UPPER TRIBUNAL (LANDS CHAMBER)

Neutral citation number: [2023] UKUT 00003 (LC) **UTLC No: LC-2022-126**

Royal Courts of Justice,
Stand, London WC2

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – VALUATION – small independent hotel – use of fair maintainable trade methodology or comparable valuation – whether a tone established for the 2017 list – appeal allowed – assessment determined at £16,250

AN APPEAL AGAINST A DECISION OF
THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

ARMA HOTELS LTD

Appellant

-and-

DAWN BUNYAN
(VALUATION OFFICER)

Respondent

Re: The Brent Hotel,
165 Preston Hill,
Kenton,
Harrow,
HA3 9UY

Mrs Diane Martin MRICS FAAV

Heard on: 6 October 2022

Decision Date: 25 January 2023

Mr Anup Patel for the appellant
Mr Guy Williams, instructed by HMRC Solicitors for the respondent

The following cases are referred to in this decision:

Arma Hotels Limited v Andrew Corkish (VO) [2020] UKUT 0103 (LC)

Futures (London) Ltd v Stratford (VO) [2005] 12WLUK92 [2006] RA 75

Stock Auto Breakers Ltd v Chris Sykes (VO) [2020] UKUT 52 (LC)

Introduction

1. This is an appeal by the ratepayer, Arma Hotels Ltd, against a decision of the Valuation Tribunal for England ("the VTE") dated 14 February 2022 ("the VTE decision") in which it dismissed the appellant's appeal and confirmed that the rateable value of the Brent Hotel, 165 Preston Hill, Kenton, Harrow HA3 9UY ("the Hotel") should remain in the 2017 rating list unaltered at £31,000.

2. The appeal was initially listed under the simplified procedure, but was moved to the standard procedure to enable case management of disclosure issues. The appellant was represented by Mr Anup Patel, one of its directors, who acted as advocate and provided evidence of fact. The Valuation Officer ("VO") was represented by Mr Guy Williams, who called Mrs Doreen Thorne MRICS of the Valuation Office Agency ("VOA") to give expert evidence.

Background

3. The Hotel was acquired as an investment by Arma Real Estate Limited ("AREL") on 17 December 2014, the previous occupier (trading as The Brent X Hotel Ltd) having gone into receivership on 31 August 2014. The appellant company took occupation on the date of purchase, with no formal basis for the occupation since both companies are owned and controlled by Mr Patel and members of his family. In the accounts for the two companies there is evidence of rent paid by Arma Hotels Ltd to Arma Real Estate Ltd but Mr Patel confirmed that these payments were made to cover the cost of borrowing by AREL, and were decided annually by the directors. They are not relied upon by either party in this appeal.

4. This is not the first appeal in which the Hotel has featured. In *Arma Hotels Limited v Corkish (VO)* [2020] UKUT 103 (LC) ("the 2020 decision") the Tribunal heard an appeal against a decision of the VTE in respect of a transitional certificate in the 2010 rating list. It determined a rateable value of £13,000 at the material day in that appeal of 31 March 2017, with reference to values as at the antecedent valuation date ("AVD") in that list of 1 April 2008. Unsurprisingly, the description of the Hotel in the 2017 list, where the material day is one day later, remains the same. In the 2020 decision it was described at paragraphs [3] and [4] as follows:

> 3. The Hotel is a bed and breakfast establishment converted from a detached residential property in the early 2000s. It was purchased from receivers by the appellant company in November 2014. Between 1 January 2015 and 13 May 2016 refurbishment works were carried out, including provision of an enlarged kitchen/breakfast room leading to the loss of bedroom 13 and a reduction in size of bedroom 16. A plan of the hotel dated 9 May 2018 shows five en-suite bedrooms on the ground floor, together with a reception room and laundry/luggage room, seven en-suite rooms on the first floor (one in use as a laundry room) and five en-suite rooms on the second floor (one in use as a laundry room). Mr Patel confirmed that the hotel is considered to be of 3* equivalent, but without a bar or restaurant.
>
> 4. The Hotel is located on Preston Hill in the London Borough of Brent. It has limited parking within the curtilage, but there is on-street parking in the surrounding

residential area. Tube services are available half a mile away at Preston Road and just under a mile away at Kingsbury. Shops and restaurants are located in the vicinity of the two stations and to walk to either involves a hill either on the way out or way back. The Hotel is two miles from Wembley Stadium and three miles from Harrow-on-the Hill.

5. In the 2020 decision it was established that the Hotel comprises 15 bedrooms, which are the equivalent of 12.94 Double Bed Units ("DBUs"). DBUs are the standard unit for valuing and comparing hotels. The rateable value at £13,000 was assessed at £1,100 per DBU, using local comparable evidence and the tone of the 2010 list, before an allowance of 8.25% for a material change of circumstances ("MCC") as at 31 March 2017 resulting from the opening of other hotels in the Wembley area since the AVD in April 2008.

