IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2017] UKUT 0063 (LC)
Case No: RA/56/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – Valuation – non-domestic hereditament - gallops at racing stables – lack of rental evidence – evidence of other assessments - whether tone of the list had been established – held that it had not – alternative costs-based approach rejected – end allowance for location - appeal allowed – Rateable Value determined at £31,000 – Schedule 6 to Local Government Finance Act 1988.

IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

MR P J HOBBS	**Appellant**
- and -	
MRS ALISON GIDMAN (VALUATION OFFICER)	**Respondent**

Re: Sandhill Stables
Bilbrook,
Minehead,
Somerset, TA24 6HA

Before: P D McCrea FRICS

Sitting at: Royal Courts of Justice, London, WC2A 2LL
on
7 December 2016

Cain Ormondroyd, instructed by Tyto Consultancy, for the Appellant
Sarabjit Singh, instructed by HMRC Solicitor, for the Respondent

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The following cases are referred to in this Decision:

Dorothy Perkins Retail Limited v Casey (VO) RA/148/1992
ELS International Lawyers v Prekopp (VO) [2016] UKUT 0423 (LC)

DECISION

Introduction

1. This is a test case concerning the rateable value of gallops (purpose-built "tracks" used for training horses) within racing stables in the 2010 rating list. In itself, there is a relatively modest amount in dispute - some £4,500 RV - but the decision is likely to have wide-ranging implications for the rateable values of other stables across the country, appeals against which have been stayed pending this decision.

2. The appeal concerns Sandhill Stables, Bilbrook, Minehead, Somerset, TA24 6HA ("the appeal property"). The principal dispute concerns the amount which the hypothetical tenant would be prepared to pay, and the landlord accept, to reflect the presence and nature of the gallops at the appeal property. The values to be attributed to the remaining elements of the hereditament have been agreed. However, it is of course the rateable value of the *whole* that is the subject of the statutory hypothesis. A secondary issue concerns whether the rent under the hypothetical tenancy would be reduced to reflect the appeal property's location.

3. The appeal is by the ratepayer, Mr Philip Hobbs, against a decision of the Valuation Tribunal for England ("the VTE") dated 28 August 2015, in which the VTE determined that the rateable value of the appeal property should be £34,000 with effect from 1 April 2010. The appeal to the VTE arose from a proposal made on behalf of the appellant against the compiled list entry of £36,500.

4. The appellant was represented by Mr Cain Ormondroyd of counsel, who called Mr William H Simpson BSc FRICS to give valuation evidence. Mr Simpson is a Chartered Surveyor who started his career in the then Valuation Office in 1972. He has been the property and rating consultant to the National Trainers Federation for about 25 years and a consultant to the Thoroughbred Breeders Association for over 10 years. He only deals with racing stables and stud farms, and represents about 80 racing trainers and 15 stud farm clients, and practises as Tyto Consultancy.

5. The respondent Valuation Officer was represented by Mr Sarabjit Singh of counsel, who called Miss Alison Deeley IRRV to give valuation evidence. Miss Deeley is a Member of the Institution of Revenues, Rating and Valuation, and has been employed by the Valuation Office Agency ("VOA") since 1987. She is a non-domestic caseworker in the south west, and is a member of the VOA's class coordination team for equestrian properties. She has considerable experience of complex non-domestic rating appeals on equestrian premises. Mr Richard Bryan BSc (Hons) MRICS, a building surveyor employed by the VOA, submitted a written expert report on the cost of the gallops, but was not called to give evidence.

6. On 6 December 2016 I inspected the appeal property, accompanied by Mr Simpson and Miss Deeley.

7. The antecedent valuation date ("AVD") is 1 April 2008. The material day and effective date are both 1 April 2010.

Facts

8. From a statement of agreed facts, the evidence and my inspection, I find the following facts.

9. Mr Hobbs is a well-known and successful race horse trainer. His family have been at Sandhill for many generations. In addition to owning approximately 50 acres, Mr Hobbs rents approximately 400 acres from the Crown Estate, including the appeal property, which forms part of a working farm. The farm and substantial farmhouse are not subject to non-domestic rating.

