VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal: Local Government Finance Act 1988; hotel and premises; mode and category of occupation, fair maintainable trade; Rating Lists 2017 Valuation of Public Houses Approved Guide; appeal dismissed.

APPEAL NUMBER:	CHG100757791
RE:	The Tudor Hotel and Restaurant, 21-25 St Mary Street, Bridgwater TA6 3LX (the "subject property")
BETWEEN:	Tudor Hotel & Restaurant Ltd — Appellant and Lucy Formela-Osborne (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	24 May 2024
BEFORE:	Mrs F Rahman-Cook, Senior Member Mrs FER Duggan, Member
CLERK:	Ms R Muller
APPEARANCES:	Mr J Barnes of Commercial Property Advisors, representative for the Appellant Mr P Stevens, representative for the Respondent

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel held that the existing valuation was reasonable, and the entry remained at £105,000 rateable value (RV) with effect from 1 April 2017.

Introduction

3. This appeal had been brought in respect of the following: The Tudor Hotel and Restaurant, 21-25 St Mary Street, Bridgwater TA6 3LX, (the subject property) which had originally been entered into the 2017 Rating List as “hotel and premises” at £110,000 RV with effect from 1 April 2017.

4. A check had been submitted on 16 April 2021 and completed on 11 July 2021. A challenge was submitted on 13 December 2021, and completed on 4 January 2023 The Valuation Officer (VO) altered the assessment of the subject property and reduced the RV to £105,000 with effect from 1 April 2017.

5. Mr Barnes 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 Barnes’ declaration of truth included a statement that he was instructed on a conditional fee arrangement. 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 the client’s case.

6. Mr Stevens, the representative for the respondent appeared as both advocate and expert witness.

7. The panel accepted the 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.

8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

9. The subject property is a hybrid mixture of a restaurant, hotel and music venue and events bar. It is a Grade II listed building dating back to 1610. The hotel has been in the same family ownership since 1963.

10. It is described in the 2017 Rating List as Hotel and premises but assessed on the public house basis using the Rating Lists 2017 Valuation of Public Houses, Approved Guide. The subject property has three trades, which consists of 16% hotel, 45.5% restaurant and 38.5% bar.

11. Mr Barnes proposed a revised assessment of the subject property using the receipts and expenditure (R&E) method of valuation, which produced a revised assessment of £75,000 RV.

12. The VO has valued the subject property as a pub using the Fair Maintainable Trade (FMT) method of valuation. He had originally arrived at an RV of £110,000. However, he had revised the assessment and had amended the assessment of the subject property to £105,000 RV.

Relevant Legislation / Case Law / Valuation Tribunal decisions and Guidance Notes.

13. Various case law and Tribunal decisions had been provided and cited by both parties:

    a) *Scottish and Newcastle (Retail) Ltd v Williams* VO 2000 RA 119
    b) *Garton v Hunter (VO)* 1969 RA 11
    c) *Fryer v Cox VO* 2022 UKUT 2022 0229 LC
    d) *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 0020 (LC)
    e) *Humber Ltd v Jones (VO) and Rugby RDC* 1960 CA 53 RIT 293.
    f) *BNPPDS Limited v Ricketts (VO)* [2022] UKUT 0192 (LC)
    g) Valuation Tribunal decision on Raddle Inn Quarry Bank Hollington ST10 4HQ. (Appeal CHG100043476)
    h) Valuation Tribunal decision on:
        i. Marlborough Tavern, Marlborough Buildings, Bath BA1 2LY (Appeal CHG100159162)
        ii. The Chequers Inn, 50 Rivers Street, Bath BA1 2QA (Appeal CHG100159236)
        iii. Hare & Hounds, Lansdown Road, Bath BA1 5TJ (Appeal CHG100159474)

14. Also referred to is the Joint Professional Institutions' Rating Valuation Forum ("the Rating Forum") published guidance in 1997 titled "The Receipts and Expenditure Method of Valuation for Non Domestic Rating: A Guidance Note", as well as the Rating Lists 2017 Valuation of Public Houses, Approved Guide.

Discussion

15. The term 'rateable value' as outlined in Schedule 6 of the Local Government Finance Act 1988 (as amended), is based on the annual rent a property would fetch if let to a new tenant responsible for all rates, taxes, repairs and insurance.

