VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; public house and premises; Fair Maintainable Trade; location of property; comparable properties; 2017 Rating List Approved Guide for the Valuation of Public Houses; appeal dismissed.

APPEAL NUMBER: CHG101093198

RE: House in the Tree, Old Gloucester Road, Boddington, Cheltenham GL51 0TO
(the "subject property")

BETWEEN: Thanks for popping in traditional pubs ltd — Appellant

and

Ms L Formela-Osbourne (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: Wednesday 3 July 2024

BEFORE: Mr K Everett, Presiding Senior Member
Mrs R Choudhury, Senior Member

CLERK: Mrs S D Morgan

APPEARANCES: Mr C Wright – appellant's representative (Pubs Advisory Service Ltd)
Mr M Pearson – Valuation Officer's representative

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel confirmed the subject property's assessment at £40,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 Rating List appeal against the RV of the subject hereditament of £40,000, with effect from 1 April 2017. The challenge submitted by Pubs Advisory Service Ltd on 20 July 2023 on behalf of the appellant sought a reduction to RV £27,000 on the basis that the

valuation is unlawful and unsound. This follows a no change check with some alteration to the survey details that did not impact on the current RV. The check submission included trade information for the years ending 31 July 2013 and 2014.

3. Mr Wright sought an alternative assessment based on a reduced FMT for both wet and dry trade contending that the assessment of the available trade information had not been considered adequately compared with other assessments when adopting FMT.

4. Mr Wright appeared on behalf of the appellant as Advocate only. In his statement of truth Mr Wright stated that "I confirm that I have made clear which fact and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinion on the matters to which they refer". He confirmed that he was paid on an hourly rate.

5. Mr Pearson appeared as advocate and expert witness on behalf of the Valuation Officer.

6. The House in the Tree is located to the east of the M5 in between junction 11 and 10 on the outskirts of Cheltenham on the Old Gloucester Road junction with Withybridge Lane. There is outside seating and guest parking as well as a children's play area. At the check stage the number of covers was said to be 62 with a capacity for around 90 people. The business is dry led. It has a traditional interior reflective of its age.

7. The material day for this appeal is 1st April 2017, when the physical circumstances of the subject property and its locality are taken into account.

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

Background

9. The issue in dispute is the correct RV that should be assigned to the subject property effective from 1 April 2017.

10. The starting point in determining fair maintainable trade (FMT) is the consideration of the receipts of the premises in the year ending closest to the Antecedent Valuation Date (AVD) of 1 April 2015 and in the immediately preceding years, where such information is available. The FMT is split between liquor (wet) receipts and non-liquor (dry) receipts such as food, accommodation or other income.

11. Mr Wright had cited the FMT as £136,000 per annum (pa)(wet) at 7.75% = £10,540 and £204,000 pa (dry) at 8.25% = £16,830 to give a rounded down RV of £27,000. Mr Pearson asserted that the FMT for the appeal property was £200,000 pa (wet) at 7.75% = £15,500 and £300,000 pa (dry) at 8.25% = £24,750 to give a rounded RV of £40,000. The parties agreed that the subject property should be placed in Category 2 for wet sales and Band B for dry trade. There was no dispute as to the percentages applied.

12. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the information exchanged between the parties during the challenge process; the Valuation Officer's challenge case decision notice, details of other public houses; photographs; RICS Practice Standards – The capital and rental values of public houses, bars, restaurants and

night clubs in England and Wales; the Valuation Officer Agency - Valuation of public houses the approved guide, Rating Manual section 4: valuation method; Valuation Tribunal for England decision appeal no. CHG10003684 and the Valuation Office Agency – Business Plan 2017-2019.

