THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; tourist attraction; receipts and expenditure valuation; appeal allowed in part.

RE: York Maze, Elvington Lane, Dunnington, York YO19 5LT

APPEAL NUMBER: CHG100151577

BETWEEN:	York Maze Ltd and	Appellants
	Mr W Cox (Valuation Officer)	Respondent

BEFORE:	Mr A Clark (Vice President)
CLERK:	Mr D Mulgrew
HEARING:	Remote hearing No.1 on 17 and 18 January 2023
APPEARANCES:	Mr M A Wasilewski, Appellants' representative and expert witness Mr T Pearcy, Appellants' director and witness of fact Mr H Flanagan of Francis Taylor Building, Counsel for the Respondent Mr W Cox, Respondent

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Summary of decision

1. The appeal is allowed in part and the rateable value reduced to £93,500 with effect from 14 June 2021.

Introduction

2. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

3. This appeal has been brought in respect of York Maze, Elvington Lane, Dunnington, York YO19 5LT (the “appeal property”) which was entered in the 2017 rating list as “tourist attraction and premises”. The initial rateable value was £25,000 from 1 April 2017 but this assessment was made by the Valuation Officer (VO) before the Appellants provided the accounting evidence. After receiving the accounting information that had been requested, the Respondent increased the rateable value to £61,000 from 25 July 2017. The effective date of the rateable value increase would have applied from 1 April 2017 but was limited to the date of the rating list alteration.

4. The Appellants then made a proposal to the VO on two grounds, namely that the entry shown in the rating list on 1 April 2017 was wrong and also disputing the subsequent list alteration by the VO. A rateable value of £24,000 was proposed from 1 April 2017.

5. As a result of the proposal, the VO gave the rating valuation further consideration, deciding that the appeal property was under-assessed and so increased the rateable value to £101,750. The effective date of the increase was again limited to the date of the rating list alteration, in this case 14 June 2021.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable. In this appeal, the Appellants sought a reduction to rateable value £26,500.

7. The material day to consider the appeal property is 1 April 2017. The antecedent valuation date (AVD) is 1 April 2015.

8. While Mr Wasilewski appeared as advocate for the Appellants, he also appeared in a dual role as expert witness. He is a qualified economist and a financial analyst, who also has experience of running a farm attraction. The dual role is allowable in VTE proceedings having regard to procedure regulations[1] and rules regarding admissibility of evidence[2].

[1] Regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.
[2] Regulation 17(2)(a) (Evidence and submissions) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

9. Mr Cox, a chartered surveyor with a long career in rating that includes the assessment of tourist attractions, provided expert evidence as the Respondent.

10. Mr Wasilewski and Mr Cox both confirmed that their primary duty in giving expert evidence was to the Tribunal and that they were not instructed under a conditional fee arrangement or other success related fee.

11. Mr Pearcy, a shareholder and director of the Appellant company, appeared before me as a witness of fact.

Preliminary matters

Proposal grounds and the effective date for any reduction

12. The Respondent had emailed the Appellants on 16 January 2023 to state that the appeal could only relate to the VO's decision to increase the RV to £101,750.

13. My Clerk had noticed that the proposal form completed on behalf of the Appellants had been made on two different grounds but was aware that regulation 4(3) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, stated that no proposal may be made by reference to more than one ground unless, for each ground relied on, the material day and the effective date are the same.

14. In view of the above restriction, my Clerk had viewed the proposal has having been made against the Respondent's list alteration from rateable value £25,000 to £61,000 with effect from 25 July 2017. He advised that if I were to allow a reduction in rateable value, the reduction would need to be from 14 June 2021 if I decided on an amount greater than £61,000 and less than £101,750. However, if I decided on an amount less than £61,000 then the reduction would need to take effect from 25 July 2017. He referred the parties to *Re the Appeal of Edbury (VO*) [2003], which of course pre-dates the new check, challenge and appeal procedures under the 2017 rating list.

