

# TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

**Appellant:** Thomas E Teague agent for Jon Durran (Occupier)

**Appellant's Address:** White Lion Inn, Bank Street, Chepstow NP16 5EL

**Appeal number:** 684028927561/192NV17

**The Matter Appealed against:** 2017 Rating List

**Date of Hearing:** Friday 21<sup>st</sup> September 2018

**Appearances:** Mr John Keane (agent for the occupier), Mr Greg Overs (for the respondent Valuation Officer)

**Date of Decision:** 15<sup>th</sup> October 2018

**Decision of Tribunal:** Appeal allowed in part

**Members of the Tribunal:** Mrs E Price-Suter (Chairperson), Mr T Cook, Mr R Henley

**Tribunal Clerk:** Mr G Harris

## Introduction

1. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

## Summary of the Case

2. Mr Keane explained that the matter for consideration by the tribunal related to a 2017 compiled list appeal in respect of The White Lion Inn, Chepstow. The appellant contended that the Rateable Value (RV) was too high at £42,900 and should be reduced to £23,000 with effect from 1<sup>st</sup> April 2017.
3. Mr Keane stated that the appeal property was a Grade II listed public house dating from 1644. It was situated in the centre of Chepstow at the junction of Bank Street and High Street facing a small square. It was of traditional stone and brick construction under a multi-pitched tiled roof and had wooden framed single glazed windows. To the rear was a paved patio area containing approximately 6 picnic benches.

4. The internal trade accommodation comprised a public bar, a rear late night bar and a coffee shop. Each trade area had a distinct demographic profile with the public bar being favoured by those in the 35-50 bracket, the late night bar by 18-25's and the coffee shop by a more mature clientele and shoppers.
5. Mr Keane explained that the layout of the pub was quite dispersed with a central passage effectively separating the coffee shop from the rest of the property. Consequently, staffing costs were high with an inevitable element of duplication, these costs had been reflected in the working expenses of the business. The White Lion had a late licence to serve alcohol until 1:00am at weekends and could stay open until 1:30. The premises licence, a copy of which was attached in the appendixes to his evidence pack, included a mandatory condition to employ door staff during alcohol sales hours, with the extra costs incurred itemised as a separate expense in Mr Keane's valuation.
6. Mr Keane explained that the basis of valuation was set down under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988, as amended. It was defined as an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on the assumptions that -
  - (a) the tenancy begins on the day by reference to which the determination is to be made;
  - (b) immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic; and
  - (c) the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.For the purposes of this appeal the Antecedent Valuation Date (AVD) was 1<sup>st</sup> April 2015.
7. Mr Keane stated that the usual methodology for the valuation of public houses was contained in The Approved Guide to the Valuation of Public Houses ("the guide") a copy of which was attached in the appendixes to his evidence pack. The valuation approach was to estimate the Fair Maintainable Trade (FMT) of the hereditament, broken down into wet, food, accommodation and other, and apply a percentage "bid" to each of those income streams with the resultant figure representing the rateable value. The Guide divided the country into 3 areas – Central London, Outer London and Provincial England and Wales and each area into 3 bands – Category 1 (Upper), Category 2 (Middle) and Category 3 (Lower). There were 2 bands for food sales – A (Upper) and B (Lower). It was the task of the valuer to place the hereditament in question into this matrix. In this case the valuer had placed The White Lion at the bottom of Category 3 for wet sales and the bottom of Band B for food sales. Mr Keane believed those choices were constrained by the Guide and contended that the resulting RV was still too high.

