THE VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2017 rating list; compiled list appeal; public house and premises; Fair Maintainable Trade; rental percentage of wet trade disputed; appeal allowed in part.

Re: The Brewers Arms, St James Street, South Petherton, Somerset TA13 5BW

APPEAL NO: CHG100413959

BETWEEN	The Brewers Arms	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL:	Ms L Dubow (Senior Member) Prof P Catterall
CLERK:	Mr James Massey
REMOTE HEARING:	2 August 2022
APPEARANCES:	Mr A Handley of Altus Group on behalf of the Appellant Mr P Stevens representing the Valuation Officer

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Summary of decision

1. The appeal was allowed in part. The panel confirmed the subject property's assessment at £72,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 Rating List appeal against the RV of the subject hereditament of £74,000, with effect from 1 April 2017. The challenge submitted by Altus Group on 5 October 2021 on behalf of the appellant sought a reduction to RV £57,000 on the basis that *"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 4 May 2021.

4. Mr Handley 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 Handley's declaration of truth included a statement that he was not instructed under any conditional fee arrangement.

5. Mr Handley 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.

6. 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.

7. The hereditament consisted of a traditionally built terraced pub constructed pre-1900. It is located in the centre of the village of South Petherton in Somerset, close to the A303 and is owned freehold by the appellant. It has a skittle alley, rear courtyard and beer garden and also comprises the 'Bakehouse Restaurant'.

8. The material day for this appeal is 1st April 2017, when the physical circumstances of the subject property and its locality are taken into account.

9. 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 evidence, should not be construed as it having been overlooked.

Issue

10. The issue in dispute is the correct RV that should be assigned to the subject property effective from 1 April 2017.

11. The starting point in determining fair maintainable trade (FMT) is the consideration of the receipts of the premises in the year ending closest to the Antecedent Valuation Date (AVD) of 1 April 2015 and in the immediately preceding years, where such information is available. The FMT is split between liquor (wet) receipts and non-liquor (dry) receipts such as food, accommodation or other income.

12. The appellant had cited the FMT as £477,326.86 per annum (pa)(wet) and £262,478.80 pa (dry) which equated to the turnover for the year ending 30 September 2014. The respondent asserted that the FMT for the appeal property was £475,000 pa (wet) and £285,000 pa (dry). The parties also disagreed whether the appeal property should be placed in category two or three for wet sales and the rental percentage to be adopted.

Evidence and submissions

13. The evidence 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.

14. Both parties considered the valuation of the subject property in accordance with the Approved Guide for the Valuation of Public Houses that had been agreed in respect of the 2017 list ("the Guide"), between the Valuation Office Agency and the British Beer and Pub Association. The Guide sets out an approach that is derived from an analysis of open market; free of tie; pub rents. The valuation approach involves determining the FMT of the premises in question as at the AVD.

15. Mr Handley explained that the FMT he had adopted in his challenge was in line with the turnover for the subject property for the year ending 30 September 2014, which is the closest available to the AVD. He considered that the appropriate rental percentage for the wet sales of £477,326.86 pa was 9.23%, which was based on the property being placed in mid-range Category three (9% to 9.5%) as he considered that the subject property fit the criteria set out in the Guide for a 'Community and Rural House' rather than a category two 'Destination House'.

16. In his calculation of the dry FMT he had added the turnover of £240,142.64 pa for food and the 'other' turnover of £22,336.16 pa. He stated that the subject property had three double en-suite bedrooms for letting, however the income from these was £1622.92 in the year ending 31 September 2014 which he considered to be 'de minimus' and therefore should be ignored. In his submission he had considered that the total dry sales of £262,478.80 pa should be valued within band B at 5%. At the hearing, he accepted that this was not within the range for that band and should be 7.81% as adopted by the respondent. He therefore amended his valuation based on his adopted wet and dry FMT and his proposed 9.23% for wet sales and sought an amended RV of £64,556.90 (rounded to £64,500).

Adopted FMT	Wet Sales	£477,326.86 @ 9.23%	= £44,047.35
	Dry Sales	£240,142.64 @ 7.81%	= £18,755.10
	Other	£22,336.16 @ 7.81%	= £1,744.45
	Total	£739,805.66	= £64,556.90
		say	£64,500

17. Mr Stephens submitted that whilst the turnover for the period ended 31 September 2014 was useful in determining the FMT of the subject property at the AVD, he argued that it required some adjustment in order to determine the anticipated receipts of a reasonably efficient operator (REO) who would be seeking to maximise all revenue streams. Although the FMT for wet sales was currently £500,000 pa this included income from functions. As details of this breakdown had not been provided when the original assessment had been carried out, he adjusted the FMT for wet sales to £475,000 pa, which he considered reasonable based on the turnover figures provided for the year ending 30 September 2014 and the subsequent four years.

18. He considered that the income from accommodation for 2014 was not in line with what would be expected from three double en-suite rooms. Having considered the turnover from

accommodation at the subject property from 2014 onward as well as that of similar properties, he argued that a FMT of £15,000 pa was reasonable for accommodation. He also considered that as well as accommodation, the dry FMT should include income from barbecues, stated as being £2466.62 in 2014. He considered that taking all these income streams into account, dry FMT of £260,000 pa was reasonable.

