VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2010 Rating list appeal; public house and premises; fair maintainable trade; national chain; brand; question of over-trading; comparable properties in the locality; Decision: Appeal allowed in part.

APPEAL NUMBER: 471525248569/539N10

BETWEEN:	J D Wetherspoon Plc (represented by BNP Paribas)	Appellant
and	Ms J Moore (Listing Officer)	Respondent

RE: Cherry Tree, John William Street, Huddersfield, HD1 1BG ("the appeal property")

BEFORE: Mr P J Hickson (Senior Member)

REMOTE HEARING: 26 April 2021

APPEARANCES: Mr S Turton of BNP Paribas (for the Appellant)
Mr A Boatwright for the Valuation Officer (Respondent)

CLERK: Mrs A Sloan

Summary of Decision

1. Appeal allowed in part. The entry in the list was reduced to £78,000 Rateable Value (RV) with effect from 1 April 2010.

Introduction

2. I heard this appeal alone as my fellow panel member was unable to attend at short notice. The Tribunal's business arrangements permit me to hear this appeal alone in such circumstances.

3. 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.

4. 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. The hearing was conducted via Microsoft Teams and I was satisfied that both parties were able to participate in the hearing.

5. Both parties' representatives appeared in a dual role of advocate and expert witness. They confirmed that their primary duty in giving expert evidence was to the Tribunal and that they were not instructed under a conditional fee arrangement.

6. The appeal property had been entered into the rating list with effect from 1 April 2010 with a RV of £120,000. Following settlement of the 2005 rating list appeal, the assessment was subsequently reduced in the 2010 list to £111,000 by notice dated 20 June 2014.

7. The appeal arose following a proposal received by the Valuation Officer (VO) on 16 March 2015, which disputed the VO's notice of alteration to the rating list. It sought a reduction to RV £1 from 1 April 2010. No alteration was made to the rating list as a result of the proposal and the VO 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.

8. 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 evidence, should not be construed as it having been overlooked.

Issue

9. The appeal property had been assessed taking into account 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').

10. The issue in dispute concerned the fair maintainable trade (FMT) to be adopted in the valuation of the appeal property.

Evidence and Submissions

11. Prior to the hearing, Mr Turton had provided the panel with additional appendices which included a copy of the 2010 approved guide for valuing public houses, maps of the locality showing the location of the various comparable properties referred to by the parties and a schedule of agreements from the 2005 and 2010 rating lists on other public houses. Mr Boatwright confirmed he had no objection to these additional documents, so I allowed them to be admitted as evidence.

12. The parties provided me with evidence packs which included extracts from the relevant legislation and approved guide for valuing public houses, along with details and photographs of other public houses in the area which the parties felt were useful comparable properties.

13. Since the original evidence bundles had been served, and as a result of further discussions, both parties provided me with revised valuations for the appeal property. Mr Turton sought a reduction in RV to £64,750 and Mr Boatwright asked me to confirm the RV as £91,000.

Decision and Reasons

14. The appeal property is a public house and premises operated by the Appellant since 22 October 2001. It is situated in the locality of Huddersfield town centre and comprises a conversion of three former shop units in a 1960s built block with offices above. The main trading area is on the ground floor with a smaller area on the lower ground floor. Mr Turton stated that the pub has a customer area (public area net of bar) of 355.91m^2. The material date and effective date in this appeal is 1 April 2010. Mr Turton confirmed that the pub had no outside area or pavement seating, as the pavement licence was obtained after 1 April 2010.

15. 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.

16. The appeal property is held leasehold on a lease from 2001 commencing at £90,000. Mr Turton stated that the five yearly, upward only, rent reviews since had all resulted in a nil increase. However, the parties agreed that the rent would not be used for the valuation as both parties were relying on the method of assessing fair maintainable trade (FMT) using the approved pub guide.

17. The 2010 Approved Guide 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 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.

18. When following the guide, available rental evidence was to be analysed by reference to a unit of comparison, which in most cases was turnover. It estimated a rent from the property's ability to provide an income for the tenant. The estimated income had to compensate the tenant sufficiently for operating the business and, in addition, provide a surplus which he would be prepared to pay the landlord for the right to occupy the property. The hypothetical tenant coming fresh to the scene was likely, as the prospective tenant, to estimate what trade could reasonably be expected to be done and have regard to the actual trade of his predecessor.

