
Valuation of leisure property for rating: The receipts and expenditure approach

Received (in revised form): 24 October 2007

Peter K. Brown

is the joint author of publications that include Rating Digest, Encyclopaedia of Local Taxation, Rating Valuation: Principles and Practice, The Contractor's Basis of Valuation, A Study of European Property Taxation, plus a range of electronic non-domestic rating publications. He is a regular speaker at conferences on international property taxation, non-domestic rating and valuation. He is a former David C Lincoln Research Fellow, a member of the Wood Committee on Plant and Machinery and advisor on rating reform in Northern Ireland. He is Professor of Property Taxation at John Moores University.

Abstract

This paper reviews the development and application of the receipts and expenditure approach to the valuation of leisure property for non-domestic rating and highlights some of the key issues in its application. It further reviews some recent Lands Tribunal decisions in the area.

Keywords:

rating, receipts and expenditure, methods of valuation

Journal of Retail and Leisure Property (2008) **7**, 53–67.

doi:10.1057/palgrave.rlp.5100084

INTRODUCTION

This paper seeks to review the receipts and expenditure method of valuation for non-domestic rating purposes and to analyse recent cases relating to this class of property.

DEVELOPMENT OF THE METHOD

The application of the method can be traced back alongside that of the contractor's basis. The receipts and expenditure approach, then termed the 'profits valuation', owed its development to the valuation of statutory undertakings or public utilities. The method was used for the valuation of the productive parts of the undertakings while the contractor's basis was used for the unproductive parts.

The first recorded case to mention a profits valuation was *R. v St Nicholas Gloucester (1783)*.¹

While originating in the realms of public utilities, the method started to be applied to other type of hereditament. The rationale was:

- that there was no rental evidence on which to base the assessment, or that the evidence there was, was unsuitable

Peter K. Brown
School of the Built Environment
Peter Jost Enterprise Centre
Byrom Street, Liverpool L3 3AY, UK
Tel: +44 (0)151 231 2803
Fax: +44 (0)151 231 2815
E-mail: p.k.brown@livjm.ac.uk

- the potential to make a profit was such that it enhanced the rental value of the property and that the hypothetical tenant would have regard to the profits in determining what rent to pay
- there was some element of monopoly value associated with the hereditament that enabled the landlord to charge a higher rent for the property by reason of its profits.

‘Where such direct evidence is not available, for example, if the rents of other premises are shown to be not truly comparable, resort must necessarily be had to indirect evidence from which it is possible to estimate the probable rent which the hypothetical tenant would pay.’²

The name change from ‘profits’ to ‘receipts and expenditure’ finally took place following the publication of the Rating Forum practice note. ‘Profits’, as such, have never been rateable but rather suitably adjusted accounts have been used to ascertain how much a tenant could afford to pay in rent.

The valuation rationale of the approach was encapsulated in more recent times by the Court of Appeal in *National Trust v Hoare VO (1998)*³

‘Sometimes in the case of properties which are rarely if, ever let it is appropriate to arrive at the annual value by a method of valuation known as the profits basis. This is a somewhat confusing name since profits as such are not rated and are not rateable. But the broad theory is that where a property can be used so as to yield profits then the hypothetical tenants would be prepared to pay a rent for the use of that property in order to be able to make those profits and that the level of rent would reflect the level of anticipated profits.’

OVERVIEW OF THE APPROACH

The approach to the valuation follows a fairly consistent and common-sense approach.

	Gross Receipts	£
Less	Working Expenses	£
	Divisible balance	£
Less	Tenant’s Share	£
	Rent	£

For specific types of properties, valuation approaches have often been agreed by the Valuation Office and trade associations or similar organizations/bodies.

CHOICE OF VALUATION METHOD

One of the current problems with the valuation of leisure facilities is the choice of the valuation approach. Where both the contractor’s basis and the receipts and expenditure basis of valuation are adopted, then often the resultant values produced are very different.

Many of the problems arise out of the fact that despite the suggestion by Lord Denning in *Garton v Hunter (1968)*⁴ that all methods of valuation should produce the same answer, in practice, they often do not do so. This is particularly the case in respect of the valuation of leisure and similar facilities occupied by Local Authorities.

