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

Case No: CHG101082191

Sitting remotely using Microsoft Teams

Date: 10 July 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 Rating List Appeal: Warehouse and premises; scheme of redevelopment works; Newbigin (VO) v Monk [2017] UKSC 14; Avison Young Limited v Jackson (VO) & Moore (VO) v Great Bear Distribution Ltd [2021] EWCA Civ 969; *VTE discretionary powers under* regulation 38(7) Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009; *appeal allowed in part.*

Before:
MS R SHARMA
MS LA OWUSU-AFRIYIE

Between:

BNPPDSJ LTD & BNPPDS LTD AS TRUSTEES OF BUKPF — **Appellant**

- and -

LUCY DYER (VALUATION OFFICER) — **Respondent**

Regarding:
UNIT 8 UPLANDS TRADING ESTATE, BLACKHORSE LANE, LONDON E17 5QJ
(the “subject property”)

Appearances:
Mr C Mann from Ryan property tax services UK Limited for the Appellant
Mr D Alford, for the Respondent

Hearing date: 13 June 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part. The reduction to nil Rateable Value is confirmed but the panel decided to exercise its powers under regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) and make an order for the temporary period of 17 October 2022 until 11 January 2023.

Introduction

2. The subject property, which is a pre-1965 built property, was shown in the 2017 Rating List as 'warehouse and premises' with a rateable value of £34,250 effective from 1 April 2017. It is located in Walthamstow, North London and forms one unit of Uplands Business Park. Prior to October 2022 the hereditament was let out to a printing and publishing company, once vacant, a scheme for redevelopment of the hereditament commenced.

3. A challenge was submitted on 5 July 2023 which proposed a deletion from the rating list with effect from 1 November 2022 on the grounds that the redevelopment works rendered the subject property incapable of beneficial occupation.

4. On 11 March 2024, the respondent's challenge decision was issued and confirmed that the proposal was not well founded and no alteration was made to the list. This decision was appeal to the Tribunal.

5. Following the challenge decision, having further considered the evidence, the respondent agreed to a temporary reduction for the duration of the works. It agreed to reduce the rateable value to nil with effect from 17 October 2022 (this being the date the works commenced) until 11 January 2023 (this being the date shown on the certificate of completion). As the 2017 rating list is closed, the respondent has no mechanism to bring a property back into the list following completion of the works, as such, he requested the panel exercise its discretion in accordance with 38(7) Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) to make an order for a temporary period.

6. The appellant's position remained that the assessment should be deleted, rather than reduced to nil for a fixed period, on the grounds that it was incapable of beneficial occupation (as agreed by the respondent) as a result of the works. It was therefore his position that a property cannot re-enter the rating list without being 100% complete (or if a completion notice is issued).

7. The parties exchanged emails regarding the outstanding dispute, within which they both summarised their respective arguments. To comply with the evidence restrictions placed on such appeals and to assist the panel, in accordance with 17A Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) both parties agreed for the email exchange to be admitted into evidence.

8. Mr Alford appeared as advocate only but submitted that he had inspected the property and could take the role of expert witness if necessary. Mr Mann appeared in a dual role of advocate and expert witness. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Mann advised that he was

instructed under a contingency based fee. He declared that he accepted and understood that his duty was to the Tribunal in giving his evidence regardless of whether or not the evidence supported the client’s case.

9. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure Regulations and was allowable due to the Tribunals’ rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

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

Issue and Relevant Law

11. The issue before the panel was whether it should exercise its discretion under regulation 38(7) Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) and order the deletion (or reduction to nil rateable value) for a temporary period.

12. Regulation 38 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) provides:

    38 Orders other than consent orders
    ……

    (4) After dealing with [a NDR appeal], the VTE may, subject to paragraph (6), by order require a VO to alter a list in accordance with any provision made by or under the 1988 Act.
    ……

    (7) Where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances**.**

13. Section 64 of the Local Government Finance Act 1988 (‘the 1988 Act’) provides that a hereditament is, by virtue of Section 115(1) of the General Rate Act 1967 a ‘…property which is or may become liable to a rate, being a unit of such property which is or would fall to be, shown as a separate item in the valuation list’.

