THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the 2017 compiled list assessment; Public House and Premises; Fair Maintainable Trade; Overtrading: Appeal allowed.

RE: The Old Vic Public House, 79 Fishergate, Preston PR1 2UH

APPEAL NO: CHG100134549

BETWEEN: Mr G Heaney
(Appellant)
and
Mr R Roberts
(Respondent Valuation Officer)

BEFORE: Mr M Hunt (Senior Member) and Dr PAR Thomson

CLERK: Mrs H Beresford

REMOTE HEARING ON: 11 June 2021

APPEARANCES: Mr A Brooke of Dunlop Heywood, representing the Appellant
Mr J Wainwright, on behalf of the Respondent Valuation Officer

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Summary of decision

1. The appeal was allowed. The appeal property's current assessment was reduced to £50,500 rateable value with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal and the rateable value (RV) of the appeal hereditament was £53,000 with effect from 1 April 2017. The appellant submitted a challenge to the Valuation Officer against the appeal property's assessment on 17 October 2019, arguing that the RV was wrong, as follows:

   "The current assessment has the FMT valued at £473,000 which I do not dispute. The only part of the valuation I deem needs tweaking is the percentage within the banding, and thus the rental bid."

3. The Valuation Officer did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 16 December 2020 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice on 18 February 2021.

4. The appeal property comprises a large three storey category 1 public house. It is located at one end of Fishergate, the main shopping street in Preston city centre. It is one of two pubs located overlooking the entrance to Preston railway station and opposite to the main public entrance of the Fishergate shopping centre.

5. The appellant's representative, when appearing as expert witness, had declared that he will not receive a success related fee if the rateable value of the appeal property were to be reduced as a result of the panel's decision.

6. However, he had also 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. The panel accepted this expert witness evidence on the above basis as the parties agreed 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 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).

8. 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.

9. 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.

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 appropriate multiplier to be applied to the fair maintainable trade (FMT) which had been agreed at £473,000. The appellant sought a multiplier of 10.69%, based on 40% of band in place of the existing multiplier of 11.19% based on 65% of band.

Evidence and submissions

12. 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 other public houses; and the Valuation Officer's challenge case decision notice.

13. Mr Brooke explained that for the 2017 rating list, public houses were valued having regard to their FMT and in accordance with the Valuation of Public Houses Approved Guide 2017. He confirmed that the FMT adopted in the appeal property's assessment was in line with the turnover for the public house. However, Mr Brooke argued that the property should be valued with a lower percentage within the banding for category one public houses. He believed that the current valuation, which is at 11.19% which is 65% of band, is too high as the pub has more 'lower level' characteristics than it does 'upper level'.

14. Mr Brooke acknowledged that the property is situated close to the railway station and in the town centre, so agreed it was a category one public house. He explained that the subject property operates as a wet-led house and has the benefit of a beer garden and parking facilities. However, he contended it is on the fringe off the main pub circuit and has mainly 'lower level' characteristics. He described the property as both tired and dated, with the upper floors being mainly unusable, and he stated that while this pub may be situated in the centre, it cannot sustain a strong trade throughout the day due to the poor facilities and high maintenance costs. It is an older style property with poor internal layout, and has to invest in subscription TV to incite passers-by.

15. Mr Brooke contended for a reduction to 40% within the banding, which he believed is a fair and reasonable position based on the Approved Guide. He argued that adopting 40% within the banding would produce a revised rental bid of 10.69% and a revised RV of £50,500, which would more accurately reflect the condition of the premises and where it sits in comparison to the main trading areas of Preston.

16. Mr Brooke argued that by far the best comparable property in this appeal was the Station Hotel which was situated only 150m from the subject property and was almost exactly the same in appearance but had an RV of £30,500. Mr Brooke believed that this property was in a better situation as it was located next to the side entrance to the railway station on Butler Street, which he argued was the busier entrance, and close to the entrance to the Fishergate shopping centre; consequently there were more pedestrians passing by.

17. Having noted that there was a considerable difference in the trading figures between the two properties Mr Brooke intimated that this may be due to overtrading on the part of the appellant.

18. Mr Brooke asked the panel to confirm the appeal property's revised RV of £50,500 with effect from 1 April 2017.

19. The Valuation Officer's representative Mr Wainwright explained that it had been agreed that there were certain merits to Mr Brooke's argument and that the percentage had been reduced from 65% to 60% resulting in an RV of £52,000 which had been adopted by the Valuation Officer.

