**VALUATION TRIBUNAL FOR ENGLAND**

*2023 Rating List Appeal appeal: Local Government Finance Act 1988; public house and premises; fair maintainable turnover; reasonably efficient operator; location of property; comparable properties; approved guide for the valuation of public houses; appeal dismissed.*

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| APPEAL NUMBER: | CHG101188466 |
| RE: | Fleece Inn, 63-67 Main Street, Keighley, BD22 8DA<br>(the "subject property") |

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| BETWEEN: | The Fleece Inn - Trudy Pilmoor | Appellant |
| | and | |
| | Valuation Officer | Respondent |

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| SITTING: | *remotely using Microsoft Teams* |
| ON: | 07 February 2025 |
| BEFORE: | Mrs S Patel, Presiding Senior Member<br>Dr T Gledhill, Senior Member |
| CLERK: | Mr J Massey IRRV(dip) |
| APPEARANCES: | Mr C Wright of The Pubs Advisory Service (Appellant's representative)<br>Mrs P Nwosu (representing the Valuation Officer) |

**DECISION AND STATEMENT OF REASONS**

## Decision

1. The appeal is dismissed.

2. The panel found that the existing entry in the 2023 rating list at £45,500 Rateable Value (RV) was reasonable.

## Introduction

3. This is a 2023 Rating List appeal against the RV of the subject property of £45,500, with effect from 1 April 2023. The challenge submitted by The Pub Advisory Service on 29 February 2024 on behalf of the appellant sought a reduction to RV £38,000 on the basis that the Valuation

Office Agency (VOA) had not carried out the valuation in accordance with statutory requirements or followed the approved guide 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 6 June 2024 making no alteration to the RV. The appellant appealed to the Tribunal against the Decision Notice on 4 September 2024.

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

6. Mrs Nwosu appeared on behalf of the respondent as both advocate and expert witness. She confirmed in her Statement of Truth that she was not instructed under any conditional or other success-based fee arrangement.

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

**Background**

8. The subject property is valued as a public house and premises. It is a three storey, former coaching inn, with a capacity of around 90 customers included 16 seated in the restaurant. It has a beer garden to the rear and guest accommodation comprises ten letting rooms with en-suite facilities. It is located in the village of Haworth's main street, situated in the heart of Bronte country, about 30 km from Leeds Bradford airport.

9. 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.

10. The issue for the panel to determine was the correct RV with effect from 1 April 2023 for the subject property.

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 fair maintainable turnover (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."*

*"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 competition 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 proposed a FMT of £299,528 for Wet trade (liquor sales) and £176,508 for Dry trade (food sales). Applying rental percentages of 9.31% (Wet) and 5.73% (Dry) resulted in the proposed RV of £38,000.

13. The respondent had estimated the FMT at the 1 April 2021 AVD based on the average trade figures for the subject property for three years ending 31 July 2020 of £470,000 (wet), £300,000 (dry) and £140,000 (accommodation). The respondent had adjusted the wet and dry turnovers by 22.5% and 20% respectively to reflect overtrading at the subject property to achieve values of £370,000 (wet) and £240,000 (dry) as it was considered that the trade achieved by the appellant exceeded that which would be expected of a REO. No adjustment was made in respect of the accommodation income of £140,000 for overtrading. The estimated FMT for each income stream was then reduced by a further 17.5% in accordance with the guide to allow for the effects of Covid. The respondent had then applied rental percentages of 8.66% for wet (0.65 of Category 1), 5.33% for dry (0.4 of food band A) and 7.5% for accommodation (mid-range of standard band) which resulted in the current RV of £45,500.

14. Mr Wright contended that the respondent had not carried out a full valuation of the subject property in 2023 when assessing its RV at £45,500. 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 considered 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.

*15.* Mr Wright stated the subject property is an integral part of the community, the appellant having built local trade and goodwill over the years by regularly supporting local events such as fell running and charity events, and hosting local groups and clubs. The appellant buys good quality fresh local produce (low food miles) and looks to employ locally and goes over and beyond what is expected of the reasonable occupier and is significantly overtrading

16. To demonstrate overtrading, the appellant considered the RVs of three other pubs in Hawarth; Haworth Old Hall (RV £65,000), The White Lion Hotel (RV £34,500) and The Old Sun (RV £13,750), the trade of which he considered to be that of an REO in the locality. He had taken the average of these to determine that the RV of £38,000 would reflect the trade achievable

by an REO in the subject property and had calculated the FMT of the subject property on this basis.

17. The appellant considered these three pubs to be comparable to the subject property as they were all in the same village. The Haworth Old Hall was nearly twice the size of the subject property with a large beer garden and its own car parking. It was also located on the main road adjacent to two bus stops. The White Lion was also on a busy main road and had its own parking and had 14 letting rooms. The Old Sun was on a busy main road and had four en-suite rooms for bed and breakfast use.

18. The respondent had also referred to the Haworth Old Hall and the White Lion Hotel as comparable to the subject property as they were in the same village and were in the same wet category and dry band as the subject property. Also referred to by the respondent were the Black Bull Inn (RV £14,500) and Kings Arms Inn (RV £28,500) which were also located in the village of Haworth. Mrs Nwosu stated that an adjustment for overtrading had been applied in respect of the 2017 rating list as the appellant, Trudy Pilmoor was considered to be an exceptional operator as her role within 'Timothy Taylor' had been to turn around failing pubs and the turnover at the subject property increased by 40% from the 2017 to 2023 AVDs. This resulted in the respondent accepting overtrading at the subject premises in the 2017 list assessment and has again accepted overtrading with regard to the 2023 list assessment.

