The Great Pub Business Rates Scandal

On the failings of the VOA, its routine misvaluation of pubs & resulting damage to the pub industry.

13th February, 2022 – version 4

Contents

Introduction

This document outlines the shortcomings of the VOA's current approach to pub valuations for business rates and their detrimental impact on the pub industry.

Much of this document draws on the personal experience of Joe Cussens of The Bath Pub Co but examines an issue that affects all pubs. The strength of feeling expressed is a result of the frustration at the current system, the financial damage it causes and apparent lack of accountability the VOA are currently held to. We believe this frustration is more than justified and urge the reader review all sections (especially the evidence of poor results created by the VOA's current system) before making their own mind up.

This document covers the following:

- A brief overview and background of the rates system & VOA
- How the VOA value pubs
- The problem with the VOA's approach
- Evidence of inaccurate, flawed valuations
- The problems with the check, challenge, appeal process

Summary

The VOA are presiding over an approach to pub valuations that produces random, arbitrary valuations that are contrary to its statutory duty, which is for accuracy. They are out of control, wreaking havoc on an industry already in distress.

The VOA is either unwilling or unable to carry out proper valuations. When presented with overwhelming evidence of inaccurate valuations it fails to engage in meaningful conversations because its approach is indefensible.

The VOA's actions mean pub rateable values have grown disproportionately as a sector compared to others despite the economic pressures the sector has faced. We estimate that the sector has paid £3.9bn in real terms too much since 2005 and around £750m pa currently.

The VOA uses the 'approval' of its 'Valuation of Public House, Approved Guide' to defend its approach. We will see how, through either incompetence or malpractice, the VOA's actions result in:

- Huge unjustifiable increases in unchanged properties from one rating list to another
- Huge disparities in values between comparable pubs
- A rise in rateable values for the pub sector of 47% compared to all properties by 17%
- No correlation between VOA rateable values and freehold values
- Pubs consistently overvalued several times over compared to restaurants

The VOA has a legal obligation to value pubs; but valuation methods are not prescribed by statute. In two centuries of case law, only three methods have evolved: Rental comparisons, Receipts and Expenditure (R&E and Contractor's Basis (CB). The VOA use the approach outlined in their 'Approved Guide' which is of their own making and choosing.

The VOA approach is not a recognised method, but a comparative approach. It is a shortcut which uses estimates of 'fair maintainable trade' to assess rateable values. Shortcuts are only legitimate if there is a consistent relationship between the proxy (FMT for pubs) and *accurate* valuations. We will show that this shortcut approach produces patently flawed valuations for the sector and individual pubs.

RICS – the most respected valuation body, publish their own pub valuation guide which outlines the approach they recommend for pub valuations. Nowhere does it mention the use of FMT.

If you run a business in an office, shop or even a restaurant as you grow the sales and profits for that business, all that value stays within the business and the property remains unaffected; the business rates stay constant. Not so with pubs, as you grow the sales of the business, the value (at least part of it) transfers to the building as your rateable value and rates bills increases, courtesy of the VOA.

The only degree of legitimacy for the 'Approved Guide' is the supposed endorsement by pub industry trade associations. Case law has so far accepted this 'approval' in lieu of actual rental evidence. The courts have assumed the associations have verified the rental evidence the Guides are supposed to reflect. This is the impression the VOA try to create; it wants the courts to believe that everything that appears in the Guide - its methodology, accuracy and all arguments – have all have been explicitly approved and endorsed by the trade associations which feature on its cover. But it is not true. Those trade associations tell us their input into the guide is far more advisory and they explicitly state that their involvement with the guide does not constitute an endorsement of it or its methods.

No qualified independent body has ever validated the VOA's data, sample sizes or methodology. The only body who has done that is the VOA itself. The VOA are intentionally misleading tribunals, the courts and all observers into believing their guide and its processes have been approved and validated.

Even if you accepted the guide had some validity, the problem is compounded by the failure of the VOA to follow it properly. Their valuation technique relies entirely on an estimate of the trade that might be possible to generate at the pub. Putting aside for one moment our assertion that this form of valuation can never produce reliable results, it is clear that for their valuation method to stand a chance of being accurate it is vital that this input to be accurate - their whole valuation hinges on this single piece of crucial data.

Yet the VOA don't even have the courtesy to visit a pub when determining that key piece of information. Instead they perform desktop valuations. A quite staggering revelation. How can their desktop assessment of fair maintainable trade be relied on? Any pub owner will tell you that the only way to assess a pub, its potential trade and viability is to visit it. Yet the VOA do not do this. It is nothing short of a scandal.

The examples and arguments shown in this document originate from The Bath Pub Company, but this is not an issue peculiar to them; misevaluations affect all pubs across the country and is an industry wide issue.

Pub operators have complained for years about the disproportionate amount of business rates they pay but have been unable to bring about any change. This is due to them being under the misapprehension that the method for pub valuations is fixed and incontestable. If they believe their rates are too high, they are told to engage the services of a rating agent to help them to try to secure a reduction. But as will be seen in this document, rating agents are only prepared to argue with the VOA on its terms, when the problem lies with those terms themselves.

Why don't more operators complain to the trade associations about the VOA's Approved Guide and their endorsements of it? Because they don't understand the rating system and how to battle it. They've known for years that something is very wrong with the current system but have felt powerless to act.

Inaccurate pub valuations aren't a problem for the VOA and not really an issue for ratings agents either; it's pub operators who pay the price, receiving inflated, unfair rates bills as a result. Calls for changes to the system need to come from them, but how can they challenge or provide evidence of wrongdoing for a system they don't understand?

The 'Approved' Guide is not only responsible for producing flawed valuations, it also contains numerous arguments and statements which, if accepted as legitimate by the courts, makes it effectively impossible for pub operators to successfully challenge them at an appeal. In short, it allows the VOA to both produce nonsensical valuations and the means with which to defend them.

This is compounded by flaws with the Check, Challenge, Appeal process itself which massively loads the odds against the appellant, placing an impossibly high burden on an operator seeking a fair outcome.

The problems faced by pubs are thrown into sharp contrast when compared with similar buildings classified by the VOA as restaurants (and therefore subject to a different valuation method (sq footage, not sales)). Take two identical buildings, both serving food and drink and economically indistinguishable from one another, the one classified as a pub will typically be paying 2-3 times more than the restaurant. This is badly hampering the ability of the pub sector to compete effectively and the ability of the market to function properly.

How are you supposed to plan a business where one of your key business taxes is unknown? Where it could increase by more than 150% from one cycle to another – with no apparent upper limit or supervision. Where the body imposing these increases appears not to be scrutinised or held to account?

Commentators sometimes call for changes to the business rates multiplier to relieve the pressure on businesses. For pub operators, concerns about multipliers are largely irrelevant when the valuation the multiplier is set against has been so poorly set. It's like facing a firing squad and worrying about the size of the bullets.

The flaws and failings of the VOA's system of pub valuations are so extreme, so unarguable and their effects on operators so damaging, it's hard to know how the pub industry has allowed the situation to evolve. The VOA is failing pub operators to a quite shocking degree.

We need a consistent, fair level playing field where we can compete properly with other sections of the hospitality business who enjoy consistently much lower rates bills.

On the VOA's website, appears the following statement

"Pubs are often seen as cherished hubs of their local community, so it is important their rateable values, and therefore business rates, are calculated as fairly and accurately as possible."

Noble words. Sadly they are not backed up by their actions.

About the authors

This document contains evidence and arguments from pub operator, Joe Cussens and financial analyst, Mark Wasilewski.

About Joe Cussens

Joe is the Managing Director of The Bath Pub Company Ltd. The company operates four pubs in Bath; they opened their first site, The Marlborough Tavern in 2006.

In 2017 the rateable values of his pubs rose by 60%, 137%, 152% and 183%. This was against the background of an average rise in pub rateable values at that time of 17%. He currently has three rating challenges at an appeal stage and another at the challenge stage.

In 2019 he made a submission to the Treasury Select Committee's enquiry into business rates which resulted in an introduction to Mark Wasilewski.

About Mark Wasilewski

Mark is an ex-City investigative analyst/fund manager with an economics degree from Oxford. After leaving the City, he ran a farm park attraction where he was on the receiving end of some punitive rateable values from the VOA. He mounted a successful challenge which saw them reduced and since has been helping other operators to do likewise.

Mark is the driving force behind the challenges and appeals of The Bath Pub Company. Much of analysis and arguments outlined in this document are the product of Mark's work.

Business rates basics

Business rates are (or are supposed to be) a tax on the property your business operates from – not a tax on the operation itself.

The amount of business rates you pay primarily depends on the "Rateable Value" of your property.

