VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating: 2017 rating list appeal: public house and premises: approved guide; fair maintainable trade; adjustment for over-trading; appeal dismissed

APPEAL NUMBER:	CHG100824693	
RE:	The Robert Peel, 8 Market Place, Bury BL9 0LD (the "subject property")	
BETWEEN:	J D Wetherspoon PLC	Appellant
	and	
	Ms A Hitchings (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Tuesday 23 April 2024	
BEFORE:	Mr MF Young, a Vice President of the Valuation Tribunal for England	
CLERK:	Mr R Patel IRRV(Hons)	
APPEARANCES:	Mr J Boswell of BNP Paribas Real Estate, on behalf of the appellant as advocate and expert witness Mr J Wainwright, on behalf of the respondent as advocate and expert witness.	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. I determined the assessment of the subject property remain at £57,500 rateable value (RV) with effect from 1 April 2017.

Introduction

3. In accordance with the Tribunal's business arrangements, I am authorised to decide this appeal sitting alone.

4. This was a 2017 Rating List appeal. The subject property had been entered into the 2017 list as "public house and premises" at a RV of £57,500, with effect from 1 April 2017.

5. The challenge proposal was submitted by BNP Paribas Real Estate on behalf of JD Wetherspoon plc and was received by the Valuation Officer on 5 July 2022. It had been made on the grounds that the £90,000 RV shown in the rating list on 1 April 2017 was incorrect and excessive, with a reduced RV of £36,500 sought.

6. The Valuation Officer issued a challenge case decision notice on 27 June 2023, which stated that based upon the evidence and information available, the Valuation Officer accepted that the current fair maintainable trade and the entry of £90,000 RV was excessive after having regard to the overtrading at the subject property. As such, within the challenge decision, the Valuation Officer reduced the subject property's assessment to £57,500 RV with effect from 1 April 2017.

7. 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 by the Tribunal on 25 October 2023 when the appellant's representative had proposed a slightly higher assessment for the subject property of £38,500 RV, with effect from 1 April 2017.

8. Mr Boswell appeared as 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 Boswell declared that he was instructed on a standard fee basis, and he was not instructed under any conditional or other success-based fee arrangement. He stated 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.

9. This statement of reasons is not a full verbatim record of the proceedings.

Background

10. The subject property is a converted retail property situated within a small open square close to the main pub circuit in Bury's cultural quarter within the town centre. It trades over a single floor, with a customer area measuring $271m^2$, with ancillary space in the basement.

11. The dispute before me related to the fair maintainable trade (FMT) to be adopted in the subject property's assessment and the extent to which the valuation should be adjusted to reflect the overtrading at the subject property.

12. The evidence bundle comprised the documents exchanged between the parties as part of the challenge process including a copy of the proposal; a location plan, photographs of the subject property and schedules of comparable properties. I was also provided with a copy of the relevant extract from the Rating Lists 2017 - Valuation of Public Houses – Approved Guide

and the Supplementary Guidance – RAT IA 110111 “Approach to High Trading and Potentially Over-trading Public Houses”.

Relevant Law

13. 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”.

14. The property was to be valued from a trade-based approach in line with the Valuation Office Agency’s Approved Guide. It was the property to be valued and not the occupier.

15. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

Discussion

16. Both parties agreed that the subject property should be valued in line with the Approved Guide, which had been drawn up by the Valuation Office Agency and the British Beer and Pub Association. Under the Guide, a rateable value was essentially based on the 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.

17. I also had regard to the following section of the Approved Guide, which stated: ‘Vacant and to let, the hypothetical tenant would be aware of the actual trade (unless a new property) which is the starting point of the valuation in accordance with principles endorsed by Mr Justice Thompson in *Watney Mann Limited v Langley (VO)* [QB 1963]. “He (the hypothetical tenant) will, as the prospective tenant would, endeavour to estimate what trade could reasonably be expected to be done by the ordinary tenant if he were the licensee in the premises as they now are, in the area which they are located. While I do not doubt that such a prospective tenant would consider in his mind whether he could make as great or a greater success of the house than his predecessor, the base from which he would ponder on his prospects would, I have no doubt whatsoever, be the actual trade his predecessor had in fact done.

18. I recognised that there was no dispute as to the approach to be adopted and both parties had submitted valuations reflecting that the subject property was a high performing, overtrading public house with discounts being applied to the FMT to reflect overtrading. Furthermore, FMT figures as at the AVD had been agreed by the parties, of wet at £930,000 and dry at £280,000.

19. In addition, there was agreement that the subject property should fall within Band 1 for the wet trade with the percentage rate adopted being at 50% in the band width. The parties also agreed Band B for the dry trade and were in agreement with the adopted FMT for the dry trade as stated, of £95,000 at 5.09%.

20. The only issue under dispute was the discount to be applied to the wet FMT to reflect overtrading, with the appellant seeking a reduction of 65% to £325,000 in contrast to the 50% reduction to £465,000 awarded by the Valuation Officer.

