THE VALUATION TRIBUNAL FOR ENGLAND

*Summary of Decision: non-domestic rates; 2017 rating list appeal; racing stables, stud and premises; scope of proposal; Corkish (VO) v Bigwood (2019) UKUT 191 (LC); Nelson Plant Hire v Dawn Bunyan (VO) [2022] UKUT (LC); Simon Earle Racing Stables Limited v Virk (VO) [2022] UKUT 311 (LC); Hobbs v Gidman (VO) [2017] UKUT 0063 (LC); appeal allowed in part as the panel found that the existing assessment was unreasonable.*

Re: Muskhill Farm, Nether Winchendon HP18 0EB

APPEAL NO: CHG100679185

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| BETWEEN: | Emma Owen | Appellant |
| | and | |
| | Mrs D Bunyan (Valuation Officer) | Respondent |

PANEL: Mr M Smith (Senior Member) and Mrs A Taylor

CLERK: Mrs R James IRRV (Hons)

SITTING AT: The Tribunal Offices, 2nd Floor, 120 Leman Street, London E1 8EU

ON: Monday 4 December 2023

APPEARANCES: Mr E Owen (appellant), who was accompanied by her father, Mr H Owen
Mr A Kushan (respondent's representative as advocate in relation to the preliminary issue)
Miss A Earl (respondent's representative as advocate in relation to the valuation matter)
Mr J Turner (respondent's representative as expert witness of fact)

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## Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced from £35,250 Rateable Value (RV) to £24,250 RV, with effect from 1 April 2017.

## Introduction

2. This appeal had been brought in respect of the following: Muskhill Farm, Nether Winchendon HP18 0EB, which was entered in the 2017 Rating List as racing stables, stud and premises at £35,250 RV, effective from 1 April 2017.

3. The appellant's challenge to the Valuation Officer (VO) was made on 17 March 2021. The appeal to this Tribunal was made on 10 February 2023, following the VO's Decision Notice of 10 October 2022, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day, being the date on which the physical factors are accounted, is 1 April 2017.

4. The appeal property was a racing and stud yard located in Aylesbury, Buckinghamshire.

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

## Preliminary Issue

6. The VO raised the matter of scope of proposal. The VO explained that the original challenge had been submitted by Christopher Marriott of Marriott Brown Ltd on behalf of the appellant on the grounds of a reduction to the compiled list assessment. The challenge sought a reduction in the appeal property's assessment to £21,250 RV, with effect from 1 April 2017.

7. However, the appellant de-instructed her representative on 11 August 2022 and subsequently tried to incorporate new grounds to the challenge. The appellant now seeks for the assessment to be deleted from the rating list as it was solely domestic accommodation. The VO contended that to have regard to a deletion went beyond the scope of the proposal.

8. In support of the VO's stance, Mr Koshan referred the panel to paragraphs 80 and 83 of the recent Upper Tribunal judgment of *Nelson Plant Hire v Dawn Bunyan (VO)* [2022] UKUT (LC), which read:

> '80. We are satisfied that it is not necessary for us to reach a conclusion on the material which may be taken into account when interpreting a proposal made in the context of the new check, challenge, appeal process. That is because we agree with the VO's submission that, no matter how much of the material from the check stage is taken into account, it is not possible to interpret the proposal itself as requesting a split of the hereditament. Neither the selected ground ("the rateable value shown in the rating list on 1 April 2017 was wrong"), nor the brief narrative explanation of the challenge refer to the occupation of the yard by companies other than the appellant or suggest that the list should be altered so that the appellant is not responsible for the whole of the burden of rates.
>
> …

> 83. We therefore conclude that the VTE was correct in its refusal to consider Mr Nelson's arguments about splitting the hereditament. They were not within the scope of the proposal and could not therefore be issues on the appeal to the VTE.'

9. In response, the appellant contended that she had been misrepresented by her former representative and incorrect facts had been quoted on the challenge. She stated that the appeal property was solely domestic and sought deletion of the appeal property's rating assessment on that basis. She had sought the advice of Mr C Ormondroyd at Francis Taylor Building who referred her to the Upper Tribunal judgment *Corkish (VO) v Bigwood* (2019) UKUT 191 (LC), in particular, to paragraph 35, which read:

> '35. This first issue raised in the appeal is whether the proposal is apt to permit a challenge to the inclusion of the hereditament in the rating list (ie a challenge under regulation 4(1)(h) or whether it is framed in such a way as to permit the Tribunal to consider only the rateable value shown in the list (ie a challenge under regulation 4(1)(d)). We consider that in the circumstances of this case that issue is insignificant and by the end of oral argument we understand both parties to agree. Even if the VTE was technically incorrect to order the deletion of the hereditament from the rating list, it would still be necessary to determine whether the respondent's proposal to reduce the assessment in the rating list to £1 was well founded. Whether the hereditament is omitted from the list altogether or appears in it at a nominal value of £1 is a matter of no importance'.

