VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556]; the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]; Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269]; rateable value; agreed unit rate; agreed allowance for quantum; masking allowance disputed; appeal allowed-in-part.

APPEAL NUMBER:	CHG100084707
RE:	90-92 Manchester Road, Leigh, WN7 2LD (the "subject hereditament")

BETWEEN:	Freshphase Ltd	Appellant
	and	
	The Valuation Officer	Respondent

SITTING:	*remotely via Microsoft Teams conference call*
ON:	Tuesday 9 August 2022 at 10:00 hours
BEFORE:	Dr J Johnson (Senior Member) (Presiding) Mr M Bhatti
CLERK:	Mr W Hamilton IRRV(Dip) A.Inst.Pa
APPEARANCES:	<u>*For the Appellant:*</u> Mr K Batty of Ken Batty Chartered Surveyors <u>*For the Respondent:*</u> Mr D Turner of Valuation Office Agency

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DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel is satisfied that –

(1) the rateable value shown in the 2017 non-domestic rating lists for the subject hereditament is not reasonable; and that

(2) the correct rateable value for subject hereditament is £11,500 with effect from 1 April 2017.

Introduction

3. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings. The Tribunal Panel gave proper judicial consideration to all the evidence and arguments put forward in the course of the proceedings whether or not it is fully set out in this statement of reasons.

Background

4. This appeal has been brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the "ALA Regulations"). The appeal challenges the Respondent's decisions that the Appellants' proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded.

5. The Appellants' proposal sought an alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the subject hereditament is incorrect.

Remote hearing

6. The hearing of the appeal was undertaken remotely via Microsoft Teams conference call. The Tribunal Panel attended the hearing by way of audio/video-link, as did the Clerk to the Tribunal and the Respondent's representative. The Appellant's representative attended by telephone-link.

Representation

7. Before commencing his substantive submissions Mr Batty noted the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC). He confirmed to the Tribunal Panel that –

(1) appeared on behalf of the Appellant as advocate and expert witness;

(2) his client had paid for his attendance on a fixed-fee basis and that there were no conditional or success-related fee arrangements with his client;

(3) he is member of the Royal Institution of Chartered Surveyors (RICS) and the Institute of Revenues, Rating and Valuation (IRRV) with over 30 years of experience in rating; and

(4) he understands his overriding duty to the Tribunal.

8. The Tribunal Panel noted this declaration.

Relevant Law

The non-domestic rate

9. Part III of the Local Government Finance Act 1988 (the "Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act (which is commonly referred to as the "rating hypothesis").

10. For these proceedings, it is not necessary to set out all the provisions but suffice it to say that the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

The material day

11. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "MD Regulations") provides for determining the material day. So far as is relevant for these proceedings, Regulation 3 of the MD Regulations provides –

> ***3 Material day for list alterations***
>
> *(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.*
>
> *(2) Where the determination is with a view to making an alteration to correct an inaccuracy in the list on the day on which it was compiled, the material day is the day on which the list was compiled.*

New evidence

12. Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2269] (the "Tribunal Procedure Regulations") prevents the Tribunal from admitting "new evidence" in appeals

> ***17A Admission of new evidence on NDR appeal***
>
> *(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—*

…

(b) *all the parties to the appeal agree in writing to the party providing the new evidence.*

(2) *If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—*

(a) *the new evidence; and*

(b) *the ground on which the proposal was made.*

Discussion

13. The Respondent's challenge decision was that the subject hereditament is shown in the rating list with a rateable value of £12,250. The Respondent's valuation to arrive at that rateable value is shown in the following table:

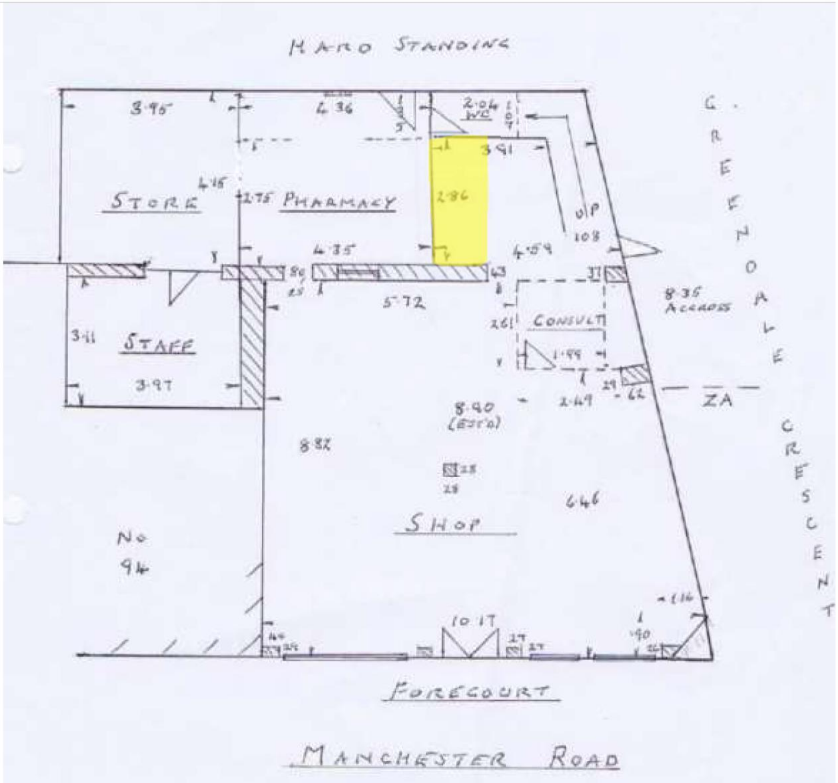
Floor	Description	Area m^2/unit	£ per m^2/m	Value (£)
Ground	Retail Zone A	57.20	£150.00	£8,580
Ground	Retail Zone B	33.60	£75.00	£2,520
Ground	Retail Area	17.90	£18.75	£336
Ground	Stores	16.20	£15.00	£243
Ground	Internal Storage	12.00	£15.00	£180
Ground	Storage (under stairs)	2.20	£15.00	£33
First	Internal Storage	53.50	£7.50	£401
			Valuation sub-total	**£12,293**
			Say RV	**£12,250**

