VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeal: Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]; Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 200 (LC); Hughes (VO) v Exeter City Council [2020] UKUT 0007 (LC); Allen (VO) v Tyne & Wear Archives & Museums [2022]; Museum and premises; valuation method; receipts and expenditure valuation; appeal dismissed

APPEAL NUMBER:	CHG100380582	
RE:	The Discovery Museum, Blandford House, Newcastle Upon Tyne NE1 4HZ (the "subject property")	
BETWEEN:	Tyne & Wear Archives & Museums	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Remote Hearing (AM) on 10 March 2025 and Remote Hearing No. 4 on 25 March 2025	
BEFORE:	Dr HM Freeman, Presiding Senior Member Ms J Gittens, Senior Member	
CLERK:	Mr J Massey	
APPEARANCES:	Mr C Hunter, Consultant to Lambert Smith Hampton, representing the Appellant Ms J Reynolds of Tyne & Wear Archives & Museums - witness of fact for the Appellant Mr M Hepworth, representing the Valuation Officer	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel was satisfied from the evidence and submissions that the current RV of £128,000 assigned to the subject property was not excessive.

Introduction

3. This appeal has been brought in respect of the subject property, which was entered in the 2017 rating list as "Museum and Premises" rateable value (RV) £715,000, effective from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

4. The challenge process began on 18 August 2020 when the appellant had made a proposal to the Valuation Officer (VO) that the entry shown in the rating list for the appeal property on 1 April 2017, was wrong and that it should be reduced to RV £1.

5. Having considered the challenge the VO issued a decision stating that the VO was of the opinion that the current RV of £715,000 attributed to the appeal property from 1 April 2017 was unreasonable and proposed an amended entry of RV £128,000.

6. An appeal under Regulation 13A of the appeals regulations was made on 6 July 2022 to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

7. As Mr Hunter appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

8. Mr Hunter declared that he was not instructed under any conditional fee arrangement and that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

9. This hearing was held remotely via Microsoft Teams on 10 March 2025.

<u>Preliminary issue – respondent's application to strike out appeal for failure to comply with the Tribunal's direction.</u>

10. This appeal had been previously listed for a hearing on 24 June 2024 along with three other appeals relating to museums under the control of Tyne and Wear Archives and Museums ("TWAM"). Prior to that hearing the parties' representatives had contacted the tribunal to request an adjournment in light of the decision of the Upper Tribunal (Lands Chamber) in the case of *Allen (VO) v Tyne & Wear Archives & Museums* [2022] UKUT 206 (LC) which was in relation to the 2010 list entries for three of the appeal properties. This decision had resulted in the respondent requiring detailed apportioned financial accounts for each of the four museum sites in order to carry out a full Receipts and Expenditure (R & E) valuation at the antecedent valuation date (AVD). Both parties had set out the additional information which they considered was relevant to the appeals and a timeline for the provision of this information and amended statements of case.

11. The previous panel accepted the parties' reasons for adjourning the appeals, and adjourned the appeals, issuing a direction notice to the parties on 25 July 2024. The direction required provision of the information suggested by the parties including;

- Copy of the Tyne and Wear Archives and Museums (TWAM) Joint Agreement in force at AVD 1 April 2015.
- Copy of the agreements between TWAM and any funders in force at AVD 1 April 2015.
- Fully apportioned accounts for each of the four appeal properties for the 2017 list, together with an explanation of the method of apportionment.
- A schedule showing settlements of all museums in cities and towns of equivalent size to Newcastle-Upon-Tyne.
- Confirmation of the total number of 2017 Rating List Checks, Challenges and Appeals which have been settled by whatever means and the number of those settlements that are at RV £1.

12. The parties were also required to submit a joint statement of issues under dispute and to exchange updated statements of case.

13. Further to the exchange of new evidence and the appellant's statement of case, the respondent provided their statement of case, which included an application for all the appeals to be struck out as the respondent did not consider that the information provided by the appellant complied with the tribunal's directions.

