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

Case No: CHG101095958

Sitting remotely using Microsoft Teams

Date: 28 November 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 rating list; sewage works; contractor's basis valuations; stage 5 "underworking allowance" rejected by the panel; stage 2 allowances already conceded by the Valuation Officer were sufficient; appeal dismissed.

Before:
MRS PA CROWTHER-NEWMAN
MR M YOUNG

Between:

UNITED UTILITIES WATER LTD **Appellant**

- and -

AMANDA HITCHINGS (VALUATION OFFICER) **Respondent**

Regarding:
COLNE SEWAGE DISPOSAL WORKS, CORPORATION STREET, COLNE BB8 8LB
(the "subject property")

Mr M Peacock of Savills, for the Appellant
Mr J Morley, expert witness for the Appellant
Ms P Smith, expert witness for the Appellant
Mr T Walker, for the Respondent
Mr J Allen, expert witness for the Respondent

Hearing date: 30 October 2025

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is dismissed.

2. The assessment was confirmed at rateable value (RV) £236,000 with effect from 6 May 2021.

STATEMENT OF REASONS

Introduction

3. This appeal has been brought in respect of Colne Sewage Disposal Works, Corporation Street, Colne BB8 8LB (the 'subject property'), which was entered in the 2017 rating list as a sewage treatment works, at rateable value £236,000 effective from 6 May 2021.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was made to the Valuation Tribunal for England (VTE) on behalf of United Utilities Water Ltd. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, the valuation officer had made only a slight reduction to the rating list in his challenge decision notice, that being from £243,000 RV to £236,000 RV. Mr Peacock, on behalf of the appellant, sought a reduction to £144,000 RV.

5. 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 and Mr Allen was employed by the Valuation Office Agency and appeared as expert witness for the Respondent.

6. During the hearing, Mr Peacock advised the panel that he had not been provided with a copy of Mr Allen's witness statement prior to the hearing. Mr Allen stated that he had wanted to provide a written statement to the Tribunal and other parties at the hearing but had been advised not to do so. As Mr Peacock did not object to oral evidence from Mr Allen his points are recorded in this decision.

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

Background

8. Colne Sewage Treatment Works is located between a mixed domestic and industrial area and countryside, a river, Colne Water runs along the northern edge of the site of the works which were built in 1962. The site was extended in 1983 and in 2021 further modifications were made including: two new sludge holding tanks, an above ground tertiary solids removal plant and effluent pumping station. Ten new kiosks were installed across the site, including Ferric Dosing, Sodium Hydroxide and Polyelectrolyte Kiosks and a new inlet channel was added along with screen and Hirate Filters.

9. In light of the material change of circumstances in 2021 the sewage works was revalued and an allowance of 51.5% for underworking was removed as the Valuation Officer was of the opinion that it had been incorrectly applied.

10. The antecedent valuation date for the 2017 rating list is 1 April 2015 and the material day for the appeal is agreed as 6 May 2021.

11. Most of the valuation for the subject property had been agreed: the only matter in dispute was the correct calculation of an underworking allowance to reflect the degree of underutilised pollution treatment capacity provided by the hereditament on the material day.

Relevant Law

12. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “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”

Discussion

13. Both parties agreed that the subject property should be valued for rating on the contractor’s basis. A useful definition of this basis was expressed by the Lands Tribunal in *Dawkins (VO) v Royal Leamington Spa BC and Warwickshire CC* [1961] 8 RRC 241:

> *“The use of the contractor’s basis, last resort or not, is amply supported by the authorities. In his opening the Solicitor-General pointed to its logic in words we cannot hope to improve upon: ‘As I understand it, the argument is that the hypothetical tenant has an alternative to leasing the hereditament and paying rent for it; he can build a precisely similar building himself. He could borrow the money, on which he would have to pay interest; or use his own capital on which he would have to forego interest to put up a similar building for his owner-occupation rather than rent it, and he will do that rather than pay what he would regard as an excessive rent – that is, a rent which is greater than the interest he foregoes by using his own capital to build the building himself. The argument is that he will therefore be unwilling to pay as annual rent for a hereditament more than it would cost him in the way of annual interest on the capital*

sum necessary to build a similar hereditament. On the other hand, if the annual rent demanded is fixed marginally below what it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament, it will be in his interest to rent the hereditament rather than build it'."

