VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal; Local Government Finance Act 1988; Public House and Premises; Fair Maintainable Trade; Location of property; Comparable properties; The Approved Guide for the Valuation of Public Houses; appeal dismissed.

APPEAL NUMBER:	CHG101098727
RE:	St John's Tavern Public House, 91 Junction Road, London N19 5QU (the “appeal property”)

BETWEEN:	St Johns Tavern	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	Monday 28 October 2024
BEFORE:	Mr AN Backway (Presiding Senior Member) Mr P Blythe-Bartram (Senior Member)
CLERK:	Miss K Hendry IRRV(Hons)
APPEARANCES:	Mr C Wright pf The Pub Advisory Service (Appellant’s Representative) Ms R Begum (Respondent’s Representative)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed the appeal property’s assessment at £100,000 rateable value (RV) with effect from 1 April 2017.

Introduction

3. This is a 2017 Rating List appeal against the RV of the appeal property of £100,000, with effect from 1 April 2017. The challenge submitted by The Pub Advisory Service on 31 July

2023 on behalf of the appellant sought a reduction to RV £80,000 on the basis that the Valuation Office Agency (VOA) had not carried out the valuation in accordance with statutory requirements.

4. The Valuation Officer (VO) did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 25 January 2024 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice on 24 May 2024.

5. Mr Wright appeared on behalf of the appellant as advocate only.

6. The appeal property was located on Junction Road, which is a busy high street located near to Archway and Tufnell Park underground stations with Upper Holloway overground situated 0.3 miles away. The appeal property was a detached three storey traditional public house of brick construction. The upper floors consisted of residential accommodation. The ground floor comprised a main bar with seating area, dining area, rear bar, customer toilets and a kitchen. There was a storage area and beer cellar in the basement. There was also a small outside seating area.

7. The pub is food led with regular customers and is family friendly. There is fresh food delivered regularly and the menu is changed daily. Beer deliveries are made daily, and there are ten beers available on tap, a good wine list and it also serves spirits.

8. 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.

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

Background

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

11. Having regard to three comparable properties, Mr Wright contended that the RV should be reduced to £80,000 based on the FMT as £400,000 per annum (pa) for wet at 11.6% equating to £46,400 and a dry trade of £400,000p.a at 8.5% equating to £34,000. This totalled £80,400, to give a rounded down RV of £80,000.

12. Ms Begum asked the panel to confirm the RV of £100,000 based on FMT of £500,000p.a for wet trade based on 11.6% equating to £58,000 and a dry trade of £500,000p.a based on 8.5% equating to £42,500. This totalled £100,500, which rounded down gave a RV of £100,000.

13. There was no dispute as to the band or percentages applied.

Preliminary issue

14. Ms Begum provided some photographs following an inspection, which Mr Wright did not object to. Therefore, the panel allowed them to be submitted as evidence.

15. The weekend before the tribunal, Mr Wright submitted late evidence which consisted of a Freedom of Information (FOI) letter he had received from the Valuation Office Agency (VOA) dated 27 August 2024. The letter referred to the 'Approved Guide for the Valuation of Public Houses' (the Guide) in which Mr Wright argued that the guide is not statutorily approved by the VOA, and therefore the relevance is dubious given the confirmation as to its status. He explained that he was only just submitting it because he had only just retrieved it from his email inbox.

16. Tribunal's standard directions prescribed that a party may make an application to include any further evidence no later than four weeks before the hearing. This would give the other party an opportunity to consider the submission and object to, or support, the application. The panel would therefore need to consider the reasons for the late application under the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926. If it was satisfied there were good reasons why the application could not have been made on time, it would then need to decide on admissibility with consideration of the limits set out in Regulation 17A of the Procedure regulations. Regulation 17A restricts new evidence to matters which relate to the appeals and were not known to the party before the VO issued her decision on the proposals.

17. The panel retired briefly after hearing from both parties and determined that the late evidence could be admitted. The panel accepted that the appellant's representative had only just become aware of this letter. The panel held that the VO would not be disadvantaged by its inclusion.

18. The parties were informed that the panel would be having regard to the statutory basis to determine the RV as outlined in Schedule 6 of the Local Government Finance Act 1988. The panel accepted that the guide had no statutory basis, but that it was an approved guide between the Pubs Rating Forum representatives and the VOA. The panel advised the parties that it would be for them to determine how much weight they applied to the guide, and if there was any stronger evidence or approach presented by either party which the panel adopt instead of the guide.

Discussion

19. 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.

20. 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.

21. The rent passing on the subject property of £128,000 pa with effect from 28 August 2015 which was free of tie. The rent included the residential upper floors which had been vacant for six months.

22. Mr Wright had argued that the VO had failed to provide a clear explanation as to how it had come to its calculation of the RV. He stated that the percentages adopted were unproven given that there was no raw data behind them. It was his opinion that the VOA had placed disproportionate emphasis on the actual trade resulting in an illegal 'turnover tax' which penalised the appellant for their performance and success. Mr Wright argued that there was no obligation for the appellant to adopt the Guide when determining the RV of a public house as the Guide "may not always reflect a reliable and sustainable level of FMT". 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.

