THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Self-contained holiday units; method of valuation in dispute; receipts and expenditure method or comparable properties; appeal allowed in part.

RE: Bossington Hall, Allerford, Minehead TA24 8HJ

APPEAL NUMBER: CHG100860082

BETWEEN:	Bossington Hall Ltd	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL:	Ms C Edwards (Senior Member) Ms F Rahman-Cook
CLERK:	Ms J Routledge
HEARING:	Remote Hearing on 9 February 2024
APPEARANCES:	Mr M Weston, representing the Appellant Mr A Wright, representing the Respondent

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Summary of decision

1. The appeal was allowed in part, the panel found the rate per single bed space was excessive having considered the evidence of the comparable properties and receipts and expenditure for the subject property and determined a revised single bed space value of £500 producing and Rateable Value of £15,000.

Introduction

2. This appeal had been brought in respect of the subject property, which was entered in the 2017 Rating List as Self-catering holiday unit and premises at a single bed space price of £967 giving a rateable value (RV) of £29,000 with effect from 15 April 2017.

3. The subject property was a grade II listed building that had been originally in the 2017 list as Lynch, Allerford, Minehead as holiday units (6) and premises at an RV of £13,500. Following a Billing Authority report the entry was changed to Bossington Hall and revalued as a single holiday unit with 30 single bed spaces with an RV of £29,000.

4. The challenge proposal was received by the Valuation Officer on 26 September 2022 . It had been made on the grounds that the RV shown in the rating list on 15 April 2017 was unreasonable. A revised RV of £8,000 was proposed with effect from 15 April 2017.

5. The Valuation Officer issued a challenge case decision notice on 27 April 2023 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, as amended, an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

7. The hereditament changed again from 29 January 2021 and therefore the period in dispute was 15 April 2017 to 28 January 2021.

8. Mr Weston stated he was appearing on behalf of the appellant as both an advocate and expert witness stated that he was on a success related fee but accepted that his first duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the appellant’s case. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC), the panel accepted this 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 in England).

9. The panel therefore, considered the “expert” evidence and attached such weight to it as it saw fit.

10. The statement of truth signed by Mr Wright confirmed that he was not instructed under any conditional or other success-based fee arrangement.

Issue

11. The issue in dispute concerned the RV to be applied to the subject property.

Evidence and submissions

12. The panel was provided with an extensive bundle of evidence which contained the parties' arguments and supporting documents. A number of Valuation Tribunal and Upper Tribunal decisions had been cited:

    - *Redrose Ltd v Thomas* [2014] UKUT 311 (LC).
    - *Wishart v Hulse* [2018] UKUT 224 (LC).
    - *Beaconside Country House & Cottages v Gidman (VO) [2016] UKUT 0497 (LC)*
    - *Facciolo v Constantin (VO) [2020] UKUT 0123 (LC)*
    - *Kingston Union AC v Metropolitan Water Board [1926] Hoare and Another v National Trust [1998] EWCA Civ 1525*
    - *Watney Mann Limited v Langley (VO) [QB 1963]*
    - *Margate Pier and Harbour Co v Yorke (VO) 1955 LT 48 RIT 107*

13. The case for the Appellant commenced with Mr Weston giving a lengthy submission providing his background and that of the subject property. He argued that although post AVD the receipts and expenditure method should be used in assessing the rateable value. The receipts could be adjusted for inflation to reflect the position at AVD.

14. The case for the Respondent was that the receipts were several years post AVD and therefore of no use when establishing the trading potential at 1 April 2015. The use of comparable properties where the receipts and expenditure method was used to establish the price per single bed space was the only reliable method available to assess the subject property.

The Statutory Framework

15. Rateable value is defined in Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended by The Rating (Valuation) Act 1999 as: "… 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 the usual tenant's rates and taxes and bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state fit to command the rent mentioned above."

16. Statute requires that the appeal property be valued reflecting certain matters as they existed on the material day, which in this case was 15 April 2017, and by reference to values pertaining at the Antecedent Valuation Date ("AVD") which was 1 April 2015. The matters which must be taken at the material day are set out in paragraph 2(7) of Schedule 6 Local Government Finance Act 1988.

Decision and reasons

17. The main dispute was the assessment of the subject property using comparable properties by the Valuation Officer rather than a receipts and expenditure approach.

18. The Appellant's submission referred the panel to the Rating Manual and the Upper Tribunal decision in *Wishart v Hulse* where it was stated that the appropriate method of estimating the rent in the case of holiday units was by adopting the receipts and expenditure method of valuation.

19. The valuation approach used by the Valuation Office Agency (VOA) is explained in the Rating Manual section 6 part 3 – Section 480: holiday accommodation (self-catering):

"8.1 Rental Basis Form of return (FOR) VO 6048 is specifically for self-catering accommodation. Details of rent, gross receipts and tariff are requested. Very few self-catering units are let on an open market rental basis. Consequently it is not normally possible to establish a scheme based solely on rental evidence.