The rateable value should be equivalent to the annual market rent your pub could command if it was vacant and to let; that last bit is important – by valuing the property assuming it was vacant and to let, it strips out any goodwill that might be associated with a pub that is currently trading. Market rent for rating valuation purposes differs from actual rent paid or commanded by a premises.

Your rateable value is set by the Valuation Office Agency (VOA) which is now an agency of HMRC.

Every five years or so (or perhaps 3 from now on), the VOA reassesses a business premises' rateable value. This revaluation should reflect changes to the rental property market.

To calculate your actual business rates bill, your local authority will apply a 'multiplier' to your rateable value. If your rateable value was £42,000 (for example) and your multiplier was 0.49, you would pay £20,580. (49% x £42,000). The multiplier is set nationally by central government and is slightly higher for rateable values above £51,000.

Around half the income raised through rates goes to central government with the rest to the local authority.

About the VOA

The VOA have a statutory duty to compile and maintain an accurate valuation list.

To appeal rateable value prior to 2017, valuations had to be 'fair and accurate'. In 2017 this was downgraded to 'fair and reasonable' in 2017, to limit the number of appeals.

Article from IRRV Valuer Magazine, June 2020

The Valuation Office was set up in 1911 as an autonomous professional body to deliver objective property assessments, originally for estate duty (inheritance tax) and a national land tax, planned by Lloyd George and Winston Churchill but never implemented (but see later!). Its role, which it executed with such competence that it became recognised as the national benchmark of valuation expertise, was expanded in 1948 to encompass all valuations for both domestic and commercial rating assessments, a role previously provided with variable competence by Las. It delivered this service with equal success under an entirely cognate management structure headed by the Chief Valuer. Tragically its independence was destroyed in the 1990s by transition to Agency status, directed by the Treasury and now managed by a board almost totally bereft of any cognate expertise, which understands little and appears to care even less about its professionalism, merely overseeing endless budget cuts and imposing directives to maximise tax yield with minimum assets. As a result, successive rating lists have become less and less accurate, and confidence in its valuations has evaporated. In the 2017 revaluation, massive increases in the assessments of for example small independent shops (some up 80% in five years?) in what was plainly a falling rental market highlighted an incompetent organisation wholly out of touch with the real world.

Rateable valuations and the law

Recognised valuation methods are not legislated, but established by case law. In two centuries only three methods have emerged:

- Rental Comparisons
- Receipts and Expenditure (R&E)
- Contractors Basis (CB)

Rental comparisons

Direct rental comparisons is the most commonly used valuation method, being used for 80% of valuations. Comparing actual rents of lots of similar businesses is an effective way of determining what a hypothetical tenant might pay. However, market rents have to be on the same basis as required for rating law. This is not very common generally and probably non-existent for pubs. Even rental evidence requires a lot of adjustments.

Properties must also be truly comparable as to mode, size and location. It works for a high street or business park where there are lots of similar retail or office spaces to choose from, however pub locations are more diverse – how would you treat a country pub several miles from any other competition for example?

The presence of additional commercial relationships between tenant and landlord in the form of beer ties also makes this valuation method problematic. Lease conditions are another problem: rating law requires all maintenance, including structural, to be borne by the tenant and the lease term is indeterminate. Market rents may well be higher for these reasons. Therefore, rental comparisons are difficult for the pub sector. If comparisons were commonly available, there would be no need for the Pub Guide.

Rental comparison is a direct method showing what someone has paid. Without this evidence, two indirect methods have evolved which shows what someone could pay.

Receipts & Expenditure

The receipts and expenditure method consists of an in-depth analysis of a business' financial performance, involving a detailed examination of an adjusted profit & loss account and balance sheet. It tries to divide adjusted profits between those that are generated by the tenant or business owner and those that are generated simply by the property. The profits are so heavily adjusted that most people would not recognise them as a profit. The rating profession has even considered dropping the use of 'profit' because it is so alien to most people's understanding of that term.

This valuation method is valid for pubs, though it requires specialist help and time to perform, hence the VOA aren't keen on it, but it is used in around one in twenty assessments.

Contractor's Basis

The contractor's basis valuation method translates the construction costs or market value of a building and translates it to an annual rent via a decapitalisation rate set by government. Used primarily (though not exclusively) for public sector buildings, around 1 in 8 of all properties are assessed this way.

Historically, contractor's basis valuations would have only used construction costs, however the 2017 guidance note from RICS says market values can also be used.

The VOA emphasises case law that originated in 1874 which refers to this valuation method as a "method of last resort". Whilst it is true that the aforementioned rental comparisons and R&E methods are generally preferable, contractor's basis was only referred to as a 'last resort' to these two other recognised methods. It is endorsed by both RICS and case law – a status the VOA's shortcut approach of FMT valuations does not enjoy. As such, whilst it may stand behind rental comparisons and R&E valuations, it would certainly stand in front of FMT valuations.

How the VOA calculate rateable values for pubs

Whilst the law states that the VOA are obliged to provide accurate valuations for commercial properties, the valuation method itself is not prescribed. The law does not state *how* valuations should be produced.

The VOA has developed an approach for valuing pubs that they claim produces accurate valuations. This approach is published in the *2017 ratings list, Valuations for Public Houses Approved Guide*.

The central premise of the guide is that they can use turnover to accurately determine rental values of a pub. The guide outlines a data modelling exercise which they claim has been developed using actual rental data.

The VOA claim to follow the following process:

It first requests your actual turnover; operators are required to fill out a form supplying their last three years turnover broken down into wet sales, food sales and accommodation.

Using this actual turnover data as a start point only (so they claim), they say that they next estimate what 'fair, maintainable trade' (FMT) they believe the pub could generate if it was run, not by the actual current operator, but by a hypothetical 'reasonably efficient operator'.

Having estimated this hypothetical trade, they then apply one from 173 different percentages contained in the guide to that turnover which they claim will accurately determine the open market rent for the property. The percentage applied to the FMT will vary depending on the type of turnover (wet, food, accommodation), the geographical region of the pub and the 'category' of pub. The category of pub is a combination of trading style (e.g. wet led vs food) and location (e.g., destination, rural or city centre). Within each classification, the actual percentage applied will come from a maximum and minimum range they can choose from.

Example

Estimated fair maintainable trade:

Wet sales	£400,000	x 12%	=	£48,000
Food sales	£350,000	x 8%	=	£28,000
		Total FMT		£750,000
Your rateable value				£76,000

The result shows the total fair maintainable trade they believe the pub could generate in the hands of the hypothetical REO (£750,00 in this example) and the open market rent it could support expressed as your rateable value.

The problems with this approach

The VOA show rents rising as sales grow

Search business overhead on Google and every example you get will show rent as the classic overhead. Overheads are costs that support a business but cannot be traced to a specific activity and so are unrelated to sales. As sales grow, overheads *fall* as a percentage of sales.

The VOA's model has operators paying an *increasing percentage* of their turnover as rent, as turnover grows.

Even if some operators do perversely actually pay a higher proportion of sales as rent with rising sales, rating law is based not on the real world but what a hypothetical tenant would pay to a hypothetical landlord. There is not an explanation for why, in this hypothetical world, the laws of economics fail for pubs.

It is even worse than this. According to the VOA's scales, the proportion of rent as a percentage of sales peaks at around £400,000 of food sales and then slowly declines. Of course, this nonsense will not be found in either the real or hypothetical world.

Sales are poor indicator of profit

The VOA's approach works on the assumption that you can accurately determine profit from turnover and you can then translate that profit into an accurate market rent. This may have been (almost) true for centuries, when pubs were all fairly similar, but it is far from true today.

As any pub operator will tell you, sales are an unreliable indicator of profit. Pubs come in all shapes and sizes; we are a wonderfully diverse, messy industry with all sorts of operating models, each with their own local challenges. To presume you can accurately apply a percentage to an individual pub's turnover and translate that accurately into a resulting profit output is nonsense.

At one of my sites, I grew the turnover by 64% from £415k to £682k; it was a tiny pub which we managed to grow sales for dramatically. But it never made a profit. We operated that site for ten years trying to make it work, but could never make it stack up. The costs to deliver those sales were too high – higher than the income, so traded at a loss there for ten long years. Yet the VOA's simplistic view of pubs is that this turnover always neatly translates into a standardised profit margin – and despite the fact that we were loss making, they rewarded me with a 137% increase in my rateable value accordingly.

An unverified approach – the 'Unapproved Guide'

The approach the VOA is using is a shortcut valuation method. Shortcuts are legitimate, but only if they are accurate. Which raises the following key questions:

- How has this model been developed?
- What data have the VOA used?
- Who has verified the accuracy of this approach and the outputs produced?

