THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Fair Maintainable Trade used based upon the previous operator's trade figures; comparable hereditaments; Watney Mann Ltd v Langley (VO) [QB 1963]; *appeal allowed in part.*

RE: The California Country Inn, California Cross, Modbury PL21 0SG

APPEAL NUMBER: CHG100040472

BETWEEN: Vision Flying Services Ltd — Appellant

and

Mr D Virk (Valuation Officer) — Respondent

BEFORE: Mr A V Clark (Vice President)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 3 on 8 March 2021

ATTENDED: Mr M Hayes, Director of the Appellant Company
Mr A Murdoch Valuation Officer's Representative

Summary of decision

1. The appeal is allowed in part, as the existing valuation is not reasonable, and the entry is to be reduced to £32,250 Rateable Value (RV) with effect from 1 April 2017.

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

5. In accordance with the normal procedure, the Appellant's representative presented his case first followed by the Respondent's representative.

6. This was a 2017 compiled Rating List appeal. Therefore, the material day was 1 April 2017. The appeal property was described as public house and premises and had been assessed at £37,500 RV with effect from 1 April 2017. A check had been completed on 6 June 2018 and a Challenge submitted on 1 August 2018. The Challenge was completed on 22 October 2020 with no change to the assessment. An appeal against the final Challenge Case Decision Notice was received by the Tribunal on 2 December 2020.

7. The appeal property was bought by the Appellant (Vision Flying Services Limited) on 27 February 2017 and was located in Modbury, Ivybridge, Devon. It was a detached property with a car park to the left hand side, which also housed a beer garden. It was operated as a free house.

8. It was situated within a rural area with only circa 15 residential dwellings nearby. However, there was a large campsite directly opposite, which produced a lot of trade during the summer months.

9. Mr Hayes, the Director of Vision Flying Services Limited, had requested that the appeal property's rating assessment be reduced to £27,000 RV with effect from 1 April 2017. However, Mr Murdoch requested that I confirm the assessment at £37,500 RV, again with effect from 1 April 2017.

10. In accordance with the Tribunal’s Business Arrangements, I have been authorised to consider and determine this appeal sitting alone.

Preliminary issue:

11. I noted that Mr Murdoch had not provided details of which Category the subject property had been classed under, he having adopted the Approved Guide for the Valuation of Public Houses 2017. He had provided the percentages used but had not explained how he had arrived at those percentages. I also noted that Mr Murdoch had not referred to the Approved Guide for the Valuation of Public Houses 2017 within the Challenge Case Decision Notice. As such, Mr Hayes had not been made fully aware of how the valuation in arriving at the rateable value had been undertaken. He was also not aware that the Valuation Office Agency referred to an approved guide when dealing with the Fair Maintainable Trade (FMT) of any public house for rating purposes.

12. Therefore, I asked Mr Murdoch to provide the details of the Category used, as well as an explanation as to how the percentages used were arrived at when considering the subject property.

13. Mr Murdoch stated he had placed the appeal property within Category 2 (Destination Houses) and he had adopted the percentages of 6.8% for wet trade and 8.5% for dry trade using scales set out in the Approved Guide for the Valuation of Public Houses 2017.

14. I offered Mr Hayes a short adjournment so that he could view and consider the Approved Guide for the Valuation of Public Houses 2017. However, he declined the offer, as he stated he was happy to proceed with the hearing given the answers provided by Mr Murdoch when I had questioned him on the matter.

Issues

15. The issue before me concerned the FMT figure that was used when calculating the RV for the subject property and if the categories and percentages adopted were appropriate and reasonable.

16. The starting point in determining the FMT is the consideration of the receipts of the premises in the year ending closest to the Antecedent Valuation Date (AVD) and in the immediately preceding years, where such information is available. The FMT is split between liquor (wet) receipts and non-liquor (dry) receipts such as food, accommodation or other income. However, the appeal property only had wet and dry trade.

Evidence and submissions

17. Mr Hayes submitted a bundle of evidence, which included: details of the appeal property; the issues in dispute; details of comparable properties; details of his reasons for the appeal and correspondence between the parties and the turnover figures for the three years ending 31 March 2020.

18. Mr Hayes had stated that it was unfair that Mr Murdoch had used the trade figures from the previous operator. He stated that he only opened the pub a few days per week, not full time like the previous operator. Therefore, he was not enjoying the same turnover and had provided his profit and loss income since taking ownership of the subject property in support of his statement. He requested that I consider the actual trade figures that he had provided and reduce the assessment of the subject property to £27,000 RV.

19. Mr Murdoch submitted a bundle of evidence which included: his grounds for resisting the appeal; a valuation for the appeal property; the trade figures enjoyed by the previous operator for three years prior to the AVD of 1 April 2015; details he sought to rely upon; extracts from the legislation and the case of *Watney Mann Ltd v Langley (VO)* [QB 1963].

20. In consideration of the trade information and his adopted FMT, Mr Murdoch considered that £37,500 RV, with effect from 1 April 2017 was reasonable.

Decision and reasons

21. In arriving at my decision, I am governed by rating legislation laid down by Parliament. The basis of valuation for non-domestic rating is set out in schedule 6 to the Local Government Finance Act 1988 as amended by section 1(2) of the Rating (Valuation) Act 1999. Paragraph 2(1) of schedule 6 provides that the rateable value of a non-domestic hereditament "shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year" on three stated assumptions.