14. The term ‘rateable value’ as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

    > “The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
    >
    > a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above."

15. Paragraphs 2(6) and 2(7) of Schedule 6 also require that matters affecting the physical state or physical enjoyment of the hereditament, and the mode or category of occupation of the hereditament, must be taken to be as they are assumed to be on the material day. Thus, a property has to be valued physically as it existed at the relevant material day but having regard to economic factors as at the antecedent valuation date of 1 April 2015.

16. The material day for the purpose of this appeal was 17 October 2022, this being the date both parties agreed that the schedule of works commenced.

Discussion

17. The works carried out to the subject property were to increase rental return and included repair and redecoration to the external areas and refurbishment of the WC and warehouse. The scheme of works involved the stripping out of the subject property including isolating and stripping out the small power back to the main distribution board to allow for a complete re-wire of the property, removal of A/C condenser and fan units, demolition of side extension plant enclosure, removal of roof lights, removal of all rainwater pipes, removal of external doors, removal of roller shutter door, cutting out of the warehouse floor (in preparation for epoxy resin floor covering), strip out of all of the sanitaryware within the W/Cs and strip out of all lighting throughout the property.

18. The panel noted that parties agreed that the subject property was undergoing a scheme of works and that the works took place between 17 October 2022 until 11 January 2023. They agreed that it was incapable of beneficial occupation for this period. The dispute lay with whether the deletion should be 'end dated' by the panel under the powers provided in Regulation 38(7) Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269).

19. Mr Mann, for the appellant, contended that as the respondent was accepting that the property is not capable of occupation, it should be deleted from the list and cannot be re-entered until it is 100% complete. He quoted the Valuation Office Agency's practice note which stated the following:

> "13.4 Reinstatement of list entry may be necessary following completion of the works. When doing so, consideration should be given to the principles in Rating Manual: Section 2 Part 3. Notably, following the Upper Tribunal decision in Aviva v Whitby (VO) RA/3/2011, it is important that the hereditament is 100% complete and ready for occupation, is actually occupied or a completion notice has been served before a new entry is made in the Rating List.

20. Mr Mann stated that re-entering it into the rating list prior to full completion would go against precedent. He referred to a recent decision from the President of the Valuation Tribunal for England in *Segro Public Limited Company v Dyer* [VTE CHG101152807] which he submitted was an almost identical finish to the subject property. He confirmed that upon completion of the works, the subject property remained unoccupied and had no small power/amenities/kitchen. It essentially required fit out works.

21. Mr Alford's submission was that reducing to a nominal value was within the ambit of the decision of the Supreme Court in *Newbigin (VO) v Monk* [2017] UKSC 14, a point in which the appellant had made themselves within the appeal documents. As such, it was his submission, that the subject property should be valued at RV £0 for the duration of the scheme and the resultant period of incapability. He submitted that he does not agree that there is no precedent to allow a temporary order for such circumstances and referred to the judgment *Moore (VO) v Great Bear Distribution Ltd* [2021] EWCA Civ 969 in support of his submission.

22. In reaching its decision, the panel had regard to the Court of Appeal's judgment in *Avison Young Limited v Jackson (VO) & Moore (VO) v Great Bear Distribution Ltd* [2021] EWCA Civ 969 which considered the Valuation Tribunal for England's use of its discretionary power under Regulation 38 (7). In that case, the Court of Appeal determined that Regulation 38 (7) was appropriate. Paragraphs 77 to 79 of the Court of Appeal's judgment set out Lord Justice Arnold's reasoning as follows:

