

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2010] UKUT 309 (LC)  
UTLC Case Number: RA/27/2010

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*RATING – public house – valuation – application of Approved Guide – lack of evidence of trading accounts for appeal hereditament at AVD for 2005 list – appellant’s use of 2009/10 accounts rejected – comparables – assessment confirmed at £30,750 – appeal dismissed*

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE  
VALUATION TRIBUNAL

BETWEEN

KEVIN HAROLD EDWARDS

Appellant

and

CATHERINE HOWARTH  
(Valuation Officer)

Respondent

Re: The Woolpack Inn,  
Whitley Road,  
Whitley,  
Dewsbury,  
West Yorkshire,  
WF12 0LZ

Before: A J Trott FRICS

Sitting at: UTIAC, Phoenix House, Rushton Avenue, Thornbury, Bradford BD3 7BH  
On 8 June 2011

Appellant in person  
Respondent in person

© CROWN COPYRIGHT 2010

The following case is referred to in this decision:

*Wetherspoon (JD) plc v Day (Valuation Officer)* [2008] RA 129

The following cases were referred to in argument:

*Watney Mann Ltd v Langley* [1964] RVR 22

*Brown (Irving) and Daughter v Smith* [1996] RA 53

## **DECISION**

### **Introduction**

1. This is an appeal by Mr Kevin Harold Edwards (the appellant) against a decision of the Valuation Tribunal dated 11 October 2010 confirming the compiled list assessment in the 2005 non-domestic rating list of the public house and premises known as the Woolpack Inn, Whitley Road, Whitley, Dewsbury, West Yorkshire WF12 0LZ at a rateable value of £30,750.
2. The respondent is Mrs Catherine Howarth MRICS, the duly authorised valuation officer.
3. Both parties appeared in person.
4. The appeal was heard under the simplified procedure.
5. I made an unaccompanied visit to the appeal property on 7 June 2011. I also made external inspections of two comparable public houses, the Hare and Hounds on the B6118 near Mirfield and the Kaye Arms on the A642 at Grange Moor.

### **Facts**

6. The appeal hereditament comprises a two storey stone and slate-roofed public house fronting Whitley Road at its junction with Scopsley Lane, approximately 1.5 miles west of Thornhill. The premises are located in a hamlet which is centred on Scopsley Lane and Scopsley Green. The building has been extended with a conservatory at the rear and by the addition of 10 letting rooms located in an annexe attached to the main building and in a separate annexe across the rear yard. There is a small car park to the rear of the building and another car park, with 65 spaces, directly opposite the property in Scopsley Lane.
7. The then owner, the Laurel Pub Company, undertook improvement works sometime between 1 April 2003 and 1 April 2005. These works included the renovation of the bedrooms, the repositioning of the bar, levelling the floor and the provision of a disabled access.
8. The appeal hereditament was shown in the 2005 compiled list as a public house and premises with a rateable value of £30,750. An appeal against this assessment was made by Commercial Valuers and Surveyors (CVS) on behalf of the then ratepayer, Mrs A McGurran, but this was withdrawn in February 2007.
9. The appellant, who occupied the appeal hereditament as a tenant of Greene King Ltd from October 2009 to June 2010, submitted a proposal to alter the 2005 rating list on 19

February 2010. It was accepted by the valuation officer as a compiled list proposal as the appellant had stated as the grounds for the proposed list alteration that the rateable value in the rating list on 1 April 2005 was inaccurate. However he also stated that he wanted the rateable value altered to the “current turnover” with effect from 14 October 2009. The appellant did not specify any material change in circumstances to justify this alteration of the list and the Valuation Tribunal, when the valuation officer referred the disagreement to them as an appeal, proceeded on the basis that it was a compiled list appeal.

### **The Valuation Tribunal’s decision**

10. The Valuation Tribunal commented upon the lack of reliable trade figures to support the compiled list assessment and the absence of data based upon completed forms of return. But it said that it could have no regard to the current economic climate when setting an assessment for the 2005 rating list, even though it accepted that trade at the appeal property “had clearly fallen by March 2008”. It concluded:

“Accordingly, having regard to the parameters set out in the current case and the lack of any alternative trade information at the AVD, the panel considered that it was with regret that the appeal had to be dismissed.”

### **Valuation method**

11. For the 2005 rating lists an Approved Guide for the Valuation of Public Houses was agreed between the British Beer and Pub Association and the Valuation Office Agency.

12. Public houses were valued by reference to fair maintainable receipts (FMR). The method of valuation was to assess separately, on the one hand the FMR of the liquor trade (including net income from gaming and other machines) and, on the other, the FMR of the food trade. A separate figure was included for letting accommodation where such accommodation exceeded six bed spaces (as it did in the appeal hereditament).

