THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; college and premises; Stephen G Hughes (VO) v Exeter City Council [2020] UKUT 0007 (LC); appeal allowed in part as the evidence showed that the existing valuation was unreasonable.

RE: Bradford College, Great Horton Road, Bradford, West Yorkshire BD7 1AY

APPEAL NUMBER: CHG100657149

BETWEEN:	Bradford College	Appellant
	and	
	Ms Joanne Moore (Valuation Officer)	Respondent

PANEL:	Miss L Moses, Presiding Senior Member Mrs N Salh, Senior Member
CLERK:	Ms R Muller
HEARING:	Remote Hearing No. 1 on 12 May 2023
APPEARANCES:	Mr R Wackett from Montagu Evans, representative for the Appellant Miss S Burke, representative for the Respondent

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Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced to £1,390,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Bradford College, Great Horton Road, Bradford, West Yorkshire BD7 1AY, which was entered in the 2017 Rating List as college and premises at £1,650,000 RV, effective from 1 April 2017.

3. The Appellant's Challenge to the Valuation Officer (VO) was made on 16 March 2021. The appeal to this Tribunal was made on 27 October 2022. Due to the changes that was made to the scheme of valuation for colleges following national discussions, the VO revised the assessment of the subject property to £1,590,000 RV with effect from 1 April 2017.

4. This was a compiled list appeal, therefore, the material day was 1 April 2017.

5. The subject property was a college and premises that was located on Great Horton Road in Bradford. The college incorporated two large buildings including a Grade II Listed Victorian multi-storey block (the area under dispute known as 'the Old Building') and a purpose-built campus (David Hockney Building). The David Hockney Building had been completed in 2014. The subject property was held freehold.

6. Mr Wackett was appearing on behalf of the appellant in a dual role capacity as expert witness and advocate. As Mr Wackett was appearing as expert witness, it was important to ascertain 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).

7. Mr Wackett confirmed that he was not instructed on an incentive fee basis. He also declared 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 his client's case.

8. Miss Burke, the representative for the respondent also appeared in a dual role capacity as expert witness and advocate.

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

Issue

10. The correct assessment for the appeal property, with effect from 1 April 2017.

Evidence and submissions

11. The panel had been provided with a bundle of evidence, which comprised the challenge submission, VO Decision notice and the representative's expert witness report.

12. Mr Wackett stated that the assessment of the subject property was excessive as it contained a large amount of superfluous accommodation that should be excluded from the subject property's RV assessment. He was of the opinion that the hypothetical tenant coming fresh to the scene as at 1 April 2015, would view the Old Building as an operational drain on a crash strapped college.

13. Mr Wackett informed the panel that the facts were agreed as to the level of tone, the issue before the panel was whether any value should be attributed to Old Building. An allowance of 55% for age and obsolescence was currently applied to the Old Building; however, he was proposing an increased allowance of 100%. Mr Wackett contended that the Old Building should be granted 100% allowance and valued at nil to reflect the repair burden of the historical unused, unwanted building.

14. Mr Wackett argued that in the real economy, just because the building existed did not automatically mean it had a positive value. In particular, he referred to the high maintenance and repair cost for a building from the 19^{th} Century. He stated that a building was an operational drain on a cash strapped college. It had not been possible to sell the Old Building and it was worse than non-remunerative.

15. Mr Wackett stated that following the completion of the David Hockney Building, planning permission had been sought to turn the Old Building into a residential development, but this had been denied due to lack of car parking. Therefore, the appellant had closed the Old Building off and only used 3% for administration and storage. Planning permission was subsequently granted for redevelopment into residential accommodation with works due to start in October 2022.

16. The panel was referred to the Bradford College Estate Strategy Update 2019 where it stated that only 18% of the whole site had been used by the college for teaching purposes. Circa 33% to 38% was usually the norm. The Utilisation report stated that there was a significant underuse of the college. As such, Mr Wackett contended that the hypothetical tenant, coming fresh to the scene would not spend a lot of money on the Old Building where only 3% was occupied. Mr Wackett explained that in the open market, there was little use for the building, a tenant would not pay rent for a building that had not been used for a number of years and came with substantial maintenance costs.

17. The panel was informed that the new building, the David Hockney Building, had been constructed in 2014. This was much larger in size at circa 23,800m^2, which was in comparison to the Old Building at 12,000m^2. As at the AVD, only 382m^2, which equated to 3% of the Old Building was in use.

18. Mr Wackett stated that the minor use of the Old Building was not sustainable, he described it as a convenience, not a necessity. He informed the panel that market conditions as of April 2015 were very costly to the college in as such, that the appellant defaulted on a loan.

19. Originally, Mr Wackett had proposed a reduced assessment of £1,300,000 RV; however following the alteration to the assessment in line with the scheme of valuation following national discussions, he submitted a revised assessment of £1,265,000 RV, with effect from 1 April 2017. His proposed assessment also included a 5% allowance to reflect maintenance of a redundant building.

