THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; tourist/farm attraction and premises; shortened method of valuation in dispute; receipts and expenditure method adopted; items of working expenses in dispute; appeal dismissed.

RE: Farmer Teds at Worrell Farm, Flatmans Lane, Downholland, Ormskirk, Lancashire L39 7HW

APPEAL NUMBER: CHG100702281

BETWEEN:	Mark Edwards	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL:	Mr M Young, Vice President Miss L Moses, Senior Member
CLERK:	Mrs L Horne
HEARING:	Remote Hearing on 22 and 23 November 2023
APPEARANCES:	Mr M Edwards (Director of Farmer Teds), the Appellant Mr M Wasilewski, representing the Appellant Mr C Ormondroyd, Counsel for the Respondent Mr D Constantin, Expert Witness for the Respondent

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Summary of decision

1. The appeal was dismissed. No change was made to the Rateable Value (RV) of Farmer Teds at Worrell Farm, Flatmans Lane, Downholland, Ormskirk, Lancashire L39 7HW (hereafter referred to as "the subject property").

Introduction

2. This appeal had been brought in respect of the subject property, which was entered in the 2017 Rating List as “Tourist Attraction and Premises” at £125,000 RV with effect from 1 April 2017.

3. The challenge proposal was submitted by Mr Wasilewski on behalf of Mr Edwards and was received by the Valuation Officer on 16 June 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV of £42,850 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 16 December 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, as amended, an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

6. The material day to consider the subject property was 1 April 2017. The antecedent valuation date (AVD) was 1 April 2015.

7. The subject property is a farm park located between Ormskirk and Formby in Lancashire. Owned and operated by Mr and Mrs Edwards, the site was originally part of Worrell House Farm, a working farm, which had been in the Edwards’ family for generations. A decision had been made to diversify by turning part of the farm into a commercial public attraction in 2003/2004. Farmer Teds features indoor and outdoor attractions and seasonal events. In 2014 a soft play and café extension was added to the site. The present assessment was based on the Valuation Officer’s adoption of the “shortened method”, which applied a percentage to gross receipts:

   Fair maintainable trade (FMT) of £1,935,000 @ 6.46% = £125,000 RV

   Mr Wasilewski appeared as advocate for the Appellant although he quite properly informed the Panel that he was not a qualified lawyer. He also provided some analysis as if an expert witness. He is a qualified economist and a financial analyst, who also had experience of running a farm attraction. He cannot be regarded as an expert witness as to valuation, lacking both relevant qualification and independence but his analysis is allowable in VTE proceedings having regard to the procedure regulations[1] and rules regarding admissibility of evidence[2].

[1] Regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

[2] Regulation 17(2)(a) (Evidence and submissions) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

8. Mr Costantin, a chartered surveyor with twelve years' experience specialising in Receipts and Expenditure valuations and a national facilitator for tourist attractions, provided expert evidence for the Respondent.

9. Mr Wasilewski, nevertheless, and Mr Costantin both confirmed that their primary duty in giving expert evidence was to the Tribunal and that they were not instructed under a conditional fee arrangement or other success related fee.

10. Mr Edwards, a director of the Appellant company, was as a witness of fact.

11. The parties were advised prior to the hearing that Mr Young had declared his role as a volunteer director of The Mudchute Association, a registered charity which operates a park area with a visitor farm on the Isle of Dogs. There were no objections raised to any potential conflict of interest.

12. The appeal had been allocated to a two day hearing and the bundle comprised 837 pages. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

13. The issue in dispute concerned the RV to be applied to the subject property.

14. Mr Wasilewski disputed the Valuation Officer's shortened method and submitted that the subject property should be valued on a full receipts and expenditure valuation. While the challenge sought a RV of £42,850, Mr Wasilewski revised his valuation to £49,000 RV, based upon an adjustment of his depreciation figures. Alternatively, he proposed a RV of £82,000 if the Panel rejected his "blended approach" in applying two months of figures from the 2016 accounts.

