THE VALUATION TRIBUNAL FOR ENGLAND

*Summary of Decision: non-domestic rates; 2017 rating list appeal; hotel and premises; rental evidence; fair maintainable trade; comparable properties; appeal allowed as the evidence showed that the existing valuation was unreasonable.*

Re: (inc 169 Queens Drive) 326-328, Seven Sisters Road, London N4 2AP

APPEAL NUMBER: CHG100094491

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| BETWEEN: | Pembury Hotels Management Limited | Appellants |
| | and | |
| | Mr A Ricketts (Valuation Officer) | Respondent |

BEFORE: Mr A Clark (Vice President)

CLERK: Mrs R James

REMOTE HEARING 2: Tuesday 8 February 2022

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors (on behalf of the Appellant)
Mr A Byfield (Respondent's representative)

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**Summary of decision**

1. The appeal was allowed and the appeal property's assessment was reduced to £150,000 Rateable Value (RV), effective from 12 July 2017.

**Introduction**

2. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and to 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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. Both parties accessed the hearing via Teams and I was satisfied that they were able to fully participate at all times.

5. Mr Bacon was appearing on behalf of the Appellants as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and, if so, whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

6. Within his submission Mr Bacon had declared that he was representing the Appellants in this appeal on a contingency fee basis. However, 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 or not the evidence supported his client's case.

7. I have accepted this expert witness evidence on the above basis as the appeal is 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). I, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

8. This appeal has been brought in respect of the following: Pembury Hotel, (inc 169 Queens Drive) 326-328, Seven Sisters Road, London, N4 2AP, which was originally entered in the 2017 Rating List as "hotel and premises" at £410,000 RV, effective from 12 July 2017. Following the Appellants' challenge, the Valuation Officer served a Notice to reduce the assessment to £397,500 RV and then reduced it further to £255,000 RV, effective from 12 July 2017.

9. The Appellants' Challenge to the Valuation Officer (VO) was made on 1 May 2019. The appeal to this Tribunal was made on 4 October 2021, following the VO's Decision Notice of 30 July 2021, in respect of the appeal property (hereditament). The material day is 12 July 2017.

10. The appeal property was a hotel and premises located on Seven Sisters Road in the London Borough of Hackney. The assessment had resulted from the merger of two large Victorian houses, one of which was a terraced house and the other detached. The premises were arranged over three and two floors respectively. There was interconnection between the two former properties and, apart from the annexe, it was serviced by a passenger lift.

11. There was agreement with regard to most aspects of the appeal property including the fact that it comprised 85 en-suite bedrooms, which when adjusted equated to 80.45 double bed units (DBU).

12. At the start of the hearing, I provided an introductory statement so that the parties would be fully aware of my understanding of the issues upon which I had to adjudicate. I explained that from my reading the challenge and appeal documentation, it was apparent that the parties initially did not agree the method of valuation that should be adopted in order to

arrive at the correct rateable value. For the current assessment, the VO had adopted a rate per bedroom based upon a rental comparative approach. This produced either £3,325 (or £2,664.75) per double/twin bedroom, with the single bedrooms at 70% of £3,325 at £2,327.50 per bedroom. Triple and quadruple rooms having a 25% uplift on the double/twin room rates. By contrast, Mr Bacon had used a fair maintainable trade (FMT) figure of £1,250,000 which he took at 12% to arrive at his proposed assessment of £150,000 RV.

13. However, after having regard to an additional submission received from Mr Byfield on 28 January 2022, it now appeared that the VO was also adopting the FMT approach but with a FMT figure of £1,750,000 which he had taken at 14.55% to give an assessment of £254,500 RV.

14. At the conclusion of my introduction, I asked the parties if they had any comments or objections to what I had been outlined. Neither party made any comment or objection and accordingly I proceeded on the basis of determining an appropriate FMT and percentage rate to be applied to the FMT so as to arrive at the rateable value.

15. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I considered all of the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

**Issue**

16. The correct assessment for the appeal property, effective from 12 July 2017.

**Evidence and submissions**

17. On 7 February 2022, the day prior to the hearing, Mr Bacon provided a paginated bundle that comprised the challenge and appeal documentation, Mr Byfield's submission dated 28 January 2022, together with his response dated 3 February 2022. As there was no objection to this bundle from Mr Byfield, I proceeded to hear the appeal having regard to it especially as it had pulled together into a single document everything that had been provided by the parties in accordance with the Tribunal's Standard Directions.

18. Mr Bacon contended that the current assessment was unreasonable. He proposed a FMT of £1,250,000, which equated to £14,100 per DBU. This FMT reflected the first 41.5 weeks actual trade of £979,576, grossed up to the full 52 weeks. Whilst he accepted that this trade was from 2018, he did not feel that there had been much growth in this part of the hotel sector between the AVD and 2018. He also drew support from a schedule of comparable property evidence, which detailed three other hotels in the vicinity. In arriving at his proposed assessment, Mr Bacon had applied a rate of 12% to the FMT of £1,250,000, which resulted in a figure of £150,000 RV, effective from 12 July 2017.

