



RA/11/2005

LANDS TRIBUNAL ACT 1949

RATING – public house – valuation – City of London public house with exceptionally high turnover – whether actual receipts representative of fair maintainable receipts – application of Approved Guide and Supplementary Guidance – comparables – held comparables did not show that actual receipts not representative of FMR – assessment of £370,000 RV upheld

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
CENTRAL LONDON VALUATION TRIBUNAL**

BETWEEN

J D WETHERSPOON plc

Appellant

and

**MARK CHARLES VINCENT DAY
(Valuation Officer)**

Respondent

**Re: Public House and Premises,
Hamilton Hall,
Liverpool Street Station,
London EC2M 7PY**

Before: The President

**Sitting at Procession House, 110 New Bridge Street, London EC4Y 6JL
on 27-28 June, 3-4 December 2007**

Richard Glover instructed by Stephenson Harwood for the appellant
David Forsdick instructed by Solicitor to HM Revenue & Customs for the respondent

No cases are referred to in this decision.

The following cases were referred to in argument:

Cartwright v Sculcoates Union [1900] AC 150

Watney Mann Ltd v Langley (VO) [1966] 1 QB 457

Sharp v Griffiths (VO) [1999] RA 265

J D Wetherspoon plc v Lothian Regional Assessor [2003] RA 105

Harrods Ltd v Baker (VO) [2007] RA 247

Scottish and Newcastle Retail Ltd v Williamson (VO) [2000] RA 119

DECISION

Introduction

1. This is an appeal by the ratepayer against a decision of the Central London Valuation Tribunal given on 1 February 2005 in relation to the ratepayer's public house, the Hamilton Hall at Liverpool Street Station. The issue is valuation. The appeal hereditament was entered in the 2000 rating list at a rateable value of £420,000. The ratepayer made a proposal to reduce this, and at the hearing before the VT the valuation officer, the respondent in the present appeal, contended for a rateable value of £370,000. This figure was accepted by the VT. The ratepayer now contends for a rateable value of £275,000.

2. Evidence for the ratepayer was given by Timothy Randall Martin, the chairman of J D Wetherspoon Plc; Dave Smith, who was manager of the Hamilton Hall between 1996 and 1999; and Tracy Steeden MRICS, rating surveyor, of Invicta Retail and Leisure Property. The respondent VO, Mark Charles Vincent Day MRICS, gave evidence on his own behalf. It was unfortunate that the parties had underestimated the time required for the hearing, so that it had to be adjourned after the second of the allotted days and there was a break of over 5 months before it could be resumed. Following the completed hearing I carried out an inspection of the Hamilton Hall and I also viewed, for the most part only from the outside, many of the comparable public houses referred to in the evidence. I later received closing submissions in writing from counsel.

The appeal hereditament

3. The Hamilton Hall occupies the former ballroom of the Great Eastern Hotel, which was constructed in the 19th century as part of Liverpool Street Station. It is situated in Bishopsgate next to the entrance to the station. It lies within the commercial centre of the City of London, with its very large office-working population, and the footfall outside it is very high. The hotel is a Grade II listed building and maintained as part of the public house are the grand painted plaster decorations of the former ballroom.

4. There is a ground floor open plan bar area of 196.8m² served by a large curved counter, and above the bar there is a first floor bar of 178.2m² (giving a total floor area of 375 m²). There is a ground floor commercial kitchen of 35.52m², a cool store of 49.4m², a wash-up area and customer lavatories. Outside at the frontage of the public house is a roped-off seating area of 47.6m².

Valuation method

5. Public houses are valued on the basis of fair maintainable receipts (FMR). This method of valuation is long established, and the cases that have endorsed its application are set out in Ryde on Rating at E[746] to E[766]. For the 2000 rating lists there was an Approved Guide for the valuation of public houses, agreed between the Brewers and Licensed Retailers

Association and the Valuation Office Agency. The method of valuation agreed is to assess separately, on the one hand, the FMR of the liquor trade (and to include with this the income from machines) and, on the other, the food trade and to apply to the FMR for each of these income streams a percentage derived from ranges included in the Guide. Both valuers in the present case use this method.

6. The Approved Guide said this about the FMR:

“The figure for receipts determined should represent the annual trade considered to be maintainable at 1st April 1998 (the antecedent valuation date) having regard to the physical nature of the property and its location as at 1st April 2000 when the new rating lists come into force (or subsequently following a material change of circumstances) 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.”