14. Five stages have developed under the contractor's basis of valuation:

    - Stage 1: Estimate the replacement cost of construction of equivalent premises (excluding the land value).
    - Stage 2: The Adjusted Replacement cost - Make adjustments to reflect deficiencies in the hereditament.
    - Stage 3: Add the value of the land.
    - Stage 4: Decapitalise using the appropriate statutory rate.
    - Stage 5: Stand back and look and make any further adjustments considered appropriate.

15. Mr Peacock had calculated the amount of allowance which should be adopted using a method in the rating manual which had been used for the 2010 Rating List. he argued that the new approach used by the Valuation Officer to calculate allowances for the 2017 list "*shows a misunderstanding and consequent misuse of the data leading to a completely flawed calculation of underworking*". He referred to a previous decision of the Valuation Tribunal (VT) Case No: CHG100992370 in which the panel had accepted his calculation over that of the Valuation Officer, and which had not been appealed. On this point, the panel noted that in the VT decision the Design Population figure had been agreed and therefore the Population Equivalent calculation had not been in dispute. It was also aware that it was not bound by decisions of the Tribunal, but they may be persuasive.

16. Mr Peacock explained that the calculation is applied when it can be shown that, on the material day, a sewage treatment works is operating at less than 80% of its capacity and it is used to reflect this underutilisation. Where an allowance is applied, the RV is adjusted downwards by 1% for every 1% of underutilisation less than 80%, up to a maximum of 55%.

17. Mr Peacock had arrived at an allowance of 39% using the following calculations and adopting the lowest outcome:

    Underworking Allowance (UWA) as applied in Oldham decision - Case No: CHG100992370 VT hearing 18 June 2025

    1. Population Equivalent calculation - utilisation UWA = 80% less % utilisation

    Actual Population 29,414
    Design Population 77,924 = 38% utilisation UWA = 80% less 38% utilisation = 42%

    2. Flow calculation - utilisation UWA = 80% less % utilisation

    Actual measured DWFm3-Q80 7,495
    Flow to Full Treatment capacity m^3 18,317 = 41% utilisation UWA = 80% less 41% = **39%**

18. Mr Peacock's witnesses, who both worked in the water industry were introduced; Ms Smith answered questions on the operational data from the works and how that aligns with the regulatory permits with regard to releasing effluence into the river. Ms Smith explained some of the terminology and calculations referred to by Mr Peacock, which she confirmed supported Mr Peacock's argument that the works were underworking.

19. Mr Morley answered questions on the superfluity assessment for the works and how the population equivalent figure should be calculated. He also explained Biochemical Oxygen Demand (BOD) which is a measure of the amount of oxygen needed by microorganisms to decompose organic matter in water. Mr Morley explained how the BOD flow through the plant is used to calculate the population equivalent figure. He stated that over recent years there had been a reduction in the amount of BOD load passing through the Colne works. In Mr Morley's opinion the calculation used by the Valuation Officer for the design population equivalent was flawed.

20. On questioning Mr Walker asked why the modifications made in 2021 had not addressed the question of underworking as the capacity of the works had not been reduced during the alterations. Ms Smith confirmed that a reduction in performance capability would be deemed by the Environment Agency to be a detriment to the environment as the water industry may not be able to maintain its high standards.

21. Mr Walker referred the panel to section 8.5.5 of the Rating Manual pertinent to 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".*

22. Mr Walker had adopted a figure of 34,940 for Design population which he had calculated using a formula set out in the Rating Manual which he stated had been agreed by the majority of the water industry, he also contended that Consented Dry Weather Flow should be used in the calculation rather than Flow to Full Treatment Capacity, his calculations were therefore as follows:

    1. Population Equivalent calculation - utilisation UWA = 80% less % utilisation

    Actual Population <u>29,414</u>
    Design Population 34,940 = 84%

    2. Flow calculation - utilisation UWA = 80% less % utilisation

    Actual measured DWFm3-Q80 <u>7,495</u>
    Consented Dry Weather Flow 7,174 = 104%

23. Mr Walker submitted that this was the correct calculation which supported his contention that no allowance should be adopted at stage 5 of the contractor's test because the flow ratio was above 80%, and therefore he did not consider that a hypothetical tenant would seek a reduction in rent for underutilisation. He also argued that the Valuation Officer had been consistent with this approach to this type of allowance and had settled numerous underworking cases in the 2017 rating list on this basis including some with Savills. The panel noted that evidence had been provided to support this.

