

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – VALUATION – bingo hall – valuation scheme based on percentage of Fair Maintainable Trade – appeal property “right-sized” – whether departure from valuation scheme justified – appeal dismissed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF
THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

BUZZ GROUP LIMITED

Appellant

and

MRS KAY SALMON (VALUATION OFFICER)

Respondent

**Re: 937 Kingsbury Road
Birmingham
B24 9PP**

Martin Rodger QC, Deputy Chamber President and Peter McCrea FRICS

17 January 2020

Royal Courts of Justice

Luke Wilcox, instructed by Mills & Reeve LLP, for the appellant
George Mackenzie, instructed by HMRC Solicitor, for the respondent

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The following cases are referred to in this decision:

JD Wetherspoon plc v Day (VO) (2008) RA/11/2005, [2008] EWLands RA_11_2005

Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 200 (LC)

Hughes (VO) v Exeter CC [2020] UKUT 7 (LC)

Introduction

1. Bingo is not as popular as it once was. This appeal concerns the valuation of bingo clubs for the purpose of non-domestic rating, where they have been “right-sized” (i.e. reduced in floor area to accommodate a smaller clientele) during the lifetime of a rating list. It raises two general questions. Does such a change in floor area justify a departure from a valuation scheme adopted by the valuation officer at the start of the list which was based on the assumed level of maintainable trade? If so, how should the altered club be valued?
2. The appellant, Buzz Group Limited (“Buzz”), is the biggest operator of bingo clubs in Britain. In 2005, before the smoking ban, there were 600 clubs in the UK. Today there are around 340, of which Buzz owns 119. Mecca, its nearest rival, has 85.
3. One of the clubs operated by Buzz occupies a building at 937 Kingsbury Road, Birmingham (“the Building”). In late 2016, following a deterioration in market conditions, Buzz agreed to sub-let part of the Building to a gym operator, and built an internal wall to divide the Building in two.
4. On 20 March 2017 Buzz made two proposals to alter the rateable value of the Building in the 2010 list, which had originally been agreed at £179,000. The valuation officer did not consider the proposals to be well founded and they became the subject of an appeal to the Valuation Tribunal for England (“VTE”). On 17 January 2019 the VTE directed that the rating list be altered to show two entries for the Building, in place of the previous single entry. The portion occupied by Buzz was entered as “bingo hall and premises” with a rateable value of £161,000, while the remainder (soon to be the gymnasium) was shown as “building under reconstruction” with a rateable value of £0.
5. Buzz now appeals against the VTE’s valuation of the bingo hall hereditament.
6. The VTE did not consider that the rateable value of the bingo hall should be reduced on account of its reduced floor area. Its assessment of £161,000 was instead based on the original figure of £179,000 from which it deducted 10% to reflect disruption while the division works were undertaken. It is common ground in this appeal that, whatever the headline rateable value, this reduction of 10% is justified.
7. Mr Luke Wilcox appeared for Buzz, calling Mr Peter Willans, a Chartered Surveyor and the company’s Property Director, to give evidence of fact, and Mr Gareth Buckley MRICS, Principal of Avison Young with 30 years’ experience in rating, to give expert evidence. Mr George Mackenzie appeared for the valuation officer, calling Mrs Kay Salmon FRICS, an employee of the VOA since 1988, to give expert evidence.

