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:	CHG101146312
RE:	The Pilgrim, 247 Kennington Lane, London, SE11 5QU (the "subject property")

BETWEEN:	WWT Pilgrim LTD	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	9 August 2024
BEFORE:	Ms R Sharma, Presiding Senior Member Ms C Caiquo, Senior Member
CLERK:	Mr J Massey IRRV(Dip)
APPEARANCES:	Mr C Wright of the Pub Advisory Service for the appellant Ms L Tang for the respondent Valuation Officer

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed the rateable value (RV) of £64,000 for the subject property was reasonable.

Introduction

3. This is a 2023 Rating List appeal against the RV of the subject property of £64,000, with effect from 1 April 2023. The challenge submitted by The Pub Advisory Service on 20 October 2023 on behalf of the appellant sought a reduction to RV £29,750 on the basis that the Valuation Office Agency (VOA) had not carried out the valuation in accordance with statutory requirements or followed the approved guides and methods in relation to establishing the fair maintainable trade (FMT) of the subject property.

4. The Valuation Officer did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 1 March 2024 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice on 8 March 2024.

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

6. Ms Tang appeared on behalf of the respondent as both advocate and expert witness. Her statement of truth confirmed that she was not instructed under any conditional or other success-based fee arrangement.

7. As part of their induction training, a new member of the Tribunal was observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleague to accompany it to the retiring room. The parties were assured that the new member would not participate in the decision-making exercise but would simply observe as part of their training. Neither party had any issues or objections to this.

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

Background

9. The subject property is a public house located at 247 Kennington Lane in Kennington in South London, located 1.4 miles south of Charing Cross in Inner London. The property has a customer area of 148.99m^2 which consists of 50 covers and has a capacity for approximately 150 people with additional capacity in a small beer garden to the rear with a retractable roof and a patio area to the front with additional seating. It is a traditional pub of standard brick construction with single glazed windows and it is set on a main road within a conservation area.

10. The evidence provided by the appellant along with the appeal submission comprised a copy of the check decision; the challenge document and supporting evidence; the information exchanged between the parties during the challenge process; the 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 VOA - Valuation of Public Houses Approved Guide 2023; Rating Manual section 4: valuation method; Valuation Tribunal for England decision appeal no. CHG10003684 and the Valuation Office Agency – Business Plan 2017- 2019.

11. The Valuation of Public Houses Approved Guide 2023 ("The Guide") had been agreed between the VOA and the Pubs Rating Forum. The Guide sets out an approach that is derived from an analysis of open market; free of tie; pub rents. The valuation approach involves

determining the FMT of the premises in question as at the AVD of 1 April 2021. The appellant's representative had provided excerpts from The Guide in his submission:

"The FMT adopted should represent the annual trade considered to be maintainable at the AVD, 1 April 2021, having regard to the physical nature of the property and its location as at 1 April 2023 when the new rating lists come into force (or subsequently following a material change of circumstances) on the assumption that the enterprise will be carried out by a "reasonably efficient operator" (REO) responding to normal trading practices and competition in the locality. It should be recognised that actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level of FMT. Rental percentages are then to be determined, in accordance with the principles set out in this Guide, and applied to the income streams for drinks, food, accommodation and certain other receipts. The sum of the rateable values attributable to these separate income streams, together with the value attributable to any other part of the property that is not reflected in the FMT will, in most cases, provide the total rateable value."

"It should be recognised that actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level of FMT."

"valuations should not be arithmetic calculations and must be considered, by a competent valuer experienced in the licensed property sector, within the terms of this Guide having regard to the individual nature of each property, its location, trading style, the completion landscape and the prevailing trading levels of competitor outlets."

12. Both parties considered the valuation of the subject property in accordance with The Guide. The appellant had adopted a FMT of £278,700 for Wet trade (liquor sales) and £65,600 for Dry trade (food sales). Applying the appropriate rental percentages (9.55% Wet and 5.15% Dry) resulted in the proposed RV of £29,994 (rounded to £29,750). The respondent had estimated the FMT for Wet trade to be £595,000 and Dry trade to be £140,000. Both parties had adopted the same rental percentages, the respondent had thus calculated the RV to be £64,000.

13. Mr Wright contended that the respondent had not carried out a full valuation of the subject property in 2023 when assessing its RV at £64,000. The appellant had sought further information during the Check stage in order to clarify how the RV of the subject property had been derived but none was forthcoming. Mr Wright stated that the cases of *Jack in the Green v Buckley (VO)* [110516875401/537N10] and *Wishart v Hulse (VO)* [UKUT 0224/ RA/70/2017] demonstrated the importance of considering over-trading when determining FMT and any over trading should have been taken into account during the 2023 assessment by the VO which Mr Wright considered did not happen. A basket of comparable assessments in the locality had not been analysed when calculating the RV to determine whether the trade figures for the subject property were excessive due to 'overtrading'. Instead, he argued, the respondent had relied solely on the actual trade figures provided by the appellant to determine its FMT and consequential RV.

14. He stated that the appellant's turnover was due more to his experience in the trade and investment in the business than the attributes of the property itself, and greatly exceeded the turnover which would be achieved by a REO. As a result, he asserted that the respondent had greatly overestimated the FMT of the subject property, exposing the appellant to what amounted to a 'turnover tax'.

