

Appeal Number:	692535328395/537NV17/17
Appellant:	HDR Group Nicola Bailey
Appeal Property:	Merthyr Industrial Services Ltd, Pengarnddu Industrial Estate, Merthyr Tydfil, CF48 2TA
Matter Appealed Against:	2017 Non-Domestic Rating List
Hearing Date:	9 July 2025
Appearances:	Mr Tuppen and Mr Bailey representing the appellant. Mr Allen representing the Valuation Officer (VO)
Decision and its date:	Appeal Dismissed on 4 August 2025
Appeal Panel Members:	Mr A G Hallett (Chairperson) Miss E Jones Mr R Henley
Tribunal Clerk(s):	Miss R Morris & Mr J Evans

Introduction

1. The appeal arose from a proposal submitted to the Valuation Officer on 12 May 2021, which challenged the accuracy of the 2017 list entry for the appeal property. The proposal sought a reduction in the existing rateable value on the ground that a material change of circumstances (MCC), had impacted on the property's value with effect from 30 March 2017
2. This summary is not exhaustive, but all evidence presented was fully considered by the Tribunal before reaching its decision. Any omission of a statement or evidence does not imply it was overlooked.

Legislation & Case Law

- Schedule 6 of the Local Government Finance Act 1988

“(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.

(6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the appropriate national authority.

(7) The matters are—

(a) matters affecting the physical state 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."

- Regulation 3 and 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005

"3.—(1) In this Part —

"material change of circumstances", in relation to a hereditament, means a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the Act;

4.—(1) The grounds for making a proposal to alter a list are as follows —

(b) the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;"

- Davey (VO) v O'Kelly [1999] a decision of the Upper Tribunal.
- BNPPDS (J) Ltd v Hitchings (VO) [2025] a decision of the Upper Tribunal.
- Fusetron Ltd v Whitehouse (VO) [1999] a decision of the Lands Tribunal.

Evidence and Submissions

3. The appeal property was an industrial site which Mr Tuppen believed had been unlawfully used as a waste facility by its previous occupiers and resulted in significant contamination. The local authority subsequently repossessed the site, but hazardous materials remained.
4. HDR Group became involved with the site in 2017 under arrangements with the local authority. He asserted that HDR's role was not commercial but solely related to environmental remediation.
5. Whilst Mr Tuppen acknowledged that the proposal was submitted on the grounds of a MCC from 30 March 2017, he invited the Tribunal to adopt a broader

interpretation and consider whether the property was capable of beneficial occupation during the relevant period.

6. In support of this, he referred to BNPPDS (J) Ltd v Hitchings (VO) [2025], where the Upper Tribunal applied the ‘reality principle’ and which held that a property undergoing substantial works, which was incapable of beneficial occupation, should be valued at £1. He noted that, although the proposal in that case did not explicitly raise the issue of rateable occupation, the Tribunal reached its decision by assessing the property’s actual condition.
7. The licence agreement for the appeal property took effect from 29 March 2019. Mr Tuppen said that HDR’s access to the site was limited and non-exclusive, and granted on condition that it was to undertake enabling works. He directed the Tribunal to Clause 6 of the licence, which stated:

“The Landlord permits the Tenant non-exclusive access to the Property for the Licensed Use with effect from the Licence Date for the Licence Period in common with the Landlord all others authorised by the Landlord (so far as is not inconsistent with the rights given to the Tenant to use the Property for the Licensed Use)”
8. To his mind, clause 6 supported his client’s position that HDR were not in rateable occupation of the site. He described their involvement as being akin to that of a contractor whose purpose is to undertake preparatory works, rather than an occupier who might have derived an actual benefit of occupying the property.
9. The appellant also relied on a bundle of supporting documents, including an Allcott Valuation Report, a written statement from Ms Nicola Bailey, a co-director of HDR Group, the 2017 OPUS Environmental Report, the licence and agreement for lease, and the final lease dated 22 November 2021.
10. In her written statement, Ms Bailey confirmed that HDR’s access prior to the lease was temporary and limited to enabling works. She stated that HDR vacated the site upon completion of those works and did not return until the lease was completed on 22 November 2021. She referred to ongoing contamination and delays in securing environmental permits from Natural Resources Wales, which she said prevented any lawful or meaningful use of the site during that period.
11. Mr Tuppen concluded that the property was not capable of beneficial occupation during the relevant period. He invited the Tribunal to apply the reality principle and reduce the Rateable Value accordingly.
12. During cross-examination of his evidence, Mr Tuppen confirmed that HDR held no rights of occupation on 30 March 2017 and that no physical works had commenced by that date. He stated that HDR did not obtain any rights over the site until March 2019. He reaffirmed that exclusive occupation did not begin until the lease was completed on 22 November 2021.
13. Mr. Allen stated that the appeal was based solely on a MCC with 30 March 2017 as the effective date. He contended that the Tribunal’s jurisdiction was limited to that ground and could not extend to issues such as beneficial occupation.