8. Referring to Case Law, Mr Keane highlighted the case *Sharp v Griffiths (VO) 1992* where Mr Norman Rose stated that the Guide is, in effect “a truncated profits method” of valuation that had no statutory basis and was not binding on individuals or the Valuation Tribunal. In the more recent Valuation Tribunal for England case *Brown v Kirk (VO)* the President of the Tribunal said “*the guide is what it says it is, merely a guide, a degree of subjective decision making is still required of the valuer or on appeal the Tribunal*”. It was Mr Keane’s opinion that the Guide was not flexible enough to adequately reflect the actual circumstances of The White Lion, specifically the high wage costs and the expense of employing door staff and as such a more refined approach was necessary.
9. Mr Keane contended that as the Guide was a “truncated profits method” that it was appropriate, therefore to use the full profits method to provide a more nuanced valuation. Mr Keane stated that the profits method was an established method for the valuation of public houses, although had been used less frequently since the introduction of the Guide and the insistence by the Valuation Office on its use.
10. Mr Keane explained the principles behind the profits method and stated that the starting point was an assessment of the Fair Maintainable Trade (FMT). Mr Keane had provided the Valuation Officer with detailed Profit and Loss accounts for the years ending 30<sup>th</sup> June 2015 and 30<sup>th</sup> June 2016, copies of which were attached to his appendixes. In this case the FMT at the AVD had been agreed between the parties as being £408,000 for wet sales and ££42,000 for food sales, being the approximate average of the 2015 and 2016 trades. For consistency Mr Keane had adopted approximate averages of the working expenses for his valuation and commented that the gross profit was in line with market expectations and as far as he was aware was accepted as reasonable by the Valuation Officer. Mr Keane’s valuation was as follows –

|                                          | <b>FMT</b>    | <b>Gross Profit %</b> | <b>Gross Profit £</b> |
|------------------------------------------|---------------|-----------------------|-----------------------|
| FMT Wet Sales                            | 408,000       | 58.00                 | 236,640               |
| FMT Food Sales                           | 42,000        | 60.00                 | 25,200                |
| Total Sales                              | 450,000       | 58.19                 | 261,840               |
| <b>Expenses</b>                          |               |                       |                       |
| Staff                                    |               | 23.79                 | 107,033               |
| Water Rates                              |               | 0.61                  | 2,750                 |
| Insurances                               |               | 0.68                  | 3,046                 |
| Heat/Light/Power                         |               | 2.29                  | 10,288                |
| Motor Expenses                           |               | 0.08                  | 360                   |
| Printing/Postage etc                     |               | 0.08                  | 360                   |
| Telephone etc                            |               | 0.32                  | 1,443                 |
| Internet                                 |               | 0.22                  | 1,000                 |
| Professional fees                        |               | 1.24                  | 5,566                 |
| Door Staff                               |               | 6.93                  | 31,190                |
| Consultancy fees (agency staff)          |               | 1.24                  | 5,587                 |
| Equipment costs                          |               | 0.53                  | 2,396                 |
| Repairs and Renewals                     |               | 1.49                  | 6,712                 |
| Cleaning Costs                           |               | 0.61                  | 2,742                 |
| Bank Charges                             |               | 1.08                  | 4,871                 |
| Depreciation                             |               | 0.21                  | 948                   |
| Sundry Expenses                          |               | <u>1.16</u>           | <u>5,206</u>          |
| <b>TOTAL</b>                             |               | 42.55                 | 191,497               |
|                                          |               | <b>FMOP</b>           | <b>70,343</b>         |
| <b>Less Interest on Tenant's Capital</b> |               |                       |                       |
| Inventory                                | 12,500        |                       |                       |
| Stock in Trade                           | 9,000         |                       |                       |
| Working Capital                          | <u>10,000</u> |                       |                       |
|                                          | 31,500        | @ 5%                  | <u>1,575</u>          |
| <b>Divisible Balance</b>                 |               |                       | <b>68,768</b>         |
| <b>Tenant's Share</b>                    |               | <b>50%</b>            | <b>34,384</b>         |
| <b>Rent and Rates</b>                    |               | <b>50%</b>            | <b>34,384</b>         |
| <b>NNDR 0.499 therefore RV =</b>         |               |                       | <u><b>22,883</b></u>  |
|                                          |               | <b>Say</b>            | <b>23,000</b>         |

