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 allowed

APPEAL NUMBER: CHG100907684

RE: Church House, Church Street, Rotherham, S63 7RD
(the "subject property")

BETWEEN: J D Wetherspoon PLC — Appellant

and

Ms J Moore
(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 M Dolben of BNP Paribas Real Estate, on behalf of the appellant as advocate and expert witness
Mr C Taylor, on behalf of the respondent as advocate and expert witness.

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. I determined the assessment of the subject property at £31,000 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 £54,500 with effect from 1 April 2017.

5. The challenge proposal was submitted by BNP Paribas Real Estate on behalf of J D Wetherspoon plc and was received by the Valuation Officer on 31 January 2023. It had been made on the grounds that the £54,500 RV shown in the rating list on 1 April 2017 was incorrect and excessive. The appellant's representative proposed a revised assessment of £31,000 RV, which is included within the appeal documentation.

6. The Valuation Officer issued a challenge case decision notice on 4 July 2023, which stated that based upon the evidence and information available, the rating list entry of £54,500 RV was considered to be reasonable and there would be no amendment.

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 26 October 2023.

8. Mr Dolben appeared 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 Dolben 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 that 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 public house that is a stone detached building constructed in 1810. It was consecrated as a church in 1912 and converted into a public house in the 1980's. It was acquired by the appellant and extensively refurbished in 2000. The property comprises basement, ground and first floors, with the main customer area on the ground floor with a small area to the first floor, where the customer toilets are also located. The beer cellar is in the basement. The property benefits from a large beer garden/outside drinking area to the front. The property includes extensive kitchen facilities and other ancillary accommodation and in keeping with the occupier's standard policy it is refurbished to a high standard.

11. The property is located on Church Street in the centre of Wath-Upon-Dearne and is the largest pub in the town centre.

12. 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 over-trading at the subject property.

13. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process including the Valuation Officer's case decision notice, 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

14. 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".

15. The property was to be valued having regard to its Fair Maintainable Trade (FMT) in line with the approved guide for the 2017 Rating List assessments on public houses. It was the property to be valued and not the occupier.

16. 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

17. 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 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.

18. 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."

19. 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 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 £580,000 and dry at £300,000.

20. In addition, there was agreement that the subject property should fall within Band 1 for the wet trade with the percentage rate adopted at 50% of the band width.

21. The only issue under dispute was the discount to be applied to the wet FMT to reflect that the appeal property was overtrading, with the appellant seeking a reduction of 60% to £235,000, in contrast to the 28% reduction to £415,000 awarded by the Valuation Officer.

22. The parties had agreed Band B for the dry trade. During the hearing, Mr Dolben acknowledged the typographical error in his submission, accepting that the agreed FMT for the dry trade was £158,500 as stated in the Valuation Office Agency's decision letter, and not £158,000.

23. Both parties referred to the FMT of comparable properties, in support of their respective wet FMT valuations.

24. Mr Dolben referred to the following three properties:

    i) The Red Lion, which was located in close proximity to the subject property on High Street, Wath-Upon-Dearne. It was a traditional pub, refurbished in 2017, in an open plan style of bar. It had two entrances, had an outside seating area and was smaller than the subject property, stated to be around 61% of the size of Church House. This property's FMT adopted wet trade was at £150,000 at band 1; there was no dry trade, and the property was assessed at £11,500 RV.

    ii) The Saracens Head was located on Church Street, the same street and in close proximity to the subject property. It had been closed since 2016. It was a traditional pub, smaller than the subject property at only 38% of its size. This property's FMT was based on wet trade only, with the adopted wet trade at £150,000, derived from band 3; and the property was assessed at £7,400 RV.

    iii) The Cross Keys Hotel was approximately one third of a mile away from the subject property, on the fringe of the town. It was refurbished in 2016, although it was stated by the respondent that the refurbishment was not reflected in the RV of £3,000. It has a car park and outside play and drinking areas, and is stated to be smaller, at around half the size of the subject property. It is a wet only venue, in band 3, with the FMT based on AVD trade of £190,000.

25. Having regard to the evidence he had provided, Mr Dolben sought the following reduced assessment for the subject property:

	Adopted FMT	% of receipts	RV
Wet	£235,000	8.93	£20,986
Dry	£158,500	6.34	£10,049
			£31,035
Say £31,000 Rateable Value, with effect from 1 April 2017			

26. Mr Taylor referred me to his two comparable properties, namely:

i) The Glasshouse located approximately one quarter of a mile from the subject property, on the outskirts of Wath-Upon-Dearne. The property, which has an outside drinking area and a large car park, is larger than the appeal property, with the parties agreeing it is 11% larger in size. This was refurbished by its operator Greene King under its Flaming Grill brand, with wet and dry trade, with the assessment of this comparable property in the 2017 Rating List recently agreed at Challenge at an RV of £105,000. This was understood to be on the basis of the property's FMT adopted wet trade at £420,000 and dry trade at £715,000. This property is regarded to be a band 2 destination venue, led by dry trade.

ii) The Bluebell located approximately half a mile from the subject property was another wet and dry venue, with an outside drinking area and large private car park. It was stated to be twice the size of the subject property. Based on estimated FMT's and trade figures received of £450,000 wet and £350,000 dry, the respondent has stated this band 2 destination venue has been under-assessed, with its £79,000 RV.

