THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2010 Rating List appeals; MCC appeal; Museum and premises; Historical building; Method of valuation; Classification of hereditament: Appeals allowed.

RE: Ancient High House, 48 Greengate Street, Stafford ST16 2JA (Appeal 1)
Industrial Heritage Museum, Ashby Road, Coalville, Leicester LE67 3LF (Appeals 2 and 3)

APPEAL NUMBERS: 342525591027/539N10 (Appeal 1)
243525591016/539N10 (Appeal 2)
243528821990/537N10 (Appeal 3)

BETWEEN Leicester County Council
Stafford Borough Council Appellants
and
Ms A Morley Respondent
(Valuation Officer)

PANEL: Mrs A Adeola (Presiding Senior Member)
Mr A Backway (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING: 6 November 2023

APPEARANCES: Mr C Hunter advocate and expert witness for the Appellant
Mrs T Dearing advocate and expert witness for the Valuation Officer

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Summary of decision

1. Appeals allowed. The appeal properties' assessments were reduced to £1 rateable value (RV) with effect from 1 April 2010 for Appeals 1 and 2; and with effect from 7 March 2016 for Appeal 3.

Introduction

2. These appeals related to three proposals which were submitted by Lambert Smith Hampton. One submitted on behalf of Stafford Borough Council for the Ancient High House, 48 Greengate Street, Stafford ST16 2JA (Appeal 1) and two on behalf of Leicester County Council for Industrial Heritage Museum, Ashby Road, Coalville, Leicester LE67 3LF (Appeals 2 and 3) and (the 'appeal properties').

3. The first proposal (Appeal 1) had been submitted on 5 May 2015 for the Ancient High House, this was a 2010 rating list appeal which sought a reduction from RV £25,000 to RV £1 with effect from 1 April 2010.

4. Two proposals had been submitted for the Industrial Heritage Museum, the first (Appeal 2) was submitted on 5 May 2015 and was a 2010 rating list appeal which sought a reduction from RV £300,000 to £1 with effect from 1 April 2010; and the second (Appeal 3) was submitted on 21 March 2017 and sought a reduction from RV £109,000 to RV £1 with effect from 7 March 2016 on the grounds of a material change of circumstances.

5. The valuation officer did not consider that any of the proposals were well founded.

6. As Appeals 1 and 2 had been submitted within six months of a relevant Valuation Tribunal decision, *City of Bradford Metropolitan District Council and York Museums and Galleries Trust v Sykes (Valuation Officer)* [2015] VTE (470517939187/538N10), the appeals are not effective date restricted (falling within the exception at Regulation 14(2B) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]).

7. The Industrial Heritage Museum is situated in the Coalville area of Leicestershire, to the northwest of Leicester city centre in what is known as Snibston Colliery Park on the site of colliery number 2 which produced coal between 1833 and 1983. The site was purchased from the Coal Board by Leicestershire County Council for £1 in 1985 and regenerated in 1992.

8. The Industrial Heritage Museum, which is now closed, comprises a preserved pit headstock, winding house, and storage sheds. On site there is also the mobile Century Theatre, Britain's oldest travelling theatre, which is of a unique design comprising an aluminium superstructure and hydraulic rams supporting a series of ex RAF trailers. A new exhibition hall was constructed in the early 1990's which was funded by the National Heritage Lottery Fund and the Millennium Fund. The museum closed on 31 July 2015 but was regenerated again in a new project in 2020. The exhibition hall was demolished in March 2016, and this was the reason for the second proposal in respect of this property. When the museum was open an admission fee was charged.

9. The Ancient High House is a Grade II listed Elizabethan town house which is the largest remaining timber framed town house in England from the Tudor period. It is situated in Stafford town centre. It has an extensive collection of period furniture relating to the lives of the people who lived there over the centuries. There are gallery spaces with displays all connected to former occupation. The Castle Room has displays explaining the method of construction and materials used. The attic floor is home to the Staffordshire Yeomanry Regiment Museum. In addition, there are two gallery spaces with changing exhibitions. There is also a shop on the ground floor. The property is owned freehold and operated by Stafford Borough Council. Admission is free.

10. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC) the appellant's representative, Mr Hunter, when appearing as expert witness, stated that a conditional fee arrangement existed. However, he also stated that he understood and accepted that his first duty was to the Valuation Tribunal for England (VTE) in giving his evidence, whether or not the evidence supported his client's case.

11. The panel has accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

12. It was therefore appropriate for the panel hearing the evidence to consider the expert evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

13. This decision document is not and does not purport to be a verbatim record of proceedings.

Issue

14. The issues in dispute were:
    - the mode and category of use of the appeal properties.
    - the method of valuation.

Evidence and submissions

15. The bundle of evidence comprised the documents exchanged between the parties as part of the appeal process. The parties referred to a plethora of case law, but in particular:

- *Hoare v National Trust* [1998] EWCA Civ 1525
- *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 0020 (LC)
- *Hughes (VO) v Exeter City Council* [2020] UKUT 0007 (LC)
- *Allen (VO) v Tyne & Wear Archives and Museums* [2022] UKUT 206 (LC)

Decision and reasons

16. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell* (VO) [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All the evidence could then be weighted.