10. The appellant explained that in accordance with the British Horseracing Authority (BHA) ruling, as at the material date of 1 April 2017, the premises could not have been rented as commercial racing premises as there was no domestic accommodation with the premises, which was a prerequisite. The former farmhouse had been sold off in March 2015 and the log cabin where she currently resided was not part of the premises.

11. The appellant explained that she had inherited Musk Hill Stud on the passing of her late partner on 10 November 2015. She kept horses for personal enjoyment, not for business purposes. She had homebreds and old retired racehorses. Following her late partner's passing, she had qualified to apply for a licence to train a racehorse under BHA rules, with her last win being in March 2023.

12. The panel took a short adjournment to consider the preliminary issue. Following which the Senior Member gave an oral statement explaining that the panel found the appellant's request for a deletion went beyond the scope of the proposal. In arriving at its decision, the panel noted the following.

13. The Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) ("the NDR Regulations") contain detailed provisions about who may make a proposal to alter a rating list, the grounds on which such a proposal may be made, and what a proposal must contain.

14. Regulation 4 of the NDR Regulations, defined circumstances when a proposal could be made. The circumstances relevant to the preliminary issue were:

> '4(1) The grounds for making a proposal are—
> (a) the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;
> …

(h) a hereditament shown in the list ought not to be shown in that list;
…'

15. The panel went on to examine the check and challenge submitted to the respondent and noted the following:

    i) At Section A of the check, Christopher Marriott had selected that 'I want to tell the VOA about changes to the property details'. He could have selected the option 'I want to remove (delete) this property from the rating list'.
    ii) Section G of the check asked if part of the premises were domestic, Christopher Marriott had selected 'No'.
    iii) At Section C of the challenge: Why do you want to challenge your valuation? Cristopher Marriott had selected 'The rateable value shown in the rating list on 1 April 2017 was wrong'. There was an option 'The property was now domestic or exempt'.
    iv) At Section K of the challenge: Mr Marriot provided a statement to explain why the rating list entry should be altered. He detailed valuation issues making no mention of the premises being domestic and seeking deletion. He provided a valuation breakdown of his proposed assessment at £21,250 RV, with effect from 1 April 2017.

16. Having regard to the details of the check and, considering *Nelson Plant Hire* more importantly, the challenge, the panel was satisfied that neither the grounds selected, nor the narrative given, made any reference to a deletion. The panel was of the opinion that the VO on receipt of the proposal would not have envisaged that the proposal had been lodged on the grounds of a deletion (Regulation 4(1)(h)), rather that it had sought a reduction of the current assessment to £21,250 RV as provided on the valuation breakdown (Regulation 4(1)(a)).

17. In arriving at its decision on the preliminary issue, the panel had regard to *Nelson Plant Hire.* This judgment related to a processing plant and premises. The Upper Tribunal confirmed the Valuation Tribunal's decision that to consider a split on a compiled list proposal went beyond the scope of the proposal. The panel had regard to paragraph 80 of the judgment and like in that judgment, the current panel found that having regard to the grounds of the proposal, plus the brief narrative given, it could not be taken as a proposal seeking a deletion of the assessment. At no point did it mention that the premises were domestic or that a deletion was sought.

18. The panel distinguished the current appeal from *Bigwood*. That case concerned stables and premises. Whilst the proposal sought a reduction in the assessment, the Valuation Tribunal had deleted its assessment. The Upper Tribunal determined that, even if the Valuation Tribunal had technically erred in deleting the assessment, it was a matter of no importance as the proposal had sought a reduction to the nominal assessment of £1 RV. This was not the case with the current appeal; the proposal had not sought a nominal value but had sought a reduction to £21,250 RV.

19. Whilst the appellant contended that she had been mis-represented by her representative, this was a matter for the appellant to take up separately with the representative. Having regard to the above, the panel rejected the appellant's claim for a deletion to be considered, which it held went beyond the scope of the proposal. As such, the panel went on to address the valuation of the appeal property.