6. The Hotel was initially entered into the 2017 rating list at rateable value £59,000, which was reduced to £56,000 and then to £54,000 following completion of the appellant's check. The appellant challenged this figure and in due course the VO reduced the rateable value to £31,000 by Valuation Officer Notice ("VON") dated 25 March 2021, based on an assessment of £2,400 per DBU. The appellant appealed to the VTE on the ground that the valuation for the Hotel was not reasonable. The appellant's representative and expert at the VTE hearing, Mr Andrew Bacon, assessed the rateable value at £13,000 (£1,012 per DBU). The VO defended the figure of £31,000, which the VTE upheld.

7. In this appeal the appellant sought a rateable value of £11,750 (£915 per DBU) and the VO continued to defend the value in the VON of £31,000 (£2,400 per DBU).

8. It was helpful that after the hearing the parties were able to agree annotations to a master list of hotels in Brent and Harrow indicating the basis of assessment and the state of the check, challenge and appeal process where applicable.

Legislative framework

9. Rateable value is defined in Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988 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 these three assumptions:

> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
>
> b) the second assumption is that 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;
>
> c) the third assumption is that the tenant undertakes to pay all the usual tenant's rates and taxes and bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state fit to command the rent mentioned above."

9. Statute requires that the appeal property be valued reflecting certain matters as they existed on the material day as set out in paragraph 2(7) of Schedule 6 Local Government Finance Act 1988. The matters relevant to the appeal are:

> "(a) matters affecting the physical state or physical enjoyment of the hereditament;
>
> (b) the mode or category of occupation of the hereditament;
>
> (c) ...
>
> (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there; and
>
> (e) the use or occupation of other premises situated in the locality of the hereditament."

Professional guidance

10. The VOA publishes a technical manual for non-domestic rating ("the Rating Manual"), intended as guidance for valuation officers but freely available on the government website. Section 510: Hotels ("Section 510") and the 2017 Practice Note provide guidance on the valuation of hotels for the 2017 rating list. Both parties referred to this guidance, acknowledging that it is not binding on the Tribunal.

The issues in dispute

11. The over-arching issue in dispute between the parties is, of course, the rateable value, but their differences arise principally over the correct methodology to be used in assessing the rateable value of the Hotel. Two methods of valuing hotels for rating are referred to in Section 510 and these were explained in the 2020 decision at paragraphs [24] and [25]:

> "24. The 'shortened receipts and expenditure method' is used for 4* and 5* hotels, and major chain operated hotels, under a national valuation scheme agreed with industry representatives. The fair maintainable trade ("FMT") (i.e. maintainable level of annual receipts) is established by reference to accounts for the three years prior to the valuation date, and a percentage is then applied to arrive at rateable value. Agreed scales provide for the number of DBU and the proportion of accommodation receipts within the total turnover to be taken into account in selecting the appropriate percentage to apply.
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> 25. For smaller hotels, the national valuation scheme is not directly applicable and the methodology used would be a comparative rental value per DBU based on locally suitable comparable evidence. In the absence of actual rental evidence, the availability of a settled tone of the list for 2010 rateable values could be substituted."

12. A crucial subsidiary issue in dispute is whether a reliable tone has emerged within the 2017 rating list for small hotels in the Brent and Harrow area.

13. The VO submits that a rateable value of £2,400 per DBU is supported by comparable rental evidence and that there is sufficient assessment evidence to support a tone of the list at £2,800 per DBU, from which downward adjustment for the Hotel to £2,400 is appropriate. Moreover, since the appellant only began trading at the Hotel in December 2014, there is insufficient accounting evidence to allow a reliable assessment of the performance of the Hotel at the AVD for the 2017 list of 1 April 2015, so the shortened R&E method cannot be used.

14. The appellant submits that there is insufficient comparable rental evidence for small hotels in the area, and that no reliable tone is apparent within the 2017 list, so the only appropriate methodology is the shortened R&E method based on FMT for the Hotel at the AVD. The appellant's assessment at £11,750 is based on 9.5% of an FMT of £135,000, reduced by 8.25% for MCC between the AVD and the material day.

Evidence and submissions for the VO

15. Mrs Thorne has 31 years' experience of valuation for rating, of which 25 years have been spent dealing with specialist properties in the Greater London area, including hotels. Mrs Thorne lives in Harrow and her office is based in central Wembley so she is very familiar with the locality of the Hotel.

16. Mrs Thorne confirmed that for a rating assessment it is the rental value of the property at the AVD which must be established, not the value of the business, and there should be consistency between assessments within the same locality. The appropriate basis of valuation is by reference to comparable evidence of what the Hotel, with its physical characteristics and equivalent number of DBUs, could attract by way of rental value.