> 77. …………The GBD Proposal sought removal of the property from the list because the property was temporarily incapable of beneficial occupation due to building works. What the Upper Tribunal was Judgment Approved by the court for handing down. Avison Young v Jackson being asked to do by the Valuation Officer was to limit the temporal effect of the order to the period when the circumstances which justified it existed. Contrary to the argument of counsel for GBD, the Upper Tribunal was not being asked to facilitate an inaccurate entry in the list. The inaccuracy in the list with effect from 4 October 2014 had arisen separately and for a different reason (namely, that there had been a different material change of circumstances, but no-one had taken the steps necessary to alter the list to reflect that change).
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> 78. Turning to the fourth ground, I consider that the Upper Tribunal was right to take the ability of the ratepayer to protect itself into account in Avison Young and wrong not to do so in Great Bear Distribution. Counsel for GBD argued that the ratepayer was under no duty to maintain the accuracy of the list, whereas the Valuation Officer was under such a duty. I accept both of these propositions, but I do not agree that they support the approach taken by the Upper Tribunal in Great Bear Distribution. The fact that the ratepayer is under no duty to maintain the accuracy of the list does not justify the ratepayer relying upon its own failure to make a proposal which would have protected its position when the VTE is asked to exercise its discretion in the ratepayer's favour under regulation 38(7). I do not suggest that the Valuation Officer's failure to take unilateral action is an irrelevant consideration, but in my judgment, it is a factor of significantly less weight because the ratepayer will know what works have been carried out and when the works were completed long before the Valuation Officer can find that out.

> 79. I would add that I am puzzled by the Upper Tribunal's statement that temporally limiting the order was not "in the public interest". By exercising its discretion in the way in which it did, the Upper Tribunal favoured the interests of one ratepayer, GBD, over the interests of other ratepayers in the relevant area (if they are required to make up the shortfall) or over the interests of persons who benefit from the public expenditure which is financed by rates (if other ratepayers are not required to make up the shortfall). This seems a strange conception of the public interest. As I understand it, what the Upper Tribunal meant was that it was not in the public interest for GBD to be overcharged. But, as discussed above, this ignores the fact that GBD could have avoided being overcharged by taking appropriate action.

23. The panel did not agree with the appellant's position that the subject property cannot be brought back into the rating list unless it is a 100% complete or a completion notice had been issued. Whilst this would be the case for a new property and there are authorities regarding this matter such as the referred to *Porter (VO) v Gladman Sipps* [2011] UKUT 2004 (LC), the difference here is that it is not yet deleted from the rating list. The subject property was already established in the rating list and even though the respondent was agreeing that it was incapable of occupation for a period, the panel considered that the Supreme Court in *Monk* did not distinguish between deletion or reduction to nominal value. Therefore, whilst the property remained in the list, the panel found it could reduce it to nil rateable value and *Great Bear* endorsed the use of the VTE's powers under 38(7).

24. Mr Mann stated that the situation in *Great Bear* differed in that the property in question was occupied. The panel was not persuaded that the fact that the subject property remained unoccupied following completion of the works meant it should not be in the rating list. If the panel was to agree with Mr Mann, one would ask what is the point of the statutory assumptions? Following the works, the subject property was is a state of reasonable repair, so should remain in the rating list, despite it being vacant.

25. In *Segro Public Limited Company v Dyer* [VTE CHG101152807] the property subject to appeal had already been deleted from the rating list so was treated as a new property in order to be re-entered. In the appeal before it, as previously mentioned, the subject property was still in the rating list and the panel was being asked to order a deletion for a temporary period. The President addressed this point within that decision stating that had the Valuation Officer not deleted the entry, the situation that the respondent found themselves in could have been avoided.

26. Ultimately, the panel was not persuaded to not exercise its discretion under the aforementioned regulation 38(7). The regulation states: 'where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances.' The panel found that the circumstances (scheme of works) had commenced on 17 October 2022 and ceased on 11 January 2023. As the period was known, and was agreed by the parties, the panel found that this was an appropriate situation to exercise its discretion.

Determination

27. In view of the above findings and conclusions, reduction to nil rateable value is confirmed but for the temporary of 17 October 2022 until 11 January 2023 only. The appeal is therefore allowed in part.

28. Accordingly, Under the provisions of regulations 38(4) and 38(7) 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 2017 rating list to nil rateable value for the temporary period of 17 October 2022 until 11 January 2023.

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

Right of further appeal

30. 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.

31. 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/.

Ms R Sharma, Senior Member (Presiding)

Ms LA Owusu-Afriyie, Senior Member

10 July 2025

Mrs C McAvoy
Clerk to the Tribunal
Date issued to the parties: 10 July 2025