## Issue

20. Whether the current compiled list assessment of £35,250 RV, with effect from 1 April 2017, was reasonable.

## Evidence and submissions

21. The panel had been provided with a joint bundle of evidence, which comprised the challenge submission, VO Decision notice and additional evidence provided by both parties. As there was no objection by either party to the inclusion of the additional evidence, the panel proceeded to hear the appeal having regard to all the evidence presented. Whilst the panel had an electronic copy of all the evidence in front of it at the hearing, for ease, the VO also provided the panel with a hard copy of the evidence.

22. During the hearing, the appellant provided the panel with a copy of a valuation of Musk Hill Farm carried out by Carter Jonas in 2016 for probate purposes, when the premises had been valued as a Stud Farm. Whilst reference had been made to this valuation report within the appellant's additional evidence, a full copy had not been provided and the Miss Earl objected to its inclusion as she had not had sight of a full copy of the report.

23. The panel took a short adjournment to consider the matter. Following which, the panel decided that the report should not be omitted. In accordance with Regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI No 2009/2269) (as amended), the Valuation Tribunal for England 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.

24. The panel determined that this evidence had been available at the challenge stage. The panel further concluded that to include the report at this late stage would cause prejudice to the VO.

## Decision and reasons

25. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the Antecedent Valuation Date (AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal. There was no rent passing on the appeal property as the appellant held the freehold interest.

26. The VO had inspected the appeal property on 14 July 2022, when the appellant and her father had been present.

27. At the hearing the VO had proposed a reduced assessment of £24,500 RV, with effect from 1 April 2017. That reduction was the result of:

a) Reducing the value of the 31 racing stables in the American barn from £630 per box to £550 per box, minus 10% (equating to £495 per box).
b) Revising the area of the outdoor arena from 1,300 $m^2$ to 1,220 $m^2$, which was valued at £1/$m^2$.
c) Revising the area for the oval canter (trotting ring) from 1.50 furlongs to 1.45 furlongs.
d) Revising the gallop from 7 furlongs to 6.3 furlongs.
e) Accepting that the whole of the haybarn should attract an agricultural exemption.
f) Applying a 5% end allowance to reflect the presence of a public footpath running through the premises.
g) Applying Stud Relief of £2,835.

28. In contrast, the appellant had proposed a reduced assessment of £12,000 RV, with effect from 1 April 2017. The panel turned to each point in turn starting with the racing stables within the American barn. The panel acknowledged that both parties had valued the racing stables at a higher rate than the non-racing stables. In respect of the racing stables, the appellant had proposed a value of £495 per box for 10 boxes. She had valued ten boxes, which was the number licensed by the BHA. The appellant contended that the remaining boxes were for personal use for the retired horses, young stock and a hunter. The appellant had also put forward a reduced number of non-racing stables.

29. The panel had to have regard to the premises as at the material day of 1 April 2017. As such, the panel placed little weight on the BHA licence that had not been issued until 2022. The VO accepted that changes to the stables had occurred from 2022 onwards, and it was happy to review the situation outside of this appeal. On the issue of the stables, the panel was satisfied that as at the material date, the VO had correctly valued 31 racing stables within the American barn. These 31 stables had been valued at a tone of £550 per box, which was in line with the tone applied in the Upper Tribunal judgment of *Simon Earle Racing Stables Limited* v *Virk (VO)* [2022] UKUT 311 (LC) following reference to settlements in the Midlands area. To the value of £550 per box, the VO had proposed a total allowance of 10%, 5% was as applied in line with the *Simon Earle Racing Stables Limited* judgment to reflect that the boxes were within an American barn and a further 5% allowance was proposed to reflect that it was a converted agricultural building and not a purpose-built American barn. This resulted in a rate of £495 per box. The non racing stables had been valued at a rate of £350 per box; a 10% uplift had been applied to the three larger boxes to account for their greater size. On the issue of the stables, the panel found the values proposed by the VO to be fair and reasonable and in line with the Upper Tribunal judgment. It also found that the number of stables valued by the VO reflected the actual situation as at the material day. The appellant had referred to comparable premises where stables were valued at a lower rate. However, the VO explained that the lower rate in those circumstances was due to quantum, which was only applied to premises with more than 45 stables.

30. The panel then addressed the outdoor arena. Whilst the panel was satisfied with the revised area applied to the outdoor arena, it found the value of £1/$m^2$ to be excessive. The appellant had proposed a nil value, stating that the outdoor arena was not fit for purpose. She added that it was either waterlogged or frozen. In the few dry summer months, it was used as a turnout area for the retired horses.