17. In this case the parties agreed that there was no rental evidence to be taken into consideration as the majority of museums and historical buildings are freehold and the majority of those held on lease are let for a peppercorn rent of £1.

18. Mrs Dearing submitted that the appeal properties' mode and category of use had been reviewed along with other museums in the rating list. The Valuation Officer, in making this review, had found that the appeal properties had been misidentified and are not museums because they are not primarily occupied as 'suitable sites on which to exhibit a collection or collections'. Mrs Dearing argued that they are historical buildings which are occupied principally for preservation, conservation, education, and as an important cultural asset and that this is the mode or category of occupation in the statutory rating scenario. She argued that as this is distinct from occupation as a museum, it would affect the rent that a hypothetical tenant would agree to pay for rating purposes.

19. Mrs Dearing referred to *Hoare v National Trust* in arguing that the receipts and expenditure method cannot represent the rateable value for a historic property because that method is based purely on commercial potential, whereas, in these cases the motive for occupation is not economic and it is not for profit. Instead, she argued that the Valuation Office has an established method of valuing historic buildings where the building is the main attraction, and the primary motive is preservation and conservation; this being the shortened profits approach of applying a percentage to gross profits.

20. Mrs Dearing referred to paragraph 162 of the Exeter case

> *"There is no general legal principle in England and Wales which requires the R&E or CB method to be used in any particular case, and certainly none which determines the outcome of the present dispute. In particular, there is no legal principle which would preclude the use of the R&E method in the present case and would require the CB to be used. Likewise, there is no legal principle or valuation practice which would preclude the modification of the R&E method for properties of the unusual kind we have in this appeal, e.g. by use of an appropriate overbid or uplift, or a revenue-based method (e.g. percentage of gross receipts), or perhaps a percentage or amount related to outgoings to reflect a socio-economic or cultural motivation to occupy, so long as all relevant considerations are taken into account and weighed.."*

21. In outlining her method of valuation Mrs Dearing stated that she had followed the historic buildings valuation scheme, a copy of which had been provided in her statement of case, her methodology is based in part on spot figures and in part on percentage of receipts. The spot figures she had used equated to 0.6% of outgoings for 2007/8 for the Ancient High House and 1.6% of total outgoings for 2007/8 for the Industrial Heritage Museum. She asked the panel to confirm RV £1,100 for the Ancient High House with effect from 1 April 2010 and for the Industrial Heritage Museum she proposed RV £10,500 with effect from 1 April 2010 and RV £5,000 with effect from 7 March 2016. On questioning by Mr Hunter, Mrs Dearing confirmed that the spot figures that she had used were not based on any evidence. She stated that this method found favour with the Exeter case.

22. Mr Hunter argued that the appeal properties should retain the classification of museum and premises. He argued that the opinion of the Valuation Officer appeared to be that it is 'the desire to preserve a building' that should be used to determine whether a property is an historic building or a museum and not its actual use. He argued that this was contrary to the definition of rateable value which refers to mode and category of use and not the intentions of the occupier. Mr Hunter agreed that the appeal properties, along with others referred to in the three main museum cases, were historic buildings but they were also museums. He argued that in respect of the Industrial Heritage Museum the redevelopment had been a regeneration project rather than a preservation project.

23. On this basis Mr Hunter argued that the method of valuation should be the receipts and expenditure method. As it was agreed between the parties that both appeal properties were loss making, he contended that the appropriate RV to be adopted in each case was RV £1. He also argued that should the appeal properties be found to be historical buildings and not museums, the most appropriate method of valuation would still be the receipts and expenditure method. In making this argument he referred to the three main museum cases referred to above, *York Museums, Exeter* and *Tyne & Wear,* and quoted from *Hoare v National Trust* as follows

"I content myself with recording my total inability as at present advised to understand the theoretical justification for arriving at the amount of the overbid by starting at the gross receipts figure rather than a profit figure. The fact that one can adjust the percentage of the gross receipts figure in order to arrive at the hypothetical rent does not detract from the arbitrariness of starting with that gross figure. Moreover, the amount of the percentage reduction seems to me equally arbitrary. The resulting valuations give a wholly misleading picture of scientific rigour. One suspects that what the valuer does is to use his evaluation of all the facts of the case and arrive at an intuitive figure and then build a theoretical structure to justify it. I cannot see any rational hypothetical tenant, who (unlike the Trust) is prepared to make an overbid, using that theoretical structure to arrive at the amount of his overbid in his negotiations with the hypothetical landlord. Nor can I see the hypothetical landlord having such calculations in mind."

