THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating list appeal – Fair maintainable trade – location - was public house over trading or location close to local football stadium and life centre the reasons – category to be placed in for wet trade – comparisons to other public house premises in locality – appeal allowed in part

Re: Britannia Inn, 2 Wolseley Road, Plymouth, PL2 3BW

APPEAL NUMBER: CHG100837025

BETWEEN:	J D Wetherspoon Plc	Appellant
	and	
	Ms L Formela-Osbourne (Valuation Officer)	Respondent

PANEL: Mrs F Cortese (Senior Member)
Mrs A Taylor

CLERK: Mr A Jolly

REMOTE HEARING: Wednesday 7 February 2024

APPEARANCES: Mr T Root of BNP Paribas Real Estates representing the appellant
Mr P Stevens representing the respondent

Summary of decision

1. Appeal allowed in part. RV £83,000 confirmed with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: An appeal was lodged by BNP Paribas Real Estates on behalf of the occupier on 28 July 2023 against the Valuation Officer's Challenge Decision Notice of 3 April 2023.

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

4. Mr Root 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 Root's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Root 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.

5. The panel member was not visible to the Senior Member during the start of the hearing but having queried this with the parties they confirmed that they were able to see both panel members and the hearing proceeded on that basis.

6. The clerk informed the parties that he had forwarded the Rating List 2017 Valuation of Public Houses Approved Guide to the panel members prior to the hearing.

Issues

7. The issue before the panel concerned the level of trade to be adopted, the wet trade category for appeal hereditament to be placed in and was the operator over-trading or was the location a factor when considering level of trade.

8. The appeal hereditament was a public house with a beer garden operated by J D Wetherspoons. It was situated in a prominent position on a busy junction. It was located close to Plymouth Argyle FC grounds and the Life Centre. The appeal hereditament lacked on-site parking and was on a one-way system and within a mainly residential locality.

Evidence and submissions

9. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, rental evidence and assessment summaries, valuations and the appellant's challenge submission.

10. Mr Root considered that having regards to location the appeal hereditament should be placed in category 3 for wet trade, the trade should take also account of the operator's pricing policy and having regards to his comparable hereditaments the RV should be £57,000.

11. Mr Stevens considered that due to the appeal hereditament's proximity to the football grounds and the Life Centre, which offered free parking, the appeal property should be placed in category 2 and a smaller deduction should be given for the operator over trading. He considered his comparable hereditaments supported his contention and sought a revised RV of £83,000.

Decision and reasons

12. The panel was informed that the actual trade figures for the public house were £800,000 for wet trade and £675,000 for dry trade.

13. Mr Root considered the actual trade for the appeal hereditament was excessive and that this was due to the pricing policy of J D Wetherspoons and not due to the proximity to the football grounds and Plymouth Life Centre. He considered that the respondent was putting too much emphasis on its proximity to the football grounds and Life Centre when considering the fair maintainable trade (FMT) and the category the public house should be placed in. He stated that the appeal hereditament location, whilst in a prominent position, was difficult to reach as there was no on-site parking and therefore the trade came from the local community. He considered that the public house was overtrading due to the pricing policy and that another reasonably efficient operator (REO) would not be able to sustain the level of trade and therefore the FMT should be £475,000 for wet trade and £200,000 for dry trade.

14. Mr Root considered that due to the location the appeal hereditament should be placed in category three. He stated that too much emphasis had been placed on the proximity of the football grounds and Life Centre but stated that there would be approximately 20/24 home games a season. He considered that the appeal hereditament, due to its locality with difficult access due to the busy one way system, no parking and within a mainly residential locality should be placed in category 3. This was for community and rural public houses with a bid of 9.50% which gave a value of £45,125. He accepted band B for the dry trade but with a bid of 6.80% giving a value of £11,900.

15. Mr Root considered that The Cherry Tree, Ham Drive and The Golden Hind, Mannamean Road were comparable hereditaments with similar locations etc but the respondent had uplifted the appeal hereditaments value by 147% against The Cherry Tree and 71% for The Golden Hind. He stated that The Cherry Tree was a similar distance from the football ground but the respondent had not used this as a reason within the recent agreement on that property.

16. Having regards to the FMT and the comparable hereditaments Mr Root requested the appeal be allowed and RV £57,000 be confirmed from 1 April 2017.

