THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; public house and premises; panel determined that the current fair maintainable trade was reasonable and that insufficient evidence had been provided to suggest that the appeal property's trade had been impacted by the factors raised by the representative; appeal dismissed.

Re: The Silver Plough Inn, White Hill, Pitton, Salisbury SP5 1DU

APPEAL NUMBER: CHG100098831

BETWEEN:	Aart Willem Frans Noordijk	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr AB Jobanputra (Senior Member) and Ms N Akhter

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING ON 3 : Thursday 13 May 2021

PARTIES PRESENT: Mr K Mills of GL Hearn (on behalf of the Appellant)
Mr S Lewis (Respondent's representative)

Summary of decision

1. The appeal was dismissed; the appeal property's assessment remained unaltered at £35,000 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: The Silver Plough Inn, White Hill, Pitton, Salisbury SP5 1DU (the appeal property), which was entered in the 2017 Rating List as "public house and premises" at rateable value £37,250 effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 21 May 2019. On 25 February 2020, the appellant instructed GL Hearn to take over the Challenge made by the former representatives, Messrs Sutton & Co. The VO allowed GL Hearn to submit supplementary material to the original Challenge on 11 October 2020. The appeal to this

Tribunal was made on 15 February 2021, following the VO's Decision Notice dated 13 November 2020, in respect of the appeal property (hereditament). Within the initial response, the VO proposed to reduce the appeal property's assessment to £36,500 RV, with effect from 1 April 2017. However, within the Challenge decision, the VO reduced the assessment further to £35,000 RV, with effect from 1 April 2017.

4. This is a compiled list appeal so the material day is 1 April 2017.

5. The appeal hereditament was a former farmhouse that had been converted to provide a traditional public house. It comprised a public bar and 70 covers (approximately) that were arranged over three main trading areas on the ground floor. There was a car park for 30 cars.

6. The appeal property was located in the village of Pitton in Wiltshire. It was located approximately 6.7 miles east from Salisbury town.

7. 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.

8. 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.

9. Mr Mills explained that GL Hearn were not representing the appellant in this appeal on a success related fee basis.

10. 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

11. The issue to be determined was the correct level of fair maintainable trade (FMT) to be applied to the appeal property's valuation.

Evidence and submissions

12. Prior to the hearing, the panel had been provided with an evidence bundle, which comprised all of the documents exchanged between the parties as part of the challenge process.

13. Within the supplementary material, together with his oral presentation at the hearing, the appellant's representative gave several reasons as to why he believed that the 2017 assessment was incorrect and excessive, which included:

i) Reference was made to the trade evidence. It had been provided in two forms, for the year ended April and to the year ended September. Having regard to that trade evidence, it was stated that the original FMT of £485,000 had not been achieved at the antecedent valuation date (AVD) or at any point since. The FMT of £485,000 ignored the downward trend in the trade evidence.

ii) Trade at the AVD had been subject to a temporary and unmaintainable boost with custom from contractors at a major construction project at Porton Down. The contractors set up campsite 0.1 miles or approximately 3 minutes' walk from the appeal property.

iii) Reference was made to the comparable properties referred to by the VO, namely The Old Castle and Malet Arms. It was considered that these two properties would not have seen the same temporary boost to trade due to the construction project at Porton Down as the appeal property had.

iv) He provided details of his comparable properties, namely The Orchards and Toby Carvery at Solstice Way. These were two new assessments that were located within a 20-minute drive from the appeal property, both with competing food offers. The two public houses with assessments totalling £230,000 RV had been enhanced or developed pre 1 April 2017. It was suggested that they would have contributed to the declining trade at the appeal property.

v) As a rural destination house there was minimal local trade from the modest village of Pitton.

vi) He had originally proposed a FMT of £350,000, which resulted in an assessment of £23,800 RV. However, after reviewing the case and accepting that not all trade loss might be attributable to the reasons he had stated, he had proposed a FMT of £390,000, which resulted in an assessment of £27,800 RV.