15. The parties accepted my Clerk's advice.

Slideshow presentation

16. The Appellants' representative had provided a PowerPoint slideshow presentation to the Respondent and Tribunal on 16 January 2023, the day before the hearing. While he tried to reassure me that there was no new

evidence in the slides, I had insufficient time on which to verify this and therefore I decided to exclude it. In reaching that decision I was mindful that the slideshow presentation was a substantial document in its own right that consisted of 78 detailed slides. The parties had already provided me with over 1000 pages of evidence and submissions, including skeleton arguments. In my view, a further 78 pages or slides adds more paperwork to the proceedings and makes it more complex. The dates for this two-day hearing had been specifically arranged well in advance after liaison with both parties and it was not acceptable to receive substantial new material the day before the hearing. Further, the slideshow appeared to refer to extraneous matters when I was primarily concerned with the receipts and expenditure valuations in respect of the appeal property, as proffered by the parties. The Respondent's representative also had concerns with the amount of material in the slides and the late service of it. Therefore, I excluded the 78 slides.

Late evidence – An extract taken from Rating Valuation Principles and Practice (4th edition) by Bond and Brown.

17. As the Respondent's representative had no objection, I allowed pages 195 and 196 to be admitted into these proceedings. These referred to receipts and expenditure valuations and the following judgment, *Underdown (VO) v Clackton Pier Co Ltd* [1958] RVR 460.

Issues

18. The issue in dispute concerned the rateable value to be applied to the appeal property. The parties had each submitted receipts and expenditure valuations. There was a massive difference between them on how to approach the exercise.

19. The Respondent defended a rateable value of £101,750, whereas the Appellants sought a reduction to £26,500.

Decision and reasons

20. The parties provided me with over 1000 pages of argument, evidence, legislation, case law and other documentation relevant to the valuation of farm attractions. For the complexity of the appeal concerned, I consider this excessive. I found the relevance of some of the material to be questionable and it made the task of determining a rateable value for York Maze more difficult than it needed to be.

21. Mr Cox reminded me that valuation is an art and not a science. I think it is important to stress this and say at the outset that I do not intend to comment

on all of the evidence that the parties have presented. I fear if I did so that any reader of my decision could quite easily become lost in a maze of figures, over analysis and information.

22. I thank both representatives for their skeleton arguments which helpfully set out their respective positions. From all of the case law and guidance, I found the following to be the most useful:

- Rating Forum guidance “The Receipts and Expenditure Method of Valuation for Non-Domestic Rating – A Guidance Note”, July 1997;
- *Redrose v Thomas (VO)* [2014] UKUT 0311 (LC);
- *Fryer v Cox (VO)* [2022] UKUT 0229 (LC), which I will refer to as “Apple Jacks”;
- *BNPPDS Ltd and BNPPDS Ltd (Jersey) as Trustees for Blackrock UK Property Fund v Ricketts (VO)* [2022] UKUT 129 (LC), which I refer to simply as “Blackrock”.

23. York Maze began on a different site in 2002 in an agricultural field. Mr Pearcy had used his strong creative and entrepreneurial skills, particularly relying on exciting maze designs when viewed from the sky. They got national attention and within four years he was achieving 60,000 visitors per annum.

24. Mr Pearcy was forced to move because his landlord wanted to develop the land. He moved to the current site in 2007, buying a farm for £590,000 that comprises a farmhouse and redundant agricultural buildings. He initially rented a further 20 acres for £4,000 per year and has subsequently purchased this. The site has mains water, but there is no mains gas or sewage on site and electricity is limited to a single-phase supply.

25. Planning permission for the tourist attraction had been difficult to secure and opening is limited to the months of July, August and September. The appeal property can also open for 9 days at Halloween but this is on a year-by-year licence.

26. In the three years prior to the AVD, the appeal property averaged 75,000 visitors per year and is the most successful maze business in the UK. The next best maze averaged 25,000 visitors but the norm was between 5,000 and 15,000.

27. Factors influencing the success of the business included the ability to keep customers on site for longer, which was good for secondary spending. The Appellants also had a large advertising budget some of which was spent promoting the attraction on radio and television.

