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

Case No: CHG101054122

Sitting remotely using Microsoft Teams

Date: 6 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — restaurant and premises; appeal against the accuracy of the rateable value of the hereditament; appeal allowed.

Before:
MR I LONSDALE
MR W J READ

Between:

FIVE GUYS JV LIMITED **Appellant**

- and -

NICOLA JOHNSON (VALUATION OFFICER) **Respondent**

Regarding:
1069-1070 WESTFIELD SHOPPING CENTRE, ARIEL WAY, LONDON, W12 7GB
(the “subject property”)

Mr D Price (instructed by Newmark) for the **Appellant**
Mr G Singh for the **Respondent**

Hearing date: 9 April 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The appeal property's assessment was reduced from £280,000 Rateable Value (RV) to £164,500 RV, with effect from 1 April 2017.

Introduction

3. This appeal has been brought in respect of Five Guys, 1069-1070 Westfield Shopping Centre, Ariel Way, London W12 7GB (the subject property) which was entered in the 2017 rating list as 'restaurant and premises' at £280,000 RV with effect from 1 April 2017.

4. The challenge proposal was submitted on 21 April 2023. The challenge proposal sought a proposed RV of £164,500 with effect from 1 April 2017.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the rateable value shown in the list for the hereditament is not reasonable.

6. The appeal was received by the Tribunal on 22 November 2024 following the Valuation Officer's challenge decision notice of 25 July 2024 in respect of the appeal property (hereditament).

7. The material date and effective date was 1 April 2017. The antecedent valuation date (AVD) was 1 April 2015.

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

Background

9. The subject hereditament comprised of two former retail units, amalgamated by the appellant to form a restaurant on the ground floor of Westfield Shopping Centre. It had a total floor area of 253.13m^2 and ITMS area of 232.82m^2. It had been valued under scheme 421966, in line with other restaurants situated on the ground floor of the shopping centre.

10. The rateable value of £280,000 was based on an adjusted rate per m^2 of £1,200/m^2 on an overall basis.

11. The appellant's representative was seeking a reduction to £164,500. This was calculated using an adjusted rate of £700/m^2.

12. The valuation officer argued that the RV was not unreasonable having regard to the rent on the subject property and comparable assessment evidence.

13. The evidence submission before the panel comprised of all the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' case submissions and photographs of the appeal property.

14. The panel noted that there were some typographical errors within one section of the evidence submission which had referred to the incorrect rateable value and adjusted rate. At the hearing, Mr Singh apologised for the errors within the decision notice.

15. The appellant's representative appeared before the panel in a dual role of advocate and expert witness. At the hearing, Mr Price indicated that his company was instructed on an incentivised fee basis but was aware that in giving evidence his responsibility was to the Tribunal.

16. The dual role is allowable in this Tribunal's proceedings having regard to the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (regulation 3 (Discharge of VTE functions – general) and rules regarding admissibility of evidence (regulation 17(2)(a)). However, it was necessary to consider the "expert" evidence and assess what weight, if any, to give it in the context of the matters in issue.

17. Mr Singh, for the valuation officer, appeared in the role of advocate only.

Relevant Law

18. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires that the rental levels be taken as at 1 April 2015, the antecedent valuation date (AVD).

19. Paragraph 2 Schedule 6 to the Local Government Finance Act 1988 (as amended) provides the statutory assumptions when valuing hereditaments.

> (6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day (but this is subject to paragraph 2ZA).
>
> (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,
> (aa) matters affecting the physical enjoyment of the hereditament.
> (b) the mode or category of occupation of the hereditament,
> (c) the quantity of minerals or other substances in or extracted from the hereditament,
> (cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,
> (d) matters affecting the physical state of the locality in which the hereditament is situated
> (e) the use or occupation of other premises situated in the locality of the hereditament.

Discussion

20. In the case under consideration, the panel analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

21. The starting point for consideration was the actual rent passing on the appeal hereditament. The headline rent was £290,337, with the lease commencing on 1 January 2015 for a period of 10 years. This included a rent-free period of 20 months. The valuation officer had adjusted this rent to reflect 12 months for fit out, resulting in £375,000 analysed to £1,247.04/m^2. On that basis Mr Singh contended that £1,200/m^2 was reasonable for the subject hereditament and he considered that most weight should be placed on this rent.

22. Mr Price argued that the rent had been agreed on 1 January 2014, which was 15 months prior to the AVD. As there were no other vacant units within the shopping centre to accommodate a restaurant, the appellant had taken over two former retail units and amalgamated them into one hereditament. The rental value was based on retail rental value (A1) to protect the value within the shopping centre, but the landlord had granted permission for the appellant to trade as a restaurant (A3 use). Mr Price contended that these factors made the rent on the subject hereditament less reliable, and the single rent should not be looked at in isolation.

