RA/74/2005

LANDS TRIBUNAL ACT 1949

RATING – College premises – open learning centre – mode and category of occupation – distinguished from office use – contractor's basis of valuation rejected – comparative rentals basis preferred – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE CORNWALL VALUATION TRIBUNAL

by

JOHN ERIC REEVES
(Valuation Officer)

Re: Truro College
Haven House
Quay Street
Truro
Cornwall TR1 1HE

Before: A J Trott FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
On 13 December 2006

Timothy Buley instructed by the Solicitor's Office, HM Revenue & Customs, for the appellant
The ratepayer did not respond to the appeal

The following cases are referred to in this decision:

Scottish and Newcastle Retail Limited v Williams (VO) [2000] 2 EGLR 1711
Williams (VO) v Scottish and Newcastle Retail Limited [2001] 1 EGLR 157
Robinson Brothers (Brewers) Limited v Houghton and Chester-le-Street Assessment Committee [1937] 2 KB 445
Leeds University v City of Leeds and Burge (VO) [1962] RA 177
John Townend (Trading as John's Radio) and Terence John Goodall (VO) (2005) Lands Tribunal, RA/48/2004
Fir Mill Limited v Royton Urban District Council (1960) 7 RRC 171
LTE v Croydon LBC and Phillips (VO) [1974] RA 225
Garton v Hunter (VO) [1969] 2 QB 37
Lotus and Delta Limited v Culverwell (VO) and Leicester City Council [1976] RA 141

DECISION

Introduction

1. This is an appeal by the Valuation Officer against a decision of the Cornwall Valuation Tribunal dated 28 October 2005 determining the assessment in the 2000 rating list of Truro College, Haven House, Quay Street, Truro at a rateable value of £28,500. The appeal hereditament was shown in the compiled local non-domestic rating list on 1 April 2000 as "Office and Premises" at a rateable value of £67,500. This is the figure supported by the appellant in this appeal.

2. Mr Timothy Buley of counsel appeared on behalf of the appellant. He called Keith Michael Stone MRICS of the Valuation Office Agency as an expert witness.

3. The ratepayer did not respond to the appeal.

4. I made an accompanied inspection of the appeal hereditament on 16 January 2007. I also made unaccompanied external site inspections on that day of 24 comparable properties that had been referred to in evidence.

Facts

5. The appeal hereditament occupies a prominent position near the town centre of Truro on the northern side of Quay Street close to its junction with Morlaix Avenue. The River Allen adjoins the site to the northeast. To the north west of the hereditament is residential development whilst to the west and south there is a mixture of commercial uses including shops, offices and a public house.

6. Haven House was purpose-built as an office in 1983 and is a detached building of steel frame construction. The external elevations of the building are of simulated Portland Stone under a pitched slate roof. The building is comprised of two blocks, the larger of which is four storeys in height and adjoins the river. It is set back from Quay Street. The smaller block is three storeys in height (although the third storey occupies the roof space) and fronts onto Quay Street. The two blocks are connected by a bridge at first and second floor levels. The entrance to the buildings is below the bridge. The ratepayer and the appellant had agreed before the VT that the net internal area of Haven House as at the material day (1 April 2000) was 1,040.40 sqm.

7. Haven House was let on a 25 year FRI lease from 22 December 1983 at a rent of £47,500 per annum to Haven Leisure and was used as a booking centre and headquarters building for its business of self-catering holiday parks. The business was sold in 1986 to the Rank

Organisation who moved the Haven Leisure operation to premises in Hemel Hempstead. The leasehold interest in Haven House was assigned to British Telecom (BT) in February 1987. The building was used by BT as administrative offices and as a call centre. The rent was reviewed to £115,000 per annum with effect from 22 December 1988.

8. In May 1994 Truro College submitted a planning application for the change of use of Haven House from class A2/B1 (the use for which it was originally constructed) to Class D1 within the meaning of the Town and Country Planning (Use Classes) Order 1987. Planning permission was granted on 18 July 1994 and at or around 1 September 1994 Truro College took a sublease of Haven House for a term expiring on 14 July 2000 at a rent of £50,000 per annum for the whole building, apportioned on a pro-rata basis depending upon how much space was actually being occupied at any one time by the college. It originally occupied part of the ground floor and all of the second floor. On 17 April 1995 it occupied the first floor as well. In June 1995 it took over all of the ground floor and by 1 September 1995 it occupied the entire building.

9. In September 1995 Truro College designated Haven House as an open learning centre the purpose of which was to provide an educational facility to the unemployed which was centrally located and close to public transport. In a subsequent letter to this Tribunal the ratepayer described an open learning centre as "a drop-in, roll-on roll-off learning centre focused upon meeting the needs of disadvantaged adults from the Truro area".

