THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; go-kart track and premises; valuation of go-kart track; mezzanine floor; The Valuation for Rating (Plant and Machinery) (England) Regulations 2000; appeal dismissed.

RE: Unit E Riverway, Harlow, Essex CM20 2SN ("the subject property")

APPEAL NUMBER: CHG100219664

BETWEEN:	Go Karting for Fun Ltd Trading as Team Sport	Appellant
	and	
	Jo Moore (Valuation Officer)	Respondent

PANEL:	Mr S Levy (Presiding Senior Member) Miss S Ballentine (Senior Member)
CLERK:	Mrs A Sloan
HEARING:	Remote hearing No.3 on 21 February 2023
APPEARANCES:	Mr J Slater of Dunlop Heywood (for the Appellant) Mr L Stevens (for the Respondent)

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of £184,000 from 19 April 2017.

Introduction

2. At the commencement of the hearing, the clerk invited the panel to correct the name of the appellant to this appeal. The clerk explained that the appeal had, on registration with the Tribunal, been incorrectly recorded as being brought by Team Sport, which is a trading name for the company in occupation of the subject property. Neither party had any objection to the correction of the record and the panel was satisfied that there was no prejudice to either party in doing so. Accordingly, pursuant to Regulation 11(1)(a) of the Valuation for

England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the Procedure Regulations"), the panel directed that the appellant, Go Karting For Fun Ltd, was substituted as the appellant in this appeal.

3. This appeal was lodged on 11 February 2022 to appeal the Valuation Officer's (VO) decision notice of 20 October 2021, which refused to reduce the Rateable Value (RV) from £184,000, effective from 19 April 2017. The appellant's proposal at Challenge stage initially sought a reduction to £147,500.

4. At an earlier hearing in January 2023, Mr Slater explained that he had taken over this appeal from a colleague and wished to introduce some new evidence and a revised valuation. The new evidence was admitted by the panel on that day, and the appeal adjourned. Mr Slater was directed to share his revised valuation with Mr Stevens and Mr Stevens given the opportunity to respond with new evidence of his own.

5. Preliminary issues concerning those bespoke directions and the evidence to be admitted were decided on 13 February 2023 and the reasons set out in a decision notice of the same date. Mr Slater's revised valuations at £139,000 and £148,000 were admitted into evidence, along with the contents of Mr Stevens' email dated 24 January 2023.

6. In his statement of truth declaration, Mr Slater confirmed he was acting in a dual role as both advocate and expert witness for the appellant. In light of the Upper Tribunal (Lands Chamber) decision in *Gardiner & Theobold LLP v Jackson* (VO) [2018] UKUT 0253 (LC), he declared that he was instructed on a contingency fee basis, but he understood that his duty was to the Tribunal in giving evidence.

7. The panel 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 Procedure Regulations 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). It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

8. Mr Stevens also declared he was acting as both advocate and expert witness for this appeal.

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

Issue

10. The issue before the panel was the accuracy of the entry shown in the 2017 rating list for the subject property.

Evidence and submissions

11. The panel was provided with a joint evidence bundle containing the evidence exchanged between the parties during the Challenge stage, leading to the VO's decision under appeal. Also considered were various late submissions that had been given judicial consideration regarding admissibility prior to the hearing.

Decision and reasons

12. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

    "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be 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 usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above."

13. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015. The material day (the date by which physical factors have to be taken into account) was 19 April 2017.

14. The panel understood that Mr Slater did not dispute the main space price of £52.50/m^2 used in the VO's valuation. He also confirmed at the hearing that he was no longer disputing the car parking element of the valuation. The remaining area of dispute between the parties concerned the valuation of the go-kart racetrack.

15. The subject property was constructed as a warehouse unit and was located on the Templefields industrial estate in Harlow. The appellant company took a lease on the property from 19 April 2017, which specified permitted use as "*a go karting facility with ancillary leisure facilities*". The appellant had obtained the appropriate change of use planning consent. The VO had altered the description in the rating list to reflect the change in use. The lease was for 20 years with five yearly rent reviews. The rent was £97,500 in the first year, payable after a rent-free period, followed by a term of 42 months at £195,000 per annum.

16. The appellant occupied the subject property as an indoor go-karting venue. The racetrack covered parts of both the ground floor and an upper level, with ramps between the two parts. The initial Challenge proposal, prepared by Mr Slater's colleague, placed weight on the subject property's rent, which was analysed to the first rent review and produced a figure of £56.16. Adjusting back to the AVD, he had adopted a unit price of £50/m^2 and, using a total area of 2,951.1m^2, sought a reduction in RV to £147,500.

