VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Compiled list appeal; Public house and premises; Appeal dismissed

APPEAL NUMBER: CHG101047431

RE: JD Wetherspoon Plc, Jolly Sailor, Hanham, Bristol BS15 3DQ
(the “appeal property”)

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

SITTING: *Remotely using Microsoft Teams*

ON: 5 June 2024 14:00

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

CLERK: Mr R Gath IRRV(Hons)

APPEARANCES: Mr T Root (Appellant’s representative)
Mr P Stevens (Respondent’s representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel was not persuaded that the rateable value was unreasonable.

Introduction

3. This appeal has been brought in respect of Jolly Sailor, Hanham, Bristol BS15 3DQ which was entered in the 2017 rating list as ‘public house and premises’ at rateable value (RV) £60,000 effective from 1 April 2017.

4. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 6 April 2023. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer (VO) decided that the proposal was not well founded and refused to alter the existing assessment. A decision notice to that effect was served on the appellant on 28 September 2023. His representatives then appealed the VO's decision to the Tribunal on 24 January 2024 on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009. The VO subsequently reduced the RV down to £60,000. However, the Appellant was seeking a RV of £40,240.

5. The appeal property was a public house and premises with an agreed area of 183.02m². It consists of a ground and first floor area It was a high street public house located in the centre of Hanham a suburb of Bristol. It has a forecourt in front which provides additional seating. It was initially valued at category 1 for wet sales and band A for dry sales, however, following the challenge the VOA changed the dry sales to band B. These are not in dispute.

6. Mr Root was acting in a dual capacity of advocate and expert witness. Hedeclared that he was paid a fixed fee. 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 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.

7. Mr Stevens confirmed that he was representing the VO as advocate and expert witness.

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

Issues

9. The issue is the level of fair maintainable trade (FMT) and the percentage to be applied to the appeal property's assessment.

Evidence and submissions

10. The evidence bundle 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 parties' comparable properties.

Discussion

11. 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 VO 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.

12. 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. Subsequent declines in the economy or liquor demand cannot be reflected in rating valuations, unless a ratepayer can identify a specific material change.

13. Mr Root argued that it was accepted that JD Wetherspoons overtraded. However, he argued that it was the appeal property that was being valued, not the occupier.

14. He disputed that the majority of the LO's comparable properties were actually comparable to the appeal property. He pointed out that the appeal property was located within a small retail parade, it did not have a car park and the main public house area on the ground floor was smaller than the other comparable properties.

15. Turning to the VO's comparable properties, Mr Root submitted that the Blue Bowl Inn had a better food offering as it was more of a family orientated public house; the Swan Inn was located six miles away from the appeal property and The Star was a community public house; The Maypole and Queens Head had superior external areas and large car parking. He also submitted that in his opinion, the Blue Bowl Inn should be placed in category 2 and Queens Head should be in category 1 and that the RV for these properties had not been tested as no challenge had been submitted to the VO in respect of these two assessments.

16. In his challenge to the VOA, Mr Root had adopted the starting figures for the appeal property's FMT for wet sales at £570,000 and the dry trade was £450,000. He contended that discounts of 58% and 67% respectively, should be applied to the FMT to establish what a reasonable efficient operator would achieve, this resulted in his proposed FMTs of wet at £240,000 and dry at £150,000. However, in his appeal statement, Mr Root sought a discount of 70% and 50% respectively with wet trade at £275,000 and dry trade of £200,000.

17. He referred to the guidance for the valuing of public houses, in particular section 7.3.3.2 and argued that he considered the appeal property to fall within type B which is described as "Secondary licensed trade Areas" and that adjustments of up to 50% could be made on wet and dry sales. However, he argued that this was purely guidance and provided the following decisions of this Tribunal *JD Wetherspoon PLC v Mrs J Moore* appeal number 253025435424/538N10 and *JD Wetherspoon PLC v Ms D Bunyan* appeal number 116025138893/537N10 which demonstrated that discounts of more than 50% could be allowed if the circumstances for that specific public house warranted it. He also provided a list of a substantial number of assessments which further demonstrated that more than 50% could be allowed.

