THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2010 rating list appeal; Public House and Premises; Approved guide; Supplementary guidance; Fair maintainable trade; Adjustment for over-trading; level of bid to be applied; Appeal allowed.

RE: The Stamford Post, 7 Sheepmarket, Stamford, Lincs, PE9 2QZ

APPEAL NUMBER: 253025435424/538N10

BETWEEN:	J D Wetherspoon PLC	Appellant
	And	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Ms A Fielder (Senior Member)

HEARING: Remote Hearing on Thursday 17 December 2020

APPEARANCES: Mr T Root of BNP Paribas Real Estate, on behalf of the appellant as advocate and expert witness
Mr C Taylor, on behalf of the respondent as advocate and expert witness

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Summary of decisions

1. The appeal was allowed. The assessment of the subject property was determined at £51,000 rateable value (RV) with effect from 27 May 2014.

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 the 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. In accordance with the Tribunal's business arrangements, I am authorised to consider and determine this appeal sitting alone.

5. The appeal before the panel resulted from a proposal submitted on behalf of the appellant by BNP Paribas on 31 March 2015. The proposal disputed the assessment entered into the Rating list for The Stamford Post, 7 Sheepmarket, Stamford, Lincs, PE9 2QZ (the appeal property), of £73,500 RV with effect from 27 May 2014 (the material day) and sought a reduction to £1 RV.

6. 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 declared that he was not instructed under any success related 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.

7. The appeal hereditament is a public house and premises located in the old 'Stamford Mercury' building, an old industrial building that the appellant had refurbished to a good standard. Works to convert the property started in February 2014 and the property commenced trading on 27 May 2014. The trade area is at ground floor level and is an open plan space with natural light provided by a large roof light. The kitchen and cellar are also on the ground floor, with the first floor accommodating the customer WC's, staff room and manager's office. The property is on the west side of the town centre, set back from the street frontage and within a cluster of public houses. The front entrance is through its own courtyard, which is also the outdoor seating area; there is also rear access via Bath Row.

8. The appellant acquired the lease for the property for a 30-year term, commencing on the 9 January 2014 at a rent of £56,000 per annum for the first five years, with a break clause at year 15.

9. This decision document is not intended to be a verbatim report of the proceedings, nor does it reproduce the parties' evidence in full. The absence in this decision of a reference to any statement or item of evidence should not be construed as it having been overlooked.

Issues

10. The disputes before the panel related to the fair maintainable trade (FMT) to be adopted in the appeal property's assessment, whether the property should be in Band 1 or Band 2 and the level of bid to be applied.

Evidence and submissions

11. Bundles of evidence were submitted by both parties, which included their respective cases; a copy of the proposal; photographs and details of the appeal property; photographs and details of comparable properties; location plans; floor plans. A copy of the Rating List 2010- Valuation of Public Houses – Approved Guide and the Supplementary Guidance – RAT IA 110111 Approach to High Trading and Potentially Over-trading Public Houses was also included. Mr Root

submitted schedules to show that properties had been given allowances to reflect overtrading in excess of the 50% quoted in the Supplementary Guide.

12. Mr Root explained that the appeal property was new in 2014, therefore no trade information was available from around the AVD. He had taken the first full year trade to July 2015 as a starting point, toned this back to the AVD and come to a FMT of £600,000 for the wet and amusement with prizes (AWP) income stream and £580,000 for the dry income stream.

13. Mr Root had viewed this toned back trade with caution; given the trade upon which it was based was achieved some seven years after the AVD, in a different economic climate and could reflect a potential 'honeymoon' period as customers tried out a new venue. He had taken a 'stand back and look' approach to check whether this FMT reflected the trade on the property or if it was representative of the business model carried out by the operator, stressing it was the property to be valued and not the occupier. In accordance with paragraph 7.1 of the Supplementary Guidance, comparisons had been made between the appeal property's estimated FMT and that of comparable public houses in the vicinity. Full details of these comparable properties were submitted.

14. Having regard to the trade of the comparable properties, but in particular that of The Cosy Club and The London Inn, Mr Root submitted a FMT for the appeal property's wet/AWP stream of £300,000 and £230,000 for the dry stream. When compared to the original toned back trade, this reflected a 50% discount on the wet/AWP trade and 60% discount on the dry trade. The advice in the Supplementary Guidance indicated that for a Type B property the maximum allowance on both wet/AWP trade and dry trade was 50%. He provided schedules of settlements reached for the 2005 and 2010 Rating lists, which confirmed that percentages above the maximum levels had been agreed, where appropriate.

15. In respect of the level of the bid, the approved guide set a range of values and factors to be considered when determining the actual percentage to be adopted. Mr Root believed the appeal property fell within the Provincial Band 2 for wet trade. Having regard to the layout and the levels shown by the comparable properties, he had adopted 60% of the Band. There was no dispute over Band A for the dry trade and he had also adopted 60% of the Band.

