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

Case No: CHG101084244

Sitting remotely using
Microsoft Teams

Date: 16 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — 2017 rating list; public house and premises; approved guide, fair maintainable trade; appeal dismissed.

Before:
MS TM BLADES
MR SC KAMALAN

Between:

J D WETHERSPOON **Appellant**

- and -

Karen Giles
(VALUATION OFFICER) **Respondent**

Regarding:
SIR NIGEL GRESLEY, MARKET STREET, SWADLINCOTE, DE11 9DA
(the “appeal property”)

Matthew Dolben, of BNP Paribas Real Estate, Representing the **Appellant**
Peace Nwosu for the **Respondent Valuation Officer**

Hearing date: 29 April 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal determined the rateable value of the appeal property to be reasonable at £43,500 with effect from 1 April 2017.

Introduction

3. The appeal was submitted following a challenge made on behalf of the appellant by BNP Paribas Real Estate on 7 July 2023. The challenge was made on the basis that the rateable value shown in the 2017 rating list is unreasonable and excessive. It requested a reduced assessment of £30,000 RV, with effect from 1 April 2017.

4. The Valuation Officer (VO) issued a challenge case decision notice on 16 July 2024, which stated that, based upon the evidence and information available, the VO accepted that the current fair maintainable trade and the assessment of £57,500 RV was excessive. As a result, the challenge decision confirmed that the VO had reduced the appeal property's assessment to £43,500 RV with effect from 1 April 2017. The appellant remained dis-satisfied with the reduced RV.

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 valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 12 November 2024.

6. The parties' representatives were appearing as both advocate and expert witness.

7. Mr Dolben confirmed that he was not employed on a success-related fee basis. He declared that he understood and fully accepted that his duty was to the Tribunal in giving evidence, and that he would comply with this as well as the requirements of the professional body, regardless of whether or not the evidence supported his client's case.

8. The panel accepted the expert witness evidence on the above basis: the appeal was not considered complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions - general) of the Procedure Regulations. The panel determined that it was appropriate to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

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

Background

10. The appeal property is a traditional public house situated on the market square. It trades from the ground floor, with customer toilets and the commercial kitchen being located on the first floor. In terms of customer area (CA), it measures 301m^2. There is a conservatory to the side of the building and a limited amount of outdoor seating located on the pavement.

11. The remaining issue in dispute related to fair maintainable trade (FMT) to be adopted in the appeal property's assessment, and the extent to which the valuation should be adjusted to

reflect overtrading. The appellant's representative argued in particular that the level of wet trade adopted was excessive.

12. The evidence bundle comprised the documents exchanged between the parties as part of the challenge process, including a copy of the proposal, a location plan, photographs of the subject property and schedules of comparable properties. The panel also referred to the Rating Lists 2017 - Valuation of Public Houses – Approved Guide.

Relevant Law

13. 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 the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

14. The material day (the date by which physical factors have to be considered) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. For this appeal, the material day is 1 April 2017.

Discussion

15. Both parties agreed that the appeal property should be valued in line with the Approved Guide, which had been drawn up by the Valuation Office Agency (VOA) and the British Beer and Pub Association. Under the Guide, a rateable value was essentially based on the Fair Maintainable Trade (or Turnover) of a public house, with adjustments made as appropriate. 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 'reasonably proficient operator' (REO) responding to the normal trading practices and competition of the locality.

16. The panel had regard to the Approved Guide, which states: 'Vacant and to let, the REO would be aware of the actual trade (unless a new property) which is the starting point for the valuation process". This is the approach endorsed by Lord Justice Thompson *in Watney Mann Ltd v Langley (VO)* [QBD 1963]. It goes on to note that "the FMT can be above or below the recent trade history of the property and is a broader approach to valuation than simply adopting actual levels of trade at AVD. It reflects a range of factors (such as location, design and character, level of adaptation and trading history) that are inherent to the property. In assessing the FMT the valuer should exclude any income above the normal expectation that is attributable solely to the personal circumstances or skill, expertise, reputation and / or brand name of a particular operator." It was common ground between the parties that the appellant operated at a level superior to the REO.

17. The panel recognised that there was no dispute as to the approach to be adopted and both parties had submitted valuations reflecting that the subject property was a high performing public house with discounts being applied to the FMT. Their respective valuations were as follows:

a. The respondent defended the current entry of £43,500:

VO's Valuation	Adopted FMT	% of receipts	RV
Wet	£327,250	10.49	£34,329
Dry	£146,250	6.34	£9,272
			£43,601
Say £43,500 Rateable Value, with effect from 1 April 2017			

b. The appellant's representative proposed:

Appellant's valuation	Adopted FMT	% of receipts	RV
Wet	£228,000	9.15	£20,862
Dry	£146,250	6.34	£9,272
			£30,134
Say £30,000 Rateable Value, with effect from 1 April 2017			

18. The VO's dry trade figure of £146,250 was not contested by the appellant, but the parties differed in the value of the wet trade and the level of discount to be applied. The parties' valuations indicated agreement that the appeal property should fall within category one for the wet trade. The appellant was seeking a reduction of 61% to £228,000 in contrast to the 45% reduction to £327,250 applied by the Valuation Officer. The VO contended that the appeal property dominates the licensed circuit in the town, being superior to other premises in terms of size, layout and fit.

