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

Case No: CHG101313479 & CHG101313477

Sitting remotely using Microsoft Teams

Date: 19 February 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating; 2023 Rating List appeal; merger of two hereditaments; factory and warehouse; Woolway (VO) v Mazars [2015] UKSC 53; *Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; John Laing & Son Ltd v Kingswood Area Assessment Committee [1949] 1 All ER 224 CA; appeal dismissed*

Before:
MRS S MALIK
MRS AE FIELDER

Between:

UGO FOODS GROUP LIMITED **Appellant**

- and -

KAREN GILES (VALUATION OFFICER) **Respondent**

Regarding:
UNITS 1--3 & UNIT 4, HERTSMERE INDUSTRIAL PARK, WARWICK ROAD, BOREHAMWOOD WD6 1GT
(the "subject property")

Mr M Evans from Ryan Property Tax Services UK Ltd (as expert witness for the appellant)
Mr C Cates from Ryan Property Tax Services UK Ltd (as advocate for the appellant)
Mr C Cole (as advocate and expert witness on behalf of the respondent)

Hearing date: 23 January 2026

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is dismissed.

2. The Tribunal confirms the current entries in the rating list Units 1-3 Hertsmere Industrial Park, Warwick Road, Borehamwood WD6 1GT with a rateable value (RV) of £472 500 and Unit 4 Hertsmere Industrial Park, Warwick Road, Borehamwood WD6 1GT which has an RV of £277,500 both with effect from 1 April 2023.

STATEMENT OF REASONS

Introduction

3. The appeal arises from challenges made by the appellant on 31 January 2025, in his capacity as the ratepayer in respect of both Units 1-3 Hertsmere Industrial Park, Warwick Road, Borehamwood WD6 1GT and Unit 4 Hertsmere Industrial Park, Warwick Road, Borehamwood WD6 1GT (the subject properties). The challenges were in respect of the entries for the subject properties in the rating list with an RV of £472,500 and £277,500 respectively, effective from 1 April 2023. The appellant sought a merger of the subject properties into a single revised assessment with effect from 1 April 2023 with an RV of £630,000. After considering the merits of the challenges, the Valuation Officer (VO) determined that they were not well founded and decision notices to this effect were issued on 30 May 2025. The appellant made appeals to this tribunal on 14 August 2025.

4. Mr Evans appeared on behalf of the appellant as 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). Mr Evans confirmed that he was instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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 this 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 Procedure regulations 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.

6. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

Introduction

7. The appellant submits that the subject properties were both occupied by the appellant as a single unit with effect from 1 April 2023. The appellant occupied units 1-3 from 2013 but Unit 4 was however occupied independently until the appellant commenced occupation on 23 February 2023. They now work as a single unit but they have a road between them. Mr Cates submitted that the road is in fact a private estate road and under the appellants exclusive occupation. On this basis the subject properties should therefore be merged into a

single assessment. It is the VO's submission that the road is a public road and therefore the properties are not contiguous and so must remain two separate entries in the list.

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

Issue

9. The issue before the panel was whether the two subject properties should be merged into one single assessment being Units 1-4 Hertsmere Industrial Park, Warwick Road, Borehamwood WD6 1GT. This assessment should have an end allowance of 10% due to being a split site and an RV of £630,000 with effect from 1 April 2023.

Relevant Law

10. The panel found that the material day was 1 April 2021.

11. The leading authority on this issue was now the Supreme Court's judgment in *Mazars*. The Supreme Court's judgment was clearly binding in appeals of this nature.

12. In paragraph 12 of the Supreme Court decision, Lord Sumpton outlined the correct test(s) to be applied;

> I derive from these decisions three broad principles relevant to cases like this one where the question is whether distinct spaces under common occupation form a single hereditament. First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second *Bank of Scotland* case illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Third, the question whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects. The application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law. They are also rationally founded on the nature of a tax on individual properties. If the functional test were to be applied in any other than the limited category of cases envisaged in the second and third principles, a subject (or in English terms a hereditament) would fall to be identified not by reference to the physical characteristics of the property, but by reference to the

business needs of a particular occupier and the use which, for his own purposes, he chose to make of it.

