THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; *Restaurant and premises; Compiled List Entry; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal dismissed*.

Re: Fitzwilliam Arms, Peterborough Road, Peterborough, Castor PE5 7AX

APPEAL NUMBER: CHG100069455

BETWEEN:	Crepex Ltd T/A Chubby Castor	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr I Lonsdale (Senior Member)

CLERK: Miss K Hendry IRRV (Tech)

APPEARANCES: Mr N Brewitt of Altus Group (expert witness on behalf of the appellant)
Mr P Emerick of Altus Group (advocate on behalf of the appellant)
Mr M Dale on behalf of the Valuation Officer

REMOTE HEARING on Monday 19 October 2020

Summary of decision

1. Appeal dismissed. No change was made to the rateable value.

Introduction

2. This appeal has been brought in respect of the following: Fitzwilliam Arms, Peterborough Road, Peterborough, PE5 7AX which was entered in the 2017 rating list as "restaurant and premises" at rateable value £38,000 effective from 1 April 2017.

3. The appellant's challenge proposal to the Valuation Officer was made on 23 January 2019, the Valuation Officer's challenge decision was given on 7 September 2019. The appellant's appeal to the Valuation Tribunal for England (VTE) was made on 15 January 2020.

4. 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.

5. 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.

6. In accordance with the Tribunal’s Business Arrangements, I have been authorised to consider and determine this appeal alone.

7. Mr Brewitt 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 Brewitt’s declaration of truth included a statement that he was instructed under a contingency based fee.

8. Mr Brewitt’s declaration confirmed 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.

9. 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).

10. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

11. The appeal property is a period restaurant housed in a former public house and Grade II listed building. It is of brick construction based on a timber frame, all under a thatched roof. There is also a garden and car park. It is currently valued as a restaurant on an overall basis equating to £220/m^2.

12. The first floor consists of a two bedroomed apartment. The tenant had planned to use this additional space for dining facilities. However, it was identified during a Risk Assessment that there was only one means of escape and would not comply with fire regulations. Therefore, the first floor remains as domestic.

13. 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 before 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

14. The issue for me to determine was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

15. The appellant's representative, Mr Brewitt, had provided the Tribunal with both parties' submissions.

16. Mr Brewitt was seeking a revised rateable value of £21,500 and relied on the following evidence:

    a. The village of Castor is home to roughly 1000 people yet is served by three public houses. The Prince of Wales Feathers, The Royal Oak and the appeal property.

    b. The appeal property has been valued as a restaurant and premises but should be valued as a public house on fair maintainable trade (FMT) in line with the 2017 Pub Guide and not as a restaurant. Externally the appeal property looks like a rural village pub with food, and whilst the cuisine may be good, it is not relevant to the valuation of the premises, vacant and to let.

    c. Mr Brewitt stated that the appellant's first year's trade produced £248,488 gross. If the property was to be valued as a public house, it would equate to £15,000 RV based on the following;

        Wet: £133,000 (less 12.5% service charge, annualized and scaled back for inflation £142,483)

        Dry: £79,990 (less 12.5% service charge, annualized and scaled back for inflation £85,692)

        Even if an uplift was applied to allow time for a start up after a period of closure, say £300,000pa would produce

        Wet: £160,000 at 8% = £12,800
        Dry: £140,000 at 6.25% = £8680

        To give a rateable of £21,480, say £21,500 RV

    d. Alternatively, if the panel determined that an overall basis was to be adopted, Mr Brewitt referred the panel to the appeal property's rent and his comparable properties. Mr Brewitt confirmed that the appellant had taken the appeal property on a 20 year lease commencing from 24 January 2018 with a break on 25 December 2022. The rent is as follows:

        6 Months: Rent free
        Year 1: £12,500
        Year 2: £25,000
        Year 3: £35,000
        Year 4: £40,000
        Year 5: £45,000

    e. The rent is inclusive of a two bedroomed apartment on the first floor, and therefore needs adjusting to reflect this. It is contended that the residential element of the property would command an annual rent of £10,000 on the open market reduced by one third to reflect the integral nature. Therefore deducting £6,667 gives an adjusted rent of £24,052 from 24 January 2018.

f. Given that the rent was set in 2018, it needs adjusting back to 2015 values. Mr Brewitt confirmed he had used RPI indices to equate to a rent as at 1 April 2015 of £22,223.

g. The landlord paid £70,000 to construct a new kitchen facility. The tenant also was required to carry out works which were mainly cosmetic and decorative opposed to alterations which would have an effect on rental value. The works undertaken by the client cost £77,000 as a result of the building having lain empty for five years prior and had started to show signs of disrepair and degradation. These were not works of improvement.

h. The representative referred to the following comparable properties;

i. **41 Crowland Road, Eye, Peterborough, PE6 7TP**, a former public house rateable value £17,500.