11. Mr Keane explained that according to the 2016 Cost Guide for Tied Tenants and Lessees to the Running of a Pub, a copy of which was attached in the appendixes to his evidence, the average working expenses expressed as a percentage of turnover for this type of public house was 33%. The actual working expenses of the White Lion were 43% of turnover, significantly more than the upper end of the range in the 2016 Cost Guide. This disparity was attributable to the exceptional costs of employing staff and door security. This was reflective of the fact that the appeal property had 3 distinct trade areas, all of which needed to be staffed. In addition, door staff had to be employed according to the terms outlined in the Premises Licence.

12. In conclusion, Mr Keane contended that the Approved Guide did not reflect the exceptional circumstances of The White Lion due to its physical layout and additional staffing requirements coupled with the legal requirements to employ door staff which resulted in significantly higher working expenses than those at the upper end of the licenced trade's benchmarking tool. A full profits method valuation provided a more nuanced valuation which was better able to reflect the individual advantages and disadvantages of The White Lion. In light of this, Mr Keane asked that the Tribunal confirm a RV of £23,000.
13. Under cross examination Mr Keane confirmed that he had not departed from using the Guide in any other valuation of a public house. Mr Keane explained that the current occupier's sister had signed the original tenancy on 1<sup>st</sup> February 2010 for a period of 15 years with preordained 3 yearly rent reviews. The original rent was for £52,000 per annum, rising to £60,000 in 2013, £68,000 on the 2<sup>nd</sup> review, £73,000 on the 3<sup>rd</sup> and £83,000 on the 4<sup>th</sup>. It was Mr Keane's opinion that the rent was unsustainable. The current occupier had inherited the lease when his sister had passed away.
14. Mr Overs, for the Valuation Officer, introduced the appeal property and provided the Tribunal with external photographs and a plan of its layout. He explained that it had been entered into the 2017 Rating List at a RV of £42,900 with effect from 1<sup>st</sup> April 2017. It had been valued according to Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988.
15. Mr Overs explained that public houses, bars and inns were valued on a rental basis. Traditional public houses use "fair maintainable turnover" as the comparator to assist in the analysis of rental evidence and therefore as a valuation basis. Percentage rental bids were then applied to the various income streams making up the FMT depending on location, age, modernity, style of operation etc. as set out in the Valuation of Public Houses Approved Guide.
16. Mr Overs stated that The Pubs Rating Forum had been established in 2014 in order to provide a vehicle through which the pub industry and the Valuation Office Agency could maintain an on-going dialogue and exchange of information in respect of matters relevant to the valuation for rating of public houses. The forum included the following member organisations –
  - British Beer & Pub Association
  - Association of Licensed Multiple Retailers
  - British Institute of Innkeeping
  - Federation of Licensed Victuallers Associations
  - Guild of Master Victuallers
17. In collaboration with the Forum and its appointed rating advisers (Gerald Eve, Lawrence Tattersall, BNP Paribas and Davis Coffey Lyons) the available rental evidence had been analysed and considered in detail, along with other market performance indicators. The Approved Guide had

been agreed with the Forum, following a period of 4 months intensive discussions covering all relevant factors.

18. Mr Overs explained that the Guide had been used to value all of the public houses (over 44,000) in England and Wales for the 2017 Rating List and to his knowledge the VOA had not departed from the Guide in the defence and settlement of any public house rating appeal.
19. Mr Overs believed that the analysis of the accounts used by Mr Keane in his valuation showed a healthy income for the property but that the outgoings appeared exceptionally high giving a low profit margin and hence a low amount available for rent and rates. Mr Overs contended that to depart from the Guide in considering the RV of a public house consideration had also to be made to the actual rent passing on the property which was stated to be £60,000 with effect from 25<sup>th</sup> June 2014. After deducting an amount to represent the domestic element of the property, the resulting figure would provide a high assessment not consistent with similar pubs in the locality trading at a similar FMT.
20. Therefore, Mr Overs believed that the only consistent approach to arriving at the correct RV for the appeal property was to follow the approved guide. Referring to the Guide, Mr Overs had considered each category and band and having had regard to the particular disabilities of the property had adopted the minimum category of both bands for wet and food trades. In particular he had taken into account the front and rear bars and the separate shop type premises within the curtilage which required additional staffing and running costs above the average, and also the additional door security costs as indicated in the accounts. Mr Over's valuation was as follows –

