IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2023 RATING LIST APPEAL

Case No: CHG101182947

Sitting remotely using Microsoft Teams

Date: 20 January 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — Newbigin (Valuation Officer) (Respondent) v SJ & J Monk (a firm) (Appellant) [2017] UKSC 14 — programme of works- capability of beneficial occupation following works – deletion of assessment – appeal allowed.

Before:

MR MF YOUNG
(VICE PRESIDENT)

Between:

FIL INVESTMENT MANAGEMENT LTD — **Appellant**

- and -

KAREN GILES
(VALUATION OFFICER) — **Respondent**

Regarding:

6TH FLOOR, 6 CUMBERLAND PLACE, NOTTINGHAM, NG1 6HJ
(the "subject property")

Mr L Wilcox (instructed by Ryan Property Tax Services UK Limited) for the **Appellant**
Mr A Walder (instructed by HMRC Solicitors) for the **Respondent Valuation Officer**

Hearing date: 17 December 2025

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is allowed.

2. I find that the subject property was undergoing a scheme of redevelopment and was incapable of beneficial occupation, so it must be deleted from the 2023 non-domestic rating list.

STATEMENT OF REASONS

Introduction

3. This appeal is another case looking at whether works ongoing at a property were sufficient to render it incapable of beneficial occupation and so not a hereditament at all.

4. The appeal was previously heard by the Tribunal (Ms JL Hadley and Mrs N Manzoor) but following a review of the decision by a Vice President of the Tribunal, Miss L Moses, the decision following from that hearing was set aside. I am therefore hearing this matter afresh, without regard to the decision or findings made by the previously constituted Tribunal.

5. In anticipation of the hearing, the parties have helpfully re-filed agreed bundles, including the original challenge bundles, a joint authorities bundle and a statement of agreed facts. The parties have also filed skeleton arguments (the Appellant's referred to as a statement of case). I am grateful to the parties for their cooperative approach to the rehearing, and to counsel for their clear and concise submissions.

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

Background

7. The subject property was a sixth-floor office. It was first shown in the 2023 non-domestic rating list (the "rating list") on compilation, 1 April 2023, as an office and premises with a rateable value of £99,000.

8. On 12 February 2024, the Appellant, through its representatives, served upon the Respondent Valuation Officer a proposal which sought the deletion of the subject property's entry in the rating list from its compilation on 1 April 2023.

9. On 5 April 2024, the Respondent Valuation Officer decided that the proposal was not well-founded and confirmed the subject property's entry should remain in the rating list from 1 April 2023 at a ratable value of £99,000.

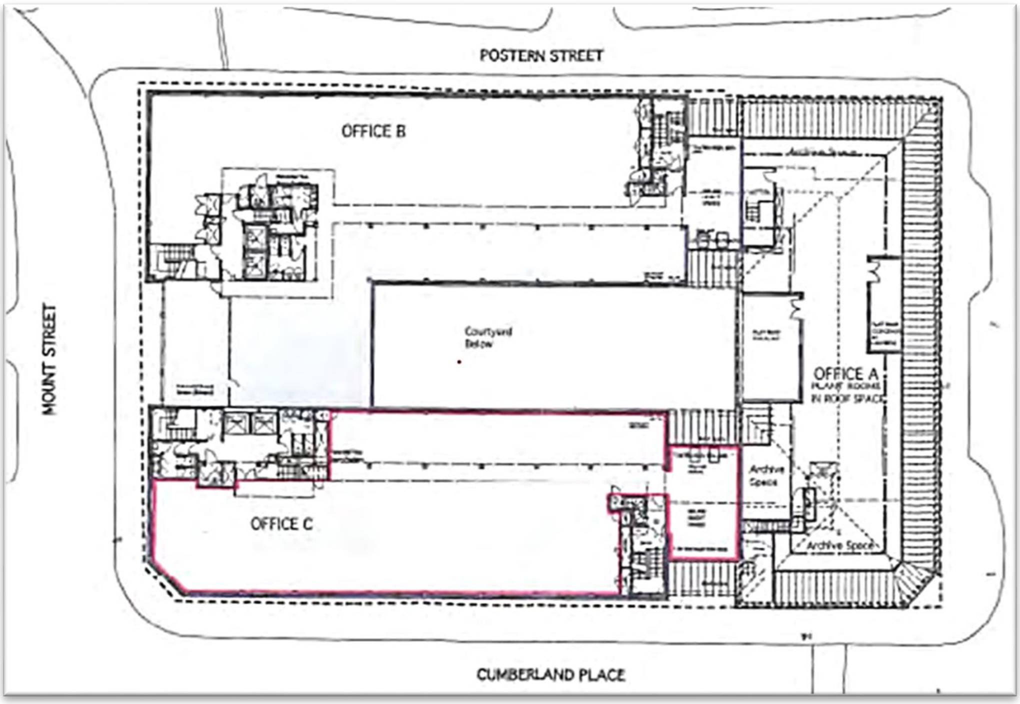
10. On 12 June 2024, the Appellant, through its representatives, filed an appeal with the Tribunal which challenges the Respondent Valuation Officer's decision.