17. The shortened R&E approach is an exception used for 4* and 5* hotels, where scales have been agreed for the 2017 list with representatives of the major hotel chains and UK Hospitality. Whilst Section 510 also suggests that chain operated 3* hotels can be valued using the agreed scales, it would not be appropriate for an independently owned 3* hotel. It was Mrs Thorne's opinion that the Hotel fits best into the category described in Section 510 as 'small independently owned hotels'. Whilst these are often 1* or 2* properties, their main characteristic is the low level of services provided, although meals may be available. They are not a homogenous group and there will not be standard operating costs so care must be taken to value the property rather than the business and the comparable method is more appropriate.

18. Mrs Thorne reviewed the 2017 Practice Note commentary on the state of the hotel industry at the AVD, by comparison with the previous AVD of 1 April 2008. The earlier AVD had been followed by a lengthy period of recession but by 2015 there was an expectation of continued post-recession recovery, following the boost created by the Olympics in 2012, and an increased supply of hotels to meet the higher demand. The budget sector had grown during the recessionary period and was expected to continue to grow. However, profitability may not have increased overall due to increases in the fixed costs of running a hotel, including utilities, staff costs and insurance premiums. Between the two AVDs the

popularity of on-line travel agencies ("OTAs") had grown significantly, providing a way for independent hotels to compete with larger chains in terms of marketing and customer reach.

19. In compiling her assessment of the rateable value for the hotel, Mrs Thorne also considered rental information gathered on Forms of Return ("FoRs") used by the VOA to compile the 2017 list; rental information gathered subsequently; and the agreement reached by the National Valuation Unit – Inner London team with agents in relation to hotels, guest houses and B&Bs in the 2017 list ("the Inner London agreement"). She also considered the levels of value applied to comparable properties in the 2017 list and the level of amendments and challenge to those entries.

20. Only one piece of rental evidence was available in the borough of Brent, for 106 Craven Park, but this was between connected parties and from May 2017 so after the AVD. In the borough of Harrow the only rental evidence was for the Euro Hotel at 415-417 Pinner Road, but this was also between connected parties and three years after AVD at June 2018. Mrs Thorne therefore placed little weight on either piece of evidence and extended her search to neighbouring boroughs in north London.

21. Mrs Thorne concluded that the rental evidence for the wider area showed that there was a rental market for hotels in the north London boroughs. But the evidence is not without difficulties, as Mrs Thorne explained. Many of the rents which had been used in the 2017 revaluation were from the boroughs of Haringey and Newham, which are in the Inner London area and had informed the Inner London agreement. Rented hotels in Hillingdon and Hounslow were too far away to assist in valuing the Hotel, and also the rents reflected their proximity to Heathrow. Rental evidence in Barnet was limited, and in close proximity to the boundary of the inner London agreement. Details of seven rentals were available in the borough of Ealing, but much of the evidence had limitations in terms of perceived accuracy, being between connected parties, being reviewed rents not related to market rent or having dates too far away from the AVD.

22. In the end Mrs Thorne placed weight on just two pieces of rental evidence from Ealing. The first was 48-50 Grange Road, a hotel of 11.19 DBU arranged over two floors, with a rent of £40,600 (£3,628 per DBU) set in 2006 and still payable as at March 2012. A new lease had commenced in July 2017 at a rent of £36,000 (£3,217 per DBU). She considered that these rents demonstrated a fairly steady rental market before and after the AVD and took an average of £3,400 per DBU as appropriate for the AVD. In cross-examination Mrs Thorne conceded that information on the FoR for 48-50 Grange Road revealed that the rent included two living accommodation units, as well as six car parking spaces and a double garage. She had not made any adjustment to the rent for those features but said she would consider that in deciding on weight and reliability.

23. The second piece of rental evidence, at 51 Grange Park, was a hotel of 12.43 DBU arranged over three floors, with a rent of £49,268.52 (£3,964 per DBU) payable on lease renewal in February 2015. The rent was reviewed annually, probably by percentage increases, which would explain the precise figure and suggest that it could not be relied on as an open market rent. Notably the occupying hotelier was the same as for 48-50 Grange Road.

24. Mrs Thorne then turned to the comprehensive Inner London agreement made in September 2019 between the VOA Inner London office and four firms representing hoteliers occupying non 4* or 5* hotels. A pricing matrix had been produced for four categories of hotel across three areas. Mrs Thorne concluded that the Hotel type would fall into Category B of that matrix, for which agreed rental levels were £4,600 per DBU in Area 1 and £3,800 per DBU in Area 2. A value of £3,300 per DBU for Area 3 (outer boroughs of inner London) had been proposed by the VOA but it had not been agreed.