Perhaps the more realistic decision from a valuation viewpoint was in *Amalgamated Relays (1950)*,⁵ which recognised the fact that different methods of valuation, especially those on the contractor's basis and on the receipts and expenditure basis, could, and often would, give different answers. The court's pragmatic approach was to accept this fact and say that sometimes you win and sometimes you lose.

THE APPROACH IN DETAIL

Use of accounts as a check for other approaches

In the rating sphere, the reference to accounts is an integral part of the receipts and expenditure method of valuation. Reference to the accounts of the business may, however, also be used for other purposes such as to prove or to disprove a valuation undertaken on a different basis whether rental, contractor's or by comparison.

Disclosure of accounts

Ideally, the method requires the valuer to have access to the accounts of a business, or sufficiently similar information, if the receipts and expenditure approach is to be adopted.

Until relatively recent times, there had been no statutory imposition for a ratepayer to disclose his accounts for the purpose of determining the rating assessment. Whether a ratepayer wished to do so was a matter up to him. Most ratepayers were often more than willing to produce their accounts especially where it supported a point that they were making. Failure to produce accounts did not stop the profits basis being used but resulted in the parties having to make do with estimates. The courts have often been happy to accept such estimates in the absence of full accounts although the weight attached to such estimates may not be as great as if there had been fully audited accounts.

The ability of the Valuation Officer to call for rent returns is of more recent origin. What information can reasonably be requested in a rent return was considered in *Watney Mann Ltd. v Langley VO (1965)*.⁶ Following that decision, the Valuation Office may ask for all the information necessary for him to undertake the valuation.

Period of accounts

Traditionally, it is normal to look at the last three years' accounts so that any trends can be discerned. This does not mean that the accounts should be averaged, although this may be appropriate under some circumstances, but rather the valuation based on the most appropriate set of accounts for the relevant valuation date but reflecting normal fluctuations in income and expenses. It must be emphasised that the use of a number of years accounts is only to ensure that any trends in the accounts can be properly

identified. What has to be ascertained is how the hypothetical tenant would use the accounts to determine his rental bid.

Many cases, however, have considered which years' accounts are admissible and which are not.

It is possible to conclude that all accounts that would be available to the hypothetical tenant in helping him to decide the amount of his rental bid are admissible regard should be had to them. Where additional information or accounts becomes available after the material date, then that information should not be used as a basis for the valuation. Regard may be, however, had to that information to confirm or support a trend that had previously been identified.

The accounts are used as a basis for the hypothetical tenant determining the rental value of the property. The available accounts will only show the current position at the very best and more likely show a historic position. The accounts need to be considered into the future to determine the true potential of the property. The hypothetical tenant will be looking to the future, not the past.

Identification of the hereditament

Properties valued on the receipts and expenditure basis can often be complex in character and can often involve parts of the property being let or licensed to other occupiers. It is therefore important to correctly identify the hereditament that is being valued and what parts, if any, are to be separately assessed. Furthermore, it may be that even where no part of the property is sub-let, it may be located in such a way that consideration must be given as to whether the property comprises a single assessment or whether there should be more than one assessment. The normal Gilbert rules will have to be considered in arriving at the appropriate number of assessments. Following those rules, there will be instances where the case for a single hereditament is made on the grounds of one hereditament being functional essential to another.

Adjustment of accounts to date of valuation

Where accounts are for a period prior to the date of valuation, then they will require to be projected forward to the relevant date. Undertaking such a projection is fraught with danger and can be subject to much debate and speculation between the parties. Wherever possible, the valuation should be based on the appropriate set of accounts.

The simplest form of adjustment that has been accepted by the courts has been the adjustment of receipts based on the experience of the management and the valuers with regard to their knowledge of the nature of the business.

Expenditure has often been adjusted by reference to the retail price index (RPI). While this is a rough and ready approach, in practice, some expenses are fixed, such as insurance and rates, and others are variable and may well increase at rates different from each other depending on the nature of the expense and the business.

Gross receipts

This will comprise all the income from all sources as long as it arises directly from the occupation of the hereditament.

