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VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2023 rating list; public house and premises; Fair Maintainable Trade; location of property; comparable properties; The Rating List Approved Guide for the Valuation of Public Houses; appeal dismissed.

APPEAL NUMBER:	CHG101125191	
RE:	Bear Hotel, High Street, Burwash TN19 7ET (the "subject property")	
BETWEEN:	Wexford Inns Limited	Appellant
	and	
	Ms D Bunyan (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 R Das – Valuation Officer's representative	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel confirmed the subject property's assessment at £42,600 rateable value (RV) with effect from 1 April 2023.

Introduction

2. This is a 2023 Rating List appeal against the RV of the subject hereditament of £42,600, with effect from 1 April 2023. The challenge submitted by Pubs Advisory Service Ltd on 20 July

2023 on behalf of the appellant sought a reduction to RV £28,000 on the basis that the valuation is unlawful and unsound.

3. 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.

4. Mr Das appeared as advocate and expert witness on behalf of the Valuation Officer.

5. The subject property is an end of terrace property located on High Street, Burwash in East Sussex, next to a large free public car park. This car park is car park for the village hall, local Fairfield Surgery and Burwash Parish Council, so is the central point for the high street. In terms of location there is no better location on Burwash High Street for accessible and visible to passing trade. The property also benefits from its own dedicated parking. The subject property consists of 75 covers with the capacity of approximately 150 people. There is a rear beer garden for use by customers which overlooks fields and an accommodation block. It has eight letting rooms.

6. The material day for this appeal is 1st April 2023, when the physical circumstances of the subject property and its locality are taken into account.

7. A joint inspection of the subject property was carried out on Friday 23 October 2023. The inspection confirmed that the premises had undergone significant refurbishment. “Remodelling of the bar, refurbishment of the letting rooms, flat roof repairs and updating of appliances”. Refurbishment costs totalled over £270,000 according to information supplied by the business owner.

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 2023.

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 2021 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 £160,500 per annum (pa)(wet) at 7.90% = £12,680, £134,500 pa (dry) at 5.69% = £7,653 and £78,500 for accommodation at 9.70% = £7,615 to give a rounded down RV of £28,000. Mr Das asserted that the FMT for the appeal property was £245,000 pa (wet) at 7.90% = £19,355, £205,000 pa (dry) at 5.69% = £11,665 and £120,000 for accommodation at £11,640 to give a rounded RV of £42,600. There was no dispute as to the percentages applied in the calculations as both parties had applied the same figures.

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; details of other public houses; photographs; Valuation Officer's challenge case decision notice; 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 (VOA) – 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 ("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 and, as such, there was insufficient detail to justify the valuation. He believed that the VOA's improper application of the method of valuation (FMT) had cast serious doubt on the accuracy of the assessment. Mr Wright 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 by the VOA, which Mr Wright considered, did not happen.

16. Reference was made to several similar sized comparable public houses in the locality that Mr Wright believed should be considered in the assessment of FMT using the comparable method. These included The Bell Inn and the Rose and Crown in Burwash, The Wheel Inn in Burwash Weald and The Royal George Hotel in Hurst Green. The range of RVs for these public houses was from £6,250 to £32,250, with an average RV of £16,125. In comparison, the current RV for the subject property was an outlier, at £42,600, which was almost three times higher than the average of the comparable public houses. The Valuation Officer's representative had not provided any comparable properties that he could rely upon to support this RV in their 2023 assessment. Mr Wright put forward a revised valuation of £28,000 RV for the subject property with effect from 1 April 2023.

17. Mr Das understood that the current level of trade of FMT with £245,000 for wet trade, £205,000 for dry trade and £120,000 for accommodation was not disputed, however, the appellant's representative argued that the current operator was overtrading. Mr Das stated that "there was no evidence or rationale provided as to why the trade should be considered as 'over'. Serving good quality food is NOT a measure of overtrading".

18. With regard to the comparable properties put forward by Mr Wright, it was understood that The Bell was not trading and had not been open for some time. The closest public house was The

Rose and Castle with an RV of £32,250. This property was located along a narrow lane off the High Street and was therefore not as prominent in Burwash as the subject property. It also had a smaller footprint.

19. Mr Das contended that when considering the trade, location and rent passing the current RV of £42,600 with effect from 1 April 2023 was not unreasonable.

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

20. 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 2021. 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.

21. 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.

22. The rent passing on the subject property of £52,000 pa with effect from 30 April 2019 was higher than the RV. However, the panel noted that this rent was two years pre AVD and therefore it attached what weight it considered was appropriate.

23. 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 2021. 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.

24. The panel noted that for the purposes of the 2023 Rating List, the trading figures for 2021 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, dry and accommodation trade. The FMT of £205,000 adopted for the dry sales, £240,000 adopted for wet sales and £120,000 for accommodation by the valuation officer's representative was higher than that adopted by the appellant's representative. The panel understood that the trade figures were provided by the business owner on a Form of Return. Therefore, based on the trading figures supplied by the business owner, the panel found that the FMT for wet and dry sales and accommodation adopted by the valuation officer's representative were not unreasonable.

25. 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.

26. Reference had been made 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. As no other trade figures for the comparable public houses in the locality were publicly available, the panel could draw no reliable conclusion on overtrading. The appellant's representative had also suggested that as the comparable properties were arguably more desirable and in better trading location, the RV for the subject property should fall somewhere between £6,250 and £32,250. Again, with no details as to how those RVs had been arrived at, the panel considered it difficult to draw anything reliable from those RVs.

27. Having looked at the trading locations, the physical characteristics of the public houses and the passing rent on the subject property, the panel was satisfied that the current RV of £42,600 did not look unreasonable.

Disposal

28. In view of the above findings and conclusions, the panel is satisfied that the £42,600 RV with effect from 1 April 2023 was not excessive. The appeal was dismissed.

29. 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 23. The decision is reissued to reflect those corrections.

Date issued to parties: 5 August 2024
Date reissued to parties: 23 August 2024

Right of further appeal

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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.