THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; public house and premises; panel determined that the Approved Guide was the correct basis on which to value the appeal properties having regard to their fair maintainable trade; it was considered that the reductions already applied to the dry trade more than reasonably reflected any elements of overtrading at the appeal properties; appeals dismissed.

Re: Marlborough Tavern, Marlborough Buildings, Bath BA1 2LY (Appeal 1)
The Chequers Inn, 50 Rivers Street, Bath BA1 2QA (Appeal 2)
Hare & Hounds, Lansdown Road, Bath BA1 5TJ (Appeal 3)

APPEAL NUMBERS: CHG100159162 (Appeal 1), CHG100159236 (Appeal 2) and CHG100159474 (Appeal 3)

BETWEEN:	The Bath Pub Company Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE: Miss KB Riddy (Senior Member) and Mr DC Gardner

CLERK: Mrs R James

REMOTE HEARING 1: Tuesday 1 February 2022

Followed by a reconvened hearing –

REMOTE HEARING 6: Monday 28 February 2022

APPEARANCES: Mr J Cussens of The Bath Pub Company (The Appellant)
Mr M Wasilewski (on behalf of the Appellant)
Mr H Flanagan (Counsel for the Respondent)
Mr M Griffiths (Witness of fact for the Respondent)
Mr P May (Expert Witness for the Respondent)

Summary of decision

1. The appeals were dismissed; the appeal properties' assessments remained unaltered in the Rating List.

Introduction

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2, regulation 5 (arrangements for appeals) and regulation 6(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

3. Therefore, in pursuance of regulation 6(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this position.

4. The VTE conducted the hearing of these appeals remotely via a Microsoft Teams conference call using an audio/video-link.

5. Mr Wasilewski confirmed that he was not instructed under a conditional or success-based fee arrangement.

6. These appeals have been brought in respect of the following:

   i) (Appeal 1) Marlborough Tavern, Marlborough Buildings, Bath BA1 2LY; public house and premises. The appellant's Challenge to the Valuation Officer (VO) was made on 27 January 2020. The appeal to this Tribunal was made on 28 May 2021, following the VO's Decision Notice of 27 April 2021. The original assessment of £69,500 RV, with effect from 1 April 2017, had been reduced at the challenge stage to £66,400 RV.

   ii) (Appeal 2) The Chequers Inn, 50 Rivers Street, Bath BA1 2QA; public house and premises. The appellant's Challenge to the VO was made on 27 January 2020. The appeal to this Tribunal was made on 28 May 2021, following the VO's Decision Notice of 27 April 2021. The original assessment of £59,750 RV, with effect from 1 April 2017, had been reduced at the challenge stage to £43,750 RV.

   iii) (Appeal 3) Hare & Hounds, Lansdown Road, Bath BA1 5TJ; public house and premises. The appellant's Challenge to the VO was made on 27 January 2020. The appeal to this Tribunal was made on 28 May 2021, following the VO's Decision Notice of 27 April 2021. The original assessment of £102,000 RV, with effect from 1 April 2017, had been reduced at the challenge stage to £90,000 RV.

7. The panel decided to consolidate the hearing of these three appeals.

8. At the start of the hearing, Mr Gardner declared that he had visited two of the appeal properties in a personal capacity; however, he did not personally know any of the parties to the appeals. No objections were raised by the parties to Mr Gardner hearing the appeals and the hearing proceeded with both Miss Riddy and Mr Gardner determining the appeals.

9. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel considered all of the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

10. The first issue was the correct method of valuation for the appeal properties and resulting RVs and in particular whether the Rating Lists 2017 Valuation of Public Houses Approved Guide (referred to as 'the Guide' hereafter) was the proper method. The second issue was, if it was determined that the appeal properties had been correctly valued in accordance with the Guide, whether overtrading had been sufficiently reflected in the appeal properties' current assessments.