25. Taking into account the impact at the AVD of the opening of a number of new 4* and 5* hotels in central Wembley, Mrs Thorne concluded that a figure of £2,800 per DBU more fairly represented the rental value of non-star rated hotels in Brent and Harrow. On that basis the initial base value of £3,800 per DBU used in compiling the 2017 list was too high. In order to apply the new base value of £2,800 which Mrs Thorne considered was appropriate it was necessary to alter the list by VO review. Where a property had issued a check or challenge the review was effected as part of the VO response, but roll-out of the new base value to properties where no check or challenge had been made did not commence until mid-2022. The new base value has been applied to a total of 14 hotels in Brent and Harrow for which Mrs Thorne is responsible and had also been adopted and applied as an alteration by her colleagues responsible for hotels in other north London boroughs.

26. Turning next to the 2020 decision, Mrs Thorne noted that in arriving at its figure for the 2010 list of £1,100 per DBU, the Tribunal considered that the comparative disadvantages of the Hotel meant it should be valued below the Sudbury Hotel (£1,300 per DBU) and the Kempsford Hotel (£1,200 per DBU). The Kempsford Hotel was demolished in 2016, but the Sudbury Hotel is in the 2017 list. It was entered at a rateable value of £3,800 per DBU, which was unchallenged, but has subsequently been reviewed down to the new base level of £2,800 per DBU.

27. In her Initial Response to the appellant's challenge, dated 20 February 2020, Mrs Thorne placed the Hotel below the figure of £2,800 for the Sudbury Hotel, at £2,400 per DBU and a rateable value of £31,000, which is the figure currently in the list and the one she still held to be correct.

28. As a sense check Mrs Thorne then undertook an alternative valuation using the shorted R&E method preferred by the appellant. In order to determine the FMT of a business, it is necessary to consider what a reasonable efficient operator ("REO") would expect to achieve. The premise is that the hypothetical tenant, at the AVD, is considering what level of rent he would be prepared to bid for the forthcoming year by reference to the current occupier's accounts for the last three trading years. He would then determine whether he could make the same level of receipts and profits in the forthcoming year and base his bid on that assessment.

29. In this case the appellants had only begun trading in December 2014, and the Hotel had been unoccupied for four months prior to that, so the only accounts available at the AVD were those from the previous occupier. The gross receipts for the previous occupier were:

    Year end 29 February 2012 £179,854

Year end 28 February 2013	£192,652 (7% year on year increase)
Year end 28 February 2014	£202,515 (5% year on year increase)

30. The hypothetical tenant would be aware that works carried out by the appellants to provide a breakfast room had altered the layout and number of bedrooms in the Hotel since the previous accounts. He would be aware of external factors including both the positive outlook for the hotel sector but also that many new hotel rooms were being provided in the Wembley area. Using her experience of valuing hotels in the area for over 25 years, Mrs Thorne determined that the FMT at the AVD should be £215,000, based on a 5% increase from the 2014 accounts. Since 100% of the trade at the Hotel is generated by accommodation, this figure would be divided by the number of DBU (12.94) to calculate accommodation receipts at £16,615 per DBU.

31. Mrs Thorne's next step was to use this figure per DBU in the appropriate scale in Appendix 1 ("Appendix 1") to the 2017 Practice Note to establish the percentage of FMT to apply to reflect rateable value. It was Mrs Thorne's opinion that in the scales for provincial hotels, including those in outer London, Scale A for lower service provision budget/lodges (with bar/restaurant facilities) was the most appropriate for the Hotel. The lack of a bar/restaurant at the Hotel would be accounted for by using the percentage range applicable where 100% of receipts were for accommodation. The relevant figures from Scale A are shown below, together with (in bold) the interpolated figures appropriate to Mrs Thorne's assessment of receipts per DBU for the Hotel:

Accommodation receipts per DBU	Range applicable for accommodation receipts as 100% of total turnover
£17,500	10.25% - 13.25%
£16,615	**10.10% - 13.10%**
£14,500	9.75% - 12.75%

32. Considering where in the range from 10.10% to 13.10% the Hotel should sit, Mrs Thorne chose the mid-point of 11.60%. The Hotel is smaller than usual for this category and therefore the costs of generating the income will be higher. Hotels managed by large operators would be at the top of the range.

33. Thus Mrs Thorne's valuation using the shortened R&E method resulted in a rateable value of: FMT £215,000 at 11.60% = £24,946, rounded to £25,000. She reflected that this figure was sensitive to changes in the various components used to assess it. However, Mrs Thorne used the figure as a sense check to her opinion of rateable value at £31,000 derived by the comparable method, which she preferred as more reliable.

34. Mrs Thorne concluded that in the context of the full list of 45 hotels in Brent and Harrow, at £2,400 per DBU the Hotel is one of the lowest assessments and that the figure is fair and

reasonable. Mrs Thorne was aware that as a result of hotel openings and closings between the AVD and the material day there had been a net increase of 255 rooms in the locality. She explained that there was no place for a deduction for MCC since any effect of the number of competing hotel bedrooms on trading potential was built into the list.

