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

Case No: CHG101214028 & CHG101216656

Sitting remotely using Microsoft Teams

Date: 16 May 2025

**SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988**

*Non-domestic rating appeal; 2023 rating list; material change in circumstances; shop and premises; material change of circumstances in the locality; closure of anchor store; comparable properties; appeals allowed in part.*

**Before:**
**MRS LR MCDERMOTT**
**MR M NWOSU**

**Between:**

**THE TRAFFORD CENTRE LTD** — **Appellant**

**- and -**

**AMANDA HITCHINGS (VALUATION OFFICER)** — **Respondent**

**Regarding:**
**8 PEEL AVENUE, THE TRAFFORD CENTRE, BARTON DOCK ROAD, TRAFFORD PARK, MACHESTER M17 8BL**
**42-44 PEEL AVENUE, THE TRAFFORD CENTRE, BARTON DOCK ROAD, TRAFFORD PARK, MACHESTER M17 8BL**

(the “subject properties”)

**Mr Stuart Hicks of Dunlop Heywood, for the Appellant**
**Ms Judith Smith, for the Respondent**

Hearing date: 24 April 2025

## DECISION AND STATEMENT OF REASONS



### Decision

1. The appeals are allowed-in-part. An end allowance of 7.5% was awarded on the assessment of 8 Peel Avenue and 5% on the assessment of 42-44 Peel Avenue with effect from 23 December 2023.

### Introduction

2. This hearing related to two appeals, both of which were made following a challenge against the 2023 rating list entries, on the grounds that the assessments had been adversely affected by a material change of circumstances (MCC) in the locality. The MCC cited in the Challenges was the closure of the Marks and Spencer store on 23 December 2023.

3. To comply with the evidential restrictions imposed on such appeals, in accordance with regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the parties agreed for the two appeals to be consolidated and agreed to the admission of a consolidated bundle of evidence and map.

4. The appeal properties are valued as ‘shop and premises’ and are situated in the Trafford Centre in Manchester. 8 Peel Avenue was shown in the rating list at a rateable value (RV) of £147,000 with effect from 1 April 2023. 42-44 Peel Avenue had a rateable value (RV) of £535,000 also with effect from 1 April 2023.

5. Challenges had been submitted by the appellant’s representative which originally proposed an end adjustment of 30%. The respondent, in the challenge decision, did not agree that an allowance was warranted and upheld the current RV’s. Consequently, the challenge decisions were appealed to this Tribunal.

6. Following discussions and agreed analysis between the parties, Mr Hicks submitted that based on the evidence, a 20% allowance on each assessment was supported. The respondent conceded that 5% was fair and reasonable but this was not agreed.

7. Ms Smith, for the respondent, appeared as advocate only. Mr Hicks, for the appellant, 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), he confirmed that he was instructed under a conditional fee and declared that he accepted and understood that his overriding duty was to the Tribunal.

8. 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.

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

**Issue & Relevant Law**

10. The issue concerned the RV of the subject properties and, specifically, the extent, if any, to which their assessments were affected by the MCC within the locality. The appellant sought an allowance of 20% for each assessment. The respondent was willing to allow 5% on each assessment.

11. Matters which constitute a MCC are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988:

> (7) The matters are—
>
> (a) matters affecting the physical state or physical enjoyment of the hereditament,
>
> …….
>
> [(d) matters affecting the physical state of the locality in which the hereditament is situated,
>
> (da) matters which, though not affecting the physical state of the locality in which the hereditament is situated, are nonetheless physically manifest there, and]
>
> …..’

12. When valuing having regard to the material day, the valuation arrived to, has to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

> “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.

13. In accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268), the material day is the date on which the ratepayer confirms the accuracy of the information included in check. The material date for 8 Peel Avenue was 24 January 2024 and for 42 Peel Avenue it was 29 April 2024.

**Discussion**

14. There was no dispute between the parties that an MCC had occurred and the material dates were agreed. In reaching its decision, the panel considered, would the material change in circumstances affect the hypothetical tenants bid? In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2021, whereas the physical factors are as they existed on the aforementioned material dates.

15. The Marks and Spencer (M&S) store closed on 27 November 2023 and moved to its new store situated in Regent Crescent which is the opposite end of the Trafford Centre. Redevelopment works commenced on 23 December 2023. It was the appellant's representative's contention that the substantial re-development scheme to create a single retail store extending to 7,976m$^2$ on the ground and first floor levels, created an extended amount of 'dead frontage' on both levels. This, he submitted, makes Peel Avenue less attractive than it was prior to the MCC. As a result of the levels of vacancy, there was a measurable decline in the footfall on Peel Avenue and a table was provided containing the footfall data. It was submitted that by the material dates, much of the property comprising the redevelopment scheme had been deleted from the rating list due to the redevelopment works underway. The value of a retail store to a hypothetical tenant lies fundamentally in the attractiveness of the locality in which it sits and the level of footfall. If a material change of circumstances occurs, to the extent that the locality becomes less attractive and footfall declines, those changes adversely affect the hypothetical tenant's ability to exploit the hereditament commercially.