14. The respondent considered that the appellant had not provided sufficient information regarding the funding agreements or the apportionment of that funding in relation to each of the museums. Amongst other things, it was alleged that the accounts provided by the appellant were not the actual accounts, but those which had been adjusted so that they did not include council funding or apportioned income received from Arts Council for England (ACE) grants. Mr Hepworth stated he had pointed out the deficiencies to the appellant in an attempt to obtain the full and correct information, but this had not been forthcoming. He therefore considered that full details of income directly and indirectly derived from the subject properties had not been provided by the appellant and that there had been a significant failure by the appellant to comply with the directions.

15. Mr Hepworth referred to paragraph (11) (a) of the direction, which stated that '*A failure by a party to comply with a requirement of these directions may – (a) in the case of the Appellant, result in the striking out of these proceedings or in the exclusion of all or part of their evidence or arguments;* He therefore considered that the failure by the appellant to fully comply with the directions had prejudiced his ability as the respondent's valuation expert to carry out a full R & E valuation of the appeal property. He therefore requested that the appeal be dismissed.

16. Mr Hunter considered that the information provided by TWAM in response to the directions had been provided to the best of the appellant's abilities. He claimed that Mr Hepworth's application for the proceedings to be struck out was disproportionate in relation to the requirement for disclosure set out in the directions and as such it was not reasonable to seek the striking out of the appeals.

17. Prior to the hearing on 10 March 2025, the clerk informed the parties that he was of the view that the tribunal did not have the power to strike out the proceedings for any failure by the appellant to comply with the directions issued on 25 July 2024. He stated he would be

advising the panel accordingly at the hearing but would welcome any comments or representations the parties may wish to make prior to the hearing in respect of this.

<u>Preliminary issue – Legislation</u>

18. Appeals against the 2017 Rating List are considered under the Check, Challenge and Appeal principles where evidence and information is exchanged at the Challenge Stage of the process. In relation to 2017 List and later Rating Appeals, the VTE cannot adopt in its decision evidence not provided at challenge stage or admitted under regulation 17A because of its evidential restrictions under regulation 37A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) (the "Procedure Regulations").

37A - Matters which must not be taken into account in NDR appeals

(1) This regulation applies in relation to a NDR appeal.
(2) In determining an appeal, the VTE must not take into account any matter unless it was included in—
(a) the notice of appeal or any document accompanying the notice of appeal;
(b) evidence or submissions provided in accordance with a direction under regulation 17(1);
(c) information to which regulation 17(4) applies which is used in the proceedings by the VO;
(d) evidence admitted under regulation 17(6A); or
(e) new or further evidence admitted under regulation 17A.

19. The procedure for introducing new evidence in respect of 2017 rating list appeals is set out under regulation 17A of the Procedure Regulations;

17A – 'Admission of new evidence on NDR appeal'

(1) On a NDR appeal, the VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if—
(a) that evidence—
(i) is provided by a party to the appeal;
(ii) relates to the ground on which the proposal was made; and
(iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or
(b) all the parties to the appeal agree in writing to the party providing the new evidence.

(2) If the VTE admits new evidence under paragraph (1), the VTE may admit further evidence provided by another party to the appeal if the further evidence specifically relates to—
(a) the new evidence; and
(b) the ground on which the proposal was made.

(3) A party which provides evidence under paragraph (1) or (2) must also provide that evidence to all the other parties to the appeal.

20. The VTE powers to make directions in respect of appeals are set out in regulation 17(1) of the Procedure Regulations:

17 Evidence and submissions

(1) Subject to paragraph (1A), the VTE may give directions as to—

(a) issues on which it requires evidence or submissions;
(b) the nature of the evidence or submissions it requires;
(c) whether any parties are permitted or required to provide expert evidence;
(d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
(e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
(i) orally at a hearing; or
(ii) by written submissions or witness statement; and
(f) the time at which any evidence or submissions are to be provided.

(1A) The VTE may only direct a party to a NDR appeal to provide evidence or submissions that relate to a matter included in—
(a) the notice of appeal or any document accompanying the notice of appeal; or
(b) new or further evidence admitted under regulation 17A.

