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 disputed; appeal dismissed.

APPEAL NUMBER: CHG100127566

RE: 397 Huddersfield Road, Millbrook, Stalybridge, Cheshire, SK15 3ET (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 13:30 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 C Skerratt 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.

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 £2,225 with effect from 1 April 2017.

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 £95/m^2. However, Mr Batty explained that there continues to be a dispute regarding the correct valuation consequent to the effect of masking, step access and a small shopfront window.

15. Mr Batty referred the Tribunal Panel to his own valuation. That is set out in the following table:

Floor	Description	Area m^2/unit	£ per m^2/m	Value (£)
Ground	Retail Zone A	21.70	£95.00	£2,062
Ground	Internal storage	14.60	£9.50	£139
Ground	Kitchen	4.10	£9.50	£39
			Valuation sub-total	**£2,240**
			10% masking allowance	(£206)
			Valuation sub-total	**£2,034**
			Say RV	**£2,000**

16. Mr Batty referred the Tribunal Panel to the floorplan and photographs of the subject hereditament in evidence to demonstrate the masking, step access and the shopfront window. 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 Skerratt explained that in his opinion no allowance was warranted based upon the evidence. He set out that subject hereditament, a former Post Office, has a passing rent (albeit post-AVD agreement, with effect from 1 April 2017) of £6,492 per annum. He also explained that that the subject hereditament is located on a sloping road and that the access step is not dissimilar from other hereditaments in the location.

18. Mr Skerratt contended that the most comparable assessments were 398 Huddersfield Road and 396 Huddersfield Road. He confirmed that neither of these hereditaments had any allowances for access, masking or the size of the shopfront windows.

19. There was significant debate between Mr Batty and Mr Skerratt on the appropriate practice relating the valuation of masked areas and the size of the shop fronts. With the oral agreement of Mr Skerratt (who also confirmed he did not wish an opportunity to provide rebuttal evidence), Mr Batty referred the Tribunal Panel to a photograph of the shopfront of 398 Huddersfield Road (taken from Google Street view). In view of the parties agreement, 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).

Decision

20. The Tribunal Panel noted from the floorplan and photos that there were clearly walls along the shop front, which do present an element of masking. However, in the context of the subject hereditament, the Tribunal Panel did not find it to be particularly excessive, especially when comparing to the admitted photograph of 398 Huddersfield Road.

21. Although the Tribunal Panel noted the photograph of 398 Huddersfield Road had shutters over the window and door, the proportions and spacing of the shop front do not, in the Tribunal Panel's opinion indicate the subject hereditament suffers a disability in comparison to it. Further the Tribunal Panel noted that from the photographs of the subject hereditament and of 398 Huddersfield Road that there is a clear slope to the road and the most hereditaments and dwellings upon it appear to have, or at least likely to have, a step into it.

22. The Tribunal Panel also considered that there was no evidence before it to demonstrate that any of Mr Batty's disabilities would impact the rental bid of the hypothetical tenant for the subject hereditament.

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

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

Appeal Number:	CHG100127566	**Issued:**	8 September 2022
		Re-issued:	23 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 16 is removed in its entirety and the subsequent paragraphs are renumbered accordingly.

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.