THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – were the actual Trade Figures to be used to achieve Fair Maintainable Trade; was the owner overtrading due to the level of service and the quality of the food provided; comparable hereditaments; Watney Mann Ltd v Langley (VO) [QB 1963]; *appeal dismissed.*

Re: The Camelford Arms, 30 – 31 Camelford Street, Brighton BN2 1TQ

APPEAL NUMBER: CHG100104078

BETWEEN:	Mr T Groom Rowbell Leisure Limited	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Mr A Jobanputra
Mr M Imperato

CLERK: Ms R Muller

HEARING: Remote Hearing No. 3 on 18 February 2021

Attended: Mr T Groom, Appellant
Mr A Baker, Valuation Officer's Representative, as Advocate (Respondent)
Mr M Griffiths, Valuation Officer's Representative, as Expert Witness (Respondent)

Summary of decision

1. Appeal Dismissed. The Rateable Value (RV) of £53,000 was confirmed for the subject hereditament.

Introduction

2. This was a 2017 compiled Rating List appeal. Therefore, the material day was also 1 April 2017. The subject hereditament was described as public house and premises and had been assessed at £59,000 RV with effect from 1 April 2017. A check had been completed on 28 February 2019 and a Challenge submitted on 12 June 2019. During the Challenge stage,

the assessment of the subject hereditament was reduced to £53,000 RV. The Challenge was completed on 22 July 2020 and an appeal against the final Challenge case decision notice was received by the Tribunal on 19 November 2020.

3. The subject hereditament was owner/occupied and had been so since February 2010. It was located on a side street between Marine Parade and St James Street in the Kemptown area of Brighton, near the seafront and pier and was in close proximity to shops, bars and restaurants.

4. Mr Groom, the appellant had requested that due to the evidence provided, the panel confirm the assessment of the subject hereditament be reduced to £15,400 with effect from 1 April 2017. However, Mr Baker, the representative for the respondent, requested that the panel confirm the assessment of the subject hereditament at £53,000 RV, again with effect from 1 April 2017.

5. Mr Griffiths stated that he was representing the respondent as an expert witness. 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).

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

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. 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.

Issues

10. The issue before the panel concerned the Fair Maintainable Trade (FMT) figure that was used when calculating the RV for the subject hereditament and if overtrading had been taken into account.

11. The starting point in determining FMT is the consideration of the receipts of the premises in the year ending closest to the Antecedent Valuation Date (AVD) and in the immediately preceding years, where such information is available. The FMT was split between liquor

(wet) receipts and non-liquor (dry) receipts such as food, accommodation or other income. However, the subject hereditament only dealt with wet and dry trade.

Evidence and submissions

12. Both parties considered the valuation of the subject hereditament in accordance with the Approved Guide for the Valuation of Public Houses that had been agreed in respect of the 2017 list, between the Valuation Office Agency and the British Beer and Pub Association. The guide sets out an approach that was derived from an analysis of open market; free of tie; pub rents. The valuation approach involved determining the FMT of the subject hereditament in question as at the Antecedent Valuation Date (AVD) 1 April 2015.

13. Mr Groom submitted a bundle of evidence, which included: details of the subject hereditament, the issues in dispute, details of comparable properties with statistics and graphs, extensive details of his reasons for the appeal and correspondence between the parties.

14. Mr Groom stated that between the 2010 Rating List to the 2017 Rating List the assessment had increased by 307% and as such, something was not right and therefore, should be looked at and considered by the panel. He stated that he disagreed with Mr Baker's valuation of the subject hereditament, where his use of the FMT was too high and was closer to the actual trade figures. Therefore, due to the evidence provided, Mr Groom asked the panel to consider his revised proposed valuation of £15,400.

15. Mr Baker submitted a bundle of evidence which included: his grounds for resisting the appeal, a revised valuation for the subject hereditament, details he sought to rely upon, extracts from the legislation, the case law of *Watney Mann Ltd v Langley (VO)* [QB 1963] and reference to the Approved Guide for the Valuation of Public Houses 2017.

16. During the challenge stage, it was noted that extra work had been required by Mr Groom to maintain the FMT figure, as well as community work, advertising and sponsorship. There was also the fact that there was a restriction to children on the premises. Therefore, Mr Baker reduced the range point in Category 1. Mr Baker also took into account the well-regarded chef and associated good food of the subject property, which he considered relevant to lower the range point within band B for food.

17. In consideration of the trade information and his adopted FMT for the subject hereditament. Mr Baker considered that the subject hereditament's revised valuation of £53,000 RV with effect from 1 April 2017, was reasonable.

Decision and reasons

18. Mr Groom explained that the comparable properties cited by the Valuation Officer did not provide either the actual trade accounts or the percentages made to arrive at the FMT and therefore he was unable to compare them fairly. The panel was aware that Mr Groom had asked for the trade figures of the comparable properties he had included within his evidence. However, Mr Baker has stated that it was not the VOA policy to disclose confidential trade figures.

19. The panel noted that both parties had provided evidence, which they have deemed appropriate, in order to determine the correct RV for the subject hereditament. Therefore, the panel considered all the evidence submitted before it.

