



RA/64/2007

LANDS TRIBUNAL ACT 1949

RATING – valuation – 2005 list – outdoor market authorised by Royal Charter and operated by local authority – whether shortened profits method of valuation appropriate – held that it was – appeal allowed – RV increased from £6,100 to £14,300

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
NORTH YORKSHIRE VALUATION TRIBUNAL**

by

**PAUL RICHARD ASH (Valuation Officer)
(No Respondent)**

**Re: Knaresborough Market
Market Place
Knaresborough
North Yorkshire
HG5 8AL**

Before: N J Rose FRICS

**Sitting at Harrogate County Court, 2 Victoria Avenue, Harrogate,
North Yorkshire, HG1 1EL
on 6 August 2008**

Appellant Valuation Officer in person with permission of the Tribunal

The following case is referred to in this decision:

Hoare (VO) v National Trust [1998] RA 391

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DECISION

Introduction

1. This is an appeal by the valuation officer, Mr Paul Richard Ash MRICS, against the decision of the North Yorkshire Valuation Tribunal, reducing the assessment in the 2005 rating list of the outdoor market at Market Place, Knaresborough from RV £17,500 to RV £6,100 with effect from 1 April 2005. The material day is 1 April 2005 and the antecedent valuation date (AVD) is 1 April 2003.
2. At the hearing Mr Ash appeared in person with the Tribunal's permission. He contended that the assessment of the appeal hereditament should be increased to £14,300.
3. The appellant at the VT hearing – the ratepayer, Harrogate Borough Council (the Council) – did not respond to the present appeal, although it helpfully agreed a statement of facts with the VO for use at that appeal. Following the hearing I inspected the appeal property accompanied by Mr Ash.

Facts

4. From the agreed statement and from the evidence I find the following facts. The appeal hereditament is situated in the centre of Knaresborough, an historic market town on the river Nidd. Located approximately 3 miles from Harrogate and 20 miles from York, Knaresborough is a tourist destination attracting thousands of visitors every year, particularly during the summer months. The market is authorised by Royal Charter, and operated by the Council.
5. The market has room for approximately 100 stalls. It is roughly “boot” shaped and the stalls are usually fully occupied. On non-market days the land is used for pay and display car parking. A number of “one-off” market days are held throughout the year, for example a Victorian/Edwardian market in December and a French market held on one or two days during the year.
6. The main accesses to the market are from Market Place, Silver Street and Castlegate. Access to the bus station and car parking is principally via Silver Street. Together, these provide first class access to and from the market. The market is surrounded by local shops and there are further shops on the High Street some 100 metres away.
7. The Council provides certain additional facilities for the benefit of traders, in particular setting up stalls prior to the arrival of traders on market day. It does not pay any rent in respect of the market.

The decision of the valuation tribunal

8. At the VT hearing the Council's surveyor put forward a valuation of £6,100, based on 8 per cent of £76,600, being the average of the gross receipts over the four year period from 2001/2 to 2004/5, rounded down. Mr Ash's figure was £15,500, based on 21 per cent of average gross receipts of £74,970, again rounded down. In giving its decision to accept the Council's valuation, the VT made the following observations:

- “(a) The tribunal was aware that a property had to be valued vacant and to let, however in this particular case, as the market had been granted by Royal Charter, it could not envisage that any other person would be able to take it over.
- (b) With regard to the suggestion that a third party could run the market on behalf of the council, the tribunal felt that this would indeed be possible. However, by the fact that a third party was acting in this capacity, it followed that overall responsibility remained with the council. Therefore, this supported the contention that it could not be taken over by any other person.
- (c) Turning to the issue of the settlements reached in respect of previous lists, the tribunal understood the view that there was little point in an appellant pursuing the ‘correct’ assessment if this produced no financial gain. The fact that previous settlements had been reached in regard to the appeal property did not, in the tribunal's opinion, lead it to conclude that the valuation scheme used was necessarily appropriate, correct or even accepted.
- (d) The tribunal gave consideration to the Court of Appeal case referred to by the agent and, having done so felt that it was both relevant and important to its deliberations. It did not regard the case as being any different from any other superior court decision in which a principle had been set. Whilst the case itself concerned National Trust properties, the tribunal felt that the underlying fact was that it had set a principle which questioned the use of the shortened profits method in the valuation process, especially in cases where no rental information was available. It did not consider therefore that the case was simply limited to National Trust properties.
- (e) The tribunal noted that the valuation scheme used by the Valuation Office to value single assessment markets had been derived from a limited amount of national rental evidence. This rental evidence equated to approximately 5% of all the single assessment markets, which the tribunal considered was insufficient to prevent the scheme from being left open to challenge. Furthermore, the tribunal felt that, with such limited rental evidence, the principle set by the Court of Appeal case became more relevant.

