THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; hotel and premises; comparable evidence; rental evidence; fair maintainable trade; appeal dismissed.

RE: Alexandra Hotel, Pound Street, Lyme Regis DT7 3HZ

APPEAL NUMBER: CHG100101894

BETWEEN: Ms K Haskins Appellant

and

Ms D Bunyan
Valuation Officer Respondent

PANEL: Mr M Hunt (Senior Member)
Dr PAR Thomson

CLERK: Mrs H Beresford

REMOTE HEARING ON: 11 June 2021

APPEARANCES: Mr C Lambert on behalf of the Appellant
Mrs J Hallam on behalf of the Respondent
Mr A Robinson on behalf of the Respondent as expert witness

Summary of decision

1 Appeal dismissed. The appeal property's assessment was to remain unaltered at £131,000 rateable value (RV), with effect from 1 April 2017.

Introduction

2 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.

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 This is a 2017 rating list appeal. Alexandra Hotel, Pound Street, Lyme Regis DT7 3HZ (the 'appeal property'), had been entered into the rating list as 'hotel and premises' at RV £141,000 based on actual receipts for the year prior to the antecedent valuation date (AVD) of 1 April 2015. Information submitted at the check stage resulted in a reduction to RV £131,000 with effect from 1 April 2017.

5 The challenge proposal was submitted by Mr Lambert on behalf of the appellant and was received by the Valuation Officer on 4 June 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £65,000 RV was proposed with effect from 1 April 2017 based on a receipts method of valuation, rental evidence and tone.

6 The Valuation Officer issued a challenge case decision notice on 17 November 2020 which stated that based upon the evidence and information available, the rating list entry of £131,000 RV was considered to be reasonable with effect from 1 April 2017.

7 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 15 March 2021.

8 The appeal property is a country style hotel situated in the small town of Lyme Regis set high overlooking Lyme Bay, with 24 "double-bed units" (DBU's) and 2 self-catering cottages overlooking the sea. The Hotel has been stylishly furnished, there is over an acre of landscaped private gardens and direct access to the beach below. Most of the rooms have sea views. There is the Orangery, a large conservatory where all the meals are served, and which has views over the sea and the gardens. The hotel holds weddings and other private family events and there is an 18th century private chapel or a garden tower available for private dining events. There is a spa treatment room with various massages available and two fitness rooms, one for guests, the other for non-residents.

9 The Hotel was purchased in 2006 by the appellant's company and subsequently leased to her in 2013 on a five-year lease with an annual rent of £60,000. This was increased in 2014 to £72,000.

10 Mr Lambert appeared on behalf of the appellant as expert witness. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Lambert confirmed that he was instructed under a contingency fee arrangement. 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.

11 The expert witness evidence was accepted 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).

12 It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

13 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 it being overlooked by the panel.

Issue

14 The issue in dispute was whether the RV for the appeal property determined by the VO was reasonable. In particular, the appellant disputed the "fair maintainable trade" (FMT) that the appeal property could be expected to generate.

15 The Valuation Officer had valued the appeal property in accordance with the 2017 Valuation of Hotels (Rating Manual Section 510). This valuation method operates in two stages. Firstly, an assessment of the FMT at the hotel is made. Secondly, a percentage is applied to the FMT to arrive at the RV (from a range of percentages listed in a table). An element of professional judgement is applied at both stages in determining the respective figures to adopt. The Valuation Officer had assessed the FMT to be £1,575,000 based on the appellant's 2014/2015 accounts and applied a percentage of 8.35%, resulting in the RV of £131,000 (rounded down).

16 The appellant did not dispute this methodology. Mr Lambert confirmed, upon express questioning from the panel, that the appellant's concern was with the assessed FMT. This therefore was the main issue for the panel to determine. A principal issue raised in this regard by the appellant was that the FMT failed to take proper account of "overtrading" due to her particular business acumen. Nevertheless, Mr Lambert's submissions indicated that, although not directly in dispute, he viewed the rating methodology to be a rather blunt instrument that should be considered alongside other factors and valuation methods, such as the passing rent, the RVs of comparable hotels (notably in terms of price per DBU), as well as the full revenue and expenditure approach. Consequently, the panel considered all of these issues.

