## VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 rating list appeal; public house and premises; mode and category of occupation; comparable evidence; the appeal property was incorrectly valued as a public house and should be valued in line with its mode or category of occupation at the material day; appeal allowed.*

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| APPEAL NUMBER: | CHG101119641 |
| RE: | Venue 5, Field End Road, Ruislip, Greater London HA4 9PB<br>(the "subject property") |

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| BETWEEN: | VENUE 5 | Appellant |
| | and | |
| | Lucy Dyer MRICS<br>(Valuation Officer) | Respondent |

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| SITTING: | *remotely using Microsoft Teams* |
| ON: | 11/04/2025 |
| BEFORE: | Mr A Hussain, Presiding Senior Member<br>Mrs MJ Cole, Senior Member |
| CLERK: | Mrs H Beresford |
| APPEARANCES: | Mr M Midwinter, of Sanderson Weatherall, representing the Appellant<br>Mr R Das, representing the Respondent |

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## DECISION AND STATEMENT OF REASONS

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### Decision

1. The appeal is allowed.

2. The appeal property's assessment was reduced to £75,000 rateable value (RV), with effect from 1 April 2017.

### Introduction

3. This is a 2017 rating list appeal that has been brought in respect of Venue 5, Field End Road, Ruislip, Greater London HA4 9PB, (the ‘subject property’). The appeal property had been entered into the rating list as a public house and premises at £155,000 RV with effect from 1 April 2017. The mode and category of use for the valuation of this property was argued to be as a restaurant and premises.

4. The challenge proposal was received by the Valuation Officer on 1 September 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £75,000 RV was proposed with effect from 1 April 2017, to reflect the mode and category of the appeal property’s occupation as a Restaurant and Premises rather than a Public House and Premises.

5. The Valuation Officer issued a challenge case decision notice on 16 October 2024, which stated that based upon the evidence and information available, the current rating list entry was fair and reasonable as the appeal property should be valued as a Public House and Premises.

6. 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 was not reasonable. The appeal was received by the Tribunal on 31 October 2024.

7. Mr Midwinter appeared on behalf of the appellant as advocate and expert witness. He declared that neither he nor Sanderson Weatherall were in receipt of a conditional fee in respect of this matter.

8. Mr Das was also attending the hearing as advocate and expert witness.

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

*Background*

10. The subject property is a two storey building located on the junction of Field End Road and Whitby Road it is located in a predominantly residential area approximately 1.5 miles from Ruislip town centre and 0.5 miles from Eastcote town centre.

11. The Appellant’s representative, Mr Midwinter, argued that the subject property is a former public house and has historically been valued using a trade-based methodology using ‘VOA Public House Scales’ for rating purposes. He argued that there is an open market rent paid at the property and therefore a rentals method of valuation should be adopted as Venue 5 Ltd trade as an Indian restaurant and not a public house. He stated that the open market rent in 2015 for the property was £83,967, which included a residential element to the 2nd floor, the restaurant element devaluing to £75,571. The property was let to Venue 5 Ltd in 2006, and it has since traded as an Indian Restaurant with take away facility. The trade figure of £1.7 million comprises 75% for food and 25% wet.

12. The Valuation Officer’s representative, Mr Das, argued that the subject property is historically a public house, it has a licence to operate as a public house, and it enjoys opening hours as a public house. He submitted that the trade of £1.7million and the size of the hereditament support the current level of rateable value.

## 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 on 1 April 2015, the antecedent valuation date (AVD).

14. The subject hereditaments must be valued for the purpose of non-domestic rating on the basis of the rent at which they might reasonably be expected to be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

> 2(1) 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;
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> (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;
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> (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

15. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

16. Matters that affected the physical state or enjoyment of the property or the locality are to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject property, the material day is 1 April 2017.

17. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be considered. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

18. The only rent referred to by the parties was that of the subject property which had been referred to by Mr Midwinter. The panel noted that in this appeal there was an open market rent on the premises. The original lease was a 30-year lease from 31 December 2002, with

an initial rent of £60,000, and rent reviews on the first day of the 6th, 11th, 16th and 21st years. Venue 5 Ltd took an assignment of the lease on 6 April 2006. It was also agreed that there would be an annual RPI increase in the rent, which would be reviewed at the rent review date to open market. As at the AVD Mr Midwinter had devalued the rent for the non-domestic part of the subject property to £75,571. This rent was not disputed by Mr Das.

19. Mr Midwinter had provided evidence of two other restaurants which were historically public houses, but which were now operating and valued as restaurants. Café Rouge, 10 High Street, Ruislip HA4 7AW had a main space price of £295/m$^2$ resulting in £86,500 RV; the panel noted that this property was in a better location than the subject property on the High Street in Ruislip. 2A – 2B High Street, Ruislip HA4 7AR which was also located on the High Street was valued at £48,750 RV based on £235/m$^2$. The panel noted that both of these properties had the look of a traditional public house but had been valued on a rental basis as restaurants.