The facts

8. The Building was built in 1995 of modern steel portal frame construction providing a large open floor plate. It is located adjacent to the Ravenside Retail Park, close to Junction 5 of the M6. Buzz originally owned the freehold before agreeing a sale and leaseback of this and other bingo halls in December 2014. The lease was for a term of 25 years at a commencing rent of £359,000 subject to annual RPI increases.
9. The Building was entered in the compiled 2010 rating list at a rateable value of £206,000, subsequently reduced by agreement between the valuation officer and Mr Buckley to £179,000. The Building had previously attracted much higher values (£255,000 in the 2000 list, and £239,000 in the 2005 list, subsequently reduced to £185,000 on the introduction of the smoking ban in 2007). A further temporary reduction to £166,000 was agreed with effect from 29 May 2013 as a result of roadworks, after which the rateable value was reinstated at £179,000 by a valuation officer's notice.
10. Until November 2016 Buzz occupied the whole Building as a modern, flat floor bingo club with one large bingo hall on the ground floor and ancillary areas around the perimeter and at first floor.
11. Mr Willans described the host of factors which had contributed to the decline in the bingo industry: an aging customer base, recession, changes in societal habits, the advent of the National Lottery, scratch cards, the smoking ban, legislative changes and the rise of online gambling. In April 2008 (significant because it is the antecedent valuation date, or AVD, by reference to which rateable values are determined) the two most pressing problems were the Gambling Act 2005, which had outlawed the popular and very lucrative "section 21 jackpot machines" in September 2007, and the smoking ban, which had come into effect in England in July 2007.
12. The effect the smoking ban would eventually have was not appreciated at first, and the industry was slow to react, offering only rudimentary shelters to the high proportion of its customers who were smokers; these provided limited protection and no opportunity for the club to earn income. There was even some optimism that the industry would recover as it was already modernising, introducing newer games, better quality food, and embracing new technology. Some upside was also expected from the abolition of section 21 machines as customers no longer had to wait 24 hours to be accepted as a member, restrictions on advertising were watered down, and clubs could open an extra 16 hours a week. Mr Willans explained that there had been a feeling that the industry might suffer a 10% drop in turnover, but then recover or at least stabilise, and he referred to various professional commentaries which retained a mood of optimism.
13. The reality after 1 April 2008 was much bleaker than anticipated. Some clubs lost 30-40% of turnover and never recovered, with many closing altogether. Buzz's turnover fell from over £100m in 2007 to £40m in 2019. Instead of striving for growth, the focus is on stabilising a well-run business. The recession which commenced shortly after the AVD, had a disproportionate effect on Buzz's customers and changes to the welfare system also impacted on the disposable income of many of them. In April 2009, and again in 2012, bingo and amusement machine duties were raised, although they were reduced in 2013.

14. The industry was slow to appreciate changes in how people spent their leisure time, with a rapid increase in the use of mobile devices, allowing those who wish to gamble to do so without visiting a bingo club. Bingo clubs typically make 80% of their profit from 20% of their customers, generally older and more serious players of the traditional game who play in virtual silence. But the industry is also seeking to attract younger people who wish to socialise. Buzz has sought to accommodate both types of customer by creating lounges for younger customers, and smoking shelters where customers can continue to play. Lounges were not a feature of bingo clubs 10 years ago, but customers using the lounge can now play electronically on tablets, and can chat with music in the background.
15. On joining Buzz in September 2011, Mr Willans reviewed each property to see whether the club could be “right-sized” by letting part of the existing facilities, typically 25-30% of floor area, leaving sufficient and effective space for the club to continue to operate. Of Buzz’s 119 clubs, he considered 80 were suitable for this treatment. It had taken some time for the business to be confident that the financial outlay involved in the new approach was justified, but the Building was identified as suitable for right-sizing in 2013. Three other clubs have also been right-sized, and Buzz are in negotiations on a fifth, but Mr Willans accepted that the practice was not occurring at the AVD, and that Buzz would not have contemplated reducing the floor area of its clubs in 2008.
16. In response to the decline in the bingo industry Buzz therefore agreed to sub-let part of the Building to a gym operator for 15 years at a rent of £140,000 pa, with a seven-month rent free period. Work began on 28 November 2016, which is agreed to be the material day. By dividing the building into two separate units the floor area of the bingo hall was reduced from 3,704 sqm to 2,595 sqm (“the Club”). The Club and the gym each have separate access and share a car park of 360 spaces. At the material day the area which would become the gym had been marked out and hoarded off and the works of division had commenced.
17. When the division of the Building was completed, the Club itself was remodelled and now has two distinct public areas, a smaller main hall and a lounge. These are separated by a half-glazed wall. “Amusement with prizes machines” are situated in the lounge. Outside there is a large standalone smoking shelter immediately adjoining the Club which is equipped with a number of gaming machines and a speaker system.
18. The Building was originally designed to accommodate 2022 people; after the division the Club now had seating for 975, including in the lounge.
19. Mr Willans explained that Buzz would usually work to a rule of thumb “comfort capacity” of 60%, which reflected many customers’ preference to sit alone at a table that on paper could accommodate up to four players. Before the works, therefore, the comfort capacity of the building was in the order of 1,200.
20. Mr Buckley had analysed daily admissions data for the year to 30 September 2008 (six months either side of the AVD). The Sunday evening session invariably attracted the highest number of customers to the Building, with an average attendance of 537. Mr Willans accepted that for all but one Sunday in the period analysed there had been no risk of the comfort capacity of the Building being breached. He agreed that at the AVD, there was excess seating capacity, and an element of the floorspace was incurring overheads

while not generating a return. However, his evidence was that at the AVD Buzz would not have contemplated right-sizing by disposing of excess space.

