

RATING OF PUBLIC BUILDINGS POST – RAMM



David Forsdick QC (Chair)

Landmark Chambers

Purpose of Webinar

In seeking permission to appeal in RAMM, HMRC/VOA told Court of Appeal potentially put £billions of RV at risk.

The purpose of this seminar is to examine how that may be so:

- to assess the RAMM case and its approach to valuation method for historic museums occupied other than for profit.
- to consider the implications of RAMM for rating of public buildings more generally
- to raise questions as to the correct approach to grant funding

I will start with the issues and legal principles. Colin will then address some of the valuation issues in more detail. We will then both discuss the potential for extension of the principles in RAMM to other sectors.

There will be time for Q&A at the end

Essential Background

1. CB though “last resort” had become standard approach where buildings occupied other than profit and for socio-economic purposes – it or a variant of it used to value huge portion of public buildings in UK.
2. Often throws up very high (and apparently anomalous) results – and as a ceiling tends to pass burden of local taxation to public buildings!
3. Limited challenge because rates included in budget for the museum – and treated as a fixed expense
4. Result the practice of CB as the default approach became embedded and was thought by VO to have hardened into a principle of law

Round 1 – York museums

1. The approach to CB was so embedded that VOA challenged any attempt to depart from it even when rental evidence provided a hook to justify other methods – despite the *Garton v. Hunter* basic approach to consider all evidence.
2. In that case, CH demonstrated that there was some limited rental evidence and that real world rents were not set by reference to the hypothetical costs of construction of a modern alternative (CB) but were fixed by reference to trading potential
3. LC (Martin Rodger QC and Mr McCrea) largely agreed – CB did not have to be used in all cases if there was evidence to support a different approach
4. No appeal – matter settled? Why no appeal? Surprise of LC.

Round 2: RAMM

1. VTE based on *York Museums* imposed an RV of £1.
2. Even though VO had not appealed YM it appealed RAMM – second bite of the cherry
3. Set up expressly as a test case to try to reverse YM and to revert to what it called the orthodoxy of - **not for profit occupation of public buildings occupied for socio-economic reasons= CB as a matter of law**. R&E was not available because it could not reflect socio-economic principles.
4. Heard by Holgate J (President) and Mr Trott
5. As one would expect with that court and a test case worth £bns there was a minute and detailed examination of case law going back to 1886 and up to YM in England and Scotland (and most cases in between – my fault sorry!)

Essential Facts

1. No statutory duty to run the museum – cp schools
2. C19th grand listed building originally funded by charitable donations in centre of city;
3. Given to ECC because could not survive as a charity.
4. Owned by and financially supported by ECC because of SE benefits – very low income, high running costs – large subsidy.
5. Building underwent huge refurbishment in early C21st at huge cost – partly lottery funded but heavy drain on capital resources of ECC.
6. RV set by VO on CB – costs of construction of a modern alternative. Assumed would build an equivalent scale building – that gave rise to a question in the CB as to what the modern equivalent would be and some hard lessons there for people wanting to pursue a modern equivalent which is much smaller than the actual – not covered further here.

Competing Positions: VOA Position

1. Where a property was occupied other than for profit and for socio-economic reasons, the CB had to be applied.
2. There was no scope to use the R&E because it could not reflect the socio-economic benefits and would always result in £1 RV even when of huge value to the public body occupying it.
3. High capital expenditure here reflected how highly valued it was.
4. Grants and affordability could not be taken into account on the facts.
5. RV set out on a standard CB basis only (all eggs in basket - para 40).
6. Because the CB had to be used as a matter of law, no attempt to assess the socio-economic value (224).
7. Further as a result of that strict approach no alternative valuation based on overbid or share of receipts. (note the LC would have been very interested in adopting such an alternative method if it was before it - para 40/142).

Competing Position - ECC

1. There was no such rule of law or rating principle – that CB had to be used
2. On the contrary, choice of method was a matter of evidence (215). Was there an evidential hook (215) for the use of a valuation method. Here there was the limited rental evidence showed that rents were set by reference to trading potential and not costs of construction (217).
3. Further, in order to determine which valuation method to prefer and how to weigh rival methods, a range of factors would influence the negotiations and how well a particular valuation method fits or sits with those factors would impact the weight to be attached to that method.
4. Those factors included M/C of occupation, HT; supply of premises; circumstances in which RP came to occupy; basis of occupation (for profit or SE); responsibilities of ownership; need for subsidy, affordability of rent (43).
5. All those factors here pointed strongly against CB and to R&E.
6. Here ECC was the only possible bidder for the only museum in the City, its ability to pay was fundamental (69 – 71), huge and onerous responsibilities of occupation, could not afford the existing subsidy, had other responsibilities and could not be expected to spend even more of its money on renting RAMM (71)

Conclusions of Law

1. ECC won on every point on this test case – second bite of cherry has backfired on VOA.
2. Every circumstance and all evidence relevant to the rating hypothesis must be taken into account (para 160)
3. Selection of valuation method is a matter of valuation judgment not law (para 160);
4. Valuation methods are just a tool or guide for assessing RV under RH and are not a substituted for that test (para 160)
5. As a result there is not general legal principle which requires CB or R&E (or a variant of it) - para 162.
6. It is all a matter of evidence. All the factors listed by ECC were relevant. They also went to the weight to be attached to each valuation method.
7. Here that pointed to R&E not CB.
8. SE value did not accrue to the ECC but to the City as a whole – it was wrong in principle to treat all benefits as a price ECC would pay (224 – 225/274) **very important point for all cases – it is not axiomatic that because a public body occupies for SE reasons, it will pay a rent based on those SE benefits to the wider community.**
9. The SE benefits which accrued to ECC did not outweigh the existing huge costs – hence £1 was no surprise (274) even before one assessed affordability.

Appeal Refused and the Effects

Attempt to Appeal

PTA was pursued on the points of legal principle and was robustly refused. The debate is, for now, over (so far as historic museums are concerned).

The Effects

1. The LC was careful to treat the case as a “highly unusual” one and did not purport to deal with a much wider range of public buildings. Specifically addressed new purpose built (141)
2. However, the VO said (in my view correctly) that the LC decision put £billions of RV potentially at risk – how so?
 - a. CB not a given and even when it was, was a ceiling and at S5 affordability and “would not” pay a high rent relevant (145);
 - b. ability to pay given a new lease of life for public authorities;
 - c. query how this sits with grant funded buildings – council would not/could not pay for the building itself and SE benefits accrued elsewhere – why not big adjustment at S5 despite *Allen*.
 - d. where there is evidence (even if limited) as rents of similar hereditaments, how those rents are set and their levels will help inform the valuation method and the RV.

Other Sectors

1. Clear potential for the principles to be applied much more widely.
2. Just walk round any town with RAMM principles in mind....
3. Here no statutory duty to occupy but even for schools if rental evidence – FAS/Free Schools?
4. Arts centres
5. Leisure Centres – rental evidence, grant funded
6. Town Halls
7. Community centres/day care centres/ premises for clubs and societies/scouts/CCF

I do not attempt to predict how RAMM will evolve but given the breadth of the principles set out and in particular CB not required, CB a ceiling and issues on affordability and grant clear significant scope for major changes on the back of it. Whether that makes cases worthwhile will require careful evaluation (given rate retention percentage).

Thank you for listening

© Copyright Landmark Chambers 2020

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
🌐 Landmark Chambers