THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the 2017 compiled list assessment; Public House and Premises; Fair Maintainable Trade; Overtrading: Appeal Dismissed.

RE: Ship Inn, Porlock, Minehead, Somerset, TA24 8PB

APPEAL NUMBER: CHG100411425

BETWEEN: Mr R Connor
(Appellant)
and
Mr D Virk
(Respondent Valuation Officer)

PANEL: Mr C Aggrey (Senior Member) and Ms S Eze

CLERK: Mrs H Beresford

REMOTE HEARING ON: 21 January 2022

APPEARANCES: Mr A Handley of Altus Group, representing the Appellant
Mr P Stevens, on behalf of the Respondent Valuation Officer

Summary of decision

1. The appeal was dismissed. No alteration was made to the appeal property's current assessment of rateable value £55,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal and the rateable value (RV) of the appeal hereditament was £55,500 with effect from 1 April 2017. The appellant submitted a challenge to the Valuation Officer against the appeal property's assessment on 1 October 2020, arguing that the RV was wrong, as follows:

   "The Rateable Value does not represent the rental value of the hereditament under the rating hypothesis at the Antecedent Valuation Date – 1st April 2015 reflecting the physical factors of the property and locality as at the Material Date – 1st April 2017"

3. The Valuation Officer did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 17 February 2021 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice on 5 August 2021.

4. The appeal property comprises a thatched roofed public house of significant age, dating back to 1290. It is situated in the village of Porlock, on the A39 coast road, 5.5 miles to the west of Minehead, between Exmoor National Park, with the Dunkery and Horner Wood Nature Reserve, and the coast and is a popular tourist destination. The subject property is located on the western side of the village, at the foot of Porlock Hill and almost opposite the village hall. It is an extensive period property with flagstone floors and an open fire. It has a beer garden, skittle alley and car park. It also provides five letting rooms. The property is held on a freehold basis.

5. The appellant's representative, when appearing as expert witness, declared that he will receive a success related fee if the rateable value of the appeal property were to be reduced as a result of the panel's decision.

6. 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 or not the evidence supported his client's case.

7. The panel accepted this expert witness evidence on the above basis as the parties agreed 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 is 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).

8. 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.

9. 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.

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.

Issues

11. The appropriate multiplier to be applied to the fair maintainable trade (FMT) in respect of wet and dry sales. Whether the appeal property should be placed in category two or three for liquor sales and whether an adjustment of 15% to FMT is required for over trading.

Evidence and submissions

12. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the information exchanged between the parties during the challenge process; details of other public houses; and the Valuation Officer's challenge case decision notice.

13. Mr Handley explained that for the 2017 rating list, public houses were valued having regard to their FMT and in accordance with the Valuation of Public Houses Approved Guide 2017. He confirmed that the FMT adopted in the appeal property's assessment was in line with the turnover for the public house. However, Mr Handley argued that the FMT should be reduced by 15% to reflect over-trading by the current landlord who had been trading for over fourteen years and had built up considerable local repeat custom which was not replicated in other pubs in the village.

14. Mr Handley contended that the property should be valued as a category three public house, 'community and rural house' for liquor sales and not category two, a 'destination house' he stated that it has more category three characteristics as described in the Valuation of Public Houses Approved Guide 2017 than it does category two. Mr Handley agreed with the Valuation Officer that the property should be in band B for food and accommodation.

15. Mr Handley argued that the multiplier to be applied to the FMT should be towards the lower end of the percentage range to reflect the following difficulties with the property:

- Construction Year: The pub was constructed in 1290, meaning higher overheads and running costs.
- Listed Status: The building is Grade 2 listed.
- Thatched Roof: Higher repair and insurance costs.
- No Mains Gas: Liquefied Petroleum Gas (LPG) used with higher costs associated.
- Staffing Issues: Due to remote location – agency fees required.

16. On this basis Mr Handley had adopted a rental bid at the very bottom of the range of 7.16% for liquor and 7.33% for food and accommodation having reduced the FMT by 15% to reflect over trading. Mr Handley's valuation was as follows:

Adopted FMT- Wet Sales £260,000 @ 7.16% (0.51 Cat 3) = £18,616

Accommodation/Dry Sales £282,500 @ 7.33% (0.11 Band B) = £20,708

Total £542,500 = £39,324

say £39,250

17. Mr Handley asked the panel to confirm a rateable value of £39,250.

18. Mr Stevens argued that the currently adopted FMT figures are supported by actual trade from The Ship Inn and that no evidence had been provided that any element of this income is personal to the current occupier. Consequently, no adjustment for over trading was made by the Valuation Officer.

19. In terms of the characteristics of the subject property, Mr Stevens argued that just because the property matches the criteria of a village pub, has a skittle alley and provides sponsorship of the local cricket team, The Ship Inn should not be taken out of the definition

of category two. These criteria simply confirm it to be located in a village, allowing it to generate additional trade which would not be available to a category two property in a more rural location. He contended that his evidence of comparable properties showed that all the other public houses within a five-mile radius had been valued as either category two, ‘Destination House’, or category one, ‘Primary Licensed Trade Area’ and that none had been valued as category three.

