VALUATION TRIBUNAL FOR ENGLAND

2017 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: CHG101176229

RE: The Greystones, The Greystones, Sheffield S11 7BS
(the “appeal property”)

BETWEEN: Thornbridge Taps Limited — Appellant

and

(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 03/09/2024 09:30

BEFORE: Mr K Everett, Presiding Senior Member
Mrs NBN Imambaccus, Senior Member

CLERK: Ms R Muller IRRV (Hons)

APPEARANCES: Mr C Wright of the Pub Advisory Service, representative for the Appellant
Mr C Taylor, representative for the Respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed.

2. The Tribunal panel held that the existing Rateable Value (RV) of £44,750 with effect from 1 April 2017 for The Greystones, Sheffield S11 7BS, hereafter, known as the appeal property, was reasonable.

Introduction

3. This appeal had been brought in respect of the following: the appeal property had been entered into the 2017 Rating List as Public House and Premises with an RV of £48,750 with effect from 1 April 2017.

4. A Check had been submitted on 24 March 2023 and completed on 23 October 2023. A Challenge had been submitted on 22 January 2024 and completed on 13 March 2024. The VO altered the assessment of the appeal property and reduced the RV to £44,750 with effect from 1 April 2017. The Appellant appealed to this Tribunal on 25 March 2024.

5. Mr Wright appeared on behalf of the Appellant as both advocate and Mr Taylor appeared on behalf of the Respondent as both advocate and expert witness. His statement of truth confirmed that he was not instructed under any conditional or other success-based fee arrangement.

6. The material day for this appeal was 1 April 2017, when the physical circumstances of the appeal property and its locality are taken into account.

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

Background

8. The appeal property was a detached, two storey public house, constructed of red brick and part 'Tudor' style timber frame, built in 1939 and located in Sheffield. Within the property was a ground floor which comprised of a lounge / bar / games room, along with a kitchen and public toilets. The cellar was in the basement. On the first floor was a domestic flat. The appeal property was set back away from the main road and had a small front licensed outside area with car parking at the left side with a small covered area for smoking on the right side. Opposite the appeal property was a small parade of shops within a residential area. The appeal property was considered to be a community pub.

9. The latest rental information provided showed that the current lease commenced from 29 March 2016 at a passing rent of £65,000 per annum. This was based on a 20 year lease with 5 yearly reviews. Mr Wright provided rental evidence to show that the passing rent was now £71,112 per annum which had commenced on 1 July 2022.

10. The evidence provided by both parties consisted of the Valuation of Public Houses Approved Guide 2023; the RCIS Practice Standards - the capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales and the Rating Manual section 4: valuation method.

11. The Valuation of Public Houses Approved Guide 2017, agreed upon by the Valuation Office Agency (VOA) and the Pubs Rating Forum, outlines a valuation method based on an analysis of the open market, free from tied pub restrictions. This approach involves determining the Fair Maintainable Trade (FMT) of a premises as of the AVD of 1 April 2015.

12. In determining the FMT, regard would have been considered of the receipts of the property in the year ending closest to the AVD of 1 April 2015 and in the preceding two years, if such

information was available. The FMT would be split between liquor (wet) receipts and non-liquor (dry) receipts such as food, accommodation or possible other income.

13. Both parties reviewed the appeal property's valuation. Following the Guide, Mr Wright had adopted a FMT of £344,500 for Wet trade (liquor sales) and £0 for Dry trade (food sales). Applying the appropriate rental percentage of 9.87% for Wet trade resulted in the proposed RV of £34,002 (rounded down to £34,000). Mr Taylor had considered the FMT for Wet trade to be £495,000 and Food £0, as he stated that food levels below £30,000 per annum were de minimis. Using the same rental percentage of 9.87% and placing the appeal property into Wet category 2 at 0.20 resulted in the RV of £48,857 (rounded down to £48,750). However, upon reflection, Mr Taylor considered that the Wet category for the appeal property should be within category 3, as the appeal property was located in a more community-based area. Therefore, this reduced the assessment of the appeal property to an amended figure of £44,750 RV.

Relevant Law

14. Within the evidence documents, details of the following cases were referred to:

a) *Watney Mann Ltd v Langley* (VO) [QB 1963]
b) *JD Wetherspoon PLC v Day* (VO) [2008 RA 129]
c) *Lothian Assessor v Belhaven Brewery Co Ltd* (2008) RA464, LT, Lands Valuation Appeal Court (Scotland) – Overtrading in a public house.
d) *Lothian Assessor v BBW Leisure Ltd* (2008) RA470*, LT, Lands Valuation Appeal Court (Scotland) – Treatment of comparables in valuation of a restaurant and public bar.
e) *Dennett v Crisp* (VO) [2013] UKUT 035
f) *Brunning & Price Ltd v Wynn-Cowell* (VO) LT 2007 RA/25/2005
g) *Jack in the Green v Buckley* (VO) 110516875401/537N10
h) *Wishart v Hulse* (VO) UKUT 0224/ RA/70/2017

Discussion

15. Mr Wright informed the panel that Mr Taylor had not provided justification as to how he had arrived at his calculation of the appeal property's assessment. He argued that Mr Taylor had used data that was untested and there was nothing to show that this data was correct. Mr Wright believed that Mr Taylor had overly focused on the actual trade, leading to an unfair series of actions that punished the appellant for their achievements and success. Mr Wright argued that the Appellant was not obligated to adhere to the Guide when evaluating the RV of the appeal property, as the Guide may not reliably or consistently reflect a sustainable level of FMT. The FMT is calculated by assuming the business is being run by a 'reasonably efficient operator' who is adhering to standard trading practices and responding to local competition. The panel determined that employing the valuation approach outlined in the Guide was crucial for assessing the RV of the appeal property.