It is located on a very busy thoroughfare between Peterborough / Eye and Crowland. It is a similar distance from Peterborough as the appeal property. The basic price is £95 per m^2, which is 57% lower than the appeal property. It has a large car park and benefits from passing trade.

ii. **Prevost, 20 Priestgate, Peterborough PE1 1JA**, RV £24,500 valued at £105 per m^2.

This is town centre property, which has been included as a comparable to demonstrate how much lower it has been valued in comparison with the appeal property. The Valuation Officer has stated that this property has limited visibility from the street, but the appeal property suffers in similar fashion due to the fact that no one passes. This comparable is valued significantly less than the appeal property at £105 per m^2, (52% of the appeal property) despite being within close proximity to The Queensgate Shopping Centre.

iii. **Lakeside Kitchen, Orton Waterville PE2 5UU,** RV £32,750 valued at £120 per m^2.

This property is the nearest restaurant to the appeal property that has been valued on the same scheme. It is a modern building less than a couple of miles away from the appeal property, within walking distance. The property benefits views over Gunwade Lake and close to Ferry Meadows Country Park, as well as having a consistent stream of visitors / customers. It has been valued at £120 per m^2, 54% less than the appeal property.

iv. **Loch Fyne Oyster Bar, The Old Diary, Elton, Peterborough PE8 4SG**,

This property is situated on the busy A605 (Peterborough to Northampton), thousands of people pass this property each day. It is also next to Elton Hall and Gardens and is very popular with Bosworth Garden Centre. It is assessed at £200 per m^2, which is 10% less than the appeal property. A rent of £40,000 has been quoted by the Valuation Office with no details of terms.

v. On the overall basis, Mr Brewitt had valued the appeal property in line with his comparable properties as follows: ITMS area of 173.76m^2 x £125/m^2 - £21,720

vi. Mr Brewitt stated that both valuation methods compared favourably with the analysed rent for the appeal property of £24,000

17. To support the existing rateable value in the 2017 list, the Valuation Officer relied upon the following evidence;

a. The appeal property is a restaurant establishment and has been valued using the non-zoned approach. It is only appropriate to make comparison with other similar restaurants in similar locations. The appeal property is unique as it has attractive character features, it is set on a good size plot with attractive outdoor sitting area, good parking facilities and is of better quality in comparison with other similar establishments.

b. The appeal property was entered into the 2010 rating list at £38,000 and was not challenged. In the 2005 list, it was accepted and agreed that the property should be valued as a restaurant and not a pub. The rent declared on the 2005 appeal was £38,000 agreed with effect from 1 November 2005 until 1 November 2012. The rental values on restaurants have improved between 2012 and the antecedent valuation date of 1 April 2015.

c. Prior to the 2005 appeal agreement, the property was valued on receipt and expenditure and it would appear that the appeal property was trading at a much higher rate than any pubs in the locality, and the RV was £73,500.

d. Mr Dale argued that the appeal property should not be valued on a receipts and expenditure approach. There is sufficient evidence in respect of restaurant establishments. The representative has only taken trade figures derived from nine months trade, where the occupier has only just began trading and was not yet established. Fair Maintainable Trade requires at least three years of accounts or trade leading up to the antecedent valuation date (AVD). The representative has produced trade figures from 2018, which is too far removed from the AVD, and the evidence is unreliable.

e. Mr Dale had regard to the rent which averaged at £34,000. He confirmed that he had agreed with the representative's £10,000 figure for the domestic accommodation. However, he did not agree with Mr Brewitt's use of indices to try and equate a 2018 rent back to 2015. He also disputed that the tenant's works were works of improvement which should be factored into the rent. The cost of £77,037.52 for the works should be spread over five years which equals £15,407 minimum and added to the rent. Therefore, the rent supported the current rateable value.

