



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: CHG100129185

RE: Manor Pharmacy, 9 Hindley Road, Bolton, BL5 2JU
(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 11:15 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.

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.*

Discussion

12. The Respondent’s challenge decision was that the subject hereditament is shown in the rating list with a rateable value of £5,800 with effect from 1 April 2017. 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	26.8	£150.00	£4,020
Ground	Retail Zone B	23.10	£71.25	£1,646
Ground	Retail Zone C	4.7	£35.63	£167

contended that the impact was negligible and was in effect, nothing more excessive than any ordinary corner of a shop front.

Decision

17. The Tribunal Panel is satisfied that the impact of the fragmentation and masking in Zones B and C 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.
18. In relation to the masking in Zone A, the Tribunal Panel agreed with the Respondent that the impact would be minimal and considered that it was unlikely to affect any rental bid. Accordingly, the Tribunal Panel was satisfied that there is no evidence an allowance for such minor masking was warranted.
19. In view of these findings, the Tribunal Panel is satisfied that the Respondent's valuation of the subject hereditament is not unreasonable.
20. Accordingly, the appeal fails and is dismissed accordingly.

Appeal Number: CHG100129185

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.