16. The respondent's position was that there was still plenty to draw shoppers to the area. Whilst Marks and Spencer had closed, this was not the only anchor tenant on Peel Avenue. There was a John Lewis, Boots, H&M and Zara. There was also public toilets situated next to Boots and lifts situated on this side of the Centre. It was submitted that the whole of the centre was struggling prior to 2023 and this cannot be seen as linked to this MCC. The respondent did not agree that this MCC had a similar impact to the comparable quoted and both parties discussed the rental and footfall evidence.

17. The panel considered the rental evidence provided, the parties had helpfully agreed the analysis. The appellant's representative had provided a table and included the average difference between the adjusted rent and RV in 2023. The average for Peel Avenue (lower mall (excluding H&M and units occupied by mobile phone companies) was 20%, for Peel Avenue (upper mall) it was 21%. The panel was not convinced that this evidenced a decline due to the MCC, it was an average, excluding some units and the rents were agreed at different times. Many factors impact the rental market, and the evidence did not demonstrate that there was a significant poorer market on Peel Avenue solely due to this MCC. The panel was therefore not convinced that this substantiated a 20% reduction for the MCC.

18. Footfall data was also provided which revealed a fall in 2023 in respect of Peel Avenue. It demonstrated that by 2024 Peel Avenues' footfall was down by 25% since 2021 and down by 43% on 2022. In Regent Cresent the footfall had increased, which the appellant's representative summited proved the impact of the closure, as the M&S store had moved to Regent Crescent. Whilst the panel accepted there was a drop in Peel Avenue, it was also mindful that it was not a certainty that this was solely due to the MCC in question. The panel found that the MCC had likely caused some reduction in footfall but many other factors could have contributed to this, for example, as stated by the respondent, the waning popularity of John Lewis. Whilst neither could be proven, the likelihood of it is that there were many factors at play.

19. The panel noted that allowances of 20% and 5% were given on Regent Crescent following the closure of Debenhams. This was agreed when the Debenhams store was removed from the rating list as well as the former Arcadia stores, which together totalled nearly 50% of the available floor area on Regent Crescent. The panel found this to be a good comparison, it evidence that levels of allowances agreed to in similar circumstances. However, the panel found that the subject properties were not impacted as severely. M&S was not the only major store in Peel Avenue, there were other stores including a John Lewis. There was also less vacancy. Furthermore, at the time the allowances were granted in respect of Regent Crescent, there were no plans for an incoming tenant. In respect of Peel Avenue, as at the material dates in 2024, the hypothetical tenant would be able to look forward as there was ongoing redevelopment.

20. The panel found that the MCC did warrant a reduction. Whilst it could not attribute the decrease in rents and footfall exclusively to this MCC it was reasonable to conclude that this would have had some impact. The question therefore was, what level of reduction was warranted? The panel placed weight on the fact that there were other anchor stores, there was a large John Lewis at the end of the Centre on Peel Avenue. There was also other major retailers and the redevelopment of the former M&S could be seen as a positive MCC and the panel found that this could reasonably have been in the mind of the hypothetical tenants at the material dates, which were months after the commencement of the redevelopment.

21. In conclusion, the panel was not persuaded that a reduction of 20% was warranted. Whilst there clearly was a level of vacancy this was not as severe as the vacancy levels on the MCC at Regent Crescent. 8 Peel Avenue was situated closer to the vacant stores and the panel concluded that, having regard to the totality of the evidence, an allowance of 7.5% was fair and reasonable. 42-44 Peel Avenue was slightly further away, closer to the dome, which had an increase in footfall. The panel therefore allowed 5% allowance in respect of 42-44 Peel Avenue.

22. Applying the end allowances reduces the RV of 8 Peel Avenue and 42-44 Peel Avenue to £136,546 (rounded to £136,000) and £510,810 (rounded to £510,000) respectively.

**Determination**

23. In view of the above findings and conclusions, the appeals are allowed in part.

24. Under the provisions of regulations 38(4) and 38(10) 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 show the following:

- 8 Peel Avenue, The Trafford Centre, Barton Dock Road, Trafford Park, Machester M17 8BL
  £136,000 Rateable Value with effect from 23 December 2023

- 42-44 Peel Avenue, The Trafford Centre, Barton Dock Road, Trafford Park, Machester M17 8BL
  £510,000 Rateable Value with effect from 23 December 2023

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

26. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

**Right of further appeal**

27. 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.

28. 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/.

Mrs LR McDermott, Senior Member

Mr M Nwosu, Member

16 May 2025

Mrs Charlotte McAvoy
Clerk to the Tribunal
**Date issued to the parties:** 16 May 2025