VALUATION TRIBUNAL FOR ENGLAND

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

APPEAL NUMBER: CHG101180907

RE: The Apollo, 24 Prince Street, Bridlington YO15 2NW (the "appeal property")

BETWEEN:	The Apollo	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Tuesday 20 August 2024

BEFORE: Mr SP Wood (Presiding Senior Member)
Mr A Ramsay (Senior Member)

CLERK: Miss K Hendry IRRV(Tech)

APPEARANCES: Mr C Wright of the Pub Advisory Service for the Appellant
Mr C Taylor Respondent's Representative.

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed the appeal property's assessment at £90,000 rateable value (RV) with effect from 1 April 2023.

Introduction

3. This is a 2023 Rating List appeal against the RV of the appeal property of £90,000, with effect from 1 April 2023. The challenge submitted by The Pub Advisory Service on 6 February

2024 on behalf of the appellant sought a reduction to RV £53,000 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 (VO) did not agree to reduce the assessment and issued a Challenge Case Decision Notice on 7 March 2024 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice on 25 March 2024.

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

6. 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.

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 appeal property was a circa 1950's purpose built Public House premises. It was a detached two storey building which was located in the centre of Bridlington, a seaside town on the Yorkshire east coast. It had frontage on to the south side of Prince Street and rear views which overlooked the harbour. The appeal property underwent major alterations in 2001. It comprised a large ground floor open plan bar / lounge 'café / bar' style public area, with seating for approximately 175, and was licensed for 400 people. It had a large servery / bar on one side of the open plan room. The lower ground floor former bar is now only the fire escape route. There was an outside veranda style seating area at the rear overlooking the harbour. The appeal property is trading as a pub / restaurant / music venue with a late night licence from 3am on Friday and Saturdays. It targets diners during the day with food served from 11am to 9pm and then caters for the younger market in the evening / nighttime.

10. 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.

Discussion

11. The starting point in determining 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.

12. 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 percentage 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.

13. 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 George – 21 Prince Street, Bridlington (RV £15,000)
    b) Harbour Tavern – 23 Queen Street, Bridlington (RV £30,500)
    c) Balancos (formerly Greyhound) – 71 Promenade, Bridlington (RV £16,500)

14. The range of RV's for these pubs is from £15,000 to £30,500 with an average of £20,666 in comparison to the appeal property at £90,000 which was almost 4.4 times higher. Mr Wright argued that there was no justifiable reason for such a significant difference.

15. Mr Wright sought a revised RV of £53,000 based on a FMT of £553,400 per annum (pa). This was based on wet sales of £404,400 at 10.87% equating to an RV of £43,958 and dry was based on sales of £149,000 at 6.08% equating to £9,059. Which together gave a total RV of £53,017, rounded to £53,000.

16. Mr Tayor explained that the appeal property had been valued having regard to the Public Houses Approved Guide 2023 which had been agreed between the VOA and representatives of the Licensed Property Industry. The adoption of The Guide was 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."

17. In arriving at the FMT, the actual trade on the appeal property should be the starting point as endorsed by Lord Justice Thompson in *Watney Mann Ltd v Langley (VO) [QB 1963].* Comparable properties would be taken into account when estimating the FMT if there was not any relevant trade evidence from the appeal property. Mr Taylor stated that the VOA held trade evidence on record for the years 2017, 2018 and 2019 which was declared by way of a Form of Return. Trade evidence for the years 2020, 2021 and 2022 was provided by Mr Wright to the VOA.

18. He stated that the FMT adopted should represent the annual trade considered to be maintainable on 1 April 2021, the antecedent valuation date (AVD), having regard to the physical nature of the appeal property and its location as at the material date on the assumption that the enterprise will be carried out by a reasonably efficient operator responding to normal trade practices and competition in the locality. Mr Taylor explained that the effects of the Covid-19 outbreak needed to be taken into account as they would have been anticipated by the parties at the AVD. Therefore, the starting point was the closest reliable trade, which was likely to be the 2019/2020 trading year and any previous trading years, and any short periods of lockdown within those years would need to be adjusted for.

19. Mr Tayor stated that his valuation was based on a FMT of wet trade of £825,000 and then applied an adjustment of minus 17.5% for Covid which equated to £680,000. He applied 10.87% which equated to an RV for wet of £73,916. He applied the same adjustment of

17.5% to the dry trade of £300,000 equating to £250,000. He applied 6.08% which equated to a RV for dry of £15,200. The trade also had other receipts of £10,000 for door entry fees, which he applied at 10% equating to a RV of £1000. Together this totalled £90,116, which rounded came to a RV of £90,000.

20. Mr Taylor stated that there had been no evidence of “overtrading” at the appeal property and it was his opinion that the trade being achieved would be considered sustainable by a reasonably efficient operator. The appellant’s representative had not provided any explanation as to how he had calculated a RV of £53,000 based on a FMT of £553,400. The rental percentages used by Mr Wright was the same as the VO’s, adopting 10.87% for wet and 6.08% for dry. Mr Taylor pointed out that these percentages against the trade were higher than the maximum percent range contained within The Guide.

21. In response to the comparable properties cited, Mr Taylor stated that if we were to look at the whole picture, why did the appellant’s representative not consider the following as comparable:

a) Three Brass Monkeys, 8 Prince Street, Bridlington (RV £62,000)
b) Stirling Castle, Queen Street, Bridlington (RV £60,000)
c) Prior John, 34-36 Promenade, Bridlington (RV £113,000)
d) Jerome’s Continental Café Bar and Premises, Royal Princes Parade, Bridlington (RV £87,500)

22. Mr Taylor provided the FMT details of these properties to show that they had been valued consistently using trade evidence.

23. 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. 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.

24. The panel noted that Mr Taylor had valued the appeal property having regard to the trade figures which had been provided by the appellant by way of a Form of Return. The VO had adopted a percentage reduction to allow for the effects of Covid-19 in line with The Guide and then applied a percentage, which Mr Wright had adopted the same percentages in calculating his valuation. Therefore, the panel noted that there was no dispute to the percentages used in the FMT calculations. However, the panel failed to understand how the appellant’s representative had arrived at a FMT of £553,500 split as wet of £404,400 and dry at £149,000. As the panel could not understand how these adopted figures had been arrived at, little weight could be applied to the appellant’s revised RV calculation.

25. 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. Furthermore, Mr Wright had not provided sufficient evidence regarding the comparable properties in order for the panel to test if the appeal property was overtrading.

26. Having regard to all the evidence presented before it, the panel were satisfied that the current RV of £90,000 did not look unreasonable.

Disposal

27. In view of the above findings and conclusions, the panel is satisfied that the £90,000 RV with effect from 1 April 2023 was not excessive. The appeal was dismissed.

Date issued to parties: 16 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.
