THE VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; compiled list appeal; public house and premises; the correct basis of valuation to be adopted for the appeal property; comparable properties; turnover figures; appeal dismissed.

Re: Bears Paw Inn, School Lane, Warmingham, Sandbach, CW11 3QN

APPEAL NO: CHG100047252

BETWEEN	Nelson Hotels Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE: Ms L Moses (Senior Member)
Mr J Imperato

CLERK: Mrs A Keohane

REMOTE HEARING: Friday 23 October 2020

APPEARANCES: Mr A Brooke of Dunlop Heywood on behalf of the Appellant as advocate and expert witness
Mr G Dodd representing the Valuation Officer as both advocate and expert witness

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Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a public house and premises at £164,000 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 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. The subject appeal was a 2017 rating list appeal that had been submitted following the Valuation Officer's Challenge Case Decision Notice of 15 February 2020. The appeal property's original 2017 rating list assessment had been £171,500 RV, with effect from 1 April 2017 on a public house basis. However, following the appellant's Challenge and whilst the property was still valued as a public house, the Valuation Officer altered the assessment to £164,000 RV, with effect from 1 April 2017. The appellant's appeal to the Valuation Tribunal against the Challenge Case Decision Notice was received on 17 April 2020.

5. The appeal property is a 19th century Victorian inn located in Warmingham, a small village with approximately 50 residential properties and 175 inhabitants. It is described as an integral asset of the local community. The property was purchased by Nelson (Northwest) Hotels in March 2008 and following a fire in May 2008, was re-built/refurbished and re-opened on 20 May 2009. Between the re-opening of the property in 2009 and the material day of 1 April 2017, the appellant had increased the number of available letting rooms from 8 to 17.

6. Mr Brooke 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 Brooke confirmed that he was not instructed under a conditional 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. A substantial amount of evidence was provided in this appeal and this is not intended to be an exhaustive record of the proceedings. However, 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.

8. Within the parties' evidence, reference was made to the following:

(a) *The Raddle Inn, Hollington, Stoke-on-Trent* - (343528278856/537N10)
(b) *Paul Dinsdale Insurance & Financial Services v Whitehead (VO)* - 234017753824/125N10
(c) *Mears Ltd v Smith (VO)* – 234518338273/125N10
(d) *Luigi Ceramics v Smith (VO)* – 237217605620/125N10
(e) *Dunbartonshire and Argyll and Bute v Mohammed Akram and another* - 423516744014113N10 [2011] CSIH 79 XA94/11
(f) *Sharp v Griffiths (VO)* RA/120/1998
(g) *Jack in the Green, London Road, Rockbeare, Devon, EX5 2EE* (110516875401/537/N10)

(h) *London County Council v Erith* [1983] AC 562, 588
(i) *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960]
(j) *Orange PCS Ltd v Bradford* [2004].
(k) *Sharp v Griffiths (VO)* RA/120/1998

Issue

9. The basis on which the appeal property should be valued for the 2017 rating list.

Evidence and submissions

10. Mr Brooke submitted a bundle of evidence, which included: photographs, details and line drawings of the appeal property; photographs, location maps and details of comparable properties; a valuation for the appeal property on a hotel basis; a valuation for the appeal property on a restaurant basis; a copy of a previous tribunal decision in relation to the Raddle Inn; reference to the RICS: Pubs Benchmarking Survey 2016 and guidance from the VOA rating manual on 'Interface between Hotels and Public Houses'.

11. Mr Brooke provided four different rating assessments for the appeal property of between £92,000 RV and £126,000 RV, based on both a hotel and restaurant approach. To support a restaurant valuation, he referred to a previous tribunal decision in relation to the Raddle Inn, where the argument had been whether the property should be valued as a public house or restaurant. The Raddle Inn had been valued as a restaurant. He also provided details of Shampaan, Crewe Road, Sandbach, a property that had the appearance of a public house but had been valued as a restaurant, based on £100/m^2. Mr Brooke had provided a valuation for the appeal property based on £100/m^2 in line with this comparable property.

12. To support the hotel valuation, Mr Brooke argued that substantial investment had been made by the appellant to convert the property, he believed its profile had changed and the income drivers were now the food and accommodation. The property had 17 letting rooms advertised as 5-star hotel accommodation on its website. It had a reception area, desk and an entrance from the car park for guests. There was an external sign on the property stating it was a hotel and it offered the same services as a hotel. Mr Brooke considered that the food income was high because of corporate stays by local companies with whom the operators had established links. These corporate clients ate and drank at the property, increasing these income streams. He argued that if the food receipts could be split to show local/passing/destination trade, and those who ate as a consequence of using the accommodation where the cost of the meal was added to the overall hotel bill, the accommodation would be the highest income stream.