15. He stated the hereditament consisted of a traditional pub located in a conservation area but has no architectural or remarkable features and does not benefit from views or a riverside location. Although it is not listed, the maintenance is significantly higher than more modern pubs as are the energy costs to run the building. Whilst there is a small beer garden for use by about 50 customers, the use of this space has been diminished by the erection of an adjacent four storey apartment which has taken all of the sunlight from the beer garden. He argued that the appellant goes over and beyond what is expected of the reasonable occupier and the business is significantly overtrading. As a result, he considered that the actual trade figures adopted by the respondent did not represent a reliable and sustainable level of trade which would be achieved by a REO at the subject property.

16. In support of this, Mr Wright had provided details of three public houses which he considered to be comparable to the subject property.

- The Duchy Arms - 63 Sancroft St, London SE11 5UG (RV £30,000)
- The Black Prince - 6 Black Prince Rd, London SE11 6HS (RV £21,000)
- The Kings Arms (The Little Apple) - 98 Kennington Lane London SE11 4XD (RV £8,250)

He stated they were all less than half a mile from the subject property, have beer gardens and show live sport. The Duchy Arms has a large internal seating area and is a short walk from the Oval cricket ground. The Black Prince also benefits from a function room and is situated on a minor road on a bus route, and The Kings Arms is located in a prime location on a junction close to Kennington underground station. He considered that all his comparable properties had a good level of passing trade and demonstrated that the subject property was overtrading.

17. The respondent's representative stated that the turnover figures provided by the appellant for the year ending 31 December 2019 were £905,000 and £233,000 for wet and dry sales respectively. To adjust for the ongoing effects of the Covid pandemic in 2021, these sums had been reduced by 30% to give the amounts adopted in calculating the RV of £64,000. Ms Tang considered that the adjusted 2019 turnover represented the annual trade which would have been reasonably maintainable by a REO at the AVD. She had personally visited the subject property along with another twelve pubs in the locality on 9 July 2024 and considered that the pubs put forward as comparable by the previous caseworker during the challenge process supported the RV of the subject property. Of these, she considered that the most weight should be attributed to the RV of £69,000 for The White Bear, 138 Kennington Park Road. This is a traditional pub with 130m^2 of customer area and with a garden area and patio to the front, similar to the subject property. Whilst it was located 0.4 miles away from the subject property, it was located on a main road a similar distance from Lords Cricket Ground and other amenities.

18. She considered that two of the appellant's comparable properties - The Duchy Arms and The Black Prince were situated on residential streets and did not benefit from the same level of passing trade as the subject property. The subject property is located on a major A road, with a bus route, and also shows live sporting events on screens, with two screens in the beer garden, which can be used in all weathers due to its retractable roof. She also argued that its proximity to the Beefeater Gin Distillery Tour and the Lords Cricket Ground would have a positive effect on the passing trade at the subject property.

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

Discussion

19. The panel had to determine whether the RV that had been applied to the appeal 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, subject to the assumptions set out in Schedule 6 of the Local Government Finance Act 1988 (as amended). 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.

20. 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 2023. 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. 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 2021. Mr Wright argued that there was no obligation for the respondent or appellant to adopt The Guide when determining the RV of a public house, as The Pubs Rating Forum was not a statutory body.

22. The panel considered that the valuation approach set out in The Guide was essential in determining the RV for the subject property, as there was no useful rental evidence available for the subject property or comparable properties in the locality from which to make such a determination. It did however consider that it was important to test the RV determined using the FMT approach by making comparisons with the assessments of similar properties.

23. The panel noted there was no dispute as to the Category or Band percentages used in the calculation of the RV from the parties' respective wet and dry FMT for the subject property. With regard to the FMT for wet and dry trade submitted by the parties, the panel considered that the figures adopted by the respondent were derived from actual trade figures provided by the appellant for 2019. These figures were not disputed, and neither was the 30% deduction applied to reflect the effects of the Covid pandemic. The difference in FMT lay in the appellant's assertion that he was overtrading at the subject property, which he had supported by provision of three public houses which he considered to be comparable to the subject property. The panel noted that the appellant's representative had not quantified the extent by which the appellant was overtrading but had stated that his turnover significantly exceeded that of a REO as a result of the additional efforts he had made to attract trade, such as charity quizzes and fundraisers.

24. Having regard to the comparable properties provided by the parties the panel placed most weight on The White Bear, which it found to be most comparable to the subject property in terms of size, character, amenities and location. Whilst there was a theatre located above the White Bear, the panel accepted from Ms Tang's evidence that the receipts from the theatre

had not been included in its FMT. Neither wet or dry trade figures or FMT had been provided by the respondent for the White Bear but given that it's RV was slightly higher than that of the subject property, the panel was satisfied that its FMT would have been similar to that adopted by the respondent for the subject property.

25. Therefore, having examined the trading locations and the physical characteristics of the public houses in the locality, the panel was not persuaded that the FMT adopted by the respondent for the subject property included any element of overtrading, and was satisfied that the current RV of £64,000 was reasonable.

26. The panel noted that in his appeal submission, Mr Wright had sought the award of costs in favour of the appellant. The panel wished to point out if a party is successful in their appeal the Tribunal does not have the power to make an order for costs against the losing party.

Disposal

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

Date issued to parties: 20 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.