21. Both parties referred to the FMT of comparable properties, in support of their respective wet FMT valuations. The following eight properties, all within band 1, were referred to:

    i) The Wyldes was stated by Mr Boswell to be the best comparable to the subject property. Not only was it located next door, it was also stated to be of a similar style and size to the subject property, at 260m^2, as well as having a trade kitchen. Whilst this property's FMT adopted wet trade was at £302,750, there was no adopted dry trade, as the food offering was not of sufficient significance to have regard to it. The property was assessed at £30,500 RV, based on its wet trade.

    ii) The Two Tubbs, at 217m^2, was a more traditional pub, slightly smaller than the subject property. Situated opposite the subject property it was located in close proximity, with Mr Boswell stating it was in a slightly worse location being marginally further away from the other pubs in the town. This property's FMT adopted wet trade at £250,000 and adopted dry trade at £50,000, with the property assessed at £25,575 RV, which Mr Boswell contended supported his submission of £325,000 adopted wet trade for the subject property.

    iii) The Old White Lion was a traditional hotel and pub located next and to the other side of Wyldes, smaller than the subject property at 197m^2. Mr Boswell stated that it became a wet-only Craft Union in 2019, but in 2017 was operated as a pub and guesthouse. With an RV of £38,500, a wet FMT of £280,000 and dry FMT of £90,000 supported by this guest house operation, Mr Boswell stating this and its better position closer to Silver Street, supported his proposed FMT's for the Robert Peel.

    iv) The Blind Tiger was located a few doors away from the Old White Lion on Bolton Street. This was the smallest of all the comparable properties, at 98m^2. It had no dry trade, with FMT adopted wet trade of £367,000 on which its RV of £44,000 was based.

    v) Yates' Wine Lodge is a grade II listed converted bank, stated by Mr Boswell to be in a better position than the subject property, as it is located opposite the Met theatre and closer to the Rock development. Smaller than the subject property at 221m^2 its 2017 Rating List RV entry of £57,500 was agreed at challenge, based on adopted trade of £480,500 wet and dry £83,000. Mr Boswell contended that adjusting for the slightly stronger dry trade at the subject and its poorer position would suggest a wet FMT around £350,000 to £400,000 for the subject property.

vi) O'Neill's also known as The Earl of Derby at 145m^2 is a much smaller house. Mr Boswell states that it is significantly better positioned than the subject in the heart of the pub circuit on Silver Street, which makes it a challenge to adjust. It has an RV of £54,750 with wet FMT of £466,000 and dry of £27,250. Nevertheless, he contends adjusting for the much greater food trade at the subject property would lead to a wet FMT of around £350,000 to £400,000 for the subject property.

vii) The Clarence Hotel, with an RV of £64,500 was stated by Mr Boswell to have its valuation based on estimated trade and he argues that it is not a reliable comparable property due to the significant fall in this trade from 2010. It is less than half the size of the subject property, at 131m^2, with estimated FMT wet and dry trade at £350,000 and £325,000, respectively.

viii) The Knowsley Hotel at 242m^2, with an RV of £61,250 based on wet trade of £499,000 and dry trade of £72,500 was considered by Mr Boswell to be situated too far away from the subject to be truly relevant.

Having regard to the evidence provided, Mr Boswell proposed a reduced assessment of £38,500 RV and Mr Wainwright defended the current entry of £57,500, which were as follows:

Mr Boswell's Valuation	Adopted FMT	% of receipts	RV
Wet	£325,000	10.38	£33,735
Dry	£95,000	5.09	£4,836
			£38,571
Say £38,500 Rateable Value, with effect from 1 April 2017			

Mr Wainwright's Valuation	Adopted FMT	% of receipts	RV
Wet	£465,000	11.36	£52,824
Dry	£95,000	5.09	£4,836
			£57,660
Say £57,500 Rateable Value, with effect from 1 April 2017			

22. In the appeal before me, the comparable properties were all in the same band for wet trade, however, I recognised the differences in terms of their location, physical characteristics, and size.

23. I was more persuaded and preferred the assessments and subsequent valuation of Mr Wainwright. Wyldes, which Mr Boswell argued was the best comparable property, did not to any material extent have a dry food offering. This was not challenged by Mr Boswell. When considering all of the comparable properties, I found Yates' Wine Lodge to be a better comparable. It was only a short distance down the street, serving the same clientele and considered it to be a comparable house. Its adopted wet trade of £480,500 and dry of £83,000 were not too dissimilar from the subject property and

24. In considering the extent of the discount to be applied I had regard to the guidance and the factors to be considered. The guide provided that the factors that need to be considered vary, dependent upon the trading environment in which the subject property is located. Type A referred to "Primary Licenced Trade Areas" in locations where major operators are well

represented. I gave regard to the occurrence of similar turnovers at other public houses in the same location as the subject property.

25. Whilst the guidance suggesting justification for discounting the drinks turnover by up to 25%, I noted that Mr Wainwright's assessment had provided a significant overtrading discount of 50% for the wet trade. I did not find that going any further with more discount was supported by the evidence. The success of the appellant company's operations is accepted. Nevertheless, the level of overtrading can only go so far, and whilst a 50% reduction was both reasonable and appropriate, in the context of the subject property and the comparable properties within the locality. This is in excess of the figure referred to in the guidance, and whilst I consider that the guidance is just guidance with paragraph 7.3.5 stating "The starting point of any consideration under this guidance is the actual trade achieved at the subject property. Any adjustment of the actual trade needs to be justified relative to the trading level and profile of other public houses in the vicinity." I do not consider that the reduction should be 66% as proposed by Mr Boswell. This would not take into account the competition for trade resulting from the numerous other houses within the locality, a few of which were represented by major operators, when taking a 'stand back and look' approach.

Disposal

26. In view of the above findings and conclusions, I was satisfied that the subject property was correctly entered into the 2017 Rating List from 1 April 2017 at a Rateable Value of £57,500, and therefore the appeal was dismissed.

Date issued to parties: 21 May 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.
