

Case Name: *Stephen G Hughes (VO) v Exeter City Council* [2020] UKUT 0007 (LC) (8 January 2020)

Topic: Valuation – method of valuation of museum premises located in historic building

Full case: [click here](#)

Summary: The Royal Albert Memorial Museum and Art Gallery in Exeter is housed in a Grade II listed building, is not operated for profit and is expensive to maintain. It appeared in the 2010 list at an RV of £510,000 following completion of a major refurbishment project, later reduced to £445,000. In the absence of valid rental comparables, the contractor's basis of valuation (adopting a modern substitute) would have given a much higher RV (in the VO's opinion). By contrast, use of the receipts and expenditure method would have produced an RV of £1. After considering relevant case law and applying this to the facts, the Upper Tribunal determined that the receipts and expenditure method was the correct approach and confirmed the VTE's reduction of the RV to £1 (with effect from 1 April 2015).

Commentary: The underlying proposal in this case was triggered by the York Museums decision in 2017, in which the Tribunal had determined the RV of the Yorkshire Museum in the 2010 list at £1. The contractor's basis of valuation was held not to be an appropriate valuation method and the VO did not appeal that decision.

Exeter had been successful in the VTE at reducing the RV of its museum and art gallery to £1, where the tribunal stated that application of the reality principle would not produce a positive rent for the premises on the open market. The panel's conclusion was that although the museum may provide some socio-economic benefit to the area, this was not shown to be sufficient to offset the financial burden which would rest on the hypothetical tenant occupying the property as a museum. An associated café was agreed at an RV of £14,750 and was not part of the appeal.

The parties had reached agreement on a number of matters, including the lack of valid rental comparables, that the R&E valuation method would produce an RV of £1, the adoption of a modern substitute in a contractor's basis valuation, the unit cost of a modern equivalent at £3,450 per m² and the area of the subject hereditament at 5,281.44 m². In anticipation of the Tribunal possibly determining that the receipts and expenditure method was not applicable (by reason of the business not being operated for profit), the VO argued for a CB valuation of £690,000 (but capped at £445,000 under regulations applying to the 2010 list), whereas Exeter's CB valuation was £430,000.

In a fully-reasoned decision, the Tribunal took the opportunity to review the relevant case law. Details are set out in paragraphs 16 to 36 and 75 to 159 of the decision. The Tribunal emphasised that the reality principle rests on the fundamental objective of the rating hypothesis, namely to establish the real value of the occupation to a hypothetical tenant. The starting point in the valuation exercise must always be to apply the principles referred to in *Robinson Brothers (Brewers) Limited v Houghton and Chester le Street Assessment Committee* [1937] 2KB 445 (a House of Lords decision). The key principle applicable in this case is that where the occupation of a property could not achieve a pecuniary profit (e.g. where a public authority occupies in performance of a statutory duty) that still represents a

real demand for which a real value would be payable, but not an arbitrary sum higher or lower than the real value. The determination of such real value is a question of fact, not of law – there is no legal imperative as to the valuation method by which the value is to be ascertained.

The main issue in this case was clearly the method of valuation, in the context that it had been agreed between the parties that the council was the only potential bidder for the hypothetical tenancy. The VO chose to rely solely on a CB valuation, but could have instead used an R&E valuation to take into account the nature of the business (e.g. by reference to a percentage of gross receipts). The council's expert, on the other hand, sought to rely solely on an R&E valuation.

The Tribunal carefully considered the appropriate factors (see para 43ff of the decision) which influence negotiations for the hypothetical letting. In this case, a key factor was whether the hereditament could be occupied to make a profit – it was accepted by the VO that the museum was never occupied for profit, but instead it was occupied solely for socio-economic and cultural reasons. This led the VO to argue that the R&E method is wholly inappropriate and the CB method must therefore apply. A further factor (agreed between the parties) was that revenue to maintain the museum could only come from the council's own resources. As the council was the only potential bidder, the decision in *Plymouth Argyle* confirmed that no competition existed which would cause the council to raise its (hypothetical) bid and that the ability to pay the hypothetical rent became a valid consideration. The council had limited resources and numerous competing demands on those resources.

A key plank of the VO's argument had been that the R&E valuation method is appropriate only where a hereditament is occupied with a view to making profits and should not be used where the motive for occupation is to obtain or promote social, economic or cultural benefits for the public. As part of a detailed review of the relevant case law (including Scots case law), the Tribunal stated (in para 100) that "there can be no objection in principle to the use of valuation judgment... where the outcome of the R&E method is approximately nil or a modest deficit or even plainly a negative value". The conclusion reached by the Tribunal was that York Museums had been correctly decided and that the VO's argument (as to the exclusion of the R&E method in a not-for-profit scenario) was not supported by any legal or valuation principle.

For completeness, the Tribunal considered whether the indirect rental comparables referred to by the VO were of assistance in the valuation exercise and concluded that they were not. It then considered the financial information provided by the council and commented that it did not see how an RV of more than £1 could be justified. The Tribunal analysed the parties' respective CB valuations within each of the 5 stages and concluded that the "stand back and look" requirement at Stage 5 led to the core question as to whether the tenant's responsibilities were so great that occupation of the museum was in fact burdensome and therefore would not command any positive rent – in the Tribunal's judgment the evidence pointed unequivocally towards such a conclusion.

The Tribunal therefore dismissed the appeal and upheld the VTE's decision that the RV of the museum should be £1 with effect from 1 April 2015 (the decision in fact refers to 15 April

2015 but this is understood to be a slip that will be corrected when the VO alters the list). It remains to be seen if this decision will be appealed but it is of course consistent with York Museums and given the Tribunal's statement as to the factual nature of the decision as to the valuation method and its fully-reasoned decision permission for an appeal is unlikely to be granted by the Tribunal (but the Court of Appeal may disagree and allow an appeal).

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