VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; public house and premises; fair maintainable turnover; reasonably efficient operator; comparable properties; approved guide for the valuation of public houses; appeal dismissed.

APPEAL NUMBER: CHG101095009

RE: Inn on the Green,2 Filton Road, Horfield, Bristol BS7 0PA
(the "subject property")

BETWEEN:	Odinns Ltd	Appellant
	and	
	Lucy Formela-Osbourne MRICS (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 4 October 2024

BEFORE: Miss A M Price, Presiding Senior Member
Mrs N Carman, Senior Member

CLERK: Mrs A Sloan IRRV(Hons)

APPEARANCES: Mr C Wright of the Pubs Advisory Service (Appellant's representative)
Mr M Pearson (Valuation Officer's representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the existing entry in the 2017 rating list at £65,500 Rateable Value (RV) was reasonable.

Introduction

3. The appellant made a proposal on 24 July 2023 to challenge the entry in the 2017 Rating List of £72,000 with effect from 1 April 2017. The proposal sought a reduction to £48,000 RV. The

Valuation Officer (VO) agreed that the compiled list entry was unreasonable and reduced the entry to £65,600 RV with effect from 1 April 2017. The Challenge decision was issued on 4 October 2023 and an appeal against that decision was received by the Tribunal on 1 February 2024.

4. Prior to an earlier listing of this appeal, the VO had supplied additional documentation, namely a VTE decision from April 2024 on an appeal for the Seven Stars Inn, Plymouth, some photographs, and a map showing the subject property and comparable properties referred to in the parties' submissions. No objection was received from Mr Wright at the time and the documents were not considered to constitute new evidence. The panel therefore considered all documents on file for this case.

5. Mr Wright stated that he was appearing as Advocate for the appellant. In view of the Upper Tribunal's judgment in *Gardiner & Theobold LLP v Jackson* (VO) [2018] UKUT 0253 (LC), Mr Pearson declared he was appearing in a dual role as Advocate and Expert Witness for the Respondent.

6. During the hearing, Mr Pearson briefly lost connection so the hearing was paused until he could reconnect. The panel was satisfied that this did not interfere with proceedings and Mr Pearson was invited to recap when the connection was restored.

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

Issue and Relevant Law

8. The subject property is valued as a public house and premises. It is located in Horfield, Bristol toward the northern end of the Gloucester Road close to the football and cricket grounds and the hospital.

9. The issue for the panel to determine was the correct RV with effect from 1 April 2017 for the subject property. Mr Wright's submissions questioned the respondent's methodology in assessing the original compiled list entry and he submitted that the revised valuation clearly demonstrates the initial valuation was incorrect. He submitted that the VO had not supplied information about the valuation at Check stage and the appellant was not asked during the Challenge stage about over trading. Mr Wright contended that the VO had not followed the correct process and, in his closing remarks, invited the panel to scrutinise the whole appeals process.

10. The panel was aware that it has no jurisdiction over the process at Check and Challenge stage so any allegations about the VO's handling of those procedures would need to be addressed through the respondent's complaints process. The Tribunal's jurisdiction begins when a valid appeal is lodged. In this case the VO accepted that the original compiled list entry was excessive, hence the revised valuation in the Challenge decision. The panel was not required to scrutinise the original valuation as the only issue before it was the entry in the list following the Challenge decision issued on 4 October 2023.

11. Mr Wright raised various points during the hearing regarding the VO's use of the Valuation of Public Houses Approved Guide (hereafter referred to as "the Guide"). This publication is drawn up by the Valuation Office Agency (VOA) in conjunction with the Pubs Rating Forum. The panel did not find his questioning of Mr Pearson on the qualifications of those involved in the compilation of the Guide or the raw data used in the various charts within to be helpful.

The panel was aware that a similar guide is published for each rating list, and it has been long established to assist with valuing public houses. It found that the Guide should be used unless there was compelling evidence not to do so and assessing a public house on Fair Maintainable Turnover (FMT) was reasonable in the absence of stronger evidence of the subject property's value on the antecedent valuation date (AVD) of 1 April 2015. The property must be considered on the material day of 1 April 2017 as this is an appeal against the compiled list entry.

Discussion

12. Mr Wright submitted that the appellant's proposed RV of £48,000 was arrived at by taking an average of the RV ascribed to four pubs in the locality which he considered comparable to the subject property. The pubs in question are The Crafty Cow (£41,500 RV), The Beehive (£11,900 RV), The Gloucester Old Spot (£63,000 RV) and The Royal Oak (£75,500 RV). His proposal highlighted that the average of these valuations, on pubs that he considered representative and similar in size, demonstrated that the RV of £72,000 originally ascribed to the subject property was clearly excessive. It was submitted that the appellant is overtrading, and the comparable pubs cited would not be expected to achieve the same level of trade as the subject property.