**Discussion**

19. Mr Wright's submissions questioned the respondent's methodology in assessing the original compiled list entry and he submitted that the initial valuation was incorrect. He submitted that the VO had not supplied information about the valuation at Check stage and the appellant was not asked during the Challenge stage about over trading. Mr Wright contended that the VO had not followed the correct process and, invited the panel to scrutinise the whole appeals process.

20. The panel was aware that it has no jurisdiction over the process at Check and Challenge stage so any allegations about the VO's handling of those procedures would need to be addressed through the respondent's complaints process. The Tribunal's jurisdiction begins when a valid appeal is lodged. The panel was not required to scrutinise the original valuation as the only issue before it was the entry in the list following the Challenge decision issued on 6 June 2024.

21. Mr Wright raised various points during the hearing regarding the VO's use of The Guide. This publication is drawn up by the Valuation Office Agency (VOA) in conjunction with the Pubs Rating Forum. He had questioned Mrs Nwosu on the qualifications of those involved in the compilation of The Guide and the raw data used to compile the various charts within The Guide. The panel did not find his questioning helpful and was aware that similar guides are produced for each rating list to assist with valuing public houses.

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 found that The Guide should be used unless there was compelling evidence not to do so and assessing a public house on Fair Maintainable Turnover (FMT) was reasonable in the absence of stronger evidence of the subject property's value on the antecedent valuation date (AVD) of 1 April 2021. 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 was aware that The Guide requires the valuer to assess the likely FMT that could be achieved by a Reasonably Efficient Operator (REO) on the material day. The appellant's proposed FMT of £476,036 had been calculated by taking the proposed RV of £38,000 and working backwards using rental percentages of 9.31% for wet trade and 5.73% for dry trade. No information had been provided by the appellant as to how the rental percentages had been chosen, or how the split between wet and dry trade had been determined in this calculation. No account had been taken of the income for accommodation in the appellant's calculation.

24. The panel noted that the current valuation had firstly considered the actual trade figures for the subject property for the years prior to the AVD. The reported figures for the years ending July 2017 to 2020 demonstrated a consistent trade in wet sales and an increase in dry sales, with total trade rising from £807,708 to £921,742. After considering the actual trade figures, the VO had applied an unadjusted FMT of £910,000 and had reduced this by 22.5% for wet and 20% for dry trade to estimate the likely annual trade for a REO on the AVD to be £750,000.

25. The panel was satisfied that the FMT used by the VO was less than the actual trade figures for the subject property which accounted for overtrading by the appellant. In order to test whether sufficient account had been taken of overtrading, the panel considered the parties' evidence on the comparable pubs in the locality. It was clear to the panel that the FMT varied depending on the actual trade and different attributes of each pub.

26. Both parties had referred to the Haworth Old Hall. The appellant's submission cited it as being almost twice the size of the subject property with a large car park and attractive beer garden with good passing trade. The VO stated that the RV of £65,000 for the Haworth Old Hall was based on a FMT of £960,000. Whilst it was larger than the subject property, value was not based on size but on FMT, and it also had only two rooms for guests as opposed to ten at the subject property. The panel considered that the FMT for the Haworth Old Hall reflected its larger size. It was considered by the appellant to be the subject property's main competition, and both pubs had been placed in the same wet category and dry band by the respondent. The panel did not consider that the FMT adopted for Haworth Old Hall indicated that the adjusted FMT for the subject property was excessive.

27. The appellant had also cited the White Lion Hotel, which was stated to be located on a busy road close to a car park, museums and other amenities, and it had 14 ensuite rooms as well as function rooms for private hire. The VO stated that the RV of £34,500 for the White Lion was based on a FMT of £640,000, but that the income from letting of the function rooms was not included in this figure as the function rooms were assessed separately. Whilst the panel noted that the adopted FMT for food and accommodation was similar to that of the subject property, the FMT for wet trade was much lower, which indicated that it was not wet-led like the subject property and less comparable.

28. The third pub referred to by the appellant was The Old Sun, located on the corner of a busy road near to a residential area, with good access to parking and public transport, near a residential area. The panel noted that the Old Sun had four rooms for bed and breakfast use but these had only been refurbished for use recently and it did not consider they would be reflected in the FMT applied to calculate its RV of £13,750. The panel did not find this property comparable to the subject property. After considering all the examples presented, the panel

found the best comparison to be that of Howarth Old Hall. The VO conceded that this property benefits from being larger with its own car park, but the panel accepted that this was reflected in the higher FMT adopted for the Haworth Old Hall.

29. Mr Wright contended that the appellant was not required to evidence any over trading as this should have been a factor in setting the initial compiled list valuation. The panel did not agree with this position, given that the burden rests with the appellant to provide the VO, and the Tribunal, with evidence to demonstrate that the FMT, and subsequently the RV, adopted by the VO was excessive. The panel concluded that the trade figures demonstrated strong consistent sales from 2017 to 2020 which would be a fact known to the hypothetical tenant fresh to the scene, and the hypothetical landlord with a view to negotiating a lease on the AVD.

**Disposal**

30. In view of the above findings and conclusions, the panel found that the appellant had not discharged the burden of proof and the existing entry in the rating list at £45,500 was not unreasonable. The appeal was therefore dismissed.

**Date issued to parties:** 4 March 2025

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**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.

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