THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; transitional certificate appeal; farm attraction; appeal dismissed.

RE: Apple Jacks Adventure Park, Stretton, Warrington WA4 4NW

APPEAL NUMBER: M0266335

BETWEEN:	Mr J and Mrs V Fryer	Appellants
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL:	Mr A Backway (Chairman) Dr J Johnson
CLERK:	Mr D Mulgrew
HEARING:	Remote hearing No.5 on 29 September 2021
APPEARANCES:	Mr J Fryer, appellant Mr M Wasilewski, advocate for the appellants Mr H Flanagan, counsel for the respondent Mr W Cox, respondent's expert witness Mr D Bazuaye, HMRC solicitor

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Summary of decision

1. Appeal dismissed. No change was made to the certified rateable value (RV) for transitional purposes.

Introduction

2. This appeal has been brought in respect of a transitional certificate for Apple Jacks Adventure Park, Stretton, Warrington (the "appeal property"). The appeal disputed the Valuation Officer's (VO's) certification that the RV for the appeal property should have been £29,000 on 31 March 2017.

3. The appeal has been made under regulation 21 of the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 (SI 2016 No.1265) because the appellants are dissatisfied with the value so certified.

4. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with the relevant legislation[1]. The VTE may determine the form of any hearing.

5. Therefore, in pursuance of the relevant regulation[2] the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

6. We have conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The parties were fully able to participate in the proceedings. However, our clerk briefly lost connection while Mr Cox was giving expert evidence. On the clerk's connection being restored Mr Cox repeated what he had said during this interruption.

7. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

8. The issue in dispute concerned the RV of £29,000 for 31 March 2017 which had been certified by the VO's notice dated 31 July 2019.

Evidence and submissions

9. Mr Wasilewski is a former City investigative analyst and farm park owner. His submission had sought the reversal of the transitional certificate, but at the hearing he appreciated that the certificate could not be unwound and asked us to determine a certified value of £23,700. His 256-page bundle included his statement of case; VTE decisions; graphs and analysis; correspondence

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[1] Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers).

[2] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

with the VO and third parties (including an expert witness report from Mr A R Wolfe, an expert in the agri-business sector); his valuation and approach; recognised guidance material concerning rating methods of valuation and an Upper Tribunal judgment: *Redrose Ltd v Thomas (VO)* [2014] UKUT 311 (LC). At the hearing, he presented the appellants' case in the form of a PowerPoint slideshow which included a summary of his arguments and a number of photographs.

10. The respondent's bundle ran to 233 pages. It included transitional certificates; notice of appeal; statement of case; expert witness report from Mr W Cox; internal Valuation Office Agency documentation; photographs; the relevant legislation; the respondent's submission for a VTE hearing on 30 April 2018; correspondence with the appellants' previous agent; Halsbury's Laws of England "Finality of judgments and of litigation" and a House of Lords judgment: *Society of Medical Officers of Health v Hope (VO)* [1960] AC 551.

Decision and reasons

11. Under regulation 20 of the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 the appropriate VO must make an RV certification as soon as practicable after the circumstances calling for the certification come to his attention. The VO had issued the certificate after the VTE decision in *Mr and Mrs Fryer v Mr Roberts (VO)* [VTE, 065518218223/134N10, 30 April 2018] (referred to in this decision as the "2018 VTE decision", with that panel and that hearing also being referred to as the "2018 VTE panel" or "2018 hearing" as appropriate).

12. The 2018 VTE decision had been issued on 22 May 2018. Mr Wasilewski was critical of the VO for the delay in issuing the certificate. While we have noted his concerns and that the certificate was issued more than a year after the VTE decision, we regard this as an administrative matter. Our jurisdiction on this appeal was limited to examining the RV of £29,000 that had been certified by the VO.

13. The appeal property, located near to junction 10 of the M56 motorway, is described by the VO as "farm attraction and premises (part exempt)". It is run as a farm diversification business. The premises comprise of a number of facilities such as maize maze, quad karts, pig racing, zip wires, play area, corn cannon, crazy golf, eliminator and jumping pillow. The attraction is primarily open air and therefore weather dependent. It is a seasonal site which opens less than 120 days per year. In October, the attraction further diversifies into the "Spooky World" attraction.

14. The site has no mains electricity, water, or sewage disposal. As a result of this, the operating costs are higher. The site is also prone to waterlogging which limits the season.