14. In response, in the VO's Challenge case decision notice, and in oral presentation at the hearing, the VO explained that:

i) In respect of the trade evidence, the VO considered that annual equivalents did not hold the same weight as they were adjusted and represented a view of trade at a point in time compared to the actual trade achieved. The trade figures submitted by the appellant should have higher weighting and used to form an opinion of the achievable FMT.

ii) The VO contended that the hypothetical landlord and tenant would not have any knowledge of the future trade. It was the VO's opinion that partial pre AVD trade carried more weight.

iii) The VO had no reason to disbelieve the statement that a number of contractors' caravans were set up at White Hill Farm campsite, in close proximity to the appeal property. However, the VO was reluctant to attach significant weight to what was hearsay evidence. Furthermore, there was no date provided for when the project had concluded and the contractors left the area.

iv) The VO referred to his two comparable properties, namely Malet Arms and The Old Castle that were also in close location to the construction project at Porton Down. Those two properties had not shown a drop in trade post 2015.

v) Reference was made to the appellant's representative's comparable properties, namely The Orchard and Toby Carvery, both licensed properties located approximately 9.5 miles and 10.7 miles respectively, from the appeal property. Both properties were located close to the A303 (Amesbury Bypass), which was likely to support their trade. The appeal property was located closer to Salisbury town centre and was likely to draw trade from feeder routes such as the A30 and A36.

vi) The VO contended that the evidence presented did not justify a reduction to the level of £27,800 RV as proposed by the representative.

vii) Within the Challenge Decision, VO reduced the wet FMT, which had resulted in an assessment to £35,000 RV, with effect from 1 April 2017; and it was this value that the VO was supporting.

Decision and reasons

15. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 as amended. The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of an appeal against an entry in the 2017 Rating List, the AVD, when one was required to have regard to rental levels, was 1 April 2015.

16. Whilst neither party referred to the rent passing on the appeal property, within the Challenge it was declared that the rent was 11% of turnover, with effect from September 2017. The panel found this to be of no assistance in determining the appeal.

17. Both parties agreed that the appeal property should be valued in line with the 2017 Approved Guide, which had been drawn up by the Valuation Office Agency (VOA) and the British Beer and Pub Association; a copy of which had been provided to the panel prior to the hearing. Under the Guide, a rateable value was essentially based on the FMT of a public house. The FMT represented the annual trade considered to be maintainable at the AVD of 1 April 2015, on the assumption that the business will be proficiently carried out by a competent publican responding to the normal trading practices and competition of the locality.

18. The panel also had regard to the following section of the Approved Guide, which stated:

> 'The FMT adopted should represent the annual trade considered to be maintainable at the Antecedent Valuation Date (AVD) 1 April 2015, having regard to the physical nature of the property and its location as at 1 April 2017 when the new rating lists came into force (or subsequently following a material change of circumstances) on the assumption that the enterprise will be carried out by a 'reasonably efficient operator (REO) responding to normal trading practices and competition in the locality. It should be recognised that actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level.'

19. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at 1 April 2017. In the appeal before it, the panel determined that it was reasonable to estimate a rent from the property's ability to provide an income for the tenant. The estimated income would have to compensate the tenant sufficiently for operating the business and, in addition, provide a surplus which he would be prepared to pay the landlord for the right to occupy the property.

20. The hypothetical tenant was likely, as the prospective tenant, to estimate what trade could reasonably be expected to be done and have regard to the actual trade of his predecessor. In the appeal before the panel, the appellant took occupation of the appeal property in September 2017. In reality, the panel would have preferred to have been presented with trade figures for the three years leading up to the AVD, in order to identify any trends in the trading levels. The panel had been presented with the trading figures for the six months leading up to the AVD, which were £73,098 wet and £150,140 dry.

21. When considering the trade evidence, the panel noted that the trade had been in decline from 2015 onwards. The panel also noted that the original FMT figure of £485,000 had not been achieved at the AVD or at any time since. However, the panel treated the trade figures after the AVD with caution as these figures would not have been available to the hypothetical landlord and tenant considering the rent on the appeal property afresh at the AVD. The panel was more persuaded by the actual trade figures that had been previously supplied for the year ended September 2015, which were £169,750 wet and £315,250 dry. The annual equivalent of those trade figures for the year ended April 2015 were £149,414 wet and £301,665 dry.