Evidence and submissions

11. The day prior to the hearing, the panel had been provided with a joint bundle of evidence. This included skeleton arguments, witness statements, the challenge submissions and VO's decision notices, the Guide, various pieces of caselaw, together with various tribunal decisions. The bundle also provided various Freedom of Information requests that Mr Wasilewski had made to the VOA, photographs and details in relation to the appeal properties and those properties cited for comparable purposes and a Valuation Report in relation to the Marlborough Tavern dated November 2015. In addition, the parties provided the panel with a copy of relevant regulations and RICS guidance on the Contractor's basis of valuation for rating purposes. As there was no objection to the provision of any of the evidence, the panel proceeded to hear the appeal having regard to all the evidence presented.

12. Mr Wasilewski gave a power point presentation (a copy of the slides had been forwarded to the VO prior to the hearing and no objection had been raised in relation to them). Mr Wasilewski's case centred on two main points. Firstly, he contended that that the Guide was flawed and produced inaccurate and unreliable valuations. In using the Guide, the VOA had failed to meet its statutory obligation and had provided no evidence of rent or indirect evidence based on profit or capital value. He believed that the Guide was not approved and had been based on a small number of public houses. He added that the Guide was an approach or 'short cut' and not a method of valuation. From 200 years of case law, the only three accepted valuation methods were rental, receipts and expenditure and the Contractor's basis. Mr Wasilewski added that the Guide did not reflect the real world in which rent was a fixed cost for a set period of time. This was in contrast to the Guide, where rent increased with sales. He contended that the Guide was a 'sales tax' which penalised high sales.

13. Mr Wasilewski had put forward valuations based on a variation of the Contractor's basis, and as an alternative, the receipts and expenditure method. He stated that the increase in the appeal properties' assessments from the 2010 Rating List to the 2017 Rating List had not been supported by evidence. Having regard to his proposed valuations, Mr Wasilewski sought the following revised valuations:

    i) (Appeal 1) Marlborough Tavern, Marlborough Buildings, Bath BA1 2LY - £35,000 RV, with effect from 1 April 2017;
    ii) (Appeal 2) The Chequers Inn, 50 Rivers Street, Bath BA1 2QA - £22,400 RV, with effect from 1 April 2017; and
    iii) (Appeal 3) Hare & Hounds, Lansdown Road, Bath BA1 5TJ - £42,250 RV, with effect from 1 April 2017.

14. Mr Flanagan sought dismissal of the appeals. He called Mr M Griffiths and Mr P May as witnesses. Mr Griffiths detailed how the Guide had been compiled and Mr May gave

evidence on the actual subject assessments. Having regard to the evidence presented, Mr Flanagan contended that the appeal properties had been correctly valued in line with the Guide, which had been based on rental evidence. He also contended that any element of overtrading had been sufficiently reflected in the current reduced assessments.

15. Mr Flanagan brought to the panel's attention inappropriate communication in the form of an email chain that had been exchanged whilst Mr May was giving his witness evidence. The panel thanked Mr Flanagan for bringing this issue to its attention, it was quite proper to do so. Mr Wasilewski raised no objections to continuing and did not request any action be taken. The panel considered that no prejudice or advantage had come to any party as a result of the communication. The panel proceeded with the hearing.

Decision and reasons

16. The subject hereditaments must be valued for the purpose of non-domestic rating on the basis of the rent at which they might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015; the antecedent valuation date (AVD). These were compiled list appeals so the material date was 1 April 2017.

17. The appeal properties were currently valued in line with the Guide, which had been drawn up by the Valuation Office Agency (VOA) and the Pubs Rating Forum; a copy of which had been provided to the panel prior to the hearing. Under the Guide, a rateable value was essentially based on the fair maintainable trade (FMT) of a public house. The FMT represented the annual trade considered to be maintainable at the AVD of 1 April 2015, on the assumption that the business will be proficiently carried out by a competent publican responding to the normal trading practices and competition of the locality.

