THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeal; 2017; Rating List; Public House and premises; Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; Sharp v Griffiths (Valuation Officer) RA/120/1998 and Jack in the Green, London, Rockbeare, Devon, EX5 2EE VTE 110516875401/537N10; Approved Guide for the Valuation of Public Houses; Fair Maintainable Trade*; Category and Band; Comparable evidence; Appeal Dismissed.*

Re: John Gandy's, Gandy Street, Exeter, EX4 3LS

APPEAL NUMBER: CHG100066523

BETWEEN: South Devon Inns Ltd Appellant

and

Mr A Corkish Respondent

(Valuation Officer)

PANEL: Mr W Read (Chairman)

Mrs F Higgin

CLERK: Mr L Bertie

REMOTE HEARING ON: 13 January 2021

APPEARANCES: Mr A Brooke of Dunlop Heywood Surveyors for the Appellant

Mr P Stevens (Valuation Officer's Representative)

Summary of Decision

1. The appeal is dismissed and the assessment of the appeal property remains unaltered.

Introduction

2. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £70,000 from 1 April 2017, with a description of Public House and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage, the Valuation Office Agency (VOA) altered the Rating List to £68,700 effective from 1 April 2017. The appeal dated 19 October 2020 was against the Valuation Officer's (VO) final Decision Notice of 19 June 2020. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £68,700 from 1 April 2017 was deemed as correct. The appellant sought a rateable value of £50,500.

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. Mr Brooke appeared on behalf of the Appellant as both surveyor-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's declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the evidence supported the client's case.

6. The Valuation Officer's representative, Mr Stevens, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

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

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 it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

9. The appeal property was a two storey, terraced, public house located in Gandy Street in Exeter City Centre.

Issue

10. The issue in this appeal concerned the Fair Maintainable Trade (FMT) and the Banding and percentage to be applied to the assessment of the appeal property.

Evidence and Submissions

11. The appellant's representative provided information regarding the appeal property which included correspondence with the Valuation Officer, photographs, valuations of comparable properties, trade figures and case law. In view of this evidence he asked the panel to determine a Rateable Value of £50,500 effective from 1 April 2017.

12. The Valuation Officer's representative provided a copy of the proposal, location maps and information in respect of the appeal property which included the trade figures which he had used in reaching his valuation and valuations of comparable properties. He also referred to the approved guide for the valuation of public houses for the 2017 Rating List and Schedule 6 of the Local Government Finance Act 1988. He contended that the appeal property's existing Rateable Value of £68,700 with effect from 1 April 20170 was correct based on its Fair Maintainable Trade, banding and percentage applied. He asked the panel to dismiss the appeal.

Decision and Reasons

13. In arriving at its decision, the panel had regard to the basis of valuation from schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which states:

"(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from local non-domestic rating] 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 these three 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]".

14. Although, the usual approach in determining the rateable value for non-domestic purposes was based on first addressing the rent passing in accordance with authoritative guidance in the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council (1976) RA 141*, the panel noting that the appeal property was a public house, did not consider this approach to be the most appropriate for determining its Rateable Value.

15. The panel was of the opinion that the correct approach for valuing the appeal property should be with reference to and in line with the nationally Approved Guide for the Valuation of Public Houses and having regard to its fair maintainable trade figure, banding category and percentage applied. Noting that this was the issue in dispute between the parties, the panel was satisfied that this was the best starting point for determining whether or not the existing Rateable Value was correct.

16. The panel noted the trade figures available from the Appellant's representative between 2010/2018 who contended that based on the average trading figures for wet /dry for the appeal property over this period should be £525,000. He contended that as the appellant had taken action to alter the business to make it mainly a night time venue in 2013 following losses between 2010/2012 and introduced other activities such as live music every Friday, cocktail classes, discounted drinks and promotions the turnover should be discounted by 10 % to take account of the business overtrading because of the actions of the appellant in altering his business model . The Judgment in Sharp v Griffiths (Valuation Officer) RA/120/1998 and Jack in the Green, London, Rockbeare, Devon, EX5 2EE VTE 110516875401/537N10 was referred to in highlighting the level of discount applied to the valuation to reflect the very competent operator. Moreover, in taking account of the opening of the Guildhall Casual Dining Centre in Autumn 2016 which provided approximately 13 new restaurants and bars, which had an adverse impact on the appeal property's food trade to such an extent that the food trade should be considered to be de minimis.

17. In addition, the appellant's representative considered that the appeal property should fall into a Category 2 public house – Destination Houses ' *This category will comprise the full spectrum of free houses, managed and tenanted pubs. A significant food or entertainment offer will be key indicators of public houses that will fall in this category*'. Reference was made to the rateable value of The Duck and Drake, Leeds which was a public house that trades by putting on bands which is the main driver of its income. As such, it is run in a very similar manner to the subject premises.