20. Mr Wainwright argued that, whilst the subject property is on the fringe of the main pub circuit in Preston, it would be a calling point at the beginning and end of the evening for those people travelling into Preston for a night out by train. He argued that the appeal property is situated in a better position than the Station Hotel as it is by the main entrance to the railway station which he believed is the most used entrance. He also pointed out that the Station Hotel had been valued on the same basis as the subject property using FMT and a percentage of 65% of band. The resulting RV was lower due to the lower amount of trade.

21. In terms of the characteristics of the subject property, Mr Wainwright argued that Mr Brooke's contentions regarding the level of customer demand could be questioned; he stated that it is arguable that there must be strong customer demand throughout the day

given the turnover was considerably higher than the Station Hotel. He did not accept Mr Brooke's contention that there was an element of overtrading.

22. Mr Wainwright referred to The Adelphi public house as a more reliable comparable property. It is situated on the fringe of what he described as the "university circuit" and had been valued with a multiplier applied to the FMT of 11.4% at 65% of band one.

23. In conclusion, Mr Wainwright contended that the guidance suggests the revised figure is not unreasonable and that Mr Brooke had failed to prove his case. He therefore requested that the panel confirm an RV of £52,000 with effect from 1 April 2017.

Decision and reasons

24. In this appeal, the panel had to determine whether the RV that had been applied to the appeal property was reasonable, representing a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD) of 1 April 2015. This common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental levels and economic factors fluctuated over time.

25. As this was a compiled list appeal, matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017. Any changes to the locality, and changes to the occupation of nearby outlets that had occurred after this date, could not be taken into consideration when determining this appeal.

26. Public houses are assessed using the Valuation of Public Houses Approved Guide 2017, a document that has been agreed between the Pubs Rating Forum and the Valuation Office Agency. Under this guide an RV was, in effect, based on the FMT of a public house from the various income streams, as at 1 April 2015.

27. In his submission, the appellant had accepted that the trade figures had been agreed in his original challenge documentation. However, he had suggested an assessment of £50,500 RV for the appeal property based on a rate of 40% of the applicable band which equated to 10.69% of FMT at £473,000.

28. The Valuation Officer's revised assessment of £52,000 RV was based on the same FMT, but at a rate of 60% of the applicable band.

29. The panel noted that there was no rental evidence in this case and therefore it paid attention to the Approved Guide to determine whether the appeal property had been placed within the category that best fitted its physical characteristics. The Valuation Officer had placed it within category one, which was agreed by the appellant, and the panel were of the opinion that this was the correct category. In line with the appellant's submissions, the panel found that the property had more 'lower level' characteristics than higher, for example, it is situated on the fringe of the main pub circuit and is somewhat tired and dated. Also, it resorted to subscription TV to incite custom. In light of the conflicting arguments as to the level of demand throughout the day, and the lack of objective evidence on this point, the panel could not place much weight on this consideration, but the overall picture remained of a pub with mostly 'lower level' characteristics. As such, the panel determined that a percentage of 40% of band was much more appropriate.

30. The panel turned to the evidence of comparable properties submitted by the parties. The panel was not persuaded that The Adelphi was a good comparable, situated some distance from the subject property and in the student area. It appeared to have its own mini circuit

and benefitted from a large beer garden. The Adelphi had been valued at 65% of band and the panel determined that, in comparison, this supported 40% for the subject property.

31. The panel found the comparable cited by the appellant's representative to be the more compelling evidence. The Station Hotel was situated 150m away from the subject property and appeared to be very similar in appearance and character. It also served the railway station and was valued at £30,500 RV, considerably less than the appeal property.

32. Mr Wainwright had argued that the Station Hotel had also been valued at a rate of 65% of band suggesting that the difference in RV was due to the difference in the amount of trade and the fact that the subject property was situated close to the main entrance to the railway station whilst the comparable was situated near to the side entrance. The panel found that it appeared that both entrances were well used and could not place much weight on the relative distinctions the parties sought to make in relation to which generated most pedestrian traffic.

33. The panel found no evidence of overtrading at the subject property.

34. The panel determined that, regardless of the percentage used to value the Station Hotel (and indeed the Adelphi, which was in any event a poor comparable), based on the characteristics of the subject property 65% was clearly too high a rental bid and unreasonable in the circumstances. The panel found the appellant's suggestion of 40% of the band at 10.69% to be a balanced assessment and should therefore be adopted.

35. In view of the foregoing, the grounds of the appeal were upheld, and the appeal was allowed, the RV was reduced to £50,500.

Order

36. 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 amend the entry in the rating list to show a revised assessment of £50,500 RV for the appeal property, with effect from 1 April 2017.

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

38. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended)) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process

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Date: 7 July 2021