THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rates; method of valuation for a farm attraction; percentage of turnover; receipts and expenditure method; contractor's basis; hypothetical tenancy; statutory assumptions; repairing assumptions; partners' pay; divisible balance; the stand back stage; appeal dismissed.*

RE: Apple Jacks Adventure Park, Stretton, Warrington WA4 4NW

APPEAL NUMBER: CHG100119504

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| BETWEEN: | Mr and Mrs J Fryer<br>and<br>Mr R Roberts<br>(Valuation Officer) | Appellants<br><br>Respondent |

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| PANEL: | Mr R P Cammidge (Chairman)<br>Mr C J Lester |
| CLERK: | Mr D Mulgrew |
| HEARING: | Remote hearing No.1 on 15 January 2021 |
| APPEARANCES: | Mr M Wasilewski, advocate for the appellants, assisted by Mr R New of Mills & Reeve LLP<br>Mr H Flanagan of Francis Taylor Building, Counsel for the respondent<br>Mr W Cox, respondent's expert witness |

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## Summary of decision

1. Appeal dismissed. No change was made to the rateable value (RV).

## Introduction

2. This appeal has been brought in respect of Apple Jacks Adventure Park, Stretton, Warrington (the "appeal property") which was entered in the 2017

rating list as “farm attraction and premises (part exempt)” at RV £35,000, effective from 1 April 2017.

3. The appellants had made a proposal to the Valuation Officer (VO) on the grounds that the entry shown in the rating list on 1 April 2017 was wrong and that it should be reduced to rateable value £5,000. However, no alteration was made to the rating list by the VO.

4. In accordance with regulations[1], an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

5. The President of the VTE is required to make sure arrangements are in place and make such statements and directions so as to ensure that business before the Tribunal is conducted in accordance with the relevant legislation[2]. The VTE may determine the form of any hearing.

6. Therefore, in pursuance of the relevant regulation[3] the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this.

7. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

**Issues**

8. The issue in dispute concerned the rateable value of the appeal property and the underlying valuation methodology to support the same.

9. The appellants’ representative was critical of the VO’s assessment based on receipts. It was argued that as there were very few arm’s length rents, a valuation should be carried out using the receipts and expenditure (R & E) method, or possibly based on the contractor’s method of valuation. The appellants’ representative had carried out valuations using both methods and considered they should be looked at in unison. Standing back, he believed the RV should be reduced to £5,000 with effect from 1 April 2017.

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[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.
[2] Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers).
[3] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

10. The VO had also had regard to valuations using the R & E method, carrying out five separate valuations in respect of the appeal property. The VO argued it was necessary to stand back and compare the resulting valuation(s) with other farm attraction RVs, the percentage of fair maintainable trade (FMT) used on other attractions, an analysis of costs on other attractions and the limited rental evidence. The VO had also had regard to the Valuation Tribunal decision in respect of the appeal property's 2010 rating list entry. The VO believed the appeal should be dismissed because he was of the view the existing assessment at RV £35,000 was not excessive.

**Evidence and submissions**

11. The appeal to this Tribunal included correspondence between both parties and extensive evidence bundles which they had exchanged. In particular:

(a) A challenge proposal with detailed report containing case argument, analysis and valuations. It also included:
- The Royal Institution of Chartered Surveyors (RICS) guidance "The Contractor's Basis of Valuation for Rating Purposes, 2nd Edition, August 2017".
- Rating Forum guidance "The Receipts and Expenditure Method of Valuation for Non-Domestic Rating – A Guidance Note", July 1997.
- Rating valuation for Apple Jacks, 3 September 2018.
- Accounts for Apple Jacks.
- Related correspondence
- Schedule of assets.
- The Valuation Tribunal decision in respect of Thurleigh Fruit Farm, Cross End, Thurleigh, Bedford: *Wasilewski v Sykes (VO)* [VTE, 023530706125/221N10, 21 January 2019].

