VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; Public House and Premises; Fair Maintainable Trade; Reasonably Efficient Operator; Overtrading; Comparable properties; Appeal allowed in part.

Re: Pandora Inn, Restronguet, Mylor, Falmouth, Cornwall, TR11 5ST

APPEAL NO: CHG100064376

BETWEEN Mr R J Milan (Appellant)

and

Mr D Virk (Respondent)

(Valuation Officer)

BEFORE: Mr D J Hayes (Senior member); Ms N Akhter

REMOTE HEARING ON: Wednesday 2 December 2020

CLERK: Mr J Hewitson

APPEARANCES:

Mr J Ward (Harris Lamb - Representing the Appellant)

Messrs S Bellman & R Milan (Appellants)

Mr J Sloan (Representing the Owner)

Mr A Murdoch (Representing the Respondent)

Summary of decision

1. The appeal was allowed in part and the assessment was determined at £110,000 rateable value 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 was a 2017 rating list appeal and the property had been entered in the rating list at £145,000 rateable value with effect from 1 April 2017, with a description of Public House and Premises. At the challenge stage, the Valuation Office Agency (VOA) decided that the proposal was not well-founded but accepted that the existing assessment was excessive and amended the rateable value to £130,000. The appeal was made by the appellant's representative against the Valuation Officer's (VO) Decision Notice of 5 June 2020.

5. The panel was mindful of the fact that the 'witnesses' present had not provided formal witness statements and, as such, their evidence had not been made available to the VO in advance of the hearing in accordance with the disclosure process and the Check, Challenge, Appeal procedure. Mr Sloan was presented as an expert on the valuation of public houses and the appellants were said to be experts in the running of overtrading public houses. All had been party to the discussions that had taken place. Mr Murdoch stated that he had not received advance notification that they were to be invited to speak but he was happy to have an open hearing and had no objection to them appearing before the tribunal. Given that there was no objection from the VO, the panel proceeded and determined that Mr Ward should be allowed to call the appellants and Mr Sloan to make their representations to the tribunal.

6. The subject property comprises a public house and premises in what was acknowledged to be a beautiful location on the Fal estuary. The premises benefits from a pontoon extending out over the tidal water that provides a 'unique dining experience'. The first-floor dining area provides approximately 24-30 covers. Whilst there was no dispute as to the attractiveness and desirability of the location, the premises are served by a small car park, which is shared with adjacent occupiers and accessed by a very narrow road. The Pandora Inn is not signposted from any main roads and the main car park for the area is some distance away at the top of a steep hill. The current tenants have been in situ since1999. The premises were subject to a 'devastating' fire in 2011 and the rebuilding and renovations done subsequently were in keeping with the requirements for the listed building.

7. The actual trade for the year ending April 2015 was approximately £535,000 wet and £1,060,000 dry and this was not in dispute.

8. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that the statement or item of evidence has been overlooked.

Issue

9. The issue between the parties concerned the RV of the appeal property and, specifically, the extent to which the actual trade of the public house should be adjusted to reflect the fact that the premises were 'overtrading'. Furthermore, although it was agreed that, in accordance with the Approved Guide for the Valuation of Public Houses, the premises fell into Category 2 for the wet trade and Band B for the dry, the percentages to be applied to the trade were in dispute.

Decision and reasons

10. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions detailed in paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988. The date of the hypothetical rent was 1 April 2015 (the antecedent valuation date or AVD). Matters that affect 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.

11. In his submission, Mr Ward described the appeal property and its location and detailed the history of the appeal, expressing his disappointment at the lack of engagement from the VO during the challenge process. He accepted that the property was in an attractive location but submitted that there were a number of drawbacks associated with the property, particularly the small car park and limited usage times for the pontoon. It was his argument that the approach of the management team had driven the trade upwards beyond the level that could reasonably be expected by a competent operator. He explained that the property had been badly damaged by a fire in 2011 but ultimately, he contended that this setback had been the catalyst for the change.

