THE VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; compiled list appeal; public house and premises; the correct fair maintainable trade to be adopted in the appeal property's valuation; reasonably efficient operator; overtrading; appeal allowed in part.

Re: The Bull Inn, Maldon Road, Maldon, CM9 8NH

APPEAL NO: CHG100171366

BETWEEN	Bull and Willow Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Miss M F Dowrick (Senior Member)

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 4, Friday 4 December 2020

APPEARANCES: Mr M Clayton of Altus Group on behalf of the Appellant as advocate and expert witness
Mr M Watson representing the Valuation Officer as advocate and expert witness

---

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £65,000 rateable value (RV) 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 the 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. In accordance with the Tribunal's business arrangements, I am authorised to consider and determine this appeal sitting alone.

5. The subject appeal is a 2017 rating list appeal brought in respect of the Bull Inn, Maldon Road, Maldon, CM9 8NH (the 'appeal property'), entered into the 2017 rating list as a Public House and Premises at £72,500 RV with effect from 1 April 2017.

6. The appellant submitted a challenge proposal that was received by the Valuation Officer on 26 February 2020. The grounds of the proposal sought a reduction in the assessment as the fair maintainable trade (FMT) used in the valuation was excessive. Upon consideration of the proposal, the Valuation Officer decided that it was not well-founded but accepted that the existing assessment was unreasonable and reduced it to £68,200 RV with effect from 1 April 2017. As the assessment had not been altered in the way requested in the proposal, an appeal was made to the Valuation Tribunal on 18 September 2020 on the grounds that the valuation for the hereditament was not reasonable.

7. The appeal property is an 18th century timber framed building under a clay peg tile covered roof with a large modern single-storey extension to the rear. It has a large car park to the side and open views across fields to the front and rear. It is located in Great Totham, which comprises two separate settlements approximately a mile apart on the B1022 Maldon to Colchester road. The appeal property is situated approximately 2.5 miles south-east of Witham and the same distance north from Maldon. The site fronts the main road and although the appeal property is slightly set back it remains prominent.

8. Mr Clayton 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 Clayton confirmed 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.

9. The expert witness evidence was accepted 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).

10. The 'expert' evidence was considered, and appropriate weight attached.

11. This decision document is not intended to be a verbatim report of the proceedings, nor does it reproduce the parties' evidence in full. The absence in this decision of a reference to any statement or item of evidence should not be construed as it having been overlooked.

Issue

12. The disputed issue was the FMT to be adopted in the appeal property's assessment. There was no dispute over the rental percentages applied in the respective valuations or that the appeal premises fell into Category 2 for the wet trade and Band B for the dry trade.

Evidence and submissions

13. A bundle of evidence comprising the information exchanged between the parties during the check and challenge process was provided for consideration. This bundle included a location plan and photographs of the appeal property; together with details of properties considered to be comparable. References to numerous pieces of case law were also included. Although reference had been made in the submissions to the 2017 approved guide for the Valuation of Public Houses (the approved guide), a copy had not been included. To assist, Mr Watson provided a link to the approved guide on the day of the hearing.

14. The appeal property's 2017 rating list assessment was almost 54% higher than its assessment in the 2010 rating list. Mr Clayton confirmed that the appellant had taken over the appeal property in 2016 and provided trade figures for the years 2016/2017 and 2017/2018. These figures were substantially lower than the FMT used by the Valuation Officer when calculating the 2017 rating list assessment. In the absence of any identifiable event that had affected the appeal property's trade, it was resolved that the previous occupier had overtraded at the premises. The Valuation Officer had applied a 20% allowance in the FMT to reflect this.

15. Mr Clayton contended that, even with the 20% allowance, the FMT used by the Valuation Officer was in excess of the trade figures provided by the appellant. Taking account of these trade figures, Mr Clayton proposed a revised valuation of £56,000 RV, based on FMT of £310,000 for the wet trade, £300,000 for the dry trade and £60,000 for the accommodation stream.