10. The rent under the sublease to the college was increased on review to £80,000 per annum on 14 July 1996. On 23 February 1998 Truro College purchased the freehold interest in Haven House for £1m. It received a capital contribution of £225,000 from BT, being £125,000 in respect of dilapidations and £100,000 as a premium for the surrender of its head lease.

11. The physical adaptation of the appeal hereditament to an educational use was largely achieved by removing and repositioning internal partitions. It also required the construction of an additional internal staircase between the second and the third floors of the building. This does not appear to have been a planning requirement and did not form part of the planning application for the change of use to class D1. The cost of the new staircase was in the region of £100,000.

Rating history of the appeal hereditament

12. Haven House was entered in the 1990 Rating List as a single hereditament described as office and premises and at a rateable value of £92,000. This assessment was divided into four with effect from 1 September 1994 to reflect the occupation of part of the ground floor and the whole of the second floor by Truro College. The two assessments occupied by the college both continued to be described as office and premises and had a total rateable value of £35,300.

13. In the 1995 list the assessments occupied by Truro College were again described as office and premises. Their combined rateable value was £37,500 (subsequently reduced to £33,750 following a proposal by the ratepayer). The VO altered the 1995 list with effect from 17 April 1995 to reflect the college's occupation of the whole of the first floor. The college's occupation was shown as a single assessment comprising ground floor (part), first and second floors. It was now described as college and premises at a rateable value of £64,500 (subsequently reduced to £61,500 following a proposal by the ratepayer).

14. The 1995 list was altered again with effect from 5 June 1995 to reflect the occupation of the whole of the ground floor by Truro College. The ensuing entry was for ground, first and second floors of Haven House and was described as office and premises at a rateable value of £75,000 (subsequently reduced to £71,000 following a proposal by the ratepayer).

15. Finally, the VO altered the 1995 list with effect from 1 September 1995 to reflect the total occupation of Haven House by Truro College. There was a single assessment described as office and premises at a rateable value of £101,000 (subsequently reduced to £80,500 following a proposal by the ratepayer).

16. Haven House was shown in the 2000 compiled rating list as a single hereditament described as office and premises at a rateable value of £67,500. The ratepayer made a proposal against this assessment on 28 September 2000 on the grounds that the rateable value was excessive. The VO did not consider this proposal to be well founded and it was therefore referred as an appeal to the VT.

The decision of the Valuation Tribunal

17. On 28 October 2005 the VT determined that Haven House should be shown in the 2000 list as a college and premises at a rateable value of £28,500. In reaching this decision the VT accepted the argument of the ratepayer that the mode or category of occupation of Haven House was best described as a college and premises and that this user was not the same as that of an office notwithstanding that the property physically still lent itself to occupation as such. The VT held that the rateable value of Haven House should not be compared with hereditaments in an office mode or category of occupation and the comparable evidence of such offices was disregarded. Nor did the VT accept the evidence of the rent passing on the appeal hereditament because it inferred that this formed part of a more complex transaction for the acquisition by the ratepayer of the freehold interest of Haven House, assisted by a capital contribution from BT. The VT decided that, given the lack of rental evidence relating to college premises, consistency required that Haven House be valued on the same basis as other colleges, namely by the contractor's basis (referred to at the VT hearing as the "college basis"). The parties agreed that the rateable value on the contractor's basis was £28,500 and the VT found accordingly.

The Issues

18. The issues to be determined in this case are:

(i) The mode or category of occupation of the appeal hereditament.

(ii) Whether the contractor's basis should be used to value all colleges.

(iii) Whether the evidence of the rent passing on the appeal hereditament is tainted and of no weight.

(iv) Whether evidence of rents and settled assessments from hereditaments in the same and/or different modes or categories of occupation should be considered.

Evidence

19. Mr Stone stated that the relevant statutory provisions required the hereditament to be valued rebus sic stantibus, ie by reference to the actual property as it in fact was at the material day (1 April 2000) and by reference to the values pertaining at the antecedent valuation date (1 April 1998). This required consideration of both the physical state of the hereditament and its mode and category of occupation. Mr Stone said that throughout its occupational history only minor physical alterations had been made to the appeal property and that it remained an office building falling within the office class for rating purposes.

20. The expression "mode or category of occupation" was not confined to the precise actual use of the occupier but referred to uses within the same class, ie a use for the same general purpose as the existing use of the hereditament. Mr Stone considered that the use of the appeal hereditament by the ratepayer as an open learning centre could be distinguished from a college use. A change of use for planning purposes could be envisaged as long as it did not involve a change to the existing mode or category of occupation. He observed that planning use classes were not determinative of what constituted a mode or category of use for rating purposes. Mr Stone considered that the occupation by the ratepayer (a college) was similar to comparable occupations in the locality for what he described as quasi-office purposes, such as a Job Centre or a public health laboratory.