21. Regulation 10 of the Procedure Regulations sets out the circumstances which may lead to a panel striking out an appeal;

10 Striking out proceedings

(1) The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

(2) The VTE must strike out the whole or part of the proceedings if the VTE does not have jurisdiction in relation to the proceedings or that part of them.

(3) The VTE may strike out the whole or a part of the proceedings if—

(a) the appellant has failed to comply with a direction that stated that failure by the appellant to comply with the direction could lead to the striking out of the proceedings or that part of them;
(b) the appellant has failed to co-operate with the VTE to such an extent that the VTE cannot deal with the proceedings fairly and justly; or
(c) the VTE considers there is no reasonable prospect of the appellant's appeal, or part of it, succeeding.

(*4) The VTE may not strike out the whole or part of the proceedings under paragraph (2) or (3)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out*

<u>Preliminary issue – discussion and disposal</u>

22. Appeals against the 2017 Rating List are considered under the Check, Challenge and Appeal principles where all relevant evidence and information is expected to be exchanged in the Challenge Stage of the process. When the matter reaches the appeal stage, new

evidence not disclosed during challenge can only be admitted by the tribunal, if it meets the qualifying criteria set out under regulation 17A of the tribunal's procedure regulations.

23. The panel at the hearing on 24 June 2024 accepted that the evidence and arguments contained in the parties' exchanges in respect of the original challenges for the four appeals predated a ruling of the Upper Tribunal (LC) in respect of the entries for three of the instant appeals in the 2010 Rating List, which had changed the landscape somewhat. That panel had therefore determined that the appeals should be adjourned in order for the parties to provide additional submissions and evidence in order to consider a full R&E valuation of the properties.

24. Whilst the appeals had been adjourned along with directions by that panel, the clerk's advice to the current panel was that the VTE is not empowered to make bespoke evidential directions in respect of 2017 List and later appeals**.**

25. Mr Hepworth stated that the parties had written to the tribunal on 18 June 2024 with a list of further evidence that the parties wished to introduce into proceedings. He did not consider that this was a request for the parties to supply additional information under Regulation 17A of the Procedure Regulations, rather it was a request for directions to be issued in accordance with Regulation 17(1) of the same regulations to narrow down the evidence. He was of the opinion that Regulation 17(1A) restricted the Tribunal to requiring evidence or submissions that relate to matters already before it, such as 'matters' included in the notice of appeal, or relating to new or further evidence; he did not consider that it precluded the Tribunal from making directions to adduce new evidence to support the parties' R&E valuations on the subject properties.

26. Mr Hunter agreed that the written request by the parties on 18 June 2024 specifically requested that the Valuation Tribunal use its powers under Regulation 17(1) to issue directions enabling the exchange of evidence and also to enable the reasoning and arguments derived from that evidence to be put forward, such argument not having been possible during the Challenge stage. He considered that the appellant had made reasonable efforts to comply with the directions and striking out of the appeals due to the purported non-compliance would be disproportionate.

27. Having considered the parties' submissions in this matter, the panel decided that the earlier panel was not empowered to make the bespoke evidential directions in the manner that it did. The panel's understanding of regulation 17(1) which was subject to regulation (1A) was that any directions made were restricted to evidence that accompanied the appeal and any other evidence admitted under regulation 17A. Bespoke directions should not be therefore akin to a fishing expedition to enable the tribunal to fish or demand more evidence from the parties, merely because the evidence currently before the panel was considered deficient.

28. With the benefit of hindsight, it would have been more appropriate for the earlier panel to simply invite the parties to endeavour to agree by consent what new evidence should be admitted under regulation 17A. If no consent was reached, it could have been left open for a party to make an application for new evidence to be admitted. Given that the earlier panel issued directions that it was not entitled to make, the panel decided that it would be inappropriate to compound that error by granting the respondent's application for a strike out. Accordingly, that application was rejected.

