THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; public house and premises; mode and category of occupation; fair maintainable trade: Rating Lists 2017 Valuation of Public Houses Approved Guide; appeal allowed in part – panel determined that the correct mode and category of occupation for the appeal property was a public house and premises but the evidence showed that the existing valuation was not reasonable.

Re: Raddle Inn, Quarry Bank, Hollington, Stoke-on-Trent ST10 4HQ

APPEAL NUMBER: CHG100043476

BETWEEN:	Mr P Wilkinson	Appellant
	and	
	Mr D Virk	Respondent
	(Valuation Officer)	

PANEL: Mr J Rogers (Senior Member) and Mr S Kandola

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING ON: Wednesday 21 October 2020

PARTIES PRESENT: Mr P Wilkinson (Appellant)

Mr A Wilkinson (Respondent's representative)

Summary of decision

1. Appeal allowed in part as the existing valuation is not reasonable and the entry is reduced to £39,000 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Raddle Inn, Quarry Bank, Hollington, Stoke-on-Trent ST10 4HQ, which was originally entered in the 2017 Rating List as "public house and premises" at rateable value £65,000, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 21 August 2018. The appeal to this Tribunal was made on 10 February 2020, following the VO's Decision Notice of 30 October 2019, in respect of the appeal property (hereditament). Following the check and challenge process, the appeal property's assessment had been reduced by the VO to £44,000 RV, with effect from 1 April 2017.

4. This is a compiled list appeal so the material day is 1 April 2017.

5. The appeal hereditament was currently described in the rating list as a public house and premises. The premises comprised a bar, dining area, open conservatory and beer garden. It also comprised several overnight lodges. The property was remotely located down a single-track country lane.

6. 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.

7. 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.

8. With the agreement of the parties and to assist the appellant, the panel varied Practice Statement 8 (the Model Hearing Procedure) and invited the respondent's representative to present his evidence first.

9. As part of the appeal submission, the appellant, in contravention of Regulation 13C of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) (as amended) Regulations 2009 had omitted the following information and evidence that had been exchanged at the Challenge stage:

   i) an email dated 25 September 2019, from the appellant detailing a further comparable property, Cloves Indian Cuisine Restaurant, together with the appellant's further representations; and
   ii) an email dated 27 October 2019, detailing the VO's further response to the Challenge, the 2017 Valuation of Public Houses Approved Guide, an extract from the appeal property's website and google earth extracts highlighting the appeal property.

10. Having realised the omission, the VO forwarded the documentation to the Tribunal Office on 13 October 2020. The VO also explained to the appellant that he should send any objections regarding the inclusion of this evidence to the Tribunal Office; no objections were received.

11. Prior to the tribunal hearing the panel had been provided access to a bundle of evidence, which comprised all the documentation forwarded by the appellant when the appeal was lodged, namely: a copy of the appellant's Challenge, the Challenge Decision, Challenge evidence from the proposer (including a copy of the evidence pack for the 2010 Rating List appeal on the appeal property, together with the 2017 Rating List valuations for the appeal property and his comparable properties), the VO's evidence (including the VO's initial

response to the Challenge, an extract from the appeal property's and the appellant's comparable properties' websites, a schedule of comparable properties detailing trade spilt and various previous Valuation Tribunal decisions).

12. Prior to the tribunal hearing, the clerk had also emailed the panel with a copy of the email exchanges that had been omitted from the original appeal submission.

13. During the course of the hearing, the Chairman asked for a short adjournment. He was concerned that the panel and the parties were not all looking at the same documentation. In open hearing, the Chairman asked the appellant if he wanted an adjournment; the Chairman was concerned that the appellant would not get a fair hearing due to the panel having sight of a different paginated bundle to the parties. The clerk assured both the panel and the parties that everyone had sight of the same documents, it was just that the Tribunal Office had amalgamated the appeal documents into a paginated PDF document for the panel's use. Having heard the explanation, the appellant was happy that everyone had all necessary documents and he wished to proceed with the hearing.

14. 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 when 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

15. The issue to be determined was the correct method of valuation to be applied to the appeal property's assessment. The VO was defending the current entry, which valued the appeal property as a public house and premises having regard to the fair maintainable trade (FMT). In contrast, the appellant contended that the appeal property should be valued as a restaurant and premises on the overall basis.

