

Important developments in valuation

Plus ça change....

Tim Mould QC

Basic principle – annual letting value



- Rates seeks a standard by which every hereditament in the country can be measured in relation to every other hereditament.
- It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest.
- The selected standard of comparison is annual letting value.

Dawkins v Ash Bros & Heaton Ltd [1969] 2 AC 366, 381.

The statutory hypothesis

- A hypothetical tenancy from year to year.
- Introduced by the Parochial Assessments Act 1836.
- Local Government Finance Act 1988 schedule 6 para 2(1)

The rateable value of a non-domestic hereditament 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.....

The object of the inquiry



...it is in respect of his occupation that the rate is levied, and the standard in the Act is nothing but a means of finding out what the value of that occupation is for the purposes of the assessment.

Port of London Authority v Orsett Union [1920] AC 273, 305

The reality principle

- Although the tenant is imaginary, the conditions in which his rent is determined cannot be imaginary.
- They are the actual conditions affecting the hereditament at the time when the valuation is made.

Poplar Assessment Committee v Roberts [1922] AC 93, 98

...one only excludes the human realities to a limited and necessary extent since it is only the human realities that give any value at all to the hereditament.

Dawkins @ 381

The hereditament



- Orsett Union @ 305

The actual hereditament of which the hypothetical tenancy is to be determined must be the particular hereditament as it stands, with all its privileges, opportunities and disabilities created or imposed either by its natural position or by the artificial conditions of an Act of Parliament.

The hereditament – assumptions



- Immediately before the tenancy begins the hereditament is in a state of reasonable repair (but excluding any repairs which a reasonable landlord would consider uneconomic) .
- All process machinery has been removed and is to be disregarded.
- The hereditament is vacant and to let.
- Matters affecting the physical state or physical enjoyment of the hereditament, and the mode or category of its occupation, are to be assumed to be as they were as at the material day.
- Other LGFA schedule 6 paragraph 2(6)(7) assumptions.

The hypothetical tenancy - assumptions



- The tenancy begins on the prescribed valuation date.
- The tenancy is to be on full repairing and insuring terms.
- The tenancy is to be from year to year, with a reasonable prospect of continuance.
- A tenancy from year to year is to be assumed, even in cases in which such a letting would never in fact occur.
- The actual occupier is properly to be regarded as in the market for the tenancy.

The *rebus* principle – what are the *res*?



- The factors to be taken into account in order to produce equality of rating.

In weighing up the evidence of value, it is the duty of the valuer to take into consideration every intrinsic quality and every intrinsic circumstance which tends to push the rental value either up or down.

Robinson Bros (Brewers) Ltd v Houghton & Chester-le-Street Assessment Committee [1937] 2 KB 445, 469

Accidental and essential characteristics



*...it would be **accidental** to the hereditament that its owner intended to pull it down in the near future. For the hereditament might have had a different owner who would not pull it down. So the actual owner's intentions are thus immaterial since it is the hypothetical owner who is being considered.*

*But when a demolition order is made by a superior power on a hereditament within its jurisdiction different considerations apply. The order becomes an **essential characteristic** of the hereditament, regardless of who may be its owner or what its owner might intend. That particular hereditament has had branded on its walls the words "doomed to demolition" whatever hypothetical landlord may own it.*

Dawkins @ 382

Black v Oliver [1978] QB 870

The duration of the tenancy - Centrica



...the concept of the hypothetical tenancy as a tenancy from year to year but one with an indefinite prospect of continuance, requires the valuer...to consider, in the light of all the facts and circumstances, what probable length of time the hypothetical landlord and the hypothetical tenant would attribute to the prospect of continuance...

...it is a matter of fact for us in the light of all the circumstances to find what degree of prospect of continuance the hypothetical parties to the tenancy from year to year would be likely to contemplate...

Hardman (VO) v British Gas Trading Ltd [2015] UKUT 0053 (LC) at [158], [161].

Centrica – the relevant facts



- Gas fired power station bought for £99.5M shortly before AVD.
- Purchaser anticipated long term and strategic benefits.
- £Ms of annual profit ascribed to PPS.

UT(LC) held that it was perverse in these circumstances to value on the basis that the tenancy might endure for no longer than 2 years – see [158].

The nature of the inquiry



....the objective being the real value of the actual hereditament, the enquiry is primarily economic and not legal; it is only legal insofar as logical relevance is the measure of legal admissibility... - Robinson Bros @ 470.

- There are no statutorily prescribed methods of valuation.
- There is no statutorily prescribed bible of valuation evidence.
- Decisions of the VTE and the UT(LC) are not binding.
- Appropriate method or methods of valuation must be determined in the light of the circumstances.

The correct approach to Lotus & Delta



Lotus & Delta Ltd v Culverwell (VO) [1976] RA 141

These propositions provide guidance on the usefulness of different types of evidence but they should not be regarded as rules to be followed slavishly. It will be necessary to have regard to relevant evidence of all types, if available, but always with a clear focus on the statutory valuation hypothesis.

Lamb (VO) v Go Outdoors Ltd [2015] UKUT 0366 (LC) at [39]

Stand back and look

- Remains the touchstone of valuation for rates.
- British Gas Trading at [163] –
...where a valuer finds that the application of particular method of valuation produces such a result, it would be wise to step back and consider whether or not the result should be tested appropriately by using another method of valuation...
- Go Outdoors at [84]-[107] is a model example.

The Message?



...the body of statute law has shown extraordinary stability...

Williams (VO) v Scottish and Newcastle Retail Ltd [2001] EWCA Civ 185 at [16]

The overwhelming weight of high authority, reviewed by the House of Lords in Dawkins and not challenged since then...

British Gas Trading at [158]

Understand the facts and value what's in front of you!