18. The panel read the Guide and in particular, noted the following paragraphs:

> 'The FMT adopted should represent the annual trade considered to be maintainable at the Antecedent Valuation Date (AVD) 1 April 2015, having regard to the physical nature of the property and its location as at 1 April 2017 when the new rating lists came into force (or subsequently following a material change of circumstances) on the assumption that the enterprise will be carried out by a 'reasonably efficient operator (REO) responding to normal trading practices and competition in the locality. It should be recognised that actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level of FMT.
>
> Rental percentages are then to be determined, in accordance with the principles set out in this Guide, and applied to the income streams for drinks, food, accommodation and certain other receipts. The sum of the rateable value attributable to these separate income streams, together with the value attributable to any other part of the property that is not reflected in the FMT will, in most cases, provide the total rateable value.'

19. Mr Wasilewski contended that the Guide was flawed and produced inaccurate and unreliable valuations. He also disputed that the Guide was approved. In this respect, he provided the panel with an undated joint letter from the British Institute of Innkeeping, British Beer & Pub Association and UK Hospitality, which were three out of five of the organisations that formed the Pubs Rating Forum (PRF). The PRF had been formed to assist in the development of the Guide ahead of the 2017 revaluation. The panel noted part of the letter, which detailed:

‘A key part of the consultation with the PRF is about setting the parameters within which the valuation takes place, so that it is not a purely arithmetic exercise. The Guide contains very important considerations for valuation: that a valuation is not just a paper exercise, that valuers stand back and assess the valuation in light of comparable properties in the vicinity, that they consider whether the operator of the business is performing above the level of a ‘reasonably efficient operator’, consideration of retail rents if in an equivalent location, etc. Essentially, the guide is a framework for a complex assessment of rental value – that takes into account a range of factors. This needs significant resource from the VOA to deliver.

As such, the role of the PRF is to ensure that the estimated valuation can be delivered in the most accurate way possible, subject to the expertise and resource of valuers. It is not an endorsement of the overall methodology – using a proxy FMT to deliver a RV – under all circumstances. We have also been disappointed to hear that at valuation tribunals our contribution to the Guide is being interpreted as an impediment to consideration of rateable values using alternative valuation methods. To reiterate the role of the PRF is an enhanced consultative role, not as expert valuation professionals.’

20. From reading the above, the panel noted that the PRF had been involved in the compilation of the Guide. Furthermore, after having regard to the Guide, the panel noted that the PRF also included two other industry bodies, namely Guild of Master Victuallers and Federation of Licensed Victuallers Association.

21. Mr Griffiths had personally been involved in the compilation of the Guide and gave a detailed witness statement and oral evidence. He explained that for the 2017 Guide, the VOA had considered it desirable for the Guide to be jointly owned with those industry bodies that participated. As such, the leading bodies whose members would together represent a large portion of the public house operators were contacted with a view to constituting a new forum for discussion and collaboration in the production of the 2017 Guide. There were five organisations that made up the PRF.

22. Early discussions went into considerable detail regarding wording and interpretation which resulted in a draft document. The industry bodies felt that at this stage, any discussion regarding analysis of any rental evidence and the process of producing a valuation using the Guide went beyond their remit. It was therefore agreed that a ‘technical group’ of nominated rating representatives would be established to take matters forward. It was also the view that discussions with the representatives might result in the need to amend the draft document. The technical group was made up of four rating representatives.

23. Mr Griffiths explained that the VOA shared rental evidence and analysis taken from approximately 1,100 public houses. The representatives could also bring forward any evidence they wished to be considered. It was agreed that the existing three bands of bid ranges should be significantly changed in order to force all involved to approach their valuations afresh.

24. He went on to explain that when discussing the bid ranges for “dry” receipts, the representatives highlighted how significantly food income had grown and become a vital source of income since the turn of the century. They held the view that there was a maximum amount that any occupier would pay in rent regardless of the level of dry receipts they could generate, and they produced evidence to back up this contention. Consequently,

this resulted in another significant change, the adoption of the “High Food Scale”. This would apply where the food FMT was £500,000 and above and represented 55% or more of the total of drink and food FMT.