13. Mr Pearson explained that the Guide requires the valuer to assess the likely FMT that could be achieved by a Reasonably Efficient Operator (REO) on the material day. The starting point for this is usually the actual trade figures for the subject property around the AVD and adjustments are then made to reflect various elements to arrive at the rent a hypothetical tenant and REO would expect to negotiate on the AVD of 1 April 2015, with reference to the information available on that date.

14. Mr Wright proposed the FMT at £369,200 for wet sales and £131,800 for dry sales. He then applied 10.5% to the wet sales (£38,766) and 7% to the dry sales (£9,226), resulting in an RV of £47,992 rounded to £48,000. The panel understood this valuation was provided to reflect the average RV he had calculated from comparable pubs.

15. Mr Pearson submitted that the subject property is subject to an annual rent of £207,367 from September 2022. However, the panel considered this to be too far removed from the AVD and pub rents are not always reliable for valuation purposes as they may contain an element for domestic accommodation, as was the case here. Mr Pearson stated that the current valuation had firstly considered the actual trade figures for the Inn on the Green for the years prior to the AVD. The reported figures for 2013 to 2015 demonstrated a consistent trade in wet sales and an increase in dry sales. The trade for 2015 was £530,600 for wet sales and £227,400 dry sales. After considering the actual trade figures and the likely annual trade for a REO on the AVD, the VO had applied the FMT at £525,000 for wet sales and £200,000 for dry sales. The percentage rental bids applied were 10.49% (wet) and 6.5% (dry), resulting in the revised RV of £65,500.

16. The panel noted that the FMT used by the VO was less than, but close to, the actual trade figures for the subject property. Mr Wright's FMT was significantly lower than the actual trade and he contended that this was because the appellant was over trading. In order to test whether this was the case, Mr Pearson presented the VO's evidence on the comparable pubs in the locality. It was clear to the panel that the FMT varied depending on the actual trade and different attributes of each pub. It first considered the two pubs geographically closest to the subject property.

17. The appellant's submission cited The Beehive as a live music venue with a large and attractive beer garden with good passing trade. However, the VO contended that this property was in a local community setting with no main road frontage and its FMT indicated an inferior location to the subject property. With an FMT of £110,000 (wet) and £105,000 (dry), and its location on a side road away from the main thoroughfare, the panel did not find this property comparable.

18. It was noted that The Crafty Cow was not an independent pub but was tied to the Greene King brewery in April 2017, although it had since moved away from that affiliation. Its FMT was £350,000 (wet) and £150,000 (dry). Although this property is geographically closest to the subject property, the panel found that its FMT suggested it was less valuable on the material day. Although the appellant contended it has a large beer garden and good parking, this did not appear to be reflected in the trade when compared to the subject property.

19. The Anchor and The Lazy Dog are located the furthest from the subject property. The Anchor (FMT £650,000 wet sales and £125,000 dry sales) appeared to be less comparable in its food sales and The Lazy Dog (FMT £450,000 wet sales, £170,000 dry) did not demonstrate trade close to the subject property in either area.

20. The panel found that The Gloucester Old Spot was a similar character pub and it is independent of a chain, as is the subject property. However, it is not on the same Gloucester Road thoroughfare as the subject property and its trade appeared to be more evenly distributed between wet (£350,000) and dry sales (£350,000).

21. After considering all the examples presented, the panel found the best comparison to be that of The Royal Oak. The VO conceded that this property benefits from a superior position compared to the subject property. Its FMT is £550,000 (wet sales) and £200,000 (dry sales), very similar to the actual trade figures for the subject property in 2015. The percentage rental bids applied for The Royal Oak were 11% (wet) and 7.5% (dry). The VO submitted that the FMT for this property demonstrates the trading potential is affected by the competing nearby establishments in close proximity.

22. The panel found that the FMT on the valuation for The Royal Oak was close to the actual trade achieved at the subject property. Mr Wright contended the appellant was over trading, but no evidence had been supplied to support this position. He submitted that the appellant was not required to evidence any over trading as this should have been a factor in setting the initial compiled list valuation. The panel did not agree with this position. The purpose of an appeals process is for the appellant to challenge an entry in the list that is perceived to be excessive. The burden rests with the appellant to provide the VO, and the Tribunal, with any evidence on which he relies to demonstrate why the actual trade figures should not be a consideration when setting the FMT. The panel concluded that the trade figures from 2013 to 2015 demonstrated strong consistent sales, which would be a factor researched by the hypothetical tenant fresh to the scene with a view to negotiating a lease on the AVD. No evidence had been provided to illustrate any element of the appellant's business model or trading that was exceptional or unachievable by a REO.

Disposal

23. In view of the above findings and conclusions, the panel found that the appellant had not discharged the burden of proof and the existing entry in the rating list at £65,500 was not unreasonable. The appeal was therefore dismissed.

Date issued to parties: 23 October 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.