28. Mr Pearcy still managed the farm but the vast majority of his time was spent running the maze business. The majority of the agricultural work on the 400-acre farm was carried out by contractors.

29. The business also hosted approximately 6 to 12 weddings each year, limited to the summer months.

30. Mrs Pearcy works full-time, all year, on the retail side of the business.

31. I have given no weight to the rent between the Appellants, as tenant, and Mr and Mrs Pearcy, as owners. While I acknowledge the rent was determined by a chartered surveyor, it was clearly not an open market transaction and is between connected parties. I also do not know upon what basis the rent was arrived at.

32. After listening to two full days of argument and evidence, I consider that the better of the two primary valuations was that of the Respondent who could present his valuation in a way that could easily be understood. The approach of the VO fits in mostly with the RICS guidance and has been developed over the years. The Appellants' representative's valuation and evidence was unnecessarily complicated. Ultimately, I found that the proposed rateable value lacked credibility in relation to the share of the divisible balance going to the tenant combined with the approach to making a large fictional adjustment for directors' remuneration on top of that.

33. In providing my own valuation I was most influenced by the Respondent's primary valuation but I preferred to follow the approach by the Upper Tribunal in *Apple Jacks* by keeping the valuation as simple as possible.

34. My valuation is set out as follows:

Receipts	£1,601,581
Cost of Sales	£334,413
Gross Profit	**£1,267,168**
Expenditure	
Employee costs (full time & seasonal staff)	£411,755
Advertising and Marketing	£127,045
Hire of Plant and Machinery	£30,000
Repairs and Renewals	£74,752
Insurance	£26,336
Business Rates	£11,975
Water Rates	£7,905
Lighting and Heating	£23,915
Telephone	£4,066
Postage and Stationery	£3,755
Travelling and Motor Expenses	£10,844
Uniforms	£3,784
Household and Cleaning	£5,935
Sundries	£3,056
Accountancy	£3,650
Professional Fees	£4,128
Bank Charges	£30,220
Manager (including pension)	£60,000
Total Expenditure	**£843,121**
Net Profit	**£424,047**
Less Renewal Fund (Tenant Assets)	£90,000
Less Renewal Fund (Significant Landlord Assets)	£5,528
Divisible Balance	**£328,519**
Tenant's Share @ 71.5%	£234,891
Available for Rent	£93,628
Rateable Value	**£93,500**

35. For the following expenses I adopted the actual amounts from the accounts in the year immediately prior to the AVD, as advocated by the Appellants'

representative. I preferred this to the VO's approach of generally rounding up or down to the nearest £1000. This therefore applies to:

- Employee costs (full time and seasonal staff)
- Advertising and Marketing
- Insurance
- Repairs and renewals

36. My other reasons for my valuation are set out in the following paragraphs:

Sales

37. I have adopted the actual sales (as shown in the Appellants' valuation) and the actual cost of sales from the accounts immediately prior to the AVD. This gives a very small change to gross profit. Instead of £1,265,000, as adopted by the Respondent, I calculate gross profit at £1,267,168.

Directors' remuneration and pension

38. The Appellants' representative had included an expense of £114,078, but I found that Mr and Mrs Pearcy ran the business themselves and that this amount was a fictional expense. Mr and Mrs Pearcy then had £195,756 on top of that from the divisible balance.

39. I was not convinced this was the correct approach, especially having regard to paragraph 5.29 of the Rating Forum guidance which stated:

> "Salaries
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> 5.29 Where the expenditure takes the form of directors' remuneration by way of salary, contributions to pension schemes or other reward, it is necessary to consider the nature of that remuneration to ensure that it properly forms an expense and is not an item which should be considered under the tenant's share. Where the occupier is an individual, or where the hypothetical tenant might be expected to carry on the undertaking without advice from directors, it is normal to allow for remuneration solely in the tenant's share."