7. For liquor trade the Guide requires the public house that is being valued to be placed within one of three “valuation bands”. Band 1 comprises “good quality houses in good quality locations”. There is no dispute that the Hamilton Hall is within this band. There are then set out the percentage ranges within each band related to levels of FMR. For central London public houses the range is 13% to 14% for FMRs of £500,000 and above. (The percentage is 11.75% to 13% for FMRs of £300,000 and 10.5% to 12% for FMRs of £200,000). Graphs showing the application of these percentages are included. On the choice of percentage the Guide says this:

“The graphs provide a range of percentage values within each band at any level of fair maintainable receipts. The choice of the percentage to be applied to the total of the fair maintainable liquor receipts and the fair maintainable net income from gaming machines for each individual house is a matter of judgement. 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 the level of prices charged, staffing costs, maintenance, incentives, insurance, marketing, provision of entertainments, etc, in relation to the fair maintainable receipts adopted.”

8. For food trade, public houses are placed in one of two bands, and percentage ranges are set out for these. Graphs incorporating these are set out.

9. In October 2001 the VOA produced Supplementary Guidance on the valuation of public houses. Ms Steeden in her evidence explained the genesis of this further guidance. She said that she had entered into discussions with the Chief Executive’s Office of the VOA to try to overcome the problems that existed when valuing and settling assessments of Wetherspoons – that valuation on the basis of actual trade as a proxy for FMR appeared to produce RVs that were excessive when set against those of comparable public houses – and it was as the result of this that Supplementary Guidance was produced by the VOA for the 1995 and 2000 lists.

10. In relation to ascertaining the FMR the Supplementary Guidance said:

“In some cases it may be obvious from the outset that the actual trade figures are either higher or lower than those achievable by the hypothetical tenant for the type of house in that location, (for example due to the personality of the actual licensee either in attracting or deterring trade), in which case the fair maintainable trade should be adjusted at the outset.

Where the property is part of a group, chain or brand, any over- or under-trading outside the range of trading variation that can reasonably be expected may not be immediately apparent. In such cases no systematic adjustment, either upwards or downwards, is appropriate but where it is considered this may be a factor the initial valuation should be reviewed at the stand back and look stage.”

11. Under the heading “Public Houses in primary licensed trade areas including circuit locations” the Supplementary Guidance said this:

“Fair maintainable receipts should be ascertained in accordance with the forgoing principles. No allowance is made for pricing policy of the actual occupier when determining the FMR (although this may be a relevant consideration when the specific point within the band is determined where it is considered that the level of FMR can only be achieved by discounting sales prices compared to competitors).

Having calculated the initial valuation it may be necessary to stand back and look in order to consider whether or not this appears reasonable in comparison with the assessments of similar styles of property and if it fits into the broad range and pattern of assessments in similar localities.

Every factor should be considered including imperfections in the market. Where it can be clearly demonstrated that the initial valuation is patently out of line (not just because a house is trading well, has a high turnover per m² than similar houses, or it has a higher/the highest RV), and appears inconsistent with the assessments of similar styles of property in similar locations occupied by other companies, valued on the receipts basis following disclosure of full trade information, the valuation should be reviewed.

If such differences cannot be explained by the vagaries of the market, the individual physical characteristics and size of the house, the type and style of trade which is maintainable, its customer base and the nature of the trading location, it will be necessary to revisit the initial FMR in order to reconsider whether this is consistent or substantially out of line with the turnover achieved at other houses. This will be a matter of valuation opinion and experience, not arithmetic. If it is concluded that the initial FMR should be revised, as the hypothetical tenant would not consider trading at such level, the valuation will require to be reworked in order to determine the assessment.”

The valuations

12. Ms Steeden's valuation was as follows:

Income Stream		Adopted Bid	Rateable Value
Fair Maintainable Receipts			
Liquor and Machine income	£1,807,200	14%	£253,008
Food Income	£ 250,000	8.75%	£21,875
Total:			<u>£274,883</u>
		Say Rateable Value	£275,000

13. Mr Day's valuation was this:

Income Stream		Adopted Rental %	Rateable Value
Fair Maintainable Receipts			
Liquor Sales & Machine Income	£2,470,000	@ 14%	£345,800
Food Sales	£280,000	@ 9.05%	<u>£25,340</u>
			£371,140
		Say	£370,000

The evidence

14. Mr Martin said that he had started off the Wetherspoon business in 1979 with a single public house in north London. The business was in due course incorporated and it became the first company to acquire unlicensed premises, such as shops and banks, on a significant scale and convert them into public houses. This was still a novel process when it acquired the Hamilton Hall in 1991. They agreed a rent that they felt was safe for the site. The site was, however, an unknown quantity, and they were prepared to agree to British Rail taking a profit if the level of trade turned out to be better than expected. Wetherspoons had always operated on a completely different basis from their competitors, Mr Martin said. They concentrated on real ale, which they sold at far lower prices and offered food over long hours. They paid much higher bonuses to staff than other operators. At the Hamilton Hall for the financial year ending 2 August 1998 they paid the public house management couple a basic salary of £56,200 and a bonus of £19,700. They also rented a flat for them at a cost of £15,500 per annum. In addition they employed an average of six shift managers at a total cost of £95,700, and they paid them bonuses of £10,350 and rented flats for them at a cost of £21,200. They also paid bonuses to hourly paid staff of £9,200.