21. Mr Stone said that he preferred to use the comparative rentals basis where a hereditament was rented or where there were comparable rented properties that provided reliable evidence. Where a tone of the list had been established settled assessments could also be used as comparative evidence. The contractor's basis was only used where the hereditament to be valued was of a type where rental evidence did not exist and the use of the receipts and expenditure method of valuation was not appropriate. Mr Stone cited larger industrial properties, chemical works, shipyards, schools and university and college campuses as being examples of the types of property suited to the contractor's basis. The VT had treated the contractor's basis as though it were synonymous with the "college basis", but Mr Stone considered its use in this instance was inappropriate because Truro College paid a rent for

Haven House that was comparable to that paid for similar office accommodation in the locality.

22. Mr Stone said that the college basis to which the VT referred in its decision was derived from a Memorandum of Agreement for the 2000 list revaluation agreed by the VOA, Universities UK and the Standing Conference of Principals. Hereditaments to which this memorandum applied were identified to one of three categories:

(a) Category A: Contractor's Basis Hereditaments – All those hereditaments consisting of purpose-built and other adapted buildings occupied by a Higher Education Institution (HEI) and for which as a hereditament an HEI was the only possible hypothetical tenant because of rebus sic stantibus or planning restrictions. HEI centres, complexes and campuses fell into this category.

(b) Category B: HEI Living Accommodation – not relevant in this appeal.

(c) Category C: Miscellaneous Hereditaments – All other non-domestic or composite hereditaments occupied by HEIs where a rental method of valuation was appropriate.

23. In an addendum to his report Mr Stone stated that the above approach applied to colleges of further education as well as to HEIs. At the material date Haven House operated as the former. In Mr Stone's opinion Haven House could be identified as a category C hereditament since there was evidence of rental value and he concluded that it was properly valued by the comparative rentals method. He said that the VT had confused the college basis, as represented by the Memorandum of Agreement, with the contractor's basis of valuation. They were different things and the VT had misdirected itself with respect to them.

24. Mr Stone began his valuation by analysing the rent passing on Haven House and comparing the results with an analysis of rents on similar buildings in the locality. Given an established tone of the list, he then considered comparable assessments for similar buildings in the locality and, lastly, he reviewed the assessments of other college occupations throughout Cornwall to verify his approach and the level of values that he had derived from the comparable assessments.

25. On 14 July 1996 the rent payable under Truro College's sublease of Haven House was reviewed to £80,000 per annum. Both parties were professionally represented and Mr Stone stated that the rent did not reflect an intention on the College's part to purchase the freehold interest since there was no question of such a purchase at that time. This rent devalued to a figure of £71.87 per sq.m in terms of its main space accommodation (ITMS). This was considerably lower than the rent paid by BT as head lessees from December 1988 ie £115,000 per annum or £91.30 per sq.m ITMS. Mr Stone was satisfied that this difference reflected the movement of the local office market and he produced in support of his argument property market reports published by the VOA from October 1982 to April 2002 to demonstrate the trend in rental values for Truro area.

26. Mr Stone believed that the reviewed rent was the best evidence of the value of the beneficial occupation to the actual occupier. It was an arm's length transaction and was an open market rent review close to the AVD of 1 April 1998. He supported his analysis by reference to rental evidence of comparable hereditaments in Truro. He identified six other offices ranging in size from approximately 250 to 2,000 sq.m. The evidence consisted of four new lettings and two rent reviews. Three of the transactions preceded the AVD and three followed it. Mr Stone concluded from this evidence, having regard to the different qualities of the accommodation and the dates when the rents were agreed, that the rental value of Haven House at July 1996 for office purposes would have been in the region of £65 to £75 per sq.m.

27. Mr Stone then reviewed comparable assessments from the 2000 list. He considered that sufficient assessments had been challenged and settled to set a tone of the list for assessments comparable to Haven House. Mr Stone identified six such comparable properties, five of which were offices the sixth being a laboratory and offices. His analysis revealed a range of rateable value from £50 to £66 per sq.m. Weighting the evidence to allow for differences in the location, age and quality of the accommodation Mr Stone stated that the evidence established a comparable range of values of £55 to £60 per sq.m and that Haven House fell at the top of this range.