40. Further, having regard to Upper Tribunal decisions in *Holden Vale (Conference Centre) Limited v Whitehead VO* [2014] RA 10, and *Redrose Ltd v Thomas* [2014] UKUT 0311 (LC), I considered it normal to allow for this in the tenant's share. In particular at paragraph 73 in *Redrose*, the Upper Tribunal held:

> “The rating valuation is to be prepared on the assumption of a letting to a hypothetical tenant, not the actual tenant. The fact that Mr Meulendijk has chosen to operate the business at the appeal property through a limited company is no reason to approach the tenant’s share in a manner different from what would have been appropriate had he operated as a sole trader or in partnership with his wife.”

41. However, having regard to the fact that there are staff who work all year on the business plus additional seasonal staff when the attraction is open to the public, I am of the opinion that the hypothetical tenant may have employed an experienced manager to carry out a lot of the day to day tasks associated with this. In *Apple Jacks*, I noted that the Upper Tribunal had, at paragraph 66, also allowed for the cost of a manager. In that case it had been to reflect the fact that it was a farm diversification and the Appellants were also responsible for running a farm. Mr Pearcy had some farm responsibilities too but the impression I got was that he tried to take a back seat role and oversee things.

42. In the case of York Maze, Mr and Mrs Pearcy both work full time all year round. A hypothetical tenant might not be two people with this commitment and I therefore consider it reasonable to allow an additional expense of £60,000 for a manager’s salary including pension contributions.

Hire of Plant and Machinery

43. I was not persuaded that the £54,590 expenses that was shown in the accounts closest to the AVD should be adopted because the amount was a threefold increase on the previous two years. The increase in the expenses was said to be as a result of the hire of a marquee for queuing customers around Halloween to avoid them getting wet, but I found there was a lack of information provided on this matter when Mr Wasilewski was questioned on it. Ultimately, I was not persuaded a hypothetical tenant would allow for £54,590 because in none of the preceding years did it exceed £18,965.

44. In contrast, the Respondent had adopted £30,000 which was an average of the three years prior to the AVD. I considered that a hypothetical tenant would view the preceding years accounts and make a judgement that £30,000 was reasonable. I therefore adopted £30,000 in my valuation.

Business rates and water rates

45. The Appellants had adopted the actual amounts paid in the year closest to the AVD, namely business rates of £11,975 and water rates of £7,905.

46. The Respondent had adopted a combined expense of £37,232 for both business rates and water rates. This approach was clearly more favourable to the Appellants.

47. Referring to paragraphs 5.42 and 5.43 of the Rating Forum guidance, the Respondent referred to the hypothetical tenant projecting future business rate liability. However, I was not persuaded that a hypothetical tenant would have anticipated an increase in business rates and I found that Mr Wasilewski's approach was entirely consistent with the Upper Tribunal's judgment in *Apple Jacks.* I therefore adopted business rates of £11,975 and water rates of £7,905.

Sundries

48. Due to the significant year on year variations, I have adopted £3,056 which is the average of the three years prior to the AVD. This is similar to the figure adopted by the Respondent.

Bank charges

49. I have gone with the Appellants' representative and included the actual bank charges of £30,220 in the year immediately prior to the AVD, which was broadly consistent with the previous year, and reflected the trend away from cash and the move to card and internet transactions. This increased the amount of £24,000 expenses as shown in the Respondent's valuation. To be fair to Mr Cox, in giving his expert evidence he could see some justification for increasing this expense.

Rent

50. The Appellants' representative had included an amount of £42,000 for rent.

51. The Respondent was correct to exclude the amount and I noted the Rating Forum guidance at 5.28:

> "Outgoings to be considered as allowable working expenses are those incurred as a result of the operation of the undertaking within the subject property. It should be noted that any rent paid for the subject property should not be deducted as a working expense since ascertaining rental value is the object of the valuation exercise."

Renewal Fund for Tenant Assets

52. The Appellants had provided a figure of £437,257 for non-rateable assets. The Respondent had increased this by 14.5% to £500,000 to reflect farm machinery cross subsidising the attraction. I understood that a tractor and JCB telehandler were needed for tractor rides, preparing the maze and other tasks. The Respondent considered this reasonable based on the cost of a second-hand tractor and telehandler, which were only needed on a part-time basis. He stated that an alternative to hiring is to own those items and the valuation was done on that basis.