15. Mr Martin said that the result of Wetherspoons' adoption of a lower pricing structure than their competitors was that they had a high turnover but lower gross margins and higher staff costs. Although originally he said that he estimated that at 1998 their prices were 30% lower than those of their competitors, later in his evidence he said that he thought that the true figure was 10 to 15%. He referred to contemporaneous stockbrokers' analysts' reports, which said that Wetherspoons' gross margins were low compared with those of others in the industry, while they had higher sales per public house. He did not, however, produce margins for the Hamilton Hall itself, although he accepted that it would have been theoretically possible to do so, and that there was therefore no basis for comparing its margins with the overall margins of Wetherspoons' public houses.

16. Mr Smith said that he was manager of the Hamilton Hall from June 1996 to June 1999. He gave evidence on the trading policy that applied during 1998 and compared this with the operations of the Hamilton Hall's local competitors. He said that the Hamilton Hall was around 30% cheaper for beers and spirits. Although he originally said it was "consistently" this much cheaper, in cross-examination he said that the 30% related to the Friday evening discounted price. They offered a wider range of beers and spirits. There were regularly 6 to 8 beers on tap. They were the only public house in the vicinity that was open all day including weekends. This enabled them to cater for a wide range of clientele from manual workers to city professionals, whereas their competitors focussed on office staff and city professionals. They were also the only public house in the vicinity to serve food all day and every day, and the only one to have a designated non-smoking area, which covered most of the mezzanine dining area. They employed more staff than their rivals. Thus at the Friday evening peak they would have 22 bar staff, 4 waiters, 3 kitchen staff and 5 managers. Their competitors would only have one manager and an assistant (except for the Pitcher and Piano, which had one manager and two assistants), and far fewer staff. Thus when the Hamilton Hall had 6 staff behind the bar, the Pitcher and Piano would have two or three. Queuing time at the Hamilton Hall would thus be less. They had enhanced training and bonuses, which were known to be higher than their competitors, and there were regular staff meetings to discuss service standards and product knowledge. They put on regular promotions, and held two large-scale beer festivals each year, each lasting for 10 days to two weeks. None of their competitors were doing anything similar at that time.

17. Ms Steeden said that she had been a practising general practice surveyor since 1988. From 1995 to 1998 she was in the London Specialist Rating Unit of the Valuation Office Agency, carrying out valuations for rating purposes on leisure properties. The majority of her work involved the settlement of public house rating appeals. In 1998 she joined Fuller Peiser and became rating adviser to Wetherspoons. In 2003 she joined Wetherspoons as an in house rating adviser. In 2003 she joined Intrinsic, an independent surveying company, but continued in her role as Wetherspoons' rating adviser. She said that she had been responsible for settling in excess of 300 rating appeals for Wetherspoons.

18. Ms Steeden said that she had entered into discussions with the Chief Executive's Office of the VOA to try to overcome the problems that existed when valuing and settling assessments of Wetherspoons – that valuation on the basis of actual trade as a proxy for FMR appeared to produce RVs that were excessive when set against those of comparable public houses. The result of this was the production of supplementary guidance by the VOA for the 1995 and 2000 lists. The valuation process within the guidance involved the valuer assessing

the property based on its actual trade as a first step and then requiring him to stand back and assess whether the resultant RV looked reasonable by comparison with the RVs of other local public houses, taking into account the physical differences between the properties. If the RV did not appear correct it was reduced to a level that did.

19. Ms Steeden said that the Hamilton Hall was well located for station custom, with Liverpool Street being one of the busiest stations in London both for mainline and underground users. The property also benefited from having access to a wide and varied customer base, with a large number of offices and other commercial occupiers nearby. However, it was not directly accessible from the station, and it had no link to the station information systems. There was moreover restricted visibility, both for passengers using the station and pedestrians in Bishopsgate.

20. The nature of the business carried on at the Hamilton Hall was, said Ms Steeden, characterised by the Wetherspoons policy of significantly lower prices for all wet elements of turnover by comparison with normal market prices. She referred to a Wetherspoon's Price Watch document of April 2003, which showed an average 30% discount on Hamilton Hall prices compared with adjacent public houses, and she understood from the evidence of Mr Martin and Mr Smith that that lower pricing policy had applied since the Hamilton Hall was opened.

21. Referring to the Approved Guide, Ms Steeden noted that the percentages to be applied to the identified bands of turnover increased up to the highest band at £500,000. She had adopted the percentages in the guide, although she thought it unlikely that a property like the subject hereditament with a turnover of £2,762,652 would pay as high a percentage to the landlord as one with a turnover of slightly more than £500,000.