19. Mr Turton 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 VO was excessive. In his view, the trade was underpinned by the Appellant's brand, reputation and trading practices, which gave the Appellant a significantly higher trade than its competitors. I recognised that the actual trade of the occupier was not necessarily the trade of the hypothetical tenant for rating purposes.

20. 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. Examples were provided by Mr Turton to show this could be as much as 60% or more and he referred me to schedules of settlements in the 2005 and 2010 lists to illustrate that such high discounts were not exceptional. The parties disagreed the basis of discounts to the FMT at the appeal property.

21. Mr Turton provided a table showing the actual trade for the appeal property for four financial years, ending in July of each year. The table showed a breakdown of the wet and machine trade and dry trade for the years 2006, 2007, 2008 and 2009. He suggested a starting point of £1,100,000 for wet trade and £250,000 for dry. Mr Boatwright considered £1,130,000 should be used for wet trade and agreed £250,000 was fair for dry. Both parties acknowledged the actual trade would be higher than the FMT achievable by the hypothetical tenant but could not agree on the reduction to be applied.

22. Six other public houses were referred to in the locality by Mr Turton, but I noted that his examples were all smaller than the appeal property, some significantly so, and all but one had no dry trade. I did not therefore find these particularly useful comparisons. The one example where both wet and dry trade was included in the valuation was the ‘Head of Steam’ public house, located at the railway station. This property is an attractive, historic stone-built building which benefits from considerable passing trade at the station and also forms part of the ‘Rail Ale Trail’, which provides unique trading opportunities. I therefore did not find this example particularly useful as a comparison to the appeal property.

23. In addition to the comparable pubs presented by Mr Turton, Mr Boatwright included details of two further properties. ‘Yates’, King Street was assessed on both wet and dry trade and is operated by a large chain. It was assessed at an RV of £115,000, which reflected its location close to the Kingsgate Shopping Centre and the outside courtyard. He also referred to ‘Revolutions’, Cross Church Street, another chain pub offering both food and drink. This property is located in a more retail location away from the main drinking and dining circuits. It was valued at £120,000RV. Mr Boatwright felt these chain operated pubs should be considered as they were more comparable to the appeal property in nature than the examples provided by Mr Turton.

24. The parties were very close on their position regarding the BIDs although there was some disagreement on whether the appeal property was in a secondary or tertiary location. I accepted Mr Turton’s argument that the ‘main circuit’ surrounding Zetland Street and King Street provided a better location but noted the appeal property’s proximity to the railway station and did not consider its position to be particularly poor. I also noted Mr Boatwright’s submission that on inspection he found the lower ground floor of the subject property to be well lit and fully glazed, so the additional 70m^2 of customer space there should not be disregarded.

25. After considering the other public houses in the locality provided by the parties, I concluded that none were truly comparable to the appeal property in size, offer, character and location. I was not provided with the sizes for Yates or Revolution, but I accepted that these pubs were indicative that established chain public houses would be more valuable than smaller independent examples. However, I also found these examples to be in a better location, with outside space in the case of Yates. I

found the Crown Hotel, measuring 255.48m^2, to be the closest in size to the appeal property and was located in the same area, near the railway station. I also acknowledged that this establishment had no dry trade in the assessment and therefore the appeal property's value would probably be higher to reflect the food offer and larger customer area. The RV of the Crown Hotel was £60,500. The chain pubs, Yates and Revolution, were valued at £115,000 and £120,000 respectively, which reflects their more desirable location. In conclusion I found the size and location of the Crown Hotel to be the most useful comparison, although I noted its construction and character was very different.

26. Mr Turton's valuation for the appeal property applied a 55% adjustment on the wet trade for overtrading and 60% on the dry trade. Mr Boatwright had applied 37% to the wet trade and 50% to the dry. After considering the evidence presented, I was not persuaded that either of these were correct and found the FMT for the appeal property lay somewhere between the two valuations. I therefore found the correct RV for the appeal property to be £78,000 and the appeal was allowed in part. My assessment was as follows –

Actual trade	Adjustment for overtrading
£1,100,000 (wet and machines)	45%
£250,000 (dry)	55%

Income Stream	FMT (£)	Bid %	RV (£)
Wet and Machines	£605,000	11.7%	70,785
Dry	£112,500	6.5%	7,313
Total			78,098
		Say rateable value	£78,000

Order

27. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for Cherry Tree, John William Street, Huddersfield, HD1 1BG in the 2010 Rating List to £78,000 effective from 1 April 2010.

The Valuation Officer must comply with this Order within two weeks of its making.

Date: 11 May 2021

Appeal number: 471525248569/539N10