VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Compiled list appeal; Public house and premises; appeal 1 allowed, appeal 2 dismissed.

APPEAL NUMBERS: CHG100881225 (appeal 1) and CHG101027637 (appeal 2)

RE: Travellers Rest, Kenton Road, Harrow HA3 8AT
(the "appeal property")

BETWEEN: Whitbread Group Plc — Appellant

and

Lucy Dyer MRICS (Valuation Officer) — Respondent

SITTING: *Remotely using Microsoft Teams*

ON: 05 June 2024 10:00

BEFORE: Mr A Hussain, Presiding Senior Member
Mrs A E Fielder, Senior Member

CLERK: Mr R Gath IRRV(Hons)

APPEARANCES: Mr A Buxton (Appellant's representative, who was assisted by Mr Vasey)
Mr R Das (Respondent's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. Appeal 1 is allowed. Appeal 2 is dismissed

2. The Tribunal panel concluded that the rateable value (RV) should be £439,000 with effect from 1 April 2017. However, the panel was not persuaded that there had been sufficient evidence to prove that the RV should be reduced further as a result of the Material change of circumstances.

Introduction

3. The parties agreed that the appeals could be heard together.

4. These appeals have been brought in respect of Travellers Rest, Kenton Road, Harrow HA3 8AT which was entered in the 2017 rating list as ‘public house and premises’ at rateable value £565,000 effective from 1 April 2017. The appeal property was a Premier Inn with a Beefeater restaurant. In appeal 1, the appellant disagreed with the RV. More specifically, he disagreed with double bed unit (DBU) that the Valuation Office Agency’s (VOA) records showed, he also disagreed with the FMT for wet and dry trade. In appeal 2 the appellant was seeking a reduction of 10% due to the building of another Premier Inn in Wembley.

5. The appellant had made a challenge against the accuracy of the compiled list assessment and made another challenge in respect of a material change of circumstances, by way of proposals that he served on the VOA on 22 November 2022 and 30 March 2023. After considering the proposals and evidence submitted during the challenge period, the VOA decided that the proposals were not well founded and refused to alter the existing assessment. Decision notices to that effect were served on the appellant on 9 September 2023.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Buxton made appeals to this Tribunal on 8 January 2023 because he disagreed with the current rateable value. The appeals to this Tribunal had been made on the grounds that the valuation for the appeal property is not reasonable.

7. For appeal 1, the material day is 1 April 2017. For appeal 2, the material day is 14 December 2021 being the date that the VOA received the check submission.

8. Mr Buxton had declared that was paid a fee irrespective of the outcome of the appeal. In view of the Upper Tribunal’s judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Buxton’s declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

9. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

10. Mr Das confirmed that he was representing the VOA as advocate and expert witness.

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

Issues

12. The issues are the level of fair maintainable trade and the percentage to be applied (appeal 1). For appeal 2 the issue is whether or not the building of a Premier Inn in Wembley has caused a reduction in trade for the appeal property.

Evidence and submissions

13. The evidence bundles before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties' skeleton arguments, location maps, photographs of the appeal property and the newly built Premier Inn.

Preliminary Issue

14. There was a preliminary issue which was the number of bedrooms that were located at the appeal property. Mr Buxton had argued that the appeal property contained 119 bedrooms. However, Mr Das had contended that it had 149.

15. The Approved guide for the Valuation of Public Houses 'the guide' states that a standard lodge bedroom will be treated as one DBU, irrespective if it is let for single, double of family occupancy. Mr Buxton had provided a plan which demonstrated that the appeal property had 119 bedrooms. Although the parties had discussed undertaking a joint inspection, Mr Buxton had inspected the accommodation. Although Mr Das confirmed that he had visited the appeal property, this inspection appeared to consist of a meal in the restaurant and not in his capacity as a representative of the VOA as he did not identify to the staff that he was a representative of the VOA. He also accepted that he had not verified the number of bedrooms at the appeal property.

16. The panel was disappointed that the VOA had not undertaken a joint inspection of the appeal property. However, given that Mr Das had not visited the accommodation and Mr Buxton had done so and provided a plan of the appeal property to the Tribunal, the panel accepted that the appeal property contained 119 bedrooms and that was also the DBU in accordance with 'the guide'.

Discussion

17. The parties agreed that the appeal property should be valued in line with the Approved Guide for the valuation of public houses that had been agreed between the VOA and the British Beer and Pub Association. Public houses are assessed using what was known as the Fair Maintainable Trade (FMT). This is based on the wet and dry sales. A percentage of this is then taken as the rateable value. The percentage varies depending on the type of public house, its locality and characteristics.

18. The Antecedent Valuation Date is 1 April 2015. This is the date used to determine the trade for the 2017 rating list. The same date was used to assess all public houses which meant that all ratepayers were treated consistently and rateable values must reflect the economy and general demand for liquor on that date. Although subsequent declines in the economy or liquor demand cannot be reflected in rating valuations, Mr Buxton had identified a specific material change, which was the construction of another Premier Inn located just over two miles away from the appeal property.