22. Ms Steeden said that the FMR to be taken for the purposes of the valuation was the level of trade that was sustainable by a reasonably efficient operator. The actual trade might or might not represent the FMR, but it could only be the starting-point. In recent years, as compared with former times, there was a flexibility in the market enabling public houses to adopt their own pricing policies or negotiate their own purchasing prices. Cut price sales could result in an increase in turnover, and Ms Steeden referred to the guidance on the rating of petrol filling stations that directed valuers to the turnover of a cut-price PFS by reference to other filling stations in the area.

23. Ms Steeden discounted as reliable evidence the rent passing for the subject hereditament at the valuation date. That rent, £380,500, had been the result of a rent review in August 1997. Under the terms of the lease the rent to be determined on review was to be the highest of: (a) the rent for the preceding year; (b) the open market rental value of the premises; and (c) 16% of the average turnover of the preceding two years. The rent had in fact been determined under (c), and this showed, Ms Steeden said, that the open market rental value was less than this. The valuation was properly to be made by reference to FMR.

24. Taking the actual trade for the year to end-July 1998 for liquor (£2,311,707), food and other, adjusting these by the RPI to April 1998 and applying to them 14% for liquor and other

and 9% for food, resulted, Ms Steeden said, in a rateable value of £367,500. She considered whether the actual turnover was representative of FMR, and she did this by looking at whether the assessment looked reasonable when considered alongside those of comparable properties. She looked at properties in the immediate vicinity of the Hamilton Hall because the value of location was linked to the accessible customer base, and she rejected properties further afield. In order to arrive at her judgment, she analysed the comparables in terms of FMR per m². Her analysis was as follows:

Public house Name	FMR Adopted	Bar Size	FMR/m ²	RV	RV per m ²
Pitcher and Piano 194-200 Bishopsgate	Wet & Machine £1,800,000 Food £300,000	525 m ²	W & M £3428 Food £571	£280,000	£533
First & Last 175 Bishopsgate	Wet & Machine £525,000 Food £100,000	270.3 m ²	W & M £1942 Food £370	£ 80,000	£296
Railway Tavern 15 Liverpool Street	Wet & Machine £995,000 Food £160,000	257 m ²	W & M £3871 Food £622	£150,000	£583
Dirty Dicks 202-204 Bishopsgate	Wet & Machine £782,500 Food £85,000	202.1 m ²	W & M £3872 Food £420	£115,000	£569
White Hart 121 Bishopsgate	Wet & Machine £838,000 Food £50,000	189.5 m ²	W & M £4422 Food £264	£120,000	£633
Lord Aberconway 73 Old Broad Street	Wet & Machine £410,000 Food £12,000	99.5 m ²	W & M £4120 Food £121	£56,000	£563

25. The Pitcher and Piano is on the opposite side of Bishopsgate from Liverpool Street Station. It has an open plan ground floor and a basement bar. Ms Steeden said that it opened in February 1998 and was occupied by Wolverhampton and Dudley, a well established regional brewer whom she would consider to be representative of the competent publican envisaged by the guide. The FMR was based on actual trade adjusted to AVD. As compared with the Hamilton Hall the Pitcher and Piano was, she said, located further away from Liverpool Street Station and across a pedestrian crossing from the Bishopsgate entrance. It had a single frontage to the street and was not very prominent to people walking on the eastern side of the street. It was, however, prominent to those leaving the station and to those going to the large office developments nearby. It benefited from large open plan trading areas. Like the Hamilton Hall it was a converted property designed for modern use with modern sized commercial kitchens and a large menu choice.

26. The First and Last (previously the Sir Paul Pinder) has a frontage onto Bishopsgate Arcade some distance to the north of the station entrance. Ms Steeden said that it was opened in August 1991, having been let as a shell, and was occupied by Mitchell and Butler. It had a ground floor bar and a first floor mezzanine bar. The FMR was estimated. As compared with the Hamilton Hall it was further away from the station but had access to a large customer base from the offices around it. The property was raised above street level and was set back from the road on the busy walkway area.

27. The Railway Tavern is a traditional Victorian public house opposite the Liverpool Street entrance to the station and also adjacent to the underground station entrance. Ms Steeden said that it was occupied by Greene King, whom she considered representative of the competent operator. It had been maintained to a high standard and had undergone regular refurbishment. The accommodation comprised ground and first floor bar areas with serveries. The FMR was based on actual trade. The Liverpool Street entrance to the station was, she said, wider and had a more open aspect than the Bishopsgate entrance. The Railway Tavern was in a very prominent position. As compared with the Hamilton Hall, there was less footfall during the day and the layout, with two rooms on the ground floor and stairs to a third, was disjointed.