(b) The challenge decision from the VO with detailed case argument, analysis and valuations. It also included:
- The VO's initial response to the challenge.
- Rebuttal of the appellants' challenge.
- Settled comparable assessments.
- Analysis of farm attraction expenses.
- A schedule of other farm attractions Mr Cox had valued.
- The Valuation Tribunal's decision in respect of the 2010 rating list entry for the appeal property: *Fryer v Roberts (VO)* [VTE, 065518218223/134N10, 30 April 2018].
- Farm park comparable facilities table.
- Farm park comparable layout maps.
- Photographs of the appeal property.
- Rental evidence.

(c) Various other documentation and correspondence exchanged by the parties, which among other things, included:
- A letter from Mr T Robinson, Chairman of the National Farm Attractions Network, 21 August 2020.

- Table of Farm Park RVs
- Graph showing percentage of FMT and RV.
- Judicial oversight report.
- Letters from other farm attraction owners.
- "Misvaluation of farm diversifications" report, by Mr Wasilewski, for a business rates review.
- National schemes report, also by Mr Wasilewski.

12. On 15 December 2020, Mr Wasilewski made an application to the Tribunal to admit new evidence. The respondent objected to all of the additional evidence. The Tribunal gave a decision on 6 January 2021 allowing the appellants to introduce the National Farm Attractions Network's October 2020 submission to a Government review into rating. This was because it was not available at the date the appeal had been made. However, the Tribunal decided not to allow:

    (a) Mr Wasilewski's submission to the review on the valuation of public houses because it was a different type of property and he had not persuaded the Tribunal of its relevance.

    (b) An expert witness statement because it should have been provided earlier in the challenge stage.

    (c) A table showing outstanding/unsettled appeals on other similar properties was not considered necessary to the appellants' case.

13. At the hearing, Mr Wasilewski also relied on a PowerPoint presentation and Mr Flanagan provided a skeleton argument.

14. Mr Wasilewski provided the advocacy for the appellants, supported by Mr New. Mr Wasilewski confirmed he was not under a conditional fee arrangement or other success related fee.

15. Mr Flanagan provided the advocacy for the respondent. Mr Cox, Valuation Office Agency (VOA), appeared as an expert witness. Mr Cox had provided a declaration that also confirmed he was not under a conditional fee arrangement or other success related fee.

16. Both Mr Wasilewski and Mr Cox were very experienced in their respective fields.

17. Mr Wasilewski acquired a farm attraction in 2003 so he had considerable knowledge of this industry. Prior to that he was a city investment analyst; his strength was as an investigative analyst working for the UK's largest single pension fund. This involved accurately reconstructing the true performance from company accounts. He helped reshape the UK accounting framework, led by Professor Tweedie, in the early 1990s.

18. Mr Cox is a chartered surveyor. Since qualifying in 1991, he had worked exclusively in rating; 20 years in private practice and the last 10 years with the

VOA, as Head of the Leisure and Licence Property Team. He explained he had valued a lot of the iconic tourist attractions in the country and many farm attractions. Some of the cases had resulted in his attendance at the Upper Tribunal. He was also the RICS lead examiner for the Rating Diploma's R & E module.

19. The panel wished to thank both parties for the comprehensive research that was provided in their respective submissions. It was clear to the panel that both parties had carried out extensive research and effort which was reflected in the bundles and presentations to support their respective cases.

20. Owing to the lack of rental evidence, Mr Wasilewski had undertaken two R & E valuations. They produced negative results: -£35,859 and -£37. His contractor's valuations were at £6,391 and £10,095, but he explained that the statutory decapitalisation rate was presumed to earn a return even if the tenant's investment was mistaken. Standing back and considering his various valuations, he believed a valuation at RV £5,000 was appropriate.

21. Mr Wasilewski argued that his analysis showed that the proposed reduction was reasonable because R & E, and contractor's valuations consistently showed that RVs in this sector were three times too high. He was also critical of incorrect or misleading data relied on by the VOA, and reverse-engineered calculations.