20. Miss Burke informed the panel that the position at the compilation date was not the relevant consideration in this matter. Demand was an AVD consideration. To value the Old Building at nil, she would need to be convinced that as of 1 April 2015, it had been identified as being surplus and that a decision had been made on its future.

21. She referred to the fact that once the David Hockney Building had been completed in 2014, there had not been any suggestion that the Old Building was to be sold and it had remained in use until 2019 albeit, in minor use.

22. Miss Burke referred to the Annual Report and Financial Statements from year end July 2015 -85:

    'The Old Building was to be developed and was 'envisaged as an enabler of growth in FE and HE students from the UK, the rest of the EU and from countries from outside of the EU'.

    'The college has various resources that it can deploy in pursuit of its strategic objective, particularly the enhanced estate covering the £20M Trinity Green Building, £50M David Hockney Building, £10M Advanced Technology Centre and £3M Lister Building refurbishment. In addition, the Old Building represents a heritage building and the blend of new and old is designed to be attractive to a wide range of FE and HE students".

23. Miss Burke stated that the following years Annual Report and Financial Statement also made no reference to the Old Building being surplus to requirements. She also stated that the older reports had been taken down from the college website, as it looked as though the website had been updated in general.

24. Due to the reports Miss Burke had found, she informed the panel that there was no evidence that at the AVD, the Old Building would be redundant. The Old Building had been in use up until October 2019, albeit only a small percentage, but as it had been in use, she was of the opinion that the value applied to it with the current 55% allowance should remain.

Decision and reasons

25. The panel turned to the definition of rateable value as contained in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988, as amended by The Rating Valuation Act 1999, which in brief, explained that the rateable assessment of a property should be equal to the rent that the property would be expected to achieve on the open market as at the antecedent valuation date, which for the 2017 Rating List was 1 April 2015. It would also assume that the hereditament would be in a reasonable state of repair, excluding from this any repairs that a reasonable landlord would consider uneconomic and that the tenant would undertake to pay all usual tenant's rates and taxes, to bear the cost of the repairs and insurance.

26. The panel held that there was not rental evidence to assist it in arriving at a decision, as the subject property was held freehold. The panel acknowledged that the appeal property was valued by the Contractor's basis.

27. The panel addressed the question of the correct allowance with regards to age and obsolescence that was applicable to the Old Building. Mr Wackett sought 100% allowance due to the fact that it was a historical, unwanted, outdated building with only circa 3% being in use; the Old Building was considered superfluous accommodation.

28. However, Miss Burke considered that the current 55% allowance for age and obsolescence was sufficient due to the fact that the Old Building had been in use, albeit only a minor part of the property, up until October 2019.

29. The panel noted that Miss Burke had not provided the revised assessment where the RV had been altered to £1,590,000. Therefore, at the end of the hearing, the panel requested that she send a copy of the revised assessment to the clerk with a copy to Mr Wackett. The clerk received a copy of the valuation, and the panel noted the changes made within the assessment of the subject property. The panel noted that Miss Burke had stated within the email that the RV should have been reduced to £1,580,000 as such, she was going to raise a notice to alter the RV within the Rating List after the hearing. No further comments on that revised assessment were received from Mr Wackett. The panel also requested a copy of each parties notes that they had referred to during the hearing of which were provided after the hearing had ended.

30. The panel found the decision of *Stephen G Hughes (VO) v Exeter City Council* [2020] UKUT 0007 (LC) as referred to by Mr Wackett helpful in that it reviewed case law on the rating hypothesis, principles of valuation, a review of case law on buildings which are not occupied for profit, as well as the possible valuation approaches.

31. In that judgment, The Upper Tribunal (Lands Chamber) decided that the museum should be valued on the Receipts & Expenditure (R&E) Method rather than Contractors Basis, leading to a decision of £1 RV agreed between the parties as the value, should R&E prove to be the correct approach. The Contractor's Test was not considered appropriate as the stage 5 assessment of £560k was considered not to reflect the burden of occupation in the real world where, due to the costs of maintaining the property, no tenant would pay a rent (see Hoare).

32. The hypothetical landlord would be satisfied to grant a lease to a tenant who would take on the maintenance and repair obligations (costs were considerable) and the lack of rent received by the landlord would more than be made up for by no longer having repair obligations. There was also an affordability factor. No tenant would have been able to make a profit if in occupation.

33. The panel held that this part of the decision was useful, the Upper Tribunal concluded that there may come a time where the cost of providing the facility was so high that it outweighed the social-economic benefits. This was the case in question where the city council had no legal obligation to provide the museum (freehold was transferred to them in 1870) but had a duty to maintain a listed building even if they didn't occupy it.

