THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Fair Maintainable Trade; Comparable hereditaments; Whether there should be an allowance for over-trading; Appeal allowed in part.

RE: Punch Bowl Inn, Crosthwaite, Kendal, LA8 8HR

APPEAL NUMBER: CHG100161988

BETWEEN: Noble View Limited Appellant

and

Amanda Hitchings (Valuation Officer) Respondent

BEFORE: Mr I Lonsdale (Senior Member sitting alone)

CLERK: Mr A Johnson Tech IRRV

HEARING: 20 April 2022

APPEARANCES: Mr G Herron (from Altus Group representing the Appellant)
Mr J Wainwright (representing the Respondent)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

DECISION AND STATEMENT OF REASONS

Summary of decision

1. This appeal was allowed in part. I determined that the existing rateable value of £109,500 was not reasonable and the entry should be reduced by 10% to reflect over-trading at the property. I determined that the rateable value of the Punch Bowl Inn, Crosthwaite, Kendal, LA8 8HR was £98,500 with effect from 1 April 2017.

Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that I considered all of the evidence presented before coming to my decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. Paragraph 10 of Tribunal's business arrangements allows a Senior Member to consider an appeal alone where a member gives notice that he/she becomes unavailable within one working day of the commencement of the hearing.

   Hearings Where a Member is Unable to Sit

   > *Where a panel member is allocated to a hearing and unable to sit for any reason or fails to appear, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where a member gives notice of unavailability within one working day of the commencement of the hearing, to avoid postponing the hearing. In all other cases the hearing must be postponed unless the President directs otherwise.*

4. As my fellow panel member became unavailable on 19 April 2022 and the Tribunal was unable to find a replacement at such short notice, I was satisfied that I was authorised to hear this appeal alone.

5. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009.

6. This was a 2017 rating list appeal. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the appeal hereditament on the compiled date of 1 April 2017 was not reasonable.

7. The rateable value was £114,800 and subsequently reduced at the 'Challenge' stage to £109,500. The appellant was seeking a revised rateable value of £69,000.

8. The representatives for both parties stated that they were appearing in a dual role of both advocate and expert witness, and that their first duty was to the Tribunal. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Herron declared that he was appointed on a conditional fee basis. I accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

Preliminary matter

9. This appeal had originally been listing for a hearing on 22 September 2021. At the commencement of that hearing the panel considered an objection from Mr Wainwright regarding the inclusion of an expert witness report (EWR) which had been submitted by Mr Herron on 8 June 2021, the outcome of which was to allow the EWR into evidence. As a consequence of this decision, Mr Wainwright was granted an adjournment in order to consider the contents of the EWR and to make comments in respect of it to Mr Herron and to provide this Tribunal with a copy of those comments.

10. On 6 October 2021 Mr Wainwright submitted a four page document to Mr Herron and a copy of this was received by the Tribunal on the same day.

11. Mr Herron objected to the inclusion of Mr Wainwright's comments because he considered them to include additional submissions and comments which exceeded what had been requested of him. In response, Mr Wainwright submitted that he had not exceeded his remit and that his comments did not amount to additional submissions.

12. After retiring to consider the matter I determined that Mr Wainwright's comments did not amount to new evidence. In summary I found them to be generic in their nature which, if anything, served to amplify the points which had already been made within the Valuation Officer's submission. I therefore decided to allow Mr Wainwright's comments into evidence.

Issue

13. The issue in dispute was the rateable value which had been ascribed to the Punch Bowl Inn from 1 April 2017. The parties disagreed the percentages which should be applied to the trade figures and whether an allowance should be made for over-trading.

Evidence and submissions

14. I considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process. I also considered the EWR and Mr Wainwright's comments in respect of it (as referred to above).

15. The Punch Bowl Inn was described as a two storey property which had been built in the seventeenth century. It was located in the Lake District National Park between Kendal and Windermere with Kendal being approximately twenty minutes away by car.

16. The Punch Bowl Inn had been valued in accordance with the 'Valuation of Public Houses Approved Guide' which had been agreed between the Valuation Office Agency and representatives from the pub trade (referred to as the 'Pubs Rating Forum'). This guide was regarded as a fair and consistent method by which public houses should be valued and is based upon the level

of fair maintainable trade (FMT) at the antecedent valuation date (AVD) of 1 April 2015. The parties had agreed that the Punch Bowl Inn was a ‘Category 2 Destination House’ in accordance with the Approved Guide.