19. Although he had removed the income from functions from the wet FMT, Mr Stephens considered that this should be considered as dry sales. Whilst this was £22,336.16 for 2014, it was higher for the following three years, and he considered that the FMT attributed to functions which could achieved by a REO was £25,000 pa. Although he had determined a slightly different FMT than used in the current valuation, the change in the figures, coupled with the rental % adopted had not resulted in any change to the current RV.

Adopted FMT	Wet Sales	£475,000 @ 10.89 %	= £51,728
		(0.75 of Cat 2)	
	Dry Sales	£260,000 @ 7.81%	= £20,306
	(Including accom)	(0.60 of band B)	
	Other	£25,000 @ 7.81%	= £1,953
	Total	£739,805.66	= £73,986
		say	£74,000

20. Mr Stevens contended that categories of public houses for wet trade are determined by having regard to the criteria set out in the 2017 Approved Guide. He considered that the subject property met the majority of the criteria for a category two house in the upper level, and that the appropriate range point was 0.75 (of the range 9.5% to 11.5%), which equated to 10.89%.

21. In support of his adopted rental percentage for wet trade, Mr Stevens had provided details of the assessments of ten public houses which he considered to be comparable to the subject property. He referred to these only in relation to the range points which had been adopted for these houses in wet category 2 and dry band B, at between 0.7 & 1.0 and 0.6 & 0.8 respectively. He contended that this demonstrated that the factors of higher staff costs, costs of maintaining a listed building and cost of Sky TV had been reflected in the range points adopted for the appeal property which were at the lower end of these scales.

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. 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.

23. 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.

24. As there is often very little reliable rental evidence in respect of public houses, they are often assessed using the Guide. This has been agreed between the Pubs Rating Forum and the Valuation Office Agency. Using this method an RV is, in effect, based on the FMT of a public house from the various income streams, as at 1 April 2015.

25. With regard to the FMT for wet and dry trade submitted by the parties, the panel considered the main difference lay in the income used for accommodation by the parties. Mr Handley had argued that at the AVD, the hypothetical tenant would have been aware of the income from accommodation of £1,622.92 for the year ending 30 September 2014 which he considered to be *de minimis* and therefore should be ignored. The panel however, considered that with three double bedrooms with ensuite facilities, which were in place at the relevant date, it would be reasonable to expect that an REO would envisage a significant increase in income from accommodation and did not consider the sum of £15,000 pa adopted by the respondent to be excessive. The Dry FMT adopted by the respondent comprised the 2013/14 income from barbecues of £2,486.62 and food of £240,242.65 and the panel was satisfied that the total FMT adopted for these two income streams by the respondent of £245,000 pa was reasonable. This resulted in a total dry FMT of £260,000 pa including accommodation.

26. The FMT of £475,000 pa adopted for wet sales by the respondent was lower than that adopted by the appellant and the panel was satisfied that this was reasonable based on the trade figures and the appellant's own adopted figure of £477,326.86 pa.

27. Both parties had also included 'other' receipts in their valuations under dry income, which represented the income from functions held at the pub. The panel noted that this ranged from £13,745 to £39,390 pa between 2014 and 2018 and therefore did not consider that the sum of £25,000 for other income (dry) adopted by the respondent was unreasonable.

28. Therefore, based on the trading figures supplied by the appellant, the panel found that the FMT for both wet sales and dry sales adopted by the respondent were not unreasonable.

29. The panel referred to Section 3.2 of the 2017 Approved Guide to determine whether the appeal property had been placed within the category for dry sales 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 (Community & Rural Houses) 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 to a category two public house described as a destination house. Paraphrasing the criteria in the guide, it is a listed character property maintained to a high standard with good levels of amenity; it is in an attractive location with a strong customer demand both from locals and outsiders; it has a separate dining area with high food sales; outside trading facilities including a courtyard and beer garden; there is parking nearby and it offers accommodation.

30. In considering the criteria set out for the upper and lower levels of category two houses, the panel considered that the range point of 0.75, from which Mr Stevens had calculated the rental percentage at 10.89%, was excessive. Higher operating and maintenance costs caused by lack of staff availability and listed building status and the lack of any major attraction or customer draw and lack of onsite parking were factors which the panel considered would indicate that the range point of 0.75 was too high. The panel did not find the respondent's comparable properties of any assistance in determining the correct range point for the wet trade in category two as no information was submitted with regard to their relative locations or other attributes which had resulted in their adopted range points. In considering the criteria for the upper levels and lower levels of category two, the panel felt that the subject property would fall in the upper level, but low down in this level. It therefore considered that a range point of 0.6 in category two was fair and reasonable which, with reference to the charts within the Guide, the panel determined would translate to a rental percentage of 10.5%.

31. Based on their findings on the evidence submitted by the parties, the panel concluded that the existing RV of £74,000 for the subject property was excessive and should be reduced to £72,000 in line with the following valuation:

Adopted FMT	Wet Sales	£475,000 @ 10.5 %	= £49,875
		(0.60 of Cat 2)	
	Dry Sales	£260,000 @ 7.81%	= £20,306
	(Including accom)	(0.60 of band B)	
	Other	£25,000 @ 7.81%	= £1,953
	Total	£739,805.66	= £72,133
		say	£72,000

32. The appeal is therefore allowed in part.

Order

33. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for The Brewers Arms, St James Street, South Petherton, Somerset TA13 5BW to £72,000 with effect from 1 April 2017, within two weeks of the date of this order.

34. 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 around six weeks to process.

Date: 30 August 2022
Appeal number: CHG100413959

Appeal rights

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.