THE VALUATION TRIBUNAL FOR ENGLAND

Transitional Certificate appeal; Public house and premises; Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016; Approved guide; Supplementary guidance; Fair maintainable trade; Appeal allowed in part.

RE: The Master Mariner, Marine Promenade, New Brighton, Wallasey CH45 2JT

APPEAL NUMBER: M0267075

BETWEEN	JD Wetherspoon	Appellant
	And	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE:	Mrs X Holt (Senior Member) Mr S Hooberman
CLERK:	Mrs Rachel James
REMOTE HEARING 1:	Wednesday 13 October 2021
APPEARANCES:	Mr J Thompson of BNP Real Estate (on behalf of the Appellant) Mr D Wood of the Valuation Office Agency (VOA) for the Respondent

---

Summary of decision

1 Appeal allowed in part and the certified entry for the subject property to be altered to £93,500 Rateable Value (RV), effective 31 March 2017.

Introduction

2 The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government

Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

3 Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

4 The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that the parties were able to fully participate in the hearing.

5 Mr Thompson appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Thompson’s declaration of truth included a statement that he was not instructed under any conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client’s case.

6 This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel considered all of the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

7 This appeal has been brought in respect of the following: a transitional certificate was issued by the Valuation Officer on 11 September 2019, certifying a rateable value of £142,000 for 31 March 2017. The appellant appealed against the certified rateable value. As the respondent and appellant had not agreed the matter, it was referred to the Tribunal under regulation 21 of the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 (SI 2016/1265).

8 The appeal property was a public house and premises that traded as JD Wetherspoon. It had been converted in April 2013 from two former night clubs. It comprised accommodation on the basement, ground and first floors and had a public area, net of the bar, of 412 m^2. The 2010 Rating List had not been updated to show the newly converted premises. The property entered the 2017 Rating List on 5 September 2019 at £174,500 RV with effect from 1 April 2017.

9 The appeal property was located on Union Terrace, a small set back road on Marine Promenade in New Brighton, Wallasey.

10 The appeal property had been held on a leasehold for a 30-year term from April 2012, subject to a break option after 15 years at a rent of £55,000 per annum (pa) increasing by 7.5% every 5 years and with an initial 18 month rent free period. However, the appellant purchased the freehold interest in 2014.

Issue

11 The issue to be determined was the value to be certified in accordance with Regulation 17 of the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 (SI 2016/1265).

Evidence and submissions

12 The panel had been provided with statements of case from both parties.

13 Mr Thompson considered that the certified value of £142,000 RV was excessive after having regard to the following factors:

i) the actual trade achieved by JD Wetherspoon which was underpinned by its brand, reputation, pricing and trading practices;
ii) the circumstances at the material day;
iii) actual trade achieved and the Fair Maintainable Trade (FMT) adopted in relation to the assessments of comparable properties; and
iv) guidance provided in the Approved Guide and the supplementary instruction.

14 After having regard to the actual trade achieved by the appeal property in determining FMT, Mr Thompson adopted £840,000 for wet/AWP machines and £695,000 for dry. However, Mr Thompson considered that this level of trade was out of line with the FMTs adopted in relation to the comparable pubs in the locality and he questioned the 'maintainability' of that trading level. To the proposed FMT, Mr Thompson had applied discounts to reflect the fact that Wetherspoon's overtraded; the discounts sought were 45% to wet/AWP machine and 58% to dry. He had also categorised the wet trade in band 2 and the dry in band A.

15 Mr Thompson's proposed valuation was as follows:

Wet/AWP machine	£462,000	Band 2	25% range point	10.45% =	£48,311
Dry	£290,000	Band A	25% range point	8.78% =	£25,462
					£73,773
					say £73,500 RV

16 As an alternative valuation, Mr Thompson had referred to his main comparable property, The Seahorse. This property was a large modern Greene King operated unit within the new seafront development opposite the appeal property. Despite being described as a public house, The Seahorse was valued on a restaurant basis. The subject premises, prior to its merger, had also been valued on a rental basis. The former properties, namely Playas Lounge, had been valued on a restaurant basis (subsequently agreed on the lower nightclub basis) and RJ's on a nightclub basis. Taking this into account, Mr Thompson considered that a floor area valuation could be applied to the appeal property.