Evidence and submissions for the appellant

35. Mr Patel referred to two decisions of the VTE in respect of 2017 list rateable values for hotels with some similarities to the Hotel.

36. The Arinza Hotel in Ilford had been entered into the list at £82,000 (£3,800 per DBU). Following challenge, and a general review by the VOA of levels of value (as described by Mrs Thorne above) the figure was reduced to £60,500 based on 21.7 DBU at the revised base value for north London of £2,800 per DBU. Due to a lack of suitable comparable evidence, the ratepayer had used the shortened R&E method, to propose a rateable value of £25,000. This was calculated from £250,000 FMT, rounded down to £10,000 per DBU for the Appendix 1 scale. The appropriate range for rateable value from FMT in Appendix 1 was 9.50% to 12.25%, from which 10% was selected to reflect an older converted property which would be more expensive to run, giving a rateable value of £25,000 (£1,152 per DBU). In its decision dated 8 April 2021 the VTE determined the rateable value at £25,000 based on the appellant's shortened R&E methodology, since there was a paucity of rental or comparable evidence. The VTE said that the FMT of £250,000 was not shown to be unreasonable, nor was the 10% applied to it.

37. The Queen's Hotel, in Queen's Avenue in the borough of Haringey, had been entered into the 2017 list at £68,500 for 18.45 DBU (£3,700 per DBU). This was subsequently reduced to £60,500 (£3,300 per DBU for inner London). The appellant's representative proposed a rateable value of £16,000 based on 10% of an FMT of £160,000. This was lower than the entry for the 2010 list at £18,000, which had been based on 15% of £120,000 FMT. In its decision dated 15 February 2022 the VTE allowed the appeal and determined the rateable value at £16,000. It found that it could not rely on the comparable evidence supplied by the VO and that the audited accounts for the ratepayer were unchallenged and relevant.

38. Mr Patel submitted that in this case, as for the Arinza Hotel and the Queen's Hotel, there was insufficient rental evidence, and only unreliable evidence from other rating assessments, to allow anything other than a shortened R&E approach to establish rateable value. He had carried out extensive investigation into the evidence supplied by the VO and, whilst he understood that confidentiality of competitor data is essential, he made the point that it is very hard for a ratepayer to challenge a VO's evidence without full access to information provided by other ratepayers on their FoRs. Mrs Thorne had made available relevant FoRs for Mr Patel to examine at her office, but it was not possible for him to have copies to take away. The same copies were brought to hearing for the Tribunal to see.

39. Mrs Thorne had admitted that rental evidence was sparse and she placed more reliance on comparable evidence from the 2017 list. What Mr Patel disputed in particular was her reliance on assessments in that list which remained unchallenged. He made the point that transitional relief and Covid 19 relief had cushioned ratepayers for the first few years of the

new list, meaning that challenges would have been less likely. Moreover, after the VOA rolled out their review to a lower base value of £2,800 per DBU, some ratepayers had received unexpected refunds on the rates already paid against higher assessments and they would be less likely to challenge their new lower assessment.

40. Mr Patel submitted that that the initial base value of £3,800 had not been agreed by any industry representatives and neither had the new base value of £2,800 been agreed. It was a figure determined by Mrs Thorne, based on her experience in Brent and Harrow, which seemed now to have been used widely across other outer London boroughs. When the VTE heard evidence from Mrs Thorne in the appeal for the Hotel on 1 February 2022, although she explained how her assessment for the Hotel at £2,400 per DBU derived from a new base value of £2,800 per DBU, the table of 10 comparable assessments published by the VTE in their decision showed eight comparable assessments at £3,800 per DBU of which six were due to be altered down to £2,800 following the review. All six have since been reduced to £2,800 per DBU but it was clear in their decision that the VTE based its determination on evidence which included the unaltered figures.

41. Mr Patel's investigations had also revealed background to some of those 10 comparables which underlined the fact that they were not agreed assessments. 106 Craven Park was occupied by a new owner who had submitted a challenge but had no previous trading accounts to support an alternative approach to valuation. 1 Elm Road, Wembley had withdrawn a challenge because of a reconstitution to the entry (to 1 – 11 Elm Road). The number of DBU for the Arena Hotel in Wembley, the Adelphi Hotel in Wembley, 233 High Road, Harrow and 6-8 Hindes Road, Harrow had all been under-stated so the overall assessment was unlikely to be challenged. The Wembley Hotel, 38-42 London Road, Harrow had an outstanding challenge submitted on 25 April 2022.