19. Whilst raising no objections to my introductory statement, Mr Byfield referred to the valuation of the appeal property on the rental comparative basis. He considered that the rental comparative approach should not be totally disregarded and went on to refer me to six rental comparable properties. Having regard to those comparable properties, he contended that it was reasonable to adopt a hybrid rate of £3,325 per DBU, with further adjustments to reflect the fragmented arrangement of the accommodation. This resulted in the current assessment of £255,000 RV.

20. Mr Byfield then went onto refer to the alternative FMT approach. He proposed a FMT of £1,750,000 for the appeal property. He explained that the trade for the 41.5 weeks reflected the appeal property as a start-up business. He did not consider that this level of trade demonstrated the level achievable by a reasonably efficient operator (REO). In support of the higher FMT, he referred to the FMT of 372-374 Seven Sisters Road of £1,475,000. This was a smaller hotel comprising 45.55 adjusted DBUs. Therefore, he considered it was reasonable to assume that the appeal property with 80.45 adjusted DBUs would achieve a FMT of £1,750,000. To the proposed FMT of £1,750,000, Mr Byfield had applied 14.55%, which resulted in the slightly reduced value of £254,500 RV.

21. To conclude, if I was to determine that the appeal property should be valued in accordance with the rental comparative method, Mr Byfield contended that the current assessment of £255,000 RV was correct and he sought dismissal of the appeal. Alternatively, should I determine that the appeal property should be valued by way of FMT, then he proposed the reduced assessment of £254,500 RV, effective from 12 July 2017.

**Decision and reasons**

22. The appeal property (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 (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015; the antecedent valuation date (AVD).

23. As outlined in my introductory statement, based upon the later submissions provided, it was apparent that the parties had both agreed that the correct valuation method for the appeal property was the shortened receipts and expenditure method having regard to the FMT. Comments were invited on my interpretation of the submissions and as set out in paragraph 14 above no objections were raised. However, Mr Byfield in giving his evidence referred to both the rental comparative method, and as an alternative, the FMT approach. I arrived at my decision solely having regard to the FMT approach. This was consistent with previous Tribunal decisions provided in relation to non-chain hotels and bed and breakfast establishments in outer London. I accepted Mr Bacon's statement that there was a paucity of rental evidence for such properties in this location as hotels were usually constructed by the owner/occupier and run for profit. Thus, a valuation based on the rental comparative method would inevitably be reliant on a relatively small number of diverse properties. As such, I find it appropriate to value the appeal property on the shortened receipt and expenditure method having regard to a reasonable FMT achievable at the AVD.

24. As the appeal property was a newly merged property on 12 July 2017, there was no available trade either side of the AVD. Actual trade figures for the appeal property at £979,576 had been provided for the 41.5 week period from 12 July 2017 to April 2018. Mr Bacon had grossed this up to arrive at the actual FMT to the full 52 week period, which he rounded up to £1,250,000.

25. Mr Byfield contended that the 41.5 weeks trade did not represent what a REO would achieve when running the appeal property. He believed that as a start-up business trade would be lower than that expected by the REO. In a start-up business it was assumed that the occupancy rate and the rooms available would be low for the first couple of years. Mr Byfield also contended that peak months were not included in the 41.5 weeks FMT.

26. In support of their proposed FMT, both parties had referred to schedules of comparable properties. Mr Byfield had specifically referred to 372-372 Seven Sisters Road, which was a hotel and premises with an adjusted DBU of 45.55. This property had an AVD FMT of £1,475,000. Mr Byfield contended that the REO should be able to achieve a higher FMT for the larger appeal property with 80.45 adjusted DBUs.

27. However, it was established that the FMT figure for 372-372 Seven Sisters Road had not been agreed. Furthermore, I noted that Mr Byfield had not visited this property nor the appeal property, solely having regard to them on google. I found the FMT for 372-374 Seven Sister Road out of kilter with the rest, it appeared excessive in relation to other hotels of a comparable size in that locality. Unfortunately, I was unable to fully compare the two hotels, as I was not provided with specific details on the quality of 372-372 Seven Sisters Road, what facilities were on offer or its location in comparison to travel links and amenities. It could well be that the FMT incorporated an element for bar or kitchen facilities. Due to the uncertainty surrounding this property, I placed less weight on its quoted FMT.