13. The Guide required that for liquor sales the public house be placed within one of three geographical areas and one of three valuation bands. Each band for each geographical area had a minimum and a maximum percentage which varied according to the size of the turnover. The “change points” in turnover were at intervals of £100,000.

14. For food sales the Guide made no distinction between geographical areas and gave a choice of only two valuation bands. Each band had a minimum and a maximum percentage which again varied with the level of turnover, this being measured at smaller intervals than for liquor sales for amounts less than £100,000 but thereafter with change points every £100,000.

15. For accommodation sales the Guide said:

“The appropriate percentage will be derived from the rate determined for the fair maintainable receipts for food sales ... plus an addition of from zero to 3%, depending on circumstances.”

### **The case for the appellant**

16. Mr Edwards criticised the lack of reliable trading information upon which the compiled list assessment was based. The trading figures that had been provided by CVS when acting for Mrs McGurran in the earlier appeal were not taken from a form of return but had been provided verbally and made no reference to income from letting out rooms. He did not consider that they fairly reflected the FMR. Because of this lack of reliable evidence Mr Edwards asked that the burden of proof be reversed and that the valuation officer be required to justify the compiled list entry.

17. Mr Edwards said that the trading figures from his own period of occupation gave a more accurate picture of the trading potential of the appeal property. These accounts, for the period ending 30 June 2010, showed an operating loss of £11,681 on a turnover of £116,299 (equivalent to an annual turnover figure of £174,448). Mr Edwards said that had the FMR been as high as the respondent said then there would not have been as many changes of landlord over the last few years. He also referred to trading figures provided on a form of return made by Daisychain Inns for the 30 week period ending 29 March 2008. These showed an annual equivalent turnover of £146,300 which again was substantially lower than the figures relied upon by the respondent when compiling the 2005 rating list. Mr Edwards did not accept that the trading figures for 2009/10 would reflect the effects of the recession and that consequently they would be expected to be lower than the FMR in 2003.

18. Mr Edwards said that the appeal hereditament was not located in a residential area with a large local catchment population. The respondent had wrongly proceeded on the assumption that there were a significant number of patrons living within walking distance. The two other public houses referred to by the valuation officer, namely the Hare and Hounds and the Kaye Arms, were not comparable to the Woolpack. They were both traditional country public houses and were located on much busier roads than the appeal property which Mr Edwards described as a normal village inn.

### **The case for the respondent**

19. Mrs Howarth valued the appeal hereditament by reference to the Approved Guide. She firstly estimated the FMR of liquor, food and accommodation sales as at the antecedent valuation date (AVD) of 1 April 2003 but having regard to the actual physical state of the hereditament as at 1 April 2005. Mrs Howarth said that since the hearing before the Valuation Tribunal she had discovered that the trading information provided by CVS at the time of the earlier appeal was supplied on a form of return rather than verbally and that it also provided details of the income from room lettings. She had reviewed her valuation in the light of this new evidence and adopted the following figures of FMR:

Liquor and machines: £132,500  
Food: £210,000  
Accommodation: £60,000

20. These figures were said to be broadly in line with the trade that was actually achieved in 1999 and 2000. As such they did not reflect the improvements that had been made to the appeal hereditament by the Laurel Pub Company between 2003 and 2005.

21. Mrs Howarth then determined the bands to which the liquor and food trade should be allocated and also the point in the range of percentages appropriate to the FMR of each type of trade. She informed her decision by reference to two comparable public houses; the Hare and Hounds at Mirfield and the Kaye Arms Inn and Brasserie at Grange Moor. This analysis produced the following results:

*Hare and Hounds*

FMR liquor: £120,000 - valued at 0.6 of Band 2 (7.0%)  
FMR food: £645,000 - valued at 0.6 of Band A (10.1%)

*Kaye Arms*

FMR liquor: £200,000 - valued at 0.8 of Band 2 (9.2%)  
FMR food: £500,000 - valued at 0.7 of Band B (9.7%)

22. Mrs Howarth valued the appeal hereditament as follows:

*Woolpack Inn*

FMR liquor: £132,500 - valued at 0.6 of Band 2 (7.28%)  
FMR food: £210,000 - valued at 0.6 of Band B (7.85%)  
FMR accommodation: £60,000 - valued at 7.85% (0% addition)

Applying these percentages to the FMRs gave a total valuation of £30,841 which Mrs Howarth rounded down to a rateable value of £30,750.