17. Mr Stevens informed the panel that the original entry in the 2017 rating list was at RV £127,500 but this had been reduced at challenge stage to £115,000. However, having re-considered the evidence and with the benefit of an inspection he had offered a reduction to £83,000 but this offer was rejected.

18. In support of his contention that RV £83,000 was not unreasonable Mr Stevens considered the trade figures, the FMT to be adopted, the category for wet trade, the location and the comparable hereditaments.

19. Mr Stevens stated that the appeal hereditament was located on a busy junction and whilst there was no parking on the grounds of the public house there was a free car park with over 300 car parking spaces opposite and access to the appeal hereditament was via a pedestrian crossing. He stated that he had spoken with the manager on duty during an inspection on 8 September 2023 who stated that lack of parking was not an issue.

20. Whilst he accepted some overtrading due to the operators pricing policy he considered that a REO could maintain the higher trade due to the proximity of the football ground and the life centre. He stated that the Life Centre comprised a swimming pool, climbing centre and 8 lane bowling alley amongst other activities and were hosts to the Lego Brick Festival. Having regards to the location he considered that the fair maintainable should be £625,000 for wet trade and £200,000 for dry trade.

21. Mr Stevens considered that the appeal hereditament should be placed in category two for wet trade as he considered due to its proximity to the football ground and the Life Centre it was a destination public house. He considered that the bid should be 11.13% giving a value of £69,563. He agreed that the dry trade should be within band B but with a bid of 6.83% giving a value of £13,660.

22. Mr Stevens did not consider The Cherry Tree and The Golden Hind to be truly comparable as whilst a similar distance from the football ground The Cherry Tree was not between the town centre/railway station and the football ground like the appeal hereditament. He considered The Tamar Hotel to be more comparable in terms of both trade and location.

23. Mr Stevens requested the panel to allow the appeal to his revised value of £83,000 with effect from 1 April 2017.

24. Whilst the panel accepts that J D Wetherspoons pricing policy may inflate trade over and above that of an REO the panel also considered the location to be a factor in the trade of the appeal hereditament. It considered its location between the town centre/railway station and the football grounds and its proximity to the Life Centre would, under a REO, generate trade. The panel therefore considered the FMT adopted by the respondent to reflect both the location and also any over-trading due to the operator's pricing policy was reasonable.

25. The panel then considered the category in which wet trade should be placed. The appellant's representative considered category 3 should apply as it was located adjacent to a major road in a residential area and supported by the local community whereas the respondent considered category 2 as it was located in an area with attractions such as the football grounds and the Life Centre. The panel considered that the football grounds and Life Centre were a draw for the public house and considered, from the trading figure there was a strong customer demand all year and whilst in a prominent position close to a residential area, category 2 would appear more appropriate. The panel also considered the percentage bids to be appropriate for the category applied by the respondent.

26. The panel noted that both parties accepted that dry trade should be in band B but at different points within that band for the percentage bid albeit only .03% of a difference. The panel did not consider the difference to be significant and as it had accepted the respondent's FMT it would accept 6.83% and not 6.80% sought by the appellant's representative.

27. The panel noted the comparable hereditaments cited by both parties. Whilst the appellant's representative's comparable hereditaments may be closer to the appeal hereditament in locality their FMTs were considerably lower than the FMT accepted by the panel for the appeal hereditament. The panel noted the FMT for the Tamar Hotel was higher than the appeal hereditament.

28. During the hearing the appellant's representative sought for the trade figures to be redacted. The clerk referred to the relevant practice statement in the Consolidate Practice Statement in which any application for redacting information should be made to the President of the Valuation Tribunal for England.

29. In considering the evidence and having weighted that evidence the panel had not been persuaded by the appellant's representative that the respondent's revised valuation of £83,000 was unreasonable. The panel accordingly allow the appeal in part and confirm RV £83,000 with effect 1 April 2017.

Valuation

	Wet Sales	**Dry Sales**	**Total**
FMT	£625,000	£200,000	£825,000
Value at	0.65 Cat 2 = 11.13%	.05 Band B = 6.83	
Value at	£69,563	£13,550	£83,223
say RV			£83,000

Order

30. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £83,000 with effect from 1 April 2017 within two weeks of the date of this order.

Refund of appeal fee

31. As the ground of the appeal has been made out in part, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: Thursday 27 February 2024

Appeal number: CHG100837025

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.