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; effect of masking/fragmentation disputed; appeal dismissed.

APPEAL NUMBER:	CHG100115872	
RE:	4 Gathurst Lane, Wigan, WN6 8HA (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 11:50 hours	
BEFORE:	Dr J Johnson (Senior Member) (Presiding) Mr M Bhatti	
CLERK:	Mr W Hamilton IRRV(Dip) A.Inst.Pa	
APPEARANCES:	*For the Appellant:* Mr K Batty of Ken Batty Chartered Surveyors *For the Respondent:* Mr B Slater of Valuation Office Agency	

DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is dismissed.

2. The Tribunal Panel is satisfied that the Respondent's valuation of the subject dwelling set out in its challenge decision notice is reasonable.

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.

7. During the hearing the Respondent's representative encountered some technical issues with his connection. He therefore switched off the visual link to improve the audio connection. Notwithstanding this issue temporary issue, the Tribunal Panel were satisfied that the Respondent's representative was fully able to participate in the proceedings.

Representation

8. 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.

9. The Tribunal Panel noted this declaration.

Relevant Law

The non-domestic rate

10. 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").

11. 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

12. 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.*

Discussion

13. The Respondent's challenge decision was that the subject hereditament is shown in the rating list with a rateable value of £11,250 with effect from 1 April 2017. The Respondent's valuation to arrive at that rateable value is shown in the following table:

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 £160/m^2. However, Mr Batty explained that there continues to be a dispute regarding the correct valuation consequent to the effect of masking, layout and fragmentation within the subject hereditament and that the unit was a doble unit.

15. Mr Batty referred the Tribunal Panel to his own valuation (to which he made some typographical corrections). That is set out in the following table:

Floor	Description	Area m^2/unit	£ per m^2/m	Value (£)
Ground	Retail Zone A	50.71	£160.00	£8,113
Ground	Retail Zone B	42.09	£80.00	£3,367
Ground	Retail Zone C	8.60	£40.00	£344
Ground	Retail area	7.60	£20.00	£152
Ground	Office	3.90	£16.00	£63
Ground	Staff toilets	2.40	£0.00	£0
Ground	Internal storage	14.70	£16.00	£235
			Valuation sub-total	**£12,263**
			5% double unit allowance	(£613)
			5% layout / fragmentation allowance	(£613)
			Valuation sub-total	**£11,037**
			Say RV	**£11,000**

16. Mr Batty referred the Tribunal Panel to the floorplan and photographs of the subject hereditament in evidence to demonstrate the issues with layout and fragmentation. In particular, Mr Batty considered the masking caused by a structure wall between the door and the main shop window (measuring 1.06m in width) was significant.

17. However, Mr Slater explained that in his valuation allowances for layout and fragmentation were already evidence within the adopted retails area unit rates. For example, he explained that Retail Zone A is shown as £156/m^2, being £160/m^2 less 2.5% layout/fragmentation allowance. Retail Zones B, C and the remainder are then calculated as one half, one quarter and one eighth of the Zone A rate respectively. These allowances culminated in a pre-rounded valuation of £11,994, from which a 5% end allowance reflecting the double-unit was included, reducing the pre-rounded valuation to £11,394. Under the Respondent's current rounding policy this is then rounded down to a rateable value of £11,250.

18. Mr Slater also highlighted that this was the methodology determined by the Tribunal in relation the subject hereditament in the 2010 rating list (although Mr Batty also reminded the Tribunal that each list is individual).

Decision

19. Having considered the evidence, the Tribunal Panel is satisfied that the impact of the layout, fragmentation and masking is already accounted for in the

Respondent’s calculations. Further the Tribunal Panel found that there was no evidence before the Tribunal to suggest that the valuation impact of the fragmentation and masking would be greater than that already allowed for the by Respondent. The Tribunal Panel was not satisfied that, on the evidence before it, there was a case to warrant further allowances that the Respondent had granted.

20. Whilst the Tribunal Panel understood that on Mr Batty’s method – applying an end allowance in relation to the layout, fragmentation and masking rather than applying to the line entries as Mr Slater has done – there is a greater reduction in the rateable value, it did not consider that the Respondent’s method was producing an unreasonable rateable value. Further, whilst the Tribunal Panel accepts that each rating list is its own creature, it found there is support in valuing the subject hereditament in the method adopted by the Respondent from the previous 2010 rating list determination of this Tribunal.

21. In view of these findings, the Tribunal Panel is satisfied that the Respondent’s valuation of the subject hereditament is not unreasonable.

22. Accordingly, the appeal fails and is dismissed accordingly.

Appeal Number: CHG100115872 **Issued:** 8 September 2022

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.