42. It was Mr Patel's submission that evidence from the list could not be relied on, and there was not yet a tone of the list It was inevitable that the rateable value for the Hotel should be determined using the shortened R&E method based on FMT ascertainable at the AVD. Since the appellant had only been trading for four months at the AVD Mr Patel maintained that the receipts from the previous occupier, together with receipts from later years, should be taken into account. The number of DBU was 15.57 before alterations made by the appellant reduced it to 12.94. The annual receipts are summarised below, with comments:

Trading period	Occupier	Receipts	Receipts per DBU	Comments
01/03/11 - 29/02/12	Previous	£179,854	£11,551	Based on 15.57 DBU
01/03/12 - 28/02/13		£192,652	£12,373	Olympics year
01/03/13 - 28/02/14		£202,515	£13,007	Included insurance payout following a fire

01/03/14 – 31/08/14		£53,807	N/A	6 months only until occupier went into receivership
04/11/14 – 30/11/15	Appellant	£141,684	10,950	Works carried out
1/12/15 – 30/11/16		£128,533	£9,933	Works carried out
1/12/16 – 31/5/17		£72,109		6 months only then new accounting year
1/6/17 – 31/5/18		£132,312		De-registration from VAT from 16/4/18
1/6/18 – 31/5/19		£78,099		
1/7/19 – 31/5/20		£47,749		

43. Mr Patel proposed that an FMT of £135,000 was appropriate for a REO at the AVD, a figure assessed by his expert in the VTE appeal, based on an assumed decline in revenue from the first trading year. Unlike his expert in the VTE appeal, he then adjusted this figure down for MCC by 8.25%, which was the amount of adjustment the Tribunal adopted in the 2020 decision having regard to the opening of new hotels in the locality between 1 April 2008 and 31 March 2015. Mr Patel supplied a list of new hotels which he said had opened in the locality between the AVD and the material day for the 2017 list, providing an additional 940 rooms, and to this he added 1,471 rooms in student halls made available in the summer. However, I note that his list included the new Travelodge which had opened nearby in February 2015 and which was the reason for an MCC allowance of 8.25% being adopted in the 2020 decision. Mr Patel provided no information on hotel closures to be offset against the number of new rooms.

44. By deducting 8.25% from an FMT of £135,000, Mr Patel reached a figure of £124,000. This reflected receipts per DBU of £9,583 for use in Appendix 1 (Scale A for provincial hotels where 100% receipts are from accommodation) where the suggested range for rateable value was (by interpolation) 9.28% to 12.03%. Mr Patel proposed that the Hotel should sit low in the range, and below the 10% used by the VTE for the Arinza and Queen's Hotels, at 9.5%.

45. Mr Patel's proposed rateable value of £11,750 was therefore based on 9.5% of £124,000, rounded down. He said that the hypothetical tenant at the AVD, having regard to the economic climate, changes in the locality, trading performance and potential profitability, would have expected to negotiate a reduced rent from the £13,000 applicable to the 2010 list.

46. In cross-examination of Mr Patel, Mr Williams asked if he and/or Arma Hotels Limited had any previous experience of operating hotels to justify reliance on their own accounts as an indicator of what a REO might achieve. Mr Patel admitted that they did not, but said that he was a director of a leisure company, his family had run a food and beverage company in the

Midlands and they also had experience of letting accommodation. The Hotel had essentially been purchased as an investment property after the family had looked at various alternative investments in the Wembley area. The profitability of the Hotel had been disappointing and Mr Patel believed this to be the result of greater change in the Wembley area than expected, with new student accommodation and flats being provided and OTAs such as Air BnB having a big impact on the hotel market. The appellant had declined to reduce room rates to be competitive and so profitability had declined.

47. Mr Patel acknowledged that for some periods during the 2014-15 and 2015-16 accounting years alteration works were undertaken at the hotel, which might have affected receipts. He also acknowledged that in the accounts for AREL in 2017-18 the property had been revalued upwards, but said that this was not as a result of any prospective increase in rental value but due to the potential to use the property for other purposes, including redevelopment such as that proposed at 123 Preston Hill, Harrow.

Submissions on tone of the list

48. Both Mr Williams and Mr Patel referred to the case of *Futures (London) Ltd v Stratford (VO)* [2006] RA 75 where the Lands Tribunal (Mr P H Clarke FRICS) said at paragraph [25]:

> "There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, assessments will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by a VT or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled: rents will be largely subsumed into assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding the tone of the list is a question of fact. When an assessment is challenged before a tribunal the correct time for deciding whether the tone of the list has been established is immediately before the hearing. The weight to be given to comparable assessments as evidence of value will depend on the circumstances in each case. These may indicate that little or no weight should be given to comparable assessments, eg where acceptance of value is more acceptance of rate liability or where a body of settlement evidence rests on a single agreed assessment."