28. Dirty Dicks is a Victorian public house immediately adjacent to the Pitcher and Piano. Ms Steeden said that it was occupied by Youngs, who were representative of the competent operator. It had been maintained to a high standard and had undergone regular refurbishment. There were bars on three floors. The FMR was based on actual trade. As compared with the Hamilton Hall it had an enclosed old fashioned feel and its layout was disjointed. Its location and prominence were the same as the Pitcher and Piano.

29. The White Hart is a traditional Victorian public house on the corner of Bishopsgate and Liverpool Street. Ms Steeden said that it was occupied by Mitchell and Butler, who were representative of the competent operator. It had been maintained to a high standard and had undergone regular refurbishment. It had a ground floor bar and a basement bar that was used as a restaurant. The FMR was based on actual trade. She said that its corner location was a very prominent position, close to both station entrances and better located in terms of visibility than the Hamilton Hall.

30. The Lord Aberconway is a traditional Victorian public house on Old Broad Street, a short distance from the Liverpool Street entrance to the station. Ms Steeden said that it was operated by Mitchell and Butler. It had a ground floor bar and a mezzanine seating area with no servery. The ceilings were high and had an open plan feel. As compared with the Hamilton Hall it was less prominent, but it was adjacent to the underground station.

31. Ms Steeden said that there were a range of physical factors that affected the value of public houses, including the attractiveness of the property, location, prominence and size. The value of location was linked to the accessible customer base, and she felt that there was little benefit in looking at distant public houses as direct comparables. Her comparables were all close to Liverpool Street Station and were all reasonably accessible to the same customer base. Overall, Ms Steeden said, the comparables were operated by well established companies who appeared to exploit their properties to the full. In terms of product choice they were all comparable with the Hamilton Hall, and the only apparent difference was price. With the exception of the First and Last, for which no figures were available, all FMRs were based on actual trade.

32. Because they were not located in the vicinity of Liverpool Street Station Ms Steeden did not regard Mr Day's comparables as of any assistance. However, she said, the one of most interest was the Shakespeare Tavern in Buckingham Palace Road. This had a similar

relationship to Victoria Station as the Hamilton Hall had to Liverpool Street Station. The assessment agreed was £207,000 based on a wet and machine FMR of £1,150,000. Mr Day's equated floor area of 322.7m² gave £3,564 per m² for wet and machine FMR. The RV per m² works out at £641.

33. In order to carry out a comparison with the Hamilton Hall, Ms Steeden considered it appropriate to express the FMRs adopted for liquor and machine income in terms of FMR per m². For the Hamilton Hall she adopted an area of 384.52 m², made up of the 375 m² bar area plus 20% of the uncovered outside seating area of 47.6 m². The relationship between size and area was, she said demonstrated by the evidence of Dirty Dicks and the Pitcher and Piano, which were located next to each other. Dirty Dicks, 202.1 m² in area, showed an FMR per m² of £3872 and the Pitcher and Piano, 525 m² showed £3428. This would suggest a figure for the Hamilton Hall at about the mid-point of the range, £3700. This figure did not look unreasonable when compared to the £3871 for the Railway Tavern, which was the most similar in terms of size. The Shakespeare Tavern at Victoria Station was similar in size to the Hamilton Hall and showed an FMR per m² of £3564.

34. For location, Ms Steeden said, there was limited evidence to allow a foolproof comparison. However, a comparison between Dirty Dicks and the White Hart, which had similar trading areas, showed a differential in FMR per m² of 14%, which was largely due, in her view to location and prominence. The Hamilton Hall was less prominent than the White Hart, but its location was more convenient for those using the station. She made an addition of 27%, or £1000, to her size-adjusted FMR per m² for the Hamilton Hall, to give a wet and machine FMR per m² of £4700. For food FMR she based herself principally on the Pitcher and Piano and adopted an estimate of £650 FMR per m², as against the Pitcher and Piano's £571.

35. Ms Steeden said that her valuation, which took an FMR of £1,807,200, gave an RV of £275,000 or £715 per m², which appeared consistent with those of her comparables. By contrast Mr Day's rateable value of £370,000 gave an RV of £962 per m², which was 51% higher than any of the comparables.

36. Mr Day said that he had served in the VOA since 1975. In 1995 he took on the leadership of the team of valuers responsible for the valuation of all public houses in London in the London Region Licensed Property Valuer's Office. In 1996 his responsibility was expanded to include other specialist leisure class properties. He had worked closely with the Chief Executive's Office in formulating the Guide for public house valuation in respect of the 1995, 2000 and 2005 rating revaluations.

