THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; farm attraction; receipts and expenditure valuation; appeal dismissed.

RE: Finkley Down Farm, Finkley Road, Finkley SP11 6NF

APPEAL NUMBER: CHG100707063

BETWEEN:	Mr Charles Waters and Mr James Waters	Appellants
	and	
	Mr W Cox (Valuation Officer)	Respondent

PANEL:	Mrs M Cole, Presiding Senior Member Mrs A Fielder, Senior Member
CLERK:	Ms R Muller
HEARING:	Remote Hearing 3: on 22 and 23 August 2023
APPEARANCES:	Mr C Waters, the Appellant (Director of Finkley Down Farm) Mr L Wilcox, Counsel for the Appellant Mr B Davies, Expert Witness for the Appellant Mr H Flanagan of Francis Taylor Building, Counsel for the Respondent Mr W Cox, 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 Finkley Down Farm, Finkley Road, Finkley SP11 6NF (hereafter, known as the subject property).

Introduction

2. This appeal has been brought in respect of the subject property, which was entered in the 2017 Rating List as “Farm Park”. The RV was £100,000 with effect from 1 April 2017 but this assessment was made by the Valuation Officer (VO) before the Appellant provided the accounting evidence. After receiving the accounting information that had been requested, the Respondent stated that the RV would remain at £100,000 within the 2017 Rating List with effect from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable. In this appeal, the Appellant sought a reduction to £54,250 RV.

4. The material day to consider the subject property was 1 April 2017. The Antecedent Valuation Date (AVD) is 1 April 2015.

5. The subject property, which was a farm park was located 1.5 miles north of the A303 and two miles east of the market town of Andover. The farm park consisted of two separate blocks of land. The land to the north extended to circa 6.68 acres and contained the main farm park. The land to the south extended to circa 9.61 acres and was currently used for grazing and overflow parking.

6. Mr Wilcox and Mr Flanagan appeared as advocates for their respective parties and Mr Davies and Mr Cox appeared as expert witnesses for their respective parties.

7. Mr Davies and Mr Cox 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.

8. Mr Waters, a shareholder and director of the Appellant company, appeared before the panel as a witness of fact.

9. The hearing was conducted remotely via a Microsoft Teams conference call using an audio/video-link. The parties were fully able to participate in the proceedings. However, one of the panel members, Mrs Fielder briefly lost connection while Mr Flanagan was presenting evidence. On the member’s connection being restored Mr Flanagan repeated what he had said during this interruption.

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

Issues

11. The issue in dispute concerned the RV to be applied to the subject property. The parties had each submitted receipts and expenditure (R&E) valuations. There was a significant difference between them on how to approach the exercise.

12. The Respondent defended an RV of £100,000, whereas the Appellant sought a reduction to £54,250 RV.

Evidence and submissions

13. The panel was provided with a bundle of evidence, which contained both parties' arguments, evidence, legislation, case law and other documentation relevant to the valuation of farm attractions. A statement had also been provided from the Appellant's accountant on 3 August 2023. The VO's representatives had no objections to its inclusion but did provide a rebuttal statement. As both parties had been in agreement with these documents being submitted as part of their evidence, the panel allowed these documents to be included within the evidence bundle.

14. Mr Flanagan provided a skeletal argument document on behalf of the Respondent for the panel's consideration on 15 August 2023, but Mr Davies informed the clerk on 18 August 2023 that Mr Wilcox would not be submitting a skeletal argument on behalf of the Appellant, as anything that would be stated, is already within the appeal statement.

15. The Appellant discussed the history of the subject property. The property had been passed down through the family. In 1981, the subject property had opened as a farm park, with toilets, café, fish shop and car park. The Appellant stated he lived on site. He was involved in all aspects of the farm from serving customers to looking after the animals. Since 2013, when the play barn had been built, the subject property operated year round, whereas prior to 2013, it was seasonal.

16. Mr Davies had provided two approaches to his valuation for the subject property. The first approach he had taken was using the R&E valuation of £65,500, a percentage of the divisible balance which had been the approach taken in the Applejacks case, where the tenants share had been set at 75% and an independent open market valuation of £50,000 of the subject property provided by Briggs & Stone. Taking into account the physical state of the subject property as of 1 April 2017 but relating to the economic circumstances as at 1 April 2015.

17. Mr Davies had undertaken a 'stand back and look' approach where he considered the disadvantages that the subject property had, such as no room for expansion and bad weather. Therefore, when considering the Applejacks case, he was of the opinion that the subject property should also have the same tenants share set at 75%. Together, along with his R&E valuation figure and the Briggs and Stone report, he contested that the correct RV for the subject property should be £54,250.

18. Mr Cox had originally calculated the RV of the subject property using the shortened method of valuation, as at the time, he had not been provided with the full R&E details from the Appellant in order to use the 'R&E approach'.

19. However, as full R&E details had been provided prior to the hearing, Mr Cox had been able to include within his evidence and had submitted a revised RV using the 'R&E approach', which had resulted in a higher assessment at £139,000 RV. However, Mr Cox did not intend to increase the RV and as such, the assessment had remained in the 2017 Rating List at £100,000.

Decision and reasons

20. The panel was aware that when a property is owned by an Appellant or where little rent exists for a property, but the property is run for a profit motive, it was usually appropriate to consider the R&E of the occupier to arrive at the RV.

21. This method of valuation used the theory that the hypothetical tenant would be prepared to pay rent for the use of the property in order to be able to make profits and that the level of rent reflects a proportion of the level of anticipated profits.

22. The panel noted that the ‘R&E approach’ supposed that a prospective tenant, in considering a rental bid, would have regard to the profit that can be made at that property. The method assumed the hypothetical tenant would be provided with the last full year’s accounts in order to judge the potential profits. Given that trade tends to fluctuate, a prudent prospective tenant would also wish to examine early accounts to discern any trends.

23. Typically, the VO would look at the three years accounts prior to the AVD. The VO had statutory powers to request information from occupiers and he will issue a ‘form of return’ (FOR). The FOR however, does not disclose full accounts and therefore, falls short of all of the relevant details. As such, the VO is required to request disclosure of full accounts for the relevant years prior to the AVD.

24. A summary of accounts had been provided with regards to previous years, but not full accounts for the VO or the panel to consider. The panel noted that full accounts had only been provided for the year ending March 2015 and also post AVD of year ending March 2016. It was also noted that there was little difference between the figures presented by both parties, except for the figures relating to Paw Patrol, cost of sales, the gross profit, Directors’ salaries and equipment hire.

25. The first approach that Mr Davies had undertaken was when he had used the R&E valuation of £65,500, as well as the decision from Applejacks where the Appellant had been granted 75% for the tenants share and the independent valuation provided by Briggs and Stone where the subject property had been valued at £50,000. Using these three figures and the relative disadvantages of the subject property, Mr Davies had considered the ‘stand back and look’ approach and used his judgement to determine that the correct RV for the subject property would be £54,250. However, the panel placed little weight on this approach and considered that the best evidence to use would be the R&E method of the subject property which had been provided from both parties.

Expenses

26. Care needs to be taken when considering the expenses because the panel was only interested in those costs which would be incurred by the hypothetical tenant. The panel noted that Mr Wilcox had included an expense for equipment hire as part of the expenses, as it was a cost incurred by the Appellant as a result of not owning certain equipment that was required as part of running the property, whereas Mr Cox had deducted the cost for equipment hire within his valuation and had included this figure within the renewal fund for replacement of non -rateable assets section. The panel held that when considering the cost of the equipment hire, it did not make a lot of difference between both parties’ valuations.

27. It was noted that the Appellant had hired a ride called Paw Patrol which had been at a cost of £65,000. Mr Wilcox stated that the Appellant had not received any income from using Paw Patrol, as the fee entry to the site had remained the same. However, as it had been found that the cost of using Paw Patrol had been too costly, the use of this ride had ceased post AVD. Therefore, Mr Wilcox had removed the cost of using Paw Patrol from his R&E, as it had been on a temporary basis. However, the VO had left the value of using Paw Patrol in his calculation and had wrapped it up in chattels.

28. The panel noted that the cost of using Paw Patrol had been costly to the Appellant. However, this had been a cost incurred by the Appellant and therefore, should be included within the figures of the R&E.

29. The panel noted that a rent had been included within this section by Mr Wilcox. The rent was between connected parties where no formal agreement had been set in place. Although this was accepted as evidence, Mr Cox stated that he gave it no weight. The panel noted that both parties agreed that this figure should be taken out of the expenses section of the valuation. The panel agreed with this action as the purpose of the valuation was to ascertain the rent that a hypothetical tenant would pay for the subject property. Therefore, to include a rental figure would not be appropriate.

Director's fees

30. As part of Mr Waters witness of facts, he informed the panel that he was involved in all aspects of the business from serving to looking after the animals. He works at the subject property full time, along with circa 30 plus staff members. Mr Waters stated that there was circa 10 to 12 full time staff members and the other staff were employed on a part time, seasonal basis. He also stated that his brother was a silent partner in the business but both himself and his brother were Directors of the business. Mr Waters stated that the Director's salary was split between himself and his brother at a ratio of circa 30/70% split. Mr Waters receiving a 70% share.

31. The panel was informed that the wages figure for the subject property was circa 24% of the turnover, whereas on a benchmarking process, wages were generally in the region of circa 30%. It was noted that the Director's remuneration had been included at an expense of £20,000.

32. The panel had regard to the Upper Tribunal decision of *Redrose Ltd v Thomas (VO)* [2014] UKUT 0311 (LC) where 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. Basically, the director and his wife carried out all of the work in the holiday lets; which included boiler maintenance; laundry; ground maintenance; external painting; roof repairs and sundry plumbing/electrical works; help with cleaning; and all book-keeping apart from drawing up annual accounts and submitting tax returns. At paragraph 73 it was stated:

> "The rating valuation is to be prepared on the assumption of a letting to a hypothetical tenant, not the actual tenant. The fact that the appellant's director has chosen to operate the business at the appeal property through a limited company is no reason to approach the tenant's share in a manner different from what would have been appropriate had he operated as a sole trader or in partnership with his wife."

33. Mr Wilcox referred to the Valuation Tribunal decision of York Maze, Elvington Lane, Dunnington, York YO19 5LT (appeal number: CHG100151577) where consideration was taken that it had been reasonable to allow an additional expense of £60,000 for a manager's salary due to the fact that both the Appellant and his wife for York Maze worked at the property all year round. Mr Wilcox stated that with regards to the subject property, the Appellant and his daughter worked all year round, so the Director's salary would apply like it did within the York Maze decision.

34. It was also noted that in the decision of Applejacks, the Upper Tribunal at paragraph 66, also allowed for the cost of a manager. In that case, it had been to reflect that the Appellants had also been responsible for the running of a farm, therefore the Upper Tribunal had accepted that a salary for a manager would be warranted.

35. Mr Cox had stated that he had removed the Director's salary figure from the 'Working Expenses' as he considered that this figure would be part of the tenant's share. Mr Cox informed the panel that if the Appellant was to get a Director's remuneration, as well as a percentage of the tenants share, he considered that this would be a form of double counting.

36. The panel considered the decision made by the Vice President with regards to the Director's salary within the York Maze decision mentioned above and held that the circumstances were not exactly the same. The Appellant and his daughter worked full time at the subject property, however, the Appellant had mentioned that the Director's salary had been split between himself and his brother, no mention of part of the Director's salary going to the Appellant's daughter.

37. Therefore, the panel held that the Director's salary should be removed as part of the 'Working Expenses' and be taken into account within the 'Tenants Share'.

Treatment of divisible balance

38. Mr Flanagan stated that the interest on capital should be taken into account. The rate of interest is what the tenant required in order to run the subject property. He also stated that is why the risk and remuneration was taken before the use of capital. Mr Davies stated that a return on capital is the first charge.

39. The panel was informed that each party had arrived at its valuation using a different approach when the R&E method was used. Mr Davies had applied a 50/50 split to the divisible balance, which produced a figure for profit and risk. Then he took interest on capital from the remainder of the divisible balance. Mr Flanagan stated that this had the effect of inflating the overall tenant's share If interest on capital had been taken from the divisible balance before the percentage split, the total tenants share would result in a different RV.

40. Mr Cox's approach had been that when arriving at the divisible balance, he had applied interest on capital, then the percentage split for profit and risk had been applied to the remainder.

41. The panel noted that the figures used with regards to the net profit or divisible balance were very different from each party. The panel held that the figures applied from Mr Cox were the more reliable and correct figures to use, as the values provided within Mr Cox's R&E valuation were very similar to the actual figures for the year ending March 2015. Whereas, Mr Davies had adopted values from both 2014 and 2015 year end figures However, as full R&E figures had not been provided for the year end of March 2014, the panel held that the figures from year end of March 2015 would be the correct figures to use.

42. The panel took the approach taken by the Upper Tribunal in the Applejack decision where the valuation was kept as simple as possible. It was noted at paragraph 87:

> *"We have assessed the divisible balance at £47,138 and do not think it appropriate to deduct from that figure a first charge for return on tenant's capital before assessing the tenant's share. So, the tenant's share must cover profit, together with an allowance for various risks and also a return on tenant's capital."*

43. Therefore, the panel held that the way Mr Cox had undertaken the R&E valuation had been the correct approach.

44. However, to determine whether or not the VO had correctly applied the percentage adopted for the tenants share, the panel considered both parties arguments.

Tenant's share

45. The Rating Forum guidance provides:

> "5.46 The tenant's share may be regarded as the first call upon the divisible balance. This share has to be sufficient to induce the tenant to take a tenancy of the property and to provide a proper reward to achieve profit, an allowance for risk and a return upon the tenant's capital. The amount of the deduction is a matter of judgement in the circumstances relating to the enterprise carried on at the property.
>
> …
>
> 5.47 The calculation of the amount will depend upon the nature of the enterprise and is generally based upon one of the following:
>
> (a) a percentage of tenant's capital;
>
> (b) a percentage of the gross receipts;
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> (c) a percentage of the divisible balance;
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> (d) an amount in keeping with the gross receipts, the amount of the tenant's capital and the divisible balance, i.e. a 'spot' figure.
>
> Although the tenant's share may be regarded as a first charge on the divisible balance, the valuation must properly reflect the strengths and weaknesses of the hypothetical landlord and tenant, given their assumed willingness to reach agreement.

5.48 When calculating the tenant's share, each method must be considered separately. Whichever of the three principal methods (i.e. those at 5.47 (a), (b) and (c) is adopted as the primary approach, it will be necessary to stand back and consider whether the answer looks reasonable, having regard to the motives for occupation when compared with each of:

(a) the amount of tenant's capital required;

(b) the turnover;

(c) the divisible balance."

46. Mr Davies stated considering his approach using the R&E figures, he had adopted the FMT of £1,320,000 The net profit and divisible balance was found to be £187,500.

47. Mr Davies had calculated £28,088 for interest on capital and £93,750 was applied for profit and risk to arrive at a tenants share at £121,838 which was 65% of the divisible balance. This resulted in an RV of £65,500. However, Mr Davies had considered that due to the Applejacks decision, the tenant's share should be increased to 75% and therefore, a revised RV of £54,250 had been requested.

48. Mr Cox had also adopted the FMT figure from the 2015 accounts as £1,320,000. The net profit was found to be £397,825. He had applied a renewal fund of £50,000 which left a divisible balance of £347,825.

49. Mr Cox had calculated £35,320 for interest on tenant's capital and £187,503 was applied for profit and risk to arrive at a tenants share at £222,823 which was 64% of the divisible balance. This resulted in an RV of £125,000. However, as he had originally used the shortened method to arrive at an RV of £100,000, he had left the assessment of the subject property within the 2017 rating list at an RV of £100,000.

50. After receiving further details and amended figures from the Appellant's accountant Mr Marsh dated 31 July 2023, Mr Flanagan stated that the cost of sales needed to be subject to a further deduction for closing stock of £36,324. This would result in a reduction to the cost of sales from £305,000 to £268,676 say £270,000. Therefore, it would increase the gross profit to £1,050,000 (the previous gross profit prior to the accountant's observation was £1,015,000).

51. The impact of the gross profit would be to increase the divisible balance from £347,825 to £382,825, adopting the same tenants share calculation for capital with the remainder split of 60/40% in favour of the hypothetical tenant, which would result in an increase of RV to £139,000.

52. However, as stated earlier in this decision, the VO did not seek an increase in the current RV of £100,000 RV. Mr Flanagan stated that using the RV of £100,000 gives the tenant a much greater tenant's share at circa 81.3%.

Other factors to consider

53. The panel then turned its attention to other reasons provided by Mr Wilcox for a reduction in RV. Location, disadvantages compared to the comparable properties, restraints of weather like York Maze and Applejacks etc. The weather being the main disadvantage. However, the panel was aware that unlike York Maze or Applejacks, the subject property had had a play barn built in 2013, which was 49.46m x 18.27m in size and had been constructed of a large steel portal frame. It consisted of various zones catering for different ages, which included a soft play area, seating area and toilet facilities, so if the weather was bad, the public still had an area to go to out of the rain.

54. The panel noted that the comparable properties discussed by both parties had been valued on the shortened method of valuation using the same 8% as the VO had originally placed upon the subject property.

55. The panel also noted that some of the comparable properties were subject to an appeal. Therefore, the panel did not place much weight upon the details of these comparable properties.

56. The panel considered the case of Applejacks. The subject property was not comparable in nature to the Applejack site. It had disadvantages but not to the same extent and therefore, the panel held that the percentage applied with regards to the tenant’s share was appropriate.

57. Mr Wilcox referred to the comparable properties that operated large events at Halloween and Christmas periods. He stated that the subject property did not have room on site to have large events like the comparable properties, as the site was more compact and there was no room for expansion. The panel noted that the brochure of the subject property was from 2017, which showed that events were listed to take place during Easter, Halloween and Christmas and other dates throughout the year. Even though these events may not be as extensive or as large as events as undertaken at the comparable properties, such as Spooky World which was an event that took place at Applejacks. The panel held that the argument about events not taking place was not considered to be significant as this was already reflected in the accounting evidence.

58. The panel placed less weight on the argument by Mr Davies about the subject property and lack of room for extension, as the panel considered the subject property as it was in 2015, what was on it and what income had been achieved around the AVD of 1 April 2015.

Request for site visit

59. After the hearing on 25 August 2023, Mr Davies sent an email to the clerk and requested that the panel conduct a site visit. The clerk advised Mr Davies that she would forward the email to the panel for its consideration. She also requested that Mr Davies inform the Respondent party of this request.

60. The panel held that the issue for the panel with regards to this appeal was the calculations and how each party had reached them. This is what had been agreed at the outset of the hearing. Furthermore, the panel heard from the Appellant in depth about the conditions on the site in chief and in response to questions from the panel. Mr Davies made no mention of the need for a site visit prior to or during the hearing, especially after questions had been asked specifically about how utilities etc were delivered to the site.

61. The panel held that as the evidence contained pictures and plans, that was sufficient for the panel to understand the site, layout, buildings and facilities and therefore, deemed that a site visit was not warranted. Both parties had been informed of the panel's decision not to conduct a site visit prior to this decision being issued.

Conclusion

62. Due to the evidence before it, the panel held that using the R&E figures referred to by Mr Cox with regards to the revised valuation, the amended details from the Appellants' accountant Mr Marsh, which increased the overall RV to £139,000, that the current RV of £100,000 was not excessive and dismissed the appeal.

Date: 18 September 2023

Appeal number: CHG100707063

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.