29. Having informed the parties of its decision the panel enquired of the parties how they would wish to proceed. Mr Hunter stated that he would like to proceed with the hearing of the appeals on the basis that the new evidence and submissions had implicitly been agreed in principle between the parties. Mr Hepworth stated it would not be possible to have an effective hearing without the additional evidence which had been submitted as a result of the directions. The panel therefore considered that the admission of each party's additional evidence has been agreed by the other party under Regulation 17A(1)(b) and determined that it would proceed with the hearing of the appeals based on the evidence included in the amended bundle submitted by the parties.

30. Mr Hunter referred to the respondent's statement of case, in which the respondent agreed that the RV of three of the appeal properties be reduced to £1 with effect from 1 April 2017. Mr Hepworth confirmed that this was the case, and the panel disposed of these three appeals by ratifying the agreements accordingly. A separate decision notice was issued to the parties in respect of these three appeals following the hearing on 10 March 2025.

CHG100382114 South Shields Museum, 6 Ocean Road, South Shields, NE33 2HZ
CHG100382163 Laing Art Gallery, Laing Art Gallery, Newcastle Upon Tyne, NE1 8AG
CHG100382237 Shipley Art Gallery, Prince Consort Road, Gateshead, NE8 4JB.

31. Mr Hunter also stated that the name of the property in the remaining (subject) appeal was now 'Discovery Museum'. In the circumstances, the panel directed that 'Discovery Museum' shall be inserted as the subject property for this appeal instead of 'Discovery Centre'.

32. After the panel had heard and disposed of the preliminary matters, and Mr Hunter had completed his advocacy by 1.20 pm when it was time to break for lunch. At that point, the panel established that Mr Hunter would require approximately an hour and a half to present his expert witness submission, plus additional time for questioning. It was clear to the panel that this would result in Mr Hepworth not being able to commence his presentation until around 4 pm. The panel was satisfied that there would not be sufficient time to conclude the case within the time available and announced that the appeal would be adjourned part-heard once Mr Hepworth had concluded his questioning of Mr Hunter and the hearing would be reconvened before the same panel, at the next available date, to conclude proceedings. Following the adjournment, the appeal was relisted to a remote hearing on 25 March 2025.

<u>Background</u>

33. Blandford House was the former Cooperative Wholesale headquarters and warehouse which was purchased by the local authority and subsequently extensively remodelled to provide museum space. It was located in the city of Newcastle-Upon-Tyne, close to the edge of the city centre, approximately 0.3 miles from the railway station and 0.5 miles from St James' Park Football Ground. Originally built in 1899 it was a Grade II listed building built of brick under a pitched slate roof and extended to 18,159 m² (GIA) over five storeys plus basement.

- The ground floor in the front section of the building provides office accommodation and education space. The remainder of the ground floor is given over to museum galleries.
- The first floor provides exhibition galleries (part two storey height in the front section) and display galleries.
- The second floor includes a cafeteria in the front section and display galleries.
- The third floor is given over to archives and storage.

- The front section of the fourth floor in, is the Great Hall designed as a meeting room for the cooperative society's members. This space is used for functions, conferences, and the like. The remainder is given over to archives and stores.
- The attic level over the rear portion of the building and the whole of the basement is given over to storage and basement plant rooms.

34. The dispute concerned the rateable value of the appeal property. The appellant sought a reduction to a nominal value of RV £1 as he considered that an analysis of the receipts and expenditure resulted in a negative value, and the landlord's share would therefore result in a peppercorn rent. The respondent had accepted that the original RV of £715,000 was excessive and in the challenge decision had proposed a revised RV of £128,000 based on a percentage of visitor numbers. Whilst the respondent accepted that this method of valuation was not accepted by the Upper Tribunal, he contended that a full R & E valuation of the subject property supported the revised RV.

35. All relevant factual information regarding the subject property, including its area, and the relativities used in their respective valuations were not disputed by the parties.

Relevant Law

36. Part III of the Local Government Finance Act 1988 (the "Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act (which is commonly referred to as the "rating hypothesis").