16. For an appeal against an entry in the 2017 Rating List, the antecedent valuation date (AVD), which required consideration of rental levels, was 1 April 2015. The subject property is owner occupied and therefore, no rent is passing on the subject property.

17. With regards to this appeal, the panel had to determine the mode and category of occupation of the subject property as at the material date of 1 April 2017. The subject property was entered into the 2017 Rating List as Hotel and premises but assessed by FMT using the Approved Guide for Public Houses. The original assessment of £110,000 RV had been reduced to £105,000 with effect from 1 April 2017.

18. Mr Stevens was defending the revised RV whilst, Mr Barnes disputed the method of valuation and held that the assessment should be valued using the R&E method using the full accounts that had been provided to determine the RV.

19. The panel was aware that under the Guide, a rateable value was essentially based on the fair maintainable trade (FMT) of a public house. The FMT represented the annual trade considered to be maintainable at the AVD of 1 April 2015, on the assumption that the business will be proficiently carried out by a competent publican responding to the normal trading practices and competition of the locality.

20. The subject property was inspected by the VO on 15 August 2023. It was agreed by both parties that the current trader was a ‘reasonable efficient operator’ and that the turnover did not require any adjustment for factors such as over trading. It was Mr Barnes’ contention that as the subject property was a hybrid mixture of restaurant, hotel and music venue and events bar, that *rebus sic stantibus*, it should not be considered to be in the same mode and category of use as a public house.

21. The panel noted the following paragraphs within the Guide:

a) ‘The FMT adopted should represent the annual trade considered to be maintainable at the Antecedent Valuation Date (AVD) 1 April 2015, having regard to the physical nature of the property and its location as at 1 April 2017 when the new rating lists came into force (or subsequently following a material change of circumstances) on the assumption that the enterprise will be carried out by a ‘reasonably efficient operator (REO) responding to normal trading practices and competition in the locality. It should be recognised that actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level of FMT.

b) Rental percentages are then to be determined, in accordance with the principles set out in this Guide, and applied to the income streams for drinks, food, accommodation and certain other receipts. The sum of the rateable value attributable to these separate income streams, together with the value attributable to any other part of the property that is not reflected in the FMT will, in most cases, provide the total rateable value.’

22. The panel was informed by Mr Stevens that the Guide had the capacity to cover this type of property, like Travel Lodges, where a separate accommodation is situated, as well as a separate building for a restaurant. Mr Stevens referred the panel to the fact that the subject property had evolved over the years and although one single hereditament, was divided into three separate elements. The visitors at the hotel would have their meals in the hotel area. Mr Bullimore informed the panel that if visitors ordered food from the bar, it would be cooked in the same place, in the kitchen. The kitchen area was used to cook food for all parts of the hotel, bar and restaurant.

23. The panel referred to the Court of Appeal decision of *Scottish & Newcastle Retail v Williams (VO)*. This case concerned two public houses within a shopping centre in Milton Keynes, in which the Court of Appeal upheld the Lands Tribunal’s decision that the premises should be valued *rebus sic stantibus*, considering their actual mode or category of occupation.

24. Mr Bullimore had no objections to the FMT figures provided by Mr Stevens, if the panel held that the subject property was correctly assessed using the public house method of valuation. Mr Stevens had provided the FMT details as follows:

Adopted FMT	Bid
Wet £530,000 Dry £360,000 Accommodation £160,000	0.70 Cat 1 0.7 Band B 10%

25. The panel considered the details of each trade of the subject property and the percentage used by each section as mentioned by the parties. It was noted that 16% was the hotel, 45.5% was the restaurant and 38.5% was the bar.

26. The panel accepted that the appeal property ran a similar level of trade for food based as well as drink based. It was noted that customers could visit the subject property solely for drinks using the bar facility, which one could not do at the restaurant. However, considering the percentages applied above, the panel found that the hotel element was not the thriving part of the business.

Disposal

27. In view of the above findings and conclusions, the Tribunal panel is satisfied that the subject property, although entered into the 2017 Rating list as Hotel and premises, had been assessed correctly using the public house method of valuation. Therefore, the appeal was dismissed.

Date issued to parties: 17 June 2024

Right of further 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.