Evidence and submissions

17 The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the information exchanged between the parties during the challenge process; details of numerous other hotels submitted by Mr Lambert and the Valuation Officer; and the Valuation Officer's challenge case decision notice. Copies of the Upper Tribunal decision *Wetherspoon Plc v Day* [2008] RA 129 and the VTE decision *Jack in the Green v VOA* were also provided along with the Valuation Office guidance on the valuation of hotels.

18 In this appeal and in absence of direct comparable rental evidence in the locality, Mr Lambert contended for a revised assessment of £65,000 RV based on the following arguments:

- There is a rent passing on the premises, albeit a connected party rent, but set by a surveyor to open market rent at £60,000 in 2013 which rose to £72,000 in 2014.

- The assessment is far out of line with comparable hotels in the immediate locality having risen between lists by 70% compared to an average in Lyme Regis of 26% and 22% in nearby Sidmouth.

- The subject property has a rent per DBU of £5,458 which is excessive compared to other similar hotels in the locality. Of the seven hotels in Sidmouth submitted in evidence, the average rent per DBU rate is £2,704. If this average rate were applied to the appeal property it would result in an RV of approximately £65,000. To support this argument Mr Lambert had provided details of the rent per DBU value of not only these seven hotels in Sidmouth, which he believed was a similar seaside town, but also four different hotels in Lyme Regis.

- The FMT adopted by the Valuation Officer based on the 2014/2015 accounts was unreasonable as there had been no adjustment for overtrading. In the recent Valuation Tribunal decision in the case of *Jack in the Green v VOA* (Appeal number 110516875401/537N10.) the Tribunal accepted that trade figures should be substantially adjusted to arrive at FMT to reflect the business acumen of the operator. In this case, the appellant had been similarly "overtrading" and that it was due to her entrepreneurial skills and hard work that the hotel business maintained such a high turnover. Mr Lambert emphasised that it is not the business that should be valued but the building. Consequently, the trade figures should be adjusted in line with other hotels in the area, in order to show the level of trade that the average hotelier could achieve.

- As well as this, he argued that the property should be valued vacant and to let, and that the hypothetical tenant would attach more weight to the profit and loss than turnover. The profit and loss accounts for 2013, 2014 and 2015 should be examined to see where the FMT should lie. Mr Lambert had taken an average of the trade for these accounting years and had arrived at a figure of £1,467,285 which he suggested should be reduced by 15% to reflect overtrading resulting in an FMT of £1,247,000. He had then suggested consideration should be given to the revenue and expenditure method of valuation, making various adjustments to this figure in terms of costs and expenses averaged out over the same period which had resulted in a net profit of £176,000. This figure had been further adjusted to reflect the cost of tenant's capital and furnishings leaving £100,000 to be divided between the tenant as reward and the landlord as rent (i.e. the "divisible balance"). How the divisible balance is divided up could then be decided by negotiation, with Mr Lambert suggesting a 50% split resulting in a rent of around £50,000. To support this analysis, Mr Lambert had provided a helpful table of turnover figures, and accounts, showing his calculations.

19 In consideration of the above, Mr Lambert asked the panel to confirm an RV of £65,000.

20 On behalf of the Valuation Officer, Mrs Hallam contended for the existing rating list entry based on 8.35% of the Valuation Officer's assessed FMT of £1,575,000. She argued that this method of valuation accorded with Section 510 of the Rating Manual, which is used to assess the rateable values of the majority of hotels nationwide. She explained that this valuation method applies a single percentage to a hotel's FMT to arrive at the RV. The percentage applied varies depending on expected profitability, having regard to the type of

hotel and its trading performance, as suggested by a number of indicators. Mrs Hallam argued that the scheme had been agreed as the appropriate method of valuation with the British Hospitality Association and various Rating representatives led by Gerald Eve, and a copy of the 2017 Practice Note had been included in the evidence pack.