13. Both parties considered the valuation of the subject property in accordance with the Approved Guide for the Valuation of Public Houses that had been agreed in respect of the 2017 list ("the Guide"), between the Valuation Office Agency and the British Beer and Pub Association. The Guide sets out an approach that is derived from an analysis of open market, free of tie and pub rents. The valuation approach involves determining the FMT of the premises in question as at the AVD. However, Mr Wright contended that the approved Guide "may not always reflect a reliable and sustainable level of FMT" and that the Guide does not have to be followed when setting out their valuation. The FMT is determined by assuming that the business is being run by a "reasonably efficient operator" who is responding to normal trading practices and competition in the local area.

14. Mr Wright contended that in this case the business owner was none the wiser as to how the RV had been arrived at. No workings out were given to the business owner. He provided some previous Valuation Tribunal for England decisions, some Upper Tribunal judgments and a list of comparable properties which he referred to in turn.

15. The cases of Jack in the Green v Buckley (VO) [110516875401/537N10] and Wishart v Hulse (VO) [UKUT 0224/ RA/70/2017] were considered to be highly relevant to his case. These cases demonstrate the importance of considering over-trading in determining FMT. Any over-trading should have been taken into account during the 2017 assessment by the Valuation Office Agency (VOA) which Mr Wright considered, did not happen.

16. Mr Wright also contended that hard work, reputation and awards attributed to the business should also be considered when assessing FMT and then discounted or reflected in the valuation. He contended that the valuer in this case had simply adopted the actual trade which was contrary to the statutory requirements and approved Guide.

17. Reference was made to several similar sized comparable pubs in the locality that Mr Wright believed should be considered in the assessment of FMT using the comparable method. These included The Swan at Coombe Hill, The Red Lion and The Old Elm Inn in Gloucester, the Farmers Arms in Lower Apperley and New Dawn Inn in Norton. The range of RVs for these pubs was from £16,750 to £38,000, with an average RV of £27,400. In comparison, the current RV for the subject property was an outlier, at £40,000, which was almost a third higher than the average of the comparable pubs. Mr Wright put forward a revised valuation of £27,000 RV for the subject property with effect from 1 April 2017.

18. Mr Pearson stated that the trade information provided at the check stage was confirmed against his office records as follows.

- Year Ending 31st July 2013 Wet £200,633, Dry £208,643
- Year Ending 31st July 2014 Wet £322,633, Dry £488,439

19. Trade for the year ending in July 2016 had also been provided to the Valuation Officer via a FOR returned to the VOA in 2019. This confirmed that the 2016 trade had grown further to:

- Wet £401,666, Dry £602,500

20. Mr Pearson contended that the figures he had used for FMT with £200,000 for wet trade and £300,000 for dry trade were well below the actual sales for drink and food and may, in his view, mean that the assessment was underassessed. The subject property had seen a fairly recent change in management with refurbishment works having been carried out. He believed that although the subject property was an attractive destination public house, with ample parking in a more rural location, it continued to bring in ample trade compared to other public houses in the locality.

21. As only two years of trade figures had been presented, Mr Pearson considered other public houses in the locality would normally be looked at. The Farmers Arms and the New Dawn Inn would be given the highest weighting as they had similarities with the subject property. These public houses were valued as Category 2, Band B with most of their FMT derived from their dry trade. He addressed the other properties in turn and their usefulness as comparable properties.

22. Of the other comparable public houses, The Swan was the closest in location to the subject property. It had a more limited wet trade and less outside space. It faced a car dealership and a petrol filling station. The Red Lion and the Old Elm Inn were different in terms of location. The Red Lion was more isolated than the subject property. Its refurbishment works prior to AVD had not been included in its current RV. The Old Elm Inn was a wet led public house and was more of a local attraction.

23. Mr Pearson did not consider any other comments and remarks made at the challenge submission would not have any impact on the FMT. Weighing up the advantages and disadvantages, Mr Pearson believed that the current assessment of £40,000 RV was not unreasonable and was in line with comparable properties such as The Farmers Arms and the New Dawn Inn public houses. He sought a dismissal of the appeal.