15. Prior to the hearing it was confirmed that the Respondent had revised his opinion from that contained in the Decision Notice. While the present assessment of £125,000 RV had been defended (derived from the shortened method), a receipts and expenditure valuation at £260,000 RV had been included in the Notice. Having discovered an arithmetical error and in consideration of recent decisions of the Valuation Tribunal and the Upper Tribunal, the Respondent presented a revised valuation of £197,750 RV. It was re-stated that the Valuation Officer was defending the present RV of £125,000.

16. As Mr Wasilewski had raised an objection to the Valuation Officer's revised valuation and opinion, the clerk had referred the issue to the Panel ahead of the hearing. The Panel decided that the revised valuation and additional submission could be admitted into proceedings and Mr Wasilewski was afforded the opportunity to make an application for further new evidence to be presented in response.

Evidence and submissions

17. The Panel was provided with an extensive bundle of evidence which contained the parties' arguments and supporting documents. Skeleton arguments had also been provided. A number of Valuation Tribunal and Upper Tribunal decisions had been cited:
    - Thurleigh Fruit Farm Valuation Tribunal decision, 28 February 2019. Appeal number 023530706125/221N10 (Mr Wasilewski's property).
    - York Maze Valuation Tribunal decision, 31 January 2023. Appeal number CHG100151577 (Mr Wasilewski representing the Appellant).
    - Finkley Down Farm Valuation Tribunal decision, 18 September 2023. Appeal number CHG100707063.
    - *Mr Joe and Mrs Valerie Fryer v Mr Wayne Cox (Valuation Officer)* [2022] UKUT 0229 (LC) (referred to as the "Apple Jacks" decision).
    - *Mr Justin Allen (Valuation Officer) v Tyne & Wear Archives and Museums* [2022] UKUT 206 (LC).
    - *BNPPDS Limited & BNPPDS Limited (Jersey) as Trustees for Blackrock UK Property Fund v Andrew Ricketts (Valuation Officer)* [2022] UKUT 129 (LC).
    - *Francis J Facciolo v Dario Costantin (Valuation Officer)* [2020] UKUT 0123 (LC).
    - *Redrose Ltd v Thomas* [2014] UKUT 311 (LC).
    - *Wishart v Hulse* [2018] UKUT 224 (LC).

18. The case for the Appellant commenced with Mr Edwards giving evidence in accordance with his witness statement. This comprised a history of Farmer Teds, an explanation of the ownership structure, accounts and lease details, and the day to day work of the directors. Mr Wasilewski explained his background and then provided his detailed submission.

19. Mr Ormondroyd presented the case on behalf of the Respondent, referring questions to Mr Costantin as the Valuation Officer's expert witness.

Decision and reasons

20. It was clear to the Panel that the Appellant's main dispute was with the shortened method adopted by the Valuation Officer. Given the Respondent's revised opinion that the subject property should be valued on a full receipts and expenditure valuation, the Panel decided to focus on the major differences in the parties' respective valuations on that basis, no other basis for valuation being appropriate. The Panel was assisted by the Respondent's skeleton argument from counsel, which identified the main issues in dispute as follows, where indicated in red, as well as the approach to the tenant's share:

	Respondent	Appellant
FMT	£1,935,000	£1,946,071
Cost of Sales	£571,174	£596,111
Gross Profit	£1,363,826	£1,349,960
Working Expenses		
Business Rates	£33,976	£57,500
Repairs & Renewals	£85,000	£84,980
Depreciation	£65,000	£166,000
Renewal Fund Landlord's Assets	£0	£15,068
Directors' Renumeration	£0	£150,552
Water Rates	£4,642	£4,593
Heat & Light	£14,500	£13,697
Insurance	£40,224	£42,263
Telephone	£5,000	£5,172
Advertising	£73,894	£80,835
Stationary & Postage	£3,500	£3,682
Travelling	£25,000	£24,888
Cleaning	£26,000	£26,644
Bank Charges	£7,500	£7,187
Credit Charges	£6,900	£6,979
Accountancy	£5,500	£5,582
Legal & Professional Fees	£23,500	£20,278
Sundry Expenses	£18,400	£20,915
Wages	£306,352	£314,631
Social Security	£20,000	£20,157
Pensions	£39,000	£39,793
Training	£1,500	£1,442
Workwear & Clothing	£2,000	£2,187
Entertainment	£3,800	£4,437
Subscriptions	£2,500	£2,513
Bank Interest	£550	£0
Net Profit/Divisible Balance	£549,588	£227,986
Tenant Share	64% of Divisible Balance	Return On Capital Employed 20.75%
Basis	Reflects Return on capital Risk, Reward	Return on Capital 2% Risk 8% and Reward 10.25%
Tenant Fixed Assets		£800,000
Working Capital		£90,457
Tenants Capital		£890,457
Tenants Share	64% of £549,588 = £351,680	20.75% of £890,457 = £184,758
RV Rent	**£197,852**	**£43,228**