27. Having regard to the evidence he had provided, Mr Taylor's assessment was as follows:

	Adopted FMT	% of receipts	RV
Wet	£415,000	10.66	£44,239
Dry	£158,500	6.53	£10,350
			£54,589
Say £54,500 Rateable Value, with effect from 1 April 2017			

28. Mr Dolben had referred me to a previous Valuation Tribunal decision in relation to The Stannary Court, 95-99 Ridgeway, Plymouth PL7 2AA (VTE 116025138893/537N10) dated 16 June 2021. I acknowledged that unlike a judgment from a higher court, a previous Valuation Tribunal decision was not binding upon me. However, I found this decision particularly helpful as it related to an appeal concerning the correct level of allowance applicable to another JD Wetherspoons operation. I found paragraphs 34 and 35 particularly helpful which stated:

> '34. After giving full consideration to all the comparable properties, I attached less weight on the two presented by Mr Holloway. I found that both The Unicorn and The Lord Louis were destination venues with large car parks and beer gardens. Mr Holloway had described them as family food orientated, low cost, high volume operations, which were both situated outside of the town centre. I agree with Mr Root that The Unicorn and The Lord Louis were very similar to each other but not the subject property and competed in a different segment of the market to the subject property; being 'destination venues'. The dry trade at these properties represented 71% and 61% of their FMT's, respectively. Vacant and to let, I do not find these two properties to be comparable to the subject property. I agree with Mr Root, that the hypothetical tenant coming fresh to the scene would have regard to more local public houses.

35. Out of the three comparable properties presented by Mr Root, I found The George to be most comparable. Like the appeal property, The George was located within the town centre. It had a good food offering, with dry trade at £190,000 and wet at £240,000. To provide such a food offering, the property would require reasonable kitchen facilities. Whilst providing a substantial food offering, the premises would also cater to wet sales into the evening, which was in line with appellant's operating practice.'

29. In the appeal before me, I agree with the panel in *The Stannary Court* decision in that destination venues were not true comparisons to the subject property. Whilst recognising that none of the comparable properties presented by both parties were exactly or markedly similar to the subject property, in giving full consideration of all the comparable properties, I decided to attach less weight to the two presented by Mr Taylor. I found that both The Glasshouse and The Bluebell were destination venues, both situated outside of the town centre, that customers who frequented the subject property would have to go out of their way to get to. As 'destination venues' situated in a different part of Wath-Upon-Dearne, whilst they both comprised wet and dry trade, I determined that they competed in a different segment of the market to the subject property. The dry trade at The Glasshouse and The Bluebell represented 63% and 44% of their respective total FMT figures, in contrast to the subject property's agreed dry trade, which was 34% of its total FMT. In considering the subject property as vacant and let, I do not find these two properties to be comparable to it and agree with Mr Dolben that any hypothetical tenant coming new to the scene would have regard to more local public houses.

30. Of the three comparable properties Mr Dolben presented, I found The Red Lion to be most akin to the subject property. It was located within the same settlement within the centre of Wath-Upon-Dearne and was a band 1 public house. Taking into consideration the physical characteristics and size of the subject property, I recognised The Red Lion was smaller in size than the subject property, with wet only trade, at £150,000.

31. 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. Band 1 referred to "Primary Licenced Trade Areas" in locations. Whilst the guidance suggesting justification for discounting the drinks turnover by up to 25%, upon which Mr Taylor's discount of 28% for the wet trade to £415,000 was based, I also took into account the occurrence of similar turnovers at other public houses in the same location as the subject property.

32. I was also aware that the evidence did not show there to be an abundance of well represented major operators within the locality that resulted in the presence of a very competitive market. The assessment for The Red Lion was based on a FMT of wet trade of £150,000. Taking a "stand back and look' approach I consider that the FMT adopted for this property demonstrates that Mr Dolben's proposed wet FMT for the subject property, at £235,000 is reasonable. This reflects a 60% reduction on the wet trade. Whilst this is in excess of the figure referred to in the guidance, I had regard to its 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." As indicated by examples submitted in the evidence, higher percentages have been agreed where appropriate, to ensure a property is valued in line with the available evidence. I also apply the percentage of 8.93% to the wet FMT and 6.34% to the dry FMT as proposed by Mr Dolben.

Disposal

33. In view of the above findings and conclusions, I allow the appeal and determine the correct assessment for the subject property was £31,000 RV, with effect from 1 April 2017.

Order

34. 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 amend the entry in the rating list for the subject property to rateable value £31,000 with effect from 1 April 2017.

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

Refund of fees

36. 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. The refund will take around six weeks to process.

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.
