THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2010 rating list; public house and premises; Fair Maintainable Trade; location of property; comparable properties; 2010 Rating List Approved Guide for the Valuation of Public Houses; appeal allowed in part.

Re: The Sheaf Island, Ecclesall Road, Sheffield, S11 8HW

APPEAL NUMBER: 442025141228/539N10

BETWEEN: J D Wetherspoon plc Appellant

and

Ms J Moore Respondent

(Valuation Officer)

PANEL: Dr J Johnson (Senior Member) and Mr A Wheeler

CLERK: Mrs S Morgan

REMOTE HEARING: Wednesday 2 March 2022

PARTIES PRESENT: Mr S Turton – (BNP Paribas Real Estate) - Appellant's representative

Mr H Wadsworth – Valuation Officer's representative

Summary of decision

1. The rateable value (RV) was reduced from £153,000 to £107,000 with effect from 17 September 2010.

Introduction

2. This appeal has been brought in respect of the following: The Sheaf Island, Ecclesall Road, Sheffield, S11 8HW (the 'appeal property'), which was entered in the 2010 rating list as 'public house and premises' at £153,000 RV effective from 17 September 2010.

3. The appeal arose following a proposal received by the Valuation Officer on 25 February 2015, which disputed the accuracy of the RV in the Rating List. The proposal sought an alteration to £1 with effect from 17 September 2010 on the grounds that the alteration made by the Valuation Officer and notified by notice on 25 January 2011 was inaccurate because the RV was incorrect, excessive and bad in law.

4. No alteration was made to the rating list as a result of the proposal and the Valuation Officer referred the matter to the Tribunal as an appeal under regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

5. 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 the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

6. The appeal property had been assessed taking account of the 2010 Rating List Approved Guide for the Valuation of Public Houses (known as the '2010 Approved Guide'), and having regard to the Valuation Office Agency's Information and Advice 110111, Approach to High Trading and Potentially Over-trading Public Houses (the 'supplementary guidance').

7. The issue in dispute concerned the following:

   (a) The fair maintainable trade (FMT) to be adopted in the valuation of the appeal property.

Evidence and submissions

8. Both of the parties' representatives appeared in a dual role of advocate and expert witness. Both had signed a declaration to confirm their primary duty in giving expert evidence was to the Tribunal and that they were not instructed under a conditional fee arrangement. Additionally, the appellant's representative confirmed his firm was not on a success related fee in respect of these proceedings.

9. The parties provided a considerable amount of documentary evidence which included photographs, location and floor plans, rating valuations, the statutory basis of valuation, extracts from guidance material, trading data, and the proposal form.

10. The appeal property is a relatively new public house, situated on the ground floor of the redeveloped Wards Brewery site, in a mainly residential area. The pub trades only on the ground floor and includes a kitchen, cellar and disabled toilets. It has a customer area of 383.6m^2. On the first floor are the main toilets and ancillary area. It also has a large licensed outdoor area to the front of the premises. There is no car park but there is some on street parking nearby. It is well served by public transport. The premises opened as new on 17 September 2010.

11. The opening hours for the appeal premises are

    Sunday - Saturday 8:00 - 12:00

    Alcohol is served from 8:00, meals from 9:00 to 23:00 Sunday to Monday.

12. In their respective case submissions, Mr Turton, who initially sought a reduction to £45,000 RV, at the hearing revised this figure to £55,000 RV whilst Mr Wadsworth sought a reduction to £107,000 RV, with effect from 17 September 2010.

Decision and reasons

13. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2010 rating list, the Rating Lists (Valuation Date) (England) Order 2008 required the rental levels to be taken as at the antecedent valuation date (AVD) of 1 April 2008.

14. The Valuation Officer assesses public houses using the 2010 Approved Guide, which had been drawn up by the Valuation Office Agency and the British Beer and Pub Association. Under the guide, a rateable value was essentially based on the Fair Maintainable Trade (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. This was on the basis that 'a tenant coming fresh to the scene' would have had regard to the level of trade undertaken at the appeal property, before formulating his rental bid for the subject property. However, in this case, the appellant is the freehold owner of the subject premises, so there is no rental information. Furthermore, there are no trading figures at AVD, as the appeal property only started trading, as new, on 17 September 2010. However, trading figures were produced for years 2011 to 2014 (after the AVD) and both parties agreed the trade figures.

15. The material day to consider the physical nature of the property and its location in this appeal was at 17 September 2010.

16. The appellant's representative stated that one of the key points to remember was that the rating assessment reflected the value of the property and not the occupier. He believed the FMT adopted in respect of the appeal property by the Valuation Officer was excessive. This

was because the appellant's business model of a lower pricing policy, which resulted in a lower profit margin, gave the appellant a significantly higher trade than its competitors. In his view, the trade was also underpinned by the appellant's brand, reputation and trading practices. The panel also recognised that the actual trade of the occupier was not necessarily the trade of the hypothetical tenant for rating purposes.

17. The supplementary guidance allowed, when assessing high trading and potentially over-trading pubs, to effectively test the trade achieved at the appeal property against the trade achieved at comparable public houses in the locality. Discounts were permitted to be made against actual trade. Both parties agreed that the FMT at the appeal property needed to be discounted, but they disagreed the level.