21. Following the works, the total seating capacity of the Club was 975; the comfort capacity was 525 in the main hall, and 104 in the lounge, totalling 628. Mr Willans accepted that if the works had been carried out at the AVD, during an average peak Sunday evening session, with 537 customers, the comfort capacity of the club would only have been exceeded by 12 people assuming they *all* sat in the main hall and nobody sat in the lounge.
22. Mr Willans acknowledged that the FMT of the Building, and then of the Club, was not affected by the right-sizing exercise.

The VOA's valuation scheme

23. The VOA's Rating Manual has no statutory authority, nor is it binding on the Tribunal. It comprises instructions given by one party, the VOA, to its own staff on how to conduct valuations of different classes of property. It is carefully considered and it often forms the basis of agreement between valuation officers and ratepayers and their representatives. The parties agree that it is relevant in this appeal, at least as a starting point, and it is therefore necessary that we describe the valuation scheme which the Manual applied to bingo halls in the 2010 rating list.
24. The valuation scheme is applied by the VOA to all 2010 rating list assessments of bingo halls in England and Wales. It was prepared following analysis of relevant information. It had first been used for previous rating lists when rental evidence was more readily available and could be analysed as a percentage of gross receipts. In more recent years there has been a lack of rental evidence owing to a scarcity of lettings and implemented rent reviews.
25. Mrs Salmon explained that the scheme was negotiated with rating agents representing the leading bingo hall operators and the Bingo Association, including Mr Buckley. Mr Buckley had agreed the reduction in the compiled list assessment and the temporary reduction to £166,000 on the basis of the valuation scheme.
26. The scheme is based on an assessment of the level of trade which a competent operator could be expected to achieve at the hereditament as at the antecedent valuation date of 1 April 2008, referred to as the fair maintainable trade, or FMT. The Manual explains FMT as follows, at paragraph 3.2:

“FMT is an estimate of annual receipts that could be derived by occupying the property and conducting the bingo operation with the skill and expertise that could reasonably be expected from a potential tenant of the hereditament. This figure will represent the gross annual receipts from all sources (exclusive of VAT and Gross Profit Tax) but disregarding both stake money from the game and prize money from gaming machines that is returned to players.”

27. Although the statutory basis of valuation assumes a notional letting of the hereditament on the antecedent valuation date, the Manual equips the hypothetical parties with non-statutory foresight. At paragraph 3.1 it explains:

“The initial valuation consideration is to determine the fair maintainable trade (FMT) as at the antecedent valuation date (AVD), 1 April 2008. Given the exceptional circumstances affecting the industry towards the end of 2007 it is appropriate to consider turnovers and trends evidenced in the period to September 2008 when establishing the level of FMT to be applied.”

28. The approach to valuing bingo clubs proposed by the valuation scheme is a “shortened FMT” method, whereby the rateable value (the rent that the assumed hypothetical landlord and tenant would agree under the statutory hypothesis) is determined by applying a given percentage to the club’s estimated fair maintainable trade (the gross annual receipts, from all sources, that the hypothetical tenant could achieve by occupying the property to conduct the bingo operation with an assumed level of skill and expertise).
29. The percentage to be applied to the assessed FMT is prescribed in two valuation scales, which are said to have been derived from an analysis of the available evidence, and which are set out in an appendix to the scheme. Scale A is applicable to bingo halls in converted cinemas, theatres or concert halls, while scale B applies to modern purpose-built “flat floor” establishments.
30. Scale B is as follows:

Fair Maintainable Trade (£)	Percentage
500,000	5.0
700,000	5.5
1,000,000	6.5
1,500,000	7.5
2,000,000	8.0
3,000,000	8.0
4,000,000	8.0

