THE VALUATION TRIBUNAL FOR ENGLAND

*Non domestic rating appeal; 2017 rating list; MCC appeal; hotel and premises; turnover; panel not persuaded that the re-opening of a refurbished licensed premises in the appeal property's vicinity had affected its trade to such an extent that a reduction in the assessment was justified; appeal dismissed.*

Re: The Granary Hotel & Restaurant, Heath Lane, Kidderminster, DY10 4BS

APPEAL NO: CHG100367579

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| BETWEEN | Khalid Zaman | Appellant |
| | and | |
| | Mr D Virk<br>(Valuation Officer) | Respondent |

BEFORE: Mrs N Salh (Senior Member)
Dr PAR Thomson

CLERK: Mrs A Keohane

HEARING: Remote Hearing 2, Wednesday 10 March 2021

APPEARANCES: Mr A Brooke of Dunlop Heywood on behalf of the Appellant as advocate and expert witness
Mr A Wilkinson representing the Valuation Officer as both advocate and expert witness

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**Summary of decision**

1. The appeal was dismissed. The panel made no change to the appeal property's existing assessment of £57,750 rateable value (RV), effective from 22 February 2018.

**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. This is a 2017 rating list appeal that had been submitted following the Valuation Officer’s Challenge Case Decision Notice of 24 September 2020. The appeal property’s assessment of £70,000 RV was revised to £57,750 RV with effect from 22 February 2018 following a Challenge proposal citing a material change of circumstances (MCC) due to the opening of the Hare and Hounds in the vicinity. The subject proposal submitted on 10 August 2020, sought a reduction to £47,250 RV to reflect a further MCC, identified as the re-opening of the refurbished The Dog (originally The Dog Inn) on 2 May 2018. The appeal to the Valuation Tribunal against the Challenge Case Decision Notice was received on 23 December 2020.

5. The appeal property is situated on the A450. It is largely a single storey hotel, with a mixed offer including dining, accommodation and with a function room.

6. Mr Brooke 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 Brooke confirmed that he was instructed under a contingency 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.

7. The panel 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

8. The material day in this appeal is 7 August 2020, as confirmed by the Valuation Officer’s representative.

9. Mr Brooke submitted a presentation document which he confirmed did not contain any new evidence. As Mr Wilkinson raised no objection to this being referred to, it was included in the hearing bundle.

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

11. Within the parties’ evidence, reference was made to the following:

(a) *Scottish & Newcastle Retail Ltd & Allied Domecq Retailing Ltd v R F Williams (VO)* (Court of Appeal) [2001].
(b) *London County Council v Erith* [1983] AC 562, 588.
(c) *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960].
(d) *Orange PCS Ltd v Bradford* [2004].
(e) *Sharp v Griffiths (VO)* RA/120/1998.

**Issue**

12. Whether the appeal property's trade had been affected by the re-opening of the fully refurbished The Dog, situated 1.2 miles away and on the same A450 road.

**Evidence and submissions**

13. The panel was provided with a bundle of evidence comprising the evidence of both parties. This included Mr Brooke's reason for submitting the proposal and appeal and supporting evidence; external photographs of The Dog taken in April 2017 and June 2018; his revised valuation for the appeal property; photographs of the internal alterations carried out to The Dog and the announcements of its re-opening; together with the appeal property's accounts for the years 2017/2018 and 2018/2019. The Valuation Officer's evidence included the initial response to the Challenge; TripAdvisor reviews for the appeal property; and the Challenge case decision notice. The bundle also contained reference to the agreed scheme for valuing hotels and guest houses.

14. The appeal property's compiled list assessment was reduced to £57,750 RV with effect from 22 February 2018, to reflect the effect of the opening of the Hare and Hounds. This revision was based on a turnover of £1,100,000 and a reduction in the rental bid to 9% of the range, which equated to a rate of 5.25%.

15. In arguing his case, Mr Brooke referred to the following:

    i. A further value effective MCC had occurred on 2 May 2018 with the re-opening of the fully refurbished The Dog. This property was situated 1.2 miles from the subject on the same road and attracted the same passing and local trade.

    ii. Facebook screenshots of The Dog, showing the extent of the internal refurbishment work. The Facebook page had received over 250 'likes' which indicated that people were aware of the refurbishment work and awaiting its re-opening. External photographs both before and after the work had been done, showed a beer garden had been extended to the front of the property.

    iii. Accounts showing turnover for the years 2017/2018 (£1,210,986) and 2018/2019 (£905,874). The fall in trade was attributed to the re-opening of the refurbished The Dog. Mr Brooke believed the accounts for 2019/2020 would show that turnover had declined further. A revised valuation of £47,250 RV was proposed in which only the turnover had been amended, all other factors such as the double bed units, the category of the hotel and the choice of percentage in the band remained constant. This valuation reflected a turnover of £905,000 and a rate of 5.23% to give the rental bid.