21 Mrs Hallam explained that in this case the Valuation Officer had applied a percentage from the mid-range three- to four-star standard scale. She believed that the subject property was a luxury hotel and that given the various facilities available, it could be argued the higher standard scale would be more appropriate. Within each scale, Mrs Hallam explained that different bands containing percentage ranges are applicable dependant on the proportion of accommodation receipts to turnover, and the accommodation revenue per double-bed unit. In this respect Mrs Hallam argued that the appeal property had also been placed in a lower band than it might otherwise have been (adopting a figure from the percentage ranges for a hotel with accommodation receipts per DBU of £25,000, instead of £35,000 per DBU which the appeal property achieved). The result is that the RV was calculated as 8.35% of the appeal property's FMT, whereas the percentage adopted could reasonably have been towards the high end of a 9.25% - 13.25% range. Mrs Hallam indicated that the relatively low percentage had been adopted in order to take account of the appeal property's high maintenance costs and an element of overtrading by this particular operator. However, she argued that in any case the Valuation Officer would value the property from the basis of a hypothetical tenant fresh on the scene who is a 'reasonably efficient' operator (rather than an 'average' operator as contended by Mr Lambert). She contended that there was no evidence that the performance at this hotel was at a level that an operator suitable to the property, with the required level of knowledge and experience, would not be able to replicate.

22 Mrs Hallam did not consider the comparable properties referred to by Mr Lambert were useful as several were budget hotels and guest houses, and not all offered the same facilities or services. She argued that there is a difference between these classes of property and that they are valued either differently or on different scales. Mrs Hallam also contended that the majority of hotels are valued on their receipts, and consequently the RV is individual to each particular hotel; on this basis she argued that there is no 'general tone' for hotels. Furthermore, Mrs Hallam argued that comparing RV directly to DBUs to produce an average rent per DBU was unhelpful as it failed to take account of the particular characteristics and revenue streams from individual hotels (e.g. some are principally accommodation-led, others benefit from significant restaurant turnover or hosting weddings and events).

23 Referring to the rent passing on the property, Mrs Hallam argued that this was a connected party rent to which she could not attach significant weight as it was unreliable. It was not an open market rent and therefore went against the rating hypothesis.

24 Addressing the FMT valuation submitted by Mr Lambert, Mrs Hallam argued that he had gone against guidance in averaging out the three years turnover preceding AVD to obtain a starting figure of £1,467,000, somewhat lower than that used by the Valuation Officer of £1,575,000, which he had subsequently reduced by 15% to account for overtrading. In support of this argument Mr Robinson appeared as expert witness on the Valuation Scheme used to assess the subject property. He explained that for the valuation of this type of hotel paragraph 4.3 of the practice note stated that averaging out of trade figures should be avoided.

25 Mr Robinson explained that the 2017 scheme used by the Valuation Officer to value the subject property had been based on trading accounts from over 200 hotels across many different types of hotel countrywide, which were analysed to find the key drivers of profitability in the hotel trade. Mr Robinson referred to the authority of *JD Wetherspoon v Day* which confirmed at paragraph 43 that:

"guidance of this sort agreed by the Valuation Officer and on behalf of a particular category of ratepayers ought to be followed unless there is good reason not to do so".

26 In conclusion, Mrs Hallam could see no reason to deviate from the method of valuation outlined in the Rating Manual for the appeal property. Accordingly, she sought confirmation of the appeal property's existing assessment to £131,000 RV, effective from 1 April 2017.

Decision and reasons

27 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(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.

28 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

29 The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, as this is a compiled list appeal, the material day is 1 April 2017.

30 The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 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.

31 The panel noted that there was rental evidence for the subject property. The rent referred to by Mr Lambert had apparently been set by a surveyor at a rent of £60,000 in 2013 which rose to £72,000 in 2014. However, this was a connected party rent, no evidence was provided to demonstrate how the surveyor arrived at his assessment, and the panel therefore decided to attach limited weight to this evidence.