14. At the commencement of the hearing, Mr Batty confirmed that the Appellant and the Respondent had agreed that that the subject hereditament should be valued at a Zone A price of £150/m^2, less a 5% end allowance to reflect that the subject hereditament is a double unit. On the Respondent's figures this reduced the pre-rounding valuation to £11,678, rounding to an RV of £11,500.

15. However, Mr Batty explained that there continues to be a dispute regarding the correct valuation of a masked area, which sits within Zone B on the Respondent's valuation.

16. Prior to the commencement of the hearing the Mr Turner submitted an additional plan of the subject hereditament, which was identical to that previously disclosed to the Appellant, except that the contended masked area was highlighted in yellow. This was orally agreed as admissible by Mr Batty, without the need for any further response. The Tribunal Panel therefore admitted this modified plan under Regulation 17A(1)(b) of the Tribunal Procedure Regulations (waiving the requirement for the agreement to be in writing under Regulation 9(2)(a) of those Regulations).

17. For simplicity, the modified plan is shown below:



18. The masked area measures 3.72m^2 in area (1.3m wide, by 2.86m deep) sits at the back of the subject hereditament as you enter from the front of the shop. It is masked by the structural wall at between the area's marked as "pharmacy" and "shop" on that plan.

19. Mr Batty contended that this masked area should be dropped back into the remainder "Retail Area". In his valuation, this reduces the area of Retail Zone B to 29.88m^2 and increases the area of the "Retail Area" to 21.62m^2. This has the overall effect that the pre-rounded valuation reduces to £11,479, which under the Respondent's current policy would round to a rateable value of £11,250.

20. However, Mr Turner did not agree that this was an appropriate way of valuing the masked area. He contended that the masking has very limited impact to the overall valuation and that adopting Mr Batty's method resulted in a 70-75% allowance in value for the area or valuing it at 1/8th (12.5%) of Zone A. He argued that this was too significant an allowance for useable retail floor space within Zone B.

21. There was significant debate between Mr Batty and Mr Turner on the appropriate methodology and practice relating the valuation of masked areas, such as these. With the oral agreement of Mr Turner (who also confirmed he did not wish an opportunity to provide rebuttal evidence), Mr Batty referred the Tribunal Panel to this Tribunal's decision in *Goldington Road Post Office v Moore (Valuation Officer)* [2022] VTE (CHG100167363). Again, the Tribunal

Panel admitted this decision under Regulation 17A(1)(b) of the Tribunal Procedure Regulations (waiving the requirement for the agreement to be in writing under Regulation 9(2)(a) of those Regulations).

22. In the *Goldington Road Post Office* decision, the Tribunal approved of Mr Batty's method of dropping back a masked area into the next valuation zone.

Decision

23. The Tribunal Panel is satisfied that the impact of the masking in minimal in the overall valuation of the subject hereditament.

24. Whilst the methodology of "dropping back" a masked area into the next zone may well be correct in other hereditaments, as was the case in *Goldington Road Post Office*, it does not mean that it must always be the method applied. The area affected by the masking is small and, as Mr Turner contended, is useable retail floor space which is not completely hidden to someone entering; the Tribunal Panel agreed that it is simply too narrow to be completely obscured from view and it would be understood to be there.

25. On balance, having regard to the circumstances of the hereditament, the Tribunal Panel is satisfied that the Respondent's valuation of the subject hereditament is a reasonable one. Adopting a reasonable allowance for the minimally masked area, say between 5% and 10%, would result in the same outcome; a rateable value rounded to £11,500.

26. Further, taking Mr Turner's point, the pre-rounded valuation of the subject hereditament on Mr Batty's own valuation is just £31 lower than the Respondent's proposed rateable value. The Tribunal Panel considered that Mr Batty's argument is, in effect, seeking to leverage the Respondent's rounding policy to gain a further £219 reduction in rateable value, which does not seem reasonable.

27. Accordingly, the Tribunal Panel is satisfied that the correct rateable value of the subject hereditament £11,500 with effect from 1 April 2017.

28. As there is a reduction in the rateable value from the Respondent's challenge decision, the appeal is accordingly allowed-in-part.

Order

29. In view of the above decision, the Tribunal orders –

    (1) the Respondent shall alter the entry in the 2017 non-domestic rating list to show the subject hereditament with a rateable value of £11,500 with effect from 1 April 2017; and

    (2) the Respondent shall comply with this order within two weeks.

Refund of appeal fee

30. Further, in view of the above decision, the appeal fee shall be refunded.

Appeal Number:	CHG100084707	**Issued:**	7 September 2022
		Re-issued:	8 September 2022

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Paragraph 2(1) is now amended to correct the typographical error of "£85,000" to show "£11,500" and remove the reference to an appended valuation.

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.