17. Mr Slater contended that the racetrack was installed as part of the appellant's business and was fully demountable, being removed when the appellant company vacates at the end of the lease. He felt that it should be considered a chattel, used to conduct the business, and excluded from the valuation. On the basis of the racetrack not forming part of the valuation,

Mr Slater proposed an RV of £139,000 from 19 April 2017. This valuation adopted the VO's main space price and relativities but excluded the line entry for the mezzanine floor. Alternatively, if the track were to be rated, he contended that this should be achieved by reference to the cost of installation (£203,154) and a decapitalisation rate of 4.40% (£8,938.78). This produced an RV of £148,000.

18. Mr Stevens confirmed that the VO's valuation included the racetrack, which was valued as a mezzanine floor. He explained that it was not unusual for tenants to instal a mezzanine level as part of tenant's improvements, which the landlord would expect to be removed when the lease comes to an end. The VO had therefore valued the racetrack at £28.88/m^2 (55% of the main space price at £52.50/m^2).

19. The panel was provided with photographs showing the interior of the subject property, including the racetrack. With reference to these photographs, Mr Slater explained that the structure was bolted to the floor and not to the walls, making it free standing. He stated that the structure was custom built for the purpose of a go-kart racetrack and was not load bearing for cars or forklift trucks, as suggested by Mr Stevens. He considered that the track would have no general market appeal to other tenants. Mr Slater contended that the track was part of the business process and should be excluded from the various definitions of rateable plant and machinery as set out in The Valuation for Rating (Plant and Machinery) (England) Regulations 2000.

20. Mr Stevens disagreed that the track should be excluded from the valuation and contended that it was a mezzanine floor and not part of a "business process". Referring to the classes of plant and machinery to be assumed part of the hereditament, he cited Class 4, table 3 – *"Foundations, settings, fixed gantries, supports, walkways, stairways, handrails, catwalks, stages, staithes and platforms."*

21. Having visited the subject property himself, although not for an officially arranged detailed inspection, Mr Stevens stated that there was a mezzanine floor in place prior to the appellant's occupation and the racetrack abutted that structure. He confirmed that it was possible to walk from the original mezzanine, housing a café, onto the racetrack. He pointed out that other similar properties operated as indoor go-kart facilities by the appellant had been valued including the track and contended there should be no difference in approach here.

22. Various pieces of case law were cited by the parties during their presentations, and both made thorough submissions in support of their respective positions.

23. The panel found that the subject property must be valued vacant and to let as a go-kart racing venue, in accordance with the long-established principle of *rebus sic stantibus*, and not as a warehouse. Mr Slater contended that the installation of the racetrack was of no value to anyone else as it was a bespoke structure. Mr Stevens disagreed and stated that, a new tenant in the market for an indoor go-kart track, would be very interested in this tenant improvement to the property. He also questioned if it was feasible that the significant alterations and installation of a track costing in excess of £200,000 would make the subject property less valuable. In his opinion, the track was a mezzanine floor that formed part of the structure of the building and was rateable. He disagreed with Mr Slater's approach to valuing the track using decapitalisation as there was no breakdown of the costs for consideration and there was a difference between valuing under a contractor's basis of valuation and annualised costs.

24. The panel accepted Mr Slater's point that there is no rental evidence available for racetracks. However, it found that the track was a structure akin to a mezzanine floor and should be valued accordingly. The panel accepted Mr Stevens' submission that this was a significant alteration to the subject property as it was previously occupied as a tyre distribution centre and loading bays had been removed during the track installation.

25. Both parties had referred to the Upper Tribunal decision *Wilkinson (VO) v Edmundson Electrical Limited* [2017] UKUT 390 (LC). This case concerned a dispute on whether chipboard decking supported by timber joists resting on non-rateable Dexion racking and steel staircases formed part of the hereditament or was non-rateable. Paragraph 52 of that decision states –

"Factors which are relevant to that enquiry will obviously include the nature of the item, whether it could readily be removed and re-assembled elsewhere, and the extent and purpose of any fixings which secure it to the main structure of the premises. Fixings which can easily be loosened to enable the item to be relocated, or whose purpose is to stop it from being knocked out of position while in use, might indicate that the item was not part of the premises. Fixings which support the item on the walls or other structural parts of the building might have the opposite effect. The size of the item relative to the area of the premises as a whole may be relevant, as may be its bulk or substantiality, but we are less inclined to consider the mere passage of time since the item was installed to be significant. If the premises have been adapted to accommodate the item, as by the creation of a doorway in the dividing wall at mezzanine level in Rogers v Evans, or the construction of a blockwork wall to surround the racking system in Toys R Us v Penny, that will tend to support the case that the structure has become an integral part of the premises themselves. We emphasise that these are factors to be taken into account, rather than features which will necessarily be decisive one way or the other."