15. Mr Fryer explained that producing electricity is a difficulty for their operation and that the cost to connect to the national grid would be prohibitive. Drinking water has to be tanked in. These are considerable overheads.

16. In comparison to other farm attractions, Mr Fryer stated that Apple Jacks was located in the Cheshire Gap which is far wetter than other parts of the country. We appreciate that, given the nature of the attraction being outdoors, this is a disadvantage.

17. Mr Fryer also stated that the planning authority would not allow any permanent buildings on site. He went on to discuss pricing and how it was difficult to increase prices of an attraction for children.

18. We are concerned by the disadvantages and problems as outlined by Mr Fryer and are sorry to hear that he needs a reduction in rates to stay in business. Our difficulty is that we have to decide the appeal having regard to the statutory provisions and evidence. We have to determine an RV for 31 March 2017.

19. Rating was not the everyday world as rateable values reflected a hypothetical tenancy based on a number of statutory assumptions. The rental value arrived at had to represent the figure at which the hypothetical landlord and tenant would agree to, as a result of bargaining for that property in the light of the available evidence at that time. The statutory definition was provided in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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 –
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> (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> (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;
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> (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."

20. Rental levels had to reflect the market at the antecedent valuation date of 1 April 2008.

21. We decided that the best starting point was to consider the 2018 VTE decision in respect of the appeal property's 2010 rating list entry. This was because both parties had completely differing interpretations about what had been decided. The appellants believed that all that the 2018 VTE panel had

decided was that RV £23,700 was not excessive. The respondent believed that his revised valuation of RV £30,000 had been adjusted to RV £29,000, but that the VTE had dismissed the appeal because it knew it could not increase the RV retrospectively, since the list had ended on 31 March 2017.

22. In considering this matter, we found the following paragraphs of the 2018 VTE decision to be relevant:

> "24. After full and fair consideration of all the evidence presented, the panel upheld the VO's decision not to reduce the RV and it dismissed the appeal.
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> 32. The panel is not persuaded, however, by Mr. Cox's assertion that the RV is too low presumably as a result of an error by a colleague in 2011. There is a convention that the VO should not impugn his own list; he has a statutory duty provided by the Local Government Finance Act 1988 to compile and maintain an accurate rating list. Where he finds an error, he should correct it. Had he addressed the subject assessment ahead of the first listing of the appeal in January 2015, as he was critical of the appellant for not doing, he would have spotted the error he now perceives and presumably issued a notice to correct it. That he waited until the 2018 hearing to argue the RV is too low (and cannot now issue a notice because the list is closed) undermines the point he makes.
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> …
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> 34. In making a finding of fact, albeit with redacted figures, the panel finds the FMT figure provided by a D. Harvey to the VO in correspondence dated 21 January, 2011 to be reasonable and the best evidence available. The panel finds Mr. Cox has rounded that figure down and adopts a 6% take.
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> 35. The panel, in moving to a straight percentage of the revenue, similar to method adopted by the VO in the table of comparable property evidence above, finds a percentage take of 5.8% (having reflected the risks and disadvantages set out by Mr. Harvey and Mr. Fryer) to be fair and reasonable. The result of £29,000, however, is a figure higher than the RV under appeal. This, the panel finds, is sufficient to show that the existing RV was not excessive at the material day. The panel is not persuaded by Mr. Harvey's arguments to reduce the RV to £11,800 because of the lack of persuasive evidence. The appeal is, accordingly, dismissed.
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> 36. For completeness, the panel notes the error in the instigating proposal but finds the VO is not pursuing any aspect or argument of 'invalidity of proposal'. As the 2010 rating list is closed, the panel finds little point in ordering the change of description. However, given that he

agreed with Mr. Harvey's argument on the point, Mr. Cox might arrange that the description in the respective entry in the 2017 list be amended."

23. Paragraphs 32 and 36 clearly showed that the 2018 VTE panel was fully aware of the inability to increase an RV after the rating list was closed. The VO was restricted and, additionally, the 2018 VTE panel was restricted by regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 No.2269), as any order to increase an RV could not take effect because it cannot be ordered retrospectively.

24. Paragraph 34 indicates that the 2018 VTE panel adopted the fair maintainable trade (FMT) figure provided by D Harvey to the VO. Paragraphs 34 and 35 then shows that the 2018 VTE panel had adjusted the percentage of 6% adopted by the VO to 5.8%. This was done to reflect "the risks and disadvantages" associated with the appeal property. The 2018 VTE panel stated that it considered 5.8% to be "fair and reasonable" and that this resulted in RV £29,000 as opposed to the VO's valuation at £30,000.