8.2 Receipts & Expenditure Basis As the largest body of evidence is likely to be in the form of gross receipts, schemes of valuation should be derived from an analysis of a cross-section of accounts information.

It is important when looking at accounts to ensure that properties are let to their full commercial potential, as there can be a variety of reasons for owning a single property for letting, which do not apply to multiple properties, e.g. a holiday home for own use, a legacy, potential retirement home etc. Complexes (5 units and above) will almost invariably be let commercially. When analysing accounts for complexes of self-catering units, and single properties where it can be identified that these are being commercially let, the following approach to analysis is recommended:

a. Income should be assumed as being gross, inclusive of commission, which normally varies between 20 and 25%.

b. Tenants share should normally be taken at 50%, (up to 55% where there is an exceptional standard of equipment).

The analysis of accounts of self-catering units that are wholly commercial should be expressed as percentage of gross receipts before deduction of commission. The actual percentage will be determined by the relativity between the income achieved and the costs incurred in achieving it. For instance if two properties produce the same income but one generates this purely through location and has limited expenditure the % of receipts will be higher than one in a poorer location with significant overheads. The outcome should also be back analysed in terms of a price per Single Bed Space (SBS)."

20. The Appellant provided the overall profit and loss accounts from when the business opened in 2017 to year ending 2020. The accounts for 2017 which was a part year and 2020 which was affected by the pandemic were not considered representative of average trading. It was stated that these accounts included receipts for Gate Cottage and a deduction was made in respect of this. The overall receipts for the two years were £209,966.69 in 2018 and £184,886.85 in 2019. The appellant analysed the receipts and expenditure and made adjustments for expenditure over and above the average on certain items. He then adjusted back to 2015 taking into account inflation and calculated the RV to be £8,000 giving the price per single bed space of £267.

21. The Respondent argued that as there were no receipts leading up to the AVD then it was reasonable to use comparable properties which have not been challenged to set the tone for such properties in the area. The VO referred to Margate *Pier and Harbour Co v Yorke (VO) 1955 LT 48 RIT 107* in support of the contention where it is stated:

> *"It is fundamental that a valuation designed to represent the expectation of a rentor price to be obtained at a particular date cannot properly rest on knowledge which would have not been available at that date."*

22. The panel considered that the accounts three years post AVD were of some value in indicating the potential rental bid, but would carry considerably less weight than had they been for a period before the AVD as this would allow a like for like comparison with the comparable properties cited. The panel also had regard to the fact that the average occupancy of 50% over the first and second full years trading, demonstrated that this was a relatively new business that had not reached its full potential.

23. The Valuation Officer had provided a number of comparable properties which were in the locality that ranged from 22 to 47 single bed spaces with values between £900 and £1000. All but one, Redland House which appeared to be in a less isolated location within a popular tourist village, were established businesses that had provided account information for several years leading up to the AVD to the VOA. The receipts and expenditure information for the comparable properties was not provided to the panel. The panel noted most

were of differing age location and character to the subject property, however it accepted these properties indicated a tone for established SCHU in the area as none had challenged their assessments.

24. The panel noted the Appellant's calculations of receipts and expenditure within his statement of evidence and was mindful of paragraph 27 of *Wishart v Hulse* that:

> "*27. The basis of the valuation is the assumption of a letting to a reasonably competent or efficient operator who will expect to achieve a level of income, or turnover, and to incur a level of expenditure, which are broadly representative of an average level of performance."*

25. The panel therefore considered that the Appellant's submission based on an average 50% occupancy over the two trading years indicated half the potential that the subject property would achieve and therefore the RV should be based on what it should be once established when its full potential was achieved.

Conclusion

26. In full consideration of all the evidence, the panel concluded that the present single bed space price of £967 giving an RV of £29,000 was not reasonable as this was based on the tone of the comparable businesses. The panel considered without the basic details of the receipts and expenditure used to reach the RVs on the comparable properties and given the variety of ages and locations of these properties it found that the weight that could be given to these comparable properties was limited. Having formed an opinion on the weight to be given to the comparable properties, the panel taking an overall view also had regard to the trading figures which demonstrated what the appeal property trading at 50% capacity achieved. The panel considered this should also be given some weight as an indicator of the trading potential that would be achieved by a competent or efficient operator. Having had regard to the full basket of evidence the panel therefore concluded that a reasonable price per single bed space would be £500 which would result in an RV of £15,000 from 15 April 2017.

27. Accordingly the appeal was allowed in part.

Order

28. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list for Bossington Hall, Allerford, Minehead TA24 8HJ to £15,000 with effect from 15 April 2017.

29. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

30. A refund of the paid fees will now be arranged provided there are no reviews of the Tribunal's decision.

Date: 1 March 2024

Appeal number: CHG1008600082

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.