Evidence and submissions

16. Within his Challenge documentation and his response to the VO, the appellant had stated the following:

    i) Both the primary description and the method of valuation applied to the appeal property were incorrect.

    ii) The Valuation Tribunal had heard an appeal on the 2010 Rating List for the appeal property, when it had been decided that the description of the appeal property should be changed from public house and premises to restaurant and premises. This meant that the property's assessment had been amended to being valued on an overall basis at £70/m^2 in line with comparable properties, namely the Alton Bridge Hotel and Thornbury Hall Rasoi.

    iii) He disagreed with the VO's statement that the previous Valuation Tribunal did not change the mode or category of occupation of the appeal property. He referred to the following paragraph from the previous tribunal's decision:

    > 'The panel came to the conclusion that the appellant had submitted a persuasive case that the best comparable was the Alton Bridge Hotel, which is described as a restaurant and premises and is assessed on a price per m^2 basis. The panel saw no reason not to adopt that description and, most

importantly, valuation approach in the assessment of the appeal property in preference to a profit-based valuation contended by the respondent.'

iv) When the 2010 Rating List appeal was heard, the previous tribunal panel had placed weight on Alton Bridge Hotel, which was described and assessed as a restaurant and premises. The VO had advised that the 2017 assessment for this property was currently under review. However, as it currently stood, it was valued as a restaurant and premises.

v) He disputed that the properties detailed within the VO's schedule of comparable properties were relevant in this appeal as they were public houses and not restaurants.

vi) He had referred to Thornbury Hall Rasoi for location purposes only and not the character and history of the building.

vii) He did not accept the VO's revised assessment of £44,000 RV. His proposed amended assessment valued the property as a restaurant and premises at £55/m^2, which equated to a valuation of £20,394, say £20,300 RV. He had based this valuation on the assessment of Cloves Indian Restaurant, which was a restaurant and premises that had previously been described and valued as a public house and premises. As a restaurant, it was now valued on the overall basis. In the 2010 Rating List this property had been valued at £60/m^2, which had been reduced to £55/m^2 in the 2017 Rating List. He considered that the Cloves Indian Restaurant was a good comparison to the appeal property, being a destination restaurant located in the countryside.

17. Within the Initial response to the Challenge, further response and the Challenge Decision, the VO stated the following:

i) Although the previous Valuation Tribunal decision altered the description of the appeal property to restaurant and premises, it did not change the mode and category of the occupation. The pervious decision on the appeal property referred to the premises as 'ceased to be *just* a public house' (para 20) and had changed the description to a restaurant and premises. However, the VO was of the view that the wider mode and category of occupation of public house/pub restaurant had not changed.

ii) The 2017 Valuation of Public Houses Approved Guide was referred to, which allowed for public houses to be valued on a price per m^2; however, this was generally for open plan units in prime retail locations.

iii) Having referred to the extract from the appeal property's website, it was the VO's view, that the appeal property was a country inn and restaurant that should be valued in the 2017 Rating List based on its FMT. This was in line with the list of comparable properties detailed within his schedule that were located in the Stoke area with a similar wet/dry trade split.

iv) Regardless of the current manner of operation, the VO was required to value the appeal property 'vacant and to let'. Vacant and to let, the subject was a public house and restaurant and therefore fell to be valued on the FMT basis. Following the guidance available in the Approved Guide 2017, the VO had valued the appeal property with wet trade at category 2 (destination house) and food trade under band B.

v) The VO's had provided previous Valuation Tribunal decisions which had determined how numerous restaurants and public houses should be valued.

vi) It appeared that the Alton Bridge Hotel had been extensively refurbished in recent years and its assessment was currently under review.

vii) The VO did not consider the Thornbury Hall Rasoi, to be a good comparison to the appeal property. This property was a converted house that operated as a restaurant specialising in Pakistani cuisine.

viii) He accepted that many country establishments were food driven; however, that did not mean that they were no longer public houses or should be valued as restaurants.

ix) He referred to the appellant's comparable, Cloves Indian Cuisine, which had been converted from a public house but the manner of operation was different to the appeal property. The opening hours were 5 pm to 10:30 pm and drinks would not be served if the customers were not also eating on the premises.

x) As a comparison to Cloves Indian Cuisine, the VO referred to the Admiral Duncan Inn, where the lounge area provided an Indian restaurant but the bar area was run as a traditional public house. This property was valued in accordance with its FMT. The 2017 assessment placed on the property had been subject to a Challenge but the valuation approach had not been altered.

xi) The appeal property had planning use for A4 – drinking establishment and not A3 – restaurants and cafes. The manner of operation and the opening hours at the appeal property were that of a public house. The appeal property had retained the characteristics of a public house. Furthermore, there was the provision of a bouncy castle and play area, which appeared out of keeping with a restaurant but was more in line with a beer garden.

xii) To summarise, having reviewed the operation of the subject and comparable properties in the area, the 2017 Approved Guide and previous VT decisions, it was the VO's view that the appeal property was correctly valued based on the FMT. However, the original valuation of £65,000 RV was found to be unreasonable and had been amended to £44,000 RV.

