THE VALUATION TRIBUNAL FOR ENGLAND

*Non-Domestic Rating Appeal; Williams (VO)* v *Scottish & Newcastle Retail Ltd and Allied Domecq Retailing Ltd [1993] RA 480;* Mode and category; Gym and Premises*; Appeal dismissed.*

RE: Barn 7A at The Suffolk Food Hall, Peppers Lane, Ipswich IP9 2AB

APPEAL NUMBER: CHG100868222

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| BETWEEN: | Crossfit Orwell | Appellant |
| | and | |
| | Ms J Moore<br>(Valuation Officer) | Respondent |

PANEL: Miss S Ballentine (Presiding Senior Member)
Dr H Freeman (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 2 on 16 January 2024

APPEARANCES: Mr B Porter from Altus (Appellant's representative)
Mr M Green (Valuation Officer's representative)

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**Summary of decision**

1. Appeal dismissed. The panel concluded that the appeal property should be valued as a gym and there should be no change to the rateable value.

**Introduction**

2. The appellant had made a challenge against the rateable value on the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 18 October 2022. The proposal was against the VO's notice of alteration to the 2017 rating list. Mr Porter considered that the appeal property should have a rateable value of £9,400 effective from 14 September 2018 as it should be valued as a Warehouse based on an unadjusted rate of £37/m$^2$.

3. Mr Green was representing the VO in the dual role of advocate and expert witness, but mainly as advocate.

4. Mr Porter declared that he was representing the appellant on this appeal as both advocate and expert witness. He was instructed under a conditional fee arrangement. He confirmed 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.

5. The panel had accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

6. The panel hearing the evidence considered the "expert" evidence and assessed what weight, if any, it should give to it in the context of the matters in issue before it.

7. This document is not and does not purport to be a full verbatim record of proceedings.

**Issue**

8. The issue for determination is the rateable value of the appeal property. The appellant sought a rateable value of £9,400 based on an unadjusted rate of £37/$m^2$. Mr Green defended the VO's existing assessment of £19,000 based on an unadjusted value of £75/$m^2$.

**Evidence and submissions**

9. The evidence bundle before the panel comprised of the evidence disclosed and exchanged during challenge which included: the appellant's statement of case, a copy of the challenge proposal, the Valuation Office Agency's decision notice, copies of correspondence that had passed between the parties, the parties' comparable properties, photographs of the appeal property and their comparable properties and the appellant's revised valuation.

**Decision and reasons**

10. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

11. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended) (LGFA 1988):

    "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

12. The appeal property was constructed in 2010 and used as an agricultural building. It had been entered into the 2017 rating list as a Warehouse. However, effective from 14 September 2018 the appeal property was split and it was let to Orwell Crossfit, on a 10 year lease with a stepped rent for the first five years. The VO analysed the rent to £89.05/m$^2$. Based on this rent, the VO valued the appeal property at £75/m$^2$ to take into account an adjustment to the rent to reflect it as at the AVD and the lack of heating at the appeal property.

13. The VO had decided to value the appeal property as a gym as the form of return (FOR) stated that the occupier had installed showers, a physio room and a separate weightlifting area. The VO considered that the alterations were more than just minor works. Furthermore, to support this, Mr Green had argued that the lease only allowed the appeal property to be used as a gym and planning permission was granted for D2 use which was for fitness centres, which further supported their argument that the appeal property should be valued as a gym.

14. Mr Porter argued that the appeal property was built as a warehouse. It had no fixed gym equipment although accepted that some equipment was bolted to the floor, but suggested through questioning that it would take less than a day to remove the equipment and no other work would need to be done to revert it back to a warehouse. He also submitted that if it was to become vacant the appeal property would be let as a warehouse and that the planning permission could easily revert back to that of a warehouse.

15. During questioning, he was unable to state how much the installation of the shower and physio room cost. He also accepted that it would be unusual for a warehouse to have a shower, if this was not removed at the end of the lease. He was also unable to confirm if the appeal property had to be stripped back at the end of the lease.

16. Mr Porter argued that by not valuing the appeal property as a warehouse, this offended the "*Rebus Sic Stantibus*" principle. In effect, the appeal property had to be valued as it stood which he considered to be was a warehouse.

17. The Latin expression for applying this principle of reality was known in rating circles as *rebus sic stantibus.* There were two strands to this. The first rule being that the physical state of the property had to be regarded as at the material day of 14 September 2018. The only alterations permitted were minor alterations of a non-structural character. The second rule being that the appeal property had to be valued vacant and to let, having regard to its mode or category of use as at the material date and it was the value of that use to the occupier that had to be determined. The leading authority was *Scottish & Newcastle Retails v Williams (VO)* [2001] EWCA Civ 185.

18. The panel was aware that the appeal property had to be valued having regard to its mode or category of use. There was no argument that as at the material date the appeal property was used as a gym. The panel therefore concluded that the appeal property had to be valued as a gym.

19. Once the panel considered that the appeal property should be valued as a gym, it then considered the valuation.

20. Whilst the appellant had provided a number of properties which he considered to be comparable to the appeal property, the panel applied less weight to most of them such as 23 Betts Avenue and 28B Gloster Road as they were built in the 1970s and 1980s respectively and where therefore older than the appeal property. Furthermore, 39 Waveney Road was not a public gym. The panel also found that there was a drawbacks with using Chelmbrook House, as it was over double the size and it was located over two floors, and Ground Floor Barn 6 at Suffolk Food Hall was substantially smaller than the appeal property.

21. The panel applied some weight to Unit 1 at 243 Felixstowe Road. It was built in 1996 and had been valued at £50/$m^2$ which supported a reduction to the rateable value.

22. Turning to the VO's comparable properties 1 Holywells Close was a new letting effective from 1 April 2014 and had been analysed to £82.16/$m^2$ (it has subsequently been assessed as a warehouse and the value reduced to £40.42/$m^2$) and 6 Alston Court the rent had been analysed to £68/$m^2$. The rateable value for these were £18,000 and £17,750 respectively. The panel noted that these units were relatively modern having been built in the 1990s and similar in size to the appeal property. These were valued within the same scheme as the appeal property which further influenced the panel of their relevance.

23. Whilst the rent for 23 Betts Avenue had been analysed to £56.21/$m^2$, the panel applied little weight to this rent as it was valued on an industrial basis and therefore it was not the same mode or category as the appeal property. The panel applied less weight to the rent for Unit G at 5 Brunel Road as it was a new letting effective from 1 December 2019 which the panel considered to be too far from the AVD to be reliable.

24. On the evidence presented, the panel was satisfied that the appeal property should be valued as a gym. Furthermore, in the absence of any substantial evidence to prove otherwise, the panel concluded that weight of evidence

suggested that the unadjusted rate of £75/m² and the resultant rateable value of £19,000 was not excessive. The panel dismissed the appeal.

**Date:** 30 January 2024

**Appeal number:** CHG100868222

**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.