IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG101045724

Sitting remotely using
Microsoft Teams

Date: 10 September 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating List appeal: Local Government Finance Act 1988; deletion from the rating list; nature of works; material day; Newbigin (VO) v Monk [2017] UKSC 14; Jackson (VO) v Canary Wharf Limited [2019] UKUT 136 (LC); The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992; Appeal dismissed

Before:
MR SP WOOD
MRS AE FIELDER

Between:

KINGFISHER LIMITED PARTNERSHIP **Appellant**

- and -

(VALUATION OFFICER) **Respondent**

Regarding:
UNIT 2, WALFORD WALK, REDDITCH, B97 4HJ
(the “subject property”)

Mr D Bullimore, from Lambert Hampton smith representing the Appellant
Mr A Leese representing the Valuation Officer

Hearing date: 14 August 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the entry for the subject property in the 2017 Rating List should not be deleted as the hereditament continued to exist.

Introduction

3. The appellant made a proposal on 4 April 2023 to challenge the entry in the 2017 Rating List in respect of the subject property, of £45,000 with effect from 1 April 2017. The proposal sought a deletion of this entry from the Rating List with effect from 31 January 2022, or that it be assessed at a rateable value of £0.00 with effect from this date. The Valuation Officer (VO) did not find the proposal to be well founded, and a challenge decision was issued on 1 August 2023 maintaining the existing entry in the Rating List. An appeal against that decision was received by the Tribunal on 1 December 2023.

4. Mr Bullimore was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC). He confirmed that he was representing the appellant at the hearing on a contingency fee basis, also declaring that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

5. The panel accepted Mr Bullimore's expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

6. Mr Leese stated that he was appearing in a dual role as both advocate and expert witness for the respondent. There was no fee involved in respect of his representation.

7. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

8. The issue before the panel was to determine whether the subject property should be deleted from the 2017 Rating List as proposed by the appellant's agent.

Relevant Law

9. Whilst the rateable value is determined having regard to the antecedent valuation date (1 April 2017), the valuation must reflect the physical facts relating to the subject property and

its locality on the date the determination is made or amended (the material day). In this appeal the material day was 31 January 2022, this being the date the appellant had sought the deletion of the subject property from the Rating List. Paragraphs 2(6), 2(7) and 2(8) of Schedule 6 to the Local Government Finance Act 1988 are relevant:

> (6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.
>
> (7) The matters are –
> (a) matters affecting the physical state or physical enjoyment of the hereditament,
> (b) the mode or category of occupation of the hereditament,
> (c)…..
> (cc) …..
> (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
> (e) the use or occupation of other premises situated in the locality of the hereditament.
>
> (8A) For the purposes of this paragraph the state of repair of a hereditament at any time relevant for the purposes of a list shall be assumed to be the state of repair in which, under sub-paragraph (1) above, it is assumed to be immediately before the assumed tenancy begins.*"*

10. The evidence bundle submitted by the parties listed a number of court judgments, as follows, with detailed reference made to the first two of these:
    - Newbigin (VO) v Monk [2017] UKSC 14
    - Jackson (VO) v Canary Wharf Limited [2019] UKUT 136 (LC)
    - Barnard and Barnard v Walker (VO) [1975] RA 383
    - Lidl (UK) GMBH v Ryder (VO) [2014] RA 23
    - Garton v Hunter (VO) [1969] RA 11
    - Specialeyes plc v Felgate (VO) [1994] RA 338
    - Lamb (VO) v Go Outdoors [2015] RA
    - Lamb v Minards (VO) [1974] 153
    - Appeal of Pavlou (VO) [2013] RA 73
    - Woolway (VO) v Mazars [2015] UKSC 53
    - Iceland Foods Ltd v Berry (VO) [2018] UKSC 15
    - Scottish & Newcastle Retail Ltd v Williams (VO) [2000] EW Lands RA 480

Discussion

11. The subject property is a two storey shop and premises situated within the Kingfisher Shopping Centre. Having previously been occupied by Jessops, it was stated to have been vacant for several years.