10. The appeal property is situated just outside the Exmoor National Park, in rural north-west Somerset. It is approximately two miles west of the village of Washford, and half a mile east of the village of Withycombe. The nearest town is Minehead, approximately six miles to the west. Junction 23 of the M5 is 23 miles to the east. The appeal property is approached from the A39 Taunton to Minehead trunk road via an unclassified country lane, one third of a mile long, which leads to Withycombe. The lane is of limited width with some passing places. There are three entry points from the unclassified lane to the appeal property, the site of which is of sufficient size to accommodate turning large vehicles.

11. Owing to the extent of agreement between the parties it is unnecessary to describe the appeal property in detail. In essence, it comprises various agricultural buildings, an American barn and purpose built stables, consisting of 102 loose boxes in total. 37 boxes are in substantial brick buildings, 51 are in the American barn, and the remaining 14 are in timber structures. The appeal property also has a manege, schooling field, outdoor equine swimming pool, and various ancillary buildings including stores, tack rooms, and feed rooms. There are two revolving horsewalkers, of which the concrete bases are rateable but the equipment is non-rateable plant and machinery.

12. Of more relevance to this appeal, the appeal property also has two gallops. One is a 5-furlong[1] "all weather" gallop, with a surface of around 250 mm of woodchip, rolled to a depth of 150 mm, laid over a limestone and membrane base, with drainage. The woodchip surface has recently been replaced, the previous material having lasted for seven years. It has an average width of 3.7m, and is bound by timber post and rail fencing.

13. The second is a 2.31-furlong "polytrack" gallop. The surface is a wax-coated synthetic equestrian riding surface of high grade silica sand with mixed fibres compacted to 150mm, laid over a limestone and membrane base, over a macadam sub-course. It was laid in 2002 by a company called Martin Collins Enterprises and still has the original surface material. The polytrack gallop can be used when the temperature is as low as -12º C. It has a width of 4.9m, and has plastic swan-neck fencing at the starting stretch.

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[1] A furlong is 201.16 metres, 220 yards or, for traditionalists, one-eighth of a mile, 10 chains or 40 rods.

Statutory Framework

14. Section 56 of the Local Government Finance Act 1988 ("the Act") gives effect to Schedule 6 to the Act which sets out the statutory basis on which the rateable value of a non-domestic hereditament is determined. The statutory assumptions for determining rateable value, as far as relevant to this appeal, are set out in paragraph 2 of Schedule 6, as follows:

> "2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –
>
> > (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
> >
> > (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from the assumption any repairs which a reasonable landlord would consider uneconomic;
> >
> > (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.
>
> ….
>
> (6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.
>
> ….
>
> (7) The matters are—
>
> > (a) matters affecting the physical state or physical enjoyment of the hereditament;
> >
> > (b) the mode or category of occupation of the hereditament;
> >
> > ….
> >
> > (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there; and
> >
> > (e) the use or occupation of other premises situated in the locality of the hereditament."

Issues

Gallops

15. It is necessary at this point to explain that the scheme of valuation in the 2010 rating list for racing stables is based on the number of loose boxes at a hereditament, with the basic unit of comparison and therefore valuation being a "box price". This box price is in respect of brick-built loose boxes, and other types of less substantial boxes attract percentage reductions. Any value attributable to minor ancillaries like a smaller trainer's office, feed stores, and tack rooms necessary for running the racing yard is included in the box price, with more substantial or unusual items being separately valued.

16. It is common ground that the box prices vary with location, with stables in major equine centres, having higher box prices. For instance Newmarket has a box price of £650. It is agreed that in the south west of England, the box price is £360.

17. For the appeal property, the parties have agreed that the basic box price of £360 should be adopted, with reductions of 5% for those boxes within the American barn and 20% for the timber boxes. It is also agreed that the rateable value should be subject to two end allowances: 5% for layout; and 20% for quantum - as there are more than 100 boxes.

18. As regards the rate per furlong to be applied to the gallops, Miss Deeley's opinion was that a rate of £600 per furlong has been agreed in both the south west and across the country, to the extent that a tone of the list had been established. She considered that the rate per furlong was supported by evidence of the cost of gallops.

19. Mr Simpson's view was that the amount which the hypothetical ratepayer would be prepared to pay for the gallops would vary with location, in the same way as the rate per box for stables varied. Mr Simpson's approach was to reduce the rate to be applied to the gallops by a similar ratio to that to which the box price had been reduced from the Newmarket rate of £650: thus he applied a ratio of £360/£650 to the rate of £600 per furlong, arriving at £330 per furlong.