18. To further support this level of discount, he also argued that the upper floor caused certain disadvantages to the occupier due to the requirement of additional staff and the need to move food from the kitchen to the upper floor.

19. However, when Mr Root submitted his appeal to this Tribunal, his proposed valuation of £40,250 was calculated by reference to the wet trade of The Maypole Tavern (wet only) and Queens Head. These were £300,000 and £225,000 respectively. The dry trade of Queens Head was £200,000. He used .70 category 1 for the wet trade and .50 band B for dry trade.

Wet sales - FMT £275,000 @ 9.68% = £26,620
Dry sales – FMT £200,000 @ 6.83% = £13,660
£40,280 RV say £40,250.

20. By basing his proposed RV on the FMT for these two properties, he argued that this demonstrated what a reasonable efficient operator was able to achieve.

21. Mr Stevens agreed that the original RV was unreasonable. The RV was originally based on 2014 trade with an expectation that these would continue to grow. However, following the challenge, the VO agreed that the RV was out of quilter with other public houses in the locality and decided to reduce the RV down to £60,000, which he considered was more reasonable and comparable with other public houses in the locality. The revised RV was based on range point of 10.91% in category 1 for wet sales of £375,000 and 7.94% in band B with sales of £250,000 for dry sales. He also confirmed that he had adjusted the FMT by 36% and 47% respectively to reflect overtrading.

22. He contended that the appeal property was superior than the other comparable properties as the appeal property had a large upstairs area, which was open at peak demand, it had outside seating and he considered that it was in a better locality than other public houses in the locality and the RV should reflect this, which was the reason for it being higher than others.

23. He also referred to the Blue Bowl Inn which was similar size to the appeal property and had a RV of £77,500. The RV had not been challenged which suggested that the RV was correct and in line with the assessment for this property. He contended that it would not be right for the appeal property's RV to be reduced further than what the VO had conceded.

24. The panel applied less weight to Mr Root's calculation of the FMT. He had only based the dry sales on one other comparable property, the Queens Head. Whilst he had based the wet trade on two of the comparable properties, the panel considered that The Maypole Tavern was not a good comparable to use wet trade figures as it did not provide any catering and from the photographs provided, the panel did not consider both of these properties to be comparable in terms of location as they were not on the High Street and in terms of appearance the panel considered that they were not as attractive to passing trade as the appeal property.

25. It also applied less weight to Mr Root's arguments that the appeal property was not in a very good location as it was highly visible in the town centre. The sales brochure stated "densely populated residential area" and "Prominent High Street location" Whereas the comparable properties were located away from the High Street.

26. The panel found that Mr Stevens put through a very clear argument to explain how he had calculated the RV. It also applied significant weight to the VO's use of the FMT for the wet and dry sales by reference to the FMT of the Blue Bowl Inn. The panel also considered the adjustments to the FMT was reasonable and Mr Root had not provided any evidence to prove otherwise. The panel also noted that by applying 7.94% to the wet sales, this was towards the lower end of the percentage range.

27. The panel also noted that the only public houses that had dry sales were the appeal property, Queens Head and Blue Bowl Inn. It applied little weight to the other comparable properties as they only had wet sales. The panel considered that dry sales may encourage trade and would appeal to different customers such as those with children.

28. At the revised RV of £60,000, the panel was aware that it was lower than the Blue Bowl Inn despite it being slightly larger. Whilst the panel accepted that the RV was greater than that for the Queens Head, the panel noted that the wet and dry sales were greater for the appeal

property. The panel also noted that the appeal property was the largest of the comparable properties and benefited from the upstairs area, which could also be used as a function room. Given that the appeal property was in the High Street, it had a front seating area and would therefore benefit from passing trade, the panel considered that it was in a more superior location than the other comparable properties and should therefore have a higher RV than the comparable properties highlighted by Mr Root.

Disposal

29. In view of the above findings and conclusions, the Tribunal panel was satisfied that the RV was reasonable and dismissed the appeal.

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.