16. Having regard to his evidence, Mr Root's proposed a revised assessment of £51,000 RV, as follows:

Wet & AWP	£300,000 @	10.40%	=	£31,200
Dry trade	£230,000 @	8.70%	=	£20,010

				£51,210 RV
			Say	£51,000 RV

17. Mr Taylor agreed that the starting point in this case was the appeal property's first full year trading figures, toned back to the AVD. Mr Taylor accepted that the subject premises provided a demonstrably different offer to others in the locality and fell within the criteria of a High Performing Public House as set out within the Supplementary Guidance.

18. Mr Taylor considered that the locality of the appeal property fell within Type B, being a secondary licensed trade area and in accordance with the guidance, it was

necessary to review the *'performances exhibited by the comparable houses in the vicinity'* and that '*adjustment can be as high as 50% on both wet and dry turnovers, but these are expected to be exceptional cases. Intermediate positions between no adjustment at all and these figures will need to be judged based on the particular circumstances encountered'*. He therefore argued that adjustments of around 50% required full justification from comparable properties in the locality and the characteristics of the subject property itself.

19. Mr Taylor had looked at the local competition at and around the AVD and provided 2010 rating list valuations and photographs for comparable properties in the locality; some of which were independent operators who were also performing at a high level. In consideration of these comparable properties, he could not accept the high-performance discounts applied by Mr Root and contended discounts of 20% to the wet/AWP trade and 40% to the food trade to be more reasonable. These discounts reduced the appeal property's toned back trade to £480,000 for the wet/AWP income stream and £348,000 for the dry stream.

20. Mr Taylor remained unconvinced that the evidence of the 2005 rating list assessments was particularly useful in this case. He argued that the appeal property's 2010 rating list assessment should be determined by reference to the assessments of comparable properties within the same list, as these would reflect the correct economic and physical circumstances.

21. Whilst recognising that the evidence from the local competition would suggest that Band 2 should be adopted for the wet/AWP trade, Mr Taylor did not accept that this was correct for the subject property, as he could see no reason why a high performing Wetherspoon house would be in Band 2. He argued Band 1 was more appropriate, and had adopted 0.25 of the range, effectively 11.40%.

22. In relation to the food trade, Mr Taylor agreed with Mr Root that Band A was applicable. He considered the appeal property would be well laid out for dining purposes and would have a better kitchen than any local competition. He had adopted 0.75 of the range, which gave 9.93%.

23. Having regard to the above, Mr Taylor considered that the appeal property was underassessed and proposed a revised valuation of £89,000 RV, made up as follows:

Wet & AWP	£480,000 @	11.40%	=	£54,720
Dry trade	£348,000 @	9.93%	=	£34,556

				£89,276 RV
			Say	£89,000 RV

Decision and reasons

24. In considering the appeal, I note that the assessment proposed by Mr Taylor is significantly in excess of the figure appearing in the rating list. The effective date for any increase in the assessment would, in normal circumstances, be the date of my decision. Given that the 2010 rating list is now closed and I am unable to give effect to any increase, if I find in favour of the Valuation Officer, the appeal will be dismissed.

25. Both parties have submitted valuations for the appeal property based on The Rating 2010 – Valuation of Public Houses – Approved Guide and the

Supplementary Guidance RAT IA 110111 Approach to High trading & Potentially Over-Trading Public Houses. In effect, this requires consideration to be given to the FMT achievable at the AVD by a reasonably competent operator and the application of bids to this FMT to arrive at a rental value. Both parties had submitted valuations on this basis, and it has been accepted that the appeal property was a high performing public house; given that both had applied adjustments to reach their estimated FMT, albeit at different levels.

26. I accept Mr Root's comments in relation to the reliability of the toned back trade. Whilst it can be viewed as a starting point, the receipts on which it is based were achieved some seven years after the AVD, within a different economic climate and more likely than not, reflective of a 'honeymoon' period; given the appeal property was a new venture. In consideration of the level of trade a reasonably competent operator could achieve at the AVD, I had regard to the details of the comparable properties provided by the parties.

27. In brief, Mr Root and Mr Taylor had both referred to the following:

a) The London Inn, £26,750 RV. A property close to the appeal property that had been refurbished to a high standard in 2011.
b) The Cosy Club assessed at £43,000 RV. A larger property that was new in November 2011 and situated close to the appeal property.
c) Golden Fleece, assessed at £25,750 RV. A traditional Grade II listed stone public house that was refurbished in 2012.
d) The Millstone a traditional 17th Century public house with a large beer garden at rear. A wet led pub, similar to the Golden Fleece with limited food. Its assessment had been agreed at £27,000 RV following the opening of The Cosy Club and again at £18,500 RV to reflect the opening of the Stamford Post.
e) Paten & Co. (also known as the Periwig) a town centre pub a short distance from the Crown Hotel and in an area with a concentration of licensed premises. The licensed area was over three floors, with a separate bar on the first floor, with live music sessions and Live Sports. A dance floor and bar were on the top floor and the property had late night trading.
f) The Crown Hotel, a large hotel and premises within the town centre. Its assessment had been agreed at £152,000 RV following the opening of The Cosy Club.

