THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; were the actual Trade Figures to be used to achieve Fair Maintainable Trade; does the Rateable Value reflect the Annual Trade; Watney Mann Ltd v Langley (VO) [QB 1963]; *Appeal dismissed.*

Re: Slug & Lettuce, 27 Market Street, Leicester LE1 6DN

APPEAL NUMBER: CHG100165034

BETWEEN:	Stonegate Pub Company Limited	Appellant
	and	
	Mrs J Moore (The Valuation Officer)	Respondent

BEFORE: Mrs M Cole (Senior Member sitting alone)

CLERK: Ms Roselyn Muller

REMOTE HEARING: Friday 11 February 2022

APPEARANCE: Mr S Hill, Gerald Eve LLP, representing the Appellant
Mr H Wadsworth, Representative for the Respondent

Summary of decision

1. Appeal dismissed. The Rateable Value (RV) of £114,000 was confirmed for the subject hereditament.

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. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. I was satisfied that all parties present were able to fully participate in the hearing.

5. Due to the unavailability of a second member I sat alone as Chairman as provided for under paragraph 11 of the Valuation Tribunal for England's Tribunal Business Arrangements:-

    HEARINGS WHERE A MEMBER IS UNABLE TO SIT

    Where a panel member is unable to sit for any reason or fails to attend they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

6. This was a 2017 complied Rating List appeal. 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.

7. The subject hereditament was described as public house and premises and had originally been assessed at £136,000 RV with effect from 1 April 2017. A check had been completed on 16 October 2019 and a Challenge submitted on 10 February 2020. The Challenge was completed on 27 May 2021 where the Valuation Officer (VO) had altered the RV of the subject hereditament to £114,000 with effect from 1 April 2017. An appeal against the final Challenge case decision notice was received by the Tribunal on 23 September 2021.

8. The subject hereditament comprises a four storey stone/brick built building under a pitched slate roof. The subject hereditament sat within a parade of properties on the pedestrianised Market Street, it had dual frontage to both Market Street and Pocklingtons Walk and was located to the south of Leicester city centre. It was noted within the evidence that the subject hereditament had had a name change from Slug and Lettuce to Distillery.

9. Mr Hill from Gerald Eve LLP, 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 Hill stated that he was not instructed under a contingent 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 as well as the requirements of his professional body regardless of whether the evidence supported the client's case.

10. I 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). I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

11. During the Challenge stage, the Valuation Officer having looked at the trade figures, reduced the wet and dry figures he had originally used and revised the assessment down to £114,000. As well as wet and dry receipts. the subject property also included amusement with prize (AWP) figures. However, as these were less than 5% of the overall trade, they were not included within the assessment. The Valuation Officer amended the 2017 Rating

List on 27 May 2021 to show that the RV of the subject hereditament was £114,000 with effect from 1 April 2017.

12. The present valuation of £114,000 was based upon an adopted Fair Maintainable Trade (FMT) of £960,000. It was assessed at band B for dry trade (food) adopted at 8.05% and Category 1, for wet trade (drinks) adopted at 11.88%. Category 1 related to primary licensed trade areas in city centres, towns and outlying commercial centres and comprised of well invested public houses. It was noted that the Category and band were not in dispute, but the percentages adopted within Category 1 and band B and the percentage that should be applied if the appeal property was also found to be overtrading.

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

Issues

14. The issues in dispute related to the choice of percentages to be adopted to the wet and dry trade and if the subject hereditament was overtrading.

15. The starting point in determining FMT is the consideration of the receipts of the premises in the year ending closest to the Antecedent Valuation Date (AVD) and in the immediately preceding years, where such information is available. The FMT was split between liquor (wet) receipts and non-liquor (dry) receipts such as food, accommodation or other income.

Evidence and submissions

16. Both parties considered the valuation of the subject hereditament in accordance with the Approved Guide for the Valuation of Public Houses that had been agreed in respect of the 2017 List, between the Valuation Office Agency and the British Beer and Pub Association. The guide sets out an approach that was derived from an analysis of open market; free of tie; pub rents. The valuation approach involved determining the FMT of the subject hereditament in question as at the AVD of 1 April 2015.