37. For these proceedings, it is not necessary to set out all the provisions but suffice to say that the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

38. In determining rateable value, matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the material day. The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] (the "Material Day Regulations") provides for determining the material day. The proposal in this appeal challenges the rateable value shown in the rating list for the subject hereditament on the day it was compiled. Therefore, the material day is 1 April 2017, being the day on which the rating list was compiled.

39. Where open-market rental evidence exists for the subject property or similar properties, and which conforms to the statutory definition set out above without need for excessive adjustment, valuation by reference to such evidence is the preferred method. Where no such body of rental evidence is available for a class of property, valuation may be determined by use of either the Contractor's Basis or the Receipts and Expenditure (R & E) method. Whilst museums have historically been valued using the Contractor's Basis, the Upper Tribunal judgments in *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 200 (LC) and *Hughes (VO) v Exeter City Council*, [2020] UKUT 0007 found that the Contractor's Basis was not appropriate.

40. The panel was referred to the Upper Tribunal's judgment in *Allen (VO) v Tyne & Wear Archives & Museums* [2022] UKUT 206 (LC) which related to the valuation of three other museums in the North East which were run by TWAM. Reference was also made to the following judgments:

Hoare & Anor v National Trust [1998] EWCA Civ 1525;
Bluebell Railway Limited v Ball (VO) [1984] RA 113.
BNPPDS Limited & BNPPDS Limited (Jersey) as trustees for Blackrock UK Property Fund v Ricketts (VO) [2022]

Discussion

41. Following the admission of their additional evidence, the parties had referred to their respective valuations for the subject property in their statements of case. Mr Hunter was not in agreement with the respondent's revised valuation of £128,000 as it was based on a percentage of receipts.

42. Mr Hunter's valuation using the R & E valuation method included total receipts of £1,542,400 less total expenditure of £1,908,296, resulting in a net loss of £365,896. His total receipts included a figure of £850,800 for notional admissions which had been calculated as follows:

Visitor type	Number	Percentage	Price	Admissions Income
Adults (full price)	98,400	41%	£5.00	£492,000
Concessions (over 65)	19,200	8%	£4.00	£76,800
Children	112,800	47%	£2.50	£282,000
Schools	9,600	4%	(separately charged)	£0
Total	240,000	100%		£850,800

43. Mr Hunter's notional admissions were based on estimated admissions for 2014/2015 of 400,000 and he had adopted a 'turn away' factor of 40% to allow for the reduction in visitors if a notional admission of £5 per adult was charged. He had based his number of visitors and the split of visitor type on actual (free) admissions for the years 2012 to 2015 and his notional admission charge of £5 was based on those of similar attractions in the area.

44. Whilst he considered that his gross expenses may be understated, and his notional admissions overstated, he pointed out that the overall loss would result in a nominal rent of £1.

45. The respondent did not consider that the apportioned accounts provided by TWAM for the subject property provided sufficient or accurate information in order to carry out a full R & E valuation of the subject property. As it was apparent that TWAM as a whole had surplus revenues for 2014/2015, the respondent assumed any deficit in the cash flow would have been remedied through funding from the various local authorities as provided for by the Joint Agreement for TWAM. He therefore considered that such funding would result in all relevant expenditure being indemnified through funding provision. In other words, all operational expenses were covered before the impact of notional receipts was considered. Once assumed notional receipts were factored into the equation, in line with the previous museums decisions, if it resulted in a surplus of income over expenditure, valuer judgement was required to determine the appropriate level of value (RV).

46. Mr Hepworth had analysed the admissions charged at the AVD for a number of other museums both locally and around the country with similar offerings to the subject property. As a result, he had adopted a notional admission charge of £10 (£8.33 excluding VAT) per adult visitor. He assumed an overall discount of 25% for concessions based on the appellant's adopted discount scheme arriving at an average admission price of £6.25 per visitor. He estimated that the visitor numbers at the AVD would have increased to 410,000 based on the trends of previous years. He stated that case studies and expert reports have shown that visitor numbers have dropped by up to 40% where there has been a change from free admission to charging (turn away effect). As he did not consider the subject property would warrant a turn away at the top of this range, he had adopted 35%, which resulted in a notional admission income of £1,665,625 (65% of 410,000 times £6.25). Finally, Mr Hepworth considered that it would be reasonable to assume gift aid at 15% taking into account the non-taxpaying visitors or those who decline gift aid, resulting in approximately £250,000 income from this source.