22. Mr Cox had carried out a structured approach to the valuation exercise which had been inspired by the six propositions in *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141. Using the accounts as a starting point, he argued that because they required significant adjustment it was necessary to consider other evidence. He did not think the existing RV to be excessive or unreasonable. In addition to his five R & E valuations he had also relied on the following:

    - Limited rental evidence that was available from Park Hall Farm, Oswestry and Bocketts Farm, Leatherhead.
    - The 2010 rating list decision in respect of the appeal property[4]. The panel in that appeal had determined that an RV of £23,700 was not excessive.
    - The exercise of analysing 22 other farm attraction expenses and comparing them as a percentage of FMT.
    - Mr Cox's own professional experience as a valuer.
    - Standing back and measuring the estimate of value by comparing it with other farm attractions whose RVs had been assessed by the shortened method.

[4] *Fryer v Roberts (VO)* [VTE, 065518218223/134N10, 30 April 2018]

## Decision and reasons

### *The appeal property*

23. Apple Jacks Adventure Park was a partnership between Mr and Mrs Fryer. They had opened nearly 15 years ago. It came about when the demand for their sugar beet ended following the closure of a nearby plant. Mr Wasilewski emphasised that the decision to open the attraction was not driven by purely rational economic forces and viability; it had been partially forced on them. In his view it was particularly risky because of their lack of knowledge about farm park returns and importantly, the critical drivers of success. Although the diversification had been successful, financial returns were limited.

24. It was a seasonal site, which opened less than 120 days per year. In October, the attraction further diversified into the "Spooky World" attraction. The attraction was closed during late autumn and winter. The entrance fee for two people at 1 April 2015 was £12.50.

25. The appeal property was located near to junction 10 of the M56 motorway, approximately two miles south of Warrington.

26. Mr Wasilewski stated that planning consent was restricted to farm diversification and not the more common change of use. He argued that competition for the site was therefore limited in scope. Mr Cox contended that the planning restriction was not relevant arguing that properties were assessed *rebus sic stantibus* (as things stand) in their mode or category of use[5].

27. The premises comprised a number of facilities such as maize maze, quad karts, pig racing, zip wires, play area, corn cannon, crazy golf, eliminator and jumping pillow. The attraction was primarily open air and therefore weather dependent.

28. Mr Wasilewski argued that the hypothetical tenant was merely renting the land and that the buildings on site were mostly temporary. However, Mr Cox stated that any buildings there were deemed to form part of the hereditament. The panel noted that Mr Cox's argument was supported by *LCC v Wilkins (VO)* [1957] AC 363 where huts occupied by contractors were rateable.

29. The site had no mains electricity, water, or sewage disposal. As a result of this, the operating costs were higher. Both parties had regard to this in their valuation approaches.

[5] *Williams (VO) v Scottish and Newcastle and Allied Domecq* [2001] RA 41 and *Wigan Football Club Ltd v Cox (VO)* [2019] UKUT 0389 (LC).

***The rating hypothesis***

30. The starting point for any valuation was to consider what it was that was being assessed. In this case, it was a farm attraction and the objective was to find a "rateable value" as defined in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) 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 on these three assumptions –
>
> (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
>
> (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
>
> (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above."

31. The physical characteristics of the property, and its surroundings[6], were reflected in the valuation on the day the rating list was compiled; in this case the material day was 1 April 2017.

32. Mr Flanagan reminded the panel of some of the key principles in rating, which have been paraphrased here as follows:

- Value was to be ascertained by reference to the rent which a hypothetical tenant would pay following negotiations with a hypothetical landlord.[7]
- The valuation took into account the "higgling of the market".[8]
- The purpose of rating valuations was to apply a common yardstick to all properties.[9]

[6] See paragraph 2(5) and (7) of Schedule 6 to the Local Government Finance Act 1988.
[7] *London CC v Erith and West Ham (Church Wardens)* [1893] AC 562
[8] *R v Paddington (VO) ex parte Peachey Property Corporation Ltd* [1966] 1 QB 380
[9] *Dawkins (VO) v Ash Brothers and Heaton Ltd* [1969] 2 AC 366

- When an error had been identified, “correctness must not be sacrificed to uniformity”.[10]

- There were examples[11] of nil valuations in rating, but great care should be taken to examine the facts that led to those conclusions.