Agreed facts and issues in dispute

11. So far as is necessary for this decision, the parties have agreed the following facts—

    (1) The building was built in 2004. It is a quadrangle comprising three separate office buildings and these are: 6 Cumberland Place, 37 Park Row and 80 Cumberland Place. There is a car park at lower ground floor/basement level.

(2) The subject property comprises 626.36m² and the unit of assessment is edged red on the following plan—



(3) On Monday 20 February 2023, a programme of works commenced at the subject property, which concerned the “category A” interior fit out.

(4) The programme of work included the following items—

(a) Strip out all existing partitioning, solid, demountable and glazed, and ceiling and grid. Removal from site and return to open plan,
(b) Removal of bespoke tea points/break out area/kitchen,
(c) Take up existing raised flooring and dispose carpet tiles from site,
(d) Strip out all previous tenant’s data and telecommunications cabling and remove from site,
(e) Re-lay and fix raised floor panels on completion of all works under the floors,
(f) Remove all small power and data and remove from site,
(g) Take out all existing floor boxes and retain for potential re-use,
(h) Supply and lay new carpet tiles,
(i) Installation of new ceiling tiles and grid,
(j) Test and service the existing air conditioning and leave in full working order and change controls as specified,
(k) Design, supply and install new lighting scheme,
(l) Supply and install new suspended mineral fibre ceiling system.

(5) During the programme of work, the plan changed and the suspended ceiling grid was retained and resprayed.

(6) On 25 May 2023 a “certificate of practical completion” was issued.

(7) The contractor's photograph timed 11:37am and dated 5 April 2023, depicts the subject property in almost shell condition comprising an exposed ceiling grid, and partial raised floor absent of wiring and cabling.

(8) On 5 April 2023, the subject property lacked under floor services, sections of raised floor, small power, partitioning, lighting, heating equipment, kitchen facilities and ceiling tiles.

(9) The material day of 1 April 2023 was a Saturday, and the photograph was taken approximately 2½ working days later on Wednesday 5 April 2023.

(10) The subject property remains in the practically complete Category A certified condition. It has not been beneficially occupied in the mode or category of an office during the currency of the 2023 rating list and is available to let.

12. The two matters not agreed by the parties are—

(1) whether the hereditament was capable of beneficial occupation at the material day; and consequently

(2) whether the subject property should be included in the rating list as a hereditament.

Relevant Law

Non-domestic rating

13. Part III of the 1988 Act (the "1988 Act") makes provision for the levying of a rate by billing authorities in respect of non-domestic hereditaments in England and Wales. Valuation Officers are required to compile, and then maintain, lists of such hereditaments and their rateable value.

14. Section 64(1) of the 1988 Act adopts the definition of hereditament from section 115(1) of the General Rate Act 1967 (the "1967 Act"). That provides—

> **115 Interpretation**
>
> (1) In this Act, except where the context otherwise requires, the following expressions have the following meanings respectively, that is to say—
>
> …
>
> "hereditament" means 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;"

15. Although I was not specifically referred to any authority on the point in this instance, it is well known that one of the four ingredients of "rateable occupation", for determining whether property is a hereditament, is whether the property is capable of "beneficial occupation".