14. Mr Allen described the appeal property as an industrial facility comprising a steel-framed shed with corrugated cladding, an attached office block, and a large concrete-surfaced yard. He acknowledged that a substantial quantity of waste remained on the site, which HDR had been contracted to manage and remove.
15. Mr Allen explained that, under Schedule 6 of the Local Government Finance Act 1988 (1988 Act) and Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005, a MCC must be something physically manifest at the property or in the locality.
16. He noted that the proposal cited delays in obtaining environmental permits from Natural Resources Wales but stated that the presence or absence of a permit was not physically manifest and therefore could not constitute a valid MCC under the statutory definition.
17. Mr Allen submitted that no physical alteration had occurred on or around the 30 March 2017. In his view, the waste cited by the appellant was present before March 2017, and no subsequent change in the site's condition or use had been demonstrated that would affect its rateable value.
18. He referred to the valuation assumptions in Schedule 6 of the 1988 Act, stating that the property must be assumed to be vacant and available to let, and in a state of reasonable repair unless such repairs would be uneconomic.
19. He clarified that these assumptions are hypothetical and do not reflect the property's actual condition. Therefore, the waste present should be disregarded unless contamination had a proven impact on rental value.
20. Mr Allen cited *Fusetron Ltd v Whitehouse (VO)* [1999], where a 10% allowance was applied due to proven underground contamination. He argued that no equivalent evidence had been provided by HDR Group in this case and emphasised that there was no evidence of any pollution on site arising from the illegally stored waste material.
21. He referred to the Allcott Valuation report relied upon by HDR but stated that it assessed value as at June 2025 and provided no evidence of rental value at the antecedent valuation date of 1 April 2015 for the 2017 Non-Domestic Rating List. He submitted that the report did not demonstrate any physical change on or around 30 March 2017, nor did it support any impact on rateable value within the scope of the appeal.
22. Nevertheless, Mr Allen acknowledged that HDR did not enter a formal lease until November 2021. However, from at least April 2019, they had exercised effective control under the licence. He noted that HDR had rights to manage waste and restrict access and submitted that, despite being described as non-exclusive, the arrangement amounted in practice to exclusive occupation.
23. In conclusion, Mr Allen maintained that no qualifying MCC had occurred around the relevant date, and no evidence had been provided to demonstrate any effect on the hypothetical rental value. He therefore requested that the Tribunal dismiss the appeal.

Decision & Reasons

24. The Tribunal first considered the scope of the appeal and whether its jurisdiction could extend beyond the grounds stated in the proposal.
25. It noted the appellant's reliance on *BNPPDS (J) Ltd v Hitchings (VO)* [2025] but considered that case materially different. In the Tribunal's view, that appeal was brought on valuation grounds, which permitted a broader consideration of the property's physical condition. It was not satisfied that BNPPDS provided a basis to extend its jurisdiction in this case.
26. By contrast, the Tribunal found the reasoning in *Davey (VO) v O'Kelly* [1999] more persuasive. The scope of the proposal had ensured the integrity of the process, making certain that all parties were clear on the nature and extent of the dispute from the outset. Since the ratepayer had subsequently sought to introduce matters relating to beneficial occupation or general valuation after the MCC proposal had been made, such matters clearly fell outside the scope of the appeal and were therefore disregarded.
27. Accordingly, the Tribunal was required to determine whether a MCC, as defined by Paragraph 2(1) of Schedule 6 of the 1988 Act and Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005, had occurred on or around the 30 March 2017.
28. The Tribunal noted that, as of that date, the appellant was not in occupation and was in preliminary discussions with the local authority. It accepted Mr Allen's submission that the presence or absence of a licence was not a physically manifest attribute capable of giving rise to a MCC. The Tribunal found no sufficient evidence of any physically manifest change at the property or in the locality.
29. The Tribunal accepted the statutory valuation assumptions under Schedule 6, including that the property is to be assumed vacant and to let. It found no indication of any physical alteration or enduring condition that would have materially affected the hypothetical rental value as of 30 March 2017.
30. In view of the foregoing, the Tribunal determined that no qualifying MCC had occurred at or around the effective date of 30 March 2017. The appeal was dismissed.