49. Mr Williams submitted that, as Mrs Thorne's evidence confirmed, the pattern of values per DBU has established a tone of the list and a base position from which adjustments can be made to reflect the characteristics of the Hotel. More than five years have elapsed since the 2017 list came into force and it will close shortly on 31 March 2023. Where assessments remain unchallenged over time that is sufficient to establish a tone. From Mrs Thorne's list of 14 assessments for hotels in Brent and Harrow where a base value of £2,800 per DBU has been applied, seven remain unchallenged.

50. Mr Williams said that where Mr Patel provides his view as to whether the list entry is correct, that is not relevant to the establishment of tone, which Mrs Thorne derives correctly from whether ratepayers have challenged their assessment.

51. Mr Patel submitted that the tone of the list concept which existed for the 2010 list no longer exists under the Check, Challenge, Appeal ("CCA") procedure introduced with the 2017 list. The effect of transitional relief, together with Covid 19 and its associated relief was to delay the impact of increased assessments and therefore blunt the pressure on ratepayers to challenge their assessments. Under CCA those who do make a challenge have to register to use the VOA portal and make a proposal supported by evidence, which is a significantly more onerous process than making a proposal under previous lists. The fact that appellants can make checks until the expiry of the list, and thereby preserve the right to make challenge within the next 12 months, means that later challenges are inevitable. All of this mitigates against any tone of the list being established until well after the list has closed.

52. Mr Patel also referred me to *Stock Auto Breakers Ltd v Chris Sykes (VO)* [2020] UKUT 52 (LC) which was the first decision of this Tribunal concerning an appeal on the 2017 list. At paragraph [62] the Tribunal stated:

> "…There is no time pressure on a ratepayer to check and challenge an assessment and the importance of making early proposals under previous lists, and thus the earlier establishment of a tone, no longer exists. Mr Watson has explained that several of the comparable assessments will need to be revisited. I do not consider that Mr Watson has impugned the compiled list in saying this; the VO has a statutory duty to maintain an accurate list and if the measurement and/or description of a hereditament is inaccurate then it is incumbent on the VO to correct it once he becomes aware of it, even in the absence of a material change of circumstances."

Discussion

53. This case illustrates that with tenacity and persistence a ratepayer can successfully challenge a new list assessment which they believe to be incorrect, leading to significant review of that assessment, both for the property itself and others in the same class. The initial assessment for the Hotel was £59,000, and it now stands at £31,000 as a result of the review which followed Mr Patel's challenge. The same challenge appears to have prompted a wholesale reconsideration by the VO, leading to comparable reductions for other small hotels in outer London.

54. Mrs Thorne is to be commended for acknowledging the lack of reliable rental evidence at the AVD and for initiating a review to correct a base value that looked wrong for hotels in the boroughs for which she is responsible. The fact that, as I understand it, VOs with responsibility for other outer London boroughs adopted the new base value for this category of hotels following Mrs Thorne's review led to a situation which Mr Patel described as 'peppering' of the new base value around outer London. But the VO has a statutory duty to maintain an accurate list and must make alterations to correct inaccuracy where it is identified, so I do not level any criticism at that approach. However, the list cannot be said to have an established tone, because it was simply a review of the first stage described in

Futures (London) where assessments are the untested opinion of the VO. In its current condition it remains the untested second opinion of the VO.

55. Mrs Thorne acknowledged that it took longer than it should have done to give effect to the review by alteration of the list due to conflicting priorities within the VOA, with alterations not being made until July and even September 2022 for some of the properties where no check or challenge had been made. Mr Williams submitted that because over five years have elapsed since the 2017 list came into force, unchallenged assessments provide evidence of a tone being established. The weakness of that argument is that well over five years after the list came into force, the VO had still to give effect to a revised opinion of an appropriate base value. Ratepayers looking at the list for comparable evidence at the five-year point would have been in the same position as the VTE, which found itself making a decision based on evidence which was due to be altered downwards following the review.

56. The second stage in the establishment of a tone is either a sufficient challenge, leading to agreement, or appeal and determination by the VTE or this Tribunal, or a lack of challenge where it might have been expected if the list was inaccurate. Since the introduction of the 2017 list, not only are we in uncharted waters with the CCA process, but we have experienced the hiatus of Covid-19 over two years. The Tribunal noted in *Stock Auto Breakers* the lack of time pressure on a ratepayer (that decision pre-dated Covid-19 with its knock-on effects). Mr Patel articulated well the various reasons why hotel ratepayers may not have felt the need to make checks and challenges to the assessments in the 2017 list before now. Mr Williams noted that of Mrs Thorne's 14 hotels listed at the new base value of £2,800 per DBU seven remained unchallenged, but that is an over-simplification given that some of the challenges referred to for the remainder did not concern tone. There is no evidence that the ratepayers in even half the list have agreed the assessment.