The VOA would have you believe that the guide, its arguments and methodology has all been approved and validated by the pub industry trade associations. But that is simply not true. We have spoken to the trade associations whose logos appear on the front of the VOA's 2017 'Approved' Pub Guide who have qualified the role they played in its creation. They state that their role is "*to provide expert industry insight into factors that were affecting the pub market at the [valuation date]*" . They make it clear that the guide is owned and put together by the VOA – they are simply commenting on what is presented to them. They make it clear that their role *"is not an endorsement of the overall methodology".*

Further evidence exists that show that no independent qualified body has validated the VOA's methods, data or analysis. The only people who have full access to this are the VOA who have validated their own results.

It appears that the VOA's 'Approved' Guide is not approved after all.

A convoluted, yet simplistic model

On one hand, the VOA's model is too crude and simplistic to be credible. As argued above, simply taking sales and applying a percentage against it can never deliver accurate results. However, the guide's appearance gives it the pretence of rigour; pages of percentages look impressive, but how is it possible to neatly pigeonhole every pub in the country accurately into one of 173 different percentage boxes.

Fails to recognise different types of operation

The VOA's percentages do not adequately recognise the different factors that will affect pub valuations.

Its percentage bands only recognise the geographical differences between inner and outer London. The rest of England and Wales are lumped into the same category. How can this satisfactorily describe the differences in property values? This means pub property values are treated the same regardless of whether they are in Winchester and St Albans or Pontypridd or Blackpool.

Neither do they distinguish between historic, listed buildings – high on charm but often full of narrow corridors and tight staircases which are operationally inefficient to run, with modern purpose built sites with all their operational advantages & efficiencies.

Neither do they distinguish between the type of operator which has a large bearing on its financial performance. Historically, the traditional pub operator was typically a husband and wife team running a pub and living above the shop. This would have previously made up the majority of pub operations, but increasingly these type of operations are being replaced by more sophisticated multi site operators whose financial and operational model bears no resemblance to the husband and wife team. Typically, the multiple operator will produce higher sales but have a higher fixed cost base like a central team to manage finance, marketing, HR etc – it takes resources to create an outstanding operation and generate big sales. Applying the lower cost model of the husband and wife team to the more sophisticated operation's sales will clearly produce inaccurate valuations.

Too many subjective inputs

The problem of using sales is compounded by the nature of the sales they are using which rely on a number of subjective judgements. Who defines what is 'fair' in fair maintainable trade? Who is qualified to assess what trade is 'maintainable'? Who gets to say what a 'reasonably efficient' operator is?

Each of these areas uses subjective judgements, and rely on skills and expertise of the valuer, and if they are wrong, they will have a major impact on the valuation.

We simply don't believe the VOA are qualified to accurately assess the trading potential of individual sites or make accurate judgements concerning what is 'fair' or 'reasonably efficient'. They appear to lack either the time, expertise or will to do this properly.

How well does VOA's model perform?

If, as the VOA claim, the valuations produced by its model are accurate, it would be supported by economic and business evidence. However, this evidence shows that the Guide fails financial, business and economic tests.

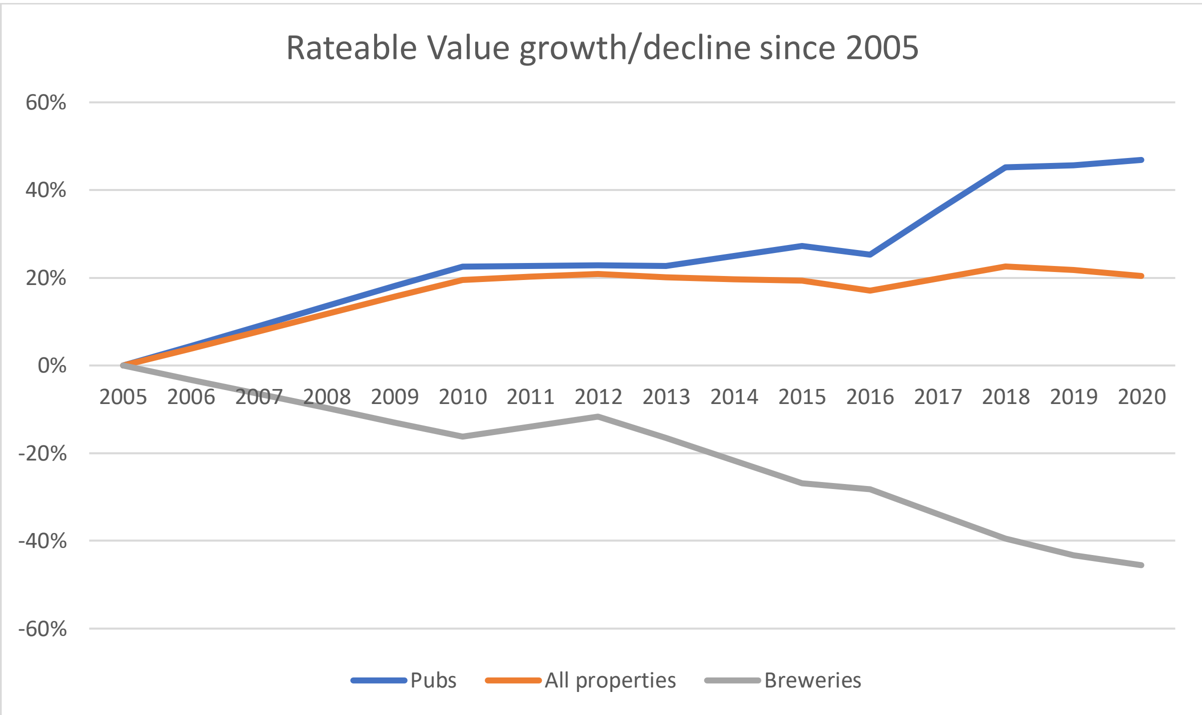
We have examined the effect of their model in a number of ways:

- Sector level – the changes on rateable values for pubs as a whole at sector level
- Pub RVs as determined by the Approved Guide vs Contractor's Basis valuations
- Real life examples of changes to pub RVs as a result of FMT valuations
- Comparisons between similar pub properties
- Comparisons between the pub valuations and restaurant valuations

Pub sector vs all properties vs breweries

This chart summaries the effect of the VOA's valuation approach on the pub sector as a whole.

Against a backdrop of a 20% decline in pubs numbers since 2005, the VOA show valuations for the sector as a whole growing by 47%, compared to a 20% rise for all commercial buildings and 45% fall in valuations for breweries.



Source: ONS

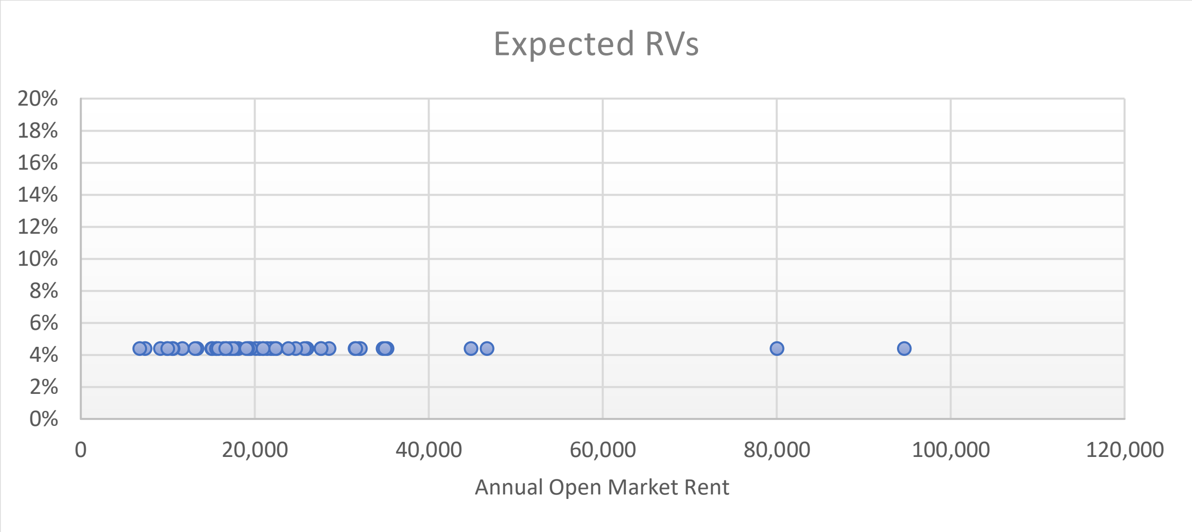
Pub valuations for the sector are growing disproportionally – despite this being a sector which has largely been in distress since 2005. It makes no sense to see average pub rents growing excessively in this way.

