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:	CHG101098723	
RE:	The Nags Head, 5 Russell Street, Reading RG1 7XD (the "subject property")	
BETWEEN:	Jody Oates	Appellant
	and	
	Lucy Dyer 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) Mrs P Rowntree (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 £38,250 Rateable Value (RV) was reasonable.

Introduction

3. The appellant made a proposal on 31 July 2023 to challenge the entry in the 2017 rating list of £54,500 with effect from 1 April 2017. The proposal sought a reduction to £20,500 RV. The

Valuation Officer (VO) agreed that the compiled list entry was unreasonable and reduced the entry to £38,250 RV with effect from 1 April 2017. The Challenge decision was issued on 30 November 2023 and an appeal against that decision was received by the Tribunal on 4 February 2024.

4. 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), Mrs Rowntree declared she was appearing in a dual role as Advocate and Expert Witness for the Respondent and provided her statement of truth prior to the hearing.

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

Issue and Relevant Law

6. The subject property is valued as a public house and premises. It is an end of terrace property with the commercial operation located on the ground floor and basement plus residential accommodation on the first and second floors. The property dates from between 1900 and 1914 and is of traditional construction. An inspection was carried out by Mrs Rowntree on 13 September 2023 and the total customer area was confirmed at 90.61m^2 with a kitchen area of 12m^2. It was established with the appellant that the car park was converted to a pub garden as a consequence of the Covid 19 pandemic and therefore on the material day of 1 April 2017 the subject property did not have a garden but a car park. The subject property specialises in real ales and has a limited food trade.

7. 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.

8. 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 30 November 2023.

9. 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 Mrs Rowntree 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

10. Mr Wright contended that the initial compiled list valuation was based entirely on the actual trading figures for the subject property and that the appellant was over trading, which was not factored into the valuation. He submitted that the VO was attributing the success of the business purely to the property, rather than the performance, investment, and success of the appellant. Mr Wright asked the panel to reduce the subject property's RV to £20,500, which was arrived at by taking an average of the RV ascribed to six pubs in the locality that he considered comparable to the subject property. The pubs in question are The Castle Tap (£9,300 RV), The Foresters Arms (£9,300 RV), The Butler (£9,350 RV), The Rose and Thistle (£47,100 RV), The Allied Arms (£30,200 RV) and The Greyfriar (£17,250 RV). His proposal highlighted that the average of these valuations, on pubs that he considered representative and comparable, demonstrated that the RV of £54,500 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.

11. Mrs Rowntree 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.

12. Mr Wright proposed the FMT at £188,000 for wet sales only and applied 10.9% to the sales (£20,492), resulting in an RV rounded to £20,500. The panel understood this valuation was provided to reflect the average RV he had calculated from comparable pubs.

13. Mrs Rowntree submitted that the subject property is subject to an annual rent, which increased in 2011 when the appellant bought themselves out of the tie to become independent. The rent paid closest to the AVD was £62,000 (2013) and £65,000 (2016). Mr Wright contended that the rent was not relevant as there may be many reasons for the rent set and the letting model for pubs had been scrutinised and found to have lots of issues. The panel was aware that rents for pubs can contain incentives or elements for domestic accommodation, so it was probably not the best method of valuation for this type of property.

14. However, the panel noted that the appellant had indicated over £240,000 was spent in the year ending 2016 on all goods for retail, including food and drink. The panel found this demonstrated that the FMT proposed by Mr Wright was significantly lower than the business expenditure and would suggest the pub was not solvent, which was clearly not the case. The panel therefore turned to the VO's evidence, using the actual turnover as a starting point.

