THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the 2017 compiled list assessment; Public House and Premises; Fair Maintainable Trade; Over Trading: Appeal allowed in part.

RE: J D Young Hotel, 2 Market Place, Harleston IP20 9AD

APPEAL NO: CHG100063307

BETWEEN: Mr D Green
(Appellant)
and
Mr A Corkish
(Respondent Valuation Officer)

BEFORE: Mr A Ramsay (Senior Member) and Miss EFM Blois

CLERK: Mrs H Beresford

REMOTE HEARING ON: Tuesday 20 October 2020

APPEARANCES: Mr S Penny representing the appellant
Mr M Green on behalf of the Respondent Valuation Officer

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £60,000 rateable value with effect from 20 September 2019.

Introduction

2. This was a 2017 Rating List appeal and the rateable value (RV) of the appeal hereditament was £50,000 with effect from 1 April 2017. The appellant submitted a Challenge to the Valuation Officer against the appeal property's assessment on 11 December 2018, which indicated that:

   "The Rateable Value of £50,000 shown in the 2017 Rating List with effect from the 1st April 2017 is disputed by the Appellant, on the grounds that the Rateable Value does not represent the rental value of the hereditament under the rating hypothesis at the Antecedent Valuation Date – 1st April 2015 reflecting the physical factors of the property and locality as at the Material Date – 1st April 2017".

3. The Valuation Officer did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 18 September 2019 increasing the rateable value by notice to £71,000 with effect from 20 September 2019. The appellant appealed to the Tribunal against the Decision Notice on 17 January 2020.

4. The subject property is a public house situated in the market town of Harleston. It was originally built in the 15th century and its origins are documented as being a coaching inn. The property comprises a restaurant and 11 en-suite rooms.

5. The property is held on a freehold basis, Mr D Green, the appellant purchased the property in 1998 and after some refurbishment opened in 2000.

6. The appellant’s representative, when appearing as expert witness, had declared that he will receive a success related fee if the rateable value of the appeal property were to be reduced as a result of the panel’s decision.

7. However, he had also 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 his client’s case.

8. The panel accepted this expert witness evidence on the above basis as the parties agreed 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 is 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 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.

10. 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.

11. 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

12. The issue for determination was the correct rateable value to be ascribed to the appeal property.

Evidence and submissions

13. Mr Penny had provided a bundle of evidence which included: a history of the case and the issues in dispute; supporting legal arguments; a summary of comparable assessments and rental evidence; a revised valuation; the current 2017 Rating assessment; location plans of

the subject property; photographic evidence; the valuation scheme; and a map of the comparable properties. He had also provided a copy of the Valuation Tribunal decision CHG100003422 *Pheasant Inn and Ritchie Roberts.*

14. Mr Penny explained that for the 2017 rating list, public houses were valued having regard to their fair maintainable trade (FMT) and in accordance with the 'Valuation of Public Houses Approved Guide 2017'. He confirmed that the FMT adopted in the appeal property's present assessment was in line with the turnover for the public house. However, Mr Penny argued that for many years the appellant, Mr D Green had been over trading at the property and consequently the RV assigned to the property was considerably higher than that of the comparable properties which he had cited. He also argued that the public house should not have been placed in category 1 as he did not consider Harleston to be a major town, he contended that the property should have been placed in category 3.

15. Mr Penny contended that the appellant, Mr D Green, had made the public house into a 'community pub', he sponsored the local football and rugby teams and provided food on match day, he also served breakfast to the public as well as guests, had coffee mornings and various other incentives to attract business to the public house. Mr Penny stated that he went well beyond what was described in the 'Approved Guide' as a reasonable efficient operator (REO) and was in fact an exceptional trader, he stated that it was necessary to adopt the stand back and look approach when comparing this pub to comparable properties. The original challenge had requested that the RV of £50,000 be reduced to £30,000 which would include a 40% end reduction for over trading. Mr Penny had since revised his valuation and believed that a 30% allowance should be adopted for over trading. Having regard to his evidence, Mr Penny asked the panel to confirm the appeal property's revised RV of £44,000 with effect from 1 April 2017.

16. The Valuation Officer's representative Mr M Green explained that the new trading figures provided by Mr Penny during the challenge had led the Valuation Office to re-assess the RV of the property and consequently the RV had increased from £50,000 to £71,000 with effect from 20 September 2019. The original challenge had requested that the RV of £50,000 be reduced to £30,000 which would include a 40% end reduction for over trading. Both parties had subsequently revised their valuations and the Valuation Office had accepted that an allowance should be made for over trading, he therefore requested that the panel confirm an RV of £60,000 which included an allowance of 20% for over trading with effect from 20 September 2019.