16. Mr Watson clarified that he had not prepared the submission he was presenting but could give expert evidence on matters pertaining to the valuation of public houses as he had been involved in numerous revaluations.

17. The appeal property had been valued as a Category 2 destination public house. The FMT used in the original assessment of £72,500 RV was derived from three years trading figures up to the antecedent valuation date (AVD), provided by the previous operator. When these figures were examined in relation to the nature of the establishment, the comparable properties and the approved guide, an overtrading allowance of 15% was applied to the FMT, resulting in figures of £305,000 for the wet trade, £500,000 for the dry trade and £55,000 for the accommodation stream.

18. In consideration of the challenge proposal, the overtrading allowance had been reviewed and increased to 20% with lower percentages being applied to achieve the rental value. This 20% reduction brought the FMT down to £288,000 for the wet trade, £475,000 for the dry trade and £52,000 for accommodation. Although the approved guide indicated that overtrading allowances could be as high as 50%, Mr Watson referred to his experience in valuing public houses and expressed the view that, in this particular case, an allowance in excess of that awarded could not be justified.

19. Applying the 20% allowance to the FMT had resulted in an assessment of £68,200 RV, which he asked to be confirmed.

Decisions and reasons

20. The appeal hereditament 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 detailed in paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988. The date of the hypothetical rent is 1 April 2015, the AVD.

21. The material day (the date by which physical factors have to be taken into account) is 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.

22. Public houses are assessed for the 2017 rating list by reference to the approved guide 2017, a document agreed between the Pubs Rating Forum and the Valuation Office Agency. The actual trade achieved at a property around the AVD is usually the starting point in its valuation. In the subject, the trade set out in the Valuation Officer's revised valuation reflected trade figures provided by the previous operator, less an adjustment of 20% to reflect overtrading. This level of allowance represented the Valuation Officer's reasoned opinion based upon the available facts. Both parties had accepted that prior to the appellant's occupation, the previous operator had traded over and above what could be expected of a reasonably efficient operator (REO).

23. Within the evidence for this appeal were details of comparable properties: however, as they were, in the main, Category 3 premises, they did not assist me in establishing the level of trade a REO could achieve in a Category 2 public house around the AVD within the area. This information would assist in determining to what extent the previous operator had overtraded and confirm whether or not the 20% allowance adopted by the Valuation Officer was reasonable.

24. In consideration of the available evidence, I am persuaded that the FMT adopted by the Valuation Officer is reasonable for both the wet and accommodation streams; however, I find that the FMT adopted for the dry income stream is excessive. The adjusted and reduced FMT attached to the wet and accommodation streams is not out of line with the trade figures provided by the appellant, a REO, for the period 2016/2017. In relation to the dry stream, the FMT adopted by the Valuation Officer is well in excess of that achieved by the appellant and from this I conclude that the previous operator overtraded to a greater extent in this area of business. For this reason, I

consider that the adjustment to the FMT for the dry income stream should be increased from 20% to 30%.

25. In view of the foregoing, the grounds of the appeal are upheld to the extent that the existing valuation of £68,200 RV is not reasonable. When reaching my revised valuation, I found some discrepancies in the calculations within the Valuation Officer's breakdown of his revised assessment, particularly the totals achieved following the application of the percentages to the FMT. In my valuation of the appeal property, I have decided to apply the percentage rates shown within the Valuation Officer's original valuation for the wet, dry and accommodation streams, which remain relevant in accordance with the approved guide. This is as follows:

• Wet trade;	£288,000	@	8.57%	=	£24,682
• Dry trade:	£425,000	@	8.25%	=	£35,062
• Accommodation:	£ 52,000	@	10.25%	=	£ 5,330

					£65,074
					Say £65,000 RV

Order

26. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £65,000 RV for the appeal property, with effect from 1 April 2017.

27. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of fees

28. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 23 December 2020

Appeal number: CHG100171366