THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the RV in the Rating List; Public House and Premises; Fair Maintainable Trade: 2017 Rating List Public House Approved Guide to Valuations; Comparable properties: Watney Mann Ltd v Langley (VO) [1963]; Appeal dismissed.

Re: Blacksmith Arms, High Street, Cloughton, Scarborough YO13 0AE

APPEAL NUMBER: CHG100646009

BETWEEN:	Blacksmith Arms	Appellant
	and	
	Ms J Moore	Respondent
	(Valuation Officer)	

PANEL: Ms U Haque (Senior Member) and Mr M Bhatti

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 30 August 2022

PARTIES PRESENT: Mr K Batty – Appellant's representative
Mr C Wykes – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel made no change to the appeal property's existing assessment of £28,250 rateable value (RV), effective from 1 April 2017.

Introduction

2. This is a 2017 Rating List appeal against the RV of the Blacksmith Arms, High Street, Cloughton, Scarborough (the 'subject hereditament') of £28,250, with effect from 1 April 2017. The Valuation Officer did not agree to reduce the assessment and issued a Challenge Case decision Notice dated 9 March 2021 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice.

3. Mr Batty 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 Batty was aware that in giving expert evidence his responsibility was to the VTE. Furthermore, he stated that he was not instructed under a conditional fee arrangement or other success related fee.

4. The hereditament is a 1750's former Coaching Inn. It is a Grade II listed building which is situated on the A171 Scarborough to Whitby road. The property is a two-room village pub with a lounge at the front and a bar to the rear. It has 11 bedrooms, all but two with ensuite facilities. It is part of the Duchy of Lancaster Estate.

5. 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.

6. 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 before 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.

Issue

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

8. 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.

9. The appellant had cited the FMT as £120,000 per annum (pa)(wet), £160,000 pa (dry) and £120,000 pa for accommodation which equated to the average turnover for the financial years 31 July 2013 to 31 July 2015. The respondent asserted that the FMT for the appeal property was £125,000 pa (wet), £167,500 pa (dry) and £125,000 pa accommodation based on the year end closest to AVD.

10. The parties also disagreed on the percentages to be applied for each category.

Evidence and submissions

11. 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; photographs, a location plan and the Valuation Officer's Challenge Case Decision Notice.

12. Both parties considered the valuation of the subject property in accordance with the Approved Guide for the Valuation of Public Houses that has been agreed in respect of the 2017 rating 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).

13. Mr Batty described the appeal property as a tourist destination public house. It attracted hikers/walkers to the area however trade was seasonal and as such, it tended to fall during the winter months. He added that the food was prepared on site and covered bar meals, lunches etc.

14. Mr Batty stated that the increase in trade during 2014/15 was due to contractors working on a gas pipeline in the locality that used the appeal property. He contended that these were one off circumstances, and that trade had fallen since then. The trade figures used in this valuation were for the years ending 31 July 2013 to 31 July 2015. The trade receipts as at 31 July 2015 were £127,967 pa for wet, £170,624 pa for dry and £127,967 pa for accommodation.

15. In his revised calculation, Mr Batty adopted the following.

Adopted FMT	Wet Sales	£120,000 @ 5.25%	= £6,300.00
	Dry Sales	£160,000 @ 6.25%	= £10,000.00
	Accommodation	£120,000 @ 8.00%	= £9,600.00
		TOTAL	= £25,900.00

16. Mr Batty sought a revised figure of £25,900 RV with effect from 1 April 2017.

17. In his evidence, Mr Wykes had explained that the Approved Guide made reference to the basis of valuation in Section 2 with the first consideration being to determine the FMT. He stated that the valuation approach in most cases could be broken down into four stages. He went through each stage in turn. By taking into account the trend of receipts over previous years as well as the receipts closest to AVD, he maintained that there was an annual growth from 2013 to 2015 which had continued to grow. He therefore saw no reason to average out the three years of trade like the appellant's representative had done.

18. Having accepted the annual trading figures provided by the appellant's representative, Mr Wykes had then made a small adjustment to the 2015 trading figures in order to tone back to 1 April 2015. He added that there had been a general rise in trade over the three years even before the pipeline

works had taken place. Furthermore, he had provided comparable properties in the locality to support his valuation for the appeal property. In relation to the appeal property being a listed building, Mr Wykes did not consider the cost of maintaining the fabric of the building would be prohibitive. Bearing all of this in mind, Mr Wykes had adopted the following.

Adopted FMT	Wet Sales	£125,000 @ 5.88%	=	£7,350.00
	Dry Sales	£167,500 @ 6.56%	=	£10,988.00
	Accommodation	£125,000 @ 8.06%	=	£10,075.00
		TOTAL	=	£28,413.00
		SAY		£28,250.00

19. Mr Wykes sought confirmation of the existing assessment of £28,250 RV with effect from 1 April 2017 and a dismissal of the appeal.

Decision and reasons

20. 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 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.

21. As there is often very little reliable rental evidence in respect of public houses, they are often assessed using the Guide which had 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.

22. In this case, the parties had accepted category B for the dry trade, category 2, destination venue for the wet trade and the accommodation on the standard scale. In terms of percentages each party had used its own interpretation of the trade figures. The appellant's representative had applied 6.25% to the dry trade, 5.25% to the wet trade and 8% to the accommodation. The respondent, on the other hand, had applied 6.56% to the dry trade, 5.88% to the wet trade and 8.06% to the accommodation. Each party explained their reasons for using the percentage figures they had in their respective valuations. However, the panel noted that the appellant's representative had not submitted any evidence to support his adopted percentages.

23. The table below set out the minimum and maximum percentages within the bands applied to the appeal property.

Location	Income	Category	Min	Max
Provincial	Liquor	Band 2	4.25%	7.50%
	Food	Band B	5.68%	6.93%
	Accommodation	Band S	6.56%	9.56%

24. Reference was made by the respondent to case law. In the case of *Watney Mann Ltd* v *Langley (VO)* [1963] it was held that public houses were valued on a trade basis.

25. Based on the trading figures supplied by the appellant's representative, the panel found that the FMT for wet sales, dry sales and accommodation adopted by the respondent were not unreasonable. The panel was satisfied that the trade figures were increasing for each trading year from 2013 even though there was the suggestion that contractors in the area had boosted these figures during 2013/14.

26. The panel noted that for the purposes of the 2017 Rating List, the trading figures for 2015 had been used as the starting point for assessments of this type. The panel saw no reason to move away from this approach. As further support for the appeal property's current assessment, the respondent had considered the trading figures of five other public houses in the locality. The panel found that the trading figures reasonably reflected the nature of the trading location, the physical characteristics of the public houses and the styles of trade which were maintainable. This information did not show the FMT adopted in the appeal property's current assessment to be excessive. Having regard to the Guide's agreed formula, once the appropriate assessment band had been determined, the valuation would then fall within the range of percentages in accordance with a geographical table which allowed for the "fine tuning" of the valuation. The panel found that the factors relevant to the comparable properties provided by the respondent had supported the percentage figures he adopted for the subject property.

27. In view of the foregoing, the panel was of the opinion that the appellant's representative had failed to substantiate his case for a reduction in the appeal property's assessment. Consequently, the case for a reduced assessment was dismissed.

Date: Tuesday 27 September 2022

Appeal number: CHG100646009

Right of Appeal:

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.