Decision and reasons

18. The term 'rateable value' is 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 2017 Rating List, the antecedent valuation date (AVD), when one was required to have regard to rental levels was 1 April 2015. There was no rent passing on the appeal property.

19. In this appeal, the panel had to determine the mode and category of occupation of the appeal property as at the material date of 1 April 2017. In the 2017 Rating List, the appeal property was currently valued as a public house and premises having regard to its FMT. The original assessment of £65,000 RV had been reduced to £44,000 RV, with effect from 1 April 2017. The VO was defending the current valuation of the property as a public house and premises. The appellant disputed the mode and category of occupation being categorised as a public house and premises. The appellant contended that the correct mode and category of occupation for the appeal property was that of a restaurant and premises and as such it should be valued on the overall basis. The appellant's amended valuation included an overall value of £55/m^2, which equated to an assessment of £20,300 RV.

20. In support of his case, the appellant had referred to a previous Valuation Tribunal decision for the appeal property in respect of its 2010 Rating List assessment. Whilst both parties had referred to this decision, neither had provided a copy. Therefore, the clerk emailed the panel a copy of the decision; neither party raised an objection to this.

21. The panel acknowledged that the previous panel had allowed the appeal and determined that the appeal property's mode and category of occupation was that of a restaurant and premises. As such, the valuation method was amended from FMT to the overall basis. Having read that decision in full, it was noted that the previous panel had reached its conclusion having regard to the fact that it had become less viable to operate the appeal property as a public house, the appellant had added accommodation to the premises and increased the food provision. The previous panel had also placed weight on the appellant's comparable property, Alton Bridge Hotel, which was valued on an overall basis.

22. However, the panel in the current appeal was aware that unlike decisions from the upper tribunals, decisions of previous Valuation Tribunals were not binding on it. Furthermore, having regard that previous decision, the panel did not find the reasonings for the decision sufficiently compelling to demonstrate that the mode and category of occupation at the appeal property had changed from a public house and premises to a restaurant and premises.

23. The panel also wished to emphasise that it was dealing with the 2017 Rating List, as opposed to the former appeal that had determined the 2010 Rating List assessment. As such, the panel was entitled to consider the applicable valuation approach afresh and was not bound by the earlier panel's decision.

24. The appellant had contended that over time there had been a change in the mode or category of occupation of the appeal property, with the property now being a food led operation. The VO contended that whilst the food offer had increased at the appeal property, it still remained in the mode and category of occupation of a public house and premises. The VO highlighted that planning permission granted for the appeal property had A4 drink usage, as opposed to A3 for restaurants and cafes.

25. When determining the issue of mode or category of occupation, the panel had to consider the appeal property physically as it stood or *rebus sic stantibus*. Therefore, one had to look at the premises 'vacant and to let'.

26. The issue of valuing a property *rebus sic stantibus* had been considered within several of the previous Valuation Tribunal decisions provided by the VO, in particular, the panel noted paragraph 21 from the decision in respect of NU Bar, 149/151 Kingston Road, Willerby, Hull (Appeal Number 2001124511063/539N10, dated 21 August 2015):

'21. The panel was aware that it had to have regard to the appeal property *rebus sic stantibus* (as it stood) and had regard to the Court of Appeal decision of *Scottish & Newcastle Retails v Williams (VO)* [2001] EWCA Civ 185. The *Scottish & Newcastle* case involved two public houses located within a shopping centre in Milton Keynes. The Court of Appeal upheld the Lands Tribunal's decision which found that the subject premises had to be valued rebus *sic stantibus* and having regard to the actual mode or category of occupation. It was held that the works required to strip the subject premises back to shells suitable for them to be let as retail units were not minor works and would not be in the contemplation of the hypothetical tenant when formulating a rental bid. It was held that the two public houses were not in the same mode or category of occupation as the shops and restaurants replied upon by the Valuation Officer; the premises were valued as public houses and premises.'