21. As outlined previously, Mr Wasilewski had revised his valuation to £49,000 RV, having adjusted the figure for depreciation to £160,000 over five years.

22. Before turning to the major elements in dispute, the Panel first considered the figures adopted by the parties. The Respondent had used information from the accounts for the year ended 31 January 2015, whereas the Appellant adopted a “blended” approach, averaging 10 months from 2015 and two months from 2016. Both parties were relying on management accounts and no point was taken on this.

23. The Panel favoured the Respondent’s approach as the accounts for the year ended 31 January 2015 were the last before the AVD and therefore the most recent set of accounts available to the hypothetical parties when negotiating the rent. The Appellant’s reference to two months of accounts in 2016 would not have been available to the hypothetical parties.

Business rates

24. The Respondent’s figure of £33,976 was based upon the 2010 RV of £68,500 adjusted to take into account the addition of the Play Barn and a cafe. The Appellant’s figure of £57,500 had taken into account the likely rates bill between £55,954 in 2017-18 with the benefit of transitional relief, rising to £62,000 the year after.

25. The Panel considered the guidance contained in the Valuation Office Agency Rating Manual Part 2: the receipts and expenditure method.

> “As the rates payable at the AVD are known they should be treated as any other working expenses. A view must therefore be taken firstly as to whether rates paid in previous years form a reliable guide to the rates payable for the forthcoming year; secondly, as to whether, at the AVD, the hypothetical tenant would expect substantial increases or decreases in rate liability for future years; and thirdly, of the weight which would be given to those predictions when framing the rental bid”.

The Panel decided to adopt the Respondent’s figure, albeit the dispute on this issue would not appear to be value significant, and the submission made by counsel for the Respondent in this regard. While it would be reasonably foreseeable to the hypothetical landlord and tenant at AVD that the RV would increase as a result of the addition to the subject property in 2014, the Panel did not consider the same applied to the increase in RV giving rise to this dispute. The Panel also had regard to the fact that in the Apple Jacks and York Maze appeals the actual rates payable at the AVD were adopted.

Depreciation

26. The Respondent’s depreciation amount of £65,000 was derived from the three years before AVD in the accounts of £37,404, £39,3776 and £70,873, applied to tenant’s fixed assets of £260,000 over four years. The Appellant’s

calculation of tenant's fixed assets was higher at £800,000 and taken over five years, resulted in an amount of £160,000 for depreciation.

27. The Panel decided to adopt the Respondent's figure, again accepting the argument of counsel in this regard to the effect that the hypothetical parties would have regard to the figures used in the available accounts in the years to AVD. Those figures show an assessment by the Appellant for accounting and business purposes. There was no valuation evidence to support the market value of the assets of the Appellant at £800,000 as contended for at the hearing and in the skeleton argument of the Appellant's representative.

Renewal Fund Landlord's assets (sinking fund)

28. The Respondent argued that this liability was accounted for by taking the sums provided in the accounts for repairs; both parties adopted circa £85,000. By including an additional amount, it was submitted that the Appellant had either double counted or allowed for an expense which went beyond the rating hypothesis.

29. The Appellant contended that, in rejecting an amount for the replacement of landlord's assets, the Respondent had breached the third assumption of paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988, which provides that the tenant must bear, among other costs set out, all the costs of maintaining the hereditament in a state fit to command the rent.