17. The starting point in determining the FMT is the consideration of the trading receipts in the year ending closest to the AVD and in the immediately preceding years. The FMT is split between liquor (wet) receipts, non-liquor (dry) receipts which includes food, accommodation and/or other income. This split between wet and dry receipts is then used to calculate a reasonable percentage which, when totalled, arrives at the rateable value to be adopted.

18. The information used to calculate the FMT for the Punch Bowl Inn had been taken from the actual trade figures for the three complete financial years leading up to the AVD. These were set out by the Valuation Officer as:

	Wet	Dry	Accommodation
Y/e 31 March 2013	£272,631	£576,839	£276,994
Y/e 31 March 2014	£267,189	£594,037	£286,977
Y/e 31 March 2015	£286,585	£642,334	£290,968

19. Mr Herron contended that the current rateable value of £109,500 was unreasonable and he argued for lower percentages than those used by the Valuation Officer. Mr Herron’s proposed rateable value was £69,000 (as set out in his EWR) which had been calculated as follows:

	Trade figures	Less 30% allowance	Revised trade figures	% applied	Total
Wet trade (liquor):	286,500	85,950	200,500	7.49%	15,021.20
Dry trade (food):	642,500	192,750	449,750	8.28%	37,239.30
Accommodation:	291,000	87,300	203,700	8.28%	16,866.36
					69,126.86
				RV say:	**69,000***

* Revised from an RV of £67,500 which had initially been sought.

20. Mr Herron’s referred me to other properties which, in his view, when compared with the Punch Bowl Inn, demonstrated that a rateable value of £109,500 was not reasonable. His main three comparables were:

Address	2017 RV	Comments
Lyth Valley Hotel, Kendal	£52,000	Relatively close proximity to the subject property
Wheatsheaf Hotel, Brigsteer, Kendal	£59,950	Within village c2 miles east of the subject property
Eagle & Child, Kendal Road, Staveley	£74,250	Picturesque pub in village off main road and to the north of Kendal

21. Mr Herron also argued that his client exceeded what was expected from a reasonably efficient operator (REO) and he contended that an allowance of 30% for over-trading was reasonable. In support of this contention he stated that the Punch Bowl Inn had developed a strong reputation as a food led business and has won a number of awards over recent years which had recognised this strength. Mr Herron also referred me to a previous VTE decision between *Pheasant Inn and Mr Richie Roberts (Valuation Officer)* which had been issued on 12 September 2018 (reference CHG100003422) in support of his argument.

22. Mr Wainwright argued that a rateable value of £109,500 was reasonable. This had been assessed as follows:

	Trade figures	% applied	Total
Wet trade (liquor):	285,000	9.07%	25,850
Dry trade (food):	640,000	9.00%	57,600
Accommodation:	290,000	9.00%	26,100
			109,550
		RV say:	**109,000**

23. Mr Wainwright argued that Mr Herron's comparable properties were not reliable because:

- Lyth Valley Hotel had been valued as a bed and breakfast hotel (not a public house) and the FMT had been based upon estimated trade figures;
- Wheatsheaf Hotel's FMT had been also been based upon estimated trade figures; and
- Whilst the Eagle & Child's FMT was based upon actual trade figures, the accommodation income was considerably less.

24. In the alternative, Mr Wainwright argued that, in particular, The Watermill Inn in Kendal was comparable because it had a similar offer to the Punch Bowl Inn and had a rateable value of £109,550 with effect from 1 April 2017. This he argued, demonstrated that a rateable value of £109,500 for the Punch Bowl Inn was not unreasonable.

25. Mr Wainwright acknowledged that whilst the Punch Bowl Inn had won a number of awards (including two rosette awards for culinary excellence) and was trading as a highly successful business, he was not aware of anything exceptional which could not be achieved by any other occupier. Therefore, he argued that no allowance should be made for overtrading.

26. Mr Wainwright also addressed the *Pheasant Inn* decision which had been relied upon by Mr Herron to support a 30% allowance for over-trading. It was Mr Wainwright's opinion that, unlike the Punch Bowl Inn, the Pheasant Inn was not located within the Lake District National Park and had been

compared to others which were in superior locations. In view of this, it was Mr Wainwright's opinion that the issues between this and the Pheasant Inn were not directly comparable.

Decision and reasons

27. In determining the rateable value, I found the Valuation Officer's initial assessment of FMT to be reasonably reflective of the actual trade figures from the Punch Bowl Inn. I was not presented with any compelling evidence from Mr Herron to convince me otherwise. This was supported by the evidence relating to The Watermill Inn which had a similar offer and rateable value.