31. The valuer is directed to interpolate between scale points so that, for example, a club with an FMT of £1.25 million would have its value determined by applying 7% to that figure, arriving at a rateable value of £87,500. The scheme allows for a quantum element in fixing the percentage at 8% once FMT reaches £2 million.
32. The scheme does take into account size relative to turnover, but only by making an adjustment to FMT where a property is over-sized.
33. The valuation scheme is intended as a guide, and the Manual does not suggest that it must be applied inflexibly in all circumstances, as paragraph 4 explains:

“Whilst it is intended that this guide should enable the assessments of all bingo halls to be determined correctly, the opportunity for properties to be valued

outside its terms is not precluded where exceptional circumstances make its application inappropriate.”

34. Mr Buckley explained that the reduction in the compiled list assessment from £206,000 to £179,000 was agreed in line with the VOA’s valuation scheme, applying 8% to an agreed FMT of £2,242,891, and rounding down. He accepted that the scheme was based on an analysis of the relationship between rents paid and the turnover or the Fair Maintainable Trade of clubs and that it enabled the valuation of a specialised category of property, dominated by two operators. It was relatively simple to implement, and allowed for the valuation of a large number of properties on a uniform basis without the necessity to value each individually based on floor area and comparables which would require lengthy negotiations.
35. Mr Buckley pointed out that the scheme was intended to determine the rateable value at the compiled list date, and made no mention of material changes in circumstance or a reduction in the size of a club. Where a change of circumstances was accepted as having had a value-significant impact on rateable value, it was usual for that impact to be measured by reference to any change in admissions, leading to an alteration of the FMT to which the appropriate percentage from the valuation scale was applied to ascertain the new rateable value. The scheme makes no mention of its application following a reduction in the size of a property. When the scales were negotiated with the rating profession, the concept of right-sizing was then at an embryonic stage and was not considered.

The parties’ cases on valuation

36. The basis of the case presented on behalf of Buzz was that it would be reasonable to reflect the right-sizing of a club by reducing the original assessment pro-rata to its reduced floor area. The VOA’s valuation scheme adopted a shortcut valuation method, based on their being a relationship between FMT and the rent that would be paid for a property. In the market bingo clubs are not valued by reference to FMT but on a rental basis. Section 120 of the Rating Manual also states at paragraph 8.1 that “the principal method of valuing bingo halls will be the rental method”.
37. Evidence that, in the market, the rental value of bingo clubs is not assessed on an FMT basis, but on the basis of a rent per square foot having regard to transactions on comparable clubs, was given by Mr Willans. He accepted that there has been a paucity of transactions following the smoking ban, but in principle the preferred valuation approach remains the rental method. He illustrated this point by producing an independent expert’s determination of the rent for a lease renewal under the PACT scheme from June 2016 in respect of Buzz’s club in Coventry. This demonstrated that the experts for both parties, and the independent expert, had all devalued comparable transactions and then valued the Coventry club on a rate per square foot derived from that evidence. We return to that document later.
38. Mr Willans also referred to transactions at four other Buzz clubs around the AVD before his involvement, but which he thought would all have been negotiated on a rental basis. This evidence was of very limited use in this appeal, since Mr Willans was unable to provide any details of the rents, and all four clubs were in first floor premises, which Mr Willans said were the most badly affected by the smoking ban.

39. Mr Buckley emphasised that the VOA's valuation scheme recognises that clubs might be valued using a different approach in exceptional circumstances. The justification for using a simplified or shortened approach to valuation when first compiling a list did not apply when what was being considered was an alteration to the list to reflect a change of circumstances.
40. The compiled list assessment for the Building was agreed at £179,000. The floor area of the Building was 3,952.64 sqm, so the assessment equated to a value of £45.28 per sqm. Mr Buckley's valuation of the Club at the material day was therefore:

Club	2,594.57 sqm @ £45.28 per sqm	£117,482
Smoking shelter	76.32 sqm @ £9.00 per sqm	<u>£686</u>
		£118,168
Less agreed reduction of 10% for disturbance from works		<u>(£11,816)</u>
		£106,352
	Say	£106,000 RV

