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; basis of valuation – shop (retail zoning) or office (overall); adopted rate; appeal dismissed.

APPEAL NUMBER:	CHG100349144	
RE:	Ground Floor, 5 Fleet Street, Preston, PR1 2UT (the "subject hereditament")	
BETWEEN:	Fleet Street Investments Ltd	Appellant
	and	
	The Valuation Officer	Respondent
SITTING:	*remotely via Microsoft Teams conference call*	
ON:	Tuesday 9 August 2022 at 14:00 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 C Wilkinson of Valuation Office Agency	

DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is dismissed.

2. The Tribunal Panel is satisfied that –

(1) the Respondent is correct to value the subject hereditament on the basis that, vacant and to let, it would be a retail unit; and accordingly

(2) 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.*
>
> …
>
> *(3) Where the determination is with a view to making an alteration to correct an inaccuracy in the list which arose in the course of making a previous alteration or is occasioned by a proposal disputing the accuracy of a previous alteration, the material day is the day by reference to which the matters mentioned in sub-paragraph (7) of paragraph 2 of Schedule 6 to the 1988 Act fell to be assessed when determining the rateable value with a view to making the alteration which gave rise to the inaccuracy or the accuracy of which is disputed.*
>
> *(4) Where the determination is with a view to making an alteration so as to show in, or delete from the list any hereditament which—*
>
> *(a) has come into existence or ceased to exist;*

Discussion

12. The Respondent's challenge decision was that the subject hereditament is shown in the rating list with a rateable value of £15,250 with effect from 23 November 2018 (being the date it came into existence). Whilst described as an "office and premises", the Respondent is of the opinion that the subject hereditament, vacant and to let, is a retail unit. Accordingly, the Respondent's valuation devised using the zoning method, as set out in the following table:

Floor	Description	Area m^2/unit	£ per m^2/m	Value (£)
Ground	Retail Zone A	59.40	£250.00	£14,850
Ground	Retail Zone B	3.60	£125.00	£450
Ground	Internal storage	3.90	£25.00	£98
			Valuation sub-total	**£15,398**
			Say RV	**£15,250**

13. At the commencement of the hearing, Mr Batty confirmed that the Appellant and the Respondent had agreed the areas, but that he disputed the valuation on the basis of retail zoning. Mr Batty contented that the subject hereditament has always been an office (albeit as part of a larger unit with the upper floors) and accordingly should be valued on an overall basis with a £70/m^2 adopted rate. This produces a significantly lower pre-rounded valuation of £4,437, rounded down to a rateable value of £4,400.

14. Mr Batty contended that the subject hereditament should be valued by reference to a valuation scheme (297865), which related to purpose-built office blocks.

15. For the Respondent, Mr Wilkinson set out that the subject hereditament came into existence following a split of the pre-existing hereditament. However, he confirmed that even prior to this split, the ground floor of the subject hereditament had always been valued as retail space. Mr Wilkinson referred the Tribunal Panel to the marketing particulars for the subject hereditament which advertised it to let as a retail unit and contended that the location – on Fleet Street, near Fox Street and Lune Street – is primarily a retail location.

16. Turning to rental evidence, Mr Wilkinson referred the Tribunal Panel to two nearby hereditaments: 11 Lune Street and 16A Lune Street. The passing rents on these hereditaments were effective from 1 March 2015 and 1 November 2015, respectively, and analysed to £309.76/m^2 and £300.96/m^2 in terms of Zone A, again respectively. Mr Wilkinson therefore contended that the Zone A rate adopted on the subject hereditament was not unreasonable. Mr Batty disputed these as being comparable to the subject hereditament, suggesting they were in a more describable location, but he was unable to direct the Tribunal Panel to any evidence before the Tribunal of lower rents.

17. Mr Wilkinson disputed the reference to the valuation scheme quoted by Mr Batty on the basis that it related to office space, rather than retail space, but

also because it was further removed from the subject hereditament's location. Referring the Tribunal Panel to the location plan, he identified that west of the railway station was primarily offices (where the valuation scheme is drawn) and that to the east of that station is primarily retail.

Decision

18. Having considered the evidence before it, the Tribunal Panel was satisfied that the subject hereditament was a retail until. Whilst it may be used undoubtedly as an office (such as an estate agent or an accountants), it is clearly a retail unit with large display windows on two frontages. The Tribunal Panel took further support from the marketing materials which clearly advertise the subject hereditament for let as a retail space.

19. Whilst Mr Batty sought to discredit the Respondent's reliance upon rents at 11 Lune Street and 16A Lune Street, the Tribunal Panel found that there was simply no other evidence in basket before it in support of a reduction in rateable value.

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

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

Appeal Number:	CHG100349144	**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.