

Valuing social and socio-economic benefits – Where does recent case law lead?

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The Issue and where it has arisen

The Issue: Premises serve a socio-economic purpose which justifies public subsidy for what would otherwise be an unviable use. No rent is actually paid and occupier (normally a public authority) contends that it could not and would not agree to pay any rent. How are the premises to be assessed for NDR?

Recently the answer to that question has been considered in two cases both concerning museums (following on from *York Museums (2017)*):

Hughes v. Exeter City Council (“RAMM”) [2020] - R&E RV £nil

Allen v. Tyne & Wear Archives and Museums (“TWAM”) [2022]: R&E RV £nil

What this talk will consider

Address the issue under following heads:

- What are social and socio-economic benefits?
- *How to measure them and assess to whom they accrue*
- *The case law – RAMM and TWAM*
- *The current position:*
 - *choice of valuation method*
 - *taking into account socio-economic benefits*
- *Possible future extension of the principle to other public buildings*

(1) Social and socio-economic benefits – what are they?

The sort of benefits we are talking about are:

- (1) providing services to local residents such as cultural, educational, sporting and community facilities to serve a general public function and to benefit the public generally;
- (2) promoting health and well being through cultural, sporting, educational activities and community engagement – providing discounts to encourage use to specific groups for wider social reasons;
- (3) promoting economic activity by providing reasons to come into town;
- (4) getting more tourists into an area and thus generating economic benefits for the area and businesses in it

(2) Social/ socio-economic benefits – key features

The key features of these benefits (fundamental to the later analysis) are:

1. All non-commercial
2. They do not directly financially benefit the person providing the services – the benefits accrue to the public more generally but are paid for by the body providing the services
3. To secure them will often (indeed almost always) involve public subsidy - museums, libraries, theatres, leisure centres by the public body
4. The benefits are thus wide-spread but the burden is borne by the service provider *and thus the building occupier* (the ratepayer)
5. *Stark distinction with normal occupation* – where benefits of occupation accrue to the occupier and ratepayer.

Measuring the value of the benefits – two stages

TWAM makes it clear there are two stages:

- (1) assessing the total socio-economic benefits
- (2) Assessing what the occupier would pay for those benefits.

As to (1):

- a. there are tried and tested methodologies for assessing such benefits;
- b. customarily used by central and local government to assess the value for money of “public good” projects and to judge between them;
- c. there are various models and competing models can be tested in XX (as in TWAM)
- d. but the basic structure of translating socio-economic benefits into financial value is not controversial – so for present purposes assume can accurately measure the overall socio-economic benefits to the community

Measuring the value of the benefits – stage 2

The second stage - working out what the public body occupier would pay in rent to secure those socio-economic benefits for its community - is far more difficult and controversial.

First, it is obviously not possible to assert that the occupier will pay the full value of the wide ranging socio-economic benefits which will accrue to others

Second, it is therefore necessary to find a way to assess what they will pay.

Third, various approaches have been tried and all have so far failed.

To explain this necessary to look at some principles about choice of valuation method and for that to look briefly at *RAMM*. TMKC will be addressing choice of valuation method in more detail later.

RAMM (1)

Essential Facts

1. Exeter CC – small council; limited budget; competing demands;
2. Large LB museum with large collection. ECC had taken it over when charitable trust failed in C19th.
3. Grade II LB – expensive to maintain;
4. Ran at a very large annual deficit
5. Evidence that would not and could not extend subsidy further;
6. had recently had major investment partly funded by ECC but mainly by Heritage Lottery Fund
7. If R&E valuation approach agreed at £nil. If CB, many elements agreed but stand back and look at stage 5 not.

RAMM (2) - Valuation Method – CB as default?