12. Prior to the fire, he submitted that the site was professionally run and had high customer satisfaction levels. Subsequently, through advertising and the use of local press and national news, attracted by the devastating fire, the site has achieved trade which he argued was far in excess of the 'reasonably competent operator'. He demonstrated this by detailing the trade pre and post fire when trade jumped £400,000 immediately. This, during a time of recession, was a reflection of the efforts that the owners of the Pandora had made, over and above the usual and he contended that they had successfully overtraded the premises by almost 50% of the original trade.

13. To support his argument regarding the effectiveness and abilities of the appellants, Mr Ward introduced Mr Sloan who, as a highly experienced and qualified representative of St Austell Brewery, who owned the establishment, explained that a rent of £78,000 was being charged at the time of the challenge. This rent was based on what was considered to be the fair maintainable trade for the site based on what a reasonable operator could achieve. Referring to his experience of knowing and working with the appellants, he stated his opinion that they were within the top two or three per cent of pub operators in the country. Given their status as, what he considered to be, exceptional operators, he stated that the level of trading achieved at the Pandora, which was above and beyond that which would be achieved by a reasonable operator, reflected this.

14. The appellants described the way in which they approached the business and explained the emphasis they placed on having an experienced core staff who were rewarded accordingly. This was illustrated by reference to the fact that their head chef had been with them for more

than 10 years and had been retained whilst the property was closed after the fire. Their manager had more than eight years in the role and they submitted that the stability of their team and the establishment of and then maintaining a reputation was central to their business model. The number of awards that had been achieved reflected their efforts and provided a demonstration of their efforts, going above and beyond the norm. The return, from a business perspective, was in the level of trade achieved and it was only by constant and continuing input, such as regular redecoration of the premises and the entry into customer focussed tourism award competitions that the level was maintained.

15. Having regard to the skills and experience of the operators, Mr Ward made reference to the Approved Guide and explained that 'in assessing the FMT the valuer should exclude any income above the normal expectation that is attributable solely to the personal circumstances or skill, expertise, reputation and/or brand name of a particular operator. Factors such as long standing occupancy and/or popularity of a particular offer may possibly give rise to levels of trade which might not be sustainable by a REO.'

16. Having regard to the figures achieved in the period immediately after the reopening following the fire, which showed a jump of £400,000 in trade, Mr Ward contended that a 33% reduction on both streams provided a more reasoned figure allowing for the overtrading. On this basis, he submitted that reasonable figures for the FMT would be £356,973 wet and £710,892 dry.

17. Given, the location and seasonal nature of the site he contended that Category 2 was appropriate for the wet trade and, making reference to the guide and the description of the lower and upper sections, he explained that both cover aspects of the site in regard to location, profitability, layout and parking and he submitted that a balanced view would be to set this site midway between the two ends.

18. In respect of the dry trade, Mr Ward submitted that band B was appropriate and, given the level of trade the High Food Scales were to be applied. Because of the heavy labour costs, with food being transported some distance down the pontoon on fine days and to allow for custom of a weather-based nature, the operator must employ staff full time, even if the sun doesn't shine. He contended that a balanced approach would be to place the percentage applied at a central point to reflect the cost of the offer and profit as well as seasonal nature.

19. Mr Ward also referred the panel to the evidence provided by the VO but did not consider that many of the comparable properties cited were truly comparable, with many of them providing accommodation or being a different type of operation. He also provided details of a previous decision of the VTE where the public house had many of the same features as the subject property and the panel had recognised that the additional time and effort spent on advertising and the awards achieved had demonstrated that the operator was far more effective than average and had assisted in the premises overtrading.

20. Having regard to the evidence, he submitted that his reduction to reflect the overtrading was reasonable and sought a revised assessment of £92,000 rateable value, as follows.