22. The VO was defending the current FMT figures of £170,000 wet and £300,000 dry, whereas the appellant's representative was seeking reduced figures of £120,000 wet and £270,000 dry. The representative contended that trade from 2017 was the cleanest in this appeal. The annual equivalent of the trade for the year ended April 2017 was £119,827 wet and £268,780 dry.

23. The appellant's representative provided several supporting reasons for seeking a lower FMT figure and the panel addressed each in turn. The representative explained that there had been a substantial building project at Porton Down which had provided the appeal property's trade with a sizeable temporary boost in 2015; it was a £115 million project to relocate 650 staff from Kent at the Defence Science and Technology Laboratory. He contended that 2015 had been a 'peak year' for trade, which a hypothetical tenant could not rely on for more than a temporary period. The representative had claimed that according to hearsay evidence, a number of contractors' caravans had been set up at White Hill Farm campsite, within 100 m of the appeal property. It was originally proposed by the appellant that £100,000 turnover per annum would not be unreasonable for a modest number of contractors (say 15 contractors to spend £20 to £30 per head five days a week). However, at the hearing, the representative had provided an amended estimation to approximately 10% of turnover.

24. The VO had referred to two comparable properties namely Malet Arms and The Old Castle. These two properties were located closer to the construction project in Porton Down and had not illustrated a drop in trade post 2015. The representative had pointed out that whilst these two properties were closer to the construction project, the contractors' caravans were situated much closer to the appeal property.

25. On this issue, the panel was in agreement with the VO and was reluctant to place significant weight on hearsay evidence. Whilst the panel had been provided with a commencement date for the construction project of March 2015, there had been no end date provided, to enable an assessment of the trade figures to clarify whether or not there had been a significant effect on the appeal property's trade. As the start date of March 2015 had been given, the panel was satisfied that the trade as at the AVD had been clean and not effected by any potential overtrading.

26. The panel then addressed the representative's contention that The Orchard and Toby Carvery had provided increased competition in the destination public house market. The Orchard had

been entered into the Rating List on 1 May 2012, so the panel concluded that any effects of the opening of this property would have been realised some time ago. The Toby Carvery entered the Rating List on 20 August 2015. The panel was informed that these properties were located 9.5 miles and 10.7 miles respectively, from the appeal property. As such, the panel was not convinced that they would have had a substantial impact on the appeal property's ability to trade. The two comparable properties were situated close to the A303 (Amesbury Bypass), which would most probably support their trade. Accordingly, on the evidence presented, the panel was not persuaded that the opening of The Orchard and Toby Carvery had any detrimental impact on the appeal property's trade.

27. The appellant's representative had also referred to issues associated with the appeal property's rural location. However, the panel found those claims to be unsubstantiated.

28. Having regard to the above conclusions, the panel determined that the current FMT figures of £170,000 wet and £300,000 dry were fair and reasonable and would have been in the mind of the hypothetical tenant coming fresh to the scene as at the AVD. On the evidence presented, the panel was not convinced that a reduction in FMT figures was supported to the levels proposed by the representative of £120,000 wet and £270,000 dry, which fell in line with trade as at 1 April 2017. Whilst the panel accepted that trade had been in a downward trend, the hypothetical tenant would not have been aware of the future trade at the AVD. Furthermore, on the evidence presented, the panel was not convinced that the appeal property's trade had been significantly affected by the construction project at Porton Down and the recent entries into the Rating List, namely, The Orchard and Toby Carvery.

29. The parties agreed that the wet trade at the appeal property should be placed within Category 2 and the dry trade within Category B. It had also been agreed that the percentages applied to the FMT should be at the mid-point of those categories.

30. Accordingly, the panel determined that the appeal property's existing entry of £35,000 RV, with effect from 1 April 2015, was fair and reasonable. Therefore, the appeal was dismissed.

Date: 7 June 2021 APPEAL NO: CHG100098831