25. Two further significant alterations were:

i) The introduction in Section 7.2 of the Guide on how to deal with “Potentially Over-Trading Public Houses”. This had previously been internal VOA guidance to valuers.
ii) The move away from the definition of a ‘wine bar’ to be replaced by ‘bar and premises’.

26. Mr Griffiths explained that the technical group recommended the inclusion of the above in the 2017 Guide along with various amendments to the wording. Then in late in 2015, formal agreement was reached between all parties on the content of the Guide. As had been desired by the VOA, the industry bodies were happy to take joint ownership of the Guide to the extent that their corporate logos were displayed on its front cover.

27. After hearing from Mr Griffiths, who had direct involvement with the compilation of the 2017 Guide, the panel accepted that there had been participation with leading rating professionals in the public house industry, together with representatives from the industry itself in the form of the PRF. The panel viewed the presence of the five corporate logos on the front of the Guide as a seal of approval from those organisations in relation to its contents.

28. Mr Wasilewski had contended that the Guide was not approved or endorsed by the PRF. After hearing from Mr Griffiths and having regard to the undated letter supplied by Mr Wasilewski from three organisations that formed part of the PRF, the panel did not accept this argument. The panel found Mr Griffiths to be a credible witness who had had direct involvement with the compilation of the 2017 Guide. He had detailed that the VOA had held discussions on the compilation of the Guide with both leading rating representatives in the public house trade and the PRF. However, whilst the panel concluded that the Guide had been approved by the PRF, it acknowledged that the PRF had not endorsed a valuation by way of FMT for every public house and premises in the country. That much was clear from the letter, which stated; “*It is not an endorsement of the overall methodology – using a proxy FMT to deliver a RV – under all circumstances*.” The last three words must not be glossed over. They reflect the PRF’s view that a proxy FMT may be used to deliver a RV (as per the methodology in the Guide), but it would not be appropriate in all circumstances. In the panel’s view, the letter did not establish that the Guide was not approved by the PRF.

29. On this point the panel drew its attention to the Guide at page 1 on the introduction where it stated:

> ‘This Guide to assessing public houses for rating purposes is agreed between the Pubs Rating Forum and the Valuation Office Agency and applies to the Rating Lists in England and Wales compiled on 1 April 2017.
>
> Whilst it is intended that this Guide should enable the assessments of all public houses to be determined correctly, the opportunity for individuals to seek to have their houses valued outside its terms, where exceptional circumstances would otherwise make their application inappropriate, is not precluded.’

30. Furthermore, at Section 7.1 of the Guide ‘Bars and Public Houses – possible floor area approach’ it stated:

> 'Where a licensed property forms part of a distinct market for a particular location, for which there is relevant market evidence, consideration needs to be given as to whether the property will be more correctly valued on a floor area comparative basis, rather than by reference to the FMT in accordance with the foregoing guidance.
>
> Such properties will usually be found together in major towns or cities, often co-located with restaurants, occupying sites close to, or on the edge of, the prime retail location. Alternatively, they may be located on retail parks or within in-town shopping centres.'

31. As such, the panel found that the Guide itself did not endorse a valuation in line with FMT for every public house in the country and in all circumstances. Rather one had to consider the characteristics and location of the premises in question as some would be better valued on the floor area comparative approach, as set out in Part 7.1 of the Guide. Further, the Guide itself, in its introduction, allowed for some other approach to valuation, outside the terms of the Guide, should the unusual circumstances of the case call for it (and in the panel's view it would be very unusual, but not precluded):

> 'Whilst it is intended that this Guide should enable the assessments of all public houses to be determined correctly, the opportunity for individuals to seek to have their houses valued outside its terms, where exceptional circumstances would otherwise make their application inappropriate, is not precluded.'

32. Mr May, in giving his witness statement, was of the opinion that a valuation on a floor area comparative basis was not appropriate for the three appeal properties. Such a valuation was more appropriate for a public house on a retail park, where the premises had been created from a shell and which could be occupied for other purposes. The panel accepted this and found it consistent with the Guide. In any case, the floor area comparative basis was not one of the alternative proposed methods of valuation as put forward by Mr Wasilewski.

