IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG100992370

Sitting remotely using Microsoft Teams

Date: 18 June 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

2017 non-domestic rating list appeal; Sewage treatment works and premises; Underworking allowance sought; Appeal allowed.

Before:
Mr W Read (Presiding Senior Member)
Mr A Hussain (Senior Member)

Between:

United Utilities Water Limited — **Appellant**

- and -

Amanda Hitchings (Valuation Officer) — **Respondent**

Regarding:
NWWA, Middleton Road, Oldham OL2 5LS
(the "subject property")

Appearances:
Mr M Peacock of Savills, representing the Appellant
Mr J Morley as expert witness for the Appellant
Ms P Smith as expert witness for the Appellant
Mr T Walker, representing the Respondent

Hearing date: 10 June 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The panel determined that the rateable value of the subject property should be altered to £1,313,000 with effect from 1 August 2019.

Introduction

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

4. The subject property is a sewage treatment works situated along Middleton Road, Oldham. A Challenge was submitted to the Valuation Officer on 23 March 2023 which concerned the following matters:

    i. the merging of two assessments into one (the Royton site and the Oldham site);
    ii. an 5% allowance to reflect the relative increase in the costs and the inconvenience of operating a wastewater treatment works on a split site;
    iii. one of the two assessments (the Royton site) incorrectly includes structures which are exempt from assessment as they are accessories belonging to an incoming sewer; and
    iv. an allowance of 10.3% to reflect the underutilised treatment capacity provided by the subject property on the material day, known as an underworking allowance, or UWA.

5. After consideration of the Challenge, the Valuation Officer agreed to merge the two assessments into one and to grant an allowance of 5% allowance to reflect the split site (both effective date of 1 August 2019). The Appellant decided not to appeal the matter at (iii) and so this left (iv) as the sole matter in dispute as the Valuation Officer had determined that no allowance should be made. It should be noted that, at appeal, the Appellant amended the level of the allowance sought to 12% as a consequence of the ‘agreed population equivalent’ of 202,378 which altered the Appellant’s calculation of the UWA.

6. Mr Peacock appeared on behalf of the Appellant on a fixed fee basis and Mr Walker appeared on behalf of the Respondent. Both declared that they were appearing in the dual roles of advocate and expert witness and they also acknowledged and accepted that, when presenting evidence as expert witnesses that their duty was to the tribunal irrespective of whether their evidence supported their respective argument. Mr Morley and Ms Smith were employees of United Utilities and appeared as expert witnesses for the Appellant.

7. Mindful of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT (LC), the panel accepted the expert witness evidence on the above 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 Tribunal’s 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). It was therefore appropriate for the panel to consider the expert evidence and assess what weight, if any, to give it in the context of the issues before it.

8. Unfortunately, the clerk, Mr Johnson, became unwell part way though Mr Peacock’s presentation and was unable to continue in his role. As a consequence, there was an adjournment of approximately thirty minutes to allow the Tribunal to source a replacement clerk. The remote hearing resumed at approximately 11:45 with Mr Massey as the clerk. The

panel was satisfied that it could continue with a replacement and neither party objected to this.

Discussion

9. On behalf of the Appellant, Mr Morley submitted that UWA's are made in respect of sewerage treatment works when it can be shown that its utilised capacity is below 80%. He explained that whilst the subject assessment had been designed and built to provide some headroom for the next twenty-five years to take into account population growth it was, on the material day of 1 August 2019, at only 68% of its capacity. Therefore, an underworking allowance of 12% should be made. Whilst the panel was taken through the operation of sewage treatment works in some detail, the 12% allowance that was sought had been arrived at by undertaking the following calculation:

$$\frac{\text{Actual Population Equivalent (APE) of the sewerage treatment works}}{\text{Design Population Equivalent (DPE) of the sewerage treatment works}} \times 100$$

where:

APE = 202,378 (agreed between the parties)
DPE = 297,000 (as set out in the Valuation Officer's decision notice)

so:

$$\frac{202{,}378}{297{,}000} \times 100 = 68\% \text{ (rounded)}$$

therefore:

80% (utilisation capacity level) less 68% (actual utilisation) = 12% UWA

10. Mr Walker referred the panel to the Respondent's Practice Note 8.5.5 for the 2017 rating list which stated that:

> "The population calculation is currently to be undertaken as the overriding evidence for the underworking calculation. If the population does not show an underworking allowance to be appropriate, even if the flow data does, then it would not be correct to apply an allowance in these circumstances.
>
> If there is consistency between these two percentage figures, then it is advised that the correct % deduction should apply if evident. (Consistency should probably allow for a fluctuation of no more than 5% between the two calculations).
>
> However, care should be exercised where the population data shows an underworking allowance to be applicable, but the flow data shows none the assumption derived from the greater flows suggest that the works are not underworking and, therefore, cannot be seen to require an allowance as a result".