Location allowance

20. The second, less significant, dispute was in respect of an end allowance for location. Miss Deeley did not consider the appeal property to be more disadvantaged than other comparable stables. Mr Simpson's opinion was that access to the M5, and thus to national racecourses, was a 45 minute drive via twisty country roads, and then either through Taunton, or on narrow roads via Williton and Bridgwater. He reflected this by applying an end allowance of 10%.

21. The competing valuations were therefore as follows:

	Ratepayer	VO
Agreed elements:		
Stables:		
37 boxes @ £360	£13,320	£13,320

51 boxes in American barn @ £342	£17,442	£17,442
14 timber boxes @ £290	£4,060	£4,060
Outdoor arena	£504	£504
Indoor horsewalker	£1,500	£1,500
Schooling field	£500	£500
Equine pool	£2,000	£2,000
	£39,326	£39,326
Gallops		
Mr Simpson: 7.31 furlongs @ £330	£2,412	
Miss Deeley: 7.31 furlongs @ £600		£4,386
Total	£41,738	£43,712
Layout -5%	-£2,087	-£2,186
Quantum – 20%	-£7,930	-£8,305
Location – 10%	-£3,172	-
Total	£28,549	£33,221
Rateable Value	**£28,500**	**£33,000**

Evidence

Gallops

22. It was common ground that the rent on the appeal property was of little assistance in assessing rateable value, as it did not fully reflect the appellant's occupation of the hereditament. Neither party adduced any other rental evidence.

23. Miss Deeley explained that whilst the box price had been arrived at in the preparation of the rating list by reference to rents, gallops tended to be tenant's improvements and there was no real rental evidence for gallops. In the absence of useful rental evidence, Miss Deeley said that it was necessary to consider other assessments, and as a cross-check to consider the valuation of the gallops using a cost-based approach.

Evidence derived from other assessments

24. Miss Deeley relied upon two sets of comparables which she said provided assistance - nine primary comparables comprising racing stables in the south west of England with which she was familiar, and 15 secondary comparables located across the country, drawn from VOA records. It is unnecessary for me to outline them. She said that her primary and secondary comparables showed that a tone of the list had been established.

25. Her primary comparables were as follows:

Address	*2010 IPP & RV*	*Agent*	*Box Price*	*Gallop value*
Whitcombe Moneymusk Racing Stables, Whitcombe, Dorchester, DT2 8NY	Compiled list appeal agreed at RV£35,000 1.4.10	Marriotts	£360	£600
Thorne Farm, Stoodleigh, Tiverton, EX16 9QG	Compiled list appeal w/drawn. RV£15,000 Effective Date 15.12.10	CVS	£360	£600
Pond Farm House, Nicholashayne, Wellington, TA21 9QY	Compiled list appeal agreed at RV£36,000 1.4.10	Tyto Consultancy[2]	£360	£600
Simon Earle Racing, Sutton Veny, Warminster, BA12 7BY	Compiled list appeal agreed at RV£33,750 1.4.10	Tyto Consultancy	£600	£600
Wilsford Stables, Wilsford, Amesbury, Salisbury, SP4 7BL	Compiled list appeal withdrawn RV£28,250 1.4.10	Tyto Consultancy	£600	£600
Conkwell Grange, Stud Farm, Limpley Stoke, Bath, BA2 7FD	Compiled list appeal agreed RV£36,500 1.4.10	Tyto Consultancy	£600	£600
East Everleigh Stables, Everleigh, Marlborough, SN8 3EY	Compiled list appeal withdrawn RV£36,250 1.4.10	Tyto Consultancy	£600	£600
Danebury Stables, Nether Wallop, Stockbridge, SO26 6JX	Compiled list appeal agreed at RV£33,250	Humberts	£600	£600

[2] As noted above, Tyto Consultancy is Mr Simpson's practice

	1.4.10			
Huntshaw Racing Stables, Huntshaw, Torrington, EX38 7HG	2010 appeal outstanding RV £13,250 1.4.10	Tyto Consultancy	£360	£600

26. There was a dispute between the parties as to whether Miss Deeley could properly say that the agreed assessments were specifically based upon an agreed rate of £600 per furlong for gallops, or whether in each case this was simply her devaluation of an agreed headline figure.

27. It was common ground that once agreement had been reached as to the level of an appealed assessment, the form issued for the ratepayer's signature simply stated the address of the assessment and the agreed rateable value. It did not contain a detailed breakdown of that rateable value, showing the value to be attributed to individual elements of the hereditament.

