

Case name: *Telereal Trillium v Kevin Hewitt (VO)* [2018] EWCA Civ 26 (19 January 2018)

Topic: Repair/rebus sic stantibus (the “reality principle”)

Full case: [click here](#)

Summary: Where there is no demand in the market for a property because the demand for suitable occupiers had been taken up by other properties in the neighbourhood prior to the material day, the reality principle requires that the rateable value be set at nil or a nominal value. However, this case was decided on the basis of a joint statement agreed between opposing counsel at the Upper Tribunal which agreed the facts and therefore ruled out the consideration by the Court of Appeal of market evidence; further, the case is subject to potential appeal to the Supreme Court (subject to grant of permission).

Commentary: This Court of Appeal case concerned the rateable value of office premises known as Mexford House, Blackpool for which there was no demand at the material day (1 April 2010) and the application in such circumstances of the statutory formula set out in the 1988 Act (as amended). The premises had been entered in the 2010 list at an RV of £490,000.

The previous tenants (HMRC and the Department for Work and Pensions) had vacated Mexford House by the material day and the VO acknowledged during the hearing that no tenant would have come forward to take a lease in the real world. Accordingly, the issue between the parties was purely legal and had been dealt with as such by the Court following the agreement between the parties’ counsel of a Joint Position Paper before the Upper Tribunal.

The rating hypothesis provides for a deal being struck between the hypothetical landlord and tenant, at a rent which forms the basis of rateable value. However, where no demand exists due, for example, to building obsolescence or the depressed state of the local market the reality principle (rebus sic stantibus) may dictate that the rental value is either nil or a nominal amount.

In this case, although nearby buildings were occupied by public sector tenants it was agreed by the parties that the relevant market was saturated and there was no evidence of any demand for Mexford House. The Court of Appeal considered itself unable to disturb the decision of the Upper Tribunal to accept the Joint Position Paper (and, therefore, confine itself to the consideration of matters of law to the exclusion of the facts) and was clear that there is no principle of law which requires a non-existent demand to be assumed.

The Court granted the appeal and ordered that the rateable value of Mexford House be restored to £1, as determined by the VTE.

However, leave to appeal this decision to the Supreme Court has been sought by the VO and it may, therefore, be that the state of the local market will be fully considered as part of that process. This may lead to an entirely different outcome for the ratepayer.