19. In his proposed valuation, Mr Buxton was seeking a RV of £439,000. This was comprised of a RV of £58,916 for wet trade, £75,330 for dry trade and £305,472 for the accommodation.

20. To calculate the drink sales, Mr Buxton had used the FMT of £515,000 and adopted 11.44% to establish a value of £58,916. Although the wet trade around the AVD was just over £540,000 Mr Buxton argued that the appeal property had limited outdoor facilities, it was not modern and the pub had a large function room resulting in higher costs. He also argued that not many operators would chose to run the appeal property. It also competed with a number of large public houses in Harrow town centre which takes trade away from the appeal

property. He therefore argued that in line with ‘the guide’ the FMT adopted should be lower and he adopted 70% of the category 2 banding.

21. Turning to the dry trade, Mr Buxton argued that the appeal property should fall within band B. To support this, he referred to the Monkey Puzzle, 101 Ively Road, Farnborough which was also the same chain of restaurant and had been placed in band B, despite the prices being higher and close to Chessington. He also argued that there were a number of other settlements using the same band for dry trade.

22. The actual dry trade in 2015 was £937,145. Although the years directly before and after were higher, the dry sales in 2017 were £926,572. Therefore, Mr Buxton had averaged the sales to £950,000 but adopted a value of £930,000, giving the same reasons as for the wet trade.

23. Turning to the accommodation, the FMT for the lettings was £2,466,260 as at the AVD. They varied between £2,119,514 in 2013 to £2,3628,338 in 2018. However, Mr Buxton adopted a FMT of £2,200,000 being an average over the years. This equated to a DBU of £18,487. He then adopted 13.89% of the FMT to reflect the four different times when the accommodation was built.

24. Given the above, percentages and the FMT, Mr Buxton had calculated the RV as follows:

Wet sales	£58,916
Dry sales	£75,330
Accommodation	£305,472
Total	£439,718
Rateable value say	£439,000

25. Mr Das contended that the appeal property was in a very good location, as it was close to Wembley and central London via the underground. He also argued that the appeal property could not be compared to a property located 40 miles away.

26. Given the above, the panel allowed appeal 1 and determined that the RV was £439,000. The panel found that Mr Buxton had fully explained how he had determined the FMT and arrived at the wet and dry sales and accommodation, together with the percentages he had used to calculate the RV. However, the panel was disappointed by Mr Das’ contentions as he did not explain the reasons for the VOA defending the RV. It also found the VOA’s decision was not very detailed.

27. The panel also applied little weight to Mr Das’ contentions that the dry sales should fall within band A. For dry sales, ‘the guide’ states for band A “Multiple outlet standard premium priced menu operations with large volumes not requiring specialist personnel”. Whilst the panel accepted that this could apply to the Beefeater restaurants, band B states “Multiple outlet standard prices menu’s with large volumes (typical brands include….)”.

28. ‘The guide’ does not state that the bands would differ between the same brands depending on the location and Mr Das was unable to point to anything in ‘the guide’ to suggest otherwise. Whilst the panel understood that a comparable property located 40 miles away would not be enough to prove that the RV would be incorrect, unless there was something unique about the two properties. The panel understood that Mr Buxton was questing the VOA’s use of the two bands when there was nothing to prove that the bands were location specific apart from the use of the percentage within the bands.

29. Turning to appeal 2, whether or not the building of the Premier Inn located next to Wembley has affected the trade of the appeal property.

30. Mr Buxton argued that the appeal property had been affected by the new Premier Inn and provided the following evidence to support his argument;

Trading period	Wet trade	Dry trade	Letting income
12 months trade to 31 July 2018	£510,173	£932,500	£2,287,567
12 months trade to 31 July 2019	£458,339	£796,853	£1,989,439

31. He argued that since the building of the Premier Inn, it was clear that the trade had fallen.

32. Mr Das accepted that there was a fall in trade, however, he contended that Premier Inn would not build another property so close, if it would affect the trade for another elsewhere. He also suggested that they could support each other in that the website will show all Premier Inns that are within the locality and that would help with the trade for the appeal property. He also argued that the appeal property was very close to public transport such as the underground.

33. Given the above, although the panel was satisfied that Mr Buxton had demonstrated that the appeal property had suffered from a loss of trade, he produced no evidence that it was directly linked to the building of the other Premier Inn. It could have related to economic factors or even less events taking place at Wembley after the building of the new Premier Inn. The panel was therefore not persuaded that the building of the new Premier had directly affected the trade of the appeal property and dismissed appeal 2.

34. The revised valuation is as follows:

Wet sales	£58,916
Dry sales	£75,330
Accommodation	£305,472
Total	£439,718
Rateable value say	£439,000

Order

35. 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 VOA to reduce the entry in the rating list to rateable value £439,000 with effect from 1 April 2017.

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

Refund of appeal fees

37. As the ground of the appeal has been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision.

Date issued to parties: 3 July 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.