33. The panel appreciated his observations of rating law and understood that rating was not the everyday world because a rateable value reflected a hypothetical tenancy based on several statutory assumptions. The rental value arrived at had to represent the figure at which the hypothetical landlord and tenant would agree to, as a result of bargaining for that property in the light of the available evidence at that time.

34. Ultimately, the task for the panel in this appeal was to determine whether the rateable value of £35,000 was correct or whether it should be reduced to £5,000.

35. Analysing the statutory assumptions concerning rateable value, the panel had regard to the following:

    (a) The first assumption, the day by reference to which the determination was to be made, was in effect a day specified by the Secretary of State by order under paragraph 2(3)(b) of Schedule 6 to the 1988 Act. In each case the Secretary of State had specified a day two years before the day on which a list came into force. This enabled the substantial work involved in preparing new rating lists to be undertaken based on known, rather than anticipated, market values. In respect of all entries in the 2017 rating list, the rental levels were to be taken at 1 April 2015.[12] The common date was used to ensure property was treated in a consistent way, particularly as rental values fluctuated over time.

    (b) The second assumption required the property to be assumed to be in a state of reasonable repair at the outset of the hypothetical tenancy; the only exception being a case where a reasonable landlord would consider repair to be uneconomic. This was something that the respondent’s representative emphasised during the hearing when he challenged the figure used for repairs in the R & E valuation submitted by the appellants’ representative.

    (c) The third assumption was that the tenant under the hypothetical tenancy was responsible, during the currency of the tenancy, for any rates and taxes applicable to a tenant, and for ongoing repairs and insurance.

[10] *Ladies' Hosiery and Underwear v West Middlesex Assessment Committee* [1932] 2 KB 679
[11] *National Trust v Hoare (VO)* (1999) 77 P&CR 366
[12] Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841)

***The shortened method v receipts and expenditure valuations***

36. There was no direct rental evidence available in respect of the appeal property, so it was therefore necessary to consider other evidence and to weight it accordingly. As mentioned, the rental value arrived at had to represent the figure at which the hypothetical landlord and tenant would come to as a result of bargaining for that property in the light of the available evidence at that time.

37. The existing rateable value of £35,000 had been derived from taking FMT of £500,000 at 7%.

38. The panel noted that the FMT adopted by the VO in the above valuation had been estimated. The actual level of trade was considerably more. In the four years ending 30 November 2012, 2013, 2014 and 2015 it was £637,420, £760,166, £825,464, and £707,577, respectively.

39. In the VO's decision notice, reference was made to the VOA Rating Manual Farm Diversification s.385, paragraph 3.4.3, where it was stated that for the vast majority of premises the percentage range would generally be between 6%, for the lower value properties with high overheads, to 9% of gross receipts for the best. The manual itself had not been admitted as evidence and the panel was unable to give it any further consideration.

40. Mr Wasilewski argued that the current VOA policy of adopting a percentage of receipts had no basis in law, nor as a valuation methodology. He made a valid point that it was difficult to compare farm attractions because every location was different. However, the VO made a reasonable argument that location was reflected in the revenue that the site could be expected to achieve.

41. The Rating Forum referred to the 'shortened' method, where a percentage of gross receipts was taken, at section 7 of its R & E guidance note.[13] The guidance made it clear that it was not a R & E method of valuation. It was a comparative method of valuation that utilised either market transactions or comparable assessments (which may themselves have been derived from a full R & E method of valuation), interpreted or analysed to represent a proportion of gross receipts.

42. The method was based upon the determination of FMT. A percentage of FMT was taken, based on rental evidence where available. The valuer was required to adjust the percentage by adjusting for the type of property, age, location and type of trade.

43. The guidance acknowledged that some rents were determined between parties using this approach. In some markets, such as licensed property, it was stated that this method of fixing rents predominates.

[13] Rating Forum guidance "The Receipts and Expenditure Method of Valuation for Non-Domestic Rating – A Guidance Note", July 1997

44. At paragraph 7.7 the guidance made it clear that where there was not sufficient evidence of rent to arrive at a reliable proportion of gross receipts to determine the rental value, then the full R & E method may need to be employed.