11. The calculations referred to in the aforementioned practice note were as follows:

APE/DPE x 100 = 68% (as above)

and:

$$\frac{\text{Dry Weather Flow Recording (DWF)}}{\text{Consented Dry Weather Flow (CDWF)}} = \text{\% of utilisation of the subject assessment}$$

where:

DFW = 60,107m^3
CDWF = 61,776^3
(both agreed between the parties)

so:

60,107m^3 / 61,776m^3 = 97% (rounded)

12. Consequently, it was Mr Walker's position that an UWA was not supported. Such allowances were applied where both calculations for both population and for DWF showed less than 80%, and the UWA was calculated on the basis of the higher of these figures. In this case, Mr Walker explained that as the flow ratio was above 80%, he did not consider that a hypothetical tenant would seek a reduction in rent for underutilisation. It was also highlighted that the Valuation Officer had been consistent with this approach to UWA and had settled numerous underworking cases on this basis (evidence of which had been provided).

13. Mr Peacock considered that the respondent had incorrectly used the 'consented DWF' as the maximum capacity for the subject works. He referred to the permit provided by the Environment Agency which specified that the works were designed to treat a maximum capacity of 2,245 litres per second, which he had calculated to 193,968 m^3 per day. He considered that the maximum capacity which should be used to determine UWA should be this 'Flow to Full Treatment' limit which is the maximum capacity of the plant before waste water can be discharged into a river untreated. This figure was usually considered to be three times the DWF figure for the works.

14. The panel noted that the Appellant had reportedly spent approximately £80 million in combining and upgrading the Oldham and Royton plants to create the subject property, compared with the £29.2 million set out as the effective replacement costs in the contractor's valuation. Mr Walker did not consider that Appellant would have spent additional money on a plant configured to handle a capacity higher than required. He considered that the age and obsolescence of the existing rateable elements had been factored individually in the contractor's valuation, and the application of an UWA would constitute double counting.

15. The panel noted the 2017 rating list Challenge cases which had been agreed in respect of other waste water treatment plants in England and Wales demonstrated a consistent approach in applying UWA's, by using the higher of the population or flow ratios and subtracting this from 80%. The panel also noted that the methodology for using the population ratio in the 2010 rating list to determine UWA had been agreed with all the water companies. However, the agreements submitted by the respondent had all been reached with a single agent and Mr Peacock asserted that his company had not been consulted on

the introduction of the flow ratio or invited to be party to any discussions. In this regard, the panel found no evidence of a nationally agreed approach to the calculation of UWA's for the 2017 rating list.

16. The panel found that the upgrade costs incurred by the Appellant would have included a large proportion of non-rateable plant and equipment and that other costs had been incurred up to four years after the AVD when prices were higher. The panel also found that it was reasonable for the Appellant to have designed the subject hereditament in such a way as to allow for additional capacity in order to allow for population growth in its catchment area and not limit it to the expected levels on the date it was commissioned. It therefore considered it reasonable to consider whether an UWA should be applied at stage 5 of the Contractor's valuation.

17. Having considered the maximum flow for the subject property to be that asserted by Mr Peacock of 193,968 m^3 per day, the panel determined that the actual (measured) DWF of 60,107 m^3 was in the region of 31% of maximum capacity. This was significantly lower than the 68% capacity calculated using the ratio of Actual Population Equivalent (APE) to Design Population at the material day. In line with the methodology adopted above the panel considered it reasonable therefore to calculate the UWA using the higher of these two percentages. Having made this determination, the panel was satisfied that the subject property was operating at 68% capacity at the material day, which translates to a 12% UWA.

Determination

18. In view of the above findings and conclusions the panel determined that the rv of the subject property should be altered to £1,313,000 with effect from 1 August 2019.

19. It is therefore ordered that, in accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the rating list within two weeks of the date of this order to show the entry for the subject property to be £1,313,000 with effect from 1 August 2019.

20. The ratepayer is also entitled to a refund in full of the fees paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Right of further appeal

21. 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.

22. 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/.

Mr W Read, Presiding Senior Member
Mr A Hussain, Senior member

Mr A Johnson & Mr J Massey
Clerks to the Tribunal

Date issued to the parties: 18 June 2025