41. Mr Buckley was taken to the independent expert determination in respect of Buzz's Coventry outlet. He agreed that the rent determined at around £64.60 per sqm, represented a higher rental value than his own assessment of the rateable value of the Club. He also accepted that we could place more weight on a PACT determination on lease renewal than had the valuation been in respect of a rent review. Buzz could have chosen to walk away from the renewal, but it did not, which rendered the expert's determination closer to a deal in the market. He nevertheless pointed out that the rateable value of the Coventry Club was assessed at £183,000 in the 2010 list which was considerably lower than the rent determined by the independent expert. Mr Buckley's starting point was the agreed rating assessment for the Building.
42. Mr Mackenzie also took Mr Buckley to the rental market commentary in a CBRE report written closer to the AVD. The report suggested that rents for bingo halls outside London ranged between £75.35 and £107.64 per sqm. Although the report had been included in the evidence produced by Mr Willans, Mr Buckley said he didn't agree with its assessment and he considered true range was much wider. The only evidence he was able to cite in support of his criticism of the report was the PACT rent determined at the Buzz Coventry club eight years after the AVD which was at a much higher rate than he was proposing for the Club.
43. Mr Buckley accepted that his approach of adjusting rateable value pro rata to changes in floor area paid no regard to the function served by, or the economic value of, the floorspace which had been lost by right-sizing. He also accepted that his approach was novel, but he did make the point that this was the first appeal in which the right-sizing of a bingo hall had been considered.
44. In answer to questions from the Tribunal, Mr Buckley accepted that the FMT of the Club at the AVD could be estimated from his valuation. As we outlined above, the VOA's valuation scheme is based upon a percentage which can be found by interpolation. Before the 10% deduction for disturbance, Mr Buckley's rateable value was £118,168. Applying the scheme

this would imply an FMT of £1,563,068, to which a percentage of 7.56% would have been applied. In essence, Mr Buckley's valuation compared an FMT of £2.24 million for the Building, with that of £1.56 million for the Club. This was not a pro-rata reduction on floor area because the scheme requires an interpolation for FMT's of between £1.5 and £2.0 million, whereas above £2 million the percentage remains at 8%.

45. Mr Buckley accepted that if a new bingo club was entered into the rating list after the compilation date, it would be perfectly possible to estimate the FMT with a view to valuing the property in line with the valuation scheme, which is what he had done for Buzz's club at Antelope Park, Southampton in January 2016. He contrasted this with the situation in this appeal, where there is an established FMT but for a larger property. Mr Buckley gave no convincing answer when he was asked whether he thought FMT would reduce in proportion to floor area in a right-sized club, and he said he had not tried to estimate the turnover of the Club, despite being aware that the VO's case was that the change in floor area would not reduce turnover.
46. Mr Willans had explained that the rationale for right-sizing was that, prior to the works, part of the floorspace of the Building was incurring costs and overheads, but not generating revenue for Buzz. Mr Mackenzie suggested to Mr Buckley that the effect of his approach was to discount that space in the same way as if it were generating revenue, and in the end Mr Buckley had no option but to accept that the loss of this floorspace would not have impacted on FMT.
47. Mrs Salmon did not consider that there were any exceptional circumstances to warrant a departure from the bingo hall valuation scheme. The FMT at the AVD was agreed between the parties. The issue was whether the Club would have generated the same FMT as the Building. Mrs Salmon saw no reason why it could not.
48. Mrs Salmon considered that the Building was obviously too large. She referred to a report written in support of the planning application for the works, which suggested that admissions were falling prior to the works being commenced. She also analysed income and admissions figures for the Building and for the Club, and concluded that admissions had been on a general decline since 2007. This was also the case for the wider Gala estate, as was evidenced by a Mintel Bingo report from April 2009.
49. Although Mrs Salmon considered it imprudent to use trade figures from recent years when assessing the FMT at AVD, they could be used to compare admissions and revenue before and after right-sizing. She produced two tables to show that admissions and gross receipts were both in decline throughout the period from April 2012 to January 2019, and that the rate of decline appeared unaffected by the division of the Building into two. She accepted in cross examination that the bingo market was stronger in April 2008, the AVD, than at the material day in November 2016, and that the performance between the two dates could not necessarily be compared on a like for like basis.
50. Mrs Salmon referred to four proposals to alter the rating list made by Mr Buckley's firm to reduce rateable values in similar circumstances to those before us. In each case a reduction was said to be justified on the basis that "as a result [of] a reduction in admissions, part of the property has been mothballed and vacated by way of closure of part of the property". All four appeals had either been withdrawn or dismissed by the VTE. She said these demonstrated a clear trend of declining admissions at bingo halls.

