

Case Name: *Wigan Football Club Limited v Wayne Cox (VO)* [2019] UKUT 0389 (LC) (18 December 2019)

Topic: Material change of circumstances – football league relegation

Full case: [click here](#)

Summary: The relegation of a football club from the Premier League to the Championship in 2013 and the subsequent relegation in 2015 to League One did not constitute a material change of circumstances (“MCC”) providing grounds for a reduction in rateable value (in the 2010 compiled list). The Tribunal confirmed the decision of the VTE, but also made reference to the unfairness of the outcome and the potential for adjustments in the valuation method for the future.

Commentary: The successive relegations referred to above had led to a dramatic decline in Wigan FC’s income from 2012/13 to 2015/16, not least because of the loss of substantial broadcasting revenue. Previous success had led to a promotion to the Premier League, where the club remained at the antecedent valuation date of 1 April 2008. The 2010 list RV was £1.5m, reduced to £1.1m following an appeal.

The appellant’s main argument was that the relegations constituted changes in the mode or category of occupation (specifically, the category of occupation, the mode being a football stadium) and, therefore, were grounds for an MCC proposal in those terms. A subsidiary argument was that the relegations were each matters physically manifest in the locality, again grounds for an MCC proposal.

It was agreed between the parties that there was only one possible tenant for the stadium (the rugby club which occupied intermittently paid a fee to use the ground and did not have the financial means to take a tenancy). The VTE had been of the view that the rugby club was a second potential tenant.

The expert witness (Mr Blake Penfold) referred to the formula agreed between ratepayers and the VOA for valuation of football stadia (in the absence of comparable local rental evidence, the alternative of a contractor’s basis valuation can only provide a ceiling value beyond which no prospective tenant would go). The detail is set out in the decision, but the application of the formula resulted in an RV of £1.1m (being the amended list value under appeal) after taking into account (1) a basic RV per seat, (2) superfluity of capacity, (3) ability to pay (“Fair Maintainable Trade”) and (4) adjustment for any other factors not reflected in building costs (there were no such factors in this case).

The Tribunal emphasised the importance of stability in the list values between revaluations and the impracticability of adjusting the list whenever economic factors become out of date. The key question is whether the changes were “material” within the meaning of para 2(7) of Schedule 6 to the 1988 Act. Dealing with the two relevant sub-paragraphs:

- the Tribunal did not accept that it was possible to separate “mode” from “category”, as argued for by the appellant. It was unable to find caselaw precedent for such an approach. Although it acknowledged that there are differences between leagues in the conduct of the relevant business by each club,

it pointed out that within leagues there are substantial differences between clubs. Such variances (being unpredictably wide and going against the principle of uniformity) led the Tribunal to confirm the VTE's statement that "football is football", meaning that the principal characteristic (as a football stadium/ground) of the actual use dictates the valuation method;

- the Tribunal was also dismissive of the argument that a change in the locality was physically manifest as a consequence of each relegation. It referred to the decision in Merlin and drew a comparison between the salient facts, concluding that the manner in which the business was operated could not be used to justify an adjustment in rateable value. The league status was characterised as linked to the manner in which the business of football was carried on at the stadium, notwithstanding the fact that Wigan FC was agreed to be the only possible tenant (it had been said in Merlin that in a monopoly situation the success of the business may affect RV).

The appellant also argued that to dismiss the relegations as MCCs would result in unfairness, on the ground that one of the elements in the agreed formula valuation for football stadia is ability to pay. The Tribunal was not persuaded, although it made the comment that the valuation method does not now seem to be fit for purpose in view of the fundamental changes in the funding of professional football in England and Wales (given the importance of both the league structure and broadcasting revenue).

It remains to be seen if the VOA is prepared to adjust its approach to football stadia valuation as a consequence of this clear message from the Upper Tribunal. If no action is taken, there must be a real possibility of a number of clubs being unable to continue in business.

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