28. I found that I was unable to place any significant weight upon the comparable evidence presented by Mr Herron. Of the three he had placed most reliance upon, The Lyth Valley Hotel and the Wheatsheaf Inn Hotel had been valued using estimated trade levels which reduced their persuasiveness. When looking at the Eagle & Child I found that it had a lower level of FMT which was reflective of its lower offer, having five letting rooms at £90.00 per night against the Punch Bowl Inn's nine letting rooms at £125.00 and the added offer of wedding packages.

29. I therefore found that when standing back and comparing the rateable value of the Punch Bowl Inn with the comparable properties put forward by the parties, that a rateable value of £109,500 was not unreasonable. However, I gave further consideration to the argument of over-trading.

30. When determining the issue of over-trading I regarded section 7.3 of the Approved Guide to be my starting point:

> "Any element of trade which is considered attaches to the operator (and thus would move with them) and which is not capable or expected to be replicated by the REO, should be disregarded in the FMT calculation. Due regard needs to be given to the attributes of the property. The overriding factor which must be identified in all cases is the existence of a demonstrably different level of trade and/or offer at the subject property compared to the typical range of trade and/or offers evident in the locality in question. The demographics of the customer base in any particular location will have a major part to play in the range of offers encountered. The circumstances of the subject property must therefore 'stand apart' from its competition and the actual turnover achieved must immediately cause the valuer to stop and reflect as to reasons why, on a first look, it appears significantly higher than achieved in any other comparable properties in the locality.
>
> This guidance cannot envisage every example of potential over-trading, but it might take the form of an all-embracing and continuous low pricing policy or, at the other extreme, it may present itself as a select high-priced non-standardised operation. Of course, the distinguishable level of trade and/or offer may be down to the exceptional personality or ability of the operator. In this regard, the fact

that a particular operator has been at a property for an extended period of time does not necessarily lead to the conclusion that there must be an element of over-trading.

The market embraces a range of performances that are considered within normal expectations and accordingly adjustments are not justified in the rating context unless the subject performance is clearly outside of this range. It is quite conceivable that a property with an offer within the typical range, but which enjoys a particularly advantageous location, may, at first look, seem to be out-performing others in the vicinity. The fact that the offer is not out of the ordinary helps the valuer to the conclusion that locational advantage is impacting here. There is an attribute of the property which should correctly be reflected in its rateable value.

Conditional upon the over-riding factor being evident, then application of this guidance provides a structured approach to the determination of;

a) Whether an adjustment to the valuation of the subject property is justified; and then,
b) What the quantum of any adjustment should be."

31. In exploring the issue of over-trading, I considered Mr Herron had placed too much reliance on his comparable property, the Pheasant Inn. I was not persuaded by that evidence because of the differences between the properties and notably that the Pheasant Inn was not within the national park. In my view, Mr Herron did not sufficiently sell the exceptional skills of the Punch Bowl Inn's occupier, especially when I gave him the opportunity to do so at the very end of the hearing.

32. I had to consider how the occupier of the Punch Bowl Inn was performing over and above what was expected from a REO. The best evidence was the photograph that was provided showing a wall inside the Punch Bowl Inn, upon which the appellant had proudly displayed five separate plaques showing they had won the Cumbria Life's dining pub of the year award for 2013, 2015, 2016, 2017 and 2018. While Mr Wainwright acknowledged that this showed the appellant to be a good operator, I considered this level of success to be over and above the REO.

33. In my view a hypothetical tenant looking to rent the Punch Bowl Inn, having regard to the appellant's trade, would be a little cautious taking into account his actual success in winning those awards and whether he would be able to continue the high level of success. The appeal property relied heavily on income from food and those awards would, in my opinion, attract additional trade.

34. In view of this, I determined that there should be an allowance to recognise the success of the appellant. I noticed from the trade evidence that there had been an increase in food sales of approximately 11%. In my view, a 10%

allowance would therefore be reasonable to reflect the over-trading at the Punch Bowl Inn. In doing so, I have simply adjusted the existing rateable value of £109,500 by 10% to reflect over-trading. This gives £98,550 rounded down to £98,500.

35. The appeal is therefore allowed in part.

Order

36. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the rating list within two weeks of the date of this order to show the entry in the rating list for the appeal hereditament to £98,500 rateable value with effect from 1 April 2017.

Refund of appeal fee

37. The appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 16 May 2022

Appeal number: CHG100161988