51. Mrs Salmon derived support for her valuation based on the VOA's valuation scheme from a number of different sources.
52. More than 300 appeals against compiled list assessments had been settled using the scheme. Mrs Salmon produced details of 17 comparable bingo hall assessments across the country. 13 had been the subject of appeals and had been settled by reference to a valuation under the scheme. 12 of these had been agreed with Mr Buckley. Assessments under the scheme for two others in Birmingham had not been appealed.
53. The remaining assessments to which Mrs Salmon referred involved changes of size and warrant fuller consideration. The Gala Club in Woking had a floor area of 1,944 sqm, and had been entered into the rating list at £69,000 RV based on an assessed FMT of £1,215,206. Part of the club was later split off for use as offices. The rateable value of the smaller club, now only 1,629 sqm, was the subject of an appeal to the VTE, where it was confirmed unchanged at £69,000. The panel considered that that the bingo club had been underutilised and gave weight to the actual turnover figures which showed that the reduction in floor area had had no direct impact on turnover.
54. The two remaining comparables involved an increase in floor area. The assessment of unit 4A the Peel Centre, Gloucester had been agreed with Mr Buckley at £184,000 RV based on an agreed FMT of £2,300,000. It had a floor area of 2,520 sqm, but this was later increased as the result of a merger with the adjoining unit 4B, to become Unit 4, having a combined floor area of 3,412 sqm. The appeal against the combined assessment had been agreed with Mr Buckley at an unchanged RV of £184,000, on the basis that the FMT was unaffected by the addition of further floor space.
55. Mrs Salmon's comparables showed a range of rateable values from £118,000 to £322,000. Mr Buckley's approach would place the Club second from lowest if it was added to the list at £118,168 (in fact, with rounding it would be joint lowest). Mrs Salmon's valuation was seventh lowest, at £179,000.
56. Mrs Salmon also tabulated the comparables and the appeal property by reference to gross internal area, FMT, Rateable Value, and thus Rateable Value per sqm, which ranged from £40.73 to £118.26 per sqm. Mr Buckley's valuation was based upon £45.37 per sqm, Mrs Salmon's equated to £68.99 per sqm.
57. In a third table, Mrs Salmon provided the admissions figures for a number of bingo halls, ranging from 1,859 sqm to 2,855 sqm which were of similar size to the Club's 2,594 sqm. This was said to show that the number of admissions required to achieve the FMT on which Mrs Salmon based her valuation could be accommodated in the club.
58. In Mrs Salmon's view, the VTE's determination of the rateable value of the Club at £161,000 was correct and she invited us to dismiss the appeal.

Discussion

59. We start by resolving an issue which emerged during the hearing about the hereditament to be valued. The statement of agreed facts recorded that building works *commenced* on the material day to divide the Building into the gym and the Club. Mr Willans' evidence was

that the internal glazed partition in the Club separating the traditional bingo hall from the lounge was erected as part of the fitting out of the Club after the internal wall had been completed. The fitting out of the Club, including the creation of the lounge, therefore occurred after the material day. This sequence of events gave rise to submissions as to exactly what was being valued.