- (f) Whilst the tribunal noted the comparable markets, it felt that it would have been useful to have been given more information about their assessments. It fully appreciated that the Valuation Officer was concerned about the sensitive information, but was of the opinion that it could have been used without the need of reproducing it in this decision.
- (g) In addition, the tribunal did not regard all the other markets referred to by the Valuation Officer as being useful comparables due to the differences that had been identified from the questions asked of the parties. In fact, the tribunal felt that Brigg market, being similar in size to the appeal property was probably the most relevant, but without its assessment details, this was just an opinion.
- (h) Having studied the income and expenditure relating to the appeal property, the tribunal noted that the gross receipts derived from the information by the two parties differed slightly in their valuations. The tribunal considered that this was of little significance in its deliberations. However, it was the considered opinion of the tribunal that the high level of expenditure would be a relevant matter to be taken into consideration during negotiations between the hypothetical landlord and tenant and would be used as a bargaining point.
- (i) Having regard to all the facts of this particular appeal, the tribunal reached the conclusion that valuation of the appeal property by reference to a full Receipts and Expenditure method was the most appropriate and reflected the true trading situation of the appellant.
- (j) Accordingly, the tribunal upheld the appeal and ordered the Valuation Officer to amend the entry in the rating list for Knaresborough Market, Knaresborough to show a rateable value of £6,100, with effect from 1 April 2005.”

(I have added the paragraph letters to the VT’s decision).

The valuation officer’s case

9. Mr Ash’s valuation of RV £14,300 was based on 20% of the average of the gross receipts achieved at the appeal hereditament in the years to 31 March 2001, 2002 and 2003; that is £71,415, rounded up to £71,500.

10. In support of this valuation Mr Ash produced details of the rents of six markets which had been agreed between late 2001 and 2003. He said that, so far as he was aware, these were the only rented open air intermittent markets in the north of England where the stalls were erected and removed at various times during a typical week. The operators of two of these markets objected to the information they provided to the VO being published by this Tribunal. I say no more about them, other than that they do not seem to be out of line with the rents to which I have been permitted to refer. The rents payable were analysed using the gross receipts in the years to 31 March 2001, 2002 and 2003. The relevant figures were:

Address	Gross receipts	Rent	Rent as % of gross receipts
Market Place, Alnwick, Northumberland	£23,993	£5,198	21.67
Cleveland Square, Bentham, North Yorkshire	£1,839	£ 400	21.75
R/o Whitley Junior School, Whitley Bridge, Goole, East Yorkshire	£43,381	£11,450	26.40
Front Street, Stanley, Co Durham	£170,043	£75,771	44.56

11. Mr Ash said that, as part of the preparations for the 2005 revaluation, the VOA derived a national scheme of valuation from this evidence and from rental evidence in other parts of England and Wales, taking into account differences in the type and operation of the various markets. The scheme adopted a percentage of gross receipts founded on the comparable rental evidence. The percentage varied according to the level of turnover. There was a range of percentages at each level to permit adjustments to be made to reflect the particular circumstances of the individual market. Although it was an internal VOA advice document, the scheme of valuation had been generally accepted by rating surveyors acting for market operators, as had similar schemes prepared for the assessment of markets in the 1995 and 2000 lists.

12. Mr Ash produced details of ten markets whose assessments he relied upon to support his valuation. Eight of them had not been appealed. Appeals against the remaining two had been made by rating surveyors. One appeal had resulted in an agreed reduction and the other had been withdrawn. The local authority occupier which withdrew its objection has stated that it does not wish the relevant details to be published in this decision and I will respect that request. The remaining uncontested or agreed assessments all relate to outdoor markets established by Royal Charter with demountable stalls. They are situated in traditional market towns in Yorkshire within a radius of about 40 miles of Knaresborough. They may be summarised as follows:

Town	Gross receipts	RV as % of gross receipts
Bedale	£6,300	20.0
Easingwold	£11,000	17.5
Leyburn	£29,500	22.5
Masham	£10,500	20.0
Northallerton	£160,000	27.5
Otley	£100,000	25.0
Ripon	£88,000	25.0
Thirsk	£56,000	25.0
Wetherby	£22,500	20.0

13. Mr Ash said that he had put forward a valuation at the VT hearing based on 21.0% of £74,970, being the average gross receipts in the four years to 2004/5. On reconsideration he had reduced the receipts figure to £71,500, based on the three years before the AVD, in conformity with the approach adopted for the comparable assessments. He had also reduced the percentage applied to this figure by one point “in order to be as fair and as reasonable as possible”.

