THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; guest house and premises; method of valuation; tone of the rating list; comparable properties; appeal allowed in part.

RE: Woodlands, Meathorp, Grange Over Sands, Cumbria, LA11 6RB (“the subject property”)

APPEAL NUMBER: CHG100415076

BETWEEN:	Mr P Baker T/A Woodlands Hotel and Pine Lodges	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL: Mr C Aggrey (Senior Member)
Mr M Bhatti

CLERK: Mrs A Sloan

HEARING: Remote hearing No.3 on 20 January 2023

APPEARANCES: Mr J Houston of John Houston Consulting (for the Appellant)
Mr K Collins (Respondent’s representative)

Summary of decision

1. Appeal allowed in part. The panel reduced the rateable value (RV) to £41,750 with effect from 21 January 2020.

Introduction

2. This appeal was lodged on 23 June 2022 to challenge the Valuation Officer’s (VO) decision notice of 14 March 2022, which stated that the challenge was well founded and reduced the RV from £49,000 to £48,250 with effect from 21 January 2020. The appellant’s representative considered this revised valuation to be excessive and sought a reduction to £29,500.

3. The subject property comprises a five-bedroom hotel, restaurant and eleven self-catering Scandinavian style pine lodges. The main building is constructed of stone and slate and

houses the hotel and restaurant. It was built in 1915. The restaurant and bar area was extended in 2008 to cater for up to 50 people and the self-catering accommodation was increased from five to eleven lodges.

4. Mr Houston was acting in a dual role as both advocate and expert witness for the appellant. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), he declared that he was instructed under a fixed fee arrangement. In giving expert evidence, 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 his client's case.

5. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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). It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

6. Mr Collins stated he was also acting as both advocate and expert witness for this case and he provided a statement of truth declaration.

7. During the hearing, Mr Collins lost connection and was unable to re-join the Microsoft Teams platform by video link. He was, however, able to connect by telephone and confirmed he was content to proceed with the hearing on that basis. Mr Houston re-capped his presentation to the point where Mr Collins lost connection. For the avoidance of doubt, the panel was satisfied that both parties were able to fully participate in the hearing.

8. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

9. The issue before the panel was the accuracy of the entry shown in the rating list. There were three elements to the valuation that the parties could not agree.
    - Price per unit for the guest house
    - Method of valuation for the self-catering accommodation
    - Method of valuation for the restaurant and bar area

Decision and reasons

10. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

    "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

11. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015. The material day (the date by which physical factors have to be taken into account) was 21 January 2020, when the current entry was made in the rating list.

12. There was no rent available on the subject property, so the valuation was considered with reference to similar properties in the locality, in accordance with *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

Guest house

13. The first issue concerned the tone of the rating list for guest houses and the price per double bed unit (DBU) applied to the five-bedroom hotel at the subject property. Mr Collins confirmed that the existing valuation used a DBU price of £1,400. Mr Houston sought a reduction to £1,200/DBU.

14. The VO's decision notice set out that the DBU price is based on two factors, the parish location and the quality of the building. The parties were agreed on the quality of the building but could not agree on the location factor. The VO stated that, within the region of South Lakeland District Council, parishes within the Lake District National Park fall into the primary area, while all but three parishes outside the National Park fall into a secondary catchment area. Mr Collins considered that Meathop should be valued within this secondary area. Mr Houston disagreed and argued that Meathop was not as valuable a trading area as others used for comparison.

15. The following table was provided to address the quality element of the DBU price.

Quality of accommodation	£/DBU
A. Good standard, detached	£1,525
B. Average standard, detached Very good standard, semi-detached and terraced	£1,400
C. Average standard, semi-detached and terraced	£1,300
D. Poorer quality houses	£1,000

16. No guidance table was provided to reflect the difference in value for primary, secondary or tertiary locations. Mr Houston contended that Meathop is 'off the beaten track' and does not benefit from passing trade. He considered that it was in an isolated position and should not be compared with properties in locations such as seaside resorts with high visitor levels. Mr

Houston provided details of a number of guest houses in Grange over Sands and Cartmel, which he considered were superior trading locations, with DBU's valued below £1,400.

17. Mr Collins had declared that he was an expert witness for this appeal but admitted at the hearing he had not inspected the subject property so relied upon its website and Google Earth for information. He confirmed a referencer for the VO had carried out an inspection recently. Mr Collins stated that the subject property had two caravan parks either side of it and its website advertised the property as being just a 15-minute drive from Lake Windermere, a statement disputed by Mr Houston. He disagreed with Mr Houston's contention that there were no nearby visitor attractions and maintained that the subject property was in a secondary location and £1,400/DBU was correct.