- Familiar Choice: rental (or settlement) evidence; R&E; CB as last resort
- Here no direct rental comparables or reliable settlement evidence
- Not occupied for profit – so VO said could not be R&E which could only apply to hereditaments occupied for profit and therefore had to be CB.
- However LC held that choice of valuation approach should be evidence led and not determined as a matter of principle (215). Real question was what evidential hook was there in the market for use of a particular valuation method

RAMM (3) Rejection of CB because not evidence led Adoption of R&E because reflected working of market

- In the case of museums there was no evidence that market valued such properties on CB basis.
- Therefore, the historic and widespread basic assumption that buildings occupied other than for profit for their social and socio-economic benefits had to be valued on a CB is wrong because that is not how the market values them. CB was therefore only to be used as a last resort if there was no evidence of the market adopting any other valuation approach.
- On the facts here, however, there was market evidence which showed that rents for museums were set by reference to their trading potential (an approach similar to R&E – even if that resulted in £nil) and not by reference to costs of construction.
- Where occupation was burdensome— LB, subsidised operation, little income, high costs, undertaken for public benefits - a £nil rent was customarily agreed in the market.

RAMM (4) – R&E even if result was £nil

- But that led to a £nil rent. And would tend to always lead to a £nil rent for buildings occupied for their socio-economic value and requiring public subsidy.
- How then to reflect the value the occupier places on the socio-economic benefits – **the fundamental question and the fundamental dilemma**
- Council occupies building for the socio-economic benefits but by almost by definition R&E yields £nil.
- And no evidence of enhanced rental bids to reflect socio-economic benefits or non-profit motives. The evidence showed that landlords were willing to let burdensome buildings for £nil and that Councils and charities were not prepared to pay substantive rents to reflect socio-economic benefits and there was no competition for such buildings.

RAMM (5) –reflecting socio-economic value

VO refused to undertake an R&E because would always = £nil. Its use was wrong in principle, VO said, because it failed to reflect socio-economic benefits for which a council would pay rent to secure [220].

LC rejected that - socio-economic value could be reflected in an overbid or a share of receipts approach

That caused a problem because in *RAMM* VO had consistently refused to argue for anything other than a CB (even as a fallback) because it stuck to its “CB was the only permissible methodology” approach. There was thus no evidential basis for the Court to consider an overbid or share of profits approach [162/223]

But the LC in *RAMM* expressly left the door open to the VO to demonstrate that the council would pay a positive rent to secure the socio-economic benefits...

TWAM (1)

That brings us to TWAM. In TWAM (2022) VO sought to fill that gap and to value “socio-economic value” to the council occupiers to avoid the £nil result from an R&E – “assessing their socio economic value meaning their non-financial benefit to the public and their economic value to public authorities” [4].

All the museums were free to enter and ran a significant deficit [9/10] and would yield £nil on the R&E even assuming notional entry fees. Extensions to them had (relatively recently) been part funded by the local councils which was said by VO to show how much the councils valued them.

The buildings were owned and operated purely for socio-economic benefits to the community.

TWAM (2) – The financial value of the socio-econ benefits

Evidence was given as to the financial value of the socio-economic benefits of the museums – contested but capable of showing major overall benefits to the community as a whole.

However, as in *RAMM* [225], there was a distinction between financially quantifiable benefits to the community and the benefits to the actual occupier. Those socio-economic benefits “may hold some value for the occupier”

The question was how to assess that value to the occupier

Various and wide-ranging arguments as to how that value might be assessed were raised – on the fundamental basis that “valuation judgement [could be applied] to assess whether the value of any relevant socio-economic benefit might give rise to a positive rateable value” [41].

TWAM (3) – the fundamental lacune

The VO was thus seeking to *infer* value that the council's would pay – they had no positive market evidence that a provider of facilities for socio-economic benefits would pay a premium over the results of an R&E.

The VO sought to adopt a share of gross receipts approach but this was rejected as there was no evidential base for it [105].

The VO argued for a socio-economic uplift (or overbid) based on the evidence of the financial value of those benefits but:

“there is no methodology available to translate that social value to the public into value to the local authority itself. This is more than a theoretical point – it is fundamental to the rating hypothesis” [109]

The claim that there must be an “overbid” to secure the socio-economic benefits was not based on evidence. And see para 112/114.