16. Section 56(1) and Schedule 6 of the 1988 Act make provision for determining the rateable value of a non-domestic hereditament. Paragraph 2(1) of schedule 6 to the 1988 Act

provides the basis and statutory assumptions for undertaking the valuation. So far as is relevant, schedule 6 of the 1988 Act provides—

> **Schedule 6**
> **Non-domestic rating: Valuation**
>
> 1 This Schedule has effect to determine the rateable value of non-domestic hereditaments for the purposes of this Part.
>
> 2
>
> (1) 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.

17. It is the interaction with the definition of hereditament at section 115 of the 1967 Act and the statutory assumption at paragraph 2(1)(b) of Schedule 6 of the 1988 Act that has been the subject of significant litigation where property is, or has been undergoing, redevelopment.

18. In the joint authorities bundle I was referred to the following eight judgments—

(1) *Newbigin (Valuation Officer) (Respondent) v SJ & J Monk (a firm) (Appellant*) [2017] UKSC 14

(2) *Poplar Assessment Committee v Roberts* [1992] 2 AC 93

(3) *BNPPDS(J) Limited and BCI Limited (as Trustees of the Blackrock Industrial Trust) v Hitchings (VO)* [2025] UKUT 401 (LC)

(4) *De Silva & Anor v Davis (VO)* [1983] 1 EGLR 211

(5) *Carey Group Ltd v Ricketts (VO)* [2024] UKUT 356 (LC), [2025] RA 65

(6) *Jackson (VO) v Canary Wharf* [2019] UKUT 136 (LC), [2019] RA 411

(7) *Aviva Investors v Bunyan (VO)* [2022] VTE CHG100345300, [2023] RA 11

(8) *Porter v Trustees of Gladman Sipps* [2011] UKUT 204 (LC), [2011] RA 337

19. In *Monk*, the Supreme Court was considering an appeal concerning the first floor of a three-storey office block that had undergone redevelopment works. At [3], Lord Hodge summarised the works—

> "3. The contracted building works involved the removal of all internal elements, except for the enclosure for the lift and staircase by which people gained access to other floors. This entailed stripping out the cooling system including all internal and external plant, the lighting and power installations, the fire alarm system, the suspended ceiling, all sanitary fittings and drainage connections, the timber joisted and modular raised flooring, and existing masonry walls and metal stud partitions. The contract also provided for the construction of new common parts to the premises and new communal sanitary facilities, which involved new solid partitioning, a raised floor, new sanitary fittings, new drainage and plumbing systems, and new electric lighting, alarm and heating systems. Finally, the contract envisaged the construction of three new letting areas within the premises with three self-contained electrical distribution circuits and air conditioning and heating systems"

20. Referring to the alteration to schedule 6 to the 1988 Act by the Rating (Valuation Act) 1999 (which restored the "repair assumption"), Lord Hodge SCJ said at [20]—

> "20. … In my view the Court of Appeal goes too far in interpreting the 1999 Act as completely displacing the reality principle in relation to both the physical state and the mode of occupation of a hereditament which is undergoing redevelopment. The 1999 Act, by introducing the assumption of reasonable repair at the outset of the hypothetical tenancy ("the repair assumption"), is not addressing the question of whether the premises were capable of beneficial occupation, which, in the context of a building undergoing redevelopment, is a logically prior question. Thus the repair assumption (para 2(1)(b)) applies to matters affecting the physical state of the hereditament (para 2(7)(a)) but not to the mode or category of occupation of the hereditament (para 2(7)(b))."

21. He went on to state, at [22], affirming of the intervention by the Rating Surveyors' Association and British Property Federation, that—

> "…the correct approach was to proceed in this order: (i) to determine whether a property is capable of rateable occupation at all and thus whether it is a hereditament, (ii) if the property is a hereditament, to determine the mode or category of occupation and then (iii) to consider whether the property is in a state of reasonable repair for use consistent with that mode or category. The first two stages of that process involve the application of the reality principle. At the third stage the valuation officer applies the statutory assumption in para 2(1)(b) if the reality is

> otherwise. In my view, this is a helpful approach where a building is undergoing redevelopment."