18. After hearing from both parties, the panel acknowledged that guests have different requirements, depending on the type of holiday they wish to experience. A remote, rural location would be desirable for outdoor pursuits or a relaxing break, whereas a town or coastal location may be suited to families looking for more lively entertainment or proximity to visitor attractions. As Mr Collins had not personally inspected the subject property, the panel concluded that Mr Houston, who lived locally and had visited Woodlands, had a better knowledge of the property and its location, and it found him a credible witness on this point. The panel found that the subject property's location was less valuable from the point of passing trade than those properties in town or coastal localities and it considered the £/DBU should be lowered. No guidance was provided on rates for tertiary locations, so the panel accepted Mr Houston's valuation at £1,200/DBU for the five-bedroom guesthouse.

<u>Self-catering accommodation</u>

19. The second issue to be decided was the method of valuation for the self-catering lodge accommodation. Mr Houston explained that the lodges had been built with the intention of expanding the letting capacity of the guest house as it was cheaper to build the lodges than extend the main house. He contended the lodges should be valued by the same method as the five-bedroom guest house, on a price per DBU basis, but on a lower rate of £1,000/DBU to reflect the quality. Mr Collins confirmed that the VO's position was to value the lodges using a percentage of the Fair Maintainable Trade (FMT) from the lodge letting income.

20. Mr Houston had provided a number of self-catering holiday accommodation assessments in Cartmel, which had RVs ranging from £2,500 to £4,350 and questioned how the subject property's RV could be so high in comparison. Mr Collins explained that the examples provided by Mr Houston were individual holiday let units, not a group of units on one site as in the subject appeal, and therefore not comparable.

21. Mr Collins explained that the self-catering lodges are different to the small hotel guesthouse accommodation and were therefore valued differently. The method used was for self-catering holiday home 'complexes' of five units and above, which adopted a percentage of the gross FMT. The existing valuation for the subject property valued the lodges at an FMT of £209,000. Both parties acknowledged that the accounts produced by the appellant up to June 2015 would reflect the position when there were less lodges, not the eleven in place at the material date. The VO's rating manual stated that 13.5% should be adopted for standard quality holiday home complexes and caravan parks. This resulted in a valuation of £28,215 for the eleven lodges.

22. Mr Houston had provided a number of examples for comparison with the subject property, which Mr Collins responded to with details from the VO's records.

Address	RV	VO Comments
Aynsome Manor Hotel, Cartmel	£38,750	3 Star hotel with 12 letting rooms. Valued on a trade basis due to standard and size
The Commodore Hotel, Grange over Sands	£42,000	Both valued as public houses on a percentage of FMT
Cavendish Arms, Cartmel	£32,000	
Aynsome Manor Chalet Park, Cartmel	£15,100	All assessed as caravan parks and valued on 13.5% of FMT. The subject property is valued on the same basis but with reference to a different scheme as the lodges are not caravans.
Meathop Caravan Park, Grange over Sands	£49,000	
Low Fell Gate, Grange over Sands	£20,250	
Lingwood Park, Middle Fellgate Farm, Grange over Sands	£16,250	

23. The panel did not consider that these examples were comparable to the subject property, so little weight was placed on them. It accepted that the lodges were likely to be of a lower quality than the rooms in the guest house, but it found that they are nevertheless a different category of use to serviced rooms in a hotel or guest house. Therefore, it concluded that the VO's approach was correct and they should be valued on a percentage of FMT, rather than £/DBU.

24. As an alternative to the £1,000/DBU price put forward, Mr Houston suggested that the income generated from the lodges should be taken as £177,892 and that 13.5% would produce a valuation of £24,015. This was based on an income per lodge at £16,172 (an average of the lodge income achieved on nine lodges in the four years prior to the AVD) multiplied by the eleven existing lodges. The panel noted that the actual accounts for 2012-2015 provided by the appellant would not include income from the additional lodges built post AVD and found that it was looking at the maintainable trade not necessarily the actual trade, although this provided a good starting point.

25. Mr Collins confirmed that the VO had not relied on the lodge income from 2019, as alleged by Mr Houston. He stated that the best income was from 2014, as the 2015 accounts were only up to June 2015 and so a full year of income for 2015 was not available at the AVD. The income per lodge for the year ending 30 June 2014 was calculated at £19,995, rounded down to £19,000 per lodge. Mr Collins stated that the figures used for the subject property were lower than other self-contained holiday let assessments and he did not consider the valuation of £28,150 for the lodges to be excessive.

26. On balance, the panel preferred the VO's approach and therefore accepted the respondent's valuation of the self-catering lodges at £28,150.

<u>Bar and restaurant</u>

27. The subject property contains a bar and restaurant which, while available for on-site guests, is also open to the public and non-residents. Mr Houston contended that the restaurant and

bar should be valued on a flat figure of £1,500. Mr Collins defended the VO's approach in the existing valuation, which was to value at a percentage of FMT.