Contractor's Basis valuations prove randomness of VOA's approach

The RICS approved Contractor's Basis valuation method allows us to examine the accuracy of VOA 'rents', by translating the freehold value of a property into a market rent. This method is recognised in case law as a valid approach in a way that the VOA's FMT approach is not.

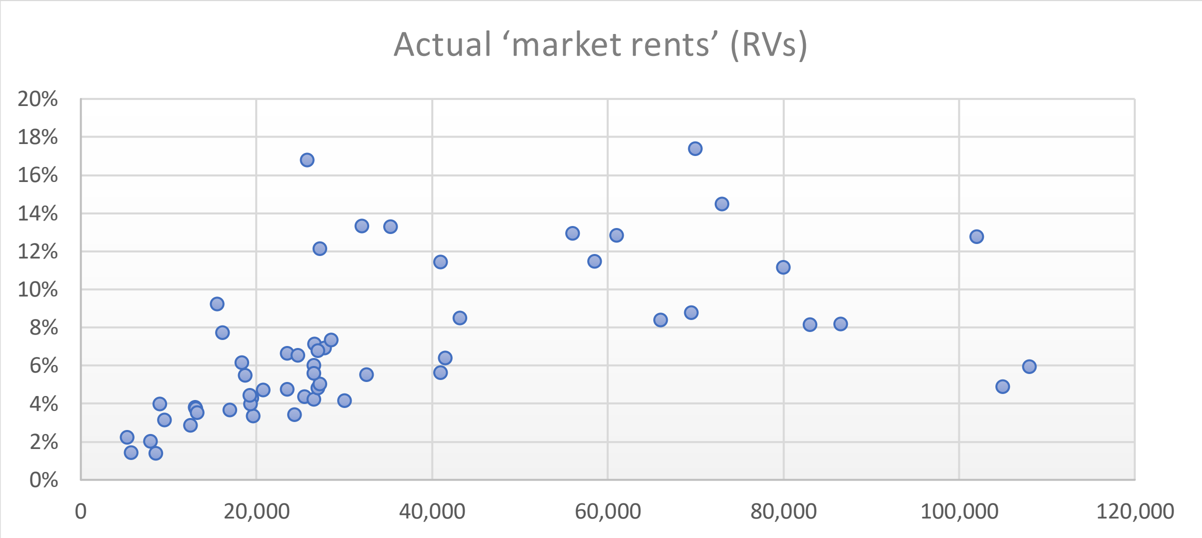
We analysed a basket of freehold pubs for sale and compared their rateable value given to them by the VOA with their advertised sale price. The freehold values ranged from £161,000 to £2,900,000.

A decapitalisation rate is applied to the freehold value – the rate is set by parliament at 4.4%. In theory, with the decapitalisation rate applied, you would expect to see the 'annual rents' or rateable value of these pubs translate into a line as per the chart below. In the real world, of course, they would not align quite so neatly, nonetheless there should be a close relationship between the freehold value and rateable value.



Source: Own analysis/Fluerets/Savills

Instead, when you look at the rateable value the VOA gave to the properties, you see a random, arbitrary spread with no consistent relationship to freehold values. Rateable values range 1% - 17% of freehold value.



Source: Own analysis/Fluerets/Savills

If the VOA's valuations were accurate you would expect to see a strong corelation between the results of the recognised Contractor's Basis valuations and the VOA's outputs, but there is none – in fact, quite the opposite. The VOA's rents are highly random and erratic.

How well does it perform? Some real life examples

As the gov.uk website says:

“At revaluation, the Valuation Office Agency (VOA) adjusts the rateable value of business properties to reflect changes in the property market.”

So let’s take a look at how they reflected the changes in the property market in relation to some Bath Pub Company pubs.

The Marlborough Tavern

Source: VOA

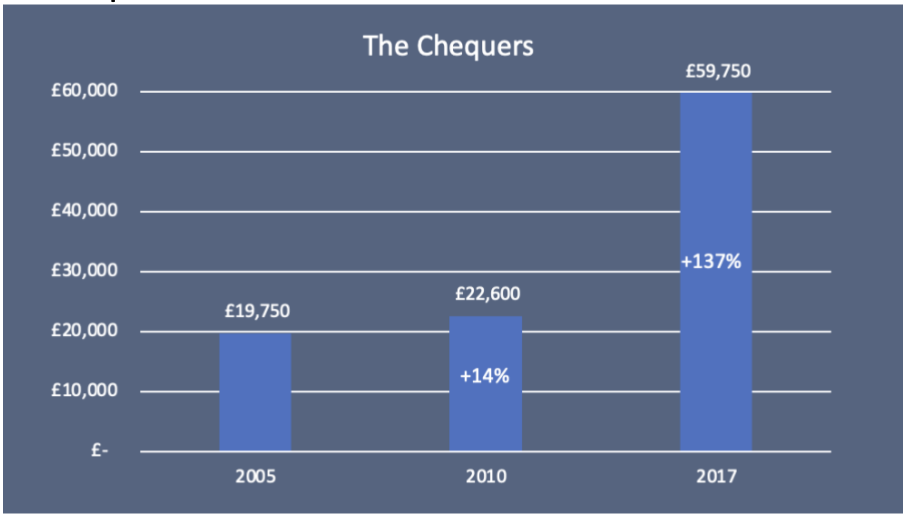
The VOA’s valuation method saw the rateable value of the Marlborough Tavern grow by 498% between 2005 and 2017.

The Marlborough Tavern has remained broadly unchanged for the whole time we’ve been there aside from redecoration – the physical size of the building has not changed. The only substantial works we did was back in 2006 when we converted a former room and converted it into additional garden space. It didn’t create additional trading space, it merely changed it from internal trading area to an external trading area.

Remember, the VOA claim it is valuing the property, not the operation inside it. How then can they justify an increase in its rateable value of 498%? This is a listed building that has remained essentially unchanged for centuries. Does this look ‘fair and accurate’?

These revaluations expose the VOA’s methods for what they are – a failure to properly value the building and instead value the business inside.

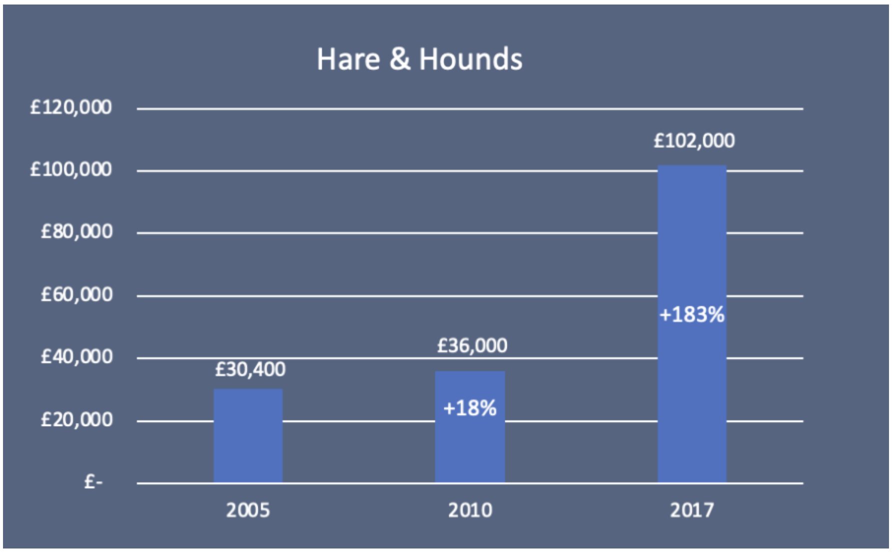
The Chequers



Source: VOA

The Chequers is a small gastropub tucked away on a quiet residential street in Bath. The property has remained completely unchanged since 2010 apart from redecoration, yet in 2017 the VOA have increased its rateable value by 137%.

The Hare & Hounds



Source: VOA

Again, apart from redecoration, the pub is unchanged since we took over there – there have been no extensions or increases to the trading area, yet the VOA have increased the RV by 183% at the last revaluation.

All the above pubs are listed buildings – they have remained essentially unchanged not just for the period we've occupied them but pretty much for hundreds of years. Yet the VOA's 2017 revaluations show their rateable value increasing massively.

It is simply not credible to argue, as the VOA does that these are accurate reflections on changes within the property market.

Case law says that where there are significant shifts in value, especially relative to similar properties, the VOA has to provide *rental evidence* that this is supported.

VOA valuations– disparities between similar pubs

This section considers the effectiveness of the VOA's valuations when comparisons are made between valuations of similar sized and types of pubs.