22. And at [23]—

> "… The premises were incapable of beneficial occupation, because, as an objective fact, they were in the process of redevelopment and no part of them was capable of beneficial use. If the works are objectively assessed as involving such redevelopment, there is no basis for applying the assumption in para 2(1)(b) to override the reality principle and to create a hypothetical tenancy of the previously existing premises in a reasonable state of repair. This is both because a building under redevelopment, like a building under construction, is incapable of beneficial occupation and, in any event, the hypothetical landlord of a building undergoing redevelopment would normally not consider it economic to restore it to its prior use."

23. Lastly, at [24] he stated—

> "When in the course of a redevelopment some part of the developed property becomes capable of beneficial occupation, and thus becomes a separate hereditament, the assumption in para 2(1)(b) might apply to that part. Thus, if, in the course of the conversion of a hospital into offices, a part of the development became capable of beneficial occupation as flatted accommodation, para 2(1)(b) might apply to deem a hole in the roof of that part to have been repaired immediately before the beginning of the hypothetical tenancy of that part. But para 2(1)(b) neither deems the development to be complete nor assumes that the building in whole or in part is in a state of repair to be let as a hospital."

24. In *Canary Wharf,* the Upper Tribunal (Mr Martin Rodger QC, Deputy Chamber President, and Mr Peter McCrea FRICS) considered works to part of an office building, like those in this appeal. At [11] the Upper Tribunal found—

> "… The works … involved the removal of raised flooring, suspended ceilings, partition walls, and mechanical and electrical services, at a cost of £740,254. … As part of the work, new fire-detection systems and sprinklers were installed. The opportunity was also taken to introduce an element of future-proofing, in the form of a new riser which was added to the core to accommodate and additional mechanical or electrical infrastructure that might be required in the future."

25. At [35], [36] and [37], the Upper Tribunal held—

> "35. The suggestion that in Monk the Supreme Court created "a building undergoing reconstruction exception" to the repair assumption, as counsel for the valuation officer submitted and as the Valuation Office's Rating Manual implies, is a mistake. As is apparent from [para 20] of Lord Hodge's judgment, and from his adoption in [para 22] of the sequence of questions suggested by the RSA and BPF in their intervention, before one comes to consider the effect of the repair assumption in the context of a building undergoing redevelopment, the

> logically prior question is whether the property is capable of beneficial occupation at all, and thus whether it is a hereditament at all.
>
> “36. If premises are not capable of beneficial occupation they are not a hereditament. …
>
> “37. The valuation officer’s acceptance in this case that the appeal property is not capable of beneficial occupation is therefore the beginning and end of the appeal.”

26. In *Carey Group Plc*, the Upper Tribunal (Mr Martin Rodger KC, Deputy Chamber President, and Mr Mark Higgin FRICS FIRRV) considered whether deterioration to a property arising from a defect. At [37], the Upper Tribunal stated—

> “37. Despite the clarity of the reasoning in *Monk*, a question mark may remain over the relationship between the reality principle and the repair assumption where premises are rendered incapable of beneficial occupation for reasons other than a programme of radical alterations”

27. More recently in *BNPPDS (J) Ltd,* the Upper Tribunal (Mr Martin Rodger KC, Deputy Chamber President, and Mr Mark Higgin FRICS FIRRV) considered a scheme of works at a warehouse. At [46] the Upper Tribunal held—

> “46. We agree with Mr Donmall that, following *Monk*, the distinction between works to remedy a lack of repair and redevelopment works is critical in cases like this. The distinction is one of fact, which must be assessed objectively, taking account of the condition of the building and the works which are being undertaken to it. Mr Donmall asserted that an end of tenancy refurbishment did not come close to justifying deletion because it did not involve reconstruction or redevelopment, which were the activities considered by Lord Hodge in *Monk*. But redevelopment, in the sense that a surveyor might deploy the word, generally refers to the construction of new buildings after clearing a site of whatever occupied it before. There is no doubt that such buildings would not be rateable until they were complete and capable of occupation (or deemed to be). Similarly, reconstruction is not a word of precise meaning and might involve different degrees of rebuilding, repairing or restoring a building or property. Rather than debating semantics we consider it is necessary to focus on the known facts about the condition of the building.”