37. The appeal hereditament was, said Mr Day, uniquely placed to benefit not only from the passing trade generated by existing office workers but also from tourists and other leisure users going to and from the station. He said that the Hamilton Hall had received a rave review in the 1996 Evening Standard London Public house Guide, when the author, Angus McGill, referring to the former hotel ballroom said: "Who could have foreseen that this extravagant folie de grandeur would end up a public house? A public house it has become, though, an extraordinary public house, possibly the most successful public house in the

country ... it sometimes seems that every one heading for Liverpool Street Station is having a drink there.” Mr Day said that it was quite clearly a flagship property that would be a prized addition to any operator’s property portfolio. The trading figures were, he thought, consistent with the property’s prominent physical character and unrivalled position. It was his opinion, therefore, that the actual trading figures formed the most reliable basis for the determination of the FMR, and he had therefore used these in his valuation.

38. The actual trade figures for the Hamilton Hall were, Mr Day said, consistent with the property’s prominent physical character and its unrivalled position with direct access from Bishopsgate and adjoining the Bishopsgate entrance to Liverpool Street Station. Those locational factors contributed significantly to the ability of the property to trade successfully seven days a week in contrast to other City of London public houses which typically opened on weekdays, when there were office workers in adjoining premises. Mr Day therefore thought that the actual figures should be adopted as the FMR. To the liquor FMR he had applied the 14% which was at the top of the range of bands, although he added that the top of the range had not been based on properties of such a wholly exceptional nature as the subject premises.

39. Mr Day produced a schedule of comparables, the primary purpose of which, he said, was to demonstrate the consistency of approach that had been applied to the valuation of public houses in central London. In every case FMRs had been determined by reference to the actual trade, with appropriate rental percentages determined in accordance with the Approved Guide. All of them had been the subject of appeals and all except one of the appeals were resolved by agreement or withdrawal. (The appeal on Wetherspoons in Victoria Station had been dismissed by the valuation tribunal and the appeal to this Tribunal withdrawn). There were 18 comparables (including, as two, O’Neills in Wardour Street before and after extension). Eight of them were in the City, but none was close to the appeal property, and the others were in Westminster. The highest FMRs were for the Punch and Judy in Covent Garden (£2,700,000 for wet trade and machines) and O’Neills after extension in 2001 (£2,915,000); and four of them had RVs per m² of bar area in excess of £1,000: the Sussex in Upper St Martins Lane (£1,237), Wetherspoons in Victoria Station (£1,095), the Punch and Judy (£2,466) and O’Neills before extension (£1,058). There was, however, a very wide range. Expressed in relation to floorspace, and taking the five comparables nearest in size to the Hamilton Hall, they varied from £307 RV per m² (Bar 38, Minorities) to £963 (Long Island Iced Tea Shop, Upper St Martins Lane). This demonstrated, Mr Day said, that the use of such a physical measure was of little assistance when trying to draw conclusions as to the comparative value of public houses. It was the physical characteristics and location of a public house that would first determine its trading potential and thence its value.

40. Mr Day also analysed his comparables by reference to the rent that was paid in each case. He adjusted the rent where necessary to take account of the date and, for those let as shell units, he adopted an uplift factor of 20% on the shell rent. In five cases, Mr Day said, the RV was within 5% of the rent, and 11 were within 10% of the rent, with the average variation of the RV being 1.5% below the rent. Bearing in mind the acknowledged imperfections of the market and the scope for variation of the assumptions underlying the analysis, his view was that this degree of correlation was more than adequate to confirm FMR as the most appropriate measure for deriving the rateable value.

41. Mr Day said that he challenged the emphasis placed in the ratepayer's evidence on pricing policy. A major difference between Wetherspoons and other operators was a new style of operation that was facilitated by the physical characteristics and location of the properties that it was developing in its evolving property portfolio. Undeniably Wetherspoons were leading the way, not only in providing a different and more inviting public house environment, but also in having outlets in more prominent and accessible locations. Other Wetherspoons occupations in the City showed no greater ability to trade than similar properties occupied by other operators nearby. In outlying locations there could be an advantage in the Wetherspoons pricing model, but there was no evidence that in central London it gave them an advantage in terms of turnover.

42. The company-wide profiles relied on by Mr Martin in relation to margins were not, Mr Day thought, of specific assistance. Each property needed to be looked at individually. Nevertheless it was to be noted that Wetherspoons were said to have a higher food gross margin than either Yates or Regent Inns.

Conclusions

43. There is no dispute between the parties that the valuation of this public house falls to be made in accordance with the Approved Guide that was agreed for the purposes of the 2000 rating lists between the Valuation Office Agency and the Brewers and Licensed Retailers Association and the Supplementary Guidance that was produced in order to address the possibility that the receipts of some of Wetherspoons' public houses might not properly represent the FMR. It is in the circumstances obviously right that the Tribunal should follow the same approach. Guidance of this sort, agreed by the VOA and on behalf of a particular category of ratepayers, ought to be followed unless there is good reason not to do so.