Adjustment of accounts

The use of the accounts is to help inform what the hypothetical tenant would be prepared to pay in rent for the property. It is necessary to ensure that the accounts fully reflect the potential of the property or otherwise. In some cases, the property may not be run at its optimum and some form of adjustment of the accounts may be necessary to more properly reflect its potential to the hypothetical tenant. In these cases, the adjustment of the income, either upwards or downwards, to reflect the true potential of the property can be difficult to prove and such an adjustment may rely heavily on the experience of the parties.

Restriction on making a profit

One of the problems with the use of the method is that the profit-earning capacity of a property may be restricted by statute or some other form of quasi-statutory control. It is generally accepted that where there is a restriction on the ability to make a profit from a particular hereditament, that fact should be reflected in the rating assessment.

In some instances, the maximum level of charges may also be subject to statutory limitation but the occupier may decide to charge a lower amount. While it may be arguable that the hypothetical tenant would charge the maximum permitted, the courts have looked at the business rationale for the level for charge to determine what would be charged by the hypothetical tenant. There may be sound business reasons for a lower charge.

Local authority overbid

The concept of a Local Authority 'overbid' has been raised in a number of cases in the mid-1950s. The argument behind the overbid is that where the local authority is a potential tenant for the property they would, under some circumstances, be prepared to bid a higher amount in rent than would be normally shown by a strict application of the receipts and expenditure approach. Often a strict analysis of the account would reveal the authority is either making a loss or just covering its costs.

The rationale for the overbid is that the local authority would receive something other than the financial benefit of the occupation of the subject hereditament — this is normally considered to be beneficial to its constituents and the town in general. As it was receiving these additional benefits, it would, in theory at least, be prepared to pay a higher rent than that indicated by the analysis of the accounts.

In more recent times, the term 'socio-economic benefits' has been used to indicate that the tenant is receiving additional benefits that should properly be reflected in the value of the property. This has been particularly the case since 1990 when arguments have arisen over the valuation of a range of local authority leisure properties where the motive of occupation and the true benefits received have been in dispute.

Where the receipts and expenditure method is applied to properties occupied by local authorities, then regard should not only be had to the results of the valuation based but also to any additional benefits

such a body may also receive from its occupation. These benefits could include:

- an increase in status of the town by the presence of the subject property — market, leisure facility, etc
- promoting and enhancing the business in the town.

Obviously, the difficulties arise in defining what the benefits actually are and what they are worth. In some instances, it could be argued that where it is difficult to define the benefits and then to quantify them, an alternative form of valuation should be used, normally the contractor's basis. This approach should overcome the problems. In many instances, however, the adoption of such an approach may well create its own problems.

One of the most common arguments with regard to the amount of the overbid is that, accepting the reason for the overbid, the amount of such a bid is challenged. Ratepayers have argued that the amount of such a bid would only be 'one bid above' that which would have been offered by the last competing tenant, usually one would argue only £1 above. The courts have ruled that the amount of such a bid could be up to 50 per cent and have rejected the arguments of the ratepayers.

In recent times, there has been a tendency for the term 'overbid' not to be used and the term 'socio-economic benefits' to be used instead, which reflects the other, non-financial, advantages that the authority obtains from the occupation of its property. In essence, they are the same but perhaps the latter term describes more accurately what is being valued.

In *Cardiff City Council v Clement VO (1996)*,⁷ a profits basis was adopted for the valuation of St David's Hall, Cardiff. In the valuation, an additional amount was included under receipts for the 'socio-economic benefits' that the council received. The Valuation Tribunal approved the addition for these factors but did not accept that a further addition should be made to reflect the local authority overbid presumably on the ground that this would have been double counting of the benefits. This was the first recorded case where an attempt was made to quantify the value of the benefits and adding them to the receipts of the property.

In most cases, other than *Cardiff City Council v Clement VO (1996)*,⁸ the approach adopted has been to add a percentage to the rental value found by the application of the profits basis to arrive at a value reflecting the 'overbid'.

Receipts must be attributable to hereditament

All receipts should be directly attributable to the actual hereditament being valued. Consequently, an income obtained from outside the hereditament will need to be excluded. For example, income from a separately assessed car park would have to be excluded as would rents from separately assessed properties.