15. Mrs Rowntree submitted that the appellant had provided the trade figures for the year ending 31 March 2013 (£488,067), the year ending 6 April 2014 (£494,344), and the year ending 5 April 2015 (£513,220 wet, £27,737 dry). She contended that these figures would have been available to the hypothetical tenant on the AVD when negotiating a rent. Mrs Rowntree compared the subject property's trade figures with the FMT adopted on the comparable pubs in the locality and agreed that there was an element of overtrading. As the actual sales would

result in an excessive RV, she had applied £370,000 as the FMT with a percentage rental bid of 10.35%. This rounded to a revised RV of £38,250.

16. The subject property and comparable pubs identified by the parties in the locality were inspected by Mrs Rowntree and she had provided her observations. Mr Wright challenged Mrs Rowntree's use of measurements to compare the pubs, but the panel found that comparisons could be made by a variety of means, including size and character. It was noted that paragraph 7.2 of the Guide, "Potentially Over-Trading Public Houses" stated that where *"the initial valuation is patently out-of-line with other houses….., and this appears inconsistent with the assessments of similar styles of property in similar locations, operated by different occupiers, valued on the receipts basis following disclosure of full trade information, the valuation should be reviewed."*

17. The Guide goes on to state "*If such differences cannot be explained by the vagaries of the market, the individual physical characteristics and size of the house, the type and style of trade which is maintainable, its customer base and the nature of the trading locality, it will be necessary to revisit the initial estimate of FMT in order to reconsider whether this is consistent or substantially out-of-line with the turnover achieved at other houses."* The panel found therefore that it was entirely appropriate to consider the size, character, location, and trading style of all the similar pubs in the locality for comparison.

18. The panel considered the comments provided by both parties and noted Mrs Rowntree had accepted that, in comparison to similar pubs in the area, the appellant was over-trading and the FMT should be adjusted accordingly. The following properties were identified by the parties and inspected by Mrs Rowntree; The Castle Tap, The Foresters Arms, The Butler, The Rose and Thistle, The Allied Arms, The Greyfriar, The Alehouse, The Pond House, The Hop Leaf, The White Eagle, and The Retreat. It is not necessary to repeat the comments of both parties in this decision, but the panel found the observations useful.

19. Mrs Rowntree submitted that the best comparison to the subject property was The Alehouse, a pub that the appellant had identified as being the biggest rival to the subject property when she spoke with him while inspecting The Nags Head. She was of the opinion that The Alehouse benefits from a superior location, but the subject property has a better layout and larger customer area. Neither had a beer garden on the material day but both are independent pubs serving the same range of real ales. The valuation for The Alehouse had been the subject of a challenge and therefore its FMT had been scrutinised. The RV was agreed between the appellant and the VO for the 2017 rating list at £38,500. Mrs Rowntree submitted that the FMT adopted for The Alehouse, at £370,000, was reasonable for the subject property.

20. After considering all the evidence presented, the panel found that the VO's evidence held the most weight. Mrs Rowntree had accepted the appellant was over-trading and the original compiled list entry at £54,500 was excessive in comparison with other similar pubs in the locality. She considered the appellant to be an Exceptional Operator, as opposed to an REO, and therefore the actual trading figures for the pub carried less weight in this case. However, the panel noted that the actual trade and the rent passing at the AVD for the subject property were far in excess of the FMT proposed by the appellant at £188,000. It was not persuaded by the valuation approach taken by Mr Wright, taking an average RV of selected pubs in the area as this did not account for the variations in character, size, location, attributes, and style of trade at each property.

21. The panel found that Mr Wright's focus in this appeal appeared to be more on his criticism of the Check, Challenge, Appeal process, the Guide, and his dissatisfaction with the VO's responses. However, that is not a matter for this Tribunal and there was little substance to support the proposed RV of £20,500. The panel considered that the revised entry in the 2017 rating list at £38,250 was reasonable and Mrs Rowntree had explained the methodology to arrive at this figure. The burden of proof in this type of appeal rests with the appellant to persuade the panel that the valuation is wrong, and the panel was not satisfied that the burden had been discharged in this case.

Disposal

22. In view of the above findings and conclusions, the panel dismissed the appeal.

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.
