THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2010 rating list appeal; Public House and Premises; Approved guide; Supplementary guidance; Fair maintainable trade; Appeal allowed.*

RE: The Stannary Court, 95-99 Ridgeway, Plymouth PL7 2AA

APPEAL NUMBER: 116025138893/537N10

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| BETWEEN: | J D Wetherspoon PLC | Appellant |
| | And | |
| | Ms D Bunyan (Valuation Officer) | Respondent |

BEFORE: Ms J Routledge (Senior Member)

CLERK: Mrs Rachel James IRRV (Hons)

REMOTE HEARING 1: Monday 24 May 2021

APPEARANCES: Mr T Root (BNP Paribas Real Estate, Representing the Appellant)
Mr J Holloway (Representing the Valuation Officer)

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**Summary of decision**

1. The appeal was allowed in full and the assessment of the subject property was determined at £51,000 Rateable Value (RV), with effect from 28 November 2013.

**Introduction**

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

4. As permitted within the Tribunal’s Business Arrangements, due to unforeseen circumstances, I heard this appeal alone.

5. Mr Root appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Root’s declaration of truth included a statement that he was not instructed under any conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client’s case.

6. The appeal before me resulted from a proposal submitted on behalf of the appellant by BNP Paribas Real Estate on 25 February 2015. The proposal was made on the basis that the rateable value shown in the list by reason of an alteration by the Valuation Officer on 7 January 2014 is inaccurate, because it was incorrect, excessive and bad in law. It requested the assessment of £145,000 RV, with effect from 28 November 2013 be altered to £1 RV. The material day for the appeal is 7 January 2014, the date the Rating List was altered.

7. The property comprised a former retail unit in the centre of Plymouth. The property was located on Ridgeway, which was the main retail street in Plymouth. It was a Listed building with retained tiles to front. The property was situated below road level to the front and below the beer garden at the rear. There was no customer car parking on site.

8. There was an open plan customer area on the ground floor with a two level beer garden at the rear with a lift for the disabled connecting the two levels. The first floor comprised the customer toilets, the cellar and kitchen. There was restricted storage space on site and issues with deliveries due to the narrow access road at the rear.

9. The subject property was held on a lease for 30 years that commenced on 3 May 2013. The passing rent was £57,500 per annum and there was a 12 month rent free period at the commencement of the lease. The appellants commenced redevelopment works on 19 August 2013 and the property opened for trade on 10 December 2013.

10. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by myself when arriving at the decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

**Issues**

11. The issue in dispute related to the correct level of fair maintainable trade (FMT) to be adopted and the extent to which the valuation should be adjusted to reflect the high trading and over-trading at the subject hereditament.

**Evidence and submissions**

12. Statements of cases were submitted by both parties, which including their respective cases; a copy of the proposal; a location plan, photographs of the subject property and schedules of comparable properties. I was also provided with a copy of the Rating Lists 2010 - Valuation of Public Houses – Approved Guide and the Supplementary Guidance – RAT IA 110111 Approach to High Trading and Potentially Over-trading Public Houses.

13. Mr Root explained that the property was to be valued from a trade-based approach in line with the Valuation Office Agency's (VOA's) approved guide. He emphasised that it was the property being valued and not the occupier.

14. Mr Root took me through the background to the approved guide and the methodology adopted in the valuation of public houses for rating. He also highlighted the supplementary guidance issued in 2011 and explained the need for that guidance and the additional factors to be considered for high trading and potentially over-trading public houses. He stated that the guide confirmed that the actual trade was the starting point of the valuation and it was necessary to establish the annual trade considered to be maintainable at the antecedent valuation date. It was to be assumed that the business was carried out in a reasonably competent fashion by an experienced publican. Care must be exercised to reflect economic circumstances at the antecedent valuation date (AVD) and it should be borne in mind that past trading patterns were not necessarily a guide to future performance and that trade could increase as well as decrease.

15. The subject property opened for business on 10 December 2013 and Mr Root had provided the actual receipts for the 33 week period up to the end of July 2014. The actual trade needed equating to an annual figure and toning back to the AVD as this trade was some six years post AVD. If one adopted the first 33 weeks' trade as a starting point, equated to an annual figure and toned back to AVD by RPI, the resultant figures were

    Wet - £784,683
    AWP - £25,909
    Dry - £895,633

16. Mr Root contended that little weight should be placed on the actual trade as it was some six years post the AVD and during that period the economy went through a recession. Plus, with the opening of a new public house there would be a 'honeymoon' period during which trade would be initially high as customers tried out the new venture; this would artificially show a higher trade than would be normally expected. He was of the opinion based purely on the actual trade achieved on the property, the FMT would be as follows:

| | |
|---|---|
| Wet & AWP | £800,000 |
| Dry | £895,000 |

17. Having established the fair maintainable trade (FMT), Mr Root then adopted a 'stand back and look' approach to consider if it correctly reflected the FMT on the property or if it was representative of the business itself. He submitted that the FMT needed to be compared with that of other public houses in the locality to determine if it suggested that the actual receipts were both fair and reasonable or were showing an excessive amount.