| <b>Location</b> | <b>Income</b>          | <b>Category</b>          | <b>Min</b>            | <b>Max</b>    |
|-----------------|------------------------|--------------------------|-----------------------|---------------|
| Provincial      | Liquor                 | Band 3                   | 8.26%                 | 9.50%         |
|                 | Food                   | Band B                   | 1.48%                 | 3.74%         |
| <b>Receipts</b> | <b>Adopted FMT (£)</b> | <b>Rental Percentage</b> | <b>RV (£)</b>         |               |
| Liquor          | 408,000                | 8.26%                    | 33,701                |               |
| Food            | 42,000                 | 1.48%                    | 622                   |               |
| Accommodation   |                        |                          |                       |               |
| Other           |                        |                          |                       |               |
| <b>Total</b>    |                        |                          | 34,322                |               |
|                 |                        |                          | <b>Rateable Value</b> | <b>34,000</b> |

21. In conclusion, Mr Overs urged the tribunal not to depart from using the Approved Guide in considering the correct RV for The White Lion Inn. In using the Guide and having regard to the particular disadvantages of the property, adopting the minimum of the lowest band adequately reflected the particular hereditament whilst maintaining a consistent approach to the valuation of public houses. Adopting the minimum of the lowest bands to the agreed FMT had given a RV of £34,000 with effect from 1<sup>st</sup> April 2017 which he asked the Tribunal to confirm.

22. Under cross examination, Mr Overs believed the rent to be exceptionally high and not useful as it had been agreed 5 years prior to the AVD although all evidence was considered depending upon its weight. Mr Overs agreed that the property was unique but did not believe that this was enough reason to depart from the Guide, stating that lots of public houses have more than 2 bars and other pubs in Chepstow employ door staff.
23. At the conclusion of the hearing, the tribunal decided to reserve its decision.

### **The Reasons for Decision**

24. Having considered all the evidence placed before it the tribunal decided as follows: -
25. The Tribunal accepted that there was no dispute between the parties with regard to the FMT used by each party in their respective valuations. The dispute centred upon the method of valuation used to obtain the RV of the hereditament.
26. Mr Keane contended that due to the exceptional circumstances of The White Lion due to its physical layout and additional staffing requirements, a full profits method valuation would provide a more nuanced valuation which was better able to reflect the individual advantages and disadvantages of hereditament. Mr Overs on the other hand contended that the property should be valued in accordance with The Approved Guide to the Valuation of Public Houses.
27. The Tribunal whilst acknowledging that the full profits method could be used in the valuation of a public house believed that such guidance such as The Approved Guide, agreed by the VOA and on behalf of a particular category of ratepayers, in this case The Pubs Rating Forum, ought to be followed unless there was good reason not to. The Tribunal accepted that The White Lion Inn had unconventional layout which had resulted in high staffing costs however did not consider this to be unique in the public house industry and therefore was not reason enough to depart from The Approved Guide.
28. The Tribunal was satisfied that Mr Overs had adequately reflected the characteristics of the appeal property when deciding in which category and band to place it for his valuation and that his proposed RV of £34,000 was fair and reasonable. In light of this, the Tribunal orders the Valuation Officer to amend the RV of The White Lion Inn, Bank Street, Chepstow NP16 5EL to £34,000 with effect from 1<sup>st</sup> April 2017.

Certified a true copy on 15<sup>th</sup> October 2018