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

Case No: CHG101166535

Sitting remotely using Microsoft Teams on 16 March 2026

Date: 1 April 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

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

Before:

MR P BLYTHE-BARTRAM
MRS V LLOYD AND MRS L JOHNSON

Between:

FIVE GUYS JV LIMITED — **Appellant**

- and -

KAREN GILES
(VALUATION OFFICER) — **Respondent**

Regarding:

FIVE GUYS, UNIT 7B, CHESHUNT EN8 0QE
(the “subject property”)

Mr D Price, for the **Appellant**
Mr L Stevens, for the **Respondent**

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is allowed.

2. The appeal property's assessment was reduced to £132,000 rateable value (RV), with effect from 23 May 2022.

STATEMENT OF REASONS

Introduction

3. This is a 2017 rating list appeal that has been brought in respect of Five Guys, Unit 7b, Cheshunt EN8 0QE, (the 'subject property'). The appeal property had been entered into the rating list as a Retail Warehouse and Premises at £201,000 RV with effect from 23 May 2022.

4. The challenge proposal was received by the Valuation Officer on 19 December 2023. It had been made on the grounds that the RV shown in the 2017 rating list was wrong. A revised assessment of £132,000 RV was proposed with effect from 23 May 2022, to reflect the mode and category of the appeal property's occupation as a Restaurant and Premises rather than a Retail Warehouse and Premises.

5. The Valuation Officer issued a challenge decision notice on 19 June 2025, 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 Retail Warehouse 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 17 October 2025.

7. The appellant's representative, Mr Price, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

8. The panel have accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

10. The respondent's representative, Mr Stevens, appeared as both expert witness and advocate.

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

Background

12. The subject property is a retail warehouse with a total significant area of 298.40m^2 located in Brookfield Retail Park. The retail park was built in the mid-1990s. The subject unit was originally one larger unit known as Unit 7, this included what is now Unit 7 and Unit 7A prior to a deletion and renovation works effective from 12 October 2020 which created the two separate assessments Unit 7 and Unit 7A.

13. Mr Price argued that the subject property has been incorrectly valued under scheme 414008 which is applicable to Retail Warehouses in Broxbourne Borough. He submitted that the property is not a retail warehouse but is an A3 restaurant and instead should be valued under scheme 323834 which is applicable to drive to restaurants including stand-alone and retail/leisure park restaurants in London and Hertfordshire.

Preliminary issue

14. The parties raised a preliminary issue, just prior to the hearing Mr Price had submitted evidence of an agreement which he stated supported his case. Whilst Mr Stevens objected to this late evidence being admitted at the hearing, he supported Mr Price in requesting that the hearing be adjourned to allow him to inspect the comparable property and consider its merit.

15. The panel was not minded to adjourn the hearing as this late evidence had been available since January 2026 and both parties had had ample time to make their submissions. It was aware that any application to submit late evidence should be made no less than four weeks prior to the hearing, there had therefore been a breach of the Tribunal's directions.

16. In considering a breach of the Tribunal's directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an inaccurate entry in the valuation list and the need to enforce compliance with the rules, directions and orders of the Tribunal.

17. The panel considered that this was a serious breach and that there was no good reason why the evidence had not been submitted in accordance with the Tribunal's directions. It also noted that Mr Price had stated that the evidence merely reinforced other evidence which had been submitted. The panel therefore found no good reason to admit the evidence at stage three.

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

19. 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;
>
> (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

20. 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).

21. 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 23 May 2022.

22. 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.

23. Mr Price referred to the rent which had been agreed on the subject when Five Guys took occupation of the property with an open market letting on a new 15-year lease effective from 15 March 2022 on a stepped rent basis amounting to £102,711 per annum. The tenant received nine months' rent free as an incentive to take the lease and he had analysed the rent to £344/m^2. He argued that this was not reflected in the RV of £201,000 and tone of £670/m^2. Mr Price argued that the property should be valued under scheme 323834 for restaurants and premises rather than scheme 414008 for retail warehouses. Whilst the panel took this rent as a starting point, it noted that it was too remote from the AVD to be given any significant weight.

24. Mr Price stated that the best comparable evidence in this appeal was an agreement made between himself and the Valuation Office for Costa Coffee situated at Unit 5a Brookfield

Retail Park. This was an open market letting effective from 6 July 2015 at a rent of £90,000 per annum, there was a six-month rent-free period which was granted as an incentive. This rent had been analysed to an average annual rent of £81,000 or £482/m^2 based on a floor area of 167.80m^2 up until the first review. Agreement was reached for the 2017 List by basing the revised level of value £480/m^2 in line with the rent, given this was a new letting 3 months post AVD. The panel noted that this property was smaller than the subject property at 167.80m2, however, it found this to be good evidence, and it attached significant weight to it.

25. Mr Price also referred to various other similar restaurants in the Enfield area which he believed supported his argument. In particular, the panel noted that Nando's situated at 5B Crown Road, Enfield EN1 1TH had an area of 259.82/m^2, similar to that of the subject property, and was valued at £440/m^2. The panel attached weight to this evidence.

26. Mr Stevens considered that the subject property should be valued as a Retail Warehouse and Premises as vacant and to let that is what the subject property was. Therefore, he argued that the best comparable evidence was that of other retail warehouses in the same location. He referred to assessment evidence for three units on the same retail park these were units 5, 6, and 18 which each had a tone of £670/m^2; however, no rental evidence was provided for these properties. The panel noted that on questioning Mr Stevens could not refer it to any rental evidence that supported a tone of £670/m^2 for a restaurant.

27. The description of the appeal property was, Retail Warehouse 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. 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. 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.

28. Given the evidence before it the panel concluded that at the material day the subject property was occupied as a Restaurant and Premises and had the physical attributes of a restaurant and based on the values of comparable restaurants a price of £440/m^2 was fair and reasonable, the following valuation was therefore adopted.

ref	Floor	Description	Area m2	£/m2	Value
1	Ground	Sales	298.4	440.00	£131,296
Additional items		Air Conditioning	298.4	4.00	£1,194
					£132,490
Total					£132,000

Conclusion

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

30. 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 £132,000 RV for the appeal property, with effect from 23 May 2022.

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

32. 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.

Right of further appeal

33. 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.

34. 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 P Blythe-Bartram, Senior Member (Chair)
Mrs V Lloyd, Member
Mrs L Johnson, Member
1 April 2026

Mrs H Beresford
Clerk to the Tribunal
Date issued to the parties: 1 April 2026