57. When paragraph [25] in *Futures [London]* is quoted, for example by Mr Williams and also in the VTE decision, the last sentence is rarely included, and yet it changes the perspective significantly. I set it out below, along with the preceding sentence as context:

> "…The weight to be given to comparable assessments as evidence of value will depend on the circumstances in each case. These may indicate that little or no weight should be given to comparable assessments, eg where acceptance of value is more acceptance of rate liability or where a body of settlement evidence rests on a single agreed assessment."

I agree with Mr Patel that there is just not sufficient evidence of agreement to the current assessments for a tone to have been established at the date of the hearing. The relative lack of challenge to date may simply reflect a marked reduction of rate liability, as mitigated by various reliefs, leading to inertia from ratepayers. Accordingly, I can place very limited weight on the list of assessments provided by Mrs Thorne as evidence of rateable value at the AVD.

58. With no helpful rental evidence, and no reliable tone of the list, then Mr Patel is correct in saying that the only remaining methodology is one based on shortened R&E and FMT. I accept Mrs Thorne's point that the evidence by which to establish FMT for the Hotel at the AVD is not strong, but we must do the best we can. In her sense check valuation Mrs Thorne adopted a figure for FMT of £215,000 based on a 5% increase from the previous occupier's

receipts to February 2014 of £202,515. She was unaware when writing her report of evidence supplied later by the appellant that this included a payment from insurers following fire damage, which makes the figure an unreliable starting point. I note also that Mrs Thorne then divided her figure of £215,000 by 12.94 DBU, whereas the receipts from which she assessed her figure were derived from the higher number of rooms which existed before alterations made by the appellant. That gave her a higher figure for receipts per DBU and a higher range in Scale A.

59. By contrast, Mr Patel adopted a figure of £135,000 for FMT, which had been assessed by his expert in the VTE appeal and took into account the decline in receipts in subsequent years. This figure seems to me to be excessively cautious given that receipts of £141,684 (£10,950 per DBU) were achieved by the appellant in its first year, whilst also carrying out some work to the Hotel. Mr Patel then reduced his figure by 8.25% for MCC, resulting in a very low figure for receipts per DBU and a lower range in Scale A. It appears that Mr Patel simply adopted the figure of 8.25% determined by the Tribunal in the 2020 decision, and did not support it with any evidence of a net increase, between the AVD and the material day, in the number of hotel rooms which would be in direct competition with the Hotel, thus affecting the bid of a hypothetical tenant. Mrs Thorne referred to a net gain of 255 rooms in the locality during that period, but commented that trade at the Hotel in earlier years had withstood fluctuations of a similar scale and that this would be just one of the considerations in the mind of the hypothetical tenant. I agree with Mrs Thorne and see no evidence for making a deduction for MCC in this case.

60. The hypothetical tenant standing at 1 April 2015 would be aware that the previous occupier had gone into receivership, but he would see the Hotel in its partially improved physical state, albeit with fewer DBU, and be aware that hotel business in general had been improving since the boost of the Olympics. He would be unaware of the future decline in receipts. Looking at the receipts achieved by the previous occupier, excluding the year of the fire, these were £179,854 (£11,551 per DBU) in 2011-12 and £192,652 (£12,373 per DBU) in the Olympic year of 2012-13. In its first trading year of 2014-15 the appellant achieved £141,684 (£10,950 per DBU) whilst carrying out alterations.

61. In my view a reasonably efficient operator taking a new tenancy at 1 April 2015 would expect to match and improve on the receipts per DBU from 2011-12, whilst accepting that those from 2012-13 were probably exceptional. I therefore assess the FMT as in the region of £12,000 per DBU or £155,000.

62. Using £12,000 per DBU in Scale A, for 100% of receipts from accommodation, the appropriate interpolated range is shown in bold below:

Accommodation receipts per DBU	Range applicable for accommodation receipts as 100% of total turnover
£14,500	9.75 - 12.75%
£12,000	**9.57% - 12.39%**

£11,000	9.50% - 12.25%

63. The range from within which the VOA scale suggests the percentage to reflect rateable value should be selected is significant, with the upper end of the range 29% higher than the lower end. The 2017 Practice Note advises that the relevant factors to be considered in choosing a point within the range are: the construction and layout of the hotel (which have an effect on running costs), the size of the hotel (where economies of scale may be evident for larger hotels) and the presence of ancillary facilities adding to income. In this case the Hotel has no ancillary facilities and no economies of scale. It has some disadvantages as a converted residential property, although the works carried out by the appellant will have improved the layout, at the expense of income potential from the smaller number of DBUs. I therefore move a little way up from the bottom of the range and select 10.5% as an appropriate figure.

64. I determine the rateable value of the Hotel at 10.5% of £155,000, i.e. £16,275 rounded to £16,250 or (£1,256 per DBU).

Diane Martin MRICS FAAV

Member, Upper Tribunal
(Lands Chamber)

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.