26. Whilst it was accepted that the racetrack was designed to be demountable, the panel found that the photographs illustrated it was a substantial structure, which must be weight bearing to a degree for safety purposes when carrying go-karts and their drivers at speed. It understood that the racetrack covered a large portion of the property and, whilst designed to be removed at the tenancy end, the track could not be easily moved or relocated within the building. The panel did not find that this was a chattel that could be removed without significant effort and, as such, should be considered a part of the building's structure and rated accordingly.

27. Although Mr Slater had provided two alternative valuations, the panel was not persuaded that either was correct. The valuation at £139,000 excluded the racetrack/mezzanine but still valued the 'area under supported floor' lower than the main space price. The panel considered this would require adjustment and, in any case, it had found that the track was rateable.

28. The other valuation at £148,000 was based on decapitalisation of the installation costs from 2017. As pointed out by Mr Stevens, there was no breakdown of these costs, and they would need to reflect the value at the AVD in 2015. Mr Stevens had highlighted that a number of other properties occupied by the appellant company had been valued and agreed in the 2017 rating list without using this method. Mr Slater contended that there had been no discussion on some of the other settlements, but the revised RV had been accepted in each

case as it was close to the figure the appellant's agent considered to be correct. Therefore, Mr Slater was not aware of the valuation breakdown in those instances.

29. Mr Slater had introduced the Upper Tribunal case of *Bunyan (VO) v Acenden Ltd* [2023] UKUT 17 (LC), which dealt with the valuation of tenant improvements. He considered this case raised the question of whether the racetrack in the subject appeal should be valued by applying the statutory decapitalisation rate or if an annual equivalent should be found by amortising he capital cost of the works. Mr Stevens referred the panel to paragraphs 99 and 100 of the *Acenden* case as follows regarding decapitalisation –

"99. We do not accept Mr Ormondroyd's submission that the use of the statutory decapitalisation rate is, as he put it, 'mandated by law' in cases of this sort. The statutory rate is applicable only "to a hereditament… the rateable value of which is being ascertained using the contractor's basis of valuation". We accept (as we did in Iceland) that use of the prescribed rate is not confined to valuations where the contractor's basis is being applied to the entirety of a hereditament; it is also to be employed where only part of a hereditament is being valued by the contractor's method. But the valuation in this case is not such a valuation.

100. Before the use of the statutory rate becomes mandatory, we think it essential that the full contractor's basis, properly so described, is being employed to ascertain the rateable value of at least some part of the hereditament. It need not be employed to establish the rateable value of the whole of the hereditament, but at least in relation to part the exercise must
recognisably be the ascertainment of a rateable value on the contractor's basis. We perceive there to be a difference in this respect between ascertaining the rateable value of part of a hereditament using the contractor's basis and using the annualised cost of some work of improvement of a hereditament as one component in ascertaining the rateable value of the hereditament as a whole. The former exercise involves ascertaining a rateable value, properly so called, of a subject which would be capable of having a rateable value of its own. The latter exercise does not: no separate entry is made in the rating list for a shop front, or an air-conditioning system installed in a hereditament."

30. The panel concluded that none of the valuations put forward by the parties were calculated using the contractor's method and this was distinguished from decapitalisation of the costs from 2017. It did not therefore find that Mr Slater's valuation at £148,000 was appropriate.

31. After considering all the evidence presented, the panel found that, on balance, the VO's approach was correct. The racetrack was rateable and akin to a mezzanine floor. Vacant and to let as an indoor go-kart venue, the panel found that the tenant's improvements would have added value and the VO's valuation at £184,000 was below the rent agreed on the subject property in 2017 at £195,000. It therefore found that the existing RV in the list at £184,000 from 19 April 2017 was fair and reasonable, and the appeal was dismissed.

Date: 8 March 2023 **Appeal number:** CHG100219664

Appeal Rights

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.