18. Mr Root provided details of the assessments and the levels of FMT adopted in respect of three town centre public houses. He compared and contrasted each with the subject property, namely The Post Office Inn, The Sir Joshua Reynolds and The George. Having regard to the FMT on those comparable properties, Mr Root contended that it was clear that the FMT applied to the subject property was significantly excessive and required further consideration. The actual occupier had a low pricing policy that ensured the company operated at a lower profit margin than its competitors and as a result achieved a significantly higher trade than the competitors as the lower cost of a pint of beer or meal attracted customers. After having regard to the Supplementary Guidance issued in respect of potentially over trading public houses, Mr Root considered that the appeal property was of Type C – Superior to the competition and adjustments of the FMT of up to 60% were warranted. The guidance stated – 'Typically the subject property will be a new opening that is different in style character and size to existing public houses in the locality'.

19. Mr Root also made reference to the schedule detailing other JD Wetherspoons public houses and the levels of adjustments made to their actual trade.

20. Finally, Mr Root referred the following disadvantages associated with the appeal property:

    i) Access for deliveries via narrow roadway to the rear. Larger vehicles had to park at the end of the road and the goods had to be pushed on a trolley at least 100 m. The appellant was required to have smaller bins due to the poor access.
    ii) Access to the cellar required moving the barrels along the fire escape at the rear.
    iii) Due to the level of the pub being effectively in a 'bowl' below the road level at front and ground level at rear, the property was liable to flood in heavy rain.

21. After having regard to the levels of FMT adopted by his three comparable properties and allowing for the size of the subject property, Mr Root considered that the realistic level of trade would be

    Wet & AWP - £325,000
    Dry - £220,000

22. When compared to the actual receipts toned back to the AVD, this would illustrate a 60% discount on the wet trade and 75% on the dry trade. However, he reiterated that toning back the actual trade was unreliable and FMT shown by local competitors with broadly similar facilities were key. The bands applied to the wet and dry trade figure were not in dispute and neither was the percentage to be adopted, which represented 50% of the respective bands. Accordingly, Mr Root sought the following reduced assessment for the subject property:

| | Adopted FMT | % of receipts | RV |
|---|---|---|---|
| Wet & AWP | £325,000 | 10.38% | £33,719 |
| Dry | £220,000 | 7.93% | £17,435 |
| | | Total | £51,154 |
| Say £51,000 Rateable Value, with effect from 28 November 2013 | | | |

23. In his submission, Mr Holloway acknowledged that the actual trade disclosed for the subject property was excessive and did not represent the FMT that a reasonably experienced operator would achieve. However, Mr Holloway did not find reference to trade on other public houses within the same location helpful. He contended that the subject property had been created with the express ability to offer high volume wet sales and a significant food offer, which was not available at the adjacent competition.

24. Mr Holloway referred to his two comparable properties, namely The Unicorn and The Lord Louis, which were family food oriented, low cost, high volume operations. Although these two comparable properties were located outside the town centre, had car parks and beer gardens, they were the only viable alternatives for a public house with a substantial food offer.

25. Having regard to the evidence he had provided, Mr Holloway's proposed assessment was as follows:

| | Adopted FMT | % of receipts | RV |
|---|---|---|---|
| Wet & AWP | £500,000 | 11.00 | £55,000 |
| Dry | £425,000 | 10.00 | £42,500 |
| | | Total | £97,500 |

**Decision and reasons**

26. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 as amended. The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of an appeal against an entry in the 2010 Rating List, the AVD, when one was required to have regard to rental levels, was 1 April 2008.

27. The subject property was held on a lease for a term of 30 years commencing on 3 May 2013. There was a rent passing of £57,500 per annum, with an initial 12 months rent free period. I attached little weight to the rent on the appeal property, neither party had referred to it in great detail and it had been set five years after the AVD.

28. Both parties agreed that the subject property should be valued in line with the Approved Guide, which had been drawn up by the Valuation Office Agency (VOA) and the British Beer and Pub Association. Under the Guide, a rateable value was essentially based on the FMT of a public house. The FMT represented the annual trade considered to be maintainable at the AVD of 1 April 2008, on the assumption that the business will be proficiently carried out by a competent publican responding to the normal trading practices and competition of the locality.

