THE VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; compiled list appeal; public house and premises; rental percentage of wet trade disputed; overtrading; appeal dismissed.

Re: The Nags Head, Silver Street, Lyme Regis, DT7 3HS

APPEAL NO: CHG100060319

BETWEEN	Mr & Mrs De-Voisey	Appellants
	and	
	Mr D Virk	Respondent (Valuation Officer)

BEFORE:	Dr J Johnson (Senior Member) Mr A Wheeler
CLERK:	Ms R Muller
ON:	Wednesday 28 October 2020
APPEARANCES:	Mr C Lambert of Whitestone Commercials on behalf of the Appellant Mr A Murdoch representing the Valuation Officer

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Summary of decision

1. The appeal was dismissed. The panel confirmed the subject property's assessment at £20,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 Rating List appeal made following the Valuation Officer's Challenge Case Decision Notice completed on 25 October 2019. The RV of the subject hereditament was originally £25,000, with effect from 1 April 2017. However, following the appellant's Challenge, the Valuation Officer altered the subject property's assessment in the Rating List to £20,500 RV, with effect from 1 April 2017, which reflected the change of the wet trade from a Category 1 (Primary Licensed Trade Areas) to a Category 3 (Community & Rural Houses).

3. Mr Lambert 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 Lambert had not provided a declaration of truth, but he did state that he was instructed under a conditional fee arrangement. He declared that he understood the judgment in *Gardiner & Theobald* and accepted that his duty was to the Tribunal in giving his evidence.

4. The hereditament consists of a two-storey building and operates as a public house and premises. It was purchased freehold by the appellants in December 2017, is Victorian in age and of brick and flint construction. It is situated on the main road going into Lyme Regis. Facilities included a pool table and dart board, two bars and an enclosed garden to the rear. There are no parking facilities on the premises.

5. The material day for this appeal is 1st April 2017, when the physical circumstances of the subject property and its locality are taken into account.

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

Issue

9. The issue in dispute is the correct RV that should be assigned to the subject property effective from 1 April 2017.

10. The starting point in determining 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 deals with wet trade and accommodation.

11. The accommodation figure of £22,000 and the wet trade of £250,000 are not in dispute, but the issue to be determined is if there is to be an adjustment made to the percentage applied for overtrading and costs incurred by the appellant for amenities for customers.

Evidence and submissions

12. Both parties considered the valuation of the subject property in accordance with the Approved Guide for the Valuation of Public Houses that has been agreed in respect of the 2017 list, between the Valuation Office Agency and the British Beer and Pub Association. The guide sets out an approach that is derived from an analysis of open market; free of tie; pub rents. The valuation approach involves determining the FMT of the premises in question as at the (AVD) 1 April 2015.

13. Mr Lambert submitted a bundle of evidence, which includes: details of the subject property, the issue in dispute, details of comparable properties with photographs, a calculation of his proposed assessment, extracts the Valuation of Public Houses Approved Guide Rating Lists 2017 (the approved guide) and extracts from various case law. His revised proposed valuation of £9,200 is as follows:

    FMT (wet) £250,000 – 25% (overtrading) = £187,500 @ 4.5% = £8,437.50
    Accommodation £22,000 @ 4.05 = £891 – agreed by both parties
    Therefore, RV with effect from 1 April 2017 = £9,329, but say £9,200 after rounding.

14. He stated that the appellant paid for amenities for his customers, which included Sky, advertisements and live entertainment, which cost around £25,000 per year. Therefore, Mr Lambert requested a 25% discount to arrive at £187,500 then apply 4.5% instead of 8% due to overtrading, which produced the revised RV of £9,200.

15. Mr Murdoch submitted a bundle of evidence which includes: his grounds for resisting the appeal, a revised valuation for the subject property and details he sought to rely upon and extracts from the legislation.