23. The panel acknowledged the rent on the subject property and the date that the lease was agreed. This was a new letting, which was not too far from the AVD and should be taken into account along with the other assessment evidence.

24. In terms of rental evidence, in his submission, the valuation officer had referred to two properties. The headline rent of £262,500 was in respect of 1080 Front. This was a five-year lease from February 2017, and it analysed to £3,012.05/m^2. There had been a lease renewal in respect of SU1212a. This had a headline rent of £118,000 which analysed to £3,670.52/m^2. The appellant's representative argued that these were too far removed from the AVD and were both retail units which were in a different mode or category of occupation.

25. At the hearing, the valuation officer stated that there were four or five neighbouring units which had been assessed at £1,200 and were competitors in the market, however no further detail had been provided in respect of these assessments. The valuation officer had provided a schedule of comparable rental evidence, however, Mr Singh stated that the greatest weight should be placed on the rent at the subject hereditament.

26. The appellant's representative did not refer to any rental evidence. He argued that there was a lack of comparable restaurant rental evidence agreed around the time of the AVD.

27. In terms of comparable assessment evidence, the valuation officer provided details of six properties within the shopping centre. The description of five of these assessments was restaurant and premises, and the final assessment was café and premises. With the exception of SU1203, they were all assessed at £700/m^2. The assessment at SU1203 was £600/m^2. The ITMS total area of the hereditaments ranged between 251.76m^2 and 284.03m^2.

28. Mr Price argued that there were 17 restaurants under the same valuation scheme within the shopping centre, with all the other restaurants being valued at £700/m^2. He argued that the tone of the list had been established.

29. At the hearing, Mr Price referred to unit 1076 which was occupied by Zizzi and shared an adjoining wall with Five Guys. It was valued at £700/m^2. Within the shopping centre, he referred to two other units 1053a occupied by the restaurant Flat Iron and unit 2113 occupied by ITSU. He argued that Flat Iron was very similar to the subject hereditament but had a double entrance, an internal entrance and an entrance onto the Southern Terrace outside the shopping centre. He considered that this was a better unit, which benefited from footfall from those within the restaurant quarter and within the shopping centre but was assessed at £700/m^2. Mr Price argued that the subject hereditament only had internal access from within the shopping centre. He further argued that ITSU was on the first floor, directly above the subject hereditament. It also only had internal access. It had been historically zoned as a retail unit but had been changed to an overall rate and agreed at £650/m^2.

30. Mr Singh contended that the subject hereditament should not be compared with restaurants external to the shopping centre, for example Zizzi, which only had access from Southern Terrace. He argued that the location of the pitch was value sensitive. To access the restaurants outside, customers would bypass the subject property as it was on the main junction of the shopping centre.

31. In considering the basket of evidence, the rent on the subject property appeared to be out of line with the other evidence presented, and there was no obvious discernible reason for the subject property being assessed at £1,200/m^2 when the other restaurants within the same scheme were valued at £700/m^2, including the property next door. The panel noted that within the same scheme, there were restaurants which had access from both inside and outside the shopping centre as well as only internal or external access, however these had all been valued at £700/m^2.

Determination

32. After giving careful consideration to all the evidence presented, the panel was more persuaded by the argument that the RV was unreasonable for the mode or category of occupation and adopted an adjusted rate of £700/m^2.

33. The appeal was allowed as the panel upheld Mr Price's contention for an alteration to the 2017 Rating list. The revised valuation of £164,500 was confirmed as follows:

Hereditament Address					
1069-1070 Westfield Shopping Centre, Ariel Way, London W12 7GB					
Ref	**Floor**	**Description**	**Area (m^2)**	**Price (£/m^2)**	**Value (£)**
1	Ground	Retail Zone A	111.63	£700.00	£78,141
2	Ground	Retail Zone B	118.88	£700.00	£83,216
3	Ground	Public Toilets	4.62	£350.00	£1,617
		Area:	235.13	**Subtotal:**	£162,974
Additional Items					
Air Conditioning System			230.50	£7.00	£1,614
				Total Value	£164,588
				Rateable Value	£164,500
				Effective Date	1 April 2017

34. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the subject property's entry to £164,500 Rateable Value, with effect from 1 April 2017.

35. A refund of the paid fee will now be arranged provided there is no review sought of the Tribunal's decision. The refund will take around six weeks to process.

Right of further appeal

36. 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.

37. 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 I Lonsdale, Senior Member (Presiding)

Mr WJ Read, Senior Member

6 May 2025

Mrs K Edhouse-Thomas
Clerk to the Tribunal
Date issued to the parties: 6 May 2025