24. The panel found that the guidance manual which provided the established method of valuation for historical buildings had no basis in law and had not been updated to reflect recent case law, the panel therefore rejected the Valuation Officer's continued use of the outdated guidelines. The panel noted the findings in the *Tyne and Wear* case at paragraph 105:

> "*Mr Allen calculated rateable value using a percentage of gross receipts. The Tribunal has considered the so called 'shortened method' on a number of occasions and recently identified its shortcomings in BNPPDS Limited & BNPPDS Limited (Jersey) as Trustees for BlackRock UK Property Fund v Andrew Ricketts (VO) [2022] UKUT 129 (LC). This 'method' is in our view only appropriate after a rigorous analysis of the available rental evidence, or a significant number of assessments agreed on the full receipts and expenditure basis. Although the experts had a number of rents to inform their judgement, none were capable of reliable analysis, and we had no evidence of full receipts and expenditure valuations on comparable properties. So, the use of the shortened method has to be regarded with extreme caution in this case*."

25. The panel found that the shortened method of valuation had been criticised on several occasions in the higher courts and were the properties found to be historical buildings it would prefer the full receipts and expenditure method.

26. Mrs Dearing contended that the Industrial Heritage Museum site is hybrid in terms of its mode or category of occupation as there is, the historic property i.e., the colliery, a public park, and a theatre. Mrs Dearing submitted that whilst the Century Theatre is in the same occupation as the rest of the site, it falls into a different mode or category of occupation. However, for the purposes of these appeals, she was not able to consider a split of the rating assessment to reflect this as she could not go back into the 2010 rating list.

27. Mr Hunter did not agree with this approach as he believed that the museum should be valued as one single hereditament, he stated that to split the property would be contrary to the findings in the York Museums decision which required a museum to be valued as a whole and not in separate parts. He gave the example of the Yorkshire Museum which was considered in the York Museums case and includes, a park, a separate building used for weddings and Trustee meetings (the Hospitium), a separate office building in a converted listed building and the ruins of St Mary's Abbey as well as part of the City Wall. Within the museum there is also a theatre with tiered seating and projection facilities.

28. The panel noted the findings in the York Museums case and found the Industrial Heritage Museum should be valued as a single hereditament.

29. Mrs Dearing had also provided details of several settlements for historical buildings and in particular, she referred to Izaak Walton Cottage, Shallowford Stone, Staffordshire, this property had been valued at RV £1,000 and the settlement had been agreed by Lambert Smith Hampton in 2012. She referred to twenty two appeals for properties which like the appeal properties, had been altered in classification from museum and premises to historic building, some of these appeals were still to be heard but eleven had been agreed with valuations based on the historic property valuation scheme for an RV of over £1, they ranged in value from RV £1,000 to RV £9,500. She argued that a tone had been established for these properties. She also argued that Mr Hunter had provided no evidence of tone of the list for historic buildings with RV £1.

30. With respect to the settlements referred to in Mrs Dearing's submission, Mr Hunter stated that he had not been involved with the Izaak Walton Cottage settlement, but he noted that it had been made in 2012 prior to the more recent museum cases. He also pointed out that the settlements before the panel were for very low values and in his opinion, these were likely to be pragmatic settlements which had been agreed because the values were very low, and the appellants may not have wanted to proceed to appeal on a matter of principle when the cost of doing so might outweigh the benefit.

31. On questioning the parties agreed that should the panel find the appeal properties to be museums the appropriate method of valuation is the receipts and expenditure method. The parties also agreed that a receipts and expenditure valuation would result in a valuation of RV £1 for the appeal properties.

32. Photographs of the Ancient High House showed exhibits/collections which were from the Tudor period and included clothes and furniture; the parties had recently visited the property and alluded to an exhibition of embroidery which had been on display and the attic floor, the panel noted, is home to the Staffordshire Yeomanry Regiment Museum.

33. The Industrial Heritage Museum had closed in July 2015 and the parties had inspected the site just prior to this hearing, the panel noted that as at the material date 1 April 2010 (Appeal 2) the property had a large exhibition hall which was used to house a collection of exhibits. The parties had agreed that when they inspected the property, they had been informed that the collection which had been in the exhibition centre was still on site.

34. The panel found there to be no difference between an 'historic property' or 'museum' where the historic property only contains artifacts of a period in time related to the property and any building containing a range of artifacts covering various time periods. The law makes no such differential, and it found there was very little to distinguish between the appeal properties and other museums which had been referred to in the major museum cases. Based on the evidence before it the panel found that any reasonable onlooker would find both properties to be museums. Consequently, the correct method of valuation for the properties was the receipts and expenditure method. The appeals were therefore allowed, and the panel confirmed RV £1 with effect from 1 April 2010 for Appeals 1 and 2; and with effect from 7 March 2016 for Appeal 3.

Order

35. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £1 RV for the appeal properties Appeals 1 and 2, with effect from 1 April 2010 and RV £1 for Appeal 3, with effect from 7 March 2016.

36. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 28 November 2023

Appeal Numbers: 342525591027/539N10 243525591016/539N10
243528821990/537N10

Right of appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.