28. Mr Stone completed his review of the evidence by comparing the results of his comparative rental analysis with the rateable values of agreed and established 2000 list assessments on all college occupations throughout Cornwall. Excluding the appeal hereditament there were 23 such occupations, 20 of which had been assessed on the contractor's basis and three of which were valued by the comparative rentals method. 17 of the assessments had been the subject of rating appeals (all with professional agents) and 6 had not been challenged during the life of the 2000 list. Of the 17 appealed hereditaments, 14 were valued on the contractor's basis and three were valued, and agreed, using the comparative rentals basis.

29. Mr Stone concluded, following a detailed analysis of each hereditament, that colleges formed a class of property that had been the subject of substantial negotiations and in respect of which the tone of the list was well established. The choice between the contractor's basis or the comparative rentals method depended in each case upon the availability of rental evidence. For purpose-built HEIs (such as campuses) and other converted non-commercial properties (such as schools and churches for which no rental market existed) the contractor's basis was used. For the three properties for which a rental market existed (two purpose-built offices and an adult education centre in a former school in the city centre) the comparative rentals method was used and had been agreed or accepted by the professional agents. Mr Stone considered that the circumstances of the three cases where the comparative rentals method had been adopted were comparable to those at the appeal hereditament. He felt that the approach used in valuing the 23 college hereditaments was in accord with the guidance contained in the VOA's Memorandum of Agreement for HEIs which Mr Stone said was known as the college basis. For 20 of the hereditaments the occupying educational institution was the only possible hypothetical tenant and so, as category A hereditaments, they fell to be valued by the contractor's basis. The remaining three properties were properly valued as category C

hereditaments by the comparative rentals method. Haven House was also a category C hereditament and should be valued accordingly.

30. Mr Stone believed that the VT had mistakenly understood the contractor's basis to be applicable to all college premises and that this basis was synonymous with the "college basis". This was wrong. The Memorandum of Agreement explicitly provided for the comparative rentals method to be used when valuing colleges if there was appropriate rental evidence available. The application of the contractor's basis to the appeal hereditament had produced a rateable value of £28,500 which devalued to £21.17 per sq.m. This was in complete contradiction to the actual and comparable rental and assessment evidence and indicated that the contractor's basis of valuation was inappropriate in this instance.

31. In Mr Stone's opinion the rent passing was clear evidence of how much the actual occupier was prepared to pay for the subject hereditament. There was sufficient rental and comparative evidence to support a valuation on this basis and recourse to the contractor's basis was unnecessary. Mr Stone considered that, based on the available rental and assessment evidence, the rateable value of Haven House with effect from 1 April 2000 should be £67,500.

Submissions

32. Mr Buley submitted that the VT had conflated and confused the two principal issues in this appeal, namely what is the correct description of the appeal hereditament in terms of the rebus sic stantibus rule and what is the most appropriate method of valuation of that hereditament in the light of its proper description. The VT had identified the description with a method of valuation and had thus referred erroneously to the office basis and the college basis of valuation. Neither of these two bases of valuation existed.

33. Mr Buley considered the two limbs of the rebus sic stantibus rule. He said that the valuation of the appeal hereditament must proceed on the assumption that the premises would not be fundamentally altered, although they might be subject to minor alterations as per the judgment of Walker LJ in *Williams (VO) v Scottish and Newcastle Retail Limited* [2001] 1 EGLR 157 at paragraph 75. The VO's argument that the appeal hereditament could be used for offices with minor or no alterations had been accepted by the VT and Mr Stone had endorsed that conclusion for the purposes of the hearing.

34. As to the mode or category of use of the appeal hereditament the appellant contended that it was in a commercial quasi-office use (an open learning centre) which had much more in common with nearby offices than with a college campus. The description in the planning application for the change of use of the premises supported this contention, ie for use as "education, training, counselling, offices etc." It was not the identity of the occupier (an educational institution) that mattered but the actual manner of use of the appeal premises.

35. Mr Buley submitted that the crucial issue in this appeal was the determination of the appropriate valuation method. The authorities showed it was preferable to use rental evidence where it was available rather than use indirect methods such as the contractor's basis. In *Robinson Brothers (Brewers) Limited v Houghton and Chester-le-Street Assessment Committee* [1937] 2 KB 445 at 468, Scott LJ said:

> "(2) Where the particular hereditament is let at what is plainly a rack rent or where similar hereditaments in similar economic sites are so let, so that they are truly comparable, that evidence is the best evidence, and for that reason is alone admissible; indirect evidence is excluded not because it is not logically relevant to the economic enquiry, but because it is not the best evidence."

36. There was no rule of law or practice that the contractor's basis should be used in preference to actual rental or comparable evidence. In the case of *Leeds University v City of Leeds and Burge (VO)* [1962] RA 177 this Tribunal had preferred the use of available rental evidence to the contractor's basis in respect of those premises where the university was not the only possible occupier. The contractor's basis was restricted to those premises which, due to their specialised nature, could only be occupied by the University and for which no general rental evidence was available.