f. Mr Dale responded to the representative's comparable properties as follows;

i. **41 Crowland Road, Eye, Peterborough, PE6 7TP**
This property is valued as restaurant and premises. It is ground floor and first floor business accommodation. It is 25% larger than the appeal property at total floor area of 281.50m^2. It is of much different quality, it has not been refurbished in the last ten years, does not have a garden or outside seating

and is set in a less attractive locality. The catchment area for this property is more limited compared with the appeal property, which has been set as a destination establishment. This property was valued at £14,250 RV in the 2005 rating list, £17,500 in the 2010 rating list and currently £17,500 in the 2017 rating list. Compared to the appeal property at £32,500 in 2005 rating list, £38,000 in both the 2010 and 2017 rating list.

ii. **The Wicked Witch, Bridge Street, Ryhall, Stamford, Lincs PE9 4HH, The Royal Oak Inn, Peterborough Road, Castor, Peterborough PE5 7AX and The Prince of Wales Feathers, Peterborough Road, Castor, PE5 7AL**
These are valued as public house and premises and therefore not comparable as it is not 'like for like'. It is valued using FMT compared to an overall approach.

iii. **Prevost 20, Priestgate, Peterborough, PE1 JA**
This is a ground floor and first floor business accommodation with a total floor area of 283.44m^2.
It is valued as a restaurant on an overall approach. The building is an old club building and a much different quality to the appeal property. It has very limited visibility from the street, there is no garden or outside sitting area. Valued at £24,500 RV.

g. Mr Dale considered the best comparable to be Lock Fyne Oyster Bar, The Old Dairy, Elton, Peterborough, PE8 4SG. In both the 2010 and 2017 rating lists, it had a rateable value of £40,000. This equates to £200 per m^2 based on a total floor area of 250.90m^2. It provides ground floor only accommodation and is very similar to the appeal property in terms of quality and location. It has passing rent of £40,000 which was declared in 2012 for the 2010 rating list. It is the VO's opinion that the appeal property, which has just been refurbished to a very high standard, would achieve a higher rental value in its improved state and quality.

h. Mr Dale contended that this comparable property supports the current rateable on the appeal property, which was based on a value of £220/m^2 and therefore the appeal should be dismissed.

Decision and reasons

18. I had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

19. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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.

20. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell* (VO) [1976] A 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

21. Having regard to the principles established in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 which was referred to by the representative, I attach little weight to the rent passing on appeal property as it is of no real assistance. This is because not only is it a stepped rent which requires further analysis to bring it back to the statutory definition of rateable value, but it was determined in 2018 and is therefore too far removed from the antecedent valuation date. However, the case of *Lotus & Delta*, went on to say that where reliable rental evidence was not available, one should have regard to assessments placed on comparable properties.

22. In determining whether the appeal property should be valued as a public house on FMT or as a restaurant on an overall basis, I had regard to the lease provided by the appellant, which stated that the permitted use of the appeal property was as a 'restaurant and café within use Class A3" and not as a public house. In support of the property being assessed as a restaurant, I had regard to the evidence presented by Mr Dale in regard to the previous rating lists. Although earlier rating lists are not binding on the 2017 rating list, I found it useful to note that the 2005 rating list was subject to an agreement between the parties to change the mode of category from a public house to a restaurant. This was not challenged throughout the 2010 rating list. Therefore vacant and to let, I found the appeal property to be a restaurant.

23. I considered the comparable properties provided by the parties and concluded that the appeal property is a restaurant and premises and should be valued on the overall basis in line with the strongest comparable property, which was the Loch Fyne Oyster Bar, The Old Dairy, Elton, Peterborough PE8 4SG. I find the location and quality of this comparable property to be similar to the appeal property, given that is a destination type of property. I therefore disregarded the comparable properties put forward by the appellant which were public houses valued on FMT.

24. The Loch Fyne has been valued slightly lower than the appeal property at £40,000 RV which equates to £200 per m^2 in comparison to the appeal property at £38,000 or £220 per m^2. However, in my opinion, I find the appeal property to be of a better quality than this comparable which is appropriately reflected in the slightly high price per m^2.

25. Having regard to the above conclusions, I find that the appeal property's existing assessment of £38,000 RV is not unreasonable. Therefore, the appeal is dismissed.

Date: 9 November 2020

Appeal number: CHG100069455