20. Mr Groom had informed the panel that the subject hereditament had not had any adjustments made and that Mr Baker had used the top figure for the FMT. However, Mr Baker referred the panel to *Watney Mann Ltd v Langley (VO)* [QB 1963] as a starting point when looking at trading figures. Three years of trade figures would have been considered and then a stand back approach to be included. The Valuation Office Agency would also take into consideration location, style of property and competition in the immediate area. Mr Baker stated he had considered all of these factors with regards to the subject hereditament. However, he had not made any adjustments, except for the ones detailed above to reduce the original RV to £53,000.

21. The panel referred to Section 3.4 of the Approved Guide for the Valuation of Public Houses, where it provided guidance on the choice of percentage and where amenities, incentives, marketing and other factors are considered when the percentage is applied. The panel noted the trade figures that had been provided within the evidence.

22. Mr Groom believed that he had been overtrading due to the service and quality of food offered and that another person coming to the same public house would not achieve the same level of turnover, and therefore, this should be taken into account when assessing the property. He did not believe that another landlord would trade to the same level as he had achieved. However, the panel noted that the high trade figures had been achieved and these high trade figures had been taken into account by the Respondent when considering the actual trade figures of around the AVD of 1 April 2015.

23. The panel noted that Mr Baker had taken into account factors, which had enabled him to reduce the ranges that had originally been applied to the assessment to lower the RV. However, the panel noted that the overriding factor, which must be identified was the existence of proof to show that any overtrading had taken place. Mr Baker had requested details of trade figures for the year-end September 2015 from Mr Groom as evidence and proof of any discrepancies, however, none had been provided and none was provided to the panel.

24. The panel considered that another landlord running the subject hereditament could possibly trade to a similar level to that of Mr Groom. Therefore, it considered that overtrading had not been proven in this instance.

25. The panel noted that Mr Groom had concern regarding the FMT of the comparable properties on the basis he had not been provided with actual trade figures, or the percentages and band widths used. However, the panel considered that the comparable properties FMT figures did provide assistance. Some the comparable properties cited were similarly food led, as Mr Baker stated that these types of comparables were more useful with regards to the market. The panel noted that all the comparable properties were within one quarter of a mile from the subject hereditament.

26. Mr Groom stated that the increased RV of the subject hereditament should have only been circa 7.5%, which would be in line with the median average increase in RV's for public houses within the vicinity of Brighton. However, the panel was aware that every hereditament that was assessed as a public house, the RV will be considered based on the FMT and not by the median average increase in RV's within the local area.

27. The panel noted that Mr Groom had referred to the increase in the RV for the subject hereditament between the 2010 and 207 Rating Lists. However, as the 2017 Rating List was a different list to the 2010 Rating List and the Approved Public Guide provided different percentages and bands, it would therefore be inappropriate to compare RVs between the two Rating Lists.

28. Mr Baker informed the panel that the 2017 Rating List was a revaluation List, which meant that the assessment was looked at afresh and that he had arrived at the FMT using certain percentages and band widths having regard to location, trade and other relevant factors.

29. Mr Griffiths stated that there had been some changes between the Approved Guide for the Valuation of Public Houses 2010 and the Approved Guide for the Valuation of Public Houses 2017. He stated that he had been involved in all the discussions that had taken place between the Valuation Office Agency and the British Beer and Pub Association and all matters had been agreed between the parties involved. Therefore, he informed the panel that although no adjustments had been made with regards to the subject hereditament, consideration had been made in line with the Approved Guide for the Valuation of Public Houses 2017.

30. Mr Baker informed the panel that due to the location of the subject hereditament. He considered the subject hereditament to be categorised under Category One, which related to primary licenced trade areas. Even though the hereditament was on a side street, it was in a very good location. The panel did note that Category One dealt with primary licenced trade areas, of which the panel held that the subject hereditament fell into this category being near to near the seafront and pier and was in close proximity to shops, bars and restaurants.

31. In support of his contention that the RV of £53,000 was fair and reasonable, Mr Baker provided the panel with FMT details of a number of comparable properties within a quarter of a mile from the subject hereditament.

32. The panel referred to the comparable property of Brighton Rocks, which had a large food trade, which reflected the high wet trade figure. The same applied with regards to the Sidewinder, Mucky Duck and the Royal Oak. The panel noted that Marine Tavern and Brighton Pier House, where there had not been any food trade, had lower wet trade than any of the other comparable properties. The panel noted that the FMT figure of the subject hereditament at £430,000 wet and £100,000 dry, where the RV had been assessed at £53,000 was in line with the comparable properties' FMT and RV figures.

33. The panel considered that a consistent approach should be taken when valuing similar properties and therefore considered regard should be had to the Approved Public House Guide. It accepted that full accounts were not required when calculating the FMT figure, as the percentages and bands considered should reflect many factors including location and type of food offered. The panel considered that Mr Baker had correctly applied the percentage and band for the appeal property and therefore had to then consider whether or not a reduction should be applied for overtrading.

34. The panel had not been persuaded by Mr Groom that there had been any overtrading with regards to the subject hereditament. Given the trade figures provided the panel was of the

opinion that the FMT used by the VO was a fair reflection of the trade a competent landlord could achieve.

35. The panel held that Mr Baker's Decision Notice which reduced the RV from £59,000 to £53,000 was fair and reasonable and accordingly confirmed the assessment of £53,000 RV for the subject hereditament. The panel therefore dismissed the appeal.

Date: 4 March 2021

Appeal number: CHG100104078