

THE CHOICE OF VALUATION METHODOLOGY AFTER THE YORK MUSEUMS CASE

Tim Mould QC

Stephen Hughes (VO) v York Museums and Gallery Trust



- [2017] UKUT 0200 (LC)
- Valuation – historic buildings used as museums and galleries – whether to be valued on contractor’s basis or receipts and expenditure basis
- [4] “The main issue in the appeal concerns the method by which historic buildings used as museums and visitor attractions are most appropriately valued for the purpose of rating.”

The appeal hereditaments



- 4 principal hereditaments occupied by York Museums Trust
- York Art Gallery – purpose built Grade 2 listed gallery erected in 1879
- Yorkshire Museum – purpose built C19th museum set in grounds of former medieval St Mary’s Abbey
- Castle Museum – housed in two former prison buildings on site of York Castle
- Heritage Centre – housed in former medieval Grade 1 listed York St Mary’s Church

Occupation of appeal hereditaments



- Castle Museum, Heritage Centre and Art Gallery occupied by Museum Trust under long leases granted by York City Council at £1 per annum on full repairing and insuring terms.
- Yorkshire Museum occupied under a trust scheme with no rent payable but with the Museum Trust responsible for repairs and insurance.

Contentions as to valuation method



- Common ground that no evidential weight to be placed on the actual lettings of the appeal hereditaments at nominal rents [145].
- Very little evidence of lettings of comparable premises [146].
- Little relevant assessment evidence [161].
- Valuation Officer valued on contractor's basis.
- Ratepayer valued principally on receipts and expenditure basis.
- Result was a wide divergence in opinions of rateable value [115]-[117].

Statutory valuation hypothesis



- Schedule 6 to the Local Government Finance Act 1988
- The rent at which the hereditament might reasonably be expected to let from year to year in the its physical and functional state at the material day and in the market at the antecedent valuation date.
- Statutory assumptions
- Tenant's covenants – repair, insurance, maintenance, usual rates and taxes
- A state of reasonable repair

A point of fundamental importance



- Paragraph [112]
- “Ascertainment of the rent at which premises might reasonably be expected to let on the statutory assumptions is a question of fact, not one of law. The selection of the most appropriate technique to be employed in answering the question is a matter of valuation judgment rather than legal precedent.”
- Previous decisions of the Lands Tribunal should be approached on this basis.
- Paragraph [114]
- “...evidence of some surprising practices in the valuation practices in the valuation of historic buildings for rating purposes...”
- Just because it has been done like this, doesn't make it right.....

Receipts and expenditure basis of valuation



- [118]-[128]
- Consider what profit the hypothetical tenant could make out of occupying the premises, in order to find out the rent he would pay for the opportunity to do so.
- The modern method [119]
- Use of actual occupier's accounts [122]-[123]
- No hard and fast rule where the hereditament lends itself to occupation by a tenant to whom it has more than purely pecuniary value [124]-[125]
- The fact that the method suggests a nominal value is not necessarily a reason not to apply it [126]-[127]
- Difficulties of principle – lack of profit motive, isolating relevant receipts [142]

Contractor's basis of valuation

- [129]-[140]
- Assumption – for certain types of property, annual rental value bears a relationship to the capital cost of providing the building from scratch [129]-[130]
- An assumption about the relationship between cost and value, not about the behaviour of the hypothetical parties [130]
- A method of last resort - risk of arbitrary and unsubstantiated adjustments and judgments [131]
- The modern method [132]-[140]
- Difficulties of principle – where the building would never be constructed, where the historic building is “...part of the exhibit...” [143]

Choice of valuation method



- Key point of approach [141]
- UT(LC) declined to approach the issue of the choice of valuation method “...as a matter of principle...”
- UT(LC) preferred to make its choice “...after reviewing the available evidence...”
- It’s a question of fact not law.
- The Tribunal’s assessment of the valuation evidence [144]-[264]
- Castle Museum [219]-[230]
- Yorkshire Museum [231]-[239]
- Heritage Centre [240]-[254]
- York Art Gallery [255]-[264]

The contractor's method rejected



- [184]-[187]
- Focus on the characteristics of the hereditaments
- Historic buildings used as museums and visitor attractions
- No justification for the assumption underlying the contractor's method (i.e. that notional costs of construction bear some consistent relationship to rental value)
- The available evidence suggests contractor's method produces rental valuations for such hereditaments that are clearly too high
- Use of mechanical formulae to adjust building costs to value inherently unreliable
- Monsanto scales should be limited to industrial buildings and enjoy no general credibility for use in respect of other types of property

Summary – choice of valuation method



- Avoid jumping to conclusions based upon previous decisions of the Tribunal
- Choice of method is a question of fact not law
- Aside from the statutory assumptions, valuation principles are part of the facts and not legally fixed
- Where reliable rental evidence is available, it provides the starting point (Lotus and Delta)
- Whatever method you are considering, you should be able to justify it in the light of the facts of the case, not merely because it has been used by others
- Garton v Hunter [1969] 2 QB 37, 44E “All...relevant considerations are admissible”