32 In this appeal, the main issue for the panel was whether the VO's assessment of the FMT was reasonable in the context of its standardised valuation method. However, the panel also considered the different valuation methodologies they were invited to take into account in valuing the appeal property. Aside from the passing rent, Mr Lambert had advocated that the rental/comparative method of valuation should be considered for a hotel of this size and nature, as well as a full receipts and expenditure valuation to demonstrate that the adopted RV was too high. He believed that all three methods supported an RV of around £65,000.

33 Given there was a paucity of rental evidence in this case Mr Lambert had provided details of various hotels in the immediate Lyme Regis area which he considered supported his case. The panel found that the hotels referred to were not of the same standard as the subject property and differed in character, location and facilities, for example the Mariners Hotel and the Dower House Hotel had been valued as guest houses and the Premier Inn had been valued as a budget Hotel. These hotels differed in quality and location to the subject property and were therefore not considered to be directly comparable. The Royal Lion Hotel appeared to be a more comparable property in terms of location, quality and facilities, and had an RV of £117,000. However, the panel found that there were still significant differences between the properties and that the hypothetical tenant coming fresh to the scene would likely be prepared to pay a higher rent on the subject property, albeit the Royal Lion Hotel benefitted from a slightly larger number of rooms. The appeal property had more expansive grounds and significant views, and appeared more amenable to hosting a diverse range of events including weddings (which seems to be reflected in the respective current usage to which each property is put), so, in comparison, an RV of £131,000 seemed fair and reasonable. The panel placed moderate weight on this comparable.

34 Mr Lambert had also provided details of several hotels in Sidmouth, a nearby and similar seaside town (a point accepted by the Valuation Officer). The panel found that the majority of these comparable properties were again not of the same character as the subject property, however, it did dwell on the Sidmouth Harbour Hotel, which appeared to have a number of similarities to the appeal property, including a similar proportion of turnover between accommodation and restaurant receipts. It seemed to the panel peculiar that this property had twice the number of rooms as the appeal property, but although it had been valued by the same method, had an RV of £132,000 (almost identical to the appeal property). It appeared to the panel that this issue was likely in significant part to be the result of the greater amount of competition in the Sidmouth area, in comparison to Lyme Regis, an argument put forward by the respondent which had not been contested. It also did not appear to have the same advantages in terms of siting and surroundings, and although in a similar region was not in the same immediate locality as the appeal property. The panel noted also that this hotel was a rather isolated example of a potentially comparable property. The panel decided to place moderate weight on this comparable.

35 As a general consideration, the panel noted that Mr Lambert had submitted that regard should be had to the average rent per DBU achieved in the comparable properties he submitted. However, largely for the reasons given by the Valuation Officer, the panel did not consider this approach especially helpful as it would not appear well suited to reflect the

particular characteristics of each hotel and the range of facilities and opportunities each property presents. The panel preferred to review each comparable on its particular facts.

36 Within his challenge proposal Mr Lambert had contended that the appellant was overtrading and that the Valuation Officer had not made sufficient alteration to the turnover achieved to reflect this. Mr Lambert believed that the RV of the subject property was out of kilter with other hotels in the area for this reason and thus he had made a 15% reduction to the average turnover achieved over the three years leading up to the AVD of £1,467,000 resulting in £1,247,000 FMT to allow for overtrading. In response, the Valuation Officer pointed to the VOA 2017 Practice Note – Hotels, and contended that averaging out of past turnover for the period leading up to the AVD would not be appropriate in assessing FMT due to the way in which the hotel market had been developing during that timeframe. Mrs Hallam submitted that the Valuation Officer had taken account of overtrading (as well as potentially higher maintenance and staffing costs) by placing the hotel on a lower standard scale than arguably it could have been, and adopting both a relatively low assessment of accommodation receipts per DBU and a mid-range percentage bid from within the range for that level of income, when a higher percentage would have been justified. The panel found that Mr Lambert had not provided any evidence to demonstrate that the appellant had been overtrading, certainly to any greater extent than that allowed for by the Valuation Officer, and that the selection of the applicable percentage scale, and application of the 8.35% percentage bid, was fair and reasonable. The panel noted in this regard that Mr Robinson candidly admitted that his preferred approach is to adjust the FMT downwards at the outset of the Valuation Officer's calculations under its valuation methodology to account for overtrading, rather than to apply different bands and percentage ranges as was done here. Mr Robinson argued that applying his preferred methodology, starting from the 2014/2015 turnover and reducing it by 15% (as suggested by Mr Lambert), the RV would have been similar to that adopted in any event. The panel agreed that this proposed approach may well be preferable as it is arguably clearer and more transparent, but found it could not apply weight to Mr Robinson's suggested alternative calculation as the precise working was not provided (and indeed Mr Robinson had not accepted that 15% would be the appropriate deduction as he had not considered the point). Albeit this suggested process may have been easier to follow, the panel did not find that the precise method adopted in this case was unreasonable or obviously contrary to the guidance in the Rating Manual. Similarly, the FMT figure adopted, based on the latest accounts, was not unreasonable. This point is addressed further below.

