THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; public house and premises; choice of category and percentage adopted for dry trade in dispute; 2017 Approved Guide-Public Houses; appeal dismissed.

RE: Thames Head Inn, Tetbury Road, Cirencester, Gloucestershire, GL7 6NZ

APPEAL NUMBER:	CHG100155269
BETWEEN:	NBT Trading Ltd — Appellant
	and
	Mr D Virk, Valuation Officer — Respondent
PANEL:	Mr A Ramsay (Senior Member), Mr S Hooberman
CLERK:	Mrs L Horne
REMOTE HEARING ON:	Friday 11 June 2021
APPEARANCES:	Mr A Handley from Altus Group, representing the appellant
	Mr M Pearson representing the Valuation Officer

Summary of decision

1 Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £42,000 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. Thames Head Inn, Tetbury Road, Cirencester, Gloucestershire, GL7 6NZ, (the 'appeal property') had been entered in the 2017 rating list as 'Public House and Premises' at a RV of £42,000 with effect from 1 April 2017.

5 The challenge proposal was submitted by Altus Group on behalf of NBT Trading Ltd and was received by the Valuation Officer on 14 January 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £33,000 was proposed with effect from 1 April 2017.

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 current rating list entry of £42,000 RV was considered to be reasonable.

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 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), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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.

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

10 The appeal property is a detached two-storey public house of brick and timber construction, with a beer garden and a car park. It is located on the A433 between Cirencester and Tetbury, outside the village of Kemble in the Cotswolds. The property provides overnight accommodation with four letting rooms available.

11 The present valuation of £42,000 RV is based upon an adopted Fair Maintainable Trade (FMT) of £520,000. It is assessed as a Category 2 – Destination House for the calculation of wet trade (drinks), and band B for dry trade (food and accommodation).

12 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.

Issues

13 The issues in dispute related to the choice of category to be adopted for wet trade and the percentage to be applied to dry trade.

Evidence and submissions

14 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: appellant's challenge submission; the Valuation Officer's initial response and challenge case decision notice; comparable properties and location plan; and photographs of the appeal property. Prior to the hearing the panel was also provided with a copy of the Rating Lists 2017 Valuation of Public Houses Approved Guide.

15 Mr Handley contended that the appeal property lacked many of the features of a Category 2 - Destination House. He described the appeal property as being an integral part of the community offering locals a place to play traditional pub games including skittles. It is included on the Kemble Village website as a local business and it has a customer loyalty card scheme. He therefore requested that the appeal property be classified as a Category 3 – Community and Rural House.

16 In respect of the percentage adopted for dry trade, Mr Handley disputed the Valuation Officer's adopted 8.5%, and proposed a revised percentage of 7.5%. His original proposed valuation of £33,000 RV reflected £50,000 accommodation at 3% and £300,000 food at 7.5%. At the hearing, he revised his valuation to £33,250 RV following his acceptance of the Valuation Officer's approach of combining food and accommodation (£350,000 at 7.5%).

17 Mr Pearson stated that he was appearing on behalf of his colleague who had prepared the case. He defended the appeal property's designation as a Category 2 – Destination House, as it is a stand-alone location with no significant adjacent community. It is necessary to drive to the property as walking would prove to be perilous.

18 The Valuation Officer's adopted percentage of 8.5% for dry trade was also defended with reference to the scales in the Approved Guide.

19 Mr Pearson asked the panel to confirm the Valuation Officer's RV of £42,000 and dismiss the appeal.

Decision and reasons

20 When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. The basis of valuation for non-domestic rating is set out in schedule 6 to the Local Government Finance Act 1988 as amended by section 1(2) of the Rating (Valuation) Act 1999. Paragraph 2(1) of schedule 6 provides that the rateable value of a non-domestic hereditament "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 three stated assumptions.

21 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).

22 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, the material day is 1 April 2017.

23 As the appeal property is a public house and premises, it is valued according to trade, rather than actual rental evidence, and with reference to the Rating Lists 2017 Valuation of Public Houses Approved Guide, which has been agreed with the Pubs Rating Forum.

24 The first issue considered by the panel was whether the appeal property had been correctly classified as a Category 2 – Destination House. The panel referred to pages 11 and 12 of the Approved Guide which provided guidance for the choice of category to be adopted.

25 Having considered the features of each category, together with the descriptions and photographs provided, the panel determined that the appeal property is correctly valued in accordance with Category 2 - Destination Houses. The most relevant features were held to be:

- Prominent out of town or rural location with little or no competition.
- Frequently in attractive locations or in close proximity to tourist or other leisure attractions (i.e. the Cotswolds).
- Ample parking and beer garden.
- Letting rooms.
- Larger food trade.

26 Having referred to the features of Category 3 – Community & Rural Houses, the panel held that the appeal property could not be described as a predominantly wet led pub, with poor amenities which essentially was just for the local community. It was situated a mile away from the small village of Kemble, and the photographs demonstrated that there was no pavement to access the property.

27 In further support of his case, Mr Handley referred to four comparable properties: Wild Duck Inn, Tunnel House Inn, Trouble House Inn and The Tavern. He drew particular attention to the fact that the appeal property had seen the largest increase in RV from the 2010 list at 71%. The panel rejected Mr Handley's argument regarding the large increase between lists for the reasons outlined by the Valuation Officer: any increase between lists is not a relevant consideration, as each stands on its own merits. Mr Pearson explained that the 2010 list entry for the appeal property was based on an estimated FMT which may explain the large increase.

28 The panel then turned to the percentage to be adopted for dry trade. Mr Handley stated that his proposed 7.5% reflected the middle of the range in consideration of the standard food offering. As Mr Pearson was not the original caseworker he was not able to explain the choice of percentage at the hearing. Upon the request of the panel, this was clarified afterwards and copied to Mr Handley:

> The percentage adopted by the VO for the Food and Accommodation FMT is in line with the Approved Pub Valuation Guide. The food and accommodation trade was combined as per page 19 of the Guide, as the letting accommodation is understood to not exceed 6 bed spaces. This produced a total FMT of £350,000.
>
> This FMT was valued under Band B of the food bands listed on page 16.
>
> As the table shows, 8.25% is the top range bid for a total FMT of £250,000. This level of turnover has a min percentage of 7% and a max of 8.25%.
>
> As the FMT being valued was £350,000 the minimum and maximum range points are higher – this is indicated by the scales on page 32 of the Approved Guide. I understand that a FMT of £350,000 has a percentage range of between 7.6% – 8.85%, of which the VO has adopted 8.5%.
>
> The choice of percentage is discussed on page 17 of the Approved Guide but is based on valuer judgement. In this case, the VO has considered the menu, offering and expense of the operation at the subject property and considers that it is not significantly expensive and that the operation would have higher profitability. Hence we have adopted a rental percentage of 8.5% which is towards the higher end of this range.

29 As outlined above, for a FMT of £350,000 there is a percentage range between 7.6% and 8.85%. For that reason, the panel was not persuaded that Mr Handley's adopted 7.5% was in accordance with the scales in the Approved Guide. The panel was satisfied that the Valuation Officer had demonstrated that 8.5% was reasonable.

30 In conclusion, the panel determined that the appeal property was correctly valued in accordance with the Approved Guide. The appellant's representative had failed to demonstrate that the RV of £42,000 was unreasonable, and therefore the appeal was dismissed.

Date: 2 July 2021

Appeal Number: CHG100155269