THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; public house and premises; Fair maintainable trade; Valuation of Public Houses approved guide; wet sales; overtrading; comparable properties; appeal dismissed.

RE: Seven Stars Inn, Seven Stars Lane, Tamerton Foliot, Plymouth PL5 4NN

APPEAL NUMBER: CHG100934670

BETWEEN	RS	Appellant
	and	
	Lucy Formela-Osborne (Valuation Officer)	Respondent

PANEL: Mrs N Yang (Presiding Senior Member)
Mrs NC Crawshaw (Senior Member)

CLERK: Miss N Shepherd (IRRV Hons)

REMOTE HEARING: Wednesday 6 March 2024

APPEARANCES: Mr C Wright from Pubs Advisory Service, representing the appellant
Mr P Stevens, representing the Valuation Officer

Summary of decision

1. Appeal dismissed. The appeal property’s assessment remained unaltered at £25,500 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The appeal property had been entered into the 2017 list as “Public House and Premises” at an RV of £25,500 with effect from 1 April 2017.

3. The challenge proposal was submitted by Pubs Advisory Service on behalf of the appellant and was received by the Valuation Officer on 1 March 2023. The

proposal had been made on the grounds that the RV shown in the rating list was inaccurate. The appellant's representative sought a revised RV of £16,000 from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 6 June 2023 which stated, that based upon the evidence and information available, that the rating list entry of £25,500 was considered to be reasonable and there would be no amendment.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal to this Tribunal was then made on the grounds that the valuation of the hereditament was not reasonable. The appeal was registered by the Tribunal on 25 September 2023.

6. The subject hereditament is a pub located in Tamerton Foliot, a village on the northern edge of Plymouth. It had a car park, small beer garden and a conservatory extension. The pub is a regular live music venue and is Grade II listed.

7. Mr Wright appeared on behalf of the appellant as advocate.

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

Issues

9. The issue in dispute was the correct RV to be ascribed to the assessment.

Evidence and submissions

10. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

Decision and reasons

11. The subject hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015; the antecedent valuation date (AVD). This was a compiled list appeal so the material date was 1 April 2017.

12. The appeal property was currently valued in line with the Guide, which had been drawn up by the Valuation Office Agency (VOA) and the Pubs Rating Forum; a copy of which had been provided to the panel prior to the hearing. Under the Guide, a rateable value was essentially based on the fair

maintainable trade (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.

13. Mr Wright contended that the approved guide featured a list of organisations that were predominantly backed or endorsed by pub companies, major breweries and property companies which advocated the organisations interests and that in this case this groups did not represent or act on behalf of the appellant. Therefore, it could be considered that the approved guide was not applicable in this case.

14. The panel had regard to the Lands Tribunal judgment of *J D Wetherspoon v Day (VO)* RA/11/2005, in which the President of the Lands Tribunal (George Bartlett QC) endorsed the valuation of public houses on the basis of fair maintainable receipts and also emphasised the importance of following guidance agreed between the VOA and ratepayers. Paragraph 43 was of particular importance to the panel considering the current appeal.

'43. There is no dispute between the parties that the valuation of this public house falls to be made in accordance with the Approved Guide that was agreed for the purposes of the 2000 rating lists between the Valuation Office Agency and the Brewers and Licensed Retailers Association and the Supplementary Guidance that was produced in order to address the possibility that the receipts of some of Wetherspoons Public houses might not properly represent the FMR. It is in the circumstances obviously right that the Tribunal should follow the same approach.

Guidance of this sort, agreed by the VOA and on behalf of a particular category of ratepayers, ought to be followed unless there is good reason not to do so.'

15. The panel was aware that decisions from the Lands Tribunal were binding on it. Therefore, having regard Paragraph 43 from *J D Wetherspoon v Day (VO),* the panel concluded that the Guide should be followed unless there was good reason not to do so, or there was more compelling evidence to determine rateable value. The panel found that in this case no good reason had been provided to deviate from the Guide and it therefore was satisfied that the appeal property was correctly valued by this method.

16. The panel had regard to the Guide and noted the appeal property had been valued in Category 2 for the wet trade and Band B for the dry trade. There was no dispute from the appellant regarding the categorisation of the appeal property nor for the FMT adopted for dry trade. However, the appellant did contend the adopted FMT for wet trade within the valuation.

17. Mr Wright submitted that the FMT for wet sales of £280,000 was not reasonable and instead proposed that an FMT of £175,509 was appropriate. He contended that this took into account an element of overtrading which he

considered to be applicable for the appeal property, citing that the appellant went over and beyond what was expected of a reasonable operator in sourcing fresh local produce, employing locally and being involved with community and charity fundraising. Mr Wright referred to VT Decision: *Jack in the Green v VOA* appeal number 110516875401/537N10, submitting that this was a similar case in terms of overtrading.

18. The panel noted that in *Jack in the Green v VOA,* the Valuation Tribunal had found that there was an element of overtrading after the Jack in the Green public house was had won a number of numerous awards, including being voted 5th in the UK's top 50 Gastropubs. The Tribunal's decision had taken the wet trade figure of £250,000 and applied a reduction of 25% for overtrading, as it had been proven that the figure attained by the appellant within this case would not be achieved by a typical operator.

19. Mr Wright also identified a number of comparable properties within the area which he considered further demonstrated that the appeal property was over assessed and which he contended had been overlooked in the Valuation Officer's FMT valuation for wet sales.

20. Of the comparable properties submitted by Mr Wright, the panel found a number of these to be Category 3 pubs or to be located too far away from the appeal property to be influential and as such attached little weight to these. However, the panel found details pertaining to the Kings Arms and Queens Arms to be useful as these were located within the same village as the appeal property and were also Category 2, Band B pubs.

21. The Kings Arms had an RV of £17,000 and the Queens Arms an RV of £20,400, with Mr Wright submitting these demonstrated that the current RV at the appeal property was a clear outlier. He submitted that both of these comparables were also larger and benefitted from better kitchens and cellars, than those at the appeal property, further supporting that the appeal property had been over assessed due to overtrading.

22. The panel had regard to these comparable properties, however noted there was no evidence provided to demonstrate that the facilities at the Kings Arms and Queens Arms were superior to those at the appeal dwelling. Furthermore, the panel noted that both of these pubs secured more of their trade from dry sales, which was less profitable than that of wet sales and therefore considered that these did not necessarily support there to be an element of overtrading at the appeal property.

23. The panel also had consideration to the fact that the adopted FMT for wet sales within the valuation was based upon the actual trade figures provided by the appellant for 2013/2014 and 2014/2015. The panel noted that the FMT within the valuation was slightly lower than the actual sales achieved for both of these years.

24. The panel ultimately found that it had not been presented with substantive evidence to suggest that the appellant was operating at a level which could

not be anticipated by a typical operator. As such, it did not consider that overtrading had been proven in this instance. As the wet FMT figures adopted were based upon the actual 2015 wet sales achieved at the appeal property, the panel found no good reason to depart from these and therefore considered the current FMT for wet sales within the valuation to be reasonable.

25. In conclusion, the panel was not persuaded by the arguments and evidence put forward by Mr Wright in respect of his contention. In view of the foregoing, the panel dismissed the appeal.

Date: 5 April 2024

Appeal Number: CHG100934670

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.

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Following an email from the appellant's representative the decision has now been corrected to show he was advocate only for the appellant and not expert witness.