28. In addition, Mr Root had referred to:

a) The Otters Packet, £20,500 RV, a traditional town centre public house akin to both the Golden Fleece and The Millstone.

29. Mr Taylor had also referred to the details of the following:

a) Lord Burghley, assessed at £66,000 RV.
b) Toby Norris assessed at £48,000 RV.

30. After considering the evidence of the comparable properties, I find that the Lord Burghley and the Toby Norris are some distance from the appeal property; therefore, less weight was given to these properties. In my view, the Crown Hotel was within a different market to the appeal property and it's 26 bedrooms, two restaurants, bar, meeting rooms, function rooms and courtyard garden would

attract and increase both its wet and dry trade. Paten & Co (Periwig), was also of a different nature; given it had a late night offer not available at the appeal property and the Golden Fleece, The Millstone and The Otters Packet were wet led pubs, unlike the appeal property.

31. On balance, having regard to all of the comparable properties, I accept Mr Root's contention that the best evidence in the subject case is that provided by The Cosy Club and The London Inn; both of these located close to the appeal property and both had a wet and dry offer. Mr Taylor suggested that the Valuation Officer had estimated the FMT of these properties; given the lack of trade information around the AVD. I find no evidence to demonstrate that the trade quoted is excessive and the evidence shows that no appeals have been made against these assessments. If the assessments were felt to be low, no doubt the Valuation Officer would have taken steps to remedy this.

32. The London Inn, whilst being smaller than the appeal property was in a good prominent position and had been refurbished to a high standard in 2011. Its assessment was based on FMT of £230,000 for the wet trade and £100,000 for the dry trade. The Cosy Club, was 11% larger than the appeal property and a new public house in 2011. Whilst it contained a function room at second floor level, the majority of the trading area was on a single floor. The property had no outside area and its visibility was on a par with that of the appeal property; given the appeal property was set back from street frontage and this comparable property was located via a passageway. The assessment of The Cosy Club was based on FMT of £230,000 for the wet stream and £250,000 for the dry. I consider that the FMT adopted for these two comparable properties does not demonstrate that Mr Root's proposed FMT for the appeal property of £300,000 for the wet/AWP income stream and £230,000 for the dry income stream is unreasonable.

33. The revised FMT above reflects a 50% reduction on the toned back wet/AWP trade and a 60% reduction on the dry. The Supplementary Guidance sets out that for a Type B property the maximum adjustments are 50% on wet/AWP and 50% on dry trade. However, I consider that the guidance is just that, and paragraph 7.1 states that '*Any adjustment of the actual trade needs to be justified relative to the trading level and profile of other public houses in the vicinity.'* As shown by the examples submitted in evidence, higher percentages have been agreed where appropriate, to ensure a property is valued in line with the available evidence.

34. A dispute existed between the parties over the Band in which the property should fall to reflect its trading locality, the physical characteristics of the house and the style of trade which is maintainable. Mr Taylor had argued for Band 1 and Mr Root for Band 2. After considering the criteria in the guide, I find that the property should be placed in Band 2. In reaching this decision, I note that all of the comparable properties have been placed in Band 2, as had the appeal property prior to Mr Taylor's revised increased valuation. The definition of a Band 1 property is one situated in primary licensed trade area and of modern design or refitted to a modern standard. The London Inn and The Cosy Club are in the same locality as the appeal property, were redeveloped/refurbished in 2011 to a comparable standard and were in Band 2. I can see no reason why the appeal property should not be within the same Band. In relation to the dry trade, both parties had accepted that Band A was applicable and therefore, I did not consider the merits of this Band further.

35. Having regard to the evidence and the provisions of the Approved Guide and Supplementary Guidance, I accept that the FMT proposed by Mr Root is reasonable and that Band 2 is correct for the wet/AWP trade and Band A for the dry trade. I can find no reason to change the percentages within the ranges applied to the FMT by Mr Root to come to a rental value for the appeal property; I therefore accept his proposed valuation in its entirety and consequently determine the following:

Wet & AWP	£300,000 @	10.40% =	£31,200
Dry trade	£230,000 @	8.70% =	£20,010

			£51,210 RV
		Say	£51,000 RV

Order

36. 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 £51,000 RV with effect from 27 May 2014.

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

Date: 11 January 2021

Appeal number: 253025435424/538N10