37. Mr Buley submitted that the same approach had been taken in the Memorandum of Agreement for HEIs and in the valuation of colleges of further education. It was appropriate that hereditaments for which the rental method was available should be valued on that basis. It was the correct way to value Haven House for which actual rental evidence was available and where the ratepayer was not the sole possible tenant of the premises. The VT had rejected this evidence as being unreliable because it considered the rent agreed, £80,000 per annum, to be part of a more complex transaction under which the ratepayer was to acquire the freehold interest in Haven House. Mr Buley submitted that the VT had reached this conclusion without having had any evidence before it upon which to do so. There was nothing to suggest any link between the review of the rent payable under the lease in 1996 and the subsequent purchase of the freehold interest by the ratepayer in 1998. The VT were wrong to have inferred such a link. The rent of £80,000 per annum was the best possible evidence to have used in this case. The use of the contractor's basis produced a wholly artificial result and one which was divorced from the reality of how much the ratepayer was actually prepared to pay. Nor was the description of the hereditament in the list determinative of the way it is to be valued rebus sic stantibus in terms of its use, as per this Tribunal (P R Francis FRICS) in *John Townend (Trading as John's Radio) and Terence John Goodall (VO)* (2005) Lands Tribunal, RA/48/2004 at paragraph 27.

38. Mr Buley submitted that Mr Stone's detailed valuation method was to be preferred to the contractor's basis and that this Tribunal should allow the appeal and enter the appeal premises in the 2000 rating list at a rateable value of £67,500.

Conclusions: rebus sic stantibus

39. From the evidence and from my inspection of the appeal premises I am satisfied that Haven House could be occupied as offices by making only minor alterations. The construction of an additional staircase by the ratepayer and the reconfiguration of the internal layout by means of partitions have not taken office use outside the ambit of the physical limb of the rebus sic stantibus rule.

40. The second limb of the rebus sic stantibus rule relates to the mode or category of occupation. Haven House was used on the material day as an open learning centre. The principal purpose of such a centre is an educational one, its services being aimed at disadvantaged adults. Truro College's 2006-2007 prospectus describes an open learning centre as follows:

> "Truro College Open Learning Centres are places where you can learn at a time, place and pace to suit. They are places to learn new skills, find help for advice and guidance about jobs and improving career prospects. You don't need qualifications in most cases and there are no entry tests to complete. All you need is to want to learn: we are there to help. We will support and encourage you to progress in your everyday life or work. Open Learning Centres are relevant to you ....
>
> The team have proven experience of enabling people to overcome barriers to learning, such as disability, dyslexia, child care, travel problems and benefit issues.
>
> Whether you are in work or out of it they will help you make choices and move on."

Open learning centres are less structured and formal in their mode of operation than are HEIs or colleges of further education (at the material day Truro College also offered further education courses at its main college campus). Haven House was an open, accessible and less intimidating learning environment for those adults who wished to further their education and opportunities. At the material day Haven House contained classrooms, a library/resources centre, an IT training suite, a kitchen/refectory, a dark room, a staff room and ancillary offices and stores. It did not have a lecture hall.

41. In *Scottish and Newcastle Retail Limited v Williams (VO)* [2000] 2 EGLR 1711 this Tribunal (the President and P H Clarke FRICS) stated that in determining to what mode or category a particular use belongs, it is the principal characteristics of the use to which regard must be had. This view was upheld in that case by the Court of Appeal (*Williams (VO) v Scottish and Newcastle Retail Limited* [2001] 1 EGLR 157). Walker LJ, in giving the judgment of the Court, referred to this Tribunal's decision in *Fir Mill Limited v Royton Urban District Council* (1960) 7 RRC 171 in which it was stated that:

> "[The second assumption] is that the mode or category of occupation by the hypothetical tenant must be conceived as the same mode or category as that of the actual occupier. A dwellinghouse must be assessed as a dwellinghouse; a shop as a

> shop, but not as any particular kind of shop; a factory as a factory, but not as any particular kind of factory."

Walker LJ said at 164H that:

> "I would certainly not treat that [the formulation in *Fir Mill*] as a statutory text. But Parliament's adoption of the expression 'mode or category of occupation' must be taken as recognising that the formulation in *Fir Mill* is on the right lines, even if its precise scope has to be worked out on a case-by-case basis."