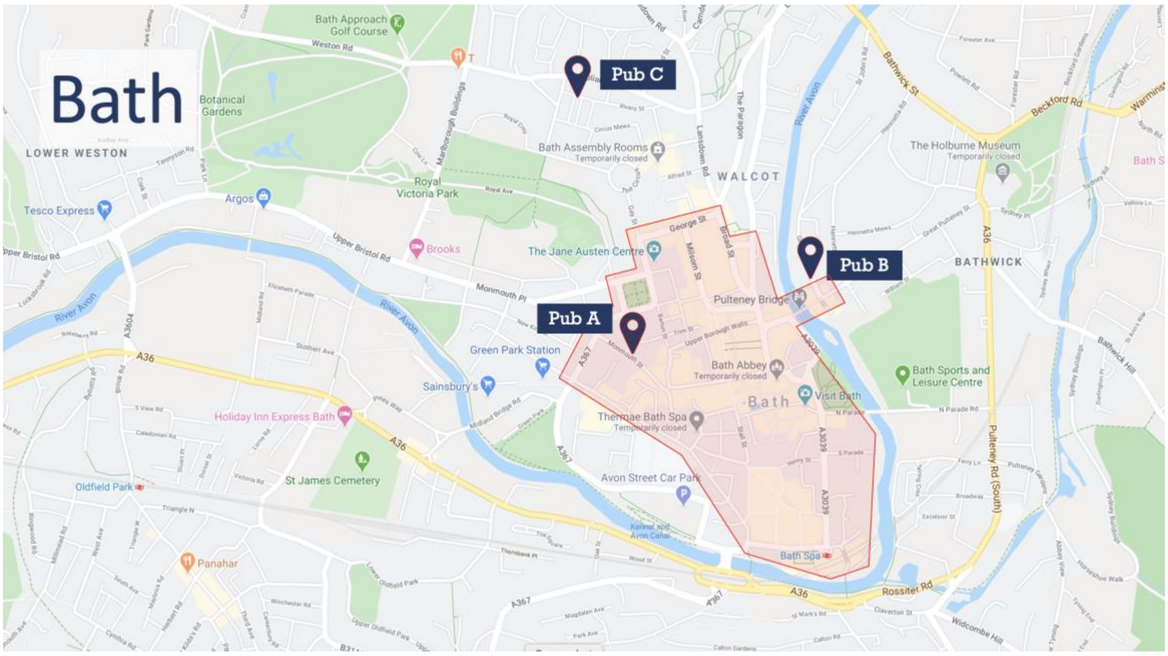
The VOA claim these valuations are the results of objective, evidence based, dispassionate accurate methods.

The examples below are from Bath and feature three very similar sized pubs. Two are located centrally (shaded area), the other just outside the centre.

Reverse engineering to reveal FMT used

If you are familiar with a pub and its trade, it's possible to reverse engineer its rateable value and reveal the 'fair maintainable trade' the VOA have used to determine its RV.

We have shown the actual 2017 rateable values each pub was given and the estimated fair maintainable trade the VOA are likely to have used to calculate them.



Bath – central area highlighted

Centrally located small gastropub with letting rooms.

Rateable value - £16,300

Estimated fair maintainable trade - £284,000

Small gastropub with letting rooms, close to Pultney Bridge tourist attraction

Rateable value - £8,900

Estimated fair maintainable trade - £202,000

Small gastropub, no letting rooms, located on quiet residential street away from city centre

Rateable value - £59,750

Estimated fair maintainable trade - £690,000

Despite being in a disadvantageous location, the VOA believe the open market rent for The Chequers should be more than six times higher than a similar sized pub in a more central location.

The VOA would have you believe The Chequers should be able to generate more than 2-3 times fair maintainable trade in the hands of a hypothetical reasonable efficient operator than these comparables, despite the locational disadvantages it faces.

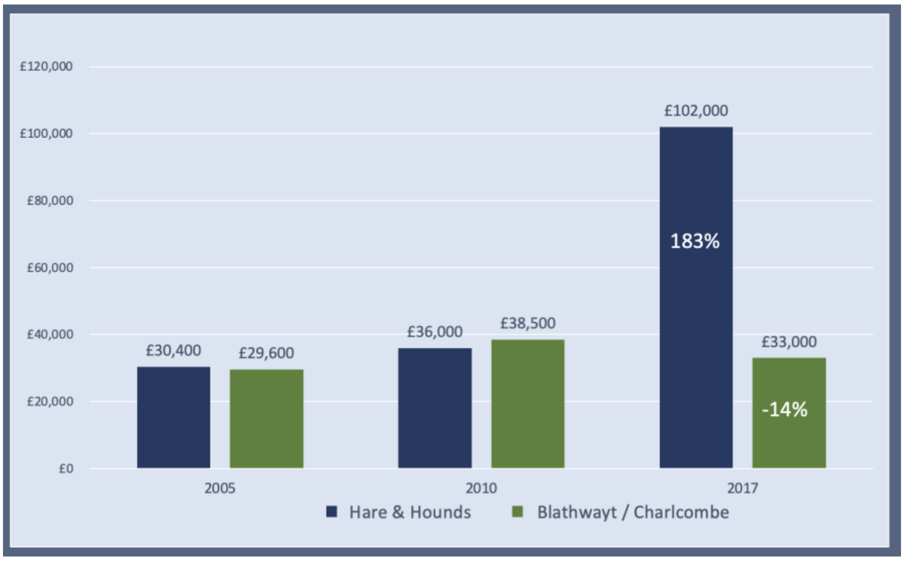
This example suggest either the VOA’s incompetence or malpractice.

The Hare & Hounds vs nearest competitor

The Hare & Hounds closest competitor is The Charlcombe Inn (formerly The Blathwayt Arms).

Both pubs are on the same road and a similar size (The Charlcombe Inn is actually slightly bigger and has a bigger car park). Both pubs could be said to have attractions – The Hare & Hounds has attractive views over a valley whilst The Charlcombe Inn is on the doorstep of Bath Racecourse. By any measure, they are highly comparable which is born out by the historic rateable values of the two pubs which were always very similar.

However, that changed in 2017 when the VOA increased the rateable value of the Hare & Hounds by 183%.

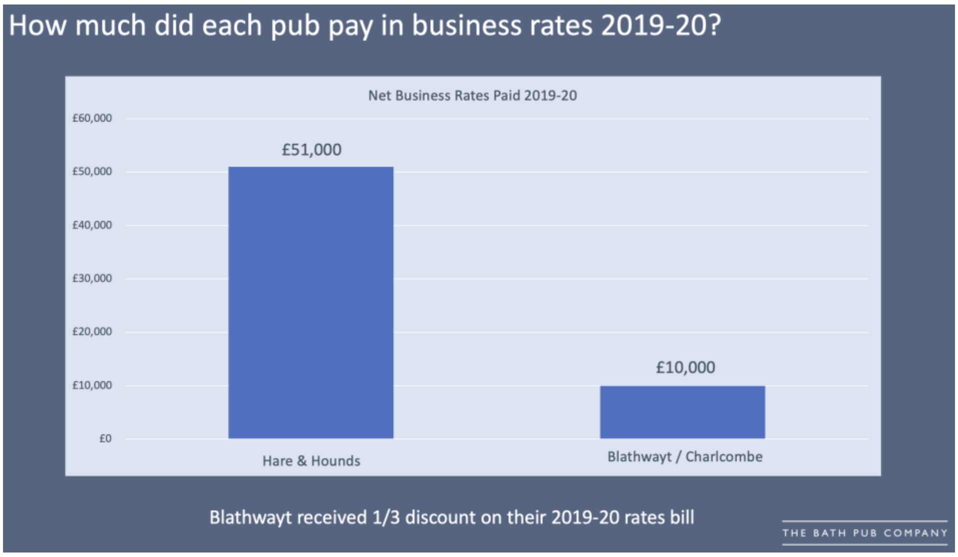


Source: Own analysis

How can the VOA justify a change in property values of 183% within five years? The property has remained completely unchanged.

Do we really believe this valuation is the product of a fair, objective valuation of the properties?

The large disparity in RVs between to two comparable pubs meant that in 2019-20, The Hare & Hounds paid five times more in rates than its neighbour (The Blathwayt/Charlcombe qualified for the government's 1/3 discount it gave that year to properties with a RV of £51,000 or less).



That £51,000 threshold was also used in March 2020 when the government announced it would give covid support grants of £25,000 to pubs with an RV of less than £51,000. The net result of all this is that The Hare & Hounds was disadvantaged in that year to the tune of **£65,000** compared to its near neighbour due to the scandalous rateable value imposed on it by the VOA.

Again, it would appear clear evidence of the VOA failing to properly value the property and simply valuing the business instead.