28. At [49], the Upper Tribunal stated—

> “49. We see some force in Mr Wilcox’s reliance on the principle of equality of treatment between the owners of properties in a similar condition. The fact that the completion notice regime enables buildings to be brought into the list on a deemed basis, whether or not they are in fact capable of beneficial occupation, does not undermine the point. The Tribunal’s decisions in Porter and Aviva were not concerned with completion notices. They support the proposition that a building which, for reasons other than disrepair, lacks attributes and features that are a prerequisite for beneficial occupation is not a hereditament. We do not see why a building which has never been in the list should be treated

more favourably than one which has, when both are in substantially the same condition."

Appeal to the Tribunal

29. Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the "NDR Regulations") provides that a proposer may appeal to the Tribunal. So far as is relevant to this appeal, Regulation 13A provides—

13A Making an appeal to the VTE

(1) A proposer may appeal to the VTE on either or both of the grounds set out in paragraph (2) if—

(a) the VO has decided under regulation 13 not to alter the list;

…

(2) The grounds are—

(a) the valuation for the hereditament is not reasonable;

(b) the list is inaccurate in relation to the hereditament (other than in relation to the valuation).

30. In determining the appeal, the Tribunal may make such a decision as it finds correct, standing in the shoes of the Respondent Valuation Officer, considering the proposed alteration afresh on the evidence available to them when determining the proposal. The burden of proof in satisfying the Tribunal that the Respondent Valuation Officer's decision was wrong rests with the Appellant.

Discussion

31. For the Appellant, Mr Wilcox proposed two questions: first was the subject property in fact incapable of beneficial occupation on the material day and if it was not, was this because of a *Monk*-type scheme of works or because of deterioration or disrepair.

32. In answer to his first question, Mr Wilcox put it that the only answer was that the subject property was incapable of beneficial occupation; on the material day it was agreed that the subject property lacked lighting, small power, ceiling tiles, floor tiles, data cabling, or any kitchens or tea points. On the second question, Mr Wilcox highlighted that there was no evidence that the subject property was in disrepair or had deteriorated. Instead, he referred to the evidence of the schedule of works that show the landlord has chosen to redevelop the property to category A fit out specification. In considering whether the scheme was sufficiently radical, Mr Wilcox first referred me to [17] in *Monk* and the description of the works undertaken in *Paynter,* which the Lands Tribunal held to result in a nil valuation.

33. For the Respondent Valuation Officer, Mr Walder sought to categorise the works as repair. Whilst there was no evidence of dilapidations, he contended that the works did not fall on the side of redevelopment. He cited references in the schedule of works – in particular

paragraph 1.2.2 – where it cited "Repair/replace/renew" as demonstrating that the works were in fact

34. But this is not, in my view, a particularly difficult case. The programme of works did contain some elements of stripping out and repair but crucially some rateable items were stripped out and not replaced. In any valuation exercise, regard has to be made to what is actually there at the material day (*rebus sic stantibus*) as opposed to what the property may eventually become at a later date with the addition of additional items or adaptation of the premises. The question to be resolved is, was the property in this case capable of use as an office and therefore a hereditament on the material day?

35. On the material day, the parties agreed that the subject property was subject to works which resulted in it being returned to "category A". The photographs taken on 5 April 2023 show all internal partitioning and suspended ceiling tiles have been removed, and the raised floor tiles have been removed in tracks where the electrical and data cabling has been removed. It was clearly incapable of beneficial occupation as an office and premises.