42. The ratepayer, Truro College, obtained planning permission for the change of use of the appeal premises from class A2/B1 to class D1 on 18 July 1994. I agree with the VT that planning user is not determinative of the mode or category of occupation as was confirmed by the Court of Appeal in *Williams (VO) v Scottish and Newcastle Retail Limited*. In determining the mode or category of occupation, however, I have had regard to the decision of this Tribunal (the President, Douglas Frank QC, and W H Rees FRICS) in *LTE v Croydon LBC and Phillips (VO)* [1974] RA 225 at 228:

> "While it is perfectly true that the Town and Country Planning Use Classes Order under the Town Planning Acts is a modern innovation compared with the age of rating law, it has stood of course now for many years as a generalisation. We think it is a useful guide – but we put it no higher – in deciding what other uses can be taken into account."

43. I find that Haven House was occupied as an open learning centre at the material day and that this, on the facts of the case, is in a separate mode or category of use from an office. The potential for the use of Haven House as an office must therefore be ignored. Mr Stone suggested that its use was properly described as a quasi-office. I do not think this description is helpful; whilst the appeal hereditament has elements of an office use the principal characteristic of its use is educational. I do not consider that an open learning centre is a sui generis use but, as an educational institution catering mainly for adult education and development, I find that it falls within the broad category of a college occupation.

Conclusions: The contractor's basis of valuation

44. The VT found that Haven House was best described as a college and premises. Having so determined the VT said:

> ".... the method of valuation may follow naturally. In this case, comparable office rents are interesting only insofar as they illustrate how large a departure from the real world is taken by giving force to the statutory expression of 'mode or category of occupation'"

The VT concluded that, as a college, and to be consistent with the valuation of other such hereditaments, Haven House should be valued on the "college basis" which it took to be the contractor's basis. It said in its decision that:

> "The 'horse' of 'user' [college] and the 'cart' of 'method of valuation' [contractor's basis] commonly applied by rating surveyors are in this instance harnessed together."

45. I disagree with the VT's decision. In *Williams (VO) v Scottish and Newcastle Retail Limited* Walker LJ said at 164B:

> "The principle of uniformity also commands ready agreement, so far as fairness generally requires comparable properties to be valued by the same yardstick (but that does not make one single method of valuation uniquely appropriate, as a matter of law, for a particular type of hereditament: see *Garton v Hunter (VO)* [1969] 2 QB 37, a case about a caravan site)."

Furthermore this Tribunal (P R Francis FRICS) stated in *John Townend (Trading as John's Radio) and Terence John Goodall (VO)*, at paragraph 27:

> "Mr Goodall's contention is that the description in the list is determinative of the way the hereditament is to be valued rebus sic stantibus in terms of its use; but there is nothing in the statute or the regulations to this effect. Under the Local Government Finance Act 1988 s 42(4) the rating list must show the rateable value of a hereditament. Under the Non-Domestic Rating (Miscellaneous Provisions) Regulations 1989 reg 2(a) the list must contain a description of the hereditament. There is, however, nothing to suggest that the description shown has any other purpose than that of identification. I can see no reason why it should be determinative of the way the hereditament is to be valued rebus sic stantibus in terms of its use."

46. The Memorandum of Agreement between the VOA, Universities UK and the Standing Conference of Principals (which Mr Stone said also applied to colleges of further education) stated that the contractor's basis was used where hereditament consisted of purpose-built or adapted buildings occupied by an HEI and where the HEI was the only possible hypothetical tenant. Otherwise a rental method was appropriate. The VOA's own Rating Manual Guidance for colleges of further education stated:

> "In the absence of any rental evidence for this class, the contractor's basis should be adopted."

As Mr Buley pointed out such guidance was consistent with the decision of this Tribunal in *Leeds University v Leeds City Council and Burge (VO)* at 189:

> "We agree that satisfactory rental evidence, if available, should be used in preference to other methods of arriving at gross value."

In my opinion there is nothing to justify the VT's insistence that the contractor's basis is, of necessity, the only valuation method that can be used to value a college.

Conclusions: The rent paid for the appeal hereditament

47. Mr Buley referred the Tribunal to the decision of Scott LJ in *Robinson Brothers (Brewers) Limited* in support of his submission that direct rental evidence was preferable to indirect methods such as the contractor's basis. I do not accept that Scott LJ's dictum is a correct statement of the law. It was unanimously rejected by the Court of Appeal in *Garton v Hunter (VO)* [1969] 2 QB 37 where Lord Denning MR said of Robinson at 44D:

> "Nowadays we do not confine ourselves to the best evidence. We admit all relevant evidence. The goodness or badness of it goes only to weight and not to admissibility. So I fear that Scott LJ was in error."

The contractor's basis is not excluded as evidence but the weight attached to it will depend upon the availability of other relevant evidence.