These are examples are just a few from dozens of similar comparisons that could have been made from Bath alone. This pattern will be repeated in towns and cities across the UK.

This is not a 'Bath Pub Company' issue – the pub sector as a whole is being damaged by the systematic and routine misvalutions by the VOA.

How do pubs compare to restaurants?

There was a time when a typical pub generally looked quite different from a typical restaurant; pubs were generally drinking establishments and restaurants were table-serviced food operations.

Today, the lines between pubs and restaurants have blurred to such an extent that in many cases, the distinction is meaningless; some gastropubs are more like a restaurant than some establishments that are classified as a restaurant by the VOA. Yet the VOA use a different valuation approach for restaurants.

The valuation approach for restaurants relies on square footage of the property. Regardless of which valuation approach is used, if both are accurate (as claimed by the VOA), then both should return comparable valuations that look sensible when similar businesses are compared. The approach or VOA classification should not impact the valuation. But it does; and does so dramatically.

The following is a real life example of two pubs run by the same operator. They are both gastropubs but whilst one is classified and valued as a pub, the other appears on the VOA's rating list as a 'restaurant'.

As far as any customer is concerned, they are indistinguishable from one another – they both serve food and drink in a traditional pub building. They are located in the same part of the country, a few miles apart. Yet the business valued as a pub has a rateable value ***three times higher*** than its sister business, despite being slightly smaller.

	Pub A	**Pub B**
VOA Description	Restaurant	Public house
Approx. indoor area	420m^2	375m^2
2017 RV	£35,000	£100,000

The details of the pubs and operator has been anonymised to protect the operator who is reluctant to challenge the rateable value of the pub as they are fearful that the 'restaurant' will be subject to the VOA's misvaluation as a pub.

It is unclear what criteria the VOA use to decide whether an establishment should be classified as a restaurant or a pub. However, it seems clear that such distinctions are outdated in the modern hospitality sector.

If pubs were valued in the same manner as restaurants, we would see a more level playing field and improved prospects for the pub sector. The square footage method of valuation has the advantage of transparency; something the flawed, murky and subjective FMT approach lacks.

More irrefutable evidence of inaccurate pub valuations

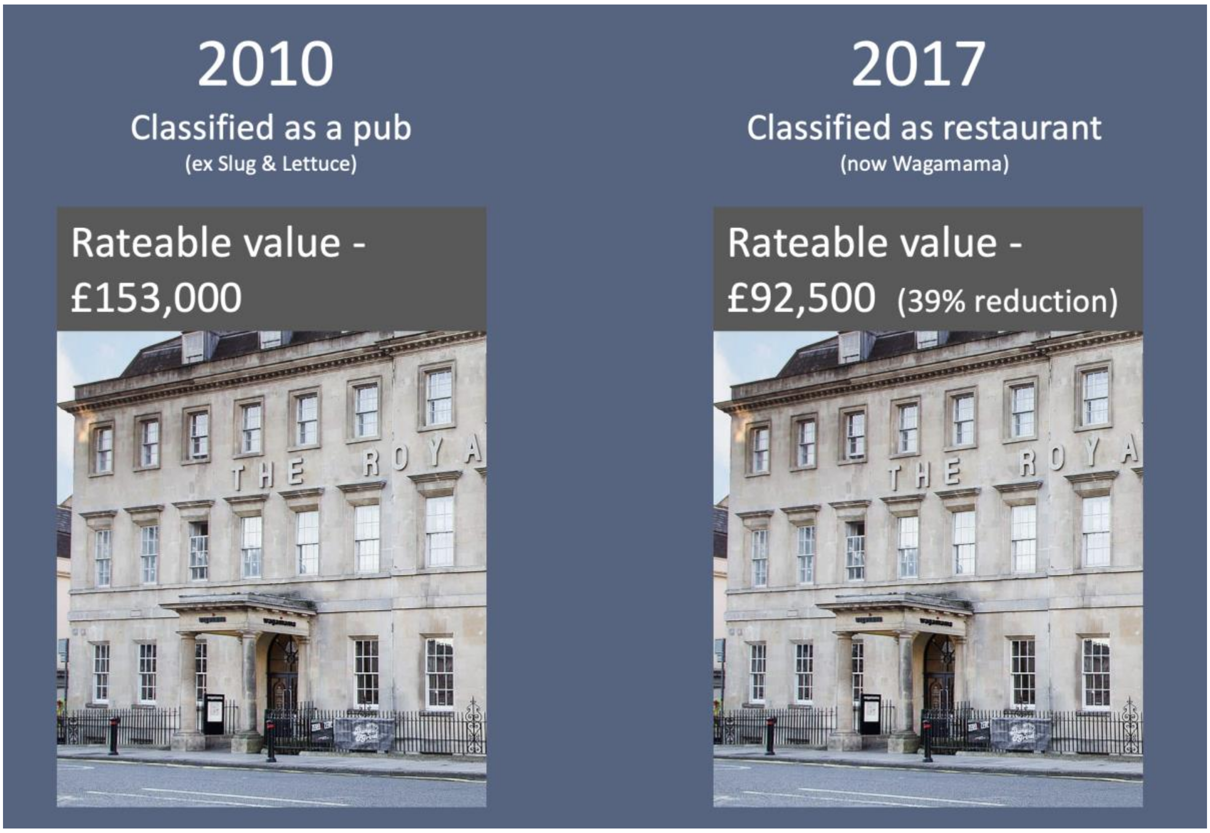
This example below goes one step further. Instead of comparing the disparity of the two valuation methods on similar buildings, this one shows it in effect on *exactly the same building*.

The site in Bath occupied by Wagamama today was previously occupied by a Slug & Lettuce; they moved out circa 2005.

The site appeared on the VOA's 2010 list as a pub and was valued as such, being given a rateable value of £153,000. Seven years later, it was reclassified as a restaurant, revalued as such, and saw its rateable value fall by 39%.

This is the same building, yet after a period of seven years, when you'd expect rents to have risen, the VOA valued it 39% lower.

It's hard to imagine a clearer example of how pubs are being misvalued compared to restaurants than this.



The VOA claim that both valuation methods are valid and produce accurate results. If this is true then you should see similar valuations as an output, regardless of which is used. But we don't. The only explanation is that one of the valuation methods used is producing flawed results. And I know which my money is on.

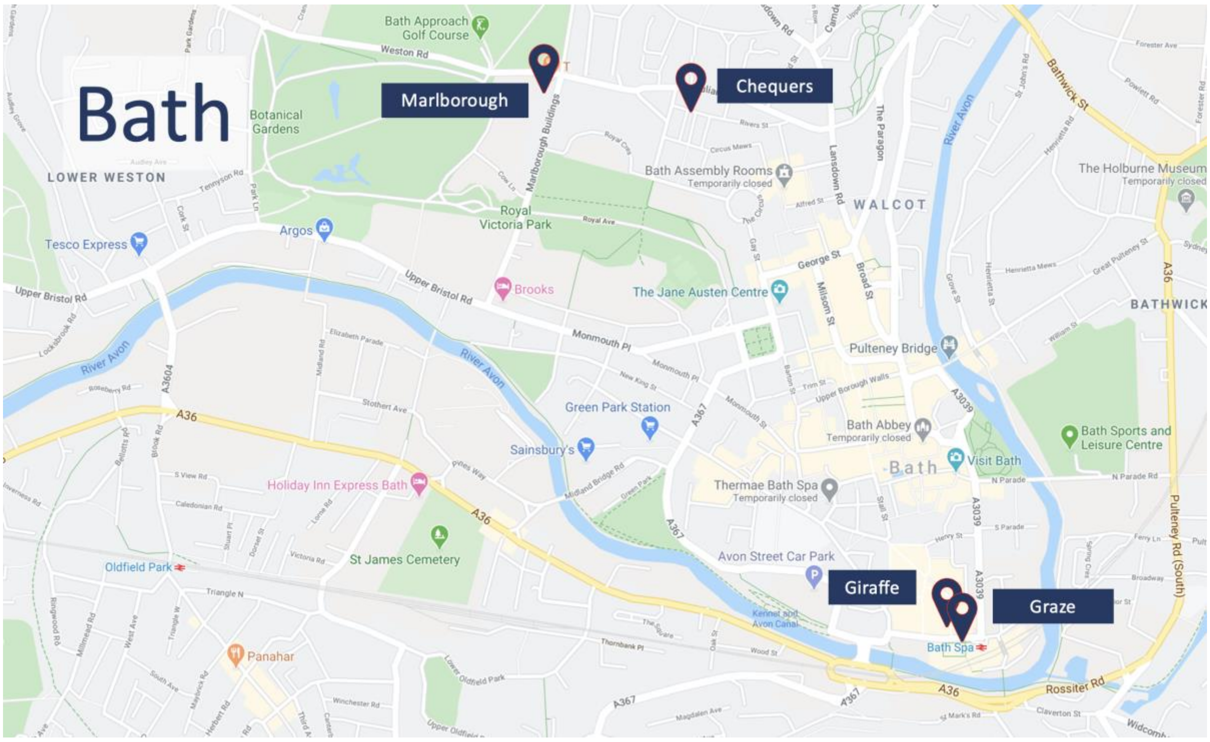
It is *exactly* the same building, but the pub operator pays through the nose to operate out of it.