Liquor	£356,973	@	9.63% =	£34,376
Food sales	£710,892	@	8.17% =	£58,080
			TOTAL	£92,456

Say £92,000 wef 1/4/17

21. Mr Murdoch began his submission by accepting that the categories adopted by the appellant – Category 2 for the wet trade and Band B for the food sales were not in dispute. His valuation was undertaken in accordance with the approved guide and, given the nature of the appeal, he highlighted, in particular, section 7.3, which detailed the approach to a potentially overtrading public house. In respect of the subject property, he submitted that there was little doubt that the premises are run efficiently to a very high standard. However, he submitted that there was limited accountable evidence to support a reduction of one third to represent the FMT.

22. The trade for the three years to the AVD showed a consistent rising trend with the wet trade at approximately one third of the gross take. Mr Murdoch argued that the issue was to consider whether the reasonably efficient operator (REO) would have responded to the free advertising of the national and local coverage following the fire and what level of adjustment should be applied to ascertain a level of FMT for the premises in their physical state as at the material date. It was his submission that the given the wide-ranging publicity, the fire was used by the appellants to give the trade a boost. He did not consider that there was a significant element of overtrading and considered that a REO should have achieved similar trading levels to the appellant.

23. Mr Murdoch explained his approach by reference to the approved guide and provided details of the wider occupational history of the property submitting details of trade for a total of 14 years prior to the fire (including nine years when the present occupiers were trading) as well as the three years prior to the AVD. He showed that in the first year after the fire the trade increase was exceptional at over 40% when compared to the original premises prior to the fire for the year ending March 2011. Subsequent years both showed an increase in excess of 9%. Having considered the figures he submitted that there did not appear to be anything significant to denote a level of overtrading prior to the fire that is exceptional to the REO.

24. In considering the appeal property, Mr Murdoch submitted that it was reasonable to have regard to Para 7.3.4 of the guide which referred to 'Unique Properties' and states that '….a property that is uniquely placed and/or enjoys a particularly attractive physical character, is likely inherently to achieve a much higher level of turnover than any other property in the vicinity. It is important to establish that, having regard to the size and nature of the customer base in the locality, no element of the performance is solely attributed to the particular offer of the current operator. In such circumstances where over-trading is not manifest, no adjustment of the actual turnover when determining FMT is necessary.'

25. In this respect he had regard to the inherent appeal of the property and submitted that The Pandora Inn, which, he contended, is in an idyllic and popular location despite being away from built up residential areas. In addition, he considered that the widely reported fire would have raised the public's interest and added to its notoriety. He stated that the area was not only popular with locals but was also popular with tourists, walkers and sailing/motorboat enthusiasts with large numbers of nearby anchorages.

26. In contrast to the view put forward by the appellant's representative, Mr Murdoch submitted that the evidence for areas that are popular with tourists in Cornwall have not shown a decline in their trade 'despite the reported recession' and he referred the panel to the rateable values of 12 other public houses shown in the 2010 and 2017 rating lists in such locations. All the properties showed substantial increases in their assessments between the two lists.

27. Overall, having regard to the evidence Mr Murdoch had considered that a large part of the increase in trade was the result of increased public interest due to the local and national coverage following the fire. Accordingly, whilst he accepted that there was an element of overtrading, he contended that a reasonable FMT was £500,000 wet and £1,000,000 dry. To these figures he had applied 10.8% to the wet trade and 7.66% to the dry trade resulting in his valuation of £130,000 rateable value.

28. In considering the approach adopted by the parties the panel noted that there was no dispute that the Pandora Inn was overtrading. The extent to which the actual trade was in excess of that achievable by a REO however differed substantially and in considering the matter the panel first had regard to the approved guide and noted, in particular, the section detailing the circumstances where overtrading is applicable.

29. The panel noted from the guide that '..any element of trade which is considered attaches to the operator (and thus would move with them) and which is not capable or expected to be replicated by the REO, should be disregarded in the FMT calculation. Due regard needs to be given to the attributes of the property. The overriding factor which must be identified in all cases is the existence of a demonstrably different level of trade and/ or offer at the subject property compared to the typical range of trade and/ or offers evident in the locality in question. The demographics of the customer base in any particular location will have a major part to play in the range of offers encountered. The circumstances of the subject property must therefore "stand apart" from its competition and the actual turnover achieved must immediately cause the valuer to stop and reflect as to reasons why, on a first look, it appears significantly higher than that achieved in any other comparable properties in the locality.'

