THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; café bar and premises; method of valuation in dispute; whether valued according to fair maintainable trade as a licensed premises or price per m^2 as a restaurant; comparable assessments; appeal dismissed.

RE: Housmans, High Street, Church Stretton, Shropshire, SY6 6BX

APPEAL NUMBER:	CHG100689274	
BETWEEN:	Artemis Leisure Limited	Appellant
	and	
	Mr D Virk, Valuation Officer	Respondent
PANEL:	Mr M H Smith (Senior Member sitting alone)	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Wednesday 6 July 2022	
APPEARANCES:	Mr M Bates from FCS Nationwide Ltd, representing the appellant Mr A Wilkinson representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The Rateable Value (RV) of the appeal property was confirmed at £28,500 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Housmans, High Street, Church Stretton, Shropshire, SY6 6BX, (the ‘appeal property’) had been entered in the 2017 rating list as Café Bar and Premises at a RV of £28,500 with effect from 1 April 2017.

3 The challenge proposal was submitted by FCS Nationwide Ltd on behalf of the appellant Artemis Leisure Limited, and was received by the Valuation

Officer on 11 February 2021. It sought a reduction in RV from £28,500 to £10,250 with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 30 September 2021, which stated that the rating list was reasonable based upon the evidence and information available.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received on 2 November 2021.

6 The appeal property is a café bar and premises located on the High Street in the town centre of Church Stretton. The present valuation of £28,500 is based upon the Valuation Officer's assessment of fair maintainable trade (FMT).

7 Due to the late cancellation of the second panel member, in accordance with the Consolidated Practice Statement part 1 Tribunal Business Arrangements, I am authorised to sit alone as a Senior Member.

8 As Mr Bates appeared on behalf of the appellant in the dual role of advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9 Mr Bates declared that he was not instructed under any conditional fee arrangement. He confirmed 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.

10 This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I fully considered all of the evidence presented before coming to my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

11 The issue in dispute was the method of valuation to be adopted.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's initial response and challenge case decision notice and the appellant's challenge submission.

13 Mr Bates outlined that the appeal property had been assessed on a price per m^2 basis as a restaurant in the 2010 list at £10,250 RV. He disputed the change in the method of valuation adopted by the Valuation Officer, which represented an increase of 178% between lists. He contended that that there was a distinct market with available rents identified for restaurant premises, and he provided evidence of comparable assessments valued on a price per m^2 basis.

14 A revised RV of £10,250 was requested by Mr Bates, based upon a main space price of £150 per m^2.

15 Mr Wilkinson defended the valuation of the appeal property as a licensed property based on FMT with reference to its physical characteristics, style, layout, opening hours, and trade split. He disputed the relevance of Mr Bates' comparable properties and referred to the Food Hygiene Rating issued by Shropshire Council which had categorised the property as a "pub/bar/nightclub" rather than "restaurant/café/canteen".

16 The RV of £28,500 was based upon FMT of £160,000 for liquor (band 2 at 7.50%) and £220,000 for food (Band B at 7.50%).

17 Both parties confirmed that only the method of valuation was in dispute; neither party disputed the respective valuations.

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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

19 Although no rental evidence had been scheduled by the parties, reference had been made in the challenge decision to a rent of £30,000 (including the flat) obtained from property particulars. The Valuation Officer deducted £450 per calendar month for the flat, which left £24,600 for the business. With reference to Mr Bates' valuation at £10,250 RV, and the Valuation Officer's trade valuation at £28,500, it was argued that the hypothetical landlord would be in the market for £28,500.

20 That approach was questioned by Mr Bates, who stated that the rent for the flat of £600 per month left a net figure of £22,800. In the absence of any further details and in consideration of the fact that it was derived from property particulars rather than an actual rental transaction, I attached no weight to that evidence.

21 The issue to be determined was whether the appeal property was a restaurant which should be valued according to floor area price per m^2 or a licensed café/bar which should be valued according to FMT.

22 Mr Bates submitted that the appeal property should be valued as a restaurant for the following reasons:

- It was valued on a price per m^2 basis as a restaurant in the 2010 list; the 178% increase between lists was not consistent with other properties on the High Street.
- The trade split for the restaurant was 80% dry to 20% wet, which was indicative of a restaurant, not a public house.
- There was a distinct market with available rents for restaurant premises in valuation scheme 360005.

23 In support, he provided details of the following comparable assessments:

Three licensed properties valued as restaurants:

- Jaipur Lounge, 6 Sandford Avenue, ST6 6BW – Zoned at £185 per m^2.
- Sawadde, 5 The Square, ST6 6DA – Zoned at £185 per m^2.
- Berrys, 17 High Street, SY6 6BU – Zoned at £115 per m^2.

Restaurants and cafes in South Shropshire in valuation scheme 360005 valued on an overall basis:

- The Lazy Trout, Marshbrook, SY6 6RG – valued at £55 per m^2.
- Carding Mill Café, Carding Mill Valley, SY6 6JG – valued at £60 per m^2.
- School House Café at Acton Scott Farm Museum, SY6 6QN – valued at £55 per m^2.
- The Mailroom, Palmers House, Corve Street, SY8 1DB – valued at £200 per m^2.
- Chutneys Estate House, 6 Parys Road, SY8 1DB – valued at £115 per m^2.

The Stables Inn, Dale Street, Craven Arms SY7 9PB, a public house valued as a restaurant at £115 per m^2 from May 2018 to April 2020.

