THE VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; pub and premises; fair maintainable trade; comparable properties; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal dismissed.

Re**:** Jolly Sailor, Mead Lane, Bristol BS31 3ER

APPEAL NO: CHG100154040

BETWEEN	Jolly Sailor Private Ltd	Appellant
	and	
	Mr R Roberts	Respondent
	(Valuation Officer)	

BEFORE:	Miss Uzma Haque (Senior Member)
	Miss Leanne Westwell
CLERK:	Miss F Willson

REMOTE HEARING: 26 July 2021

APPEARANCES: Mr A Handley of Altus group on behalf of the Appellant
Mr P Hunter representing the Valuation Officer

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of the subject property to be £53,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal made by the appellant's representative on 9 January 2020. The Valuation Officer's Challenge Case Decision Notice was completed on 1 December 2020 in respect of the subject property and the appeal was made to this tribunal on 26 March 2021 submitting that an RV of £13,750 would be reasonable.

3. The property had been entered in the 2017 rating list at £56,000 RV as a public house and premises but as a result of the Challenge the RV was reduced to £53,000 with effect from 1 April 2017.

4. The present valuation of £53,000 RV is based upon a 'fair maintainable trade' (FMT) for the premises in accordance with the Rating Lists 2017 Valuation of Public Houses Approved Guide (the Approved Guide).

5. Mr Handley appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Handley's declaration of truth included a statement that he was instructed under a conditional 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 the client's case.

6. 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.

7. 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.

8. The subject property comprises a Grade II listed riverside public house located on the River Avon on the outskirts of Saltford in North East Somerset. The pub serves food and has an ample outside dining area as well as a conservatory. It also has its own car park.

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 when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

10. The issue in dispute is the value of the FMT relating to the subject property and the resulting valuation.

Evidence and submissions

11. Mr Handley submitted a bundle of evidence which included details of the subject property, the issues in dispute, details of comparable properties, a calculation of his proposed RV and extracts from the legislation and relevant case law.

12. With reference to his analysis of the FMT and the RV's of other comparable properties in the locality Mr Handley asked the panel to confirm a revised rateable value of £13,750. This is based upon the trade figures for the subject property from 29 April 2015 to the year ending 31 March 2018.

13. Mr Hunter submitted a bundle of evidence which included the Challenge application and decision.

14. In consideration of the FMT for the premises in accordance with the Approved Guide he asked the tribunal to confirm the RV of £53,000 with effect from 1 April 2017.

Decision and reasons

15. Mr Handley submitted that the subject property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD).

16. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976*, as referred to by both parties. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

> '(1) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
> (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.
> (3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.
> (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.
> (5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.
> (6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would be clearly more difficult to reject the evidence of the actual rent.'

18. Mr Handley submitted that the subject property was held by the appellant on a tied leasehold commencing from 2015 with a passing rent of £72,000 per annum but as the approved method of valuing a public house is on receipts the passing rent is not relevant.

19. He submitted that the subject property is a public house and premises, and it should therefore be valued on the basis of FMT and the application of the Approved Guide which was an agreed methodology between the Pubs Rating Forum and the Valuation Office Agency. The Approved Guide indicates the following:

> '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 come 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 the actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level of FMT.’

20. The subject property is a destination public house in a pleasant setting on the side of the River Avon which is restaurant focussed on seasonal lunchtime and evening menus. The appellant has confirmed that the public house is a dry led operation with a 70/30 split dry/wet. It was agreed between the parties that the public house should be valued on the provincial scales as a lower Category 2 Band B pub according to the Approved Guide.

21. Mr Handley submitted that the appellant had higher maintenance costs as a result of the subject property being a Grade II listed building. He also argued that the appellant incurred more outgoings to pay for entertainment and discounts in order to increase trade due to its location. Access to the subject property is down a minor road which leads to a sewage works and has limited signage.

22. The issue in dispute is the FMT to be applied to the subject property. The current RV is based on using an FMT for wet trade of £310,000 and £320,000 for dry. Mr Handley submitted that these figures had been inflated by the previous occupier to encourage the sale of the business. He therefore argued that the FMT should be reduced based on the trade information from 2015-2018:

    a. 29/4/2015 to 31/3/2016 202 days trading £169,882 turnover with a full year equivalent of £310,000.

    b. 1/6/2016 to 31/3/2017 303 days trading £261,968 turnover with a full year equivalent of £315,000.

    c. Year ending 31/3/2016 full year trading £314,455

    Mr Handley submitted that using these turnover figures the turnover can be seen to be consistently between £310,000 to £315,000. He therefore argued that the appropriate FMT that should be adopted is £315,000 split with £94,5000 for wet and £220,500 for dry.