24. With regard to the VT decision Case No: CHG100992370 Mr Walker introduced his expert witness, Mr Allen, who was a lead valuer for sewage works in the 2010 rating list and a national coordinator for the 2017 rating list. In response to the VT decision Mr Allen made the following comments explaining why he believed Mr Peacock's calculations and valuation, which had been accepted by the Tribunal, to be flawed:

- At stage 5 of the contractor's basis for valuation any allowance granted should be applicable to the whole of the site, in his opinion individual assets should be dealt with either at stage 1 or at stage 2 of the valuation;
- It was not the correct approach to use Flow to Full Treatment Capacity in the underworking allowance calculation, instead the consented Dry Weather Flow should be used;
- The comparable evidence referred to in the decision had not been agreed solely with one agent.
- Since the 2010 list there had been significant discussions on the approach to the valuation of sewage works. A memorandum of agreement had been drawn up in 2011 which formed a practice statement. Since then, the Valuation Officer had been able to obtain more consistent information from the Environment Agency regarding flow through sewage works, upon which to base his calculations. Agreements had been reached to introduce Dry Weather Flow as a consideration of superfluity, and the practice statement/memorandum of agreement had been updated.

25. In response to these comments, Mr Peacock did not agree that a method of calculation had been agreed nationally between the various interested parties as no signed memorandum of agreement had been provided. The panel accepted that discussions had taken place and agreements reached on how various calculations should be made, even though Mr Peacock may not have been involved in them. In any event, the panel was not concerned with the arguments as to whether or not Mr Peacock was bound by the agreements made between various other interested parties. The panel was chiefly concerned with whether the correct approach had been taken in applying the contractor's basis for valuation; it had to determine whether it was appropriate to consider the over capacity of the sewage works at stage 5 and whether, in fact, it had been proven that there was overcapacity at the site.

26. In considering at which stage of the valuation over capacity should be accounted for, the panel turned to the VOA Rating Manual guidance notes. Whilst the panel accepted that allowances for disabilities affecting the whole of the site could be considered at stage 5 of the valuation, it determined that excess capacity, i.e., physical and functional obsolescence, should be considered at stage 2 of the valuation. At stage 2 Mr Walker had confirmed that two redundant primary tanks had been omitted from the valuation by both parties along with a redundant press house at stage 1.

27. The panel turned its attention to whether there was any evidence of underworking at the works. It had been argued by Mr Peacock that there had been a decline in population in the

vicinity of the works and that there had been a decline in industry since the works were built in 1962 which had resulted in underworking. The panel found that no supporting evidence had been placed before it to persuade it that this was the case and the panel turned to the statistics which had been alluded to by Mr Walker regarding discharge of overflow into the Colne Water. Mr Walker had raised the question as to why, if the sewage works were not working to full capacity, it had been necessary on 126 occasions in 2021 to release sewage into the river. These were referred to as ‘events’ or ‘spills’ which had reportedly lasted for 1,707 hours in total.

28. The panel also noted that evidence at page 14 of the Valuation Officer’s decision notice, suggested that the alterations made to the works in 2021 were intended to increase capacity, it questioned why this would have been done if there was already excess capacity. Having reviewed the evidence and arguments it seemed to the panel that all of the assets included in the party’s valuations were in use and consequently there is no 39% redundancy. The panel found that in this appeal the Valuation Officer’s calculation and reasoning better reflected the contractor’s basis of valuation as it did not make assumptions about the hypothetical tenant which were not justified. Having reached this conclusion the panel determined that the hypothetical tenant would have been unlikely to have rebuilt the sewage works with a 39% reduction in capacity.

Conclusion

29. In view of the above findings and conclusions, the appeal was dismissed.

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) using Form T385 (Notice of appeal) within **four weeks** of the date this decision and statement of reasons was 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/.

Mrs PA Crowther-Newman, Senior Member (Chair)
Mr M Young, Vice President
28 November 2025

Mrs H Beresford
Clerk to the Tribunal
Date issued to the parties: 28 November 2025