14. Mr Ash summarised his submissions as follows:

- (a) The percentage of gross receipts, namely 8%, adopted by the VT is too low.
- (b) There is no insurmountable legal reason preventing Harrogate Borough Council appointing a private sector third party operator to run the market.
- (c) Any rental bid would not be affected by the fact that the authority to hold a market was granted by Royal Charter.
- (d) The national scheme of valuation is reasonable, underpinned by rental evidence and supported by comparable assessment evidence.
- (e) As both parties had adopted the shortened profits method of valuation, the Court of Appeal judgment in *Hoare (VO) v National Trust* [1998] RA 391 should not have been given as much weight as it was.
- (f) Any “high level of expenditure” in respect of the subject property has been taken into consideration in his valuation.
- (g) The national scheme of valuation should be adopted to value the appeal hereditament.
- (h) The issue therefore is one of valuation and it is reasonable to adopt 20% of the reasonable annual gross receipts as a basis for arriving at the RV.

Conclusions

15. I accept Mr Ash’s submission that the VT was wrong to conclude that, because the right to hold a market at Knaresborough was granted by Royal Charter, no other party would be able to take it over from the Council. That is clear from the statement of facts which has been agreed by the Council, which states:

“Certain private sector third party operators are known to run certain other Royal Charter markets in northern England on behalf of market authorities. There is no insurmountable legal reason that would prevent Harrogate Borough Council appointing a private sector third party operator to run Knaresborough Market. Therefore, if they so decided, Harrogate Borough Council could exercise the option to ‘let out’ the running of Knaresborough Market to a private sector third party operator.”

16. In Mr Ash's opinion, the right to hold a market to the exclusion of other markets within a certain radius of Knaresborough is more likely to enhance its value than reduce it. I agree.

17. I also accept Mr Ash's view that, although the Council incur significant wage costs in erecting, dismantling and storing the market stalls, such costs would be substantially reduced if the market were taken over by a private contractor, whose method of operation is likely to be very different.

18. Furthermore, I agree with Mr Ash that the VT was wrong to conclude that the judgment of the Court of Appeal in *Hoare* put into question the use of the shortened profits method for rating valuation purposes. In that judgment the court allowed appeals by the ratepayers against the Lands Tribunal decision to value the appeal hereditaments based on 3% of their gross receipts. The court substituted values of nil. Far from establishing any general principle about the use of a percentage of gross receipts as a method of valuation, it is clear that the court's judgment was based on the particular facts of the cases it was considering. As Schiemann LJ said at 396:

“On any basis the present cases are exceptional when compared to most of the hereditaments which need to be valued – in each case their owner paid huge sums in cash or kind to the National Trust in order to be shot of them.”

19. Moreover, in *Hoare* there was no evidence to support the adoption of 3% or any other percentage. At 419 Peter Gibson LJ said this:

“The modified profits basis in the context of cases such as the present is completely arbitrary with no firm reference point in the real world.”

By contrast, in the present appeal Mr Ash's valuation has been prepared using a scheme of valuation which has itself been founded on evidence of rents paid for outdoor markets in the north of England and elsewhere in England and Wales.

20. In any event, as Mr Ash pointed out, the VT's decision was internally inconsistent. Having held that the use of the shortened profits method (that is, one based on a percentage of gross receipts) was questionable, the VT proceeded to accept the valuation put forward on behalf of the Council, which was itself based on that method.

21. Since there was no respondent to this appeal, and in view of the large difference between Mr Ash's figure and that determined by the VT, I questioned him closely on his valuation approach. Having done so, I am satisfied that the scheme of valuation upon which he has based his valuation is soundly based. Although Mr Ash did not suggest that the assessments of other markets upon which he relied had the force of an established tone, there is nothing in the evidence which leads me to conclude that his valuation of the appeal hereditament is too high.

22. The appeal is allowed. I determine that the assessment of Knaresborough Market in the 2005 rating list with effect from 1 April 2005 be altered to RV £14,300. As there is no respondent to the appeal I make no order as to costs.

Dated 29 September 2008

N J Rose FRICS