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

Case No: CHG101085324
CHG101085284
CHG101085756

Sitting remotely using
Microsoft Teams

Date: 8 October 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 rating list; material change in circumstances; redevelopment building works in locality; comparable properties; trading figures; appeals allowed in part..

Before:
MR AMRAN HUSSAIN
MRS AE FIELDER

Between:

FIVE GUYS JV LIMITED
COSTA LTD
NERO HOLDINGS LTD

Appellants

- and -

KAREN GILES
(VALUATION OFFICER)

Respondent

Regarding:
7, 8 & 96 HIGH STREET, CHELMSFORD CM1 1BE
(the "subject properties")

Mr D Price from Newmark Gerald Eve LLP (as advocate and expert witness for all appellants)

Mr L Stevens (as advocate and expert witness on behalf of the respondent)

Hearing date: 2 September 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal finds that, as at the material date, the building works would have impacted the subject properties to the extent to warrant a material change in circumstances (MCC) as follows:

   (1) 7 High Street with a current rateable value of £67,000 with a reduction of 10% giving a rateable value (RV) from 3 January 2022 to 19 August 2022 (the relevant period) of £60,300.

   (2) 8 High Street with a current rateable value of £61,000 with a reduction of 12% giving an RV from 3 January 2022 to 19 August 2022 (the relevant period) of £53,500.

   (3) 96 High Street with a current rateable value of £39,000 with a reduction of 12% giving an RV from 3 January 2022 to 2 November 2022 (the relevant period) of £34,250

Introduction

3. This hearing related to three appeals, all of which were made following a challenge against the 2017 rating list entries, on the basis that the assessments had been adversely affected by building works in the locality. Both parties were agreed on the size of each subject property and the fact the works were ongoing for the relevant periods.

4. The MCC in question was in connection with the redevelopment works at Tindal Square. Mr Price submitted that an allowance of 15% was appropriate on all the subject properties for the relevant period. Mr Stevens however submitted that no allowance should be granted. He stated that upgrading works in a town centre were to be expected. In his opinion any tenant new to the scene would consider that the temporary improvement work would have a negative impact on the trade in the short term but in the long term the works would improve trade.

5. Challenges had been submitted by the appellants representative. An allowance of 15% was proposed to account for the MCC. This was for the period of:

   (1) 7 & 8 High Street from 3 January 2022 to 19 August 2022 (relevant period).
   (2) 96 High Street from 3 January 2022 to 2 November 2022 (relevant period).

6. Mr Price appeared on behalf of the appellants as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration included a statement that he was instructed under a conditional fee arrangement.

7. Mr Price also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

8. The panel accepted this expert witness evidence on the above basis as the appeal was not 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 on

admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

9. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

10. Mr Stevens also declared that he accepted and understood that when giving evidence as an expert witness his overriding duty was to the Tribunal

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

Relevant Law

12. Matters which constitute an MCC are defined in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988.

13. When valuing having regard to the material day, the valuation arrived to, has to conform with the rateable value definition provided in paragraph 2(1) to Schedule 6 of the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999:

> “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.

14. The panel then considered, having regard to the above, would the MCC affect the hypothetical tenants bid? In doing so, economic factors must be considered as at the antecedent valuation date of 1 April 2015, whereas the physical factors are as they existed on the material date.

15. The material date is determined in accordance with the Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No.556) and 4C of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No. 2268). The material day is the date on which the ratepayer confirms the accuracy of the information included in the check which in connection with these cases were submitted on 11 March 2022. The effective date in all these cases is 3 January 2022 when the work commenced outside the subject properties.

Discussion

16. The issue concerned the RV of the appeal properties and, specifically, the extent, if any, to which their assessments were affected by nearby building works. The appellant sought an allowance of 15% for each assessment for the relevant period for that property. The VO considered the current rating list entries to be reasonable and that there was no requirement for an MCC allowance..

17. The panel noted that the appellant's representative sought an MCC reduction of 15% for each of the subject properties. Mr Price submitted that the bid a tenant new to the scene would offer would be impacted by the development works being carried out. He provided an overview of the works:

    (1) The excavation of the road in front of the subject properties causing noise and dust.
    (2) The fencing off of the street outside the subject properties.
    (3) The closure and one way diversions around the subject properties.
    (4) The loud noise of the machinery used to carry out the works.
    (5) Areas being fenced off with narrow footpaths for pedestrian access but no access to cross from one side of the street to the other.
    (6) The creation of a pedestrian space and the planting of trees.
    (7) The removal of road traffic and street clutter and significant changes to the street furniture. This included putting in seats for the public, cycle stands, wayfinding signs and creative lighting. It also, in the case of Costa and Café Nero, meant that they could not use their external seating area for the relevant period.