13. Mr Brooke's valuation of the appeal property on a hotel basis had resulted in an assessment of £126,000 RV. Within the Valuation Officer's evidence there was included an alternative hotel valuation at £131,000 RV. It was the assessment of £131,000 RV that Mr Brooke sought confirmation of.

14. Mr Dodd submitted a bundle of evidence which included: his grounds for resisting the appeal; an amended alternative valuation for the appeal property

on a hotel basis; a breakdown of the appeal property's current valuation on a public house basis; details of the appeal property; details of comparable properties he was relying on and a response to the appellant's comparable properties. He confirmed that an appeal had been made by a rating representative in relation to the appeal property's 2010 rating list assessment, however, this had been withdrawn, leaving the property valued as a public house and premises.

15. Mr Dodd argued that the appeal property had not been converted by the appellant into a food-led business. This implied that this style of operation was established by the appellant after the property had been re-built following the fire. The trade figures provided by the appellant and the previous occupier showed that the food trade had, and continued to be, the main income driver at the property both prior to and after the works. The fair maintainable trade (FMT) adopted in the assessment, reflected turnover information provided by the appellant and the split in the FMT equated to 25% liquor, 56% food and 19% accommodation.

16. Mr Dodd accepted that the food and accommodation income had increased substantially since the last valuation date in 2008; however, he could not agree that the property had been transformed to such an extent that it now warranted a valuation on either a hotel or restaurant basis. Between the re-opening of the property in 2009 and the material day of 1 April 2017, the appellant had more than doubled the number of letting rooms, all of which were in use by the material day. In addition, the physical appearance of the public areas had been substantially improved to reflect the modern expectations of its clientele. These factors would have some beneficial effect on the appeal property's turnover figures.

17. In consideration of the trade information and his adopted FMT for the appeal property, Mr Dodd argued that it had been correctly valued as a public house and premises at £164,000 RV.

Decision and reasons

18. When arriving at its decision, the panel is governed by rating legislation. 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.

a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

(c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above

19. The date of the hypothetical rent is 1 April 2015, the antecedent valuation date (AVD) for the 2017 Rating List. Matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (the material day) for this appeal.

20. As the appeal property had been valued as a public house and premises, its valuation was based on FMT and the application of the 2017 approved guide for the Valuation of Public Houses (the approved guide), agreed between the Pubs Rating Forum and the Valuation Office Agency.

21. Mr Brooke submitted a number of valuations for the appeal property, one as a restaurant on a rentals basis and another as a hotel based on the number of double bed units. However, in his final summing up in the subject appeal, he asked the panel to determine an assessment of £131,000 RV with effect from 1 April 2017. This assessment was on a hotel basis and had been put forward by the Valuation Officer in response to the appellant's Challenge documents. Having regard to this, the panel considered that the crux of this appeal was whether the appeal property should be valued as a hotel or public house. Thus, the evidence relating to restaurants and the rentals basis of valuation was not explored further; attention was paid to the evidence relating to both hotel and public house valuations.

22. Upon checking the hotel valuation Mr Brookes sought confirmation of, Mr Dodd had found an error. An incorrect percentage had been adopted and in correcting this to fully reflect the quality and nature of the accommodation, a higher assessment of £158,000 RV had been produced. That said, Mr Dodd did not consider this was the best way to value the appeal property. He argued that his public house valuation was the most appropriate and fairly reflected the mixed nature of the appeal property and the associated income streams.

23. After due consideration of all the evidence, the panel determined the appeal property had been correctly valued as a public house and premises. In reaching this decision, it accepted that the main driver of the appeal property's income was the food stream, in effect, making it a food led business. It did not agree, however, that the second main income driver was the accommodation stream, which as a percentage of the total receipts had appeared to remain largely constant since the property re-opened in 2009. The turnover figures indicated that both historically and currently, drink sales had consistently outperformed those of the accommodation, including in the years up to the AVD. For this reason, the panel found that the appeal property was not an accommodation led property and should not be valued on a hotel basis, but as a public house and premises where each income stream could be correctly reflected in accordance with the approved guide.