48. In *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council* [1976] RA 141 this Tribunal (J H Emlyn Jones FRICS) formulated six propositions for dealing with value evidence. The first two of these are relevant to the consideration of the rent passing on the appeal hereditament:

> "In the light of the authorities, I think the following propositions are now established:
>
> (i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
>
> (ii) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements .... the more weight should be attached to it."

49. At the 1998 AVD the rent passing on the sublease of the whole of the appeal hereditament to Truro College was £80,000 per annum. The rent passing on the headlease to BT was £115,000 per annum payable from December 1988. There is uncertainty in the evidence about when the sublease rent was fixed. A copy of the sublease was not available and in a letter dated 27 March 2006 Mr David Matthew, the Director of Administration and Finance of Truro College, wrote to the appellant, in response to a series of written questions, saying that the sublease started on 1 September 1994 and that the rent review took effect from 14 July 1996 although it was agreed a year earlier.

50. The appellant also wrote to the head lessee raising similar questions. A reply was received from Mr Mark Kelly, a development surveyor with Telereal, on 6 July 2006. Mr Kelly dealt the matter back in 1998 but qualified his answers by saying:

> ".... I have been unable to obtain all the necessary background information. Therefore the following is a combination of some brief correspondence in an archive file and my recollection of events .... I cannot guarantee the accuracy."

With respect to the sublease Mr Kelly stated:

> "The sub-lease from BT to Truro College was dated 28/7/95 and was for a term of circa 6 years (15/8/94 to 14/7/2000). This lease was FRI as far as I am aware and there was a review in 1998 to market rent (£80,000 per annum)."

51. The difference between the two responses in respect of the start date of the sublease is not material but the difference in respect of the date of the rent review is more significant. There are three possible dates: July 1995, July 1996 or 1998. Given the heavy caveats with which Mr Kelly qualified his answers I give more weight to the answers given by Mr Matthew and I have taken July 1996 as being the rent review date.

52. When the sublease was taken, at or around late August 1994, the rent was said to be based upon an apportionment of the space within Haven House that was occupied by Truro College, up to £50,000 per annum if it occupied the whole premises. I referred Mr Stone to his evidence of office rental values for the Truro area from October 1992 until April 2002, taken from schedules produced by the VOA. These show the rental value of office space in Truro, equivalent in type and size to the appeal hereditament, declining from £80 per sq.m in October 1994, £70 per sq.m in October 1995, to £60 per sq.m from October 1996 to the AVD in April 1998. When asked why, in the light of this evidence, the rental value of Haven House should have increased from £50,000 to £80,000 per annum between August 1994 and July 1996, Mr Stone speculated that the schedules might have been based upon a limited number of transactions. There was no evidence that this was the case and this anomaly has affected the weight that I have given to the rent paid. Nor, without a copy of the sublease, can I ascertain details of the user clause or the assumptions as to user under the rent review clause. Those clauses may have had a material effect upon the rent payable.

53. The VT rejected the evidence of the rent passing at the AVD on the grounds that it was unreliable since:

> ".... it may reasonably be inferred that it was paid as part of a more complex transaction by which in time Truro College became sole occupiers and owners of the freehold with, as Mr Stone fairly pointed out, some considerable financial assistance from British Telecom, who were seeking to relinquish their lease of Haven House as office premises."

54. On the evidence before me such an inference would not be reasonable. Mr Matthew confirmed in his letter dated 27 March 2006 that "there was no question of a purchase at that time". The acquisition of the freehold interest was completed on 23 February 1998. On the same day BT surrendered its head leasehold interest. In a file note of a telephone conversation with Mr Matthew, Mr Stone recorded that the college had not approached the freeholder until the rent review had been settled at £80,000. Mr Matthew said that the revised rent was unsustainable for the college and that it had managed to obtain some monies from the Regional Development Fund towards the freehold purchase. BT were prepared to pay a reverse premium on the surrender of its headlease to avoid its continued over renting of the property (in the sum of £35,000 per annum). It was also liable to make a payment for dilapidations. I am satisfied that the payments by BT did not reflect part of a larger and more complex deal by

which Truro College became freeholder and which would impugn the reliability of the evidence of the rent review.

55. On balance I consider the rent review on the appeal hereditament to be of assistance in determining market value although the incomplete and contradictory information about it has limited the reliance that I place upon it.

Conclusions: Evidence of rents and settled assessments

56. It was stated by the Tribunal in *Scottish and Newcastle* at 189H that:

> "Any evidence relating to the rents or assessments of other hereditaments may be taken into account provided it is relevant to the valuation. There is no rule that evidence relating to another hereditament is irrelevant if that other hereditament is in a different mode or category of occupation."