47. In considering the notional admission charges, and the resulting reduction in visitors, Mr Hepworth estimated that café and shop receipts would be reduced by in the region of £15,000 and income from local authority funding would reduce by £350,000 as admission was no longer free. Assuming the R & E valuation provided by the appellant would result in the operator breaking event, Mr Hepworth had adjusted the figures as follows to adjust for notional admissions:

Receipts	Add	Remove
Add Notional Receipts (inc gift aid)	£1,915,625	
Reduce shop/cafe		£15,000
Reduce Local Authority Funding		£350,000
Expenditure - No changes		
Divisible Balance	£1,550,625	
Tenant's share at 50%	£775,313	
Remainder to rent	£775,313 (Say £775,000)	

48. The panel noted that both parties agreed that following the various decisions of the UT in respect of museums and art galleries, the appropriate method of valuation was the R & E valuation method. The main difference in the parties' approach was the starting point prior to adding in notional receipts from admission.

49. Mr Hunter had disregarded any grant income from Arts Council for England (ACE) apart from an apportioned sum of £271,091 from the ACE core grant for 2015/16. This resulted in a net loss of £1,208,238 before the addition of notional receipts from admission. The appellant argued that other funding from the ACE was not directly attributable to the occupation of the subject property and was 'ringfenced' for other projects and events relating to TWAM. Ms Reynolds stated that the staffing and other expenses relating to these activities had not been included in the expenditure for the subject property.

50. Mr Hepworth contended that whilst the appellant had included an apportioned amount for ACE core funding for 2015/16 in the restated accounts, other income from the Renaissance Major Grants Programme (replaced by Major Partner Museums from 1 April 2015) and Bridge Funding had been excluded. He considered that income from these sources, as well

as any corresponding expenses, should not be excluded from the accounts as it was for the valuer to contemplate how such items should be treated in carrying out a full R & E valuation. Mr Hepworth also considered that direct funding from the local authorities, which in respect of 2015/16 was £850,506 for the subject property should be included in the accounts but the appellant had not done so.

51. The panel considered that it would be wrong to disregard grant aided income as any operator occupying the museum would expect to have access to such funding as had been confirmed in *Bluebell Railway Limited v Ball*.

52. The panel did not consider that the information supplied by the appellant provided full apportioned accounts for the subject property to enable it to conclude that the accounts fully reflected all the income the appellant's occupation of the subject property could generate. Moreover, it appeared to the panel that income streams, which any operator of the museum could reasonably expect to receive, should be reflected. Consequently, all income and expenditure both directly and indirectly attributable to the occupation of the subject property needs to be available to allow a valuer to examine them and form an opinion as to the applicability of each item to the rating hypothesis. This was because it was important to establish the value of the appeal property's use as a museum to a potential tenant.

53. In view of the above, the panel concluded that the apportioned expenditure figures provided were reasonable and had not been challenged by Mr Hepworth. That was not the case, however, with the receipts. The appellant had provided insufficient detail regarding the apportioned receipts for the subject property. Moreover, grant related income from various sources, in particular from ACE and local authority funding had not been reflected in the gross receipts. As the panel was satisfied that such grant income was not dependent upon TWAM being in occupation of the subject property and its other museums, it found that the appellant had erred in not including it in its proposed valuation. This was therefore the panel's starting point before the possible addition of notional income from paying visitors was factored in to the valuation exercise.

Visitor numbers

54. The appellant had provided total visitor numbers for the three years prior to the AVD for the subject property:

2012/13: 434,417   2013/14: 412,999   2014/15: 412,210

Mr Hunter stated that these numbers included a small number of paid entries for special exhibitions, the income from which had already been accounted for in the receipts. Given the downward trend demonstrated between these years, the panel considered that projected visitor numbers of 400,000 adopted by Mr Hunter was reasonable.