17 The Seahorse, a more modern purpose-built unit, had been valued at £150/m^2. The Playas Lounge had been valued at £80/m^2 on a restaurant basis before being reduced to £55/m^2 on a nightclub basis by a previous Valuation Tribunal. RJ's had been valued at £55/m^2 on a nightclub basis.

18 As a starting point, Mr Thompson took the basic rate of £80/m^2, as had previously been applied to the restaurant valuation of Playas Lounge. He had increased that rate to £100/m^2

to reflect the appeal property's refurbishment compared to the previous RJ's and Playas Lounge and the provision of the outside seating areas. He considered that a rate of £100/m^2 sat comfortably with The Seahorse at £150/m^2, which reflected its superior layout, the fact that the property traded from a single floor and it being a modern purpose-built property. This resulted in a valuation of £57,000 RV for the appeal property.

19 Mr Thompson also provided an alternative FMT valuation. He referred to three local comparable properties namely Bobby's Bar, The Queens Royal Restaurant and The Seahorse. All three traded as food-led operations with wet trade making up between 30% and 40% of the total trade. He considered that the hypothetical tenant would expect to trade in a similar way. The hypothetical tenant would have expected to achieve around £340,000 wet and £400,000 dry. This would represent a 60% overtrading discount on the wet trade and a 42.5% overtrading discount on the dry to the 2014/15 trade indexed back to the AVD. This equated to an assessment of £73,272, say £73,000 RV.

20 Finally, Mr Thompson took the 'stand back and look' approach and considered the actual 2015/16 trade for the appeal property, The Seahorse and The Clairville, together with their respective assessments, which were as follows:

i) Appeal property - total trade £1,913,287 - £142,000 RV;
ii) The Seahorse – total trade £1,994,333 - £74,000 RV; and
iii) The Clairville – total trade £1,625,654 - £73,500 RV

21 Taking all the above considerations into account, Mr Thompson considered that the correct valuation for the appeal property as it stood on 31 March 2017 was £70,000 RV.

22 Mr Wood was defending the current FMT applied as follows:

Wet £850,000 Band 1 50% range point 12.00% =	£102,000
Dry £400,000 Band A 50% range point 10.00% =	£40,000
	Say £142,000 RV

23 Mr Wood had detailed how the circumstances as at the material date of 31 March 2017 had been considerably different to those as at the AVD of 1 April 2008. In 2012, New Brighton seafront had been the subject of large-scale redevelopment. The Marine Point scheme comprised a large public house, several restaurants and, initially, a casino, Travelodge and cinema. There were substantial environmental improvements, a Morrison's supermarket and other retail and leisure improvements such as a swimming centre and theatre redevelopment, together with new car parking.

24 Mr Wood considered that the only way to reflect the improved locality was to take trade from that point in time and tone it back to the AVD. Originally FMT had been estimated and toned back at 15% by reference to the Retail Price Index. Actual trade figures had since become available which had proved to be close to the estimated level and did not alter the Valuation Officer's opinion on the level of FMT to adopt.

25 Whilst Mr Thompson had contended that the appeal property overtraded, no evidence had been provided to support this contention. He contended that one should not assume that discounts from a property in a different setting, derived from comparable properties local to it, would equally apply elsewhere. Any discount appropriate to the appeal property should be derived from comparable properties in the locality.

26 Mr Wood referred to The Seahorse which had been valued on a rental basis due to the nature of the property. He also highlighted that the balance between the wet and dry trade at The Seahorse was different to that at the appeal property. He did not consider the FMT adopted for the appeal property was unreasonable or demonstrated any overtrading characteristics after having regard to the actual trade achieved by The Seahorse.

27 Mr Wood made the following comments in relation to the other comparable properties referred to by Mr Thompson:

i) The Clairville was located in a different setting in Liscard Village approximately two miles away.
ii) The Playas Lounge and RJ's were the former occupiers of the subject premises but operated as a restaurant and nightclub and were valued on a rentals basis.
iii) The Queens Royal was less than half the size of the appeal property and had a different operating style and also included accommodation.
iv) Bobby's Bar was much smaller and operated as a restaurant with its trade reflecting that.

28 Mr Wood also disputed the usefulness of Mr Thompson's alternative valuations. He highlighted that the former occupiers of the subject premises operated different entities for which the accepted valuation approach was the rentals basis. The building was subsequently merged into one, remodelled and now operated as a public house and therefore bore no resemblance to those former occupations. Furthermore, in the alternative FMT valuation, the FMT adopted did not appear to place any weight on the property closest in size and trading style to the appeal property, which Mr Wood considered to be The Seahorse.