30. It was apparent to the panel that the property is in an idyllic location but, in itself, it was also recognized that this brought disadvantages, with limited parking adjacent to the property and otherwise remote parking with access down a steep hill. The panel did not find the property to be unique but did consider that it was superior to the competition.

31. The panel also had regard to the fire which, although it occurred in 2011, resulted in an apparent transformation which manifested itself in marked increased levels of trade. The VO had contended that the 'notoriety' achieved following the fire and the resultant publicity accounted for the majority of the increase, whereas the appellant submitted that it was the endeavor and enthusiasm shown by the appellants that had driven the increase and resulted in a level of trade well in access of that achievable by a reasonably efficient operator.

32. The panel found the appellants to be highly experienced operators who used their skills and knowledge to promote and generate business in ways which went beyond that achieved by a normal operator. The brewery representative had expressed his opinion and recognized the high levels of ability and skills of the appellants as operators of public houses. The panel noted their attention to detail and approach which focused on the team and the targeted and skillful use of media in all its forms for promotional purposes. The level and number of awards achieved over a number of years did, the panel found, help demonstrate the abilities of the appellants in going above those of a REO. This was further demonstrated by their use of a marketing manager and their constant and effective use of social media to a level far in excess of the norm. Whilst, the VO had submitted that the value of these awards was questionable with little evidence about the level of competition, the panel found that they clearly showed that the appellants went above and beyond what was usual in this industry. The fire had certainly had an impact and there had been a boost when the premises reopened. This was not considered to be unusual and the panel considered such a feature would be fairly typical. Ultimately a listed building had been subject to repairs and a

refurbishment and would present an attractive prospect for a tenant. However, the panel found that the efforts and endeavours of the operators had not only consolidated this trade and prevented the drop off from the initial peak but had continued to expand the business and the constant attention to detail, with regular redecoration and initiatives demonstrated to the panel that the operators were crucial to the level of trade achieved.

33. The comparable properties referred to by the parties were found to be of little assistance and the panel did not accept that there was a substantial degree of comparability which enabled a true like for like comparison to be made. It was apparent to the panel that there was a demand for good quality public houses in good tourist locations and that such properties had seen increases in their rental value since the previous rating list. However, the panel did not find any evidence to assist them in establishing the level at which the subject property was overtrading.

34. The panel had regard to the trade details provided for the subject property dating back to the early 1990s and noted the levels of trade that had been achieved pre and post the fire. It was clear that the appellants had used the fire as an opportunity to develop the business. In doing so the panel found that they adopted their own approach and a style which they have developed over many years and which, it was found took them beyond the scope of the REO. However, the panel did not think that either party had reflected the true impact with the VO's adjustment to the FMT being regarded as minimal and not fully reflecting the element of the trade attached to the appellants. Equally the panel found that the appellant's representative had overestimated the amount by which the premises were overtrading.

35. Overall, having regard to the levels of trading and the impact brought about directly due to the efforts of the operators, the panel considered it reasonable to adjust the FMT by approximately 20% and on this basis determined the FMT at £425,000 dry and £850,000 wet.

36. Looking at the percentages to be adopted, it was not disputed that the house fell into Category 2 and Band B for the wet and fry trade respectively. Noting the rates adopted by the parties the panel found that a reasonable approach was to adopt the mid-point of each range as being fair and reasonable.

37. On this basis the panel determined the assessment as follows:

Liquor	£425,000	@	10.13%	=	£43,052
Food sales	£850,000	@	8.03%	=	£68,255
			TOTAL	£111,307	

Say £110,000 wef 1/4/17

Order

38. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show The Pandora Inn, Restronguet, Mylor, Falmouth, Cornwall, TR11 5ST at a Rateable Value of £110,000 with effect from 1 April 2017.

39. Any fee paid will be refunded in full in accordance with regulation 13E.

Date: 23 December 2020

Appeal number: CHG100064376