THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; public house and premises; rural location; refurbishment and extension; appeal allowed in part.

RE: Stafford Arms, The Village, Bagnall, Stoke-on-Trent ST9 9JR

APPEAL NUMBER: CHG100115072

BETWEEN:	Frequent Diners Club Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL:	Mr J Rogers (Chairman) Mrs A Fielder
CLERK:	Mr D Mulgrew
HEARING:	Remote hearing No.3 on 13 September 2021
APPEARANCES:	Mr M Keirl (Roger Hannah) (Appellant's representative) Ms L Sutton-Murphy (Stafford Arms) (Witness of fact) Mr P Griffin (Respondent's representative)

Summary of decision

1. Appeal allowed in part. The rateable value was reduced to £63,500 with effect from 10 November 2017.

Introduction

2. This appeal has been brought in respect of Stafford Arms, The Village, Bagnall, Stoke-on-Trent (the "appeal property"), which was entered in the 2017 rating list as "public house and premises" at rateable value £62,500, effective from 10 November 2017. The rateable value from 1 April 2017 had

been £38,000 and the increase to £62,500 from 10 November 2017 reflected alterations at the appeal property.

3. The appellant had made a proposal to the Valuation Officer (VO) against the revised rating list entry from 10 November 2017. In response, the VO had decided to increase the rateable value to £71,500. However, this could only be done prospectively and not retrospectively, so it took effect on 19 January 2021 rather than 10 November 2017.

4. In accordance with regulations [1] (see below), an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

5. The President of the 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 relevant legislation [2] (see below). The VTE may determine the form of any hearing.

6. Therefore, in pursuance of the relevant regulation [3] (see below) 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.

7. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. During the hearing, Mr Griffin's camera was not working. In an attempt to solve the problem, he left and re-joined the hearing at the beginning of Mr Keirl's presentation. This had not rectified the camera problem and in view of Mr Griffin's brief departure Mr Keirl repeated his presentation from the beginning.

8. The panel was satisfied that the lack of video for the VO representative had no material impact upon the ability of the parties to present their respective cases.

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 item of evidence, should not be construed as it having been overlooked.

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

[2] 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).

[3] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

Issues

10. The appeal property had been assessed in accordance with the Rating Lists 2017 Valuation of Public Houses Approved Guide (known as the '2017 Approved Guide'). The appellant's representative believed the rateable value was excessive because he was of the opinion that the fair maintainable trade (FMT) adopted by the Valuation Officer was too high. He also believed that the percentage take to be applied to both wet and dry trade should be reduced.

Evidence and submissions

11. The panel considered the correspondence exchanged between the parties including the challenge proposal and the VO's decision. The documentation included rental evidence, actual trade, photographs, location plans, references to the 2017 Approved Guide and valuations.

12. Mr Keirl appeared in a dual role of advocate and expert witness. He stated he was not instructed on a conditional fee basis. He also declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this regardless of whether or not the evidence supported his client's case.

13. Mr Griffin was a late replacement for the VO, as the original person involved in the case was not available. While he had over 20 years of experience of valuing public houses, he had never visited the appeal property. However, he had carried out his own background research in preparation for the hearing.

14. The appellant's representative had originally proposed a reduction to rateable value £48,750 from 10 November 2017, but on appeal had changed his valuation to rateable value £55,500.

15. The VO believed that rateable value £62,500 from 10 November 2017 was too low and had increased it to £71,500.

Decision and reasons

16. The appeal property, a 16th century stone-built public house, is situated in a rural village by the church overlooking the village green. It is a Grade II listed building. The pub benefits from car parking, a beer garden, an outdoor patio and a play area for children. There were approximately 75 residents in the village and people travelled from Stoke-on-Trent for somewhere to eat, but customers had to pass a lot of other establishments on the way.

17. As at the material day of 10 November 2017 the appeal property had been the subject of a restaurant extension and refurbishment. This had been necessary following a fire.

18. The parties disagreed on the changes that had taken place at the appeal property. Mr Griffin said that the website had referred to 24 additional covers,

but Mr Keirl said that other covers were on the opposite side of the road and could only be used in the summer. The panel noted that there were new disability and baby changing facilities, a considerable extension of the kitchen into where the restaurant seating had previously been situated (as the kitchen had previously been too small), an extension to compensate for the loss of seating and a change to the main entrance. Mr Keirl said that the number of covers had increased from 85 to 95 and the panel was satisfied that the number of covers had increased by 10 inside. The size of the extension was stated to be 33m^2. A patio area had been built next to the new extension which could accommodate 16 to 20 people, but this was weather dependant and Miss Sutton-Murphy said that it was not popular.