16. During the challenge stage, Mr Murdoch changed the subject property from Category 1 to Category 3, therefore, his revised RV assessment is as follows:

    FMT (wet) £250,000 @ 8% = £20,000
    Accommodation £22,000 @ 4.05 = £891 – agreed by both parties
    Therefore, RV with effect from 1 April 2017 = £20,891, but say £20,500 after rounding.

17. In consideration of the trade information and his adopted FMT for the subject property of 8%, as Category 3. Mr Murdoch considered that the subject property’s revised valuation of £20,500 RV with effect from 1 April 2017, was reasonable.

Decision and reasons

18. The panel is aware that Mr Lambert had asked for the trade figure of the comparable properties he had included within his evidence. However, Mr Murdoch has stated that it was not the VOA policy to disclose confidential trade figures, as per their Code of Practice in Appendix B of Section 825 Rating Manual Section 6 part 3: valuation of all property classes.

19. The panel is mindful that throughout the process, it is valuing the property and not the occupier.

20. The panel notes that both parties have provided evidence, which they have deemed appropriate, in order to determine what the correct percentage(s) applied should be. Therefore, the panel considered all the evidence submitted before it, as well as the comparable assessment.

21. The comparable assessments provided by both parties considered by the panel are:

- The Mariners Hotel, Silver Street, DN17 3HS, which has been valued in Category 2 (Destination House) and is close to the subject property. It has 14 guest rooms, a bar, restaurant, enclosed garden and parking with an RV of £18,750. The panel noted that although its it is much larger than the subject property. It has also been placed in a different Category and entered into the Valuation List as a Hotel and premises.

    - The panel referred to Section 5.3 of Approved Guide for the Valuation of Public Houses, which refers to 'blurring' between hotels/guest houses and pubs. The panel noted that this section confirms that there is a difference between how hotels and public houses are valued for Business Rate purposes. However, it did offer direction on how to differentiate between the two in situations where the properties show similar features associated with both, in order to govern the correct method of valuation. The panel attached little weight to this comparable property, as it was entered into the Valuation List as a Hotel and premises.

- The Angel Inn, Mill Green, DT7 3HS, which is situated on the outskirts of Lyme Regis and is valued in Category 3 (Community & Rural Houses). The adopted FMT of £100,000 reflected the poor location and amenities of the property, which stopped trading many years ago and had since been deleted from the Rating List with effect from 6 July 2018. It has now been converted to a domestic property.

    - The panel noted that the adopted FMT was due to the property being in a poorer location, but it still had the 8% value applied to it. Therefore, the panel found this comparable property to be persuasive to its decision, due to the fact that it was in the same Category as the subject property.

- The Ship Inn, Coombe Street, DT7 3PH, which is on the corner of the town with parking with an FMT of £150,000 (wet). It benefits from a beer garden and a skittle alley with an RV of £11,700.

    - The panel found that this property was located within the town centre, but at a distance from the sea front. It had been within placed within Category 1. The panel attached little weight to this comparable, as it had been valued as a Category 1, unlike the subject property at Category 3. There was also no accommodation at this property.

- The Rock Point Inn, Broad Street, DT7 3QD is situated within the town centre, just off the Quay. It has recently been refurbished and has been valued in Category 1 (Primary Licensed Trade Areas). It has an adopted FMT of £100,000 (wet), £150,000 (dry) and £10,000 (accommodation). It has 4 en-suite rooms, restaurant, large bar/lounge and beach front with an RV of £18,750.

    - This property was again in a good position within the town centre and has been valued in Category 1. However, the panel noted that this property is in direct competition with a neighbouring pub. Again the panel attached little weight to this comparable, as it had been valued as a Category 1, even though it did have the same amount of rooms to let. However, the value for accommodation was much lower at £10,000.

- Talbot Arms, which is situated on the outskirts of Lyme Regis and has been valued in category 2 (Destination House). The adopted FMT is £180,000,(wet), £95,000 (dry) and £45,000 (accommodation). There are 10 en-suites, however, five of these are used as owners living accommodation. This comparable property has an RV of £20,700.