45. Mr Wasilewski rightly stated, in the panel's opinion, that the revenue alone was not the most accurate method because it did not take account of the difference in costs between attractions. He contended that a full R & E valuation was needed. The approach was needed, in particular, to reflect the lack of mains utilities at the appeal property. There were extra costs facing the appellants because of this including:

    - On-site electricity generation from diesel.
    - Removal of sewage (when the attraction was open the appellants had to tank out four loads per day).
    - Bringing in tanks of drinking and non-drinking water.

46. The panel also noted Mr Wasilewski's comments regarding the appeal property's site being prone to waterlogging during certain times of year, which restricted the opening period.

47. Mr Wasilewski's two valuations produced a negative and zero valuation.

48. The disabilities/disadvantages raised by Mr Wasilewski could also have been taken into consideration when the valuer took a percentage of FMT using the shortened method. The panel understood Mr Wasilewski's concern over the percentage range of 6 - 9% which was used by the VO against FMT. Mr Wasilewski accused the VO of having "plucked it out of thin air" and having made "wild variations" for different properties. For example, Mr Wasilewski referred to the RVs in the 2010 and 2017 rating list in respect of his own property, Thurleigh Farm Centre, which equated to 2.4% of FMT.

49. The panel also noted that the Court of Appeal in *National Trust v Hoare* [1998] RA 391 had been critical of the VO's use of a percentage of receipts, at least in the context of that hereditament.

50. While the panel accepted that the valuation of a farm attraction hereditament was problematic without direct rental evidence, there was some, albeit limited, turnover rental evidence. This rental evidence contradicted Mr Wasilewski's argument that there was no relationship between receipts and rent. The rent in respect of Bocketts Farm, Leatherhead had been agreed at 10% of actual gate receipts. This demonstrated to the panel that it was possible to have a valuation based on a simple and straightforward percentage of FMT. However, there was only one rent shown on this basis, and given the scarcity of rental evidence, it was impossible to conclude whether 10% would be reasonable to apply to other properties in this sector.

51. Mr Cox also referred to 12 rating judgments, many of which were by the Upper Tribunal (or Lands Tribunal), which he said supported the VO approach of adopting a percentage of gross receipts as an accepted method of

valuation. However, Mr Wasilewski provided some further information on some of those cases to show that this valuation approach had only been accepted in the absence of full accounts or because agreed schemes had been used.

52. The panel also noted that the appellants' evidence included some statements from professionals who were critical of the shortened approach.

53. Fortunately, the parties appeared to be in broad agreement that it was necessary to consider a R & E valuation. They had had regard to the Rating Forum R & E guidance, which had been published by RICS in conjunction with other professional organisations, including the VOA.

54. The panel carefully considered the R & E calculations provided by both parties, on a line by line basis. Unfortunately, the panel's task was not helped by the substantial differences in figures used by the parties. They were not in agreement on any of the income and expenditure items within their respective valuation assessments.

55. Mr Wasilewski had adopted the actual accounts for the year ended 30 November 2014, which he said gave the most conservative approach possible based on three years of accounts he had considered. The VO had looked at that year of accounts and the preceding and following years; he had taken amounts both higher and lower than the appellants.

56. The panel noted that there were two crucial and fundamental differences between the parties.

57. Firstly, the amount for repairs. Mr Wasilewski had used the actual occupier's repair costs of £137,990. This had been higher in that particular accounting year because the appellants had needed to repair leaks in a tunnel attraction. The panel found the hypothetical tenant's repair costs of £137,990 were too high. It did not reflect the second rating assumption, referred to in paragraph 35(b) above, that the hereditament was assumed to be in reasonable repair at the commencement of the hypothetical tenancy. The panel therefore accepted the VO repair costs of £70,000 as it had regard to actual costs in the previous years. This was a reasonable amount and reflected that the hereditament only had one brick built building. The panel also noted from the VO's analysis that the repair costs showed that £70,000 was more in line with the range of repairs on other farm attractions, as shown in the VO's appendix 3. The appellants' repair figure was stated by Mr Cox to be 3.18 times the average of other farm attractions.