It can often be a difficult decision where to draw the line as to receipts directly derived from the hereditament rather than receipts derived from the wider nature of the business. The problem is not one just affecting rating. Similar problems are encountered in defining turnover within

turnover rent schemes and it may be useful to compare how and where the line is drawn in these instances to adopt a similar approach in rating. There is, however, no legal precedent for doing this.

Rents

Rents of properties let out and separately assessed should be excluded, but rents paid under service tenancies should be included.

Bad debts

Bad debts and refunds should be allowed as long as they are reasonable and not abnormal.

VAT

Generally, the figures will exclude VAT unless the business is unregistered.

Levies

Any statutory levy is to be considered as an allowable expense as it would be incurred by any hypothetical tenant taking on the hereditament. In the case of *Rank Organisation Ltd. v Priest VO*,⁹ it was held that a voluntary levy should not be allowed as an expense of the business.

Reserve funds

Money transferred from reserve funds should not be taken as income as these sums will have been taken into account in previous years. Money transferred to reserve funds is not deductible from gross receipts being a form of profit distribution.

Grants and subsidies

Generally, revenue grants and subsidies are taken as a normal receipt unless there are indications to the contrary. Problems arise, however, when the grant is of a 'one-off' nature or when the amount of grant is either variable in amount or cannot be guaranteed to be payable every year. In many instances, the amount of grant, if any, may be dependent upon the amount of funding that the allocating body receives in its own right and that may vary from one year to another — for example, The Arts Council.

In respect of football grounds income from the sale of television rights can vary considerably and may well depend on such factors as the success or otherwise of a particular club or even who the opposition is for any particular game, especially with an overseas opponent.

In deciding the approach to be adopted, one must not lose sight of what is trying to be determined, the rental value of the property. In practical terms, the hypothetical tenant would adopt a view as to the likelihood of receiving a grant or some form of subsidy, the likely amount and whether it would vary from one year to another to arrive at his rental bid.

Capital grants relating to capital projects should be ignored but at times it may be necessary to examine in more detail the exact nature of the grant as it may include both an element of revenue grant as well

as a capital grant for the construction, extension or refurbishment of the property.

Donations

Donations can take the form of a direct financial contribution to support a particular undertaking or it may also be in the form of the supply of voluntary labour or services.

This can give rise to many problems and the issue has been considered by the courts on a number of occasions. Where it can be shown that the hypothetical tenant could normally expect to receive such donations, then their value should be reflected in the gross receipts. A similar position would also apply to the use of voluntary labour.

Sponsorship

One of the issues that has become more relevant in recent times is that of sponsorship, with many sports clubs often receiving considerable sums of money in respect of sponsorship. Income from sponsorship would normally be reflected as part of the income. In some cases, the extent of the sponsorship may be wider than just the hereditament being considered and some adjustments will have to be made.

The main benefit that the sponsor receives is usually some form of advertising. This can take many different forms from naming the ground after the sponsor — The Autoglass Stadium, advertising around the ground, advertising on shirts. In other instances, the sponsor may provide equipment, such as cars — suitably endorsed with their name.

One of the problems with sponsorship is that it can be fairly transitory in nature — only available while the club is doing well and should they not do so well and be relegated, then the level of sponsorship may fall substantially. In many sporting areas, the sponsorship can relate to the sport as a whole or a particular event — Nat West and Benson & Hedges Cricket, cigarette companies and Formula 1 for example. Again, due to a range of different reasons, sponsors may pull out of events for a wide range of reasons, sometimes at very short notice, if they feel that their continued association with an event or sport is having a detrimental impact on their business.

Television rights

Some sports receive considerable sums from being televised and the recent deals to broadcast some of the major sporting events show just how lucrative this is. Generally, the sums of money for these rights are received by the sports organisations and distributed to the clubs in whatever is considered to be an appropriate manner.

As with other forms of grants and sponsorship, it will be necessary to determine whether the hypothetical tenant would be likely to receive such income and its amount on a year-by-year basis. Where the receipt was likely, then an appropriate amount should be reflected in the receipts of the business.

Further valuation problems may arise in cases where the receipts are dependent upon the success of the organisation. In these cases, a change

in fortune may result in the loss of a substantial amount of income both in terms of television rights but also in gate receipts. Consider the case of a football club relegated from one division to another. Is this a material change in circumstances that can be properly reflected in the valuation?