13. The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (The Act) amended Section 64 of the Local Government Finance Act 1988 to define an additional type of hereditament established by subsection (3) 3ZA-3ZD as follows:-

Hereditaments occupied or owned by the same person

(1) In Part 3 of the Local Government Finance Act 1988 (non-domestic rating), in section 64 (hereditaments), after subsection (3) insert—

“(3ZA) In relation to England, where—

(a) two or more hereditaments (whether in the same building or otherwise) are occupied by the same person,

(b) the hereditaments meet the contiguity condition (see subsection (3ZC)), and

(c) none of the hereditaments is used for a purpose which is wholly different from the purpose for which any of the other hereditaments is used, the hereditaments shall be treated as one hereditament.

(3ZB) In relation to England, where—

(a) two or more hereditaments (whether in the same building or otherwise) are—

(i) owned by the same person, and

(ii) unoccupied,

(b) the hereditaments—

(i) ceased to be occupied on the same day, and

(ii) have each remained unoccupied since that day,

(c) immediately before that day, the hereditaments were, or formed part of, a single hereditament by virtue of subsection (3ZA), and

(d) the hereditaments meet the contiguity condition (see subsection (3ZC), the hereditaments shall be treated as one hereditament.

(3ZC) The hereditaments meet the contiguity condition if—

(a) at least two of the hereditaments are contiguous, and

(b) where not all of the hereditaments are contiguous with each other—

(i) one or more of the other hereditaments is contiguous with one or more of the hereditaments falling within paragraph (a), and

(ii) each of the remaining hereditaments (if any) is contiguous with at least one hereditament that falls within sub-paragraph (i) or this sub-paragraph.

(3ZD) For the purposes of subsection (3ZC) two hereditaments are contiguous if—

(a) some or all of a wall, fence or other means of enclosure of one hereditament forms all or part of a wall, fence or other means of enclosure of the other hereditament, or

(b) the hereditaments are on consecutive storeys of a building and some or all of the floor of one hereditament lies directly above all or part of the ceiling of the other hereditament, and hereditaments occupied or owned by the same person are not prevented from being contiguous under paragraph (a) or (b) merely because there is a space between them that is not occupied or owned by that person."

(2) The amendments made by subsection (1) have effect for financial years beginning on or after 1 April 2010.

Discussion

14. The principle issue in these appeals is whether the road which divides the subject properties was a public one. Barriers had been placed on the road to which only the appellant had the code required to lift the barriers. Mr Cates argued that as a result the appellants had exclusive rateable occupation of that road.

15. The panel first turned to the binding Supreme Court case of *Woolway v Mazars* which concerned Tower Bridge House, an eight-storey office block in St Katherine's Way, London. Mazars occupied the 2nd and 6th floors of the building under separate leases. These floors were separated by common areas in the building and were entered in the 2005 rating list as separate hereditaments. The issue for the Supreme Court was to determine whether the two floors formed a single hereditament or two. At the time, it was custom and practice for 2 or more floors which were contiguous, and in the same rateable occupation, to be treated as a single assessment. However, in Mazars, there were 3 floors between the hereditaments that were occupied by a different tenant. The Supreme Court held that the 2nd and 6th Floors could not therefore be merged into a single hereditament. The Supreme Court decided that contiguous buildings or floors in the same building could not be merged unless there was intercommunication between the two.