16. In support of his contention that the assessment of the appeal property was excessive, Mr Wright compared the appeal property's RV to other comparable properties RV's within the local area. The panel were referred to the details of the following properties:

a) Ranmoor Inn, 330 Fulwood Road, Sheffield (£34,250 RV)
b) Banner Cross, 971 Ecclesall Road, Sheffield (£44,000 RV)
c) Hammer and Pincers, Ringinglow Road, Sheffield (£63,000 RV)
d) The Bulls Head, 396 Fulwood Road, Sheffield (£15,500 RV)

e) The Union Hotel, 1 Union Road, Sheffield (£16,000 RV)
f) Byron House, Nether Edge Road, Sheffield (£30,000 RV)

17. Mr Wright stated that all of the above were located in better areas with superior footfall and passing trade. He argued that the RV's of the above comparable properties were much lower than the RV of the appeal property. However, the comparable properties above had advantages unlike the appeal property, as some had beer gardens; served food and had live events, as well as other advantages. Mr Wright informed the panel that as the appeal property and its business was not in such a superior area as the comparable properties, it should not be assessed as having trade at the upper end of the FMT range. Therefore, he considered that its trade value should be considered to be consistent with the trade of the comparable pubs in the local area.

18. Mr Wright referred to the RV's of the comparable properties where these ranged from £15,500 to £63,000, with an average of £33,791. He claimed that the Appellant's turnover was primarily a result of his experience in the trade and investment in the business, rather than the property's inherent attributes, significantly surpassing what would typically be achieved by a 'reasonably efficient operator'. Consequently, he argued that Mr Taylor had substantially overvalued the FMT of the appeal property, effectively imposing a turnover tax on the Appellant. Therefore, he requested that the panel use his FMT figures and reduce the assessment of the appeal property to an RV of £34,000.

19. The panel noted that as well as the Public Houses Approved Guide 2017 being agreed between the VOA and representatives of the Licensed Property Industry, the Guide had also been endorsed by *JD Wetherspoon PLC v Day (VO)[2008] RA 129* "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."

20. The panel recognised that, according to Lord Justice Thompson in *Watney Mann Ltd v Langley (VO) [QB 1963],* the actual trade of the appeal property should be the starting point when determining the FMT. Comparable properties would be considered in estimating the FMT if there was no relevant trade evidence from the appeal property. Mr Taylor had provided trade evidence for the appeal property by Form of Return, which had been considered in arriving at the VO's opinion of AVD FMT. Mr Taylor informed the panel that the trade receipts for year ending 30 June 2015 was considered to be a 'one off' higher figure for reasons unknown. He stated that the Wet trade fell back in 2016 and 2017 to around 2014 levels. The Appellant had declared trade evidence for years 2016 / 2017 / 2018 / 2019 / plus parts years 2020 and 2021. Mr Taylor stated that considering the trade figures for other years, these suggested that the trade figure for 2015 figure would be unsustainable. Mr Taylor stated that he took into consideration the actual trade of the appeal property rather than by consideration of the local comparables trade information. Therefore, he considered that the estimated AVD FMT for the appeal property should be £475,000 which he considered reasonable.

21. The panel referred to the trade evidence provided within the pack. It was noted that figures provided for the year ending 30 June 2015 was higher than other years as stated above. The panel noted that taking into account the figures for the two previous years of 30 June 2013 and 30 June 2014, had an average of £466,500 for Wet (liquor) but less than £30,000 for Food, where Mr Taylor had stated were not considered due to the amounts received. The panel observed that there was no disagreement regarding the Category or Band percentages utilised in calculating the RV, based on the respective Wet trade figures submitted. The panel found that the numbers used by Mr Taylor were based on an average of actual trade figures

provided. However, the FMT figure of £344,500 provided by Mr Wright was not supported by any evidence to show how he had arrived at his version of the FMT and he considered this figure to be correct. The panel noted that Mr Taylor had asked Mr Wright to provide evidence to support his FMT figure but none had been forthcoming.

22. The panel was convinced, referring to the case of *Watney Mann v Langley* that the comparable properties should only be considered if there was insufficient trade evidence for the appeal property, however, this was not the case in this appeal. The panel also noted that the rental figure paid by the Appellant with regards to the appeal property was much higher than its current RV. However, as Mr Wright had included comparable properties situated in the local area, the panel did refer to them.

23. Mr Taylor stated he had visited the appeal property in August 2024 but did not see any evidence of overtrading or that his revised assessment of the appeal property was incorrect. Mr Taylor did state that he had not inspected the comparable properties provided by Mr Wright, or considered their trade or rental figures, but had driven by and had a look at the properties from the outside. He informed the panel that Ranmoor Inn, Byron House and The Bulls Head were category 1 properties, as they are situated on a main road. The appeal property is located in a residential location and set back off the main road. That is why he amended the category of the appeal property from category 2 to category 3. However, Mr Taylor stated that he did not consider any details of comparable properties as he had the rental figure for the appeal property as well as trading figure to use to estimate the FMT of the appeal property.

24. The panel held that limited details had been provided with regards to the comparable properties, only the RV of each property and details of whether or not they had beer gardens or live entertainment. After examining the trading locations and physical characteristics of the comparable properties, the panel was not convinced that the FMT utilised by Mr Taylor contained any aspect of overtrading and was satisfied that the current RV of £44,750 was reasonable.

25. The panel held that even though the comparable properties may have been in better locations, the panel had been provided with actual rental details for the appeal property and trade evidence from 2015 onwards, which showed that the appeal property was trading at a level in accordance with its current RV.

Disposal

26. In view of the above findings and conclusions, the panel held that the FMT figure of £44,750 used by Mr Taylor was reasonable. Therefore, the appeal was dismissed.

Date issued to parties: 24 September 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.