28. Miss Deeley's evidence was that shortly prior to the agreement form being issued to the ratepayer or agent, the valuation officer issued a breakdown of her valuation to the ratepayer or his agent, and since the agreement form was subsequently signed and returned, the VO could consider her breakdown - including gallops at £600 per furlong - to be agreed unless the returned agreement form contained a rider stating that this was not the case. She accepted in cross examination that her breakdown would not necessarily be sent in the same email as the agreement form.

29. Mr Simpson's evidence was that during the course of negotiations various valuations would be exchanged between the parties but these would not necessarily be at the final agreed rateable value. He said that in his 28 years in practice he had never known the valuation officer impose a caveat on an agreed rateable value to the effect that the rateable value was specifically based upon one element being at an agreed rate and that it would be highly unusual for him to be sent a breakdown on that basis. He accepted that he was aware, when agreeing various assessments, that the valuation officer *might* analyse those agreed rateable values to show a specific rate of £600 per furlong for gallops, but his understanding was that unless this was done the settlement would not "get through the VO's computer". I understood him to mean by this that the software used by the VO would not allow any other figure than £600 per furlong to be recorded in an analysis of a rateable value. That didn't mean he had agreed £600.

30. Mr Simpson said that in any event whether or not a ratepayer's proposal to alter the rating list is settled is driven by client's instructions and pointed by way of example to his agreement to the rateable value of Brightling Park where a compromise was sensible since the saving to the ratepayer would have been something in the order of £150 per year owing to transitional phasing. Ratepayers were more concerned with the effect on their rates bill than agreeing a point of principle on an individual aspect of an assessment.

31. Mr Simpson's criticism of Miss Deeley's comparables focussed on the three assessments that were within the same scheme reference as the appeal property, where Miss Deeley said that a gallop value of £600 per furlong had been agreed despite the base box price being agreed at £360. These were Whitcombe Moneymusk, Thorne Farm and Pond Farm.

32. In respect of Whitcombe, Miss Deeley said that she agreed the ratepayer's proposal with Mr Christopher Marriott, who had been provided with a breakdown of her valuation before he returned the agreement form. Since the agreement form was not returned with any indication that her breakdown was not agreed, Miss Deeley considered a rate of £600 per furlong for the gallops at that property had been agreed. Mr Simpson's evidence was that Mr Marriott had confirmed to him that whilst the rateable value had been agreed, a breakdown had not and the interpretation provided by Miss Deeley was her own approach.

33. In respect of Thorne Farm, this was withdrawal of a proposal by CVS rather than a settled reduction from the compiled list figure. Miss Deeley confirmed in answer to a question from me that less evidential weight should be placed on a withdrawn proposal than on an agreed settlement.

34. As regards Pond Farm, Mr Simpson said that whilst he agreed the global assessment figure, the breakdown as Miss Deeley presented it was not agreed. In his expert report he provided his own analysis – which he accepted he had not sent to Miss Deeley at the time - which indicated a rate for the gallops at £330 per furlong.

35. Mr Simpson said that the essence of his case was there was a regional variation in the value of gallops, which mirrored the regional variation that was reflected in box price, but that this was not yet borne out by the evidence because of the number of outstanding appeals pending the outcome of this case. At this stage, he could point to only two assessments where the rate agreed for gallops had been agreed at less than £600 per furlong. These were Bryn Palling Stables in Glamorgan where a rate of £500 per furlong had been used, and at Park House Stables, Kingsclere – one of Miss Deeley's secondary comparables – where £450 per furlong had been used for sand-based gallops.

36. Mr Simpson said that a blanket rate of £600 per furlong across the country was not only inconsistent with a regional variation for box prices but was also inconsistent with agreed values for other elements of racing stables, being canterways (covered rides used to warm up horses before they went out onto the gallops) and equine swimming pools. He relied upon several examples of settlements in which differences in the valuation of canterways and swimming pools clearly showed a regional variation between hereditaments in the prime racing location of Newmarket, and those outside.

37. For instance, canterways at Moulton Paddocks, Freemason Lodge, Clarehaven and Bedford House had all been assessed at £5,000 whereas in other cases, outside of the Newmarket area, canterways had been assessed at lower rates. Mr Simpson had personally dealt with appeals on four such properties.