53. I therefore adopted the Respondent's £90,000 which I note is higher than the figure used by the Appellants' representative.

54. The Appellants' valuation had also included £19,950 for farm machinery. This was stated to be from the VO's figure but this was not agreed. The Appellants' representative could not explain how he calculated £19,950 and as the VO had instead increased capital to £500,000, I believed this item was adequately reflected.

Renewal Fund for Landlord Assets

55. The Appellants' valuation included £5,528 for a renewal fund for landlord assets. In calculating this, the Appellants had depreciated the market value of the landlord's non-land assets, some £300,000, over a 40-year period to nil.

56. While the rating hypothesis provides that the hypothetical tenant is required to keep the hereditament in repair, and repairs have already been reflected in the expenses, paragraph 5.31 of the Rating Forum guidance provides:

> "…to allow for future repair or replacement of a major item, it may be necessary to establish a sinking fund in order to accumulate a sum sufficient to meet the expenditure."

57. The difficulty Mr Cox had with the sinking fund was that no specific major item had been identified and he believed it to be for all of the landlord assets. However, I noted that Mr Wasilewski had stated that this was only for *significant* future repairs and therefore I allowed this item.

Tenant's share

58. The Rating Forum guidance provides:

"5.46 The tenant's share may be regarded as the first call upon the divisible balance. This share has to be sufficient to induce the tenant to take a tenancy of the property and to provide a proper reward to achieve profit, an allowance for risk and a return upon the tenant's capital. The amount of the deduction is a matter of judgement in the circumstances relating to the enterprise carried on at the property.

…

5.47 The calculation of the amount will depend upon the nature of the enterprise and is generally based upon one of the following:

(a) a percentage of tenant's capital;

(b) a percentage of the gross receipts;

(c) a percentage of the divisible balance;

(d) an amount in keeping with the gross receipts, the amount of the tenant's capital and the divisible balance, i.e. a 'spot' figure.

Although the tenant's share may be regarded as a first charge on the divisible balance, the valuation must properly reflect the strengths and weaknesses of the hypothetical landlord and tenant, given their assumed willingness to reach agreement.

5.48 When calculating the tenant's share, each method must be considered separately. Whichever of the three principal methods (i.e. those at 5.47 (a), (b) and (c) is adopted as the primary approach, it will be necessary to stand back and consider whether the answer looks reasonable, having regard to the motives for occupation when compared with each of:

(a) the amount of tenant's capital required;

(b) the turnover;

(c) the divisible balance."

59. I appreciate that the tenant had first charge on the divisible balance. However, I had concerns with the credibility of the Appellants' proposed tenant share not least because it represented 88.6% of divisible balance (but the amount going to the tenant would have been even higher had I accepted the argument over directors' remuneration). This was far higher than the Upper Tribunal allowed in *Apple Jacks* where 75% had been decided to reflect the difficulty of that particular site.

60. I found the Appellants' approach to interest on capital was unnecessarily complicated given the VO's approach and the simplicity of the valuation from

the Upper Tribunal in *Apple Jacks*. The Appellants' representative has adopted Return on Capital Employed (ROCE) but there was inadequate evidence to show the target ROCE in the farm attraction sector.

61. The Respondent had adopted total tenant's capital of £1,034,161 (tenant's chattels of £500,000, working capital of £280,000 and goodwill of £254,161 as identified by Mr Wasilewski for the brand of York Maze). The Respondent then applies 6% to reflect a safe return on the capital at the AVD without actually taking any risk. I noted that at AVD rates of interest, this appeared to be on the high side but Mr Cox stated it was an historic legacy to use 6% and it had been used consistently by the Valuation Office Agency in receipts and expenditure valuations.

62. The Respondent then added a further 67.5% of the tenant share for profit and risk to take account of over-trading. The Respondent accepted that not all of the existing occupier's goodwill would be retained by a hypothetical tenant.

63. The Respondent's total tenant share (£273,810) was shown in the valuation as equivalent to approximately 72.9% of divisible balance (£375,768) or 26.5% of tenant's capital.