33. Mr Flanagan had referred the panel to the Lands Tribunal judgment of *J D Wetherspoon v Day (VO)* RA/11/2005, in which the President of the Lands Tribunal (George Bartlett QC) endorsed the valuation of public houses on the basis of fair maintainable receipts and also emphasised the importance of following guidance agreed between the VOA and ratepayers. Paragraphs 5 and 43 were of particular importance to the panel considering the current appeal:

> '5. Public houses are valued on the basis of fair maintainable receipts (FMR). This method of valuation is long established, and the cases that have endorsed its application are set out in Ryde on Rating at E[746] to E[766]. For the 2000 rating lists there was an Approved Guide for the valuation of public houses, agreed between the Brewers and Licensed Retailers Association and the Valuation Office Agency. The method of valuation agreed is to assess separately, on the one hand, the FMR of the liquor trade (and to include with this the income from machines) and, on the other, the food trade and to apply to the FMR for each of these income streams a percentage derived from ranges included in the Guide. Both valuers in the present case use this method.'
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> '43. There is no dispute between the parties that the valuation of this public house falls to be made in accordance with the Approved Guide that was agreed for the

purposes of the 2000 rating lists between the Valuation Office Agency and the Brewers and Licensed Retailers Association and the Supplementary Guidance that was produced in order to address the possibility that the receipts of some of Wetherspoons Public houses might not properly represent the FMR. It is in the circumstances obviously right that the Tribunal should follow the same approach. Guidance of this sort, agreed by the VOA and on behalf of a particular category of ratepayers, ought to be followed unless there is good reason not to do so.'

34. The panel noted that upper tribunal decisions were binding on it. Therefore, having regard to the above extracts from *J D Wetherspoon v Day (VO)*, the panel concluded that the Guide should be followed unless there was good reason not to do so, or more compelling evidence to determine rateable value, such as an unhampered open market rent on a subject property that accorded fully with the rating hypothesis on or close to the AVD.

35. Mr Wasilewski had highlighted how the Guide had not worked for the appeal properties as they had seen a rise in their assessments of up to 150% from the 2010 Rating List to the 2017 Rating List. However, the panel was of the view that each list should be considered de nova. This was especially relevant with the 2017 Rating List, with the AVD for the 2010 Rating List and the 2017 Rating List being 7 years apart. This view was supported by Mr Peter McCrea FRICS in *Lamb (VO) v Go Outdoors Ltd* [2015] UKUT 366, when he stated:

> '82. I am not persuaded that any weight should be attached to a comparison between the two rating lists. The variance between the 2005 and (current but in many cases appealed) 2010 assessments was notable. Some had increased, some decreased, and some remained static. I accept Mr Cohen's point that this variance and the parameters of increase or decrease may alter as and when each assessment is agreed or determined by a Tribunal. To limit the amount by which the assessment of the appeal property should alter, by reference to the change between rating lists of other assessments which themselves are subject to appeal, and in doing so then possibly affect the ultimate result of those other appeals, would in my judgement be to let the tail wag the dog.'

36. Accordingly, whilst the panel noted the percentage increase of the appeal properties' assessments between the two rating lists, the evidence was not considered influential. The panel was aware that any increase would reflect that actual FMT as at the relevant AVD.

37. The panel then had regard to Mr Wasilewski's alternative valuations. Firstly, the Contractor's basis, which the panel was aware was known as 'the method of last resort'. Having regard to the RICS guidance on the Contractor's basis, the panel noted at section B2, it stated:

> 'The traditional explanation of the theory underlying the adoption of the Contractor's basis is that the hypothetical tenant, instead of taking the subject property at a rent, has the option of building a precisely similar property for their own occupation, and that the rental bid for the subject property will be related to the annual equivalent of the capital cost of building such a property, including provision of the site.'