38. At Park House, Kingsclere, the element of agreed rateable value attached to the canterway was £3,750. Miss Deeley had not dealt with this settlement, but said that the VOA notes indicated that the 25% reduction from a standard £5,000 rate was owing to the age of the canterway. Mr Simpson disputed this, saying that the canterway at Park House was of good quality and that the valuation officer, sadly now deceased, had accepted that covered canterways outside Newmarket had a lower value than £5,000 owing to location.

39. Mr Simpson said that in respect of Whatcombe Stud, a value of £3,500 had been agreed for the canterway with Mr Ian Smith, the valuation officer. Miss Deeley said that the rate reflected a tight cramped site and that the covered yard within a stud farm was considered less

valuable than a racing yard. Mr Simpson said the assessment had been split into two hereditaments one being a racing yard and one being a stud farm but pointed out that prior to this when the property was assessed simply as a racing yard the canterway had been assessed at £3,500.

40. In respect of Woodway Farm, Blewbury Mr Simpson said that he had agreed a rate of £3,500 with Mrs Johnson of the valuation office. Miss Deeley said that having spoken to the relevant person, the canterway was considered to be at the end of its useful life. Mr Simpson rejected this but accepted that the canterway was in a natural pit and was difficult to get to.

41. Finally, at Astor Yard, Marlborough, the value of the canterway had been agreed at £3,000. Miss Deeley said that there was a proposal outstanding on this assessment and there had been no proposals against the reconstituted entry.

42. Mr Simpson also relied upon variations in the valuation of equine swimming pools in support of his contention that elements other than loose boxes were subject to regional variations.

43. He said that within the Newmarket area, the value of equine pools had been consistently agreed at £5,000, for instance at Freemason Lodge, Moulton Paddocks and Heath House whereas outside the Newmarket area values for similar equine pools were lower, for instance Park House (£2,500), Whatcombe (£2,500), Pond Farm (£3,000 but for an indoor pool) and at the appeal property where Miss Deeley had agreed a value for the equine pool at £2,000.

44. Mr Deeley maintained that the reason for the variation in the value of equine swimming pools was because those within the Newmarket area were generally of better quality and the level of assessment reflected higher construction costs. She submitted photographs and plans of the seven pools referred to by Mr Simpson, and said that those within the Newmarket area were generally of higher cost with concrete surfacing, fencing and tiling in some instances whereas those outside Newmarket were generally of a lower specification. Mr Simpson said that the issue of quality was never raised in negotiations and said that the pools at Whatcombe, Freemason Lodge and Heath House were all similar to that at the appeal property. Quality might be reflected by 5%-10% at the most but not by a factor of half. The variation could only be properly explained by location.

Tone of the list

45. Miss Deeley was of the opinion that the tone of the list had been established by both her primary and secondary comparables.

46. She accepted in cross examination that of her nine primary comparables only three had been agreed at a value for gallops of £600 per furlong for assessments where the box price had been agreed at £360. She did not disagree that there was an appeal outstanding at Huntshaw Racing Stables and together with the appeal property and six assessments which Mr Simpson had identified as being outstanding, there were at least eight outstanding appeals in the south west being the area comprising her primary comparables.

47. As regards Pond Farm House, the only settlement that had been negotiated between Miss Deeley and Mr Simpson, she accepted that even if Mr Simpson had agreed at the time that gallop value should be based upon £600 per furlong, which was disputed, he was at liberty to give an alternative analysis to the Tribunal. As regards those of her primary comparables where she said

gallop value of £600 per furlong had been agreed where the box value in each case was £600, Miss Deeley accepted that in those instances the primary comparables could equally support Mr Simpson's analysis.

48. As regards her secondary comparables, Miss Deeley confirmed that these were out of the south west area and she had not in any of the cases inspected the properties but had relied upon VOA records.

49. Mr Simpson said that within the area of the west country that contained Miss Deeley's primary comparables, he was acting for ratepayers in seven outstanding rating appeals (including the subject appeal) where the agreed box price was £360, and that there may be others of which he was not aware which were also outstanding.

50. As regards the wider area covered by Miss Deeley's secondary comparables, Mr Simpson said that he was acting in a further 17 outstanding appeals on racing yards with gallops. Mr Simpson's view was that a tone of the list had clearly not been established.