Decision and reasons

17. In this appeal, the panel had to determine the correct RV for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD) of 1 April 2015. This common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental levels and economic factors fluctuated over time.

18. As this was a compiled list appeal, matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017. Any changes to the locality and changes to the occupation of nearby outlets that had occurred after this date, could not be taken into consideration when determining this appeal.

19. Public houses are assessed using the Valuation of Public Houses Approved Guide 2017, a document that had been agreed between the Pubs Rating Forum and the Valuation Office

Agency. Under this Guide, an RV was, in effect, based on the FMT of a public house from the various income streams, as at 1 April 2015.

20. In his submission, the appellant had supplied turnover figures for the years 2013 to 2015. The figures for the years up to the valuation date, were as follows:

	31/3/2013	31/03/2014	31/03/2015	Mean Average
Liquor	£360,000	£380,000	£390,000	**£376,666.67**
Food	£307,359	£330,587	£371,946	**£336,630.67**
Accommodation	£40,000	£40,000	£50,000	**£43,333.33**

21. In his original Challenge documentation, the appellant had suggested an assessment of £30,000 RV for the appeal property, following subsequent contact with the Valuation Officer, he had revised this assessment, based on a 30% allowance for overtrading. This had resulted in an assessment of £44,000 RV, based on the following:

• Wet trade	£376,666.67	@ 8.52%	= £32,092.00
• Dry trade	£336,630.67	@ 8.10%	= £27,267.08
• Accommodation	£43,333.33	@ 8.50%	= £ 3,683.33
			£62,042.42
	Over Trading – 30%		-£18,912.73
Say £44,000			£44,129.69

22. The Valuation Officer's revised assessment of £60,000 RV was based on the scales within the Approved Guide for Category 1 – Primary Licensed Trade areas, which included city centres, towns and outlying commercial centres in relation to the drinks trade and band B for the food trade. It also included a 20% allowance for over trading which had been deducted before the percentages had been applied. Mr Green had relied on figures at the AVD and had provided the following:

• Wet trade	£310,000	@ 9.95%	= £30,845
• Dry trade	£300,000	@ 7.89%	= £23,670
• Accommodation	£ 82,500	@ 9.89%	= £ 8,159
			£62,674
Say £60,000			

23. In deciding this appeal, the panel found that the RV adopted by the Valuation Officer was reasonable and in line with the adjusted turnover achieved at the subject property around the AVD; the date the panel had to have regard to. The panel noted that this was a freehold public house so there was no rent passing.

24. The panel paid attention to the Approved Guide to determine whether the appeal property had been placed within the Category that best fitted its physical characteristics. The Valuation Officer had placed it within Category 1 and the panel were of the opinion that this was the correct category. The subject property was situated in a characterful town which would attract tourist traffic, the house was run trading under direct management and without corporate branding. It appeared to the panel that, as this was also a 'community pub' there was strong demand throughout the year.

25. The panel accepted that there was an element of overtrading, however, it concluded that the Valuation Officer's reduction of 20% was fair and reasonable.

26. In addressing comparable properties provided by Mr Penny the panel found that only the Swan Hotel was directly comparable as this property is also situated on The Thoroughfare, Harleston and offers accommodation, whilst the Cardinals Hat, which is also situated on The Thoroughfare, is wet led and does not offer accommodation. Other comparable properties, including: The Bell, High Road Wortwell; The Red Lion, High Road, Needham; and the Black Swan Hotel, Homersfield; were situated in village locations and did not offer accommodation.

27. In respect of the Swan Hotel the panel noted that the RV had been revised to £37,750. The panel was also aware that this property had a poor reputation after being featured on the television show 'Hotel Inspector'. The panel found that the hypothetical tenant coming fresh to the scene would have been prepared to pay a higher rent for the subject property than it would the Swan Hotel.

28. In view of the foregoing, the grounds of the appeal were upheld to the extent that the existing valuation of £71,000 RV was not reasonable. However, the panel did not accept Mr Penny's valuation of £44,000 and found Mr Green's assessment of £60,000 RV to be the more reasonable. The appeal was therefore allowed in part.

29. 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 (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

30. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £60,000 RV for the appeal property, with effect from 20 September 2019.

31. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

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Date: 3 November 2020