THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; Fair Maintainable Trade; Comparable hereditaments; Appeal dismissed.

RE: The White Swan, 31 High Street, Swanage, BH19 2NP

APPEAL NUMBER: CHG100321239

BETWEEN:	Mr Simon Ginn	Appellant
	and	
	Mr D Virk Valuation Officer	Respondent

BEFORE: Mr B Beyzade (Chairman) and Mr M Nwosu

CLERK: Mr A Johnson Tech IRRV

HEARING: 13 May 2021

APPEARANCES: Mr Philip Eades (representative for the appellant)
Mrs Jo Hallam (representative for the respondent)

Summary of decision

1. The appeal was dismissed. The existing rateable value (RV) was not reduced, the method of valuation was correct and the entry in the rating list was confirmed at £71,000 RV with effect from 1 April 2017.

Introduction

2. This is not intended to be an exhaustive record of the proceedings. The absence of a reference to any statement or item of evidence placed before the Panel should not be construed as that statement or item of evidence being overlooked.

3. This was a 2017 rating list appeal. The RV of the appeal property was originally £79,000 with effect from 1 April 2017. This was reduced during the challenge stage to £71,000 with effect from 1 April 2017. The challenge stage was completed on 5 October 2020.

4. This was a compiled list appeal; therefore, the material day was 1 April 2017.

Remote hearings

5. 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.

6. 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. The Panel were satisfied that it was just and equitable for the appeal to proceed by way of a remote hearing.

Issues

7. The issues before the Panel was whether the RV ascribed to the hereditament should be reduced; whether the method of valuation was correct: and whether the treatment of the figures by the Valuation Officer were reasonable.

Evidence and submissions

8. The Panel followed the VTE's model procedure and allowed Mr Eades to present his evidence first on behalf of the appellant.

9. The appellant was represented by Mr Philip Eades who described himself as a friend of the appellant and a fellow licensee. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018], Mr Eades declared that he was appearing as an advocate for the appellant and that he was not instructed under any formal contractual or conditional fee arrangement.

10. The appeal property was a traditional town centre public house with five letting rooms, located in the Dorset town of Swanage. The appellant had been operating the public house under a full repairing lease since 2011.

11. Mr Eades submitted that the appeal property should not be valued using the Valuation of Public Houses Approved Guide ('the Approved Guide'). Mr Eades

contended that the Approved Guide applied a strict mathematical calculation which was not appropriate, and this situation should be considered exceptional. The RV of the appeal property should, he said, be based upon the rent a reasonably efficient operator (REO) would be willing to pay. Mr Eades argued that the RV should be £42,300, which he had calculated as being the actual rent of £47,000 less an adjustment of 10% to take into account the domestic accommodation.

12. Mr Eades submitted that the Valuation Officer had failed to take a 'stand back and look' approach when assessing the RV of the appeal property and of failing to compare it with other public houses in the locality. These were:

The Royal Oak	RV £3,500
The Black Swan*	RV £4,500
The Globe	RV £11,500
The White Horse	RV £18,750
The Anchor	RV £28,250
The Crows Nest	RV £29,400
The Ship	RV £63,500
The Red Lion	RV £60,250 (was £63,500)

13. Mrs Hallam, representing the Valuation Officer, explained that the Approved Guide was the appropriate way to value public houses. The Approved Guide provided a fair and consistent approach, based upon the level of fair maintainable trade (FMT) at the antecedent valuation date (AVD) of 1 April 2015. The information used to calculate the FMT had been garnered from a form of return that had been completed by Mr Ginn. Other sources such as social media had been used to assist in the assessment of the appropriate category and level which should be applied from within the Approved Guide.

14. Mrs Hallam explained that the appeal property had been recategorised from a category two (higher) to a category 1 (lower) at the challenge stage, which was consistent with similar public houses in Swanage. This, together with adjustments to the actual trade receipts to take account of higher costs, resulted in a reduction to the RV from £79,000 to £71,000. Mrs Hallam provided the following breakdown:

	FMT £	Rental %		£
Wet trade (liquor)	520,000	10.94	=	56,888
Dry trade (food)	185,000	6.84	=	12,654
Accommodation	20,000	7.5	=	1,500
				71,042
		RV say		71,000

It was Mrs Hallam's opinion that, when standing back and comparing this RV with the two public houses in close proximity (The Ship and The Red Lion), the RV of the appeal property was not unreasonable.

15. Mr Eades acknowledged that the Valuation Officer had reduced the wet trade figure when calculating the RV, but he asserted that it should be reduced by a further £40,000 to properly take account of the cost of entertainment. Mrs Hallam rebutted this contention by pointing out that the wet trade figure used to calculate the RV had been reduced from £572,000 to £520,000 which she considered to be correct.

Decision and reasons

16. The appeal property had been valued according to FMT using the Approved Guide, which had been agreed between the Valuation Officer and professional bodies from the licenced trade. The Approved Guide was considered to be the appropriate way of valuing public houses as it took into consideration the annual trade considered to be maintainable by a REO at the AVD whilst also taking account of actual trading practices and the locality.

17. Whilst the Panel was aware that there may be instances where it is appropriate to value a public house outside of the Approved Guide, there was no evidence to demonstrate that the appeal property was exceptional, such that any other method of valuation was appropriate.

18. The Panel found that the Approved Guide provided sufficient flexibility to reflect the nature of individual public houses and it was not satisfied from the evidence provided by the appellant that the correct method of valuation had not been applied.

19. The starting point in determining the FMT is the consideration of the receipts of the property 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 include 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 RV to be adopted.

20. The Panel understood that the FMT adopted by the Valuation Officer had been taken from the declared turnover from a form of return that had been completed by the appellant. The Panel noted that the wet trade figure used by the Valuation Officer had been reduced to £520,000 and it was unable to accept Mr Eades's submission that a further reduction of £40,000 was appropriate. No evidence was provided to substantiate this. Furthermore, no evidence was presented to show that any of the other trade figures used to calculate the RV were inaccurate. Therefore, the Panel had no option other than to accept the figures provided.

21. The Panel considered the contention put forward that the Valuation Officer had provided no evidence that he had taken a 'stand back and look' approach in order to consider whether the RV appeared reasonable when compared to public houses of similar styles and locality, but the panel were not satisfied that this was a fair and proper characterisation. The Panel found that the RV was not significantly out of line with The Ship or The Red Lion which were similar and located closest to the appeal property. The Panel noted that all

three had been valued using the FMT method of valuation and had therefore been valued based upon their actual trade receipts.

22. In the absence of any substantial and convincing evidence to the contrary, the Panel found that the appellant failed to discharge the burden of proof on him to show that the RV of the appeal property was incorrect and that the method of valuation was wrong. The panel therefore dismissed the appeal and confirmed the Valuation Officer’s decision.

Date: 21 June 2021

Appeal number: CHG100321239