Costs-based approach

51. At the start of the 2010 rating list, the VOA published a practice note on the valuation of racing stables and racing yards as part of volume 5 of its Rating Manual (which, incidentally, referred to discussions between the VOA and Mr Simpson in his capacity as representative of the National Trainer's Federation). As regards gallops the practice note stated:

> "4.1 All-weather gallops
>
> From limited information, the following costs have been derived:
>
> - Sand
> - Woodchip
>
> For these, pricing in the range £12,000 - £18,000 per furlong may be adopted for basic tracks using these two coverings. However new developments in the use of these materials may well increase the pricing to the £24,000 - £30,000/furlong range.
>
> - Fibresand/equitrack
> - Polytrack
>
> Whilst these surfaces are superior to sand/woodchip, the costings element is variable. A recent contract at Middleton for the installation of a 5-furlong track (apparently to normal width, with a base and topping courses, using an equitrack/polytrack surface, comprising oil chopped rubber fibres and other materials in a silica/Vaseline coating was costed out at £12,000 per furlong (or around £54 per linear yard or around £18/m^2).
>
> In contrast, other information suggests that by varying specifications and quality of the top covering, the cost could rise to as much as £42/ m^2 for the very best all weather gallop…."

52. Miss Deeley confirmed that accordingly at the start of the list the gallop value per furlong of £600 was derived from a cost of £12,000 per furlong to which the statutory de-capitalisation rate of 5% had been applied.

53. In the course of preparation for the hearing, the parties agreed that the cost of the polytrack gallops at the appeal property at the AVD would have been £105,000 excluding VAT. This would equate to a capital value of £45,454 per furlong or, de-capitalised at 5%, to £2,273 per furlong in terms of rateable value. As regards the woodchip gallops the appellant's estimate was £80,000 excluding VAT whereas the valuation officer's estimate was £88,000 excluding VAT. The parameters were therefore a capital value of £16,000 to £17,600 per furlong, equating to £800-£880 per furlong in rateable value.

54. In cross-examination Miss Deeley accepted that she had applied the same rate of £600 per furlong to both the polytrack and the woodchip gallops despite the agreed costs of each being significantly different. She also accepted a general proposition that cost did not equate to value.

End allowance for location

55. Mr Simpson said that the appeal property had poor access to the motorway and therefore to racecourses. The A358 to Taunton had twisty roads, and access to the M5 was on the far side of the town. The alternative route, along the A39, had narrow roads through Williton and Bridgwater. Junction 23 was 23 miles away, and owing to the limited speed of a vehicle with a horsebox, this would take 45 minutes.

56. Mr Simpson referred to Miss Deeley's schedule of primary comparables, and said that of the nine assessments, four (Simon Earle Racing, Wilsford Stables, Conkwell Grange, and Huntshaw Stables) had an end allowance of 10% for location – with Huntshaw being subject to an outstanding appeal. In his opinion the appeal property was equally disadvantaged.

57. In her written report, Miss Deeley said that no location allowance was justified as a rural location is the norm for rating stables in the west country, and the lower box price reflected this. In the 23 miles between the appeal property and the motorway, only 0.3 miles was on an unclassified road. There were three access points to the public highway from the appeal property, and plenty of room for turning vehicles.

58. Of her primary comparables, Miss Deeley said that Thorne Farm, Pond Farm House, and Whitcombe Moneymusk were in similar locations to the appeal property, and no end allowance for location had been given. Simon Earle Racing was on low lying land, adjacent to a noisy industrial estate. Wilsford Stables was accessed via a low lying road close to the River Avon, which was prone to flooding. Conkwell Grange was situated in a highly unusual location and awkward to access, on a road with regular tailbacks. Huntshaw Stables were the most remote stables in the west country, 47 miles from the motorway of which 5.2 miles was on unclassified roads.

59. In his written evidence Mr Simpson had included a copy of an email to him from Miss Deeley, dated 1 August 2014, in which she said "I accept your point that access to this unit is not good, but there are plenty of other trainers which are remotely located. The yard is situated very close to an "A" road. I would be prepared to consider an end allowance of 2.5%.". In oral

evidence, Miss Deeley said that that email exchange was without prejudice[3], but in any event having considered the matter further, she did not consider that a location allowance was appropriate.

Discussion and conclusions

60. Having considered all of the evidence and submissions, I go back to first principles, and remind myself that Schedule 6 to the Act requires an assessment of:

> "the rent at which it is estimated the hereditament might reasonably be expected to let from year to year…."

61. The hereditament. Not part of the hereditament. Not most of the hereditament upon which the hypothetical tenant