18. The appellant's representative gave details of his comparable properties and their trading information. He took the panel through the comparable properties highlighting the differences between them and the appeal property adding that the location of the appeal property drew little footfall compared to the others which were closer to the campus for Sheffield Hallam University.

i) Nursery Tavern, Ecclesall Road, Sheffield is an established public house which is popular with students. It is the closest public house to the university on what is known as the Golden Mile. It has a good licensed outdoor area to the front and rear and is arguably in a better location than the appeal property. It is smaller than the appeal property with a customer area of 160.7m^2 and it had a rateable value of £115,000.

ii) The Pomona, Ecclesall Road is a modern purpose-built public house now trading as Champs. It has a good front and rear licensed outdoor area. The appellant's representative believed that this was the most comparable public house. It is situated on the same side as the road as the subject property and has a customer area of 256.9m^2. It is the closest public house to the appeal property and again in an arguably better location. It had a rateable value of £45,500.

iii) Champs, 315-319 Ecclesall Road was formerly shop units now converted into a public house trading as Graze Inn. It has front licensed outdoor area, 222m^2 of customer area and is arguably situated in a better location. It had a rateable value of £105,000.

iv) Varsity, 259-267 Ecclesall Road is now trading as Honeycomb. It was formerly ground floor office space before being converted to a public house. It has a customer area of 268.0m^2 and again the location was believed to be better than the appeal property. It had a rateable value of £77,000.

v) Devonshire Arms, Ecclesall Road was formerly a traditional public house situated opposite the appeal property. It was demolished in 2011. Although the details of this former public house were not directly comparable, it was indicative of the trade that could be achieved in this position.

19. In addition, the appellant's representative referred to overtrading, and that although the pub was open for 16 hours a day, the trading figures should be treated with some caution. He also contended that being a larger sized property did not bring more trade and that in relation to the trading position of the appeal property, this was not as good as the comparable properties he had put forward. Bearing in mind these factors and by applying 'a stand back and look approach', the appellant's representative was of the opinion that the rateable value should be reduced to £55,000 RV.

20. The respondent confirmed the appeal history and location details for the appeal property. He accepted that the subject property was situated slightly away from local competition, but it was nearer to the ring road and the city centre. Both the Nursery Tavern and Graze Inn were nearby, and both were high performing premises but smaller than the subject premises in terms of customer area. The respondent contended that the food trade for the subject property suggested that it was clearly an outlier in terms of the level of food sales achieved over its competitors.

21. Besides referring to the Wet and Dry trade together with the bands and range points for the comparable properties referred to above in paragraph 19, the respondent also made reference to trading details for The Porter Brook and Toby Carvery, both situated on Ecclesall Road. He argued that the customer area for the majority of the comparable properties was smaller than the subject premises and that its positioning on Ecclesall Road was negligible in comparison to those properties. The respondent contended that the subject premises may have been the furthest public house from the University but a five-minute walk for students would, in his opinion, not make such a big difference.

22. In addition, the respondent considered that the subject premises was a high performing public house and that he had made appropriate high performance discount adjustment to his AVD FMT figures, which he believed to be fair and reasonable. He added that the hypothetical tenant would be aware of the trading potential of the subject premises when compared to others in the locality. After taking everything into account the property had to offer, he believed that the hypothetical tenant would pay a higher rent for the subject premises based on the estimated levels of trade which could be generated by comparison with local competition.

23. Having argued that it was prudent to look at all properties in the locality and in the absence of AVD trade figures, the respondent believed that his trade figures of £745,000 for Wet trade (band 1 at 0.5 of the range) and £225,000 for Dry trade (band B at 0.5 of the range) for the appeal property, which was less than the Nursery Tavern and more than Graze Inn, supported his revised valuation of £107,000 RV, with effect from 17 September 2010.

24. The panel noted that for the purposes of the 2010 Rating List, the trading figures for 2008 would normally be used as the starting point for assessments of this type. However, the subject premises did not open until September 2010 and therefore the earliest figures required some adjustment. Both parties had also used the trading figures for a number of other public houses in the locality for comparison purposes. The panel found that the trading figures reasonably reflected the nature of the trading location, the physical characteristics of the public houses and the styles of trade which were maintainable. Having regard to the Guide's agreed formula, once the appropriate assessment band had been determined, the valuation would then fall within the range of percentages in accordance with a geographical table which allowed for the "fine tuning" of the valuation. While accepting that an adjustment

had to be made to FMT for the low pricing policy and brand of the appellant, the panel decided that the revised valuation submitted by the respondent was the more reasonable of the valuations provided. The panel found that there was insufficient ‘like for like’ comparable evidence to justify the appellant’s valuation.

25. In conclusion, the panel accepted the respondent’s revised valuation at £107,000 RV. The appeal was therefore allowed in part to that extent. However, the burden of proof falls on the appellant and the panel was not satisfied by the appellant’s representative’s evidence or arguments that the valuation should be reduced further than that.

Order

26. 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 reduce the entry in the Rating List to rateable value £107,000 with effect from 17 September 2010.

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

Date: Monday 4 April 2022

Appeal number: 442025141228/539N10