12. The appellant contended that the subject property was being demolished to improve access around the shopping centre and to widen the area in the shopping mall, which formed part of the communal area known, according to the appellant, as Millward Square.

13. The appellant's agent stated that the landlord was carrying out work as part of the demolition of the subject property which included the removal of the shop front, the removal of ceilings and lighting, and the removal of stairs which would result in there being no access to the first floor.

14. The appellant stated that the subject property was clearly under redevelopment having undergone works of alteration. Having been stripped, in accordance with the judgment in *Newbigin (VO) v Monk* [2017] the subject property was incapable of occupation and it could not be occupied for its intended purpose. Therefore, it did not comprise a hereditament, at the material date, and should be deleted from the Rating List, or a nominal value be applied in these circumstances due to substantial on-going works.

15. The appellant added that although the works had been carried out by the landlord of the shopping centre, the decision in *Jackson (VO) v Canary Wharf Limited* [2019] stated what was required was an objective assessment of whether or not the subject property was capable of beneficial occupation, with there being no requirement for the existence of a detailed programme of works.

16. The respondent disagreed with the appellant's opinion that the appeal property ceased to be a hereditament. Mr Leese acknowledged the decision in *Jackson (VO) v Canary Wharf Limited* [2019] that a detailed scheme of works was not required. Nevertheless, he argued that the issue to consider in this case was whether the subject property was undergoing radical alteration via redevelopment works at the material date, and if, from the material date onwards, whether the subject property is undergoing transformation, radical change, or if the subject property is undergoing reasonable repair. Mr Leese did not consider the judgment in *Jackson (VO) v Canary Wharf Limited* to be useful in this instance, stating that on the basis of the evidence in this appeal, he did not consider the work to be a similar strip out to the extent that occurred in the property considered in the *Jackson (VO) v Canary Wharf Limited* case, stating that the evidence in this appeal demonstrated the subject property to be undergoing reasonable repair rather than showing transformation, radical change or redevelopment.

17. The panel turned to the evidence submitted by the parties. The initial check submitted by the appellant on 3 February 2022 requesting the deletion of the subject property effective from 31 January 2022, included photographs of the subject property. These photographs showed work having been undertaken to support the appellant's remarks about the removal of the shop front, the removal of ceilings and lighting, and the removal of stairs.

18. On 23 February 2022 the appellant was requested by the respondent to provide a schedule of works showing the dates of each phase of the demolition project, with more photographs to evidence the progress of the subject property's demolition, also requested by 16 March 2022. The respondent advised that no response was received, albeit a second check was submitted by the appellant on 28 October 2022, identical to and including the same evidence as the 3 February 2022 check.

19. The respondent again requested information from the appellant in November and December 2022, asking for the start and end dates as well as brief details of the demolition scheme, along with dated photographs to show the property had been demolished from 31 January 2022. The respondent stated the information requested was not forthcoming, resulting in no change to the VO's decision.

20. Following the appellant's challenge submitted in April 2023, requesting a deletion from 31 January 2022, the respondent contacted the appellant again, requesting details and start and end dates of the demolition scheme, evidence of the instruction of contractors and contractors progress reports, as well as photographic evidence of the demolition of the subject property. With no reply received, an officer from the Valuation Office Agency visited the Kingfisher Centre on 29 July 2023 to inspect the property externally in order to establish if it had been demolished. Photographs were taken on this date of the outside of the subject property.

21. It was evident to the panel that the photographs taken in July 2023 did not show that the subject property had been demolished. The appearance of the exterior of the property showed it to be covered by decorative boarding, to enhance its appearance within the shopping centre. There was said to be a lock on the front of the property. It was clear from these photographs that there was no wider mall space that the intended demolition of the subject property would have resulted in. The respondent stated this indicated that the evidence was sufficient to show that the property had not been demolished. Notwithstanding, this appeal was not reliant on these photographs. They were taken more than eighteen months after the material date of 31 January 2022, when the appellant asserted that the property was not capable of beneficial occupation.