19. The parties' representatives provided details of several comparable licensed premises in the town. The panel noted that none of the properties were ascribed the same category one as the appeal property, there being no other such premises in the town.

20. Mr Dolben's preferred comparator was The Lounge Bar, in the list as The Paramount. This is a converted cinema, with a customer area a little smaller than the appeal property at 270m^2. It had a decked area to the side and a late licence to 2.00am. The VO determined this property to be category three, which Mr Dolben argued was a mistake as it is in the town centre, less than 100 metres from the appeal property. He considered that it should be a category one pub, noting that its location and the character of the building made it a prime candidate to be a Wetherspoons premises.

21. The appellant's representative opined that the resultant 2017 list RV of £16,250 was therefore too low for the Paramount, but he stated that he has ignored that fact, and relied instead on the trade evidence, which indicated a wet trade figure of £200,000 and dry of £50,000.

22. The Foresters Arms, RV £14,500, is also a category three premises. This was described as a 'local's pub' outside of the town centre. As a 'wet only' premises of 85m^2 CA the panel did not find this to be a useful comparator and weighted it accordingly.

23. The panel was presented with two category two premises to consider. Both had outside seating areas and access to free parking. The appellant's representative considered them both to be destination venues, with The Tall Chimney being roughly half a mile outside the town centre on a retail / leisure development, and Catchems Inn, a Marstons' premises, located in the suburbs approximately one mile from the appeal property.

24. The VO contended that The Tall Chimney was a direct competitor of the Sir Nigel Gresley, noting that the latter had secured a reduction in its 2010 list assessment following the opening of the former in December 2011. The Tall Chimney, a Hungry Horse premises, is housed in a renovated industrial building with a total customer area approximately 54m^2 larger than the appeal property, at 355m^2. It has a large front patio at the front. The RV is £162,000, with a wet trade figure of £765,000 and dry trade assessed at £865,000.

25. Catchems Inn has a customer area of 251m^2, and an RV of £76,500, derived from an assessed FMT of £729,500, of which £492,500 was wet trade. The VO conceded that this premises was not as well-located as the appeal property.

26. The VO pointed out that there was a pattern in the locality of category three pubs with more limited offerings seeing a drop in rateable values between the 2010 and 2017 lists. The same applied to category one premises whereas category two premises in general saw an increase in their assessments between the two lists.

27. The panel considered the differences between the comparators and the appeal property in terms of their location, physical characteristics, and size. Taking all the factors into account it found that The Tall Chimney and Paramount were the most comparable, albeit neither was particularly similar to the appeal property. Paramount had a late licence, was less favourably located and did relatively less dry trade than the appeal property. The Tall Chimney was an out-of-town pub with a large outside space with a proportionately larger dry trade. The panel considered that both of these comparable premises would have an overlapping although not identical clientele to the appeal property.

28. In considering the extent of the discount to be applied the panel gave regard to the guidance and the factors to be considered. The guide provided that the factors that need to be considered vary, dependent upon the trading environment in which the subject property is located. Type B referred to "Secondary Licensed Trade Areas, Generally Market Towns…" This covers locations with less competition from major operators. The guidance suggested that the level of adjustment could be up to 50% for both wet and dry trades. The panel understood that there should be strong evidence before exceeding the parameters set out in the Approved Guidance.

29. The panel observed that the VO's assessment had provided a significant overtrading discount of 45% for the wet trade. The appellant's valuation sought a discount of 66%, or 61% based on his wet trade figure of £228,000. The success of the appellant company's operations is acknowledged but the panel was not persuaded that the evidence supported a reduction beyond the level already provided, accepting that that was already towards the upper limit.

30. Before reaching its decision, the panel took a 'stand back and look' approach. It considered that the assessment of the appeal property was not unreasonable in comparison with other licensed premises in the locality. None of the comparators were exactly similar to the appeal property but the panel understood this to be not unusual for a small town.

Determination

31. In view of the above findings and conclusions, the Tribunal panel was satisfied that the appeal property was correctly entered into the 2017 Rating List from 1 April 2017 at a rateable value of £43,500, and therefore the appeal was dismissed.

Right of further appeal

32. 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.

33. 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/.

Ms TM Blades, Senior Member (Presiding)

Mr SC Kamalan, Senior Member

16 May 2025

Clerk to the Tribunal
Date issued to the parties: 16 May 2025