29 To conclude, Mr Wood did not believe that it had been proven that the appeal property overtraded. Having regard to the evidence he had provided, Mr Wood sought confirmation of the current certified value of £142,000 RV effective 31 March 2017.

Decision and reasons

30 The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 as amended. The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of an appeal against an entry in the 2010 Rating List, the AVD, when one was required to have regard to rental levels, was 1 April 2008. The panel attached little weight to the rent passing on the appeal property; neither party had referred to it in great detail and it had been set four years after the AVD.

31 Both parties agreed that the subject property should be valued in line with the Approved Guide which had been drawn up together by the Valuation Office Agency (VOA) and the British Beer and Pub Association. Under the Guide, a rateable value was essentially based on the FMT of a public house. The FMT represented the annual trade considered to be maintainable at the AVD of 1 April 2008, on the assumption that the business will be proficiently carried out by a competent publican responding to the normal trading practices and competition of the locality.

32 The panel placed little weight on the assessments of the former properties that had been converted into the appeal property, namely The Playas Lounge and RJ's Nightclub. These

properties had been valued on the rental basis as restaurant and premises/club and premises at £80/m^2 and £55/m^2 respectively. The panel agreed with Mr Wood that these properties operated as different entries for which the accepted valuation approach was the rental basis. This was different to the appeal property, a public house and premises, which most commonly were valued in line with their FMT.

33 The panel also found little assistance in the assessment placed on The Seahorse. It was a modern property within the seafront development in very close proximity to the appeal property. Mr Wood had referred to the actual trade achieved by The Seahorse. However, the panel found this to be of little assistance as it was a much more food-led operation and valued on the basis of a restaurant and premises.

34 The panel determined that the correct starting point should be the actual trade achieved by the appeal property; this had been reproduced below as provided by both parties:

Year Ending	31 July 2014	31 July 2015	31 July 2016
Liquor and AWP machines	£1,064,743	£1,015,189	£1,095,518
Food	£837,816	£839,967	£817,769
Total receipts	£1,902,571	£1,855,779	£1,913,287

35 The subject premises had been converted from two former nightclubs; it had not started operating as a public house and premises until April 2013. Therefore, the available trade was post AVD with the trade for the year ended 31 July 2015 being seven years post AVD. As such, both parties agreed that the trade required toning back to the AVD. Mr Wood had toned the trade back to the AVD by 15%; which had resulted in the following FMT:

i) Wet/AWP machine at £850,000; and
ii) Dry at £400,000.

36 The panel acknowledged that Mr Thompson's toned back FMT figures were relatively close to that of Mr Wood; especially the wet/AWP machine trade. Mr Thompson had proposed the following trade toned to the AVD:

i) Wet/AWP machine £840,000; and
ii) Dry at £695,000.

37 Mr Thompson had claimed that the appeal property, operated by JD Wetherspoon, overtraded and, as such, the level of trade achieved would not be maintainable. Accordingly, he had proposed discounts to the trade to reflect overtrading. Mr Wood had not applied discounts to the FMT to reflect overtrading as he believed this factor had not been proven in evidence.

38 The panel agreed with Mr Thompson on the point of overtrading and accepted that a level of overtrading was had by the appellant. The actual occupier had a low pricing policy that ensured the company operated at a lower profit margin than its competitors and, as a result, achieved a significantly higher trade than its competitors as the lower cost of a pint of beer or meal attracted customers. Having regard to the evidence and reflecting the low pricing policy of the appellant, the panel accepted that high performance discounts were required and should be reflected applying discount adjustments to the appropriate FMT.

39 Mr Wood had referred to the actual trade of The Seahorse to suggest that the appeal property did not overtrade. However, as mentioned previously, the panel was not persuaded by The Seahorse as a reliable comparable. This property was a more food led operation and had been valued on the rental basis as a restaurant and premises.