Receipts	FMT	Rental %	Value (£)
Liquor	£94,500	2.89	2,731.05
Food	£220,500	5	11,025
		Total Value	£13,756.05
		RV	£13,750

23. The panel put little weight on the fact that the previous owner could have artificially inflated their FMT as there was no evidence that this had taken place. They were aware that there was often a fall off in trade when a public house had a new owner.

24. Mr Handley provided details of comparable properties in the vicinity of the subject property:

Pub	RV	Remarks
Jolly Sailor, Saltford, Bath	£53,000	Subject property
The Boathouse, Bath	£105,000	Chain pub
The Talbot, Keynsham, Bristol	£88,000	Chain pub less like subject pub
The Brassmill, Keynsham, Bristol	£118,000	Significant dry element
The Lock keeper, Willsbridge, Bristol	£95,000	Chain pub
The Riverside Inn, Saltford, Bristol	£71,300	Fairly even split between wet and dry
Bird in the Hand, Saltford, Bristol	£70,000	More dry led
Chequers Inn, Hanham Mills, Bristol	£55,750	Dry led closer to Bristol
Old Lock and Weir, Hanham Mills, Bristol	£28,500	Similar to subject property
The Old Crown,Kelston Bath	£25,500	Very close to subject property and very similar offering
The Crown, Saltford Bristol	£16,750	Situated in the middle of a residential area and a chain pub

25. He drew the panel's attention to the Old Lock and Weir and The Old Crown which were both, in his opinion, very similar as they were not chain pubs and had a similar offering and split between wet and dry trade. They supported that the RV of £53,000 for the subject property was excessive.

26. Mr Hunter submitted that in his opinion the most comparable properties were those with in the Saltford area which are close to the subject property and share the same category and band. The RV of the subject property is in the midpoint of those properties and therefore support the RV of £53,000. He further submitted that a number of the comparable properties listed are to have a review.

27. He explained that the previous operator had provided three years trade figures for the period 2012 to 2014 which they had used to form an opinion on the FMT for the subject property:

Year Ending	Wet	Dry
12/2012	£295,512	£333,238
12/2013	£298,233	£329,631

12/2014	£312,727	£320,665

28. Mr Hunter drew the panels attention to the RV presently in the list as follows:

Receipts	FMT	Rental %	Value (£)
Liquor	£310,000	8.85	27,435
Food	£320,000	7.98	25,536
Both at 45% of range point			
		Total Value	£52,971
		RV	£53,000

29. He drew the panels attention to the fact that the current RV used 73.8% of category 2 and 70.4% of Band B. This gave allowances for the fact that the subject property is a Grade II listed building and would therefore be more expensive to maintain and that the road leading to the subject property is narrow and so the public house does not attract passing trade.

30. Mr Hunter stated that the previous occupier had a different style of operating with the appellant moving more towards a dry led business. He further stated that as a dry led venue extra care was required to the rating of food hygiene. The rating of the food hygiene under the appellants occupation had varied between being rated 3 out of a possible 5 meaning 'generally acceptable' but in September 2019 had a rating of 1 meaning 'major improvement necessary'. In comparison the two nearest comparable premises had rating of 4 'good' and 5 'very good'.

31. The panel found that a change in the offering of a pub to a dry led business could initially reduce the trading figures especially when coupled with a low hygiene rating. The public house had also only had one full year of trading since the appellant bought the pub and these periods when the public house was closed would affect their trade figures especially in relation to a destination pub. The Approved Guide also suggested that the FMT for the years leading up to the AVD were the best evidence and not the years post AVD.

32. The panel found that they had not been provided with any evidence to show that the trade figures provided by the previous occupier were inflated. It put weight on the argument by Mr Hunter that the extra costs outlined by Mr Handley had been allowed for in the range points used in the calculation of the RV.

33. In the appeal before it, the panel held that it had not been provided with sufficient evidence to demonstrate that the rateable value was excessive. It therefore confirmed the RV at £53,000 with effect from 1 April 2017.

Date: 9 August 2021

Appeal number: CHG100154040