28. Mr Byfield had also referred to 1 Aspland Grove, which like the appeal property, was located in the London Borough of Hackney. However, I placed little weight on 1 Aspland Grove that had a FMT of £1,500,000. Whilst it was comparable in terms of DBUs, it was a purpose built chain hotel operating as a Travelodge that was located closer to the city centre than the appeal property.

29. When arriving at my decision, another comparable that stood out to me was the Travelodge, 1446 High Road. This hotel comprised 96 adjusted DBUs and had a FMT of £1,705,000. The parties had accepted through questioning that a purpose built chain hotel would generally attract a higher FMT than a converted Victorian property. However, Mr Byfield was suggesting that the appeal property at 80.45 adjusted DBUs could reasonably achieve a significantly higher FMT than that of a purpose built chain hotel that comprised 96 adjusted DBUs.

30. After having regard to all the evidence, I found that the FMT of £1,750,000 was excessive and unreasonable given the size, characteristics and location of the appeal property. I found nothing to suggest that the FMT put forward by Mr Bacon was lower than that achievable by a REO. The FMT of £1,250,000 had been grossed up from the actual trade and was supported by the FMT achieved by comparable hotels in the locality, namely 414 Seven Sisters Road and 3-15 Wilberforce Road.

31. I accept that the actual trade figures had been for the 41.5 weeks period to April 2018, which was three years post AVD. However, I had not been provided with sufficient evidence to suggest that there had been a dramatic growth in this type of hotel for the period 2015 to 2018. Indeed, if I had then it may have been appropriate to adopt a lower FMT figure than the one put forward by Mr Bacon. In fact, Mr Bacon had explained that the market had been flooded with chain hotels such as Premier Inn and Travelodge, which had soaked up any potential growth in the sector. Furthermore, I have not been provided with any evidence to suggest that as a new start-up business, the appeal property was not fully operational for the initial 41.5 weeks as suggested by Mr Byfield. Accordingly, I accept the FMT as proposed by Mr Bacon of £1,250,000.

32. Having determined the correct level of FMT to be adopted in arriving at the appeal property's assessment, I went on to consider the correct percentage rate to be applied to that FMT. Mr Bacon had applied a rate of 12%, with Mr Byfield applying the higher rate of 14.55%.

33. In arriving at the correct percentage rate, I firstly had to have regard to the accommodation receipts per DBU as that would indicate the appropriate percentage range by reference to agreed scales. Mr Byfield had proposed accommodation receipts per DBU for the appeal property of £20,230. He had proposed this rate after having regard to the schedule detailing 15 hotels located throughout London, coincidentally £20,230 was the average accommodation receipts per DBU for the 15 hotels. Mr Byfield had stated that the figure of £20,230 had been arrived at by having specific regard to the three hotels on that schedule that were located in the London Borough of Hackney, which ranged between £17,813 and £29,200. However, I note that all three of those hotels were purpose built budget chain hotels, two being operated by Premier Inn, and the other by Travelodge. I also note that all three were located closer to the city than the appeal property, which would have a bearing on the tariff charged. The appeal property was located on the northern border of Hackney with 'outer London' starting on the opposite side of Seven Sisters Road. Accordingly, I did not find these three properties comparable and I found it unreasonable to assume that a Victorian converted property located on the edge of outer London was able to command similar accommodation receipts per DBU as those three purpose built chain hotels.

34. Mr Bacon had proposed accommodations receipts per DBU of £14,100 for the appeal property. I found this rate fitted in well with the comparable hotels in the locality of the London Borough of Hackney, in particular:

    i) 414 Seven Sisters Road, which had accommodation receipts of £14,436 per DBU and a rate of 12.70% had been applied to its assessment; and
    ii) 3-15 Wilberforce Road, which had accommodation receipts per DBU of £14,729 and a rate of 12.75% had been applied to its assessment.

35. I then turned to scale provided for hotels that had been placed in category A, such as the appeal property. For accommodation receipts per DBU of £14,500, the table suggested that where 100% of the FMT was from accommodation, the percentage rate to be applied was between 9.75% and 12.75%. Therefore, I find the rate of 12% put forward by Mr Bacon reasonable and in line with both the range suggested on the table and the rates applied to comparable hotels in the locality.

36. Having regard to my conclusions, I allowed the appeal in full. I found that the current assessment applied to the appeal property was excessive and unreasonable. I determined that the appeal property should be assessed at £150,000 RV, effective from 12 July 2017, as proposed by Mr Bacon.

**Order**

37. As a consequence of the above decision, the Valuation Officer is ordered to reduce the appeal property's 2017 Rating List entry within two weeks of the date of this Order, as follows:

    (inc 169 Queens Drive) 326-328, Seven Sisters Road, London N4 2AP, hotel and premises - £150,000 RV, effective from 12 July 2017.

**Refund of fees**

38. A refund of the paid fees will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

**Date:** 11 February 2022
**Appeal Number:** CHG100094491