17. Submitted to the Tribunal was a bundle of evidence which included: details of the subject hereditament, grounds for resisting the appeal, a revised valuation from each party for the subject hereditament, details they sought to reply upon and reference to the Approved Guide for the Valuation of Public Houses 2017. The issues in dispute, extensive evidence of their reasons for the appeal, comparable properties details and correspondence between the parties. The parties also included extracts from legislation and case law of Watney Mann Ltd v Langley (VO) [QB 1963]; Scottish & Newcastle Retail Ltd v Williams (VO) [2000 RA 119]; Brunning & Price Ltd v Wynn-Cowell (VO) [2008 RA 1]. Prior to the hearing, I was provided with a copy of the Rating Lists 2017 Valuation of Public Houses Approved Guide.

18. Mr Hill also provided details of tenure, which showed that the subject hereditament was on a 35 year lease from 9 March 1998 with a current passing rent of £105,250 per annum.

19. Mr Hill stated that within his proposed valuation, he had included a discount of the FMT figures of 25% for wet trade and 35% for dry trade due to overtrading and he had used the trade figures from the year 2016. He stated that he had used these figures instead of the figures for 2014, as it had been noted that trade with regards to the subject hereditament

had been falling from 2012 onwards. Therefore, Mr Hill considered that the figures for 2016 was a fairer trade figure to use.

20. In respect of the percentage adopted by the Valuation Officer, Mr Hill disputed the Valuation Officer's FMT figure and the adopted percentages he had used within Category 1 and band B. Mr Hill's revised proposed assessment of £79,500 RV reflected a revised FMT figure of £602,673 for wet trade at 11.21% and a revised FMT figure of £185,030 for dry trade at 6.59%.

21. Mr Hill also contended that the subject hereditament was overtrading and this had been proven by the comparable hereditament of The Reynards. This comparable property was a neighbouring property at 17 – 19 Market Street, Leicester, which was much larger in size and stated that its RV had been reduced to £65,000 RV. He stated within his submission that "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 the reasons why, on first look, it appears significantly higher than that achieved in any other comparable property in the locality". Mr Hill therefore, requested that I confirm the assessment of the subject hereditament to be £79,500 RV.

22. Mr Wadsworth, the representative for the Valuation Officer, stated that the revised assessment of £114,000 included an FMT figure of £760,000 for wet trade, where 11.88% had been adopted and £300,000 for dry trade, where 8.05% had been adopted. He held that the adopted percentages for dry and wet trade were defended with reference to the scales in the Approved Guide. Mr Wadsworth therefore, requested that I confirm the assessment of the subject hereditament at £114,000 with effect from 1 April 2017 and dismiss the appeal.

Decision and reasons

23. When arriving at my decision, I was 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.

24. 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).

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

26. I turned my attention to the issue of overtrading mentioned by Mr Hill. In his submission, he had stated that The Reynards at 17 – 19 Market Street, Leicester, which had an assessment of £65,000 RV, was much larger in size. This was evidence of the subject property overtrading and therefore, the assessment should be reduced in line with his revised calculations. I referred to the case of Watney Mann Ltd v Langley (VO) [QB 1963]; where

Justice Thompson endorsed that; ‘The actual level of trade achieved at the subject property is the starting point of any valuation’ and applied less weight to this assessment.

27. I therefore, referred to the trade figures that had been provided for the years, September 2012 to September 2016. I considered the trade figures of three years prior to the AVD of 1 April 2015 up to and including September 2014. It was noted that Mr Hill used the trade figures of 2016 to come to his revised valuation, however, I did not consider the trade from 2016, as it was beyond the AVD of 1 April 2015.