37 Mr Lambert invited the panel to consider the RV that might be achieved through the full revenue and expenditure valuation method. The panel had regard to the figures and calculation proposed by Mr Lambert. However, the panel gave significant weight to the Practice Note on hotels presented by the Valuation Officer, its description of the evolution of the hotel market up to the AVD, and its guidance to avoid averaging out accounting figures. In the panel's opinion, the hypothetical landlord and tenant would also have regard to this information and would likely consider the more recent accounting figures as more representative of the turnover and achievable profit at the AVD. Consequently, the panel disagreed that it would be likely that average accounting figures over the preceding three years would form the basis of valuation (whether under the Rating Manual scheme, or other methods of valuation). Equally, the panel considered it unlikely that the maintainable profit level contended for by Mr Lambert would be accepted by the parties to the lease to be so far lower than the actual profit achieved in any of the preceding three years (£169,847.15 according to Mr Lambert's calculation, as compared to £306,178 profit in 2013, rising to £470,604 in the accounting year immediately preceding the AVD). Even were the parties to accept a relatively conservative estimate of potential turnover and profit, taking account of

maintenance costs, allowing for an element of overtrading (of which there was relatively little clear evidence), and stripping out the trade and profit attributable to the holiday cottages, the panel did not consider this would result in a divisible balance that would call into question the reasonableness of the RV adopted by the Valuation Officer. Indeed, as the Valuation Officer contended, there are reasonable arguments that the adopted RV could have been higher.

38 Mr Lambert had argued that the amount of the increases in the RV of the appeal property between each rating list was unreasonable, however the panel was aware that the 2017 rating list was a separate entity and it was not concerned with previous valuations. It applied very limited weight to this consideration.

39 After considering all of the valuation methods proposed, the panel accepted that it was usual for a property of the appeal property's type and size to be valued as it had been by the Valuation Officer in accordance with Section 510 of the Rating Manual. The panel found Mr Lambert's use of an average of three years trading figures was not in line with the scheme or the Valuation Office Practice Note which had been agreed between the Valuation Office Agency and Rating Representatives. The panel found that the manner in which the Rating Manual had been applied by the Valuation Officer was reasonable and took sufficient account both of the property's particular characteristics and running costs and the appellant's concerns with regard to overtrading. The panel did not accept that the alternative valuation methods considered by the appellant indicated that the resulting RV was unreasonable. Consequently, the panel found that there were no exceptional circumstances in this case to justify a departure from the Rating Manual, and that it was reasonable for the Valuation Officer to have applied that valuation scheme in valuing the appeal property.

40 Having regard to the available evidence and, noting that the majority of hotels cited had been valued using receipts in line with the Rating Manual scheme, the panel saw no reason to deviate from this method of valuation or consider that it had been applied unreasonably in the circumstances. It considered that the FMT of £1,575,000 used by the Valuation Officer was not unreasonable, nor was the 8.35% applied to it to achieve the rental bid. The panel therefore confirmed an RV of £131,000 with effect from 1 April 2017 and the appeal was dismissed.

Date: 7 July 2021

Appeal Number: CHG100101894