58. At the hearing Mr Wasilewski spoke of costs in the business being "lumpy", as they were difficult to predict. It seemed to the panel that the approach adopted by the VO addressed as much as could be reasonably expected on that particular issue and as such the panel was therefore persuaded to adopt £70,000 as put forward by the VO.

59. Secondly, the appellants had deducted partners' pay of £43,308 before the divisible balance stage had been reached. The panel was not convinced this was the correct approach, especially having regard to paragraph 5.29 of the Rating Forum R & E guidance which stated:

> "Salaries
>
> 5.29 Where the expenditure takes the form of directors' remuneration by way of salary, contributions to pension schemes or other reward, it is necessary to consider the nature of that remuneration to ensure that it properly forms an expense and is not an item which should be considered under the tenant's share. Where the occupier is an individual, or where the hypothetical tenant might be expected to carry on the undertaking without advice from directors, it is normal to allow for remuneration solely in the tenant's share." (Emphasis added)

60. The partners' pay reflected what Mr and Mrs Fryer had chosen to pay themselves. The panel considered that it was normal to allow for this within the tenant's share as to do otherwise would be confusing and counter intuitive. In the panel's opinion, the tenant's share encompasses both the remuneration for the day to day hands-on work involved in the attraction and the management of the operation, and the return or inducement for undertaking the business.

61. This had also been the conclusion of another panel which determined the RV for Thurleigh Farm, Bedford.[14] At paragraph 29 of that decision the panel determined that in line with the Upper Tribunal judgment in *Redrose Ltd v Thomas* [2014] UKUT 0311 (LC) that no deduction should be made for directors remuneration.

62. Applying these two adjustments to the appellants' principal valuation resulted in a divisible balance of £137,967. The tenant had first charge on the divisible balance, but even if taking a tenant's share as high as £100,000 (for two people undertaking the business that was open part of the year), it would still have resulted in a RV in excess of £35,000.

63. The VO's preferred R & E valuation resulted in an RV of £39,000. Mr Cox had averaged expenses and benchmarked costs against the range of costs from other farm attractions. In giving evidence on his approach, the panel noted that the VO's valuation was not without problems too, as the accounts did not completely separate the farm and attraction, and the VO had allowed for a sizeable expense for premise costs, but was not clear whether the expense conformed to the statutory hypothesis. Mr Cox was candid in acknowledging that he was not clear what premise costs consisted of and whether it differed from repairs, but had nonetheless allowed an expense of £24,000. He had allowed for 6% on tenant's capital/assets, which was the norm, but his personal view was that this was too high a rate of return, based

[14] *Wasilewski v Sykes (VO)* [VTE, 023530706125/221N10, 21 January 2019]

on actual returns on capital when the rating list had been compiled. The panel also noted Mr Wasilewski's comments that the overall return on interest, profit and risk was not high enough; in his opinion the sector was high risk, especially with outbreaks over the years of E.coli, avian flu, and foot and mouth disease, which could result in site closures.

64. The panel was also advised by Mr Wasilewski that the self-insurance position of the appellant meant that there was no cost of a premium in the accounts, a point acknowledged by Mr Cox. In addition, it was also stated that the lack of insurance resulted in higher than normal legal costs. No evidence was educed as to the levels of insurance premium that would apply for the appeal property and equally no submissions were made as to any likely reduction in legal fees that would ensue if insurance was provided. Accordingly, without such evidence the panel was more persuaded by the respondent's approach.

65. None of the valuations from the parties were perfect. However, having considered the R & E valuations by both parties, the Rating Forum guidance and the statutory assumptions, the evidence demonstrated to the panel that the existing rating list entry of RV £35,000 was not excessive.

***The stand back stage***

66. The stand back stage was repeatedly referred to by both parties in this appeal. They had both stood back in their respective approaches but had placed reliance on different evidence.