28. Mr Hill believed that the subject hereditament had been overtrading and that another person coming to the same public house would not achieve the same level of turnover. He defended this statement by considering the assessment of a neighbouring hereditament where the RV was much lower. He therefore, stated that this should be taken into account when assessing the subject hereditament. However, the trade figures provided from 2012 to 2016 were consistent with a slight increase, but these trade figures had been achieved and had remained stable. Therefore, I held that the FMT figures used by Mr Wadsworth to be fair and reasonable.

29. I noted that Mr Wadsworth had taken into account factors, which had enabled him to reduce the percentages that had originally been applied to the assessment to lower the RV. However, I noted that the overriding factor, which must be identified was the existence of proof to show that any overtrading had taken place. I considered that another landlord running the subject hereditament could possibly trade to a similar level and no evidence was presented to prove otherwise. Therefore, I considered that overtrading had not been proven in this case.

30. Mr Wadsworth had provided comparable hereditaments which were operated by the same appellant but were not in the local vicinity. He stated that none of the other hereditaments which were operated by the same appellant had had their assessments challenged with regards to overtrading. I noted that these hereditaments were located in other areas of the country and not within Leicester City Centre. Therefore, little weight was given to these comparable hereditaments and the RV’s that had been placed upon them.

31. I turned by attention to the percentage to be adopted for wet trade and referred to Section 3.4 of the Approved Guide for the Valuation of Public Houses where it provided guidance on the choice of percentages and where amenities, incentives, marketing and other factors are considered when the percentage is applied.

32. I noted within the Approved Guide that both Mr Hill’s proposal of 11.21% and Mr Wadsworth use of 11.88% reflected the middle of the range in consideration of Category 1 for the wet trade. As for the dry trade, Mr Hill’s proposal of 6.59% and Mr Wadsworth use of 8.05% reflected the lower end of the range in consideration of band B for the dry trade.

33. The rent for the subject hereditament of £108,000 did not support the revised assessment proposed by Mr Hill of £75,000 RV, which was significantly less than the current rent. I also noted that Mr Hill had reduced the trade figures as well as reducing the percentages he had adopted to arrive at this proposed assessment. However, as Mr Hill had not provided any evidence to show why he used a lower percentage, I had to apply less weight to this.

34. As the table showed, a level of wet trade between £500 and £625 had a minimum percentage of 10.00% and a maximum percentage of 12.00%. Any trade higher than £625

had the same minimum percentage applied and had a maximum percentage of 12.50%. I noted that both parties had adopted a percentage for the wet trade, within the 11% area.

35. I looked at page 16 for the band details of band B. The table showed a level of dry trade within the Standard Food Scales of turnover of trade between £125,000 and £250,000 to have percentages range from a minimum of 5.50% to a maximum of 9.50%. Mr Hill had stated that the figure he had used with regards to dry trade, after his reduction for overtrading of 35% had resulted in his proposed percentage of 6.59% being applied. I noted that Mr Wadsworth had used a higher dry trade figure, where the percentage range had a minimum of 7.50% to a maximum of 10.25%. He had applied 8.05%, which was at the lower end of the range of percentages within band B for the level of trade applied.

36. I held that the percentages adopted by Mr Wadsworth for both the wet and dry trade were in line with the Approved Pub Valuation Guide. The food trade was valued under Category 1 as per page 12 of the Guide. The FMT was valued under band B of the food bands listed on page 16. The percentages adopted by Mr Wadsworth were more in line with the current rent of the subject hereditament. The FMT figures applied from the trading year end (September) 2014 appeared to be a fair reflection of the trade a competent landlord could achieve with regards to the subject hereditament, and no substantial evidence was put to me to pursued me that I should deviate from this. Furthermore, the figures adopted by the VO were in line with the passing current rent.

37. In conclusion, I determined that the subject hereditament was correctly valued in accordance with the Approved Guide. Mr Hill had failed to demonstrate that the assessment of £114,000 RV was unreasonable, and therefore, the appeal was dismissed.

Date: 3 March 2022

Appeal number: CHG100165034