Cost of purchases

- These should relate only to those required for the hereditament and any that relate to uses outside the hereditament such as those for personal use of the proprietor should be excluded.
- Consideration needs to be given to instances where, because the actual operator of the hereditament owns other properties, he can obtain additional discounts.
- Attention needs to be given to the general stock levels associated with the hereditament as it is possible for the operator to manipulate the levels of stock and purchases to show different trading outcomes depending on his own individual requirement. The costs may not be those that would be available to the hypothetical tenant in that the current occupier may be able to obtain discounts that would not be available to the hypothetical tenant. This can be especially true where the actual occupier is a chain that can secure additional discounts for bulk purchasing.
- The costs of purchases may include an amount for items used other than on the property and will need to be adjusted accordingly.

Working expenses

All normal expenses should be allowed but specific regard should be given to the following.

Rent

Rent should not be deducted as this is the item that has to be ascertained.

Head office expenses

At times, these can be a somewhat arbitrary figure and may be used as a means of transferring expenses from one property to another, often for taxation purposes. There is nothing in principle preventing head office expenses from being allowed as an expense.

It is necessary to ascertain the exact nature of the services provided by the head office and to form a view as to whether these are reasonable.

Directors' fees and salaries

Whether director's fees should or should not be allowed as a deduction from working expenses, and where deductible, how much, has long been an issue of debate. The principle would seem to have been established that director's fees and expenses should be allowed as a deduction as long as the payments are directly related to the activity carried on in the hereditament. In many cases, if there had not been directors actively involved in running the business, then additional staff may have had to be employed.

How much should be allowed is really a matter of valuation opinion and the amount should really reflect the amount of work undertaken by the directors concerned. In some cases, the courts have only allowed a proportion of the fees while in other cases the full fees have been allowed. In recent years, it has become a widely accepted practice to allow 50 per cent of the fees on the basis that the director will spend part of his time actively engaged in running the business and the remainder of the time promoting the landlords hereditament.

Sinking fund

Sinking funds can be established for a number of different purposes. The most common type of sinking fund encountered is one where the fund is established for the purpose of setting aside sums of money for the eventual payment of a large item of repair. In such cases, the sinking fund should be allowed as an expense.

The amount of the sinking allowance should be the amount that would be required to be set aside at the relevant date having regard to the then current state of repair of the item or items under consideration.

Payments of a capital nature

Payments of a capital nature are not allowed to be deducted as a working expense as these are inconsistent with the basis of valuation.

Rates

Rates are considered as a deductible expense.

Mortgage payments

Not allowed as not consistent with the rating hypothesis.

Interest payments

Not usually allowed. This will be taken into account when considering the tenant's capital later on in the valuation.

Bank charges and bank interest charges

While normally allowed, care needs to be taken to ensure that these are typical for running the type of business.

Repairs

This item is allowable but will often require adjustment for the periodic nature of many items of repair. This item may raise the somewhat interesting question as to 'what standard of repair is envisaged?' as was highlighted in the Brighton Pier case. Depending on the type of property being considered, it may be appropriate not only to allow for general repairs but also to make provision for a sinking fund for major items of both repair and renewal.

Repairs to tenant's chattels

Generally allowable, but again with the proviso that periodic fluctuations are evened out.

TENANT'S SHARE

The general principle governing the apportioning of tenant's share is that the greater the competition for the property, the higher the rent and the lower the profit margin.

The alternative methods applied in obtaining tenant's share are

- (1) a percentage of tenant's capital
- (2) a percentage of gross receipts
- (3) a percentage of the divisible balance
- (4) a direct estimate of the likely remuneration the tenant will require or accept. In all cases, the sum allowed must be sufficient to induce the tenant to take the tenancy irrespective of the resultant residue for rent and rates.

Percentage of tenant's capital

The approach adopts a straight percentage taken of the tenant's capital. One of the problems associated with the approach is ascertaining:

- the amount of capital that the tenant has invested in the undertaking and
- the percentage rate to be applied.