67. The panel also had regard to this stage and noted that it was referred to at paragraphs 5.59 and 5.60 of the Rating Forum R & E guidance:

> "Stand back and look
>
> 5.59 Although not strictly a separate stage in the valuation approach, when the valuer has completed a valuation on the R & E method outlined above, it is essential to review each of the elements to ascertain whether they have been correctly applied and produce a credible result.
>
> 5.60 Although it is likely that comparables will not be available in sufficient numbers to enable a valuation to be prepared on the rental/comparative basis – otherwise the R & E method would probably not have been used – the valuer should consider the valuation produced against the background of valuation relating to similar properties and/or businesses. If the valuation does not appear to 'fit the pattern' so far as one is discernible, the valuer should again carry out a thorough review of the valuation adopted."

68. Mr Cox argued that Mr Wasilewski had placed too much reliance on the actual accounts of the actual occupier with little regard to considering the rent to be agreed between the hypothetical landlord and tenant.

69. The VO did consider an array of agreed comparable assessments, which the panel viewed to be in the spirit of "stand back and look". The panel noted that the Rating Forum guidance gave some credence to the VO's approach. Having regard to his schedule of settled appeals for the 2017 rating list, noting they were agreed with professional rating or chartered surveyors, the panel considered it had some evidential value.

70. Mr Wasilewski referred to the VTE decision in respect of his property, Thurleigh Farm Centre. The R & E calculation resulted in a negative valuation. The panel in that case had accepted a valuation of £12,900 on the contractor's basis and used it at the stand back stage before arriving at a judgment of RV £9,000 in the 2010 list.

71. In the present appeal, Mr Wasilewski provided two valuations based on the contractor's basis. The first was on his assessment of the landlord's assets (RV £6,391) and the second used the VO assessment (RV £10,095). He argued it was imperative to use this because of the disconnect between asset values and profits for farm attractions.

72. Mr Wasilewski was of the view that when one stood back, a landlord would be quite happy to rent out the site for £5,000 pa, which was more than could be achieved as arable land. Given the disadvantages (electricity generation, sewage removal, lack of water supply), he stated that the current RV threatened the sustainability of the business. The panel viewed these points through the perspective of the definition of RV and was not convinced that a comparison of rents achievable for arable land was helpful in arriving at the RV for the appeal property.

73. While the panel appreciated the intention of the appellant's approach, it also noted that paragraph 3.6 of the Rating Forum's R & E guidance stated:

> "3.6 It should be noted that the foregoing considerations do not preclude the use of either the rental/comparative method or the contractor's basis in appropriate cases. Indeed, a valuer may need to use more than one method to arrive at a proper value. However, where either the relevant evidence does not exist, or the amount of adjustment needed is so great the reliability of these alternative methods is seriously affected, the R & E method may be the only, rather than the preferred, method of valuation."

74. In Mr Cox's opinion, the contractor's basis was not suitable for profit making hereditaments. The approach was used for specialist properties where there was no market. Referring to paragraph 1.3 of the RICS guidance "The Contractor's Basis of Valuation for Rating Purposes, 2nd Edition, August 2017" he stated that airports, oil refineries, major chemical works, steelworks, shipbuilding yards and public sector buildings were valued on this method. Reference was also made to paragraph 1.2 of the guidance:

> "The method is employed in the case of properties that are not normally let out, which by their nature do not lend themselves to

valuation by comparison with other classes where rental evidence does exist, and which are not of the type where a valuation solely by reference to the accounts of the undertaking would be appropriate."

75. In the case of farm attractions, Mr Cox said there were approximately 400 which enjoyed 45 million visitors. He believed the motivation was profit.

76. The panel noted that the contractor's method of valuation was generally considered as one of last resort; Mr Cox referred to several judgments to demonstrate this[15]. Ultimately, the panel was not persuaded it was a suitable method of valuation (as a particularly artificial construct) for a farm attraction because there was other, more appropriate valuation methodologies which could reflect a wider range of evidence including R & E, turnover, rental evidence and comparable farm attractions.

77. Mr Wasilewski also made the point concerning the limited nature of the building and assets on the site. He argued that because these were limited the valuation should be restrained by the same as it was a tax on property. However, Mr Cox reminded the panel that rates were a tax on occupation.