16. The first and primary test from the *Woolway v Mazars* case was the geographical test. Mr Cates confirmed that the two subject properties were contiguous although they were not physically touching as a result of a road that ran between the two buildings. He submitted that the appellants satisfied all four types of occupation contained in the case of *John Laing & Son Ltd v Kingswood Area Assessment Committee [1949] 1 All ER 224 CA.* The appellants had actual, beneficial occupation and it was not too transient over the road but the issue for the panel to decide was whether they also had exclusive occupation of the road. Mr Cates submitted that it was a private estate road not a public highway. In the lease for Units 1-3 the lease granted the tenants the right of use over that road. In the Unit 4 lease the road was not part of the demised area as set out in the lease but that the use of the road was granted by the landlord as being part of the common parts. The appellants were, Mr Cates maintained the only ones able to use that part of the road as there were barriers which stopped anyone else from using it. This gave the appellant exclusive occupation as they had control over the use of the road as a result of the barriers to which only they had the code.

17. The panel found that the road concerned was classified as "adopted but not maintainable highway by the local council" and therefore was aware that the appellants did not have exclusive occupation. The Highways Department of the local council could in fact demand

access to the road despite the barriers. The panel also found that there was no evidence that the local authority had given permission or were aware that the barriers had been erected. The panel noted that as a result the local council could insist on access through the barriers or that the barriers be removed. The panel found that the road was therefore not under exclusive occupation of the appellants and the two subject properties were therefore separated by the road and so the subject properties were not contiguous as set out in the case of *Woolway v Mazars.*

18. The panel observed that each part of the subject properties could only be accessed from the other by leaving the premises occupied by the ratepayer. There was no internal link, whether for the movement of people or goods, between the two properties. As a result, the panel concluded that the subject properties did not exhibit the necessary degree of physical connection to support treating them as a single hereditament.

19. The panel then considered the functional test from *Woolway v Mazars*, which asks whether the subject properties could be let separately. The panel noted that Units 1–3 had been occupied by the appellant since 2013, whereas Unit 4 had been independently occupied by another party until the appellant took it over in 2023. This demonstrated that the units could, and indeed had, been occupied separately. The second *Mazars* test was therefore not satisfied**.**

20. Turning to the third test which was whether “the use of one section is necessary to the effectual enjoyment of the other”. In connection with this test the panel accepted that the ratepayer’s business needs meant that the functioning of one unit was dependent on the other. The panel did however recognise that the *Mazars* test requires reliance based on **“**the objectively ascertainable character of the subjects”**,** not on the occupier’s subjective business arrangements or intentions. After reviewing the facts, the panel concluded that the properties did not present an objective character consistent with being a single unit. As a result, the overall circumstances did not support treating them as one hereditament

21. Mr Cates then referred the panel to The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (the Act) which became law on 1 November 2018. The Act allows properties that are “contiguous”, and are in common occupation, to be treated as a single hereditament even if, under the *Woolway v Mazars* ruling, they might otherwise not be. Under section 1 (3ZD) of the Act, it states that hereditaments occupied or owned by the same person are not prevented from being contiguous merely because there is a space between them that is not occupied or owned by that person. Mr Cates submitted that even if the panel was minded not to agree that the subject properties could not be merged due to the road they could still be merged based on the Act.

22. The panel noted that the subject properties were occupied by the same appellant and were used as part of the same purpose. They were not however physically touching or adjoining each other. Neither were they in relation to the Act separated by either “a wall, fence or other means of enclosure” but by a road. Also they were not on separate storeys of a building but were separate buildings. The panel therefore found that the subject properties could not be merged under the Act either.

23. The panel did not make any findings in connection with the appellants proposal for an increase in the end allowance on the single merged property of 10% for being a split site. The panel had found that the subject properties should remain as two separate entries in the rating list and therefore the end allowance on the single merged property was irrelevant.

24. In appeals of this nature, the burden of proof rests with the appellant to demonstrate that the existing rating list entries should be merged into a single hereditament. In this case, the panel found that insufficient evidence had been provided to justify such a merger.

Conclusion

25. In view of the above findings and conclusions, the Tribunal is satisfied that the current entries in the rating list should remain and dismissed the appeal.

Right of further appeal

26. 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.

27. 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 S Malik, Senior Member (Chair)
Mrs AE Fielder, Senior Member
19 February 2026

Miss F Willson
Clerk to the Tribunal
Date issued to the parties: 19 February 2026