

Valuation

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Topics to be covered

- R&E method and composites: *Wishart v Hulse (VO)*
- The limits of the contractor's basis: *Cemex v O'Dwyer (VO)*
- Theatres, additional space and ancillary space: *Royal Opera House v VO*
- Quantum allowance and the nature of demand: *Home Office v Jackson (VO)*
- Analysing rents and impugning the List: *GO Outdoors v Lacey (VO)*

R&E valuation, and composites

Wishart v Hulse (VO) [2018] UKUT 224 (LC)

- Concerned R&E valuation of non-domestic elements of a composite hereditament:
 - Owner's bungalow (CT)
 - 4 x self-catering holiday cottages (NNDR)
 - Grazing land (exempt)

R&E valuation, and composites

- Upper Tribunal gave general guidance on approach to composites:
 - Statutory focus is on identifying value of the hereditament which is reasonably attributable to the non-domestic part
 - Hypothetical letting is of the whole hereditament, including the domestic and exempt parts
 - Though the domestic and exempt parts' values are not shown in the Rating List, their presence in the hereditament may impact on the NNDR valuation (e.g. holiday cottage guests having access to livestock)

R&E valuation

- Fair maintainable trade:
 - Turnover for R&E purposes based on FMT, not (necessarily) on the actual occupier's turnover
 - In principle, FMT will be based on actual occupiers' turnover – adjustment only warranted where actual occupier performs significantly differently to the norm, as demonstrated by persuasive evidence
 - i.e. a high hurdle

R&E valuation, and composites

- But ...
 - On the facts, actual occupier took steps to promote his business which resulted in much better turnover than the reasonable occupier would have achieved:
 - National advertising
 - Deployment of high-level business qualifications
 - Lots of pressure placed on letting agency plus last-minute bookings
 - Unusually high level of on-site personal service
 - Required a reduction in actual turnover to arrive at FMT

R&E valuation

- Working expenses:
 - Need, in R&E valuation, to “adjust out” elements which reflect actual occupier’s capital growth motivations
 - “labour of love” elements, and business risk, must therefore be reflected.
Two ways:
 - As an expense of the business; or
 - As an unequal split of the divisible balance

The limits of the contractor's basis

Cemex UK Operations Ltd v O'Dwyer (VO) [2019] UKUT 106 (LC)

- Concerned hereditament with three elements:
 - Chalk quarry
 - Cement works
 - Conveyor
- Only viable means of getting chalk out of the Quarry, and only viable means of getting chalk into the Works, is via the Conveyor

The limits of the contractor's basis

- Issue – should the cost of the Conveyor be included in the CB valuation?
- Cemex argued:
 - Without Conveyor, both Quarry and Works are valueless
 - Value of Conveyor thus reflected in the “release” of positive values for Quarry and Works
 - To include its cost would be double counting
 - The longer the Conveyor, the higher the RV, but the lower the market value: results in inversion of cost-value relationship on which CB depends

The limits of the contractor's basis

- Upper Tribunal held:
 - Facts revealed a “striking paradox”, which shows the CB to be a “blunt instrument”
 - Inconceivable the hypothetical tenant would not increase its bid to reflect the Conveyor's presence, given the comparative cost of road transport
 - If a valuation method reveals a paradox, valuers should consider an alternative method, rather than “pushing the CB to the point of destruction”

The limits of the contractor's basis

- Possible alternatives:
 - Value Conveyor and Quarry together, so that Conveyor elements reflected in the royalty rate for the minerals
 - End allowance, similar to an under-utilisation allowance

Theatre valuation

Royal Opera House v VO (VTE, Martin Young (VP), 17 December 2018)

- Common ground ROH, as a theatre, to be valued on a per-seat basis:
 - Ancillary space (i.e. space essential to theatre productions) incorporated in the per-seat value
 - Additional space (i.e. space not required for productions) valued separately on a ITMS basis

Theatre valuation

- Held:
 - ROH value per seat should be higher than for comparable theatres, on the basis of the extremely high production standards capable of being delivered (and actually delivered) at the ROH. Thus ROH at £270 per seat, whereas comps at £215
 - But ... much more space required to deliver performances of that standard. VO had treated as additional space areas which were essential to deliver the kind of performances capable of justifying £270 per seat

Quantum allowances

Home Office v Jackson (VO)

- VO quantum scale for Westminster = 17%
- Home Office sought 25%

Quantum allowances

Held:

- Starting point must be the statute, not previous decisions or VO's quantum scale
- Comparables of limited assistance, but did show, for very large buildings, individually negotiated quantum allowances higher than the VO scale
- Hypothetical tenant for hereditament likely to be HMG, or a company with an equivalent (extremely high) covenant strength
- Hypothetical landlord aware it was providing the size of space the hypothetical tenant required, in the right location.
- Result = 20% quantum allowance

Analysing rents and impugning the List

GO Outdoors v Lacey (VO) [2019] UKUT 51 (LC)

Points of principle:

- Unrealistic to analyse a rent with the benefit of hindsight – so if lease negotiated on basis of 3 month fit-out and 18 months rent-free, can't increase rent-free if fit-out only takes 2 months.
- Little need to adjust for non-rateable elements in the lease: analysis is of a market transaction, and tone of the List generally based on unadjusted market rents too

Analysing rents and impugning the List

GO Outdoors v Lacey (VO) [2019] UKUT 51 (LC)

- Tribunal accepted VO's evidence that the List entry for a comparable ("Carpetright") cannot necessarily be considered as correct:

"I accept [the VO's] evidence that the rating assessment of Carpetright was agreed based upon the previous rent of £130,200. I do not consider that she is impugning the rating list in stating that the assessment is, in the light of better evidence, too low."

(para 71)

Ones to watch ...

- Ludgate House Ltd
 - Composites and the scope of the principle of reality
- Clas Ohlson Unit ABCD, Arndale Centre
 - Weight to be assigned to heavily incentivised, but adjustable, rents
 - Evidential value of commercially motivated settlements
- Telereal Trillium
 - Market demand and the rating hypothesis

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