18. The panel then turned to the photographs put into evidence which showed a complete excavation of the walkway directly in front of the subject properties with ongoing major works. The panel took into account that the footfall in front of the subject properties was significantly reduced as pedestrians could only access the subject properties using narrow fenced footpaths. This also made it impossible for anyone to cross the street to gain entrance to the subject properties. The panel noted that it would also reduce passing trade as the whole street was affected significantly reducing the number of shoppers passing by. The panel found that the effects of these extensive works would have caused a prospective tenant new to the scene to make a lower offer of rent as a result.

19. The panel found that that all the subject properties served food and drink and the noise and dust would have led to customers going to an alternative coffee shop away from the noise and the dust especially when they were eating and drinking.

20. Having found that the ongoing works would have caused an MCC on the subject properties the panel turned to what level of the temporary reduction in the RV's was appropriate. The panel noted that the trade figures introduced into evidence by the appellant's agent demonstrated a fall in trade at Café Nero's of 15.34% at the beginning of the works which increased to 31.94% in August 2022 when compared with the trade for 2019 (2019 trade figures were used to exclude any impact from the Coronavirus).

21. The panel also took note of the graphs comparing trade between the Colchester Culver Street Café Nero branch and the Chelmsford branch over the period January 2022 and June 2023. The panel found that there was a clear drop in trade which directly corresponded with the works carried out and the immediate return to normal as soon as the works had been completed. The panel found that the percentage MCC allowance of 15% on each subject

property was too high. The panel took into account the average of the downturn according to the figures provided which was 24% then halved it to account for the landlord's share giving an allowance of 12%. The panel found that 12% was an appropriate percentage MCC reduction for Costa and Café Nero. It found however that as Five Guys never had an outside seating area then the impact on the trade would have been slightly less than that of the other two subject properties. To reflect this difference the panel found an MCC allowance of 10% was appropriate for Five Guys.

22. The panel was aware that trade figures were not provided in relation to Costa and Five Guys but put weight on the trend in the trading figures for Café Nero being similar to the other two appellants as they were all national companies specialising in food and beverage sales.

23. The panel then turned to the comparable properties put into evidence by the appellant's agents which, he submitted, had been granted allowances due to redevelopment works and supported an allowance of 15% on the subject properties:

    (1) 6 Steward Street London which was awarded a 15% allowance.

    (2) Gnd Flr Pt (&Bst Rr Pt) Rex House 4-12 Regent Street in London was granted a 17.5% allowance.

    (3) 31 North Row London which was granted an allowance of 17.5% allowance.

    (4) Bst & Grd Flr 36 Berners Street London was granted a 12.5% allowance.

    (5) Bst & Grd Flr 42 James Street London was granted a 10% allowance.

24. The panel found that as these comparable properties although they were not far in distance were all in London which was a completely different market to that of Chelmsford. The panel therefore put little weight on these comparable properties. Some of the MCC allowances on these comparable properties had been due to the demolition of multi storey buildings opposite or very close to the subject properties and so were quite different types of work than at the subject properties in this case. The panel therefore put little weight on these comparable properties.

25. Mr Steven asked the appellant's agent to confirm if any of the appellants had received a reduction in rent to reflect the loss in trade whilst the work was carried out. Mr Price confirmed that none of the appellants had received any adjustments to their rent as the works were not carried out by the landlord and so there would be no reason in his opinion for the landlord to reduce the rent in that situation.

26. The panel having considered the evidence presented by both parties was persuaded that an allowance was appropriate due to the works being carried out and the impact on a tenant's rental bid as a result. The panel did not however consider that an allowance of 15% on all three subject properties was supported by the evidence particularly as Five Guys never had an outside seating area which had to be closed during the works. The panel therefore determined an MCC allowance of 12% for both Costa and Café Nero and an MCC allowance of 10% for Five Guys. The appeal was therefore allowed in part.

Determination

27. In view of the above findings and conclusions, the Tribunal is satisfied that an MCC allowance was appropriate as the ongoing works and redevelopment would have decreased the rent that tenant new to the scene would have been willing to offer. The panel found that the rate of 15% was too high and awarded an allowance of 10% for 7 High Street and 12% for 8 and 96 High Street for the relevant periods.

Order

28. 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 reduce the rateable value as follows:

(1) 7 High Street to have a 10% MCC allowance giving a RV of £60,300 from 3 January 2022 to 19 August 2022.

(2) 8 High Street to have a 12% MCC allowance giving an RV of £53,500 from 3 January 2022 to 19 August 2022.

(3) 96 High Street to have a 12% MCC allowance giving an RV of £34,250 from 3 January 2022 to 2 November 2022.

29. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Right of further appeal

30. 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.

31. 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 Amran Hussain, Senior Member (Presiding)

Mrs AE Fielder, Senior Member

8 October 2025

Miss F Willson
Clerk to the Tribunal
Date issued to the parties: 8 October 2025