20. Mr Midwinter had also referred to other purpose built restaurants as comparable properties. Nando's, Frankie & Benny's and Chiquito were three restaurant units located in a Superstore and Cineworld site in Ruislip, these were modern restaurants in a better location with a main space price of £300/m$^2$; Celebratory Café, Odyssey Business Park, Ruislip HA4 6QF was in a Business Park location and was valued at £125/m$^2$; and The New Cow Byre, Manor Farm, Estate Road, Ruislip HA4 8BD was a restaurant located in a Tudor mansion heritage site and was valued at £65/m$^2$.

21. Mr Midwinter argued that the subject property is located in a predominantly residential area, away from the town centres, and the passing rent reflects this fact; on this basis and taking into consideration quantum he argued that a main space price of £160/m$^2$ resulting in an RV of £75,000 was fair and reasonable.

22. The description of the appeal property was, public house and premises, however, the panel accepted that the description ascribed to a property was not determinative of the value to be applied in its assessment. The panel noted that historically the subject property had been valued as a public house and for the 2017 list this had been based on trade of £1.7 million resulting in an RV of £155,000. Mr Das argued that the appeal property operated under a licence for a public house and as such should be valued as one, based on trade. He went on to argue that Venue 5 also held a banqueting licence and a licence to perform marriages. On questioning Mr Das accepted that the licence referred to, simply permitted the sale of alcohol and did not restrict the use of the property as a restaurant.

23. Mr Das referred to evidence of two public houses in the locality, in particular The Manor House, Field End Road, Pinner, Middx, HA5 1RJ, this public house had an RV of £144,000 which he argued supported £155,000 for the subject property. He also argued that the trade of £1.7million and the size of the subject property support the current level of rateable value. Furthermore, he argued that the determinative factor in this case was that Venue 5 was operating under a public house licence which meant that it enjoyed extensive opening hours compared to a restaurant. Mr Das was of the opinion that under the terms of the licence the subject property had to be considered as a public house, however, the panel noted that no evidence had been submitted to support this argument.

24. Mr Das stated that he had recently inspected the subject property and there was no residential accommodation upstairs, Mr Midwinter confirmed that this had recently been removed as the appellant had bought the freehold of the subject property, he confirmed that at the material day the residential part of the property was let on a shorthold tenancy.

25. In determining the mode or category of occupation the appeal property was in at the material day, the panel had to consider the appeal property physically as it stood, or *rebus sic stantibus*. As outlined in the Lands Tribunal and Court of Appeal decisions in *Scottish & Newcastle Retails v Williams (VO)* [2001] EWCA Civ 185. There were two strands to this. The first rule being that the physical state of the property had to be regarded as at the material day 1 April 2017. The only alterations permitted were minor alterations of a non-structural character. The second rule being that the appeal property had to be valued vacant and to let, having regard to its mode or category of use as at the material date and it was the value of that use to the occupier that had to be determined.

26. The panel noted that from the outside the subject property had the look of a public house, however, Venue 5 had been operating as an Indian restaurant since 2006; trade showed that 75% of income came from the sale of food and the photographs provided by the appellant clearly showed that the property was marketed and operated as a restaurant, it also had a banqueting hall and had been fitted out with a substantial kitchen. Mr Midwinter had provided a link to the Venue 5 website which also showed it to be a restaurant, it had an extensive Indian menu and the slogan "the best Indian restaurant in Ruislip". The panel noted that unlike a public house it was necessary to book a table to eat at the restaurant and food and drink is served at the table.

27. The panel concluded that at the material day the subject property was occupied as a restaurant and had the physical attributes of a restaurant and based on the values of comparable restaurants a price of £160/m$^2$ was fair and reasonable, the following valuation was therefore adopted.

| Description | Size m$^2$ | £/m$^2$ | £ value |
|---|---|---|---|
| GF Restaurant | 116.92 | 160 | 18,707 |
| GF Kitchen | 78.76 | 112 | 8,821 |
| GF Conservatory | 90.72 | 112 | 10,160 |
| GF Public Toilets | 24.27 | 80 | 1,942 |
| GF Banqueting Hall | 226.67 | 112 | 25,387 |
| GF Stage | 8.32 | 80 | 666 |
| GF Store | 8.32 | 80 | 666 |
| Base Stores | 86.40 | 40 | 3,456 |
| FF Office | 30.80 | 80 | 2,464 |
| FF Staffroom & Stores | 52.10 | 56 | 2,918 |
| Total | | | 75,187 |
| | | | |
| 2017 Valuation | | | 75,000 |

**Disposal**

28. In view of the above findings and conclusions, the panel allowed the appeal.

29. The Tribunal Panel orders 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 entry in the rating list to show a revised assessment of £75,000 RV for the appeal property, with effect from 1 April 2017.

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

31. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

**Date issued to parties:** 25 April 2025

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**Right of further appeal**

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.

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