Relevant Law

- *Dennett v Crisp (VO)* [2013] UKUT 035
- *Brunning & Price Ltd v Wynn-Cowell (VO)* LT 2007 RA/25/2005
- *Jack in the Green v Buckley (VO)* 110516875401/537N10
- *Wishart v Hulse (VO)* UKUT 0224/ RA/70/2017
- *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141

Discussion

24. In this appeal, the panel had to determine whether the RV that had been applied to the subject property was reasonable, representing a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD) of 1 April 2015. This common date was used to ensure that every property was treated in a consistent way; otherwise, similar properties would have different rateable values if numerous dates were used, as rental levels and economic factors fluctuated over time. As this was a compiled list appeal, matters affecting the physical state or enjoyment of the property, or the locality were to be taken as at 1 April 2017. Any changes to the locality, and changes to the occupation of nearby outlets that had occurred after this date, could not be taken into consideration when determining this appeal.

25. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

26. The rent passing on the subject property of £58,671.52 pa with effect from 10 October 2022 was too far away from the AVD to be useful.

27. As there is often very little reliable rental evidence in respect of public houses, they are often assessed using the Guide. This has been agreed between the Pubs Rating Forum and the Valuation Office Agency. Using this method an RV is, in effect, based on the FMT of a public house from the various income streams, as at 1 April 2015. Although the appellant's representative had contended that they do not have to follow the Guide, the panel found the Guide to be useful in determining the RV for the subject property and it saw no good reason to deviate from this approach.

28. The panel noted that for the purposes of the 2017 Rating List, the trading figures for 2015 would normally be used as the starting point for assessments of this type. The main difference between the parties in the case of the subject property was the income figure used for the wet and dry trade. The FMT of £200,000 pa adopted for the dry sales and the FMT of £300,000 pa adopted for wet sales by the valuation officer's representative was higher than that adopted by the appellant's representative. However, looking at the trade figures provided from 2013/2014 and 2016 the panel was satisfied that this was reasonable based on those trade figures. Therefore, based on the trading figures supplied, the panel found that the FMT for both wet and dry sales adopted by the valuation officer's representative were not unreasonable.

29. Having regard to the Guide's agreed formula, once the appropriate assessment band had been determined, the valuation would then fall within the range of percentages in accordance with a geographical table which allowed for "fine tuning" of the valuation. The panel noted there was no dispute as to the Category or Band percentages used in the FMT calculations for the subject property.

30. Both parties had referred to other public houses in the locality for comparison purposes including their RVs. In relation to any potential overtrading, the panel considered that to effectively test the trade achieved at the subject property it would need to compare it against the trade achieved at comparable public houses in the locality. The panel found that The Farmers Arms (£38,000 RV) and the New Dawn Inn (£36,750 RV) had similar features and similar RVs to the subject property. The wet trade figures were the same for all three properties with just slight differences in the dry trade figures for the two comparable properties. Furthermore, the FMT for the two comparable properties and the rental bids were like that of the subject property. The panel considered The Farmers Arms and New Dawn Inn were the best two comparable properties and that they did not show the current RV of £40,000 to be unreasonable for the subject property having looked at the trading locations, the physical characteristics of the public houses and the styles of trade which were maintainable.

31. The panel decided that the valuation submitted by the valuation officer's representative was the more reasonable of the valuations provided and was in line with other public houses in the locality such as The Farmers Arms and the New Dawn Inn.

Disposal

32. In view of the above findings and conclusions, the panel is satisfied that the £40,000 RV with effect from 1 April 2017 was not excessive. The appeal was dismissed.

33. Under The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation 39, Clerical mistakes and accidental slips or omissions, the VTE may at any time correct any clerical mistake or other accidental slip or omissions in a decision, direction, order or any document produced by it. In this case corrections have been made to paragraphs 13 and 27. The decision is reissued to reflect those corrections.

Date issued to parties: 2 August 2024
Dated reissued to parties: 23 August 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.