38. At section 1.2, the guidance went on to state:

> 'The method is employed in the case of properties that are not normally let out, which by their nature do not lend themselves to valuation by comparison with other classes

where rental evidence does not exist, and which are not of the type where a valuation solely by reference to the accounts of the undertaking would be appropriate.'

39. Having regard to the above, the panel noted that the Contractor's basis was used as a method of valuation for certain classes of properties in which rental evidence was not readily available. Examples of properties where the Contractor's basis had been adopted were airports, oil refineries, major chemical works, steelworks, shipbuilding yards and public sector buildings that could not be valued by other methods. The panel held that public houses did not fall into the category of property valued by the Contractor's basis. The panel had heard from Mr Griffiths how the rents of 1,100 public houses had been used when compiling the Guide. As such, the panel did not find it appropriate to value the appeal properties on the Contractor's basis or Mr Wasilewski's variation on that method and placed little weight on those valuations using the Contractor's basis.

40. Mr Wasilewski had also put forward valuations for each of the appeal properties on his version of the receipt and expenditure method. Both Mr Wasilewski and Mr Cussens had explained that whilst the appeal properties, especially The Chequers, had high levels of FMT, this did not translate to high profits. In fact, The Chequers had operated at a loss; whilst sales grew dramatically, so did the running costs.

41. After having regard to the proposed receipt and expenditure valuations, the panel noted that various line entries were rather unique to the actual business. For example, in relation to the Marlborough Tavern, bakery costs at £5,921, meat purchases at £53,578 and fish purchases at £28,016. The panel found it inappropriate to use Mr Wasilewski's version of the receipt and expenditure method of valuation for the appeal properties, which was valuing the actual business rather than the property in question. If the property in question had been loss making and valued on the receipts and expenditure method, it would result in nil value, which the panel considered could not be correct as there was still value in the bricks and mortar.

42. Turning back to the principle outlined by George Bartlett QC in judgement of *J D Wetherspoon v Day (VO),* on the evidence presented, the panel had found no good reason to depart from the Guide and valuations for the appeal properties by reference to FMT. The panel acknowledged that the use of the Guide was well established and determined it to be the correct approach to valuation in the case before it. Furthermore, the Guide provided an alternative valuation on the floor area comparative approach and did not necessarily rule out other methods if the unusual circumstances of the case called for it. It made no mention of the Contractor's basis or receipts and expenditure method of valuation for public houses, which the panel considered to be inappropriate methods in the present case in any event. The panel held that it was incorrect to say that the VOA had failed in its statutory obligation when using the Guide. The panel found that the Guide produced valuations on the comparative rental method as a basket of approximately 1,100 rents had been considered when the Guide had been compiled.

43. Accordingly, as the panel had determined that the appeal properties should be valued by reference to the Guide, it then went on to consider the actual valuations of the three appeal properties. The panel noted that Mr Wasilewski had not provided valuations having regard to the Guide should he have lost his primary argument, but the panel considered the evidence in any event.

The Marlborough Tavern

44. (Appeal 1) The Marlborough Tavern was a Grade II listed building. It was a food lead pub which featured in the Michelin Guide. It was located northwest of Bath city centre and close to The Royal Crescent, Bath Approach Golf Course and Botanical Gardens. The property had been refurbished to a high standard, commensurate with its location and target clientele; no alterations had been made to the internal trading area. It had a corner position at the junction of Weston Road and Marlborough Buildings and had a rear courtyard garden laid out to seat 50 plus.

45. The ground floor comprised a single trading area arranged around a central bar. There were two entrances from the street and access to the beer garden at the rear. The remainder of the ground floor comprised customer toilets.

46. The Marlborough Tavern was subject to a rent of £48,000 pa with effect from 1 March 2017. However, it was rented from the directors of the company. As such, the rent was not necessarily reflective of market rent. Christie and Co had prepared a valuation of the Marlborough Tavern in November 2015, which gave a market rent of £75,000 and FMT of £860,000. The current assessment of Market Traven at £66,400 RV was lower than the market rent suggested by the Christie and Co in November 2015.