60. In the end we have concluded that the debate about the condition of the hereditament on the material day is of no significance. Both parties prepared their evidence and submissions on the assumption that the hereditament to be valued was the Club, in its altered state. No application was made to amend either party's case, and the issue over the presence of the glazed partition emerged only in the course of argument. We are also mindful that under the rating hypothesis the club is vacant and to let. All of the chairs and furniture are assumed to have been removed, and minor amendments to the internal layout to fit a revised trading style may be taken into account. Whether the removal or reconfiguration of the partition between the hall and the lounge would be a permissible assumption was not a matter on which submissions were made.
61. In any event, the proposition which gave rise to the debate was not made good on the evidence. In his cross examination of Mrs Salmon, Mr Wilcox advanced a case which his own witnesses had not attempted to support, namely that at the AVD the FMT of the Club would have been lower than the FMT of the Building on which the original rateable value was based. Using Mr Willans' evidence that 90% of customers attend the Club in the evening, and attendance data for Sundays, Saturdays and Thursdays in the calendar year of 2008 (which was introduced during the hearing), Mr Wilcox sought to show that the comfort capacity of the Club, had it been fitted out with a division of hall and lounge at the AVD, would have been exceeded on a substantial number of occasions. He implied that customer attendance, and therefore turnover, in 2008 would have been adversely affected had the space been configured at the AVD as the Club was eventually fitted out.
62. Mrs Salmon said she had specifically asked whether the FMT of the Club had declined as a result of right-sizing and was told it had not. She also referred to an email from the appellant's solicitor in which it was accepted that there was no evidence to indicate that the reduction in the size of the hereditament had had a material impact on its FMT since the works took place, when compared to the general tone of FMT across the group's other clubs. We do not think it is open to Mr Wilcox to advance a new case on the basis of assumptions which could have been the subject of evidence but which his lay and expert witnesses chose to steer well clear of.
63. In any event, we are not persuaded that the premise of Mr Wilcox's submission is reliable. It assumed that the 90% evening attendance applied throughout an average week. We were not told of any statistically material difference between Mr Buckley's table showing data for the year to September 2008, and the more detailed data for the calendar year 2008. Mr Buckley's table showed that on a Sunday in 2007/2008 the average evening attendance was 89%; but on a Thursday it dropped to 81%, and on Saturday 79%. Applying these percentages to the calendar year data, we calculate that the comfort capacity of 628 for the whole Club would have been breached on only seven Sundays, and on only one Thursday and one Saturday, in aggregate rather less than Mr Wilcox suggested. Secondly, as Mrs Salmon pointed out when Mr Wilcox put his proposition to her, the Club is open until the early hours of the morning, and Mr Wilcox's premise assumes that all of the evening attendees would have been present at the Club at the same time, which we think is unrealistic.

64. We now turn to the valuation scheme. We accept the evidence that the scheme has been used generally to value bingo clubs, and that its application in this case would have the merit of consistency (an important consideration in rating). Nevertheless, the scheme is no more than an approach to valuation; it supports, and does not trump, the statutory valuation hypothesis. Moreover, as we have noted above, the scheme itself makes provision for departure from it where its application would be inappropriate.
65. Mr Mackenzie submitted that before considering whether there were circumstances which would justify a departure from the scheme, it is necessary first to ascertain whether the property in question can reliably be valued under the scheme and to compare the outcome of a valuation applying the scheme with some other chosen method. Mr Wilcox disagreed, submitting that if it is a valuer's judgment that a valuation method will struggle in principle because of the circumstances to provide a reliable answer, then it is a waste of time to try. We agree that it would be odd to adopt a method of valuation which was obviously unsuited to the task, such as to value a bingo club using the contractor's test. But where every other bingo club in the country has been valued using a certain method, it seems to us that to make no attempt to do so requires some more substantial justification than reliance on a single valuer's judgment. Yet it is a striking feature of the case advanced on behalf of Buzz that no attempt has been made either to apply the valuation scheme or to provide any credible reason why it cannot be applied in this case.
66. Mr Wilcox submitted that the appellant need not necessarily have to show the "exceptional circumstances" referred to in the Rating Manual (see paragraph 33 above) to demonstrate that the use of the scheme would be inappropriate. The VOA's valuation manual has no statutory authority, and the VO does not dictate how properties should be valued. He accepted that where there is a valuation scheme, ordinarily it ought to be followed, but he submitted that the valuer can depart from a valuation scheme whenever there is good reason to do so. Support for that proposition is found in *Wetherspoon plc v Day (VO)* (2008) RA/11/2005 at paragraph 44, where the Lands Tribunal (George Bartlett QC, President) said of a similar scheme applicable to public houses: "Guidance of this sort, agreed by the VOA and on behalf of a particular category of ratepayers, ought to be followed unless there is good reason not to do so." Mr Wilcox also referred to recent statements by this Tribunal that the choice of valuation method is not a matter of legal principle: *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 0200 (LC) at [112], and *Hughes (VO) v Exeter CC* [2020] UKUT 007 (LC) at [115] and [160].
67. Mr Wilcox suggested that in any event there were exceptional circumstances to warrant a departure from the valuation scheme. The hereditament came into existence long after the AVD, almost as late in the list as was possible, in circumstances that couldn't have been predicted when the scheme was developed. The market had changed dramatically between the AVD and the material day in ways which may have invalidated the relationship between FMT and rateable value on which the scheme was based. Mr Wilcox drew an analogy with the receipts and expenditure method of valuation, which becomes less reliable the more distant the valuation date is from the compiled list date. The valuer has to guess income and expenditure at a later material day, whereas at the compiled list date the actual expenditure and actual income is known, but none of that data was available to us.
68. The scheme has been adopted in a number of rating lists; and in the 2010 list it has been the basis of at least 300 settlements. No other bingo clubs in the 2010 or 2017 lists have been valued other than in accordance with the scheme. Far from being an approach of last resort, in the case of bingo halls the opposite is the case, especially where the validity of the only