    - This property was situated in a good position in the middle of a village on the outskirts of Lyme Regis and is valued in Category 2. The panel noted that there were five letting rooms within this property, however, it did provide dry trade, as well as wet and accommodation. The panel attached little weight to this comparable property, even though there was a similar amount of rooms to let, the accommodation was much higher at £45,00 and this property was in Category 2.

- The Pilot Boat, Bridge Street, Lyme Regis, DT7 3QA is situated in the town centre and in Category 1 (Primary Licensed Trade Areas), food lead pub with an adopted FMT of £225,000 (wet), £350,000 (dry) and £30,000 (accommodation).

    - The panel noted that this property was also in Category 1, in a prominent town centre location. Therefore, the panel attached little weight to this comparable property. The wet trade and accommodation were similar but it was a Category 1 pub.

- Volunteer Inn, Broad Street, Lyme Regis, DT7 3QE is located mid-way from the sea front and the subject property. It has an adopted FMT of £305,000 (wet) and £64,000 (dry). The wet trade is valued at the mid-point of Category 1 (Primary Licensed Trade Areas) with an RV of £32,500.

    - Again, it was noted that this property was valued within Category 1, however, at the mid-point. Therefore, again the panel attached little weight to this comparable property.

22. Mr Lambert had informed the panel that the subject property, nor the comparable properties had had any adjustments made and the Valuation Officer had used the top figures of FMT. However, Mr Murdoch referred the panel to Watney Mann Ltd v Langley (VO) [1963] as a starting point when looking at trading figures. Three years of trade figures would have been considered and then a stand back approach to be included. 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 subject property and the costs of the amenities paid by the appellant of the subject property had also been taken into consideration. However, he had not made any adjustments with regards to the amenities provided by the appellant and the costs incurred.

23. The panel referred to Section 3.4 of the Approved Guide for the Valuation of Public Houses, where it provided guidance on the choice of percentage and amenities, incentives and marketing etc are considered when the percentage is applied. The panel noted the trade figures that had been provided within the evidence: from September 2017 to November 2018 (a total of 14 months) had produced a combined wet and accommodation trade of £369,310. This was adjusted to reflect a 12-month period, which equated to £316,551, which is much higher than the adopted £272,000.

24. Due to the evidence provided, the panel could not agree with Mr Lambert as to why the percentage applied by the Valuation Officer of 8% was incorrect. The trading history of the subject property demonstrated that the FMT adopted in the valuation by Mr Murdoch was not unreasonable.

25. When considering an issue of overtrading, with regards to the subject property, Mr Lambert referred the panel to the VT Decision: Jack in the Green v VOA appeal number 110516875401/537N10, where the decision had taken the wet trade figure of £250,000 and applied a reduction of 25% for overtrading, as it had been proven that the figure attained by the appellant within this case would not be achieved by a typical operator.

26. The panel noted that the trade figures provided by Mr Lambert to Mr Murdoch did not show that there had been any overtrading due to a 'honeymoon' period, after the appellant had bought the subject property in December 2017. There had also not been any proof of overtrading by the previous owner of the subject property. The trade figures provided by Mr Lambert had shown that the FMT had not changed following the appellant's purchase of the property..

27. The panel noted that the overriding factor, which must be identified is the existence of proof to show that any overtrading or under trading had taken place. Mr Murdoch had requested details of trade figures from Mr Lambert as evidence and proof of any discrepancies, however, none had been provided and none was provided to the panel.

28. Taking all of the evidence into account, the panel concludes that the appellant's representative has failed to prove his case for a reduction in the RV for the subject property. There was not any evidence to show that there had been any overtrading or that the percentage applied by Mr Murdoch was excessive. The onus rests with the appellant to satisfy the panel that the appeal should be allowed in respect of any argument or evidence they advance or introduce. This has not been done.

29. In consequence, the appeal is dismissed.

Date: 12 November 2020

Appeal number: CHG100060319