47. Originally, this property had an assessment of £69,500 RV, with effect from 1 April 2017. The VOA was not initially persuaded that the trade achieved at the Marlborough Tavern was ‘demonstrably’ different from that of a REO. The basis of valuation was not limited to an ‘average operator’. However, having considered all of the comparable evidence, the VOA accepted the range point adopted for food sales at the Marlborough Tavern did not appropriately reflect the nature of the business. The VOA therefore reduced the range point from 0.448 to 0.35 for consistency with similar businesses. This resulted in the reduced assessment of £69,000 RV.

48. The VOA undertook an internal inspection of the Marlborough Tavern on 17 November 2020. During that inspection, Mr Cussens had explained how the Bath Pub Company differed from the REO. Following the meeting, the VOA made the following adjustments to the assessment:

i) The adopted category for wet sales has been amended to Category 1 in order to comply more fully with the definition set out in the Guide and the treatment of nearby properties. A range point of 0.35 had been adopted in order to reflect the location of the property away from the centre of town but close to the principle historic tourist attraction and affluent residential areas.

ii) The food sales have been retained within Band B but the range point had been further reduced to 0.25 in order to account for the difficulties of layout of the building including access to the kitchen and the lack of a defined dining area that were not previously apparent.

iii) The adopted FMT for a REO on food sales has been reduced to £420,000. This reflected an element of overtrading on food sales.

This had resulted in the following valuation:

Wet FMT £330,000 at 9.75% (0.35 of Cat 1)	= £32,175	
Dry FMT £420,000 at 8.15% (0.25 of Band B)	= £34,230	
Total	£66,405 say £66,400 RV	

49. The actual trade for the year ended 31 March 2015 was wet £330,680 and dry £536,589. Mr Wasilewski had proposed a reduced assessment of £35,000.

The Chequers Inn

50. (Appeal 2) The Chequers Inn was a Grade II listed corner property. It operated as a high-end gastro pub. It was located in a predominantly residential street, close to The Royal Crescent and The Circus, north of Bath city centre. The property was located on the corner of Rivers Street and Rivers Street Mews and had limited pavement seating at the front. Internally, it was fitted to a high standard with parquet floors. The first-floor dining area had an open kitchen. There was no outside area to the rear. The appellant had changed the former function room into a restaurant.

51. The appellant had sought a rent reduction in relation to The Chequers Inn to £24,000. However, this had been refused by the landlords, Enterprise Inns, and the rent remained at £37,900 per annum. As the appellant had failed to negotiate a rent reduction; the lease was not renewed. Mr Wasilewski's proposed assessment of £22,400 RV, was in fact lower than the proposed reduced rent that had been rejected by the landlords.

52. Originally, this property had an assessment of £59,750 RV, with effect from 1 April 2017. Having considered all of the comparable evidence, the VOA accepted the range point adopted for food sales at The Chequers Inn did not appropriately reflect the nature of the business. The VOA therefore reduced the range point from 0.728 to 0.35 for consistency with similar businesses. This reduced the assessment to £57,750 RV.

53. The VOA undertook an external inspection of this property on 17 November 2020; it had not been possible to undertake an internal inspection as the appellants had surrendered the lease to the property by this date. Following the inspection and discussions with the appellant, the VOA made the following amendments to the valuation for this property:

i) The adopted category for wet sales was maintained as Category 1 (Primary Licensed Trade Areas) but the adopted range point was reduced from 0.60 to 0.20 in order to reflect the locational and other disadvantages of the building.

ii) Food sales were retained within Band B but the range point had been further reduced to 0.25. Whilst the accommodation appeared to be relatively well laid out for catering with kitchen and dining areas at first floor level, the provision had been of higher end dining with more of a requirement for specialist chefs.

iii) The adopted FMT for a REO on food sales has been reduced to £290,000. This reflected a significant element of overtrading on food sales.

54. This resulted in the following reduced assessment:

Wet FMT £250,000 at 8.75% (0.20 of Cat 1)	= £21,875	
Dry FMT £290,000 at 7.55% (0.25 of Band B)	= £21,895	
Total	£43,770 say £43,750 RV	

55. The actual trade for the year ended 31 March 2015 was wet £243,741 and dry £421,402. Mr Wasilewski sought a reduced assessment of £22,400 RV.