34. Turning to the current appeal, the panel considered the fact that the appellant as at the AVD had not determined the future of the Old Building.. The panel noted that the college had been strapped for cash and had defaulted on a loan. As such, the panel did not reply heavily upon the details within the Strategy Report when making its decision, as the panel agreed with Mr Wackett that it had given an over optimistic view of the circumstances.

35. The panel then addressed what percentage of allowance should be awarded to reflect the usage of the Old Building as at the AVD of 1 April 2015. It was noted that only 3% of the Old Building was in use at that time and had continued to be in use by the administration department up until October 2019. After having regard to the lack of demand, low occupation rate of the building, together with the high maintenance costs, the panel considered that 55% as contended by the VO was insufficient and the reasons provided by the VO did not support her case. However, the panel also considered that 100% was not appropriate, as the Old Building was still in use, albeit at a very minor percentage.

36. The panel found that following the erection of the David Hockney Building in 2014, the Old Building had become virtually superfluous. The panel acknowledged that it was an historical outdated building, which was no longer wanted. The panel was of the opinion that the hypothetical tenant coming fresh to the scene would expect a greater allowance than 55% to the superfluous accommodation. The panel also contended that the hypothetical landlord would be willing to grant a greater allowance due to the lack of demand for this type of outdated accommodation that came with extensive maintenance costs. The hypothetical landlord would also be willing to agree a low rent to reflect the high maintenance burden that came with the Old Building.

37. The panel placed great weight on the report from 2013, in which it referred to mothballing the Old Building and moving across staff and learning to the David Hockley Building. As such, the panel contended that as at the AVD, it had been the intention of the appellant to move away from the old outdated and high costing Old Building.

38. Having regard to the above conclusions, the panel allowed the appeal in part as it considered that the current assessment was unreasonable. The panel acknowledged that the current allowance of 55% applied was the national agreed allowance for a building of this age. However, that allowance did not take into account the fact that the accommodation was now virtually superfluous, with only 3% of that accommodation used for administration purposes and was a significant financial burden on the hypothetical tenant. The panel determined that an allowance of 90% more reasonably reflected the age and obsolescence of the Old Building. This resulted in the reduced assessment of £1,390,000 RV; a breakdown of which has been shown below (see overleaf). The assessment of £1,390,000 has been based on the revised percentage allowances included within the proposed RV of £1,580,000 submitted by Miss Burke after the hearing.

39. The panel determined that the 5% end allowance as sought by Mr Wackett was not warranted. The panel was of the opinion that the reduced age and obsolescence allowance of 90% more than adequately reflected the high maintenance costs of the Old Building.

Description	Area m²	Price / unit	Estimated replacement cost	Allowance A/O	Footprint of flat roof	Flat roof adjustment	Value £
Old Main Building	8137.8	1766	£14,371,372	90			£1,437,137
Old Main Building (2 Storey Pt)	736.4	1766	£1,300,447	90			£130,045
Old Main Building (6 Storey Pt)	1076.8	1766	£1,901,629	90			£190,163
Old Main Building (6 Storey Pt)	2180.1	1766	£3,849,986	90	545.01	£43,601	£341,398
Lister Building (Original Pt)	5069.5	1766	£8,952,684	55			£4,028,708
Lister Building (1954 Extns)	3823.3	1766	£6,752,001	55	1127.04	£90,163	£2,948,237
Stores R/O Lister Building	125.4	1766	£221,474	55			£99,663
Block C Music Building/Boilerhouse R/O Lister Building	706.9	1766	£1,248,385	55			£561,773
Infill Extn Café – Between Lister Building & Block C Music Building	295.6	1413	£417,683	2.5			£407,241
Workshop R/O Lister Building	219.2	1766	£387,072	26			£286,433
Yorkshire Craft Centre R/O Lister Building	907.1	1766	£1,601,939	23.3			£1,229,488
Westbrook Building (Orig-Pt 8327.2M2)		1766		59			
Westbrook Building (1970 Extn 391.9M2)		1766		58.3			
Extn to Westbrook Building (259.8M2)		1766		32.5			
Extn to Westbrook Building (118.2M.)		1766		4.8			
Kent Building (5494.8M2)		1766		58.3			
Extn to Kent Building (85.3M2)		1766		14.3			
David Hockney Building	23776.9	1766	£41,990,005	2.5			£40,940,255
Total	47054.94					Sub-total	£52,600,541
			Location factor for Bradford			0.91	£47,866,492
			External works – Intermediate 50-75~% building ratio			5%	£50,259,817
			Contract size adjustment			-10%	£45,233,835
			Fees			9%	£49,304,880
			Site area			8.5%	£53,495,795
			Decapitalise			2.6%	£1,390,890
						Rental Value	£1,390,890
			Say £1,390,000 Rateable Value, with effect from 1 April 2017				

Order

40. As a consequence of the above decision, the VO is ordered to reduce the 2017 Rating List entry to £1,390,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

41. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 5 June 2023

Appeal number: CHG100657149

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.