27. The panel was aware that there were two limbs to the *rebus sic stantibus* rule, which must be treated separately. The first rule being that the physical state of the property had to be regarded as at the material day (1 April 2017). The only alterations permitted were minor alterations of a non-structural character. On this point, the panel had not been presented with any evidence to suggest there had been any major physical changes to the premises. The bar was still in place. As such, any alterations made would have been minor in nature and would not offend the *rebus* rule. In questioning, the appellant agreed that the appeal property still had the physical characteristics of a public house; however, he added that the business was now a food led operation.

28. The second limb of the *rebus sic stantibus* rule was that it had to be assumed that the hereditament could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day. Any prospective change of use outside that mode or category should be ignored. As such, the question to be addressed was in what mode or category of use did the appeal property's actual use place it on the material day. After having regard to all of the evidence presented, the panel found the following characteristics/facilities of the appeal property were more in keeping with a public house than a restaurant:

i) provision of a bar area;
ii) beer garden;
iii) children's play area and bouncy castle;
iv) juke box;
v) pool table;
vi) being awarded 'Pub of the season Summer 2017' and 'Pub of the season Summer 2019';
vii) overnight accommodation available; and
viii) all day opening hours.

29. Therefore, whilst the panel accepted that the appeal property ran a more food led operation than it had originally, it found that the mode or category of occupation of the premises had not altered from a public house and premises. Customers could visit the appeal property solely for drinks, which one could not do at a restaurant. Furthermore, the characteristics, facilities and opening hours suggested it was a public house.

30. The panel placed little weight on Alton Bridge Hotel as a comparable property. The assessment placed on this property had been revised in January 2020, it was now valued as a public house and premises having regard to its FMT. The change to this assessment had so far not been challenged.

31. The panel placed greater weight on the schedule of comparable properties provided by the VO. This schedule listed the properties' ratio split of the wet/dry trade and accommodation. The appeal property had a ratio of 36.5% wet, 46% dry and 17.5% accommodation. Of the seven comparable properties listed, all had been valued as public houses having regard to their FMT and all had a greater percentage of dry trade than the appeal property, with a range between 55% to 67.5%. One comparable with a very similar ratio split was the Three Horse Shoes at 25% wet, 55% dry and 20% accommodation.

32. As the panel had determined that the correct mode or category of occupation for the appeal property was that of a public house and premises, it then went on to determine its valuation. Public houses were generally valued by reference to their FMT in accordance with the Approved Guide for Valuation of Public Houses. This guide had been agreed between the Valuation Office Agency and the British Beer & Pub Association. The panel had been provided with a copy of the Approved Guide.

33. The VO's revised assessment at £44,000 had used the following FMT, which had not been disputed:

Receipts	Adopted FMT (£)	Rental %	RV (£)
Liquor	230,000	6.56%	15,088
Food	290,000	7.24%	20,996
Accommodation	110,000	7.24%	7,964
Total			44,048

34. The liquor had been valued in band 2 and food in band B. After having regard to the descriptions within the Approved Guide, the panel found that its wet and dry trade had been placed in the correct bands. However, in respect of the wet trade, the panel concluded that the appeal property fell more in line with the description for those public houses at the lower levels of band 2, as opposed to those at the upper levels. The Approved Guide provided a percentage range between 4.25% and 7.50% for wet turnover above £125,000 but below £250,000. Having considered that the appeal property fell towards to lower level of band 2 for its wet trade, the panel found the application of 6.56% excessive. The panel held that a rate of 4.4% more fairly reflected the reduced wet trade at the premises, together with its remote location.

35. Accordingly, the panel allowed the appeal in part. It found that the existing rateable value was not reasonable and that an assessment of £39,000 RV more fairly reflected the mode and category of occupation of the appeal property as a public house but also reflected its remote location and lower demand on the liquor trade. This adjustment resulted in the following valuation:

Receipts	Adopted FMT (£)	Rental %	RV (£)
Liquor	230,000	4.40%	10,120
Food	290,000	7.24%	20,996
Accommodation	110,000	7.24%	7,964
Total			39,080
Say £39,000 Rateable Value, with effect from 1 April 2017			

Order

36. As a consequence of the above decision, the VO is ordered to reduce the 2017 Rating List entry to £39,000, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

37. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date: 11 November 2020 APPEAL NO: CHG100043476