No wonder it's so hard making money from pubs.

Pubs v restaurants –real life examples from Bath

This section contains more examples that highlight the overvaluing of pubs when compared to restaurants.

It shows how two modern casual dining restaurants in Bath enjoy much lower rates compared to pubs. Again, these are but two examples from many that could be chosen to illustrate this point.



The above map shows the location of casual dining site, Giraffe and Graze the flagship Bath Ales site.

Both sites enjoy prime locations close to the train station in the heart of the busiest part of the city, enjoying high footfall from the Southgate retail area.

Giraffe

Prime location in Southgate, Bath’s busiest shopping area. Opposite Bath Spa train station, enjoys high footfall. Large interior, high cover count.

2017 rateable value for Giraffe was calculated by the VOA at **£32,000**.

Compare this to the **£59,750** rateable value of The Chequers, a small gastropub with a fraction of the trading area, located in a quiet residential street away from the city centre.

Or compare it to the **£69,500** rateable value of The Marlborough Tavern – a smaller site, in less prominent location, yet given a rateable value more than double this restaurant.

Graze

Graze is a flagship Bath Ales site which is classified and valued as a restaurant. It too enjoys a prime location with high footfall, next door to Bath Spa train station and close to the busy Southgate shopping area. It has a large internal footprint with several times the number of covers of The Chequers and Marlborough Tavern.

Despite its size and locational advantages, its 2017 rateable value of **<u>£69,000</u>** is marginally less than the **<u>£69,500</u>** given to The Marlborough Tavern and makes the **<u>£59,750</u>** given to the Chequers look extremely excessive.

Conclusion on Approved Guide's performance

We have examined, in a number of different ways, the results of the VOA's valuations for pubs which they claim are science based, objective assessments of the properties. Whichever way you look at it, it is evident that far from producing accurate valuations, the VOA are presiding over an approach that creates random, arbitrary, and wholly inaccurate pub valuations.

It's clear that they are simply setting valuations against the turnover of a pub – the operator, not the property it operates from.

We doubt that the Pub Guides have ever been accurate (or properly, independently verified), but now, with the changing economics of running a pub, it is likely to be less accurate than ever.

You could argue that when it was first created in the 1990s that pubs were more similar. But since then, the pub market has diversified and there been a huge growth in food pubs. The economics of the industry and operational costs for running pubs and specifically food pubs have changed dramatically during this time. Anyone who runs a food operation will tell you that whilst a food offering generates & drives sales, it is fiendishly difficult to master and has become increasingly difficult to translate those sales into consistent profits.

Employment in the sector grew 5.9% between 2008 and 2015 (the relevant rating dates) whilst pub numbers fell 19.9%[1]. During this time, real wages have increased and the costs associated with running a food operation have increased dramatically – the culture of low paid, long hours for kitchen staff has rightly changed but means a squeeze on margins. Likewise increasing compliance obligations for food hygiene, health and safety and employee law have all increased costs and changed the financial operating model for food pubs. In contrast, the Pub Guides have changed only marginally.

[1] Office of National Statistics: Public houses and bars by size, region and nation, UK, 2001 to 2019, Employee jobs in pubs and bars sector by occupation, UK, 2003 to 2019

FOI requests suggests VOA using fraudulent and incomplete data

As stated previously, the VOA's start point for pub valuations is the actual trade. They claim they use this as a start point only in assessing the FMT of the hypothetical reasonably efficient operator, but it's clear to the whole pub industry that they don't do this.

It should come as no surprise to learn therefore, that some operators overcome this problem by simply lying about their turnover, submitting false low turnover figures on the form. I've had conversations with many pub operators have been completely open with me that this is what they do.

I've always been 100% honest on my forms and have paid the price. The form you are required to complete states that you might be prosecuted if you provide false information. I was interested to know how many prosecutions the VOA pursue, so I submitted a freedom of information request asking this. They refused to disclose the information, saying *"the information would be likely to prejudice the assessment or collection of tax*". It seems to me that if they were pursuing prosecutions, then disclosing this would be beneficial, not prejudicial, in terms of collecting tax – if operators knew there was a good chance of being prosecuted, then they would be more likely to submit accurate trade figures.

A further FOI request reveals that less than half of operators complete and return the VOA's forms requesting their turnover. I mentioned this to someone I know in the trade who commented they know a chap who's been in the pub trade for 30yrs and never returned a form. So much for it being a legal obligation. Why should I bother handing the VOA the ammunition to inflict sky high valuations on my businesses when they let others off scot free?

The conclusion one comes to is that it appears that the VOA are failing to police the collection of accurate trading information adequately. No wonder some operators simply lie – there is a massive benefit from doing so, and little or no chance of being prosecuted for doing so.

VOA assessments of FMT negligent – failure to visit pubs

During my journey of discovery on all things related to pub business rates, there is one thing that has made a bigger impression on me than anything else. It is the revelation that when determining the estimated FMT for a pub, the Valuation Officer doesn't actually visit your pub. Let that sink in for a moment. The single most crucial piece of information that drives their entire valuation – the only input - is produced by a desktop valuation. It is a quite staggering admission.

The VOA's guide states:
"Valuations should not be arithmetical calculations and must be considered, by a competent valuer experienced in the licensed property sector, within the terms of this Guide having regard to the individual nature of each property, its location, trading style, the competition landscape and the prevailing trading levels of competitor outlets."

As an owner of a pub operating company I frequently look at potential new sites. The single most important thing you can do when assessing and valuing a pub business is to visit the site and to walk around it and look around. You need to assess the operational and commercial viability - how close is the kitchen to the trading floor? where will deliveries come in? how large is the kitchen? where will the wash up go? and a myriad of other operational considerations that will impact its viability.

It is absolutely infuriating to learn that the VOA don't have the courtesy to visit your pub when valuing it. The notion that my valuations have been created by a desktop valuation method is depressing and exasperating, but sadly unsurprising.

Check, Challenge, Appeal – not fit for purpose

It's bad enough being on the wrong end of inaccurate and excessive valuations by the VOA, but things get harder when you try to get them corrected.

The Check, Challenge, Appeal process is not fit for purpose. The idea that your average pub operator could navigate the system and could easily put together a compelling challenge is laughable. The subject is far too technical and unfathomable for average operator to understand. You are up against an adversary whose full time job it is to defend challenges. They have an in-depth, expert knowledge of the system and law. Small operators simply don't have the time, knowledge or expertise to be able to compete with this - pub operators are running businesses that are typically open seven days a week, often from early in the morning until late at night.

The whole Check, Challenge, Appeal system appears to be designed to wear you down. I have spent countless hours trying to get my head around the subject. The body of evidence you are obliged to compile is enormous, the understanding of system extensive.

Far from improving things for ratepayers seeking to correct inaccurate valuations, the introduction of Check, Challenge, Appeal has made things harder. Unlike the previous system, a challenger is now required to submit all the evidence it might want to call on should the case proceed to appeal, at the initial challenge stage.

It places an impossibly high burden on an operator with limited knowledge of the law or system to be expected to collate all possible evidence and arguments for an appeal right at the outset. Not to allow any further evidence that the appellant may discover would be beneficial to his or her case, seriously stacks the odds against the appellant. As previously stated, you are up against an adversary with huge experience and knowledge of the subject and system.

Since the compilation of my initial challenges, I have discovered numerous additional compelling arguments and examples which would have been helpful in my case, but I'm not allowed to present them at our impending appeals. It hardly feels like a system designed to deliver justice.

Rating agents not the answer

As stated above, the average operator does not have the skills, experience or knowledge of the system to compile an effective challenge or appeal. You need specialist help and advice.

Unfortunately, most rating agents are not the answer. An industry of ambulance chasing rating agents has developed, but their commercial interests are not aligned with yours.

To put together a strong, robust challenge takes a huge amount of time, it simply doesn't make commercial sense for them to do this. Most rating agents operate on a commission basis, asking for a generous share of whatever rebate they might achieve by negotiating with the VOA over the FMT used in your valuation. For the agent, the objective is to spend as little time as possible on your case, quickly negotiate a reduction, claim the commission and move on to the next case. It doesn't really matter to them if the resulting RV is fair or not, it's a numbers game to these guys.