31. The panel noted that the VO had valued the outdoor arena in line with that at Sheepcote, Barestree, which like the outdoor arena at the appeal property flooded in wet weather and

was only useable in dry weather. However, having regard to the photographs provided, the panel found the outdoor arena at that property to be superior to the appeal property. Having said that, the panel was not convinced that the outdoor arena at the appeal property should attract a nil value as it had not been provided with evidence to suggest that it was beyond economic repair as at the material date. Having regard to all the evidence presented, the panel determined that a reduced rate of £0.75/m$^2$ more fairly reflected the disabilities associated with the outdoor arena. This was also the rate proposed by Mr Marriott in the original challenge valuation.

32. The panel then turned to the trotting ring and the gallop. The appellant had contended that two furlongs of the gallop were unusable and should not be valued due to it flooding and freezing on a regular basis. The panel had been presented with an aerial view photograph, which illustrated that as at 1 April 2017, the gallop was in a reasonable state of repair and did not support the suggestion that it was beyond economic repair. Therefore, having regard to the evidence before it, the panel was satisfied with the revised areas provided by the VO for both the gallop and the trotting ring.

33. In addressing the values applied to the gallop and the trotting ring, the panel found no reason to move away from the rates proposed by the VO for these items. This rate had been established in the Upper Tribunal judgment of *Hobbs* v *Gidman (VO)* [2017] UKUT 0063 (LC) at the unadjusted stable rate minus 3% (£530 per furlong in the current case).

34. The panel noted that the appellant was a registered farmer and produced her own hay and haylage. As such, it agreed with the parties that the haybarn should attract an agricultural exemption.

35. Both parties had valued the horse walker at £50 per horse. The VO had applied the rate to five horses and the appellant to four. The panel found that the horse walker had been designed as a five-horse walker. However, one of the arms was broken so currently allowed for a maximum of four horses. On this point, the panel agreed with the VO that the rate should be applied to five horses as it could once again be used as a five-horse walker with a degree of repair (again, there was no evidence before the panel to suggest that such repair would be uneconomic). The panel was also satisfied that the building in which the horse walker resided should also attract a value, which the VO had valued at £3/m$^2$.

36. Finally, the panel was satisfied that the 5% allowance applied to reflect the presence of the public footpath running through the premises was sufficient. An allowance of 5% was also consistent with the allowance granted to the appeal property's 2010 Rating List assessment.

37. Having regard to the above conclusions, the panel found the existing entry to be unreasonable. The panel determined that an assessment of £24,250 RV more accurately reflected the appeal property, its locality and any associated disabilities as at the material date. A breakdown of the assessment has been shown overleaf:

| Description | Area m²/Unit | £/Unit | Value |
|---|---|---|---|
| Racing Stables (American Barn) | 31 | £495.00 | £15,345.00 |
| Non racing stables | 15 | £350.00 | £5,250.00 |
| Non racing stables | 3 | £385.00 | £1,155.00 |
| Total Stables value | | | £21,750.00 |
| Outdoor Arena | 1,220m² | £0.75 | £915.00 |
| Sand and Rubber Gallop | 6.3 furlongs | £530.00 | £3,339.00 |
| Trotting Ring (Carpet fibre) | 1.45 furlongs | £530.00 | £768.50 |
| Indoor Horse Walker | 5 horses | £50.00 | £250.00 |
| Horse Walker Building | 375m² | £3.00 | £1,125.00 |
| Office (racing) | 23.11m² | £0.00 | |
| Mess/lockers | 23.11m² | £15.00 | £346.65 |
| Store | 23.98m² | £0.00 | |
| Hay Barn (racing) | 161m² | £0.00 | |
| Tack Room (racing) | 47.95m² | £0.00 | |
| Tack Room (non-racing) | 8m² | £20.00 | £160.00 |
| Total additions | | | £6,904.15 |
| Sub Total | | | £28,654.15 |
| Less 5% public footpath allowance | | | £1,432.70 |
| Less Stud Relief | | | £2,835.00 |
| Total | | | £24,386.45 |
| **Say £24,250 Rateable Value, with effect from 1 April 2017** | | | |

**Order**

38. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £24,250 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

**Refund of fees**

39. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

**Date:** 2 January 2024
**Appeal Number:** CHG100679185

**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.