Extending the Principle in RAMM and TWAM

So the position now is that for burdensome historic (museum) buildings which rely on subsidy from Council's there is evidence that the R&E is the approach to setting rents in the market and that it will (almost always) yield £nil. There is no evidence to support use of CB and no justification for using it as a last resort. There is no route to translating socio-economic benefits to the community into some sort of uplift to the R&E.

Can this approach be extended to other subsidy supported public facilities provided for socio-economic reasons only? A £multi-billion question?

Yet to be tested but...

Limits of RAMM and Eastbourne/Sports England

In *RAMM*, LC was careful to limit its observations to historic museums and not to imply that its approach had any wider application e.g. for grant funded local authority leisure centres.

The VO in seeking PTA to CA in *RAMM* however claimed that the issue was fundamental to a wide range of public buildings and was worth £billions in RV.

There is case law to cover the following situations:

- (1) where a Council is under a statutory duty to provide specific quantum of buildings to meet needs then CB is appropriate (schools is obvious example. It has to provide enough spaces and so has no choice but to build its own or take equivalent space – hence the CB is appropriate);
- (2) Where a council has recently built a building, the CB is appropriate because the Council evidently felt the costs of construction were value for money.

Challenging those principles seems a step too far. But what about a less extreme case....

Possible Scenarios

A 1960s Leisure Centre/Library/ Community centre or hall/ Adult education facility/ LA theatre: excessively large and grand for current usage. Expensive to maintain. No statutory duty to provide that specific building so no obligation to have it at all. Poor usage because of better facilities elsewhere. Would not be built if was not already there. Kept open for pure socio-economic reasons for the immediate locality. Requiring major subsidy. No realistic prospect of LA being willing or able to provide it if it was not already there. No competition for it. Evidence that Council divests it to wholly owned company for free based on R&E type s.123 exercise and with a guaranteed subsidy.

Why would principle in RAMM not apply to it?

Scenarios (2)

Facility recently provided by lottery based on socio-economic benefits – uneconomic and uncommercial. No competition. No statutory duty. LA bid for it precisely because it could not justify providing it itself but the socio-economic benefits to the community justified the grant. Grant awarded because of those wider socio-economic benefits and precisely because the LA would not/could not fund it itself and because the building would not be of that value to the LA. Those grants have historically been taken into account on the assumption that they represent value to the occupier equating socio-economic benefits to the community as value to the LA occupier

Is that approach sustainable post – RAMM and TWAM? What evidence is there that LA would pay any rent for such buildings? What evidence is there that a LA would pay any rent for such buildings based on costs of construction?

Scenario (3) – non-local authority situations

Question raised in advance by an attendee. Take a situation where a former commercial building is vacant and no demand. *Telereal* would normally provide the answer to that - look at values for that mode or category of occupation of that form of building in the locality.

But what of a specialist class of hereditament - an unusual class of building - no market; no demand; no comparables. And where it is possible to prove no commercially motivated use could be made of it. Intrinsically burdensome building. Landowner would be liable for rates based on that specialist class. In position of LA? Forced subsidy?

All arguments for a site specific £nil valuation on the facts. Not sure the RAMM/TWAM logic impacts that situation.

Looking forward

- Following *RAMM* expectation of wide range of cases covering wide range of public sector buildings occupied for socio-economic purposes.
- So far that has not materialised.
- Partly explained by rates retention circularity and partly explained by many such buildings being transferred to charities and/or arms length companies
- But just walking around any town or city clearly large range of buildings which potentially fall into the *RAMM/TWAM* logic and which to my mind are difficult to distinguish from *RAMM/TWAM logic*.
- Huge value at stake - financial pressure on LAs likely to see this issue arise in far wider range of situations than to date.

Thank you for listening

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