Railway Assessment Authority v Southern Railway Co. and London County Council v Southern Railway Co. and Others (1936).¹⁰ The chief factors governing the percentage to be applied to the tenant's capital to give the tenant's share were stated by the Lord Chancellor to be:

- (1) That the landlord was to be regarded as a possible tenant.
- (2) The expected continuance of the tenancy, although hypothetically only one from year to year.
- (3) The percentage was not to be influenced by
 - (i) the tenant's capital being of a large amount
 - (ii) the difficulty of finding a tenant of such extensive means
 - (iii) the possible difficulty of the tenant realising his rolling stock or other chattels or
 - (iv) in reinvesting so large an amount of capital on the expiration of his tenancy.
- (4) The degree of tenant's risk reflected by the tendency of receipts to rise or fall as evidenced by those for the individual years over which averaged or the years preceding or following the standard years.
- (5) Recent capital expenditure by the landlord, not reflected in the average net receipts.
- (6) The assumption that the hypothetical tenant would reasonably expect to avail himself of the services of the existing management and staff.
- (7) The rates payable upon the new as opposed to the existing assessment.
- (8) That in addition to the receipt of a reasonable rate of interest on the capital the tenant had invested in the concern, he was to be compensated for the risk involved in the venture, sufficient to induce him to embark upon it. (In this case, 15 per cent had been taken on

the tenant's capital for the tenant's share although the House of Lords stated that there was no evidence to show that that decision had taken the above matters into account.)

The approach is often used for small-scale undertakings. One of the problems associated with the approach is that it does not attempt to break down the return into its constituent figures (risk, return on capital and reward or salary).

Underdown VO v Clacton Pier Co Ltd & Clacton UDC [1958] RVR 460

'The weight of text book authority and decided cases seem to me to indicate that Prima facie the method that one follows in most cases is tenant's capital, except where there would be an insufficiency of capital to give you a reasonable figure.'

The Rating Forum suggests that when adopting this approach, the return to be adopted could be derived from:

- the discount rate used in a DCF for valuation and appraisal purposes. Presumably, this would be the equated yield that would show the total return required by the investor (following on from *Oswestry Borough Council v Plumpton VO (1961)*) rather than the rather deficient, All Risks Yield (ARY).
- Return on capital employed — but note that this can be calculated in a number of different ways and each method has its own advantages and disadvantages.
- Target return on capital employed — see above.
- Weighted average cost of capital. This approach has been adopted for public utilities (China Light and Power and British Telecommunications) and is perhaps too complicated for normal use.
- The RICS Rating Forum guidance note on 'The Receipts and Expenditure Method of Valuation for Non-Domestic Rating', at Paragraph 5.51, states that 'when considering the individual elements of the tenant's share, interest on the tenant's capital may be found by having regard to the yield obtainable from low-risk investments'.

Percentage of gross receipts

Choice of the appropriate percentage is difficult and often subjective. It needs to reflect the amount of capital invested and the nature of the risk associated with the type of venture being undertaken.

Percentage of divisible balance

Probably the most widely used approach, especially for smaller hereditament, and yet tends to lack sophistication and evaluation of the rationale for adoption. There is too often a tendency to adopt a 50 per cent approach without taking a more objective view.

A spot figure

Tends to be an approach of the last resort although may be appropriate depending on the knowledge and skill of the valuer in relation to the property.

Individual breakdown

In this approach, the valuer seeks to reflect the individual items that go to make up the Tenant's Share. The approach has the advantage that individually the items are easier to ascertain and to justify.

Whatever approach is adopted, it is necessary to ensure that there is no double counting especially in those instances where the proprietor's remuneration is taken out in the expenses of the business.

REVIEW — STAND BACK AND LOOK

Just as with the contractor's basis, it is necessary to take a critical look at the resultant figure to ensure that it does properly reflect the true rental value of the hereditament. Often, some form of comparative analysis is possible to check whether the devalued rent is within the expected range for that type of property.

PROPERTIES MAKING A LOSS

Where a property does not make a profit, a number of arguments have been put forward with regard to the valuation approach to be adopted.

The first argument is that the property is not capable of beneficial occupation and thus the occupier cannot be held to be in rateable occupation. In the majority of cases, this argument will fail as it can usually be demonstrated that the occupier is receiving some other form of benefit rather than a financial return. This could be in the form of complying with some form of statutory requirement, providing a social service or a host of other reasons. Since 1990, the term 'socio-economic benefits' has been adopted to often encompass these non-financial benefits occupiers often will obtain.