29. I also had regard to the following section of the Approved Guide, which stated:

> 'Vacant and to let, the hypothetical tenant would be aware of the actual trade (unless a new property) which is the starting point of the valuation in accordance with principles endorsed by Mr Justice Thompson in *Watney Mann Limited v Langley (VO)* [QB 1963].
>
> "He (the hypothetical tenant) will, as the prospective tenant would, endeavour to estimate what trade could reasonably be expected to be done by the ordinary tenant if he were the licensee in the premises as they now are, in the area which they are located. While I do not doubt that such a prospective tenant would consider in his mind whether he could make as great or a greater success of the house than his predecessor, the base from which he would ponder on his prospects would, I have no doubt whatsoever, be the actual trade his predecessor had in fact done."'

30. I recognised that there was no dispute as to the approach to be adopted and both parties had submitted valuations reflecting that the subject property was a high performing public house with discounts being applied to the FMT. Furthermore, I note that there was agreement that the subject property should fall within Band 2 for the wet trade and Band A for the dry trade, with percentage rate adopted being at 50% of those respective band widths.

31. In reality, I would have preferred to have been presented with trade figures for the three years leading up to the AVD. This was not possible in the appeal before me as the subject property had not opened for trade until 10 December 2013. Mr Root had provided trade for the 33 week period up to the end of July 2014 and had provided an annualised equivalent toned back to the AVD. However, rather than place all weight on the actual trade, both parties had referred to the FMT of comparable properties.

32. Mr Root had referred to the following three properties:

    i) The Post Office Inn, which was located in close proximity to the subject property on Ridgeway. It was a small traditional single room pub with pool table and offered live music. This property's FMT adopted wet trade at £200,000; and the property was assessed at £17,800 RV.

    ii) The Sir Joshua Reynolds was also located on Ridgeway opposite a public car park. It comprised a two roomed pub with traditional style bar in an older building, there was a second bar extension to the side that lead to the rear beer garden. This property's FMT adopted wet trade at £225,000 and Dry at £70,000; and the property was assessed at £24,000 RV.

    iii) The George was located on Ridgeway, a short distance out of the retail centre; approximately 0.1 miles from the subject property. It was a former 18th century coaching inn with external seating to the front and rear. The pub included a function room and offered a full food service. This property's FMT adopted wet trade at £240,000 and dry trade at £190,000.

33. Mr Holloway referred me to his two comparable properties, namely:

i) The Unicorn, 158 Plymouth Road. This property's FMT adopted wet/awp trade at £410,000 and dry trade at £1,000,000; and the property was assessed at £145,000 RV.
ii) The Lord Louis, Glen Road, Plymouth. This property's FMT adopted £520,000 wet trade and £830,000 dry trade; and the property was assessed £145,000 RV.

34. After giving full consideration to all the comparable properties, I attached less weight to the two presented by Mr Holloway. I found that both The Unicorn and The Lord Louis were destination venues with large car parks and beer gardens. Mr Holloway had described them as family food orientated, low cost, high volume operations, which were both situated outside of the town centre. I agree with Mr Root that The Unicorn and The Lord Louis were very similar to each other but not the subject property and competed in a different segment of the market to the subject property; being 'destination venues'. The dry trade at these property's represented 71% and 61% of their FMT's, respectively. Vacant and to let, I do not find these two properties to be comparable to the subject property. I agree with Mr Root, that the hypothetical tenant coming fresh to the scene would have regard to more local public houses.

35. Out of the three comparable properties presented by Mr Root, I found The George to be most comparable. Like the appeal property, The George was located within the town centre. It had a good food offering, with dry trade at £190,000 and wet at £240,000. To provide such a food offering, the property would require reasonable kitchen facilities. Whilst providing a substantial food offering, the premises would also cater to wet sales into the evening, which was in line with appellant's operating practice.

36. Having regard to the physical characteristics and size of the subject property, together with the associated disadvantages of the subject property's poor access and position below ground level, I found that deductions of 60% for the wet/AWP and 75% for the dry trade were appropriate. In recognising that these were substantial discounts, I had regard to the schedule provided by the appellant's representative and noted that such levels were not unheard of where circumstances were similar to that at the subject property.

37. In considering the extent of the discount to be applied, I had regard to the supplementary guidance and the factors to be considered. The guide provided that 'the factors that need to be considered will vary dependent upon the trading environment in which the subject property is located. Type B referred to 'Secondary licensed trade areas – generally market towns and outlying commercial centres, but not exclusively – Potentially over-trading public houses and Type C related to 'Superior to the competition – potentially over-trading public houses. I agree with Mr Root that the subject property falls within Type C, in which typically the subject property was a new opening that was different in style and character to the existing public houses in the locality.

38. Having regard to the above conclusions, I allow the appeal and determine the correct assessment for the subject property was £51,000 RV, with effect from 28 November 2013, as proposed by Mr Root.

**Order**

39. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list for the subject property to rateable value £51,000 with effect from 28 November 2013.

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

**Date:** 16 June 2021
**Appeal number:** 116025138893/537N10