23. Mrs Howarth explained that her choice of bands and percentages reflected the nature of the trading location, the physical characteristics of the appeal hereditament and the style of trade that was maintainable by the hypothetical tenant. For liquor trade the Approved Guide said that Band 2:

“comprises good quality houses in poor trading locations, average quality houses in average locations and poor quality houses in good trading locations.”

She considered that the Woolpack was a good quality house in a good location which led her to adopt a point slightly above the middle of the appropriate percentage range. Her choice of band and position in the band for food trade reflected the comparison with the two comparable

houses. Mrs Howarth did not consider that the occupancy level of the accommodation justified the addition of any percentage to that derived for the food trade.

24. Mrs Howarth acknowledged that her evidence of the FMR of the appeal hereditament was derived from data in 1999 and 2000 and not as at the AVD. She therefore investigated how the trade at the two comparable houses had changed over that intervening period. She said that the total trade at the Hare and Hounds had increased by 22% between September 1999 and September 2002, while trade at the Kaye Arms had increased by 6.8% between the years ending December 1999 and March 2003. Given this pattern Mrs Howarth considered that her adoption of FMRs at 1 April 2003 which were only slightly above the declared 1999 and 2000 trading figures was “not unreasonable”.

25. Mrs Howarth rejected the appellant’s argument that the reduced trading figures of his period of occupation or those of his predecessor, Daisychain Inns, for the 30 weeks ending on 29 March 2008 were relevant to the appeal. She said that although there was irrefutable evidence that turnover had declined over the years this had nothing to do with the determination of the FMR at the AVD 5 years earlier. This was an appeal against the compiled list entry and events that happened subsequently were beyond the scope of the appeal.

26. Although Mrs Howarth argued that there should be no reduction in the compiled 2005 list assessment she explained that because of a material change in circumstances the rateable value of the appeal hereditament had been reduced to £20,500 with effect from 7 August 2007. The rateable value under the 2010 list had been reduced to £23,000 with effect from 1 April 2010. She considered that these reductions had in fact satisfied what the ratepayer had been hoping to achieve in his appeal, namely that the rateable value should reflect the “current turnover with effect from 14 February 2009”.

27. Mrs Howarth concluded that the appellant had adduced no evidence to justify a reduction in the compiled 2005 list assessment of £30,750.

## **Conclusions**

28. I accept the respondent’s view that the appropriate method to value the appeal hereditament is that contained in the Approved Guide for the 2005 lists. In *Wetherspoon (JD) plc v Day (Valuation Officer)* [2008] RA 129 the President said at 143 [43]:

“Guidance of this sort, agreed by the Valuation Office Agency and on behalf of a particular category of ratepayers, ought to be followed unless there is a good reason not to do so.”

There is no good reason not to use the Approved Guide in this appeal.

29. The key issues in the appeal are the determination of the FMR as at the AVD and the allocation of the appeal hereditament to the appropriate position within the relevant bands contained in the Approved Guide.

30. I begin my consideration of the FMR by rejecting Mr Edwards' argument that weight should be given to the trading figures for 2008 (Daisychain) and 2009 (the appellant). These are 5 and 6 years after the AVD at a time when the economic climate was very different. The two sets of figures that Mr Edwards urges me to consider were both representative of a trading period of less than a year and in each instance took place after a period of closure of the Woolpack. I find them to be of no assistance.

31. There is no direct evidence of trading at the appeal hereditament at or around the AVD. Mrs Howarth produced figures from a form of return for the year ending 31 March 1999 that were not available to the Valuation Tribunal. These figures were for a period of only 26 weeks and had apparently been doubled to arrive at the full year's figures as relied upon by the respondent. Such an adjustment does not take account of any seasonal fluctuations in trade. The figures for the year ending 31 March 2000 were categorised under "other rental information" which Mrs Howarth explained was oral or written evidence other than a form of return. Accommodation turnover was not separately identified in the 2000 figures and is assumed to be included under the FMR for food.

32. I consider that Mrs Howarth has acted fairly by only making marginal upward adjustments to the 1999/2000 FMRs to reflect growth over the period until the AVD. Her use of two other nearby destination public houses to calibrate the changes in trade over that period is, in my opinion, a reasonable proxy for such growth. She has also made no adjustment to reflect the improvements to the Woolpack that were made by the Laurel Pub Company in the period between the AVD and 1 April 2005. However I do not accept her figure of £250,000 as representing the cost of those improvements since this figure was apparently derived from an uncorroborated local press report.