24. Having decided that the appeal property should be valued as a public house and premises, the panel noted that Mr Brookes had argued in his submission that if the appeal property was valued as a public house and premises, an element of overtrading should be reflected. To this end, he identified a number of comparable properties within the area that had shown, in the main, a fall in trade between the 2010 and 2017 rating lists. The appeal property had shown

a marked increase in trade for the same period. Details of the comparable properties were provided; these were:

(a) Cheshire Cheese, 468 Crewe Road Sandbach Cheshire.
(b) Rookery Tavern, Elton Road, Sandbach, Cheshire.
(c) Fox Inn, London Road, Sandbach, Cheshire,
(d) Midland Inn, 5 New Street, Sandbach, Cheshire,

25. The Valuation Officer confirmed that the above comparable properties fell within either Category 1 or Category 3. He considered the appeal property to be a destination house in Category 2 and by nature in a 'prominent out of town or rural location'. To support the contention that there was no element of overtrading, the Valuation Officer provided full details of comparable Category 2 properties set out below that were derived from a greater geographic area:

(a) Badger Inn, Church Minshull, Nantwich, Cheshire at £58,000 RV
(b) Bear's Head Hotel, Newcastle Road South, Brereton, Sandbach, Cheshire at £118,000 RV.
(c) The Dog Inn, Wellbank Lane, Over Peover, Knutsford, Cheshire at £113,500 RV.
(d) White Lion Inn, 31 Main Road, Weston, Crewe at £102,850 RV.

26. The Valuation Officer also provided full details of the following Category 2 comparable properties, to further support his view that there was no element of overtrading at the subject property. These properties traded as destination venues and had no letting accommodation.

(a) Stamford Bridge Inn, Tarvin Road, Great Barrow, Chester, at £118,000 RV
(b) The Bulls Head, Wilmslow Road, Mottram St Andrew, Macclesfield, Cheshire at £142,500 RV
(c) Fishpool Inn, Fishpool Road, Delamere, Northwich, Cheshire at £229,500 RV. This was owned and operated by the appellant.

27. The panel noted that Category 2 properties – Destination Houses, were defined in the approved guide as properties that 'will comprise the full spectrum of free houses, managed and tenanted pubs. A significant food ... offer will be [a] key indicator of public houses that will fall in this category.' Category 2 (Upper Level), goes on to say that 'letting rooms may be provided as part of the original building, an extension or separate annex. Any letting rooms are likely to be of good quality with en-suite facilities'. Having regard to this, the panel was satisfied that the appeal property was a Category 2 destination property and it found the Valuation Officer's comparable properties to be more relevant. Two of these comparable properties, The Bears Head Hotel and White Lion Inn, had the same or a greater number of letting rooms than the appeal property; however, both were valued as public houses.

28. After considering the particulars of the comparable properties, the panel concluded that the trade figures achieved at the appeal property were not excessive or out of line with what could be expected of a reasonably competent operator of a Category 2 property. Therefore, the appellant's case for overtrading was not made out. Mr Brooke's comparable properties were not Category 2 destination houses, they were in the main, smaller, led by wet trade,

had no letting accommodation, provided little or no food and appeared to be operating within a different market.

29. The appeal property's valuation as a public house was based on turnover figures provided by the appellant, which were not shown to be unreasonable by comparison to the destination public houses submitted by the Valuation Officer. In support of a hotel valuation, Mr Brooke had argued that the presence of a check-in desk, a separate entrance for guests, the presence of a 'hotel' sign, its advertisement on its own website as a hotel confirmed it was a hotel; however, the panel was not persuaded that these were definitive proof that the property should be valued as a hotel. Mr Brooke had indicated that the appellant was a hotel specialist and not a pub operator. However, the comparable property, The Fishpool Inn, was owned and operated by the appellant, it did not provide any letting accommodation and was run as a destination public house and valued as such.

30. Given the number of letting rooms at the appeal property, its location and the established style of operation, the panel concluded that it was more in the line of a 'gastro-pub' than a hotel. It was not considered unreasonable for the hypothetical tenant to be a public house operator, as viewing the appeal property vacant and to let, it would still fall within this market.

31. No dispute had arisen over the FMT adopted by the Valuation Officer in the appeal property's assessment as a public house and premises, the panel therefore, confirmed the assessment of £164,000 RV from 1 April 2017, as follows:

Trade	Adopted FMT	Percentage of the range	Total
Wet trade (drinks)	£450,000	10.88% (80%)	£48,960
Dry trade (food)	£1,000,000	8.25% (43%) Band B	£82,500
letting rooms	£340,000	9.75% (50%)	£33,150
		Total	£164,610
		Say	£164,000 RV.

32. The burden of proof rests on the appellant to show that the current rateable value was incorrect. In the appeal before it, the panel found that it had been provided with insufficient evidence to demonstrate that the appeal property had been incorrectly valued as a public house and premises and that the rateable value was unreasonable.

33. Consequently, subject appeal was dismissed.

Date: 19 November 2020

Appeal number: CHG100047252