Mr Stone sought to show that although Haven House was used as an open learning centre its accommodation and layout were very similar to that when it was formerly occupied as an office. Since most hereditaments that were physically similar to Haven House in this locality were used as offices he considered that evidence of office rents would demonstrate the rental value of such a building. He argued that the rent actually paid for Haven House as an open learning centre (which I have found to be in a different mode or category of occupation to an office) was in line with office rents for similar buildings and that therefore the ratepayer was a willing tenant within the office rentals market.

57. Mr Stone showed commendable thoroughness in producing and analysing comparable evidence. The comparables he produced in respect of office rents showed that the rent ranged from approximately £65 to £73 per sq.m within two years either side of the AVD. The rent passing on the appeal hereditament was analysed by Mr Stone at £71.87 per sq.m. The exception to this was a new letting of offices within Pydar House where Cornwall Enterprise had paid £32.08 per sq.m as at November 1998. Mr Stone distinguished this property due to its irregular shape and some shared accommodation. But he also said that this was clear evidence of a sharp dip in office rental values that occurred around the AVD. There was no other evidence of transactions that demonstrated such a dip and it was apparently short lived with a new letting a year later, albeit of smaller office premises, again fetching over £70 per sq.m. Nor is such a dip evident from Mr Stone's extracts from the VOA's schedule of office rents. These show office rents in Truro remaining static at £60 per sq.m between October 1997 and Spring 2000.

58. I am satisfied from the evidence that the ratepayer was paying a rent for use as an open learning centre shortly before the AVD that was broadly comparable to rents paid for offices in similar buildings within the locality.

59. Mr Stone also produced evidence of settled assessments of offices in comparable buildings in Truro. All the ratepayers had been professionally represented. Those settlements showed an adopted price ranging from £50 to £66 per sq.m. The adopted price on the appeal hereditament, valued in line with offices, was £60 per sq.m giving a total rateable value, including car parking, of £67,500. That figure was accepted by the ratepayer at the VT in the event that the VT found that comparison with comparable office rents was the appropriate valuation method. On the other hand as a result of the VT's decision to accept the use of the contractor's basis the adopted price for the appeal hereditament is £21.17 per sq.m. I agree with Mr Stone that this figure is much lower than is justified for a user that had been shown to be competitively priced with office rents.

60. Finally, Mr Stone considered the assessments of other colleges throughout Cornwall. Excluding the appeal hereditament there were 23 such assessments of which 20 had been valued using the contractor's basis. These included another open learning centre occupied by Truro College at Chapel Hill, Newquay. This was a former chapel, latterly used as a workshop and converted into an open learning centre in 2001. Mr Stone explained that the contractor's basis of valuation had been used in this case because the building was of unusual design for which there was unlikely to be demand or evidence to support a valuation on the comparative rentals approach.

61. Where there was no rental evidence available the colleges (including HEIs, colleges of further education, adult education centres and an open learning centre) were valued by the contractor's basis in accordance with the VOA's guidance at the time. Where such evidence was available the comparative rentals method was used, again in accordance with the VOA's guidance. I find that this approach was consistent and reasonable and properly reflected the requirements of statute and relevant case law.

62. Two of the three colleges that were valued on a comparative rentals basis were purpose-built offices occupied at the material day by colleges of further education. A third college was a former school located in the centre of Truro and which is now used as part of the County Council's Link into Learning scheme. The central location of these premises means that there would be a sufficient demand for them to be valued by the comparative basis. There was rental evidence for one of these three colleges, that known as the Penhaligon building in Redruth.

Conclusions: Valuation

63. I am satisfied that the appellant's approach to valuing the appeal hereditament by reference to the comparative rentals basis is correct. It is consistent with the way in which other comparable college premises have been valued and reflects the proper application of legal principles and the VOA's own guidance. The VT's decision that a property that is occupied as a college must invariably be valued on the contractor's basis is wrong. I find on the evidence that the ratepayer paid a rent for the appeal hereditament that was broadly in line with office values. Consequently I consider that the appellant's valuation approach using the comparative rentals basis is justified and appropriate. The evidence produced was relevant and well researched and, in my opinion, persuasive. I consider that the appellant's figure of

£67,500 as the rateable value is well supported both by rents and by settled assessments for which a tone of the list has been established. It is a figure accepted by the ratepayer before the VT in the event that the comparative rentals basis was adopted.

64. I therefore allow the appeal and direct that the appeal hereditament shall be entered in the 2000 rating list with effect from 1 April 2000 as a College and Premises with a rateable value of £67,500.

Dated 10 April 2007

A J Trott FRICS
Member