30. In his estimate of £15,068, Mr Wasilewski used as a yardstick the build cost of the buildings and a time period of 40 years, the same used in York Maze and Thurleigh Fruit Farm.

31. The Panel accepted the Respondent's arguments in this respect. The cost of maintaining the subject property in a state so as to command the rent was the figure for repairs and renewals shown on the accounts and there is no basis to allow for an additional sinking fund in this case. No amount for a sinking fund was allowed in the Apple Jacks appeal. £5,528 was allowed in York Maze on the basis that the Vice-President accepted there were known significant future repairs. £8,000 appears to have been uncontentious according to the decision in Thurleigh Fruit Farm. However, in this appeal, the Panel did not accept that the case for a separate sinking fund was made out.

Directors' remuneration

32. The Appellant's figure of £150,552 was derived from the Office of National Statistics data on manager's pay and reflected the costs required to be paid to three staff members at £40,000 to replicate the work of the actual directors. Mr Wasilewski contended that a hypothetical tenant would have to recruit such staff members for the hereditament to function and this was not money which formed part of a return on the investment a hypothetical tenant would have to make. He cited the Apple Jacks appeal to the Upper Tribunal case and the York Maze decision of this Tribunal where allowances had been made for a manager's salary.

33. Mr Edwards' evidence, which was accepted by the Panel, was that his role was focused on building and adding to the site's attractions. Alongside the fabrication work, he carried out most trades, such as plumbing (but not electrical work), ground maintenance and ground works. He was responsible for leading the outdoor team, ensuring they had the correct supply of goods and equipment, and providing cover for any absences. He stated that he worked at least 60 hours per week.

34. Mrs Edwards worked a minimum of 40 hours per week and was responsible for all financial aspects and human resource functions. She also provided cover when they were short-staffed.

35. Before he retired, Mr Edwards' father worked around 30 hours per week providing valuable maintenance skills, training the new tractor drivers and generally assisting in the smooth running of the site.

36. On the issue of directors' remuneration, the Panel favoured the Respondent's approach, as this was based upon advice from the RICS guidance note: "where the occupier is an individual, or where the hypothetical tenant might be expected to carry on the undertaking without advice from directors, it is normal to allow for remuneration solely in the tenant's share."

37. The Panel also had regard to the Upper Tribunal decision of *Redrose Ltd v Thomas (VO)* in which it had been decided that the director's salary should be excluded from total expenses on the grounds that the tenant's remuneration would be accounted for in the tenant's share.

38. The Panel drew a distinction with the Apple Jacks case where an allowance of £35,400 for directors' remuneration was made on the basis that the hypothetical tenant would be primarily running a farm, such that he would need to employ a manager for the farm diversification business. The Respondent pointed out that Farmer Teds had no accompanying farm for the tenant to run and accordingly that logic did not apply.

39. In the case of York Maze, the Vice President adopted an additional expense of £60,000 for a manager's salary including pension contributions, to take account of the fact that the hypothetical tenant may not be two people with the same commitment as the Appellants. He referred to Mr Wasilewski's allowance of £114,078 as a "fictional expense".

40. Taking into account the fact that a manager was employed at the subject property, the Panel determined that provision had been made in the amount for wages and therefore a separate amount for directors' remuneration was not required.

Tenant's share

41. As the Panel's findings on the major items in dispute resulted in an end valuation which would exceed £125,000 RV, regardless of the method

adopted, there was little merit in further consideration of the parties' approach to the tenant's share. However, the Panel confirms that if a decision had been required on this issue, the Respondent's approach would be preferred.

42. The Panel had no doubt that Mr Wasilewski had a wealth of financial knowledge and had used that knowledge to adopt a similar approach to the tenant's share in the York Maze case. However, this had been rejected by the Vice President as being "unnecessarily complicated." The Panel was inclined to agree and considered that the Valuation Officer's method of applying a percentage to the divisible balance reflected a consistent approach for the repairs and expenditure valuation appropriate for this type of hereditament.

Conclusion

43. In full consideration of all the evidence, the Panel concluded that the present RV of £125,000 was not unreasonable and therefore the appeal was dismissed.

Date:

Appeal number: CHG100702281

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.