36. In submissions before the President of the Tribunal in the case *Shoosmiths LLP and Mando Group Limited v Hitchings* [2024] VTE GHG100528632 (NV17), it was accepted that an office that lacked category B fit out was not capable of beneficial occupation and therefore not a hereditament. Both counsel before me were also involved in that case. Whilst the President's decision was successfully appealed to the Upper Tribunal (*Hitchings (VO) v Shoosmiths LLP and Mando Group Limited* [2025] UKUT 244 (LC)) this appeal solely related to valuation. Following the decision in *Shoosmiths* and the Upper Tribunal's earlier judgment in *Bunyan v Acenden Limited* [2023] UKUT 17 (LC), an uplift in the assessment is required to reflect the value of tenant's category B fit out. Without the category B fit out, an office cannot be occupied for the purposes of which it was built.

37. In *Gladman Sipps,* office properties were fitted out to category A specification, but no completion notices had been served. All that was missing were tea points in some of the units, small power (a ring main and power points) and some full height partitioning. The valuation officer entered the properties into the 2005 rating list on the basis they were complete and ready for occupation. However, the Upper Tribunal held that there was no scope for including in a rating list a new building which was nearly, or very nearly, ready for occupation unless a completion notice had been served. A building is only a hereditament if it was ready for occupation.

38. As set out at paragraph 28, above, in *BNPPDS (J) Ltd* the Upper Tribunal, at [49], saw the merits of Mr Wilcox's argument that the question of rateability should be treated equally whether the appeal property was an existing hereditament already in the list which was undergoing a programme of works and a new hereditament which had been entered into the list by the valuation officer, where no completion notice had been served. Having read the recent authorities, it appears to me that, if following a programme of works, rateable items that form part of a hereditament are removed and not replaced, there is no longer a hereditament to value. In the case under consideration, the category B fit out which is rateable has been removed. The effect of which means that until a new category B fit out is installed, which would normally follow the finding of a tenant and their requirements, the appeal property is incapable of use and therefore not a hereditament.

39. Whilst redevelopment works such as these may have some overlap with end-of-tenancy dilapidations, I found no hint that any of the works being undertaken at the subject property were seeking to remedy disrepair. Moreover, if there is no longer a category B fit out *in situ*,

the issue of repair cannot arise, because you cannot repair what is not there and there is no Category B fit out that requires repair.

40. Ultimately, I found this to be a clear example of redevelopment of the kind in *Monk* and *Canary Wharf*, stripping the property to a near shell, before returning it to category A to await a successful reletting. After securing a new tenant I have not doubt that the subject property will be fully fitted to category B. It is at the point fitting out to category B that, subject to the service of a completion notice by the relevant billing authority, the subject property would become a hereditament again. Indeed, Mr Wilcox demonstrated in the letting brochure for the subject property that there was an intention to undertake tenant fitout once a letting was agreed.

41. Given that Category B fit out forms an essential part of the hereditament to facilitate occupation, and therefore its value needs to be reflected in its rateable value, the argument that an office shorn of its category B fit remained rateable was akin to the Respondent Valuation Officer wanting his cake and to eat it at the same time. The approach in these matters was therefore inconsistent, and it was difficult to find any merit in their arguments. If a tenant requires an office property to be fitted out to category B specification, before they can occupy it for any beneficial use, there is no office to be valued, as no hereditament exists.

Conclusion

42. In conclusion, I am satisfied that the subject property was not capable of beneficial occupation on the material day, and it is therefore not a hereditament to be shown in the rating list.

43. Accordingly, the appeal is allowed.

Order and refund of appeal fees

44. In view of my above decision, under the provisions of Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, **IT IS ORDERED**—

    (1) the Respondent Valuation Officer must delete the subject property’s entry in the rating list; and

    (2) the Respondent Billing Authority must comply with this order within two weeks.

45. Further, as the appeal has been successful, and in accordance with Regulation 13E of the NDR Regulations, the Appellant’s appeal fee shall be refunded.

Right of further appeal

46. 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) using Form T385 (Notice of appeal) within **four weeks** of the date this decision and statement of reasons was issued.

47. 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/.

M.F. Young

Mr MF Young, Vice President
19 January 2026

Mr WJ Hamilton, Deputy Registrar
Clerk to the Tribunal
Date issued to the parties: 20 January 2026