44. There is very little difference between the valuers on the value that results from an unqualified application of the Approved Guide. Ms Steeden comes out at £367,500 as compared with Mr Day's £370,000. It is in the application of the Supplementary Guidance that the difference between them arises. The first step in applying the Supplementary Guidance is to decide whether the actual trade figures are obviously higher than the FMR. As the Supplementary Guidance puts it: "In some cases it may be obvious from the outset that the actual trade figures are either higher or lower than those achievable by the hypothetical tenant for the type of house in that location, ... in which case the fair maintainable trade should be adjusted at the outset."

45. It was not suggested that the trade at the Hamilton Hall was so obviously higher than that achievable by the hypothetical tenant for the type of house in that location as to require adjustment at the outset in this way. The nature of the Wetherspoons' operation at the Hamilton Hall was described by Mr Martin and Mr Smith. On the basis of this evidence I accept that a watch was kept on the prices of other local operators and that prices were pitched at about 10 to 15% lower than these (rather than 30%, as was originally suggested); that a wider range of beers was always on offer compared with local competitors; that food was offered over longer hours; that the number of staff employed was significantly higher, with a consequent reduction in bar queuing time; and that staff incentives, in terms of accommodation for managers and bonuses for staff, were greater. I have no difficulty in accepting that in some locations this style of operation may result in higher turnovers than a

competitor might expect to achieve. It is not possible to conclude in relation to the subject premises, however, that the effect of these measures was to produce a higher level of wet trade than the hypothetical tenant might have expected. They might or might not have had this effect. Certain aspects of the operation – for instance the long hours for the service of food – could reflect what any operator might think prudent in this location, while the price cutting might or might not have given a higher turnover. I attach no weight to the fact that Wetherspoons operations overall are shown to give lower margins than their competitors both because there is no evidence of the margins achieved at the Hamilton Hall itself and because it does not seem to me that it bears significantly on the application of the Approved Guide and the Supplementary Guidance. I would add also that I do not consider that any assistance is to be derived from guidance on cut-price petrol filling stations. I accept Mr Day's view that the dissimilarities are too great.

46. The Supplementary Guidance goes on to say that “No allowance is made for pricing policy of the actual occupier when determining the FMR (although this may be a relevant consideration when the specific point within the band is determined where it is considered that the level of FMR can only be achieved by discounting sales prices compared to competitors).” Again it is not suggested by Ms Steeden that some lower rate than the 14% at the top of the relevant band should be applied to the FMR in order to reflect pricing policy at the Hamilton Hall.

47. One reaches, therefore, the stand back and look stage. What has to be looked for is a clear demonstration “that the initial valuation is patently out of line (not just because a house is trading well, has a higher turnover per m² than similar houses, or it has a higher/the highest RV), and appears inconsistent with the assessments of similar styles of property in similar locations occupied by other companies, valued on the receipts basis following disclosure of full trade information.” It is for this purpose that Ms Steeden refers to her comparables. The test to be satisfied is very demanding. There is no doubt that the Hamilton Hall is trading well. What Ms Steeden says is that its turnover per m² is so much higher than those of her comparables and shows, if actual trade is taken as FMR, so much higher a RV per m² that it can be seen to be inconsistent with the assessments of those comparables. Under the Supplementary Guidance if such differences cannot be explained by the vagaries of the market, the individual physical characteristics and size of the house, the type and style of trade which is maintainable, its customer base and the nature of the trading location, it will be necessary to revisit the initial FMR in order to reconsider whether this is consistent or substantially out of line with the turnover achieved at other houses.

48. I accept Ms Steeden's view that it is appropriate to have regard principally to comparables in the vicinity for the comparison that needs to be made. With a customer base that is essentially the same, it is then possible for the valuer to form a view about the differences in location and the nature of the premises. Mr Day's comparables, which are all outside the Liverpool Street Station locality, seem to me only to establish that public houses with very high turnovers are to be found elsewhere. He identified the Punch and Judy in Covent Garden as “the best match” for the Hamilton Hall. Ms Steeden disagreed about this, and I strongly prefer her view. Mr Day's schedule of comparables shows the Punch and Judy as having a wet turnover of £2,700,000 compared with the subject premises' £2,470,000 and a wet turnover per m² of £17,075 compared with the Hamilton Hall's £6,586. I find it hard to see any comparability between the two premises other than that they are central London public houses with very high turnovers. In terms of location, the Hamilton Hall is at a main line railway station in the heart of the commercial part of the city, and is well placed to attract

those using the station and office workers. The Punch and Judy by contrast is located at the hub of Covent Garden, now an extremely popular leisure area that attracts very large numbers of people on all days of the week and particularly in the evenings. The nature of the custom that it does is clearly different. In terms of their physical natures also the two public houses are quite dissimilar – the Hamilton Hall is large and spacious, while the Punch and Judy is the only public house in the old central market buildings, with a low ceilinged cellar and a first floor balcony overlooking the market square. The contrast between the two premises is manifest, and I am at a loss to see how reference to the Punch and Judy could assist in any way in establishing the value of the Hamilton Hall.