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 the antecedent valuation date (AVD),1 April 2015, but having regard to physical factors at the material day of 10 November 2017.

20. The panel noted that the lease from November 2010 for a term of 10 years had a starting rent of £40,000 per annum. There was a rent review in November 2015 at a nil increase. The panel appreciated that this was close to the AVD, but it would not reflect the alterations in 2017. The panel noted that the rent had subsequently been increased to £50,000 per annum by way of a rent review in November 2018. The VO stated that the rent did not reflect the alterations as tenant's improvements were normally excluded from the rent. The panel therefore noted the rent but did not give it any significant weight.

21. The VO assessed all public houses based on the 2017 Approved Guide, which had been drawn up by the Valuation Office Agency and the Pubs Rating Forum, which was represented by professional associations in that sector. Under the guide, a rateable value was essentially based on the fair maintainable trade (FMT) of a public house. Both parties had prepared valuations using the 2017 Approved Guide.

22. The 2017 Approved Guide stated that when estimating the FMT, the reasonably efficient operator will have regard to the receipts envisaged as at 1 April 2015 and will be informed both by trends of receipts over previous years as well as the amount of receipts in the year closest to the AVD. This will include consideration of the economic circumstances and regulatory framework at that time.

23. In increasing the rateable value from £38,000 to £62,500 from 10 November 2017, the VO had estimated what the FMT was likely to be. The VO had subsequently been provided with trade from 2014 to 2019 and took the view (in the initial decision) that the rateable value should be £74,000. However, this was reduced to £71,500 (in the final decision).

24. In Mr Keirl's valuation, he had had regard to the trade before the refurbishment, but the panel decided that the VO had used the correct starting

point by considering the post refurbishment trade. This was necessary as the altered public house was being valued, not the pre-altered pub.

25. Both parties agreed that there would have been a honeymoon period when the appeal property re-opened following the extension and refurbishment. Therefore, the panel was satisfied that the VO had approached it correctly by using the trade for the year ended 30 May 2019. The VO had toned this back to the AVD level of pricing resulting in £365,000 and £455,000 FMT for liquor and food, respectively.

26. However, the panel agreed with Mr Keirl that it was also necessary to account for the 2018 World Cup Finals in which England were reasonably successful. The media had reported a 4.4% boost in trade which the panel decided to remove from the FMT figures adopted by the VO. Rounding this resulted in £349,000 and £435,000 FMT for liquor and food, respectively.

27. The panel found that dry trade had been assessed by both parties at the bottom of band B; the percentage varied because the FMT differed. This reflected its higher end food offering. The panel noted that the VO had adopted 7.91% and the appellant's representative was only slightly different at 7.8%. Examining the graph on page 32 (appendix D) of the 2017 Approved Guide, the panel decided that 7.91% was a reasonable figure to use because the minimum line on the graph appeared to flatten around this level of FMT (£435,000).

28. The parties' views differed significantly with regard to the percentage to take in respect of liquor sales. Their principal disagreement was the category to place the appeal property in. The VO believed category 2 was appropriate and the appellant's representative was of the view that it should be category 3.

29. The panel carefully considered the attributes of each category as shown on pages 10 to 12 of the 2017 Approved Guide. The panel decided the appeal property fell into category 2 because essentially it was a destination pub in an attractive location with good car parking. It was a food orientated pub as opposed to category 3 pubs which were wet led with a limited food offering.

30. The panel also took onboard Mr Keirl and Ms Sutton-Murphy's comments that there were higher costs associated with the appeal property because it was a listed building and its rural location increased staff costs. There was a lot of competition as those driving out of Stoke-on-Trent passed a number of pubs on the way to Bagnall. Ms Sutton-Murphy informed the panel that one person needed to be employed solely for promotions. The panel also noted that there were a lot of community events taking place at the appeal property.

31. Having regard to all of this, the panel considered that the VO's take at 9.74% was too high. The panel decided to reduce it to the lowest point of category 2. Using the graph on page 31 (appendix C) of the 2017 Approved Guide, the panel believed that this was around 8.4%.

32. In view of the foregoing, the panel's decision resulted in the following valuation:

Liquor	£349,000 @ 8.4%	£29,316
Food	£435,000 @ 7.91%	£34,408
	Total	£63,724
	Rateable value	£63,500

33. The appeal was therefore allowed in part.

Order

34. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £63,500 with effect from 19 January 2021.

35. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fee

36. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: 7 October 2021

Appeal number: CHG100115072