On the basis that there is beneficial occupation, the next issue is usually what method of valuation should be adopted. If the property is not making a profit, then it would seem inappropriate to adopt the receipts and expenditure basis as that assumes that there will be some element of profit that can be used to reward the tenant and to pay to the landlord in the form of rent. Consequently, it is often argued at this stage that some alternative approach to the valuation is required — usually the contractor's basis.

The courts have generally held that where the property is running at a loss then it is inappropriate to apply the receipts and expenditure method. In a number of cases, however, they have accepted that just because the property is making a loss, there is no reason to automatically reject the method. They have also accepted that a suitable adjustment of the accounts may be sufficient to indicate an appropriate assessment as to use an alternative method may suggest an inappropriate level of assessment.

In the final analysis, one then has the decision in the National Trust cases where the Court of Appeal found for a nil assessment.

RECENT LEISURE-RELATED CASES

Brunning & Price Ltd v Cowell VO (RA/25/2005)

Valuation of public house; property undergone substantial alterations; analysis of comparable properties and assessments; the extent to which, if any, the exceptional ability of the operator should be taken into account.

Clockfair Ltd v Harrington VO (RA/19/2003)

Valuation of casino; rebus sic stantibus and whether mode and category of use should be a casino or snooker hall; use and nature of comparable properties.

Eastbourne Borough Council, Wealden District Council v Allen VO

Valuation of local authority leisure centres; method of valuation; shortened profits basis rejected; contractor's basis adopted; simple substitute building; size and content; utilisation; allowances for under-utilisation rejected; constraints on local authority finance; effect on hypothetical rent; whether justifying stage 5 allowance; held evidence did not show allowance appropriate.

Felgate VO v Lotus Leisure Enterprises Ltd

Valuation of floating restaurant; rateability; rateable as part of hereditament comprising dock wall, river bed, restaurant and mooring.

Galgate Cricket Club v Doyle VO (RA/27/2000)

Valuation of cricket clubhouse, grounds and premises; occupied with public park; rateability; valuation; Lands Tribunal jurisdiction.

Godfrey v Sim VO

Valuation of holiday cottage; restriction on use to under 140 days.

Martin and Others v Hewitt VO (RA/3-7/2001)

Valuation and rateability of boathouses; whether boathouses some distance away from domestic property should be considered as domestic (not liable to rates) or non-domestic; consideration of whether such storage premises were used for storage of 'articles of domestic use'.

Oades v Eke VO

Valuation of holiday chalet park; whether park to be assessed as single hereditament under Non-Domestic Rating (Caravan Sites) Regulations 1990; whether chalets caravans within Caravan Sites and Control of Development Act 1960 s29; did not hold caravans because not capable of being moved from one place to another; each to be entered as a single hereditament.



Rudd VO v Cinderella Rockerfellas Limited

Whether former ferry permanently moored and used as nightclub rateable — held that it was rateable.

United Services and Services Rendered Club (Tooting And Balham) Ltd & The Putney Club v Thorneley VO

Valuation of Members Club; evidence.

Withers v Dalling VO (RA/14/2003)

Valuation of Stable Yard; whether property should be exempt LGFA 1988, Schedule 5(2)1a; adjustment of rental evidence.

Notes

- 1 (1783) 1 TR 723.
- 2 per Lord Scott in *Robinson Bros. (Brewers) Ltd. v Durham County AC* (1937).
- 3 [1998] RA 391; [1997] 2 EGLR 229.
- 4 2 QB 37; 15 RRC 145, CA; reversing 13 RRC 375; [1968] JPL 97; 204 EG 1285; [1967] RA 448.
- 5 *Amalgamated Relays Ltd. v Burnley Rating Authority* [1950] 43 R&IT 76.
- 6 [1966] 457 1 QB, [1963] 3 All ER 967, 10 RRC 176, [1964] RVR 22.
- 7 Unreported.
- 8 Unreported.
- 9 [1966] RA 540.
- 10 (1936) H.L., R.I.T. v 24/52, 231; 25/142, 39/514; 42/498.