64. I am influenced by the summary of the Upper Tribunal in *Apple Jacks*, at paragraph 85, where the members stated:

> "… According to the Rating Forum guidance the tenant's share must properly reflect the strengths and weaknesses of the hypothetical landlord and tenant, and it should look reasonable, having regard to the motives for occupation, compared with the amount of tenant's capital, the turnover and the divisible balance."

65. From the valuations provided by the parties, it is my view the Respondent approach is the more realistic or reasonable. The Respondent has also taken on board the issues concerning the weather risks associated with this outdoor attraction and recognises the skill of the Appellants in achieving higher than average sales.

66. In *Apple Jacks*, at paragraph 87, the Upper Tribunal decided it was not appropriate to deduct from the divisible balance a first charge for return on tenant's capital before assessing the tenant's share. It stated:

> "So, the tenant's share must cover profit, together with an allowance for various risks and also a return on tenant's capital."

67. I noted the other Upper Tribunal judgments with interest. For example, in *Blackrock*, the Upper Tribunal had adopted a 50:50 split for a shopping centre car park.

68. In my judgement, the hypothetical tenant and landlord would start from a 50% share. In the case of the appeal property, it is my view there are greater risks for any hypothetical tenant as the opening season is short and the trade is very sensitive to the weather. I also recognise, as did the Respondent, that there is an element of over-trading as the Appellants massively outperform any other outdoor maze attraction and a hypothetical tenant would, in my view, be more cautious when negotiating a rent.

69. After listening carefully to what the parties have had to say on the subject, I consider 71.5% would be a reasonable level of tenant's share. It reflects the greater risk to the tenant than in the car park in *Blackrock* (where the tenant's share was 50%) and that the appeal property is better situated than *Apple Jacks* where the tenant's share was 75%.

Stand back and look

70. The Rating Forum guidance provides:

> "Stand back and look
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> 5.59 Although not strictly a separate stage in the valuation approach, when the valuer has completed a valuation on the R & E method outlined above, it is essential to review each of the elements to ascertain whether they have been correctly applied and produce a credible result.
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> 5.60 Although it is likely that comparables will not be available in sufficient numbers to enable a valuation to be prepared on the rental/comparative basis – otherwise the R & E method would probably not have been used – the valuer should consider the valuation produced against the background of valuation relating to similar properties and/or businesses. If the valuation does not appear to 'fit the pattern' so far as one is discernible, the valuer should again carry out a thorough review of the valuation adopted."

71. I did not consider the Appellants' proposed rateable value of £26,500 to be credible given the level of profit. In my view, a hypothetical landlord would not accept such a low rent when having regard to the income generated for the tenant.

72. My valuation is not that far from the Respondent's valuation and standing back and looking I consider that a hypothetical tenant would be satisfied with

the arrangement, acknowledging the over-trading, weather and potential need to employ a manager.

73. The parties have referred me to evidence in respect of comparable properties, in particular the Appellants referred me to Piglets Adventure Farm and Boston Farm Park. I found it impossible to give any significant weight to this evidence in the absence of their receipts and expenditure valuations.

74. The tenant's share is ultimately the part of the valuation that can bring the greatest variations in the final rateable value. Having regard also to paragraphs 5.57 and 5.48 of the Rating Forum guidance, I am satisfied that my tenant share of £234,891 (71.5% of the divisible balance), is reasonable. Using the Respondent's total tenant capital figure of £1,034,161, I noted this is equivalent to a healthy 22.7% return on tenant's capital. It is also equivalent to 14.7% of gross receipts.

75. Further, the resulting rateable value of £93,500 represents only 5.8% of gross receipts.

76. In conclusion, the appeal is therefore allowed in part with the following order.

Order

77. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £93,500 with effect from 14 June 2021.

78. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fee

79. As the ground of the appeal (namely the valuation for the appeal property was not reasonable) has been made out, the appeal fees are to be refunded in full in accordance with regulation 13E(1) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will take approximately six weeks to process.

Date: 31 January 2023

Appeal number: CHG100151577

Right of 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.