23. Mr Wright stated that the RV appeared to be excessive when compared to the values assigned to comparable public houses in the area. In support of this he provided details of three public houses which he considered to be comparable to the subject property.

    a) The Oak and Pastor – 86 Junction Road, London (RV £19,250)
    b) The Star – 47 Chester Road, London (RV £32,000)
    c) The Bull and Last – 168 Highgate Road, London (RV £164,000)

24. The range of RV's for these pubs is from £19,250 to £164,000 with an average of £71,750 in comparison to the appeal property which was an outlier at £100,000, almost a third higher than the average of the comparable pubs. Mr Wright considered the comparable pubs to be located in better areas with superior footfall and passing trade.

25. Ms Begum argued that the RV adopted is lower than the passing rent on the appeal property and therefore the RV seemed reasonable. The appellant had provided the FMT for 2013, 2014, 2015, 2016 and 2017 and the RV applied by the VO is in line with the FMT provided by the appellant, with other years being significantly higher than in 2015. At the end of 31 October 2015, the wet trade was £502,936 and the dry trade was £527,652. In 2014 the wet trade was £624,367 and dry £640,722.

26. She stated that the case of *Watney Mann Ltd v Langley (VO) [QB 1963]* confirmed that in arriving at the FMT, the actual trade on the appeal property should be the starting point as endorsed by Lord Justice Thompson. Comparable properties would be taken into account when estimating the FMT if there was not any relevant trade evidence from the appeal property.

27. Ms Begum stated that the VO's approach was to adopt an FMT of £500,000 based on actual trade, which was lower than the trade achieved. Therefore a reasonable efficient operator would be able to achieve this level of FMT in the locality. She contended that this was further supported by comparable pubs.

28. In response to the appellant's representative comparable properties, Ms Begum stated that The Oak and Pastor was located approximately 100 yards from the appeal property. However, it was considerably smaller and had a small food offering which equated to de-minimis trade. It had no website, and according to WhatPub the trade offering is inferior to the appeal property. Therefore, Ms Begum did not consider this property to be comparable to the appeal property. The RV for this pub was £19,250 and had not been challenged. The Star was located approximately 0.4 miles from the appeal property in the borough of Camden. It

was located on a residential side road with less footfall in comparison to a busy retail high street. It was smaller than the appeal property and therefore expected to have less trade. The RV for this property had been based on the actual trade, and the RV of £32,000 had not been challenged. The Bull and Last was located 0.8 miles away on a main road with a retail location. The RV for this property was also based on actual trade and had not been challenged.

29. Ms Begum stated that she had regard to the appellant's comparable properties, some of them were either wet trade only or located in a residential area. However, she did have regard to the Duke of Cambridge located at 30 St Peters Street. The RV for this pub was reduced from £115,000 to £96,000 on a challenge submission. It was reduced based on the trade information at the AVD. The pub is located three miles from the appeal property and 0.5 miles from Angel station. Ms Begum stated that this pub had a similar offering as the appeal property, the food menu was fully organic and changed daily. It was situated on a side street in a majority residential area with a small number of commercial units. In her opinion, Ms Begum stated that this comparable property supported the current RV for the appeal property not being unreasonable given that it was within three minutes' walk from Archway station in a less residential area and on a busier high street.

30. She also referred to comparable properties of The Boston Arms which was a public house located on the same road as the appeal property, within 0.4 miles away. This property had minimal food offering in comparison to the appeal property and was currently in the list at RV of £93,000. The Junction Tavern was a public house of similar style and was located 0.6 miles away. She considered this property to be in a slightly less retail location. The food offering was not too dissimilar to the appeal property and there was also a good wet trade. This property had a RV of £119,000 based on actual trade.

31. In coming to a decision, the panel was aware of the case *JD Wetherspoon PLC v Day (VO)[2008] RA 129* in which the adoption of the Guide had been endorsed with the judge stating;

> "Where there is an agreed scheme for a particular class of property then you should follow the scheme unless there is good evidence not to."

32. As there is often very little reliable rental evidence in respect of public houses, they are often assessed using the valuation approach set out in the Guide, which involves determining the FMT of the premises in question as at the AVD of 1 April 2015. The panel held that there was no evidence to support deviating from the Guide and held that the appeal property should be valued in accordance with the Guide.

33. The panel placed little weight on the rent set for the appeal property on 28 August 2015 due to it including the residential areas.

34. Having regard to the trade provided and the comparable properties, the panel found that there had been no evidence of "overtrading" at the appeal property and considered that the trade being achieved would be considered sustainable by a reasonably efficient operator. The VO have adopted the FMT at a lower value than what the actual trade had achieved.

35. The panel had regard also to the comparable properties provided by the parties. In particular those provided by the VO of similar pubs in the locality, namely The Junction Tavern which had a RV higher than the appeal property in a slightly less retail location; The Boston Arms, had a similar RV of £93,000 but the food was considered to be minimal in comparison and

the Duke of Cambridge which also had a menu that changed daily all supported the RV for the appeal property. The RV for these pubs had all also been calculated having regard to their trade and had not been challenged.

36. The panel applied little weight to the appellant's comparable properties as they were located in residential side roads or smaller than the appeal property.

37. The panel were satisfied having regard to the case of *Watney Mann v Langley* that comparable properties are taken into account where there is a lack of trade evidence, which was not the case for this appeal.

38. Having regard to all the evidence presented before it, the panel were satisfied that the current RV of £100,000 did not look unreasonable.

Disposal

39. In view of the above findings and conclusions, the panel is satisfied that the £100,000 RV with effect from 1 April 2017 was not excessive. The appeal was dismissed.

Date issued to parties: 20 November 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.