33. I accept Mrs Howarth's figure of £132,500 for the liquor FMR which is less than the figure shown in the form of return for the year ending 1999 before any addition for machines. Her figure of £210,000 for food FMR is an increase of 5% over the 1999 figure. This increase is less than the equivalent figures for the Hare and Hounds and the Kaye Arms both of which had agreed compiled 2005 list assessments based upon full trading disclosure. I consider this increase to be reasonable in view of the comparable evidence and given the appeal hereditament's identity as a destination style public house offering good food in pleasant surroundings.

34. Mrs Howarth takes the FMR of accommodation at £60,000 which is less than the 1999 form of return figure. I accept this as being a reasonable estimate.

35. There are three valuation bands into which the appeal hereditament could be placed for the purposes of determining the appropriate percentage to apply to the liquor FMR. Mrs



Howarth adopts Band 2. She says that the “Woolpack is a good quality house in a good location.” This is actually the criterion to place a house into Band 1. In my opinion the Woolpack is a good quality house in an average location in a rural hamlet and with a reasonable amount of passing traffic. I therefore accept that the appeal hereditament should be included within Band 2.

36. The Approved Guide states that the choice of percentage values within each band at any given level of liquor FMR “is a matter of judgement”. It goes on to explain:

“This allows for the ‘fine tuning’ of the valuation to reflect the operation of the house and the significance of the expenses required to maintain the particular type of trade being carried on. Factors to be considered include whether the house is, or is not, trading at its optimum potential, the level of prices charged, staffing costs (taking into account the level and scope of services offered), maintenance, insurance, marketing, provision of entertainments, etc. in relation to the fair maintainable receipts adopted.”

While there are no contemporary financial accounts upon which to base such a judgment, I am satisfied that Mrs Howarth’s adoption of a point which is 0.6 of the difference between the minimum and maximum percentages for Band 2 is reasonable and is consistent with the evidence of the two comparable public houses.

37. There are two valuation bands into which the appeal hereditament may be placed for the purposes of determining the appropriate percentage to apply to the food FMR. The Approved Guide says that these bands:

“reflect the nature of the trading locality, the physical characteristics of the house and the style of trade which is maintainable. The ability of the house to conduct food trade and the style and profitability of the food operation will finally determine the correct band.”

38. Mrs Howarth says that:

“From my records I understand that the property had a good reputation as being a ‘destination’ style pub offering good food in pleasant surroundings.”

At the hearing she said that the Woolpack was known for good, a la carte meals served in open plan surroundings with a new conservatory and the benefit of a large car park and overnight accommodation. The operation was easy to run. Mrs Howarth allocated the appeal hereditament to Band B (the lower of the two bands) and adopted a percentage that was at 0.6 of the range between the minimum and the maximum. In my opinion that is a reasonable assessment of the food trade at the appeal hereditament and places the Woolpack at a lower point in the percentage range than either of the comparable houses.

39. Where the letting accommodation exceeds 6 bed spaces the Appeal Guide says that:

“an appropriate judgement as to the correct rate percent to be applied to the fair maintainable receipts for accommodation sales will have to be made.”

The appropriate percentage is taken as the rate determined for the food FMR plus an addition of from zero to 3% “depending on circumstances.” The Approved Guide offers the following guidance on the point:

“In considering the appropriate additional percentage, account will have to be taken of whether the accommodation is an integral part of or ancillary to the main business, the type and class of the letting bedrooms, the number of bedrooms available, the level of receipts, the proportion of these receipts as compared with the total receipts of the business, the degree of occupancy and the probable profitability of the letting business (bearing in mind additional staffing, advertising, etc. attributable solely to the business of the letting accommodation).”

40. There is limited information about the income from the letting accommodation at the appeal hereditament. There is historic data from the forms of return for the years ending 31 March 1997, 1998 and 1999. This shows that such income represented 11.7%, 14.6% and 15.5% of total turnover respectively. The occupancy rate over those years was 32%, 43% and 40% respectively. (By the time of Mr Edwards’ occupancy in 2009/10 the income from accommodation had dropped to under 3% of turnover.) In my opinion, given the limited evidence available, Mrs Howarth acted fairly when deciding not to make any addition to the food FMR percentage of 7.28%.

41. I consider that Mrs Howarth’s application of the Approved Guide to the circumstances of the appeal hereditament was appropriate, fair and accurate. I accept her figures for the FMR and her choice of bands, and of the percentages within those bands, for liquor, food and accommodation sales. The appeal is therefore dismissed and the assessment of the appeal hereditament is confirmed at a rateable value of £30,750 with effect from 1 April 2005.

42. Costs are only awarded under the simplified procedure in exceptional circumstances. In my opinion there are no such circumstances in this appeal which would justify the award of costs and neither party submitted that there were. I therefore make no award as to costs.

Dated 2 August 2011

A J Trott FRICS