22. As the appeal property is a public house and premises, it is valued according to trade, rather than any actual rental evidence, of which there is generally none, by reference to the Approved Guide, which has been agreed with the British Beer & Pub Association together with four other trade bodies.

23. Mr Hayes had provided me with a copy of his trade figures for the years ending 31 March 2018 to 2020 in support of his case. However, I am aware that when the Valuation Office Agency is considering the FMT for a new Rating List, it has to consider the actual figures three years prior to the AVD of 1 April 2015. Therefore, I could not take into account the trade figures that Mr Hayes had provided me with regards to recent trade. I have to look at a "reasonably efficient operator" (REO) would be able to trade at up to the AVD, the best evidence usually being the actual trade figures if the actual operator is trading in an efficient manner.

24. Mr Hayes stated that the high FMT figures provided by the previous operator, were due to the fact that the food provided was high quality restaurant food, but since Vision Flying Services Ltd had taken ownership, the food that was provided was more akin to pub grub rather than restaurant food.

25. Mr Hayes referred to the Church Inn at Rattery, which he stated was similar in size and trade. However, the assessment of the Church Inn at Rattery was only £16,500 RV. I was informed that its assessment had been increased to £37,500 RV, due to the creation of a large dining room extension and the extra income that this would generate. I did note, however, that before the extension, the FMT was much lower than that of the appeal property.

26. Mr Murdoch had undertaken the valuation of the appeal property in accordance with the Approved Guide for the 2017 List. He stated that the FMT adopted represented the annual trade passing at the AVD of 1 April 2015, having regard to the physical nature of the property on the assumptions that the trade would be carried out by a REO.

27. Mr Murdoch had informed me that the appeal property had not had any physical alterations made, something which Mr Hayes confirmed, and the fact that Mr Hayes only had limited opening hours was not something he could take into account in valuing the property. I am very much aware that it is the property that is being valued, vacant and to let to a REO. This does not to reflect any particular operator who may choose to operate different hours or have a different 'modus operandi'.

28. Mr Murdoch stated that the case law provided by *Watney Mann Ltd v Langley (VO)* was relevant, as a starting point when looking at trade figures. Three years of trade figures would have been considered and then a stand back approach adopted. The Valuation Office Agency would also take into consideration location, style of property and competition in the immediate area. Mr Murdoch stated he had considered all of these factors with regards to the appeal property.

29. The FMT he had adopted and his valuation was:

	FMT (£)	%	Value (£)
Wet (Liquor)	160,000	6.80	10,880
Dry (Food)	315,000	8.50	26,775
		Total	37,655 (Say £37,500 RV)

30. I referred to Sections 3.4 and 4.3 of the Approved Guide for the Valuation of Public Houses 2017, which provides guidance on the choice of percentage and how amenities, incentives, marketing and other factors are considered when selecting the percentage to be applied. Mr Murdoch had taken the FMT for wet sales and adopted 6.8%. For food sales he had adopted 8.5% of the FMT. This had produced some £37,655 in total which he rounded down to give a rateable value of £37,500.

31. In support of his contention, Mr Murdoch referred to the Church Inn at Churchstow, which was assessed at £29,400 RV, and supported by trade figures which had been provided for the three years prior to AVD of 1 April 2015. Mr Murdoch also discussed the Ship Inn at Ugborough, which I noted was closer in location at circa four miles from the California Inn and had an assessment of £38,250 RV, which again had been supported by trade figures three years prior to the AVD of 1 April 2015. However, these had been at different percentages of the respective FMT than that of the California Inn.

32. Mr Murdoch informed me that due to the location of the California Inn, he considered it to be correctly placed in Category Two, which related to Destination Houses. Even though I considered the hereditament to be in a rural area, it could not be classed as a Category Three, (Community & Rural Houses), as it was not located within a community as such. Its trade generally coming from customers who seek it out.

33. I am of the view that a consistent approach should be taken when valuing similar properties and that due regard should be had to the Approved Public House Guide 2017. I accept that the percentages and bands considered should reflect many factors including location and type of food offered as set out more fully within the Guide. I considered that Mr Murdoch had not applied appropriate percentages to the appeal property and that the FMT figure with regards to the food trade was slightly too high given the actual figures just before the AVD.

34. Considering the evidence provided to me and using valuer judgment, I hold the view that the trade figures provided by the previous operator for food and the figure adopted by Mr Murdoch should be taken as £310,000. I also hold the view that the percentages adopted with regards to both the wet and food trade should be lowered to 5.5% for the wet trade and 7.6% for the dry trade.

35. This reflects that the California Inn falls with Category 2 for wet trade and Band B for food Sale. The actual percentage that I have adopted is again based upon valuer judgment which reflects the operating style of the pub together with the operating costs required to maintain the particular type of trade being carried out and its profitability.

36. Therefore, I have allowed the appeal in part, and have determined the revised rateable value as follows:

	FMT (£)	%	Value (£)
Wet (Liquor)	160,000	5.50	8,880
Dry (Food)	310,000	7.60	23,560
		Total	32,360 (Say £32,250 RV)

Order

37. As a consequence of the above, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £32,250 RV with effect from 1 April 2017 within two weeks of the date of this order.

Refund of appeal fees

38. The Appellant is entitled to a refund of the appeal fees in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. These will be refunded as soon as possible.

Date: 17 March 2021

Appeal number: CHG100040472