18. Moreover, in applying a figure of 9.71% , the Appellant's representative contended that the appeal property should fall within the lower level of banding because it was

situated on the fringe of the main pubs circuits ,strong customer demand will not be necessarily be strong at both lunchtime and evening sessions, seven days a week or all year round possibly due to seasonality, lower levels of profitability due to higher operating costs, trade may have to be supported by discounting, promotions, or expenditure on entertainment etc, properties with limited outside facilities and parking. Reference was also made to comparative changes in the rateable values of several local public houses between the 2010 and 2017 Rating Lists to be between –39% to 12% which highlighted an increase of 33% for the appeal property between these lists. Consequently, the Appellant's representative proposed that the rateable value should therefore be £50,500 with effect from 1 April 2017.

19. In contrast , the panel was aware that the figures adopted by Valuation Officer's representative as representing the Fair Maintainable Trade were £575,147 for the wet trade based on an average of the actual trade between March 2013 to March 2015 and £14,373 for the food trade with a total FMT of £589,520 say £590,00.

20. The panel then addressed the category to apply and percentage to be applied to the Fair Maintainable Trade. In this respect, the choice of category is intended to reflect all the relevant factors which affect value for the physical attributes and location of the subject property in accordance with the Approved Guide. This includes the relevant factors that make up each category. Category 1 licensed properties apply to city centres whereas category 2 properties are used to reflect destination houses(out of town or rural location).

21. The panel noted that the appeal property is located within Exeter City Centre and consequently determined - that it should be valued as a category 1 public house. Moreover, in determining the percentage to be applied, the appeal property provides several factors from the upper levels of category 1, i.e. It is situated within a primary town and city centre; there is an open bar area and the pub is easy to be maintained; Modern and well-designed conversion fitted out to a high standard. Although, it was noted that there are also attributes from the lower levels of category 1 such as: Lower levels of profitability due to higher operating costs and trade may have to be supported by discounting, promotions and entertainment.

22. It was apparent that there had been a change in emphasis from 2013 because of the lack of profit in the earlier years i.e. 2010 – 2012. This change included catering towards the evening crowds within Exeter City Centre through its limited operating hours, opening from 4pm until late, with the draw of live music and drinks offers, providing the first floor bar free for cocktail master classes etc. The turnover figures showed that profit gains were made from 2013 but taking into account the increase in expenditure on entertainment and drinks promotions, there were lower levels of profitability. The panel accepted that it was not unreasonable to take these factors into account and adjust the rental percentage to take into account the lower levels of category 1 which are present alongside several upper levels.

23. With regard to the case law submitted of evidence of overtrading at the appeal property, the panel noted from the evidence submitted for the appeal property that the operator is generating a level of profit that increases from 2013 to 2015 and is not an indicator that there is a lack of profitability of the subject premises. In the case for 'Jack in the Green', the owner had built up trade over 20 years with a high enough quality food and dining experience that they were listed within the top 50 restaurants in the UK. In

addition to this, the trade volume was over three times higher than comparable properties in the locality; indicating that their level of trade is not achievable by a REO. However, the appellant's trade is not the highest in the locality amongst comparable properties and is not significantly higher than those with a lower RV.

24. The panel also addressed the material change of circumstance (MCC) with the opening of the *'Guildhall Casual Dining Centre providing another 13 or so new restaurants and bars'* during *'Autumn 2016'* and agreed with the Valuation Officer's contention that 'the Guildhall Casual Dining Centre may have had an impact on the trade in the immediate vicinity prior to the compiled list date of 01 April 2017. There has been confirmation of three years trade between year ending November 2016 and November 2018 showing that the level of trade has declined year on year from 2016 however, the MCC is between the AVD and compiled list date. Trade evidence beyond AVD means that other economic aspects can potentially mask any direct comparison to the MCC. Even if trade was taken into account up to year ending November 2017, our opinion is that the FMT of £590,000 would still be reasonable'.

25. In addition, the panel found no substance in the argument put forward by the appellant in comparing changes in Rateable Value between the 2010 and 2017 Rating Lists for comparable properties as a factor to support the inaccuracy of the current assessment. The panel was aware that the purpose of a revaluation exercise, which in this case took place seven years apart, was to value each hereditament appearing in the List completely afresh, taking into account the rental values and economic factors at the antecedent valuation date of 1 April 2015 and the physical factors at the compilation date of 1 April 2017 and it was not a mathematical exercise whereby every entry gets uplifted to the same degree.

26. Consequently, with regards to the FMT, bands and percentages adopted by Valuation Officer's representative in his valuation, the panel found no evidence which suggested that they were excessive or unreasonable based on the evidence submitted at Wet/dry Trade £590,000 at 11.65% to give a rateable value of £68,700.

27. The panel determined that based on the evidence submitted by the parties, in view of its findings and conclusions, the panel upheld the Valuation Officer's contention and dismissed the appeal

Date: 1 February 2021

Appeal Number: CHG100066523