Turnaway effect

55. Mr Hunter referred to evidence provided to the Parliamentary Committee for Culture Media and Sport in 2002 looking at the impact of removing the admissions charges which showed a 72% increase in visitors to the Natural History Museum. He calculated that the converse would be a 41% turn away effect and therefore adopted a 40% adjustment for turn away.

56. Mr Hepworth considered it was more accurate to look at museums which had changed from free to paid admission and referred to case studies contained in a report undertaken on behalf of Association of Independent Museums "Taking Charge – Evaluating the Evidence: The Impact of Charging or Not for Admissions on Museums - Final Report August 2016" of which he had provided an extract. He argued that the reported reductions in visitors ranged from 25% to 40%, and adopted 35% for the subject property as he did not consider it warranted in being at the top of this range. The panel considered the demographics of the subject location would indicate a larger than normal reduction in visitors if the subject property began charging and therefore accepted the 40% figure adopted by the appellant.

Notional Admission price

57. Mr Hunter had adopted a notional admission price of £5 per visitor (£6 including VAT) based on the actual admission charges at the AVD for other visitor attractions in the area which he had analysed at between £5 and £7.70 (including VAT). The panel considered that the attractions he had referred to - such as Housesteads Roman Fort (£7.70) and Aydon Castle (£5.40) were open air sites without a significant museum element. Although in a different city, the panel found that ThinkTank in Birmingham provided a similar offering to the subject property with an admission charge of £12.25. Accounting for the difference in location, the panel considered that £10 per visitor as adopted by the respondent was reasonable, and this was supported by the admission for nearby Centre for Life which was charging £9.95 per visitor at the AVD.

Adjustment for concessions

58. Mr Hunter had based his adjustment for concessions on those of other attractions in the area which charged an admission and offered a 20% reduction for concessions and a 50% reduction for children. Based on the split of visitors between Adults/Concessions/Children for the subject property, the panel noted that this resulted in an overall reduction of just under 30% on the revenue which would have been achieved if no discounts were offered to concessions. Mr Hepworth had adopted a reduction of 25% in the notional admission price to account for concessions which he considered was broadly in line with the overall effect of the appellant's discount scheme. The panel was satisfied that the calculation of the appellant's notional admissions income using that adopted discount scheme demonstrated a 30% reduction in income and therefore considered it reasonable to adopt this figure.

Gift Aid

59. The respondent had assumed the notional admissions revenue would be bolstered by Gift Aid amounting to 15% of admissions revenue. He had based this on the fact that not all visitors were UK taxpayers and some may decline to take up Gift Aid. Mr Hunter asserted that there were administrative difficulties in setting up Gift Aid, first and foremost of which was becoming an eligible charity. Even if the hypothetical tenant was a charity, given the number of ineligible visitors such as children and non-taxpayers, he did not consider take up would be more than 50%, therefore based on a tax rate of 25%, the addition for Gift Aid would be no more than 12.5% of notional admissions revenue. The panel considered that notwithstanding the challenges in doing so, the hypothetical tenant would attempt to maximise revenue by becoming eligible for Gift Aid and the hypothetical landlord would expect the tenant to do so. It therefore determined that an addition of 12.5% should be made for Gift Aid contributions.

Tenant's share

60. The panel was aware that if a positive result is achieved from an R & E valuation, the hypothetical rent is determined by what share of the surplus the tenant would expect to receive, with the other share going to the landlord as rent. Mr Hunter referred to the *Blackrock* judgment in which the Upper Tribunal found the tenant's share for a multi-storey car park, which requires negligible levels of capital investment in chattels, and tenants' fixtures and fittings and very low risk to the operator should be 50%. He considered that the risk to a museum operator would be much higher, due to the requirement to provide extensive fixtures and fittings in addition to the collection itself. He therefore considered that the hypothetical tenant would demand a 60% share, leaving 40% as rent.