78. In standing back, Mr Cox reminded the panel, through the use of case law[16], that the valuation exercise was an art, not a science. He stated that the valuer had to have his or her feet on the ground, judging and weighting all the evidence. The panel considered that it was important not to lose sight that the objective was always to consider the rental value at 1 April 2015 based on what a hypothetical landlord and tenant would be likely to negotiate based on all of the facts and evidence at their disposal. The resulting rateable value had to be credible.

79. Although the appeal property had additional costs because of the lack of mains services, it had a steady turnover and was in an established farm attraction location. Customers voted with their feet and to an extent, the quality of the attraction was reflected in the receipts.

80. Mr Wasilewski's valuation represented only 0.6% of FMT. This was well out of line with all the other farm attractions, and well below the rates in respect of the settled appeals. It was also completely out of line with this Tribunal's decision in respect of the 2010 rating list entry, where it had been determined that an RV of £29,000 based on a much lower FMT of £500,000 at 5.8% was not excessive. The FMT that needed to be used for the 2017 rating assessment was substantially higher than in 2010, but the RV of £5,000 being sought by Mr Wasilewski was significantly lower.

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[15] *R v London and North Western Railway Co* [1874]; *Robinson Bros (Brewers) Ltd v Houghton and Chester-Le-Street Assessment Committee* [1937] 2 KB 445; and *Coppin (VO) v East Midlands Airport Joint Committee* [1970] 221 EG 794.

[16] *Platform Home Loans v Oyston Shipways* [1996] and *Lamb (VO) v Go Outdoors Ltd* [2015] UT (LC) RA/66/2013

81. Although the Court of Appeal's decision in *National Trust v Hoare* [1998] RA 391 was referred to as an example of a nil R & E valuation, the hypothetical landlord in that case was motivated to preserve the historic buildings rather than to make a profit. In the present case, the motivation was profit.

82. Overall, the panel found Mr Cox's stand back approach to be more persuasive. He had had regard to the limited rental evidence for comparable properties but had decided to give the two rents little weight because of the lack of knowledge over the extent of any tenant improvements. However, he emphasised that it should not go unnoticed that the rent for Bocketts Farm Park was based on actual turnover and not FMT.

83. Mr Cox had also had regard to settled appeals (5.77% to 8% of FMT) which in his opinion was a useful measure. Other farm attractions in the North West of England were assessed between 5.5% and 7%. In his view they were also relevant, as well as other assessments in the country, but he gave less weight to other assessments (not agreed), particularly those assessments which were being checked, challenged, or appealed. He had taken into account the appeal property was of lower quality than the average. The appeal property's existing RV of £35,000 represented only 4.6% of FMT (£760,000).

84. The Panel was mindful of the argument put forward by Mr Wasilewski that the percentage approach was not a valuation methodology and in his view was not robust or reliable. The panel took the view that with sufficient robustness to the underlying R & E assessments trends will emerge and those percentages can gain currency and as such can be a useful tool in arriving at valuation assessments.

85. Five R & E valuations had been carried out by Mr Cox and he was also relying on his professional experience, particularly from having inspected and valued 13 other farm attraction hereditaments and many more in the leisure category.

86. In conclusion, the panel preferred the VO's approach to the R & E valuation. Mr Cox had adjusted through benchmarking exercises and considered what was a reasonable R & E based on the hypothetical tenancy. He stated that this was accepted practice of valuers and was used, for example, by hotel valuers. The main adjustment when compared to Mr Wasilewski's valuation was for repairs, with the panel being satisfied that Mr Cox's approach was correct, whereas the appellants' representative's approach was not in line with the statutory assumptions that had to be made. Additionally, Mr Cox's stand back approach was more relevant because he had looked at available evidence in the same sector rather than by undertaking a contractor's valuation. The panel was therefore satisfied that the RV of £35,000 was not excessive.

87. Accordingly, the appeal was dismissed.

**Date:** 11 February 2021

**Appeal number:** CHG100119504