Hare and Hounds

56. (Appeal 3) Hare and Hounds was an attractive destination venue located on the northern edge of Bath with far reaching views over the Charlcombe Valley. There was limited competition on this side of the city. The Lansdown playing fields and golf course were a short distance to the north-west. The pub and restaurant were located within an attractive stone Grade II listed building. It comprised a dining terrace, large garden with additional picnic tables and children's play area. There was an on-site car park.

57. Originally, this property had an assessment of £102,000 RV, with effect from 1 April 2017. Having considered all of the comparable evidence, the VOA concluded that it was not appropriate to value wet sales at the Hare & Hounds at Category 1 (Primary Licenced Trade Areas) and that it should instead be valued at Category 2 (Destination Houses). The VOA also amended the adopted range point for wet sales from 1.0 to 0.80 and for high food dry sales from 0.50 to 0.40 within Band B for consistency with the comparable properties. This reduced the assessment to £95,000 RV.

58. The VOA undertook an internal inspection of this property on 17 November 2020. During this meeting, the appellant had been able to explain more fully how they differed from the REO. Following which, the VOA reduced the FMT on food sales to £670,000, which reflected an element of overtrading on food sales. This resulted in the following reduced assessment:

FMT Wet sales £350,000 at 10.2% (0.80 of Cat 2)		= £35,700
Dry sales £670,000 at 8.13% (0.40 of Band B: High Food)		= £54,471
	Total	£90,171
		say £90,000 RV

59. The actual trade for the year ended 31 March 2015 was wet £356,321 and dry £747,698. Mr Wasilewski sought a reduced assessment of £35,000 RV.

60. The panel noted that in all three cases the VOA had reduced the dry FMT to reflect the trading style of the appellant and to account for any element of overtrading on the food sales. The panel had heard how the appeal properties had received various awards/Rosettes. However, the panel accepted that no evidence had been provided to demonstrate that an alternative REO could not achieved similar FMT to that of the actual appellant.

61. Accordingly, after standing back and considering the appeal properties' current assessments, the panel found that any overtrading on the food sales had more than reasonably been reflected with the reductions applied to the dry FMT in contrast to the actual dry 2015 sales achieved.

62. The panel noted that no reductions had been applied to the wet FMT. However, the panel had not been presented with any evidence to suggest that the appellant was overtrading in this area. The panel noted that the wet FMT figures adopted were in line with the actual 2015 wet sales achieved on the respective properties. The panel found no good reason to depart for the actual sales.

63. In respect of (Appeal 3) Hare and Hounds, Mr Wasilewski had referred to a material change of circumstances in that a large Ministry of Defence (MOD) site nearby had closed down. He accepted that sales had increased throughout this period but questioned what level of sales could have been achieved had the MOD site remained in operation. However, the panel had not been given a specific date in relation to that closure, rather it was explained that the closure had been phased over a number of years. Furthermore, it was noted that a large housing development was quickly erected on the former site. Having considered this issue, the panel concluded that no evidence had been provided to demonstrate that the closure of the MOD site had a significant impact on the appeal property's FMT. Accordingly, the panel determined that no allowance was warranted for this factor.

64. Having regard to the above conclusions, the panel determined that the appeal properties were correctly valued in line with the Guide, which was a well-established practice and endorsed by industry bodies (the PRF). No good reasons had been provided to depart from the Guide. After standing back and looking at the individual assessments placed on the appeal properties, the panel concluded that the VOA had generously reflected any aspect of overtrading on the dry sales. The panel also concluded that the characteristics and location of the appeal properties had been fairly reflected in the categories and bid ranges applied. Accordingly, the panel concluded that the current assessments were reasonable and dismissed the appeals.

Date: 25 March 2022
Appeal Numbers: CHG100159162, CHG100159236 and CHG100159474