24 For the reasons outlined in the Valuation Officer’s challenge decision, I was not persuaded that Mr Bates’ evidence of comparable assessments were relevant for consideration:

- Jaipur Lounge: an Indian restaurant which opens Sunday to Thursday 5.30pm to 11.30pm (12.00am on Fridays). The emphasis here is on the food and takeaway, with banquet nights and all you can eat buffet. No drinks menu, small bar, no live entertainment.

- Sawadde: a Thai restaurant which opens at lunch time 12.00pm to 2.00pm and evenings 5.30pm to 11.00pm. Has a licence, but no bar and no live entertainment. Emphasis is on the food.
- Berry's: a coffee house which opens 9.00am to 5.00pm; no bar, no alcohol licence and no entertainment.
- The Lazy Trout: a café and truck stop open Tuesday to Sunday 8.00am to 2.00pm; no bar, no alcohol licence and no entertainment.
- Carding Mill Café: a National Trust café and shop which opens 9.00am to 4.00pm, 5.00pm Saturday and Sunday; no bar, no alcohol licence and no entertainment.
- School House Café: a café associated with a working farm museum; no bar, no alcohol licence and no entertainment.
- The Mailroom: a former restaurant, now closed. Small bar for serving drinks with food, no live entertainment.
- Chutneys Estate House: a takeaway shop, food is not eaten on the premises.
- The Stables Inn: was an Indian restaurant open 5.00pm to 11.00pm. Full planning permission was obtained for change of planning use from A4 (drinking establishments) to A3 (restaurants and cafés). Conversion works were carried out to change the property from a public house to a restaurant and have since been reversed to change it back to a public house.

25 It was clear that Mr Bates' main contention was that the appeal property had been valued as a restaurant in the 2010 list and the change of valuation approach had resulted in a significant increase for the 2017 list assessment. The Valuation Officer asserted that each new rating list and assessment is considered de novo and the method of valuation for the appeal property had been changed to the correct basis for the 2017 list.

26 The Valuation Officer's reasons for adopting a valuation based on FMT were outlined as follows:

- Its physical characteristics, style of property and layout were that of a licenced property.
- In 2015 the turnover split was 42.6% wet, 57.4% dry. For a restaurant the split would be heavier on the dry side.
- It retained A4 planning use (drinking establishments).
- People could come in just for a drink.
- Provision of live music and entertainment which was unusual in a restaurant.
- The opening hours extended far beyond the time food is served, a characteristic of a public house.

27 In further support of the appeal property's FMT valuation, Mr Wilkinson referred to extracts from the Rating List 2017 – Valuation of Public Approved Guide, the Food Hygiene Rating issued by Shropshire Council and the following comparable properties:

- The Drayton Gate, Aston Street, Wem, Shrewsbury, SY4 5AY. A bar/restaurant valued on a trade basis, confirmed by the Valuation Tribunal in a 2010 appeal. Trade split 41% wet, 59% dry.
- Drapers Hall, St Marys Place, Shrewsbury, SY1 1DZ. Valued on a trade basis: 46% wet, 54% dry.
- The Peach Tree 21, Abbey Foregate, SY2 6AE. Valued on a trade basis: 42% wet, 58% dry.
- Brooks Around The Corner, Church Street, Oswestry, SY11 2SZ. A former pub advertised as a restaurant. Valued on a trade basis: 40% wet, 60% dry.
- The Olive Tree, Frankwell, Shrewsbury, SY3 8JR. A former pub advertised as a restaurant. Valued on a trade basis: 40% wet, 60% dry. 2010 appeal withdrawn.

28 While the usual method of valuation for bars and public houses is the trade approach, the Approved Guide also refers to a possible floor area approach:

> "Where a distinct licenced/A3 market can be identified, and rents, when analysed are consistent within the market such that a tone of value can be established on a floor area comparative basis, then this rental evidence should be used to derive the RV."

29 Mr Bates contended that there was a distinct market with available rents for restaurant premises in valuation scheme 360005, however, I was not presented with any relevant market evidence to support a tone of value for a floor area approach in the locality.

30 In arriving at my decision that the appeal property is correctly valued according to FMT, I was guided by section 875 of the Valuation Office Agency Rating Manual:

> "However, where a licenced restaurant is in the nature of, and shares many features and characteristics of a public house/public house restaurant then a trade based valuation in accordance with the Approved Guide may produce a more accurate assessment than a floor area approach."

31 I found further support for a FMT valuation approach with reference to the Food Hygiene Rating issued by Shropshire Council which categorised the appeal property as a pub/bar/nightclub rather than restaurant/café/canteen.

32 Mr Bates cited a restaurant turnover split of 20% wet and 80% dry, however, the correct approach was that adopted by the Valuation Officer in assessing the total trade for the whole property. This resulted in a split of 42.6% wet, 57.4% dry which supported the valuation as a licenced café bar rather than a restaurant.

33 In consideration of the above guidance, and with reference to the photographs and trade split, I concluded that the appeal property is correctly valued as a licenced premises according to FMT.

34 The appellant's representative had failed to prove his case for a reduction to £10,250 RV, and therefore the assessment of the appeal property is confirmed at £28,500 RV with effect from 1 April 2017.

35 The appeal is dismissed.

Appeal Number: CHG100689274

Date: 22 July 2022

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.