16. Mr Wilkinson explained how the appeal property, as a hotel and premises, had been valued for rating purposes. In dealing with the Challenge proposal, consideration had been given to the following:

    i. The local authority's planning website had not shown any information in relation to the refurbishment of The Dog. It had been assumed that whilst the property had been refurbished, there had been no change to the size of its trading area. The implication was that a MCC had not occurred, only the refit of a tired operation.

    ii. The Dog did not have letting rooms. Its turnover had been £650,000 at year end September 2015 and fell the following year by about £100,000. There was insufficient evidence to show that the trade at The Dog had significantly increased and was now reflected in the appeal property's turnover figures.

    iii. The appeal property's trade had already been reduced by £100,000 to reflect the material change caused by the opening of the Hare and Hounds in February 2018. Trade also appeared to be tainted by the loss of room income and any consequential wet/dry sales that element would have brought in.

    iv. A number of reviews for the appeal property had been viewed on the TripAdvisor website. These suggested there had been other factors at play affecting the trading levels at the appeal property.

17. Having regard to the above, Mr Wilkinson sought dismissal of the appeal.

**Decision and reasons**

18. 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 (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent is 1 April 2015, the antecedent valuation date (AVD) for the 2017 Rating List.

19. Matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 7 August 2020 (the material day) for this appeal. The panel noted that at this date, the refurbished The Dog had been open for in excess of two years.

20. There appeared to be no dispute between the parties over the valuation approach taken in this appeal. Mr Brooke had confirmed that only the turnover element had been revised in his proposed valuation.

21. Mr Brooke argued that the appeal property's trade had declined due to the re-opening of the refurbished The Dog. Mr Wilkinson confirmed that the Valuation Office had not received a form of return in relation to The Dog since its refurbishment. The panel considered this information would have been useful, as it would give an indication of whether or not the appeal property's lost trade had moved to benefit The Dog.

22. In consideration of the available evidence, the panel was not persuaded that the fall in the appeal property's trade could be attributed to the re-opening of The Dog, particularly as they appeared to have varying offers; given the appeal property contained letting rooms. There was no doubt The Dog had undergone refurbishment as shown in the Facebook screenshots; however, there appeared to have been no physical extension to its internal trading area. Also, photographs showed there had been little change externally and therefore it would not be apparent to passing trade that the property had undergone internal refurbishment.

23. Mr Brooke had provided Facebook information in which the page for The Dog had been 'liked' numerous times, which indicated there was interest in the property upon re-opening. Whilst accepting this, the panel found no evidence to confirm whether or not this interest had culminated in an increase in The Dog's trade to the detriment of the appeal property.

24. The panel considered there was some merit in the Valuation Officer's view that other factors had affected the appeal property's trading potential. It noted the TripAdvisor reviews that had been placed on the website, some of which were very good and others less favourable. From March 2018 to September 2018, reviews had been left by customers raising certain issues and in response the hotel had posted explanations, which included a change in ownership, significant staff changes, the need to train staff up, rooms were in the process of being revamped and that they were 'on a learning curve'.

25. Having regard to this, the panel found there were a number of pertinent factors affecting the appeal property both prior to and after the re-opening of The Dog, which may have affected its turnover. Issues had been mentioned in relation to food and accommodation, which in turn could impact on trade and have a consequential effect on other income streams, such as bar and wine. A hypothetical tenant viewing the appeal property at the material day, may conclude that the drop in turnover referred to by the appellant's representative was reflective of a number of factors, such as the economic climate, but also that the property had not been trading to its full potential due to a new operator's ability to compete in a difficult market. Therefore, the turnover may not be indicative of that which a reasonably experienced operator could achieve.

26. In such appeals, the burden of proof rests with the appellant to show that the appeal property's rating assessment had been detrimentally affected by the re-opening of the refurbished The Dog. In the appeal before it, the panel found it had been provided with insufficient evidence to demonstrate that this had been the case.

27. Consequently, subject appeal was dismissed.

**Date:** 31 March 2021

**Appeal number:** CHG100367579