28. The accounts provided in the Check submission declared that wet and dry trade in 2014 was £168,954. Mr Collins stated that the VO understood this figure did not account for any trade related to the further accommodation (more self-catering lodges) now in situ at the property. The FMT adopted for the valuation was £155,000, which the panel noted was less than the actual 2014 trade with less accommodation on site.

29. The VO's decision notice provided two different valuations for the bar and restaurant, one at 5% of the FMT (£7,750) and one at 8.5% (£13,175). The decision notice also included a page stating that the final RV for the subject property after the VO's decision was £42,750 but the summary at the beginning of the decision confirmed an RV of £48,250. Mr Collins stated at the hearing that an offer was made, in the VO's initial response to the Challenge, to reduce the RV to £42,750 but, after further advice and reconsideration, this was withdrawn and the RV amended to £48,250. He stated the reference to the lower figures in the decision was a clerical error.

30. Mr Houston had questioned the valuations on a number of other properties, which he stated had lower or no valuations for the bar and restaurant elements. In response, the VO provided further details.

- The Priory Hotel – the restaurant element of this assessment is based on 5% of the restaurant's FMT
- Market Cross Cottage - the restaurant element of this assessment is based on 6% of the restaurant's FMT
- Clare House – the assessment did not include the restaurant and valued on a £/DBU only. It had since been re-valued as a hotel and premises.
- Hampsfell House Hotel – the assessment does not reflect the restaurant and is valued on a £/DBU basis only. The assessment is under review but had not been amended at the time of the hearing.

31. Mr Houston pointed out that the VOA manual states the valuation must reflect 'significant non-resident trade'. He contended that the £/DBU rate for the guest house already reflects resident guest trade and the appellant had stated that around 50% of the wet and dry sales are generated from non-residents. Mr Houston stated that Clare House would likely have a thriving non-resident trade, being located in the centre of Grange over Sands and adjoining the promenade. He stated that the VO had provided no comparable properties to justify the 8.5% used in the subject property's valuation and 5% and 6% had been used for the two properties in Cartmel, which he considered a superior location. Mr Houston also highlighted that the respondent had appeared inconsistent in its approach to valuing the bar and restaurant, by suggesting two different percentages of FMT but also putting forward valuations based on a rate per m^2 during discussions. He stated that the income derived from the bar and restaurant at the subject property barely covers the costs of purchases, staffing and marketing etc. He felt that a nominal valuation at £1,500 was fair to reflect the value of the bar and restaurant.

32. Mr Collins provided in an email exchange the guidance from the VOA manual on facilities at guest houses– *"If there is a bar, restaurant or functions room where there is significant non-resident trade, valuers must ensure that the valuation produced adequately reflects the additional income generated."* Also provided was a chart which set out the percentage of

FMT to be adopted, depending on the FMT. This guide showed an FMT of between £10,001 and £30,000 would be subject to 5% and Mr Collins stated that the comparable properties referred to earlier had a lower turnover than the subject property. The 8.5% applied in the existing valuation reflected trade of between £150,001 and £200,000.

33. After hearing from both parties, the panel found that the bar and restaurant was not a stand-alone business and operated as part of the guest house. However, the appellant had confirmed that 50% of the trade was from non-residents, which the panel presumed would likely be the neighbouring caravan sites as well as passing trade. It therefore concluded that it should be valued on a percentage of FMT in line with the VOA's manual. It held that the FMT adopted by the VO was fair and that 50% of trade from non-residents was significant. However, the decision notice provided conflicting information as to the percentage of FMT to be adopted. Although 8.5% was in line with the table in the manual's guidance, the VO's decision notice clearly stated –

"Following receipt of this Challenge, we have reconsidered the percentage of FMT adopted and are now of the opinion that it was incorrect. The proposed valuation for this element is therefore:
Bar / restaurant - £155,000 FMT @ 5% = £7,750 RV.
With all of the above considered we believe that £7,750 is not an excessive figure to apply."

34. Although this figure was not used for the final valuation in the list, it remained in the decision notice. The panel found that this figure was more reflective of the subject property's bar and restaurant trade than the nominal figure put forward by Mr Houston and determined that 5% of the FMT was reasonable.

35. After considering all of the evidence presented by the parties, the panel determined that the existing valuation was unreasonable, and the appeal should be allowed in part on the following valuation.

Income Stream	Element	Basis	RV
Bar/restaurant	Estimated FMT £155,000	Rental @ 5%	£7,750
Guest house	5 double bed units	@ £1,200 each	£6,000
Self-catering Units	Estimated FMT £209,000	Rental @ 13.5%	£28,215
		Total	£41,965
		Rounded to	£41,750

Order

36. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for Woodlands, Meathorp, Grange Over Sands, Cumbria, LA11 6RB in the 2017 Rating List to £41,750 effective from 21 January 2020. The Valuation Officer must comply with this Order within two weeks of its making.

37. 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)), provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 3 February 2023 **Appeal number:** CHG100415076

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.