61. Mr Hepworth argued that the *Blackrock* judgment included the comment "*We see no obvious reason why the hypothetical tenant would be prepared to take more risk than the landlord in taking a letting of the property and we conclude that a balanced negotiation would always start, and often conclude at a 50% split between the two".* He considered that a hypothetical tenant for the subject property would have a lower profit motivation than a commercial tenant and financial uncertainty would be lessened by the three-year settlements with ACE and admissions are generally consistent. He did not consider there was sufficient evidence to depart from the 50/50 split set as a starting point in *Blackrock.*

62. The panel noted that in its decision relating to the 2010 List entry for the subject property 450526123414/539N10 [2020] the Valuation Tribunal adopted a landlord's share (rent) of 40%. Mr Hunter had also provided evidence that Great North Museum had been settled based on a landlord's share of 40%. The panel did consider that the *Blackrock* judgment referred to a hypothetical tenant taking on minimal risk and was satisfied that the risk involved in respect of the subject property would be more substantial. It therefore considered it reasonable to adopt a landlord's share of 40% in respect of the subject property.

Hybrid Approach

63. The respondent had also proposed that the subject property could be valued using a hybrid approach, as Blandford House is not only used as a museum, but houses corporate offices and archives, which serve other sites, not all of which are managed by TWAM. He considered that the museum element could be valued on an R & E basis, with the storage and offices elements being valued on a comparative basis. He argued that such an approach had been considered in the *York* case, but the resulting value of the offices was outweighed significantly by the losses at the museum and the issue was not fully explored. Mr Hunter did not agree with this approach, as the subject property is a single hereditament and should be valued as a whole, and it is not appropriate to value the separately used areas separately as if they were stand-alone. However, he had agreed with Mr Hepworth that if the panel accepts his contentions and decides upon a hybrid approach, the following values should be attributed to the parts of the subject property:

Archives £47,565
Corporate £50,112
Basement Stores for Great North Museum £21,403

64. Notwithstanding this agreement, Mr Hunter asserted that the value of these areas would not outweigh the negative value of £365,896 provided by the R & E valuation of the parts used as a museum.

65. The panel found some difficulty with this approach as the accounts presented contained some elements of income and expenditure which may have been attributable to the corporate offices and the archive storage. However, it found that the areas described were used mainly for purposes of either the storage of artifacts or documents which related to the use of a museum, or the offices were used for the administration of the museum. As such it considered that the areas were within the same hereditament as the museum and their uses ancillary to the main use of the building as a museum. It therefore considered it was not appropriate to value these areas separately and aggregate their values with the R & E value of the museum.

Resulting valuation

66. Having considered the appellant's submissions and evidence, the panel determined the additional income from notional income as follows:

	Appellant	Respondent	**Tribunal**
Number of visitors at the AVD	400,000	410,000	**400,000**
Turnaway Effect	40%	35%	**40%**
Resulting visitors	240,000	266,500	**240,000**
Notional admission charge (inc VAT)	£6.00	£10.00	**£10.00**
Reduction for concessions	30%	25%	**30%**
Average admission price (exc VAT)	£3.50	£6.25	**£5.83**
Notional admission receipts	£850,800	£1,665,625	**£1,399,200**
Plus gift aid (%)	£0 (0%)	£250,000 (15%)	**£174,900 (12.5%)**
Total	£850,800	£1,915,625	**£1,574,100**

67. Having determined the receipts from notional admissions, the panel considered these receipts in conjunction with the R & E figures provided by the appellant. These figures assumed a worst-case scenario in which all sources of funding from ACE and the local authority for the museum element were not available as a result of admission being charged:

Receipts	
Museum: Existing	£256,600
Museum: Notional admissions	£1,574,100
Archives	£435,000
Total Receipts	**£2,265,700**
Expenditure	
Museum	£1,633,296
Archives	£275,000
Total	**£1,908,296**
Divisible balance	**£357,404**
Landlord's share @ 40% (rent)	**£142,961**

Disposal

68. Having considered the outcome of the R & E valuation above, the panel was not persuaded that the RV of £128,000 adopted by the respondent was excessive. Accordingly, the panel dismissed the appeal.

Date issued to parties: 23 April 2025

Right of further 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.