alternative method put forward, the comparative method, cannot be verified because of the lack of market rental evidence.

69. Mr Buckley's dissatisfaction with the valuation scheme is relatively recent. He was involved in the discussions which preceded its introduction for the 2010 list. He agreed the compiled list valuation of the Building at £179,000 based on the scheme, and there is no dispute that it is appropriate to use it for compiled list date valuations. As for valuations during the lifetime of the list, Mr Buckley agreed the temporary reduction in the rateable value of the Building to £166,000 from 29 May 2013 using the scheme as a basis of valuation. He also agreed the assessment of Buzz's property at Antelope Park, Southampton in June 2016, only six months before the material day here, again on the basis of the scheme. We do not intend to suggest that it is not open to an experienced valuer to change his mind. But where he has previously been a contented user of the technique he now disparages, the Tribunal is entitled to some fuller explanation of his change of heart than was offered by Mr Buckley.
70. Despite Mr Wilcox's submissions, Mr Buckley did adopt a scheme approach, at least in the first stage of his hybrid method, in that he applied the relevant scheme percentage to an FMT figure. For the Building, this resulted in a rateable value of £179,000, or £45.28 per sqm. Mr Buckley applied this rate to arrive at his figure of £117,482 as the unadjusted value of the Club.
71. This method is fundamentally flawed. The scheme is not based on the size of the property, but on how it would be expected to trade under the management of a notional operator. That is why Mrs Salmon's table shows such a wide range of rateable values when analysed on a per sqm basis. If a property had a rateable value calculated by reference to trade which shows a comparatively low rate per sqm, it is likely that it was much larger than other properties with a comparable FMT. The implication must be that such a property was too large for the level of trade it was able to generate. That was precisely why Buzz undertook its right-sizing operation. But Mr Buckley sought to apply the same rate per sqm to a property which had been right-sized. That cannot be right in principle.
72. It was no part of the evidence of Mr Willans that the right-sizing programme depended on additional income from space sublet to a gym operator or other venture compensating for a decline in bingo income caused by the reduction in the size of its clubs. The commercial expectation was that a similar level of trade could be achieved from smaller premises, because the customer base had shrunk so significantly that the original larger premises were no longer required to accommodate them. Mr Buckley's approach paid no attention to that expectation.
73. Mr Willans and Mr Buckley both stressed that bingo clubs are valued per sqm by reference to rent, yet rental evidence in this appeal was conspicuous by its absence. In fact, the *only* rental evidence was the independent expert's determination of the rent for the appellant's property at Coventry. At first glance the Coventry premises appear to be similar to the Club, being a flat floor West Midlands bingo hall with a shared car park. The previous lease had been terminated by notice with effect from November 2015, and the interim rent which would run from that date was the same as the rent determined for the new lease. The rent determined, which was agreed to be on a shell basis, equated to £64.58 per sqm. Yet it is common ground that the market for bingo halls was better at the AVD than in November 2015, and even the tenants' valuer valued the Coventry property at £60 per sqm. The only rental evidence therefore provides no support at all for Mr Buckley's valuation.

74. For all of these reasons we consider the appeal to be without foundation and it must be dismissed. We confirm the VTE's decision to enter the club into the rating list at £161,000 RV with effect from 28 November 2016.

Martin Rodger QC
Deputy Chamber President

Peter McCrea FRICS

17 April 2020