THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – Full accounts to be used to achieve Fair Maintainable Trade or just wet/dry trade to be utilised – was the owner overtrading due to the level of service and the quality of the food provided – comparable hereditaments – appeal dismissed.

Re: *Bull Inn. Bisham Village, Marlow, SL7 1RR*

APPEAL NUMBER: CHG100044607

BETWEEN:	*The Bull Inn*	Appellant
	and	
	Valuation Officer	Respondent

PANEL; Mr A Backway
Mr S Hooberman

CLERK: Mr A Jolly

REMOTE HEARING – 22 October 2020

Attended: Mr R Bissett on behalf of the owner/occupier (appellant)
Mr A Baker representing the Valuation Officer (respondent)

Summary of decision

1. Appeal Dismissed. The Rateable Value (RV) of £75,000 was confirmed.

Introduction

2. This appeal has been brought in respect of the following: An appeal against the Valuation Officer's Notice of Decision issued on 27 September 2019 in which the Valuation Officer

reduced the RV of the public house from £84,750 to £75,000 with effect from 1 April 2017. In the Decision Notice the Valuation Officer had cited that the appellant's representative was seeking RV £53,000 when both the proposal and appeal both sought £25,100. Mr Bissett and Mr Baker both clarified that Mr Bissett had been prepared to accept £53,000 during discussions and that he was seeking the panel to determine that value.

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.

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

6. Mr Bissett 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 Bissett's declaration of truth included a statement that he was instructed under any conditional fee arrangement.

7. Mr Bissett 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.

8. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

Issues

10. The issue before the panel concerned whether or not the actual trade figures should be used when calculating the RV for the premises or should a Fair Maintainable Trade value be used. Also whether an allowance should be awarded for overtrading due to the level of service provided by the Landlord.

Decision and reasons

11. Mr Bissett informed the panel that the appeal hereditament was owner/occupied and had been in the same family since the 1990's. It was located in a small village and was not near to any attractions and therefore it had been agreed it was considered a destination venue due to the food on offer. It was run as a high end Spanish restaurant and the turnover during 2015 and 2016 was £825,913 and £865,917 which he considered was a high turnover for a small pub. Due to the level of service and the high quality food served the running costs were high, including £300,000 per annum on salary costs. He provided an example of the menu to show the specialist food on offer together with the wine list.

12. Mr Bissett stated that the Approved Public House Guide is a guide assuming a cost basis for a regular public house whereas the appeal property achieves a high turnover but has expensive running costs. The majority of the turnover relates to dry sales with wet sales being mainly purchased with a meal and not over the counter as with traditional public houses. He provided the panel with a letter from his client explaining the business.

13. Mr Bissett explained that the comparable properties cited by the Valuation Officer did not provide either the actual trade accounts or the percentages made to arrive at the Fair Maintainable Trade and therefore he was unable to compare them fairly to his clients.

14. Mr Bissett believed that his client was overtrading due to the service and quality of food offered and that another person coming to the same public house would not achieve the same level of turnover and therefore this should be taken into account when assessing the property. He referred to the 2010 Rating List entry where overtrading had been regarded and a reduction made in the original RV. He did not believe that another landlord would trade to the same level as his client. As trade was lower in 2015/2016 he considered the RV should be lower and requested the panel allow the appeal in part and determine £53,000.

15. Mr Baker explained that when the appeal property was first entered into the Valuation List it had an RV of £84,750 but, following further consideration of the appeal, a Decision Notice was issued which reduced the RV to £75,000. He agreed with Mr Bissett that the premises was a destination public house and the service on offer but stated that the National Sport Centre was located in the same village.

16. Mr Baker informed the panel that the 2017 Rating List was a different List to the 2010 Rating List which meant that the assessment was looked at afresh and that it was a new Approved Public House Guide. He explained how he had arrived at the Fair Maintainable Trade using certain percentages and band widths having regard to location, trade etc. He did not consider that there was any dispute concerning the percentages and bands he had used but did inform the panel that the ones he had used were slightly different to the appellant's representative and provided a lower value before consideration of whether the appellant was overtrading.

17. In support of his contention that the RV of £75,000 was fair and reasonable he provided the panel with assessment details of a number of other public houses in the locality. Whilst he accepted that the figures were the Fair Maintainable Trade he was unable to provide actual trade or the percentages/bands given to those properties. He stated that most of his comparable properties were also food led with high turnover trade. He did confirm that some of his comparable properties were run by or had celebrity chefs at the helm. He considered that another occupier of the appeal hereditament would achieve similar trade as illustrated

by the figures of his comparable properties and therefore overtrading had not, in his opinion, been proven. He requested the panel to confirm £75,000 and for the appeal to be dismissed.

18. The panel considered that a consistent approach should be taken when valuing similar properties and therefore considered regard should be had to the Approved Public House Guide. It accepted that full accounts were not required when calculating the Fair Maintainable Trade figure as the percentages and bands considered should reflect many factors including location and type of food offered. The panel considered that the Valuation Officer had correctly applied the percentage and band for the appeal property and therefore had to then consider whether or not a reduction should be applied for overtrading.

19. The appellant’s representative had provided details of the 2010 Rating List settlement where an allowance had been awarded for overtrading, full accounts and a letter from the owner concerning how the business was operated, whereas the Valuation Officer had provided details of other public houses in the locality. As the 2017 Rating List is a different list to the 2010 Rating List and the Approved Public Guide provided different percentages and bands, it would be difficult to compare RVs between the two Rating Lists.

20. Whilst the panel understood Mr Bissett’s concern regarding the Fair Maintainable Trade of the comparable properties on the basis he had not been provided with actual trade figures or the percentages and band widths used the panel considered that they did provide assistance. All the public houses cited were similarly food led. However, the panel discounted those where there were figures provided for accommodation as it considered that the food figures may be inflated due to breakfast and whether that was included in the dry figures or accommodation figures.

21. From the Fair Maintainable Trade figures the panel was satisfied that the locality seemed to contain many similar food led public houses. Also the Fair Maintainable Trade figures would indicate similar turnovers. From the comparable properties the panel considered that another landlord running the appeal property could possibly trade to a similar level to that of the appellant. The panel therefore considered that overtrading had not been proven in this instance.

22. The panel had not been persuaded by the appellant’s representative that the Valuation Officer’s Decision Notice which reduced the RV from £84,750 to £75,000 was anything other than fair and reasonable and accordingly confirm £75,000 and dismiss the appeal.

Date: 11 November 2020
Appeal number: CHG100044607