

Case Name: *Telereal Trillium v Hewitt (VO) [2019] UKSC 23 (15 May 2019)*

Topic: Application of the statutory formula where it is agreed that there is no demand for the subject property

Full case: [click here](#)

Summary: Where there is no demand for a particular property at the material day because that demand has been wholly taken up by nearby properties, the statutory formula nevertheless requires that the parties will agree terms for a hypothetical lease. The reality principle would result in an RV of nil or a nominal value if there is indeed no demand. The question for the court was whether in a case where the evidence shows that there is no demand to occupy a hereditament (which is capable of occupation) the rating hypothesis requires the valuer to assume demand that does not in reality exist. If the answer is “yes”, the rent payable can be assessed by reference to general demand (derived from other premises with similar characteristics) in the absence of other material evidence. Here the parties had agreed a joint position statement before the Upper Tribunal (Lands Chamber) to the effect that this was a solely a question of law and that if a demand has to be assumed then the RV was £370,000 (based on the most suitable comparable property). The Supreme Court answered the question in the affirmative and ordered that the list be re-amended to show the RV as £370,000, restoring the Upper Tribunal’s decision. However, there was a strong dissenting judgement from two of the five Law Lords, reflecting the difficulty of the issue.

Commentary: The subject property is Mexford House in Blackpool, where the previous Government tenants had vacated before the material day of 1 April 2010. During the proceedings before the Upper Tribunal the VO had acknowledged that, in the real world, no tenant would have come forward at the material day to take a lease. This was recorded in a joint position statement, confining the dispute to one of law and recording the parties’ agreement that if it was decided against the ratepayer the RV would be £370,000 (or £1 if the ratepayer was successful). The Upper Tribunal decided the matter within the scope of the joint position statement and both the Court of Appeal and the Supreme Court followed the same approach.

The VTE had decided the issue in favour of Telereal, which was reversed by the Upper Tribunal. The Court of Appeal then restored the VTE’s decision, restoring the RV to £1. The Supreme Court allowed the VO’s appeal against the Court of Appeal’s decision.

Lord Carnwath issued judgement, with which Lords Reed and Lloyd-Jones agreed. Lord Briggs and Lady Black dissented.

The rationale for Lord Carnwath’s judgement can be summarised as follows:

- It is important to distinguish between a property which is unoccupied because of a surplus between supply and demand and a property which has reached the end of its economic life (i.e. is obsolescent). In the former case the property will still have a value

- Whether the property is occupied at the AVD will be primary evidence of demand and whether other similar properties in the locality are occupied will be relevant to determine if there is general demand for that type of property
- Whether the property is occupied at the relevant date is not critical. Even in a saturated market a willing tenant must be assumed and the rent likely to be agreed can be assessed by reference to general demand derived from occupation of similar properties.

The dissenting judgement of Lord Briggs (with which Lady Black agreed) focused on the joint position statement, which he regarded as highly artificial in setting out the facts. In particular, he was critical of the joint statement (by confining its ambit to a question of law) specifically disregarding the fact that in the real world the parties could have been expected to have agreed a lower (but more than nominal) rent.

Lord Briggs was also clear that whereas the rating hypothesis requires an assumption that the parties will agree a rent, it does not stipulate that this must be more than nominal. The ability for it to be nominal enables an alignment with the real world, in circumstances where there is no (or a reduced) demand due to the nature of the property. He concluded that the rating hypothesis does not allow a departure from the real world and the substitution of an assumed demand for the subject property, derived from an assessment of demand for the comparable properties. The terms of the joint position statement ruled out such an assumed demand and Lord Briggs, on that basis, would have refused the VO's appeal.

Although the Supreme Court (by a majority of 3 to 2) allowed the appeal and restored the decision of the Upper Tribunal (RV £370,000), this decision involves a departure from the reality principle which many will find difficult to reconcile with previous authorities. It leaves open the ability to argue for obsolescence but the supply /demand surplus argument has been blocked.