Anything other than a straightforward negotiation with the VOA over FMT is unwelcome to them. And as argued previously, arguments about what FMT is right to use are only meaningful if the model/percentages are sound – otherwise they are irrelevant.

Further harm caused by the 'Approved Guide'

Not only does the guide inflict unfair, inaccurate valuations on pubs in the first place, but it contains numerous spurious arguments that then undermine the ability of an operator to fairly challenge their valuations.

Impossible to prove that you perform better than a "reasonably efficient operator"

We are reluctant to spend too much time addressing the shortcomings concerning the implementation of the guide by valuation officers – even if these were corrected the guide would still not be able to produce accurate valuations due the fundamental flaws in its approach discussed in the early part of this document. Nevertheless, it is interesting to consider some – they compound the basic flaws to reveal a system that is broken on many levels.

The guide makes provision for an operator's fair maintainable trade to be adjusted down if the operator can prove that they are an exceptional operator and their trade could not be produced by a more average 'reasonably efficient operator'. However they make it nigh on impossible to prove this.

They firstly give themselves plenty of scope to define any trade as normal by stating:

"valuation is not limited to an 'average operator', but envisages a range of performances that are considered within normal expectations"

This pretty much gives them licence to define any level of trade as normal and therefore make no adjustments for overtrading.

They then ask you to prove a negative – the place the burden on you to prove that nobody else could do what you do in terms of trade. Whatever you present to them as evidence they simply dismiss as not strong enough or valid. Tell them you worked tirelessly to create a pub that won national awards and received accolades that only a tiny percentage of pubs would achieve and they simply say, "any REO could have employed decent chefs and done the same". They dismiss any evidence you present as nothing that any other operator couldn't have done.

It's hard to know what kind of evidence they do deem acceptable. They seem only willing to accept some sort of standout reason, like the pub is owned by a TV celebrity or Michelin starred chef as evidence for overtrading that could be attributed purely to the operator.

The truth, as any decent pub operator will tell you, is that being better than a reasonably efficient operator and overtrading comes as a result of, not one single stand out factor, but by doing lots and lots of seemingly small things to a very high standard and working extremely hard.

The VOA have got it the wrong way around; the proof of overtrading, should not have to be made by linking trade to operational actions; the proof of overtrading are the turnover figures themselves – that *is* the evidence.

Great pub operations are the product of a high performing team, well designed systems and process all pulling in the same direction to create a fantastic customer experience and maximise efficiencies. It's the same concept of the 'margin gains approach' the British cycling team attracted publicity for at the Beijing Olympics; they were relentless in their pursuit of small improvements in performance and efficiency in a myriad of areas – none of which were dramatic in themselves, but together all added up to gold medal performances. Anyone of those small improvements, in isolation, could be dismissed as no big deal, but together they produce irrepressible results.

Instead of saying, you've got really high turnover figures – show us the proof that you're doing something exceptional to achieve them. We say, the proof that we're doing something exceptional comes by way of the high turnover we're achieving.

It is infuriating to be sat in judgement upon by the VOA in terms of my ability as an operator and whether I'm better than a 'reasonably efficient operator'. They are simply not qualified to pass judgement on me and my abilities.

VOA dismiss comparisons with other pubs

In my challenges I have included as evidence many examples of how similar sized pubs are valued much lower than mine. The VOA dismiss this, saying:
"in accordance with the Approved Guide attempts to compare rateable values based on size of property is inappropriate"

They go on to say:
"Regard must be had to their trading potential."

Any pub operator will tell you, that you assess the trading potential of a pub based primarily on its size and location – exactly what I'm trying to illustrate by showing comparable pubs. But the VOA yet again hide behind the guide saying that "*the guide and its contents have been agreed with industry representatives."*

Comparisons with similar pubs with significantly different rateable values are, we believe, highly relevant to deliberations concerning correct valuations.

VOA dismiss comparisons with previous valuations

I argue in my challenges that my 2017 valuations are not justified due to the huge increase on previous valuations. How, for example, could the Marlborough Tavern's value increased by 498% since 2005 when the building has remained unchanged? How can it be that The Hare & Hounds jumped up in value by 183% from one list to another. Their reply?

"As stated in the Approved Guide comparisons between rating lists are not appropriate."

And for good measure, they remind you that:
"The guide has been approved by industry representatives."

If the objective of any challenge is to arrive at a fair and accurate rateable value, how can it be right that they write their own rules which state references to valuations in any previous list be disregarded?

If a property has remained unchanged from one list to another and their valuation method is, as they claim, accurate, the huge differences between one list and another are highly relevant, and it is wholly appropriate to raise questions about them.

The harder you work, the more you pay

If you point out, as we did, that another pub with a much lower rateable value is only open three days a week, whereas you're open seven days from morning to night, sweating the asset, they will say that the competitor is a different style of operation and they've valued them differently accordingly. But the decision to only open three days a week is the choice of the actual operator. Where is the hypothetical reasonably efficient operator in this scenario?

There is no hypothetical reasonably efficient operator – the VOA only have regard for an actual operator and actual trade. They are not setting a valuation objectively against the property – they are simply valuing the actual operation.

We are penalised for trading longer and harder in our property. What we do inside the property should be no business of the VOA and have no bearing on the rateable value of the property. Business rates are supposed to be a property tax, not an operator tax.

Failure to 'stand back and look'

There is one statement in the guide which we agree with, it states:

"Having calculated the valuation, it will be necessary to "stand back and look" in order to consider whether or not the resultant figure appears reasonable in comparison with the assessment of similar styles of property and if it fits in the band range and pattern of assessments in similar localities."

The presence of this statement is evidence that the VOA themselves recognise that purely arithmetical valuations can not be relied on to always give accurate results. The results need to be sense checked in the real world and if necessary corrected.

Did the valuation officer stand back and look at our valuations? Given how out of line they are it is highly doubtful. Let's not forget, they didn't even bother to visit the pub in the first place so it's unlikely they would have done this either.

On any level it would be hard to argue that the valuations the VOA imposed on my pubs 'appear reasonable' in comparison with similar pubs in similar locations. It is crystal clear that their valuations when compared with similar pubs are inaccurate. By ignoring the requirement to 'stand back and look', they are failing to adhere to their own guidance.

Hours, days and weeks spent fighting for a fair deal

I am angry that I have had to spend endless hours, days and weeks simply battling for a fair deal; to pay a similar amount in business rates to comparable pubs.

Not only have I had to carry a massive tax burden many of my competitors haven't had to endure; I've then had to spend huge amounts of time and money trying to get close to paying a comparable amount in business rates.

This is valuable time I could be spending focussed on my staff and customers instead of fighting the VOA, their appalling, punishing valuations and the system.

A property tax – not a tax on the operation

It is crystal clear to anyone who knows anything about pubs and rates that what the VOA are actually doing is valuing the business, not the property which the business operates out of.

How else can one explain the massive disparities in valuations for pub properties that are to all intents and purposes, exactly the same?

As an operator, I'm more than happy to be taxed on my performance, but that already happens by VAT on turnover and corporation tax on my profits. I should not be subjected to a secondary tax on my turnover, which is what is currently happening through the VOA's shambolic valuations.

The VOA are not even following their own flawed guide and basing valuations of fair, maintainable trade generated by a hypothetical operator. They are simply taking actual trade and creating valuations based on that.

Rateable values and grants & reliefs

Having an incorrect, excessively high rateable value not only means you are subject to higher annual rates bills than you should be paying, but you frequently lose out on various reliefs and grants; the government is fond of using the £51,000 rateable value as a threshold for these.

In 2019-20, the government gave a one third discount of rates bills for anyone with a rateable value less that £51,000. None of my pubs received this relief and I had to watch my competitors who were already enjoying lower rates bills receive further financial help.

In their initial response to the pandemic the government gave grants of £25,000 to pubs with a rateable value of less than £51,000. I can't tell you how frustrating and demoralising it was to miss out on this vital aid in first lockdown and watch my competitors, who'd been paying way less in rates than me already, then pick up juicy grants which we were not eligible for.

Financial damage to the sector

If pub valuations had tracked the UK average since 2005, then the sector would have paid £3.5bn less in rates or £3.9bn in real term.

Analysis along the same lines suggest that the sector is paying roughly £750m pa too much in rates. This is consistent with estimates comparing how much of the entire business rates tax is paid by pubs and their share of rateable turnover, which suggest an overpayment of £560m

The problem is not the rating system, but the VOA's approach to pub valuations.