40 The panel had regard to the following paragraph from the Approved Guide in relation to public houses that opened post AVD:

> ‘Again the objective is to determine the FMT at 1 April 2008 levels, on the assumption that the property was open and trading at that time, where the circumstances outlined for bars do not apply. As there will be no trade history, it will be necessary to look at the turnovers of houses of similar size and physical characteristics, in similar trading localities and with similar styles of trade and customer base. In primary licensed trade areas where the house is competing with similar houses this will include others within the vicinity; in areas where competing houses are of different physical characteristics, often much smaller traditional houses, it will be necessary to go further afield to look at houses in similar towns and comparable locations. Comparison of trade should only be made with houses that have been valued on the receipts basis where full trade information has been disclosed. If the FMT is based upon evidence of agreed assessments of comparable houses, determined in accordance with this Guide, there should be no need to consider any further adjustment at the stand back and look stage. It is important to appreciate that it is inappropriate to estimate the FMT for a large modern house, either newly constructed, converted or a refurbishment, by reference to the trade achieved by older, smaller traditional houses in the locality and making an arbitrary uplift.’

41 The panel was of the opinion that the FMT needed to be compared with that of other public houses in the locality to determine if it suggested that the actual receipts were both fair and reasonable or were showing an excessive amount. However, after having regard to the above extract from the Approved Guide, the panel noted that, as in the appeal property’s case, if the surrounding public houses were of different physical characteristics, it would be necessary to go further afield to find comparable properties.

42 The panel found the best comparable property to be The Clairville which, like the appeal property, was operated by JD Wetherspoon. It was of a similar size to the appeal property at 418m^2 and was located approximately two miles away. The FMT that had been adopted for The Clairville was wet/AWP machines at £540,000 and dry at £157,000. Mr Thompson highlighted that the FMT adopted for The Clairville represented a 54.5% discount to its actual 2015 wet/AWP machine trade and 64.5% discount to the 2015 dry trade.

43 The panel noted that the appeal property was better located than The Clairville, with the appeal property also benefitting from an outside seating area which was not available at The Clairville. However, The Clairville was better laid out over a single floor. After having regard to the location of the two public houses at the material date, together with their physical characteristics, the panel was not convinced that such large discounts of 45% to the wet/AWP machine trade and 58% for dry trade were warranted for the appeal property as proposed by Mr Thompson.

44 Having regard to the physical characteristics and size of the appeal property, the panel found that deductions of 35% for the wet/AWP machine and 45% for the dry trade were more appropriate. In recognising that these were substantial discounts, the panel had regard to the schedule provided by Mr Thompson and noted that such levels were not unusual with many assessments having benefitted from larger discounts. The panel applied

these discounts to the FMT trade figures that had been toned to AVD as provided by Mr Thompson. As such:

i) Wet/AWP machine trade toned back to AVD was £840,000 minus 35% overtrade discount gives £546,000; and
ii) Dry trade toned back to AVD was £695,000 minus 45% overtrade discount gives £382,250.

45 In considering the level of the bids, the panel found that both parties had valued the dry trade in band A. The panel found no reason to amend this, however, it accepted Mr Thompson's proposal that the FMT be valued at 25% of the percentage range to reflect that trading was more difficult over two floors.

46 Mr Wood was defending the wet/AWP trade being categorised as Band 1, whereas Mr Thompson sought it to be categorised in band 2. After having regard to the descriptions within the Approved Guide for Bands 1 and 2, the panel agreed with Mr Thompson that the appeal property should be categorised in Band 2. This was also the band applied to nearby public houses, Bobby's Bar and The Queens. The panel found no reason to alter Mr Thompson's proposal to apply a percentage at 25% of the range.

47 Reflecting the particular characteristics of the property, the panel had regard to the tables provided within the Approved Guide and determined the percentage values at 10.50% for the wet trade and 9.59% for the dry. This resulted in the panel determining the assessment at £93,500 RV as follows:

Wet & AWP	£546,000	@	10.50%	=	RV £57,330
Dry trade	£382,250	@	9.59%	=	RV £36,658
					RV £93,988

Say, £93,500 RV, effective 31 March 2017

Order

48 The Valuation Officer is hereby ordered to amend the rateable value so certified for transitional relief purposes to £93,500 RV effective 31 March 2017.

Date: 1 December 2021
Appeal Number: M0267075

The decision has been corrected in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error.

The corrections are as follows:

Paragraph 1 – now amended to show assessment reduced to £93,500 RV.
Paragraph 47 amended to show Wet & AWP trade valued at 10.50%, which resulted in £57,330
Paragraph 47 amended to show dry trade valued at 9.59%, which resulted in £36,658
Paragraph 47 amended to show a total value of £93,988, which had been rounded to £93,500
Order has been amended to show an amended value of £93,500, effective 31 March 2017