49. Ms Steeden’s comparables, however, though close to the subject premises, are, as Mr Day in my view rightly contends, in less good locations and of dissimilar natures. The Pitcher and Piano is on the opposite side of Bishopsgate from Liverpool Street Station, a location that is clearly much less favourable than the Hamilton Hall. It is on two floors, with an open plan ground floor and basement bar areas. For its size (525 m², 40% larger than the Hamilton Hall) it has a very narrow street frontage, the size of a unit shop, and as a consequence it has a more limited and a much less inviting presence. Its wet trade at £1,800,000 compares with the Hamilton Hall’s £2,470,000. Expressed in terms of turnover per m² the comparison is between £3428 and £6586. In view of the differences between the two premises I do not think that this compels the conclusion that the Hamilton Hall’s turnover is in excess of FMR. It is to be noted that another of Ms Steeden’s comparables, albeit one on which she placed no reliance, was the First and Last, at the northern end of Bishopsgate arcade. As compared with the Pitcher and Piano it has a superior frontage, and it has major office buildings nearby, although the footfall outside is likely to be less. The First and Last had an FMR (estimated, since there were no trade figures available) of £525,000 or £1942 per m². The conclusion to be drawn from the comparison with the Pitcher and Piano’s £3428 (76% higher) is not, in my view, that one or other of them has been entered in the list at a value that is substantially wrong – and neither valuer suggested this – but that relatively small differences in location can give rise to substantial differences in turnover.

50. Both the Pitcher and Piano and the First and Last are modern public houses, fitted out from shells in the 1990s. The other four comparables relied on by Ms Steeden are traditional Victorian public houses. Dirty Dick’s at 202-204 Bishopsgate is adjacent to the Pitcher and Piano) and has bars on three floors. The Railway Tavern at 15 Liverpool Street has three bars on two floors. The White Hart, 121 Bishopsgate, has ground floor and basement bars. The Lord Aberconway, 73 Broad Street, has a ground floor bar only and is in the region of half the size of the other three (which are themselves each between half and two-thirds the size of the Hamilton Hall). Their FMRs per m² range from £3871 to £4422, and this range appears to reflect in an unsurprising way the differences in location between these traditional types of public house. Each is across a road from Liverpool Street Station. The Hamilton Hall by contrast occupies a prominent location immediately adjacent to the station, and its character, principally formed by the spaciousness of the ballroom bars, is quite different from the bars of the traditional public houses.

51. I do not find it surprising that all Ms Steeden’s comparables show substantially lower turnovers per m² than the Hamilton Hall, which is in a better location than any of them. Mr Day, in my view rightly, referred to the Hamilton Hall being “uniquely placed” in relation to the potential trade and having an “unrivalled position”. It may well be the case also that the large and spacious interior is itself a significant attraction. Adopting as her means of comparison turnover per m² the task that Ms Steeden has is a formidable one – to show that

the turnover of the Hamilton Hall is so far in excess of other nearby public houses that it cannot be reasonably explained by the differences in location and the nature of the premises. I am not satisfied that she has shown this.

52. Ms Steeden can derive no assistance from the rent that was payable. The rent review in August 1997 determined the rent at £380,500 on the basis of 16% of the turnover, rather than the market rent. Ms Steeden said that this showed that the market rent was below the rent determined. This is not necessarily so, and it seems to me unsurprising, given the difficulty that the landlord's valuer would have had in establishing that the market rent for this unique property was more than that produced by the formula, that the valuers reached agreement on the basis of the 16%. I accept Mr Martin's account of the reasons that led him to agree to the rental terms in the first place. The opportunity to take on these premises was one that he was anxious not to miss. The venture at the premises was however a new one, so that the market rent was unknown and unknowable, and he was prepared to agree to a rent that he felt was safe and to let British Rail take a profit on future rent reviews if things turned out better than expected. This does not, however, mean that the basis agreed produced a rent that was in excess of the market rent.

53. My conclusion, therefore, is that the appellants have failed to show that the actual receipts for liquor and machines at the Hamilton Hall were in excess of those that a reasonably competent public house operator could have expected to achieve. The difference between the valuers in relation to the food trade was relatively small, and was in consequence the subject of little debate. It is sufficient for me to say that I do not accept that Ms Steeden's approach, which was to derive her FMR from that of the FMR per m² of the Pitcher and Piano, is likely to give the right result, given the different nature of those premises.

54. The assessment is confirmed at £370,000, and the appeal is dismissed. The parties are now invited to make submissions on costs, and a letter about this accompanies this decision, which will become final when the question of costs has been determined.

Dated 27 March 2008

George Bartlett QC, President