22. Photographs, submitted in February 2022 by the appellant, were available to support the deletion request from 31 January 2022. The respondent argued that these photographs were equivocal, stating that they could represent repairs or stripping out of the unit prior to re-letting, and did not necessarily verify that the works related to demolition. During oral submissions, Mr Leese commented that the photographs showed an empty unit, with gaps in the ceiling, however beyond that, he did not consider that these images clearly showed a property that had been radically altered or transformed.

23. The respondent, not being persuaded by the original photographic evidence had requested on a number of occasions the appellant to provide details of the demolition scheme, its start and end dates, evidence of instruction of contractors and contractors progress reports, as well as further photographic evidence. The panel was informed by Mr Bullimore that the works carried out had been undertaken by the landlord, with ownership of the shopping centre having changed since this matter was first raised by the appellant. He told the panel that the shopping centre owners employed a considerable number of staff on site and at other shopping centres that they owned, which allowed them to use their own staff to undertake the extensive building works at the subject property. Therefore, there was no scheme of works or demolition, contractors instructions or reports, or evidence of a similar nature, which would usually be available in situations where such works were carried out by persons or companies unconnected to the property owner.

24. During his oral submissions, Mr Bullimore when questioned, about the availability or submission of other possible evidence to support the deletion request, such as documents relating to risk assessments, building control, health and safety requirements, or trade invoices, including invoices for the decorative boarding, stated that he had not been informed of any such matters, had not been sent any such documents by his client, or he had not approached his client.

25. In arriving at a decision, the panel considered the three-stage test that was endorsed by the Supreme Court in *Monk* as follows:
    i. First, is the hereditament capable of rateable occupation at all? If not, it is not a hereditament;

ii. Secondly, if it is so capable, what is its mode or category of occupation?
iii. Is the hereditament in a state of reasonable repair for use consistent with that mode or category?

26. When considering these points, the panel had regard to the documentary and oral submissions of the parties. There appeared to be a number of inconsistencies in the replies provided by the appellant’s representative, which reduced the reliability and persuasiveness of this evidence.

27. The panel was informed that at 31 January 2022, work had been carried out with the removal of the shop front, the removal of ceilings and lighting, and the removal of stairs, then to be told that work was about to start following a meeting in January 2022. When asked about the current situation regarding the work, an answer was provided that work was going slow and had stopped a few weeks ago, however a later response referred to work at the subject property being at the same stage as last summer. There was also an element of confusion about the date when the photographs provided by the appellant, were taken.

28. Prior to the parties being invited to submit closing statements, the clerk provided advice regarding this matter. Although the effective date proposed by the appellant for a deletion of the entry was 31 January 2022, the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 state that where the determination is with a view to making an alteration to delete from the list any hereditament which has ceased to exist, the material day is the day on which the circumstances giving rise to the alteration occurred. With this in mind, the parties were asked whether the panel should consider the deletion of the entry from the Rating List from a later date than what was contended for, in the proposal, and hitherto, during the hearing. The appellant confirmed that the entry in the Rating List should be deleted from 31 January 2022.

29. The panel considered if the evidence signified that the entry for the subject property should be deleted, be that from the date stated in the proposal or any other date requested by the appellant on which the circumstances giving rise to the alteration occurred. The panel looked to the appellant to demonstrate that the subject property was no longer a hereditament capable of rateable occupation, giving regard to information and evidence requests, the reasons for certain evidence not being available or submitted, along with the documentary and oral evidence presented. Taking all of this into account, on the balance of probabilities, the panel was not convinced by the appellant, determining that the subject property was capable of rateable occupation on the material day and that it was in a condition where the hypothetical landlord would consider the costs of repairs reasonably economic to undertake.

Determination

30. In view of the above findings and conclusions, the Tribunal Panel was satisfied that the appeal be dismissed.

Right of further appeal

31. Any party who is aggrieved at the Tribunal’s decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

32. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mr SP Wood, Senior Member (Presiding)
Mrs AE Fielder, Senior Member

10 September 2025

Mr R Patel
Clerk to the Tribunal
Date issued to the parties: 10 September 2025