20. Mr Stevens also argued that no evidence had been provided to show that overheads and running costs were significantly higher than other properties in the area, or, due to the age of the property. He also pointed out that the range point on liquor sales had been set at a lower rate than on other public houses within the village to reflect the additional costs associated with the thatched roof. Mr Stevens contended that The Ship Inn should be valued at 9.57% for liquor sales and 7.99% for food and accommodation. He stated that this reflects the fact that it is an attractive property situated in a popular tourist area, close to the centre of Porlock which is situated between Exmoor and the coast. Mr Stevens’ valuation was as follows:

Adopted FMT – Wet Sales £305,000 @ 9.57% (0.80 Cat 2) = £29,189

Food Sales £290,000 @ 7.99% (0.60 Band B) = £23,171

Accommodation £42,000 @ 7.99% (Nil uplift) = £3,356

Total £637,000 = £55,715

say £55,500

21. In conclusion, Mr Stevens contended that the guidance suggests the adopted figure is not unreasonable and that Mr Handley had failed to prove his case. He therefore requested that the panel confirm an RV of £55,500 with effect from 1 April 2017.

Decision and reasons

22. In this appeal, the panel had to determine whether the RV that had been applied to the appeal property was reasonable, representing a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD) of 1 April 2015. This common date was used to ensure that every property was treated in a consistent way; otherwise, similar properties would have different rateable values if numerous dates were used, as rental levels and economic factors fluctuated over time.

23. As this was a compiled list appeal, matters affecting the physical state or enjoyment of the property, or the locality were to be taken as at 1 April 2017. Any changes to the locality, and changes to the occupation of nearby outlets that had occurred after this date, could not be taken into consideration when determining this appeal

24. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

25. Public houses are also assessed using the Valuation of Public Houses Approved Guide 2017, a document that has been agreed between the Pubs Rating Forum and the Valuation Office Agency. Under this guide an RV is, in effect, based on the FMT of a public house from the various income streams, as at 1 April 2015.

26. The panel noted that there was no rental evidence in this case as the property was held freehold and therefore it paid attention to the Approved Guide to determine whether the appeal property had been placed within the category that best fitted its physical characteristics. The Valuation Officer had placed it within category two, which the appellant contested stating that it better fitted category three described in the Guide as "*local pubs serving the residential/local community. These are likely to include pubs that would typically qualify as an "asset of community value"*. The panel found that the property was more akin with a category two public house described as a destination house: in particular, it was a grade 2 listed character property maintained to a high standard with good levels of amenity; it is in an attractive location popular with tourists, it being one of the oldest pubs in the country with a thatched roof; with a strong customer demand; it has a separate dining area with high food sales; outside trading facilities including a children's play area and beer garden; there is parking on site and around the property; and it offers accommodation. The panel was also aware that Porlock itself is a destination tourist area.

27. The panel turned to the evidence of comparable properties submitted by Mr Stevens. It noted from Mr Stevens' submission that the comparable properties had all been valued in line with the guide: The Castle, High Street, Porlock, was in category one for wet sales and band B for food, it had an RV of £19,750; Royal Oak Inn, High Street, Porlock, was in category two and band A, it had an RV of £25,250; and The Ship Inn, Porlock Wier, (known as the bottom ship) was in category two and band B and had an RV of £46,500.

28. It found that whilst the RVs of the three properties referred to were lower than the subject property, very few details had been provided in respect of the quality of the comparable properties in comparison to the subject property. However, having listened to the presentations the panel found that with the exception of the 'bottom ship' the comparable properties were of a different style and age to the subject property.

29. The panel noted that Mr Handley had referred to the comparable properties submitted by Mr Stevens but had not provided any comparable properties in evidence to support his argument.

30. Mr Handley had argued that the FMT should be reduced by 15% to reflect overtrading. He had contended that should the owners of The Ship Inn move to a different pub in the area they would be likely to take the local custom with them. Unfortunately, Mr Handley had not provided any evidence to support this contention and the panel referred to the Guide which advised: '*Throughout, it must be borne in mind that a property that is uniquely placed and/or enjoys a particularly attractive physical character, is likely inherently to achieve a much higher level of turnover than any other property in the vicinity. It is important to establish that, having regard to the size and nature of the customer base in the locality, no element of the performance is solely attributed to the particular offer of the current operator. In such circumstances where over-trading is not manifest, no adjustment of the actual turnover when determining FMT is necessary*.' The panel noted that the Valuation Officer would value the property from the basis of a hypothetical tenant fresh on the scene who is a 'reasonably efficient' operator; there was no evidence that the performance at this public house was at a level that an operator suitable to the property, with the required level of knowledge and experience, would not be able to replicate.

31. Mr Handley had argued that the multiplier to be applied to the FMT should also be towards the lower end of the percentage range for the band to reflect the difficulties with the property including age, staffing and excessive running costs, however, the panel was of the opinion that the fact that the property was constructed in 1290, is ‘Grade 2’ listed and has a thatched roof added to its appeal. It found that no evidence had been provided to support Mr Handley’s contention that the multiplier to be applied to the FMT should be any lower than suggested by the Valuation Officer due to overheads and running costs or the age of the property. It noted that the comparable properties were in a similar location and there should be no variation due to staffing costs. It also noted that Mr Stevens had stated that the range point on liquor sales had been set at a lower rate than on other public houses within the village to reflect the additional costs associated with the thatched roof.

32. The panel found that the manner in which the Rating Manual had been applied by the Valuation Officer was reasonable and took sufficient account of the property’s particular characteristics and running costs. In appeals of this nature, there is a factual burden of proof on both parties. If a party asserts something, they must prove it. In addition to the factual burden of proof, there is the persuasive or legal burden of proof which rests entirely on the appellant. In this case the lack of supporting evidence was considered by the panel to be significant and detrimental to the appellant’s case.

33. The panel determined that a hypothetical tenant coming fresh to the scene would be prepared to pay a higher rent on this attractive period pub than on the comparable properties.

34. In view of the foregoing, the Valuation Officer’s decision was upheld, and the RV remained unaltered.

35. The appeal was dismissed.

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Date: 4 February 2022