THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List – Public House – wet and dry trade – Approved Public House Guide – Fair Maintainable Trade – comparison with other public houses in area between Rating List – was premises overtrading and if so what percentage to be applied to trade to reflect overtrading – appeal allowed in part

Re: The Burlington, 25-31 Burlington Street, Chesterfield, S40 1RS

APPEAL NUMBER: CHG100168348

BETWEEN:	Stonegate Pub Company	Appellant
	And	
	The Valuation Officer	Respondent

PANEL:	Mr G Coombes (Senior Member)
	Mrs C Parkes
CLERK:	Mr A Jolly
REMOTE HEARING:	Monday 7 February 2022
APPEARANCES:	Mr S Hill of Gerald Eve representing Stonegate Pub Company (appellant)
	Mr H Wadsworth representing the Valuation Officer (respondent)

Summary of decision

1. Appeal allowed. RV £90,000 determined with effect from 1 April 2017.

Introduction

2. This appeals has been brought in respect of the following: An appeal to the Valuation Tribunal on the 6 October 2021 against the Valuation Officer Challenge Notice Decision dated 9 June 2021.

3. 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.

4. 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.

5. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link.

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

7. Mr Hill 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’s declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Hill 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.

Issues

8. The issues before the panel concerned the band to apply to the wet trade and whether or not an allowance should be awarded for overtrading for both wet and dry trade.

9. The Burlington comprises a two storey building constructed from bricks under a pitched slate roof. It is located on the corner of Burlington Street and Church Way on a mid-terraced plot. There was an entrance from Burlington Street and a rear entrance from Church Lane. The trading area was located on the ground floor with a bar, kitchen and the toilets were located in the basement. The property was held on a 25 year lease from 13 November 2014 with a current rent passing of £96,804 per annum.

10. The property had originally been entered into the 2017 Rating List at RV £100,000 but following the challenge where trade figures had been fully supplied the Valuation Officer amended the RV to £92,500 and altered the List accordingly with effect 1 April 2017. The Valuation Officer sought to defend the current entry in the List whereas Mr Hill, on behalf of the appellant, sought a reduction to RV £76,500. The material date for the appeal was 1 April 2017 and the antecedent valuation date (AVD) was 1 April 2015.

Evidence and submissions

11. Mr Hill explained that public houses were normally valued by using an Approved Guide which was established between representatives and the Valuation Officer. In using the trading figures, a fair maintainable trade (FMT) can be established. Each public house is placed in a category for its wet trade based on a number of assumptions and if there is dry trade a band is applied for that, again based on a number of assumptions. He had categorised the public house as in category 1 and band A. With the category and bands, a range of percentages is given to calculate against the trade to establish a value and once established, a person should take a step back and consider if there was anything specific to that public house.

12. He provided details of the wet and dry trade and how he considered that the trade should be calculated having regards to the categories and bands from the approved guide.

13. He considered that comparison should be had to other public houses in the locality to establish whether how the appeal hereditament was trading and whether the trade was low or high compared with others.

- The Rectory at RV £50,500. The RV had been agreed on challenge. 65% of the size of the appeal hereditament. Approximately 20 metres from the appeal hereditament
- Spa Lane Vaults at RV £89,500. J P Wetherspoons public house and therefore there was an overtrading element within the assessment
- All Saints Tap at RV £47,250 agreed at challenge stage. 70/75% of the size of the appeal hereditament.
- Pig and Pump at RV £49,000

14. Mr Hill considered that at RV £92,500, the appeal hereditament did not sit right when compared with his comparable properties. He considered the comparable properties were not too dissimilar to the appeal hereditament but the appeal hereditament had a greater RV.

15. Mr Hill considered that the difference in trade could be accounted for the offerings supplied by the public house. The appeal hereditament offered good food, sky sports and 2/3 pool tables. He considered that the appeal hereditament was overtrading considering its location and the RV of the other public houses, which would have been based on their turnover. He provided his break down of the trade using Category 1 at 11.03% of trade and Band A at 8.32% of trade. He considered that a 15% allowance should be applied to the wet trade figures and 20 % to the dry trade figures and sought a RV of £76.500 with effect 1 April 2017.

16. Mr Wadsworth informed the panel that the original 2017 RV was £100,000 but having regards to the facts at challenge stage he had reduced the RV to £92,500 which he was defending. He considered that the evidence of the comparable properties showed that the current RV was not incorrect having regards to the trade and that the burden was upon the appellant to show otherwise.

17. Mr Wadsworth stated that the property underwent refurbishment to a high standard in May 2015 at a cost of £300,000. Having regards to the prominent position and its refurbishment, he adopted 75% of the available range 11.8% of wet trade and 8.06% of dry trade. He also stated that he had rounded the trade figures to £600,000 for wet and £300,000 for dry and had placed the trade within category 1 for wet trade and band b for dry trade.

18. Mr Wadsworth provided the breakdowns of how his other comparable property had been valued with the percentages of the trade etc. He also confirmed that The Rectory had also undergone refitting and rebranding and that there was an element of overtrading incorporated in the assessment of Spa Lane Vault.

19. Mr Wadsworth explained that it is essential for any valuer to stand back and reflect any income above the normal expectation that is attributable solely to the personal circumstances or skill, expertise, reputation or brand of the particular tenant and must consider if the rental value looks to be unreasonable in comparison with other similar style of properties. Whilst he did not consider there was sufficient evidence to support an adjustment for overtrading of 15% for wet trade and 20% for dry trade, he considered that

due to a 42% increase between the 2010 and 2017 Rating List for dry trade a 10% overtrading adjustment was justified which reduced the dry trade to £270,000. He requested the panel dismiss the appeal and for the RV £92,500 to be confirmed.

Decision and reasons

20. The panel noted that the parties had agreed that the wet trade should be placed within category 1 for the wet trade but differed at the percentage to be adopted but had not agreed on the band for dry trade. The panel also noted that the parties disagreed on the level of adjustment to be applied for overtrading.

21. The panel having regards to the Approved Guide for Public House the panel had to consider whether the appellant' representative was correct applying band A or the Valuation Officer was correct at applying band B. The panel noted the type of establishment and type of food serve had not been persuaded by the appellant's representative that band A was the most appropriate and therefore deemed band B should be applied.

22. The panel then considered the adopted FMT. The panel was aware of the actual trade and considered that the appellant's representative FMT appeared low and that the Valuation Officer, having rounded the actual trade to the nearest £10,000 was the most appropriate. The panel therefore used £600,000 for wet trade and £300,000 for dry trade.

23. The panel then considered the percentages to be applied to the wet and dry trade. The appellant's representative had taken the medium point whereas the Valuation Officer had taken a higher point at 75% of the trade. The panel considered the prominent position of the property and its recent refurbishment which appeared to have had an impact on the dry trade in particular considered the percentages used by the Valuation Officer to be the most appropriate.

24. The panel then considered the issue of overtrading. The appellant's representative was seeking a 15% adjustment for the wet trade and 20% adjustment for the dry trade to reflect an element of overtrading whereas the Valuation Officer had conceded a 10% adjustment for the dry trade only. The panel had not been persuaded that the wet trade had seen a significant increase in trade between the 2010 and 2017 Rating List but there had been a significant increase in dry trade since the refurbishment works. The panel therefore considered that no adjustment should be made to the wet trade in relation to the dry trade. It then considered the wet trade and was of the opinion that a 42% increase in dry trade showed that there was overtrading in respect of the dry trade and that 10% did not adequately reflect such an increase. It had been persuaded by the appellant's representative that 20% was a better reflection of the overtrading for the dry trade.

25. Consequently, the panel having regards to the FMT, categories and bands, percentages within those categories and bands and overtrading adjustment determine RV £90,000 with effect from 1 April 2017.

Order

26. The Valuation Officer is ordered to reduce the 2017 Rating List entry to £90,000 with effect from 1 April 2017 within two weeks of the date of this order.

27. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take six weeks to process.

Date: Friday 4 March 2022

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