25. The VO's valuation of £30,000 was reached by taking FMT of £500,000 at 6%. The 2018 VTE panel's valuation at £29,000 was therefore based on FMT of £500,000 at 5.8%.

26. In our view, the 2018 VTE panel had decided the RV should have been £29,000. As the RV for the 2010 rating list could not be increased, it would have been clear to the 2018 VTE panel that the only course of action would be to dismiss that appeal because it was satisfied that the RV in the 2010 rating list was not excessive.

27. The 2018 VTE panel decision was never appealed.

28. We have noted that the shortened method, where a percentage of gross receipts was taken, while not a receipt and expenditure method of valuation, was an accepted way of assessing properties. It was referred to in section 7 of the Rating Forum guidance "The Receipts and Expenditure Method of Valuation for Non-Domestic Rating – A Guidance Note", July 1997. Mr Cox gave several examples of valuations done this way in respect of hereditaments other than farm attractions; this included hotels, the London Eye, Alton Towers, Madame Tussauds and Thorpe Park.

29. We found that the VO had used an FMT of £500,000 and this was based on the actual trade in 2008 provided by the appellant's representative, rounded down. On several occasions, the VO had sought further accounting evidence in discussing the 2010 rating list appeal with the appellants' agent. This had been requested so that Mr Cox could see a more complete picture of trends to iron out peaks and troughs in the accounts; however, no further evidence of trade had been provided.

30. Therefore, as no further evidence on receipts had been provided to show the position leading up to the antecedent valuation date of 1 April 2008, we accept that the FMT of £500,000 was the appropriate starting point in the valuation.

31. The only remaining issue was the percentage to be applied to the FMT and whether 5.8% was reasonable. Mr Wasilewski argued that the 2018 VTE panel had been misled because of errors in the rating list data shown in the VO's evidence with regard to other farm attractions in the country. One of the comparable properties, Mead Open Farm, was cited as being assessed at 8.5% but the VO accepts that this should have been 7.5%. The RV for another comparable, Godstone Park, was stated as £94,250 when it was £86,500. Mr Wasilewski further contended that the York Maze comparable was also wrong given a substantial amendment to the FMT, which meant that the 10% quoted was not correct. However, with regard to York Maze, we found that the VO had shown through internal records that it had used 10% but that this applied to a very rough estimate of FMT, which has subsequently been shown to be substantially lower than the actual trade.

32. We understand why Mr Wasilewski placed importance on the evidence of the VO's mistakes in respect of Godstone Park and Mead Open Farm because the correction of those mistakes altered the average. However, in assessing the appeal property Mr Cox has stated he has had no regard to the average.

33. Mr Cox, in giving expert evidence, stated that he had inspected all of the properties in his schedule of comparable properties between 2014 and 2017 except the last two on the list. In reaching his opinion of value at the 2018 VTE hearing he had given little weight to Mead Open Farm, Godstone Park and York Maze. He said he had relied on three comparable properties: Rand Farm, near Lincoln; Walby Farm, near Brampton; and National Forest Adventure Farm (NFAF), Burton-on-Trent. He had considered a range of factors including businesses which have the additional burden of having a responsibility for animals (which require care and feeding while closed), population centres within one hour's drive and the quality of buildings. He referred to the appeal property being closer to cities such as Manchester and Liverpool and the Lancashire towns, whereas Walby Farm, for example, was situated in North Cumbria between Carlisle and Hexham.

34. Having regard to Mr Cox's expert evidence we reached the conclusion that the percentage of 5.8% adopted by the 2018 VTE panel did not require any further adjustment. The 2018 VTE panel had already had regard to the disadvantages specific to the appeal property.

35. Crucially, Mr Wasilewski had not provided a valuation of RV £23,700 and we are not persuaded that the certified value should be reduced to that amount. Mr Wasilewski had carried out a full receipts and expenditure assessment having regard to accounts from the year ending 30 November 2012 to 30 November 2015, but this was relevant for the 2017 rating list entry which had an antecedent valuation date of 1 April 2015, rather than for the certified value as of 31 March 2017, which had an antecedent valuation date of 1 April 2008.

36. In conclusion and after consideration of both parties' submissions, we did not find any persuasive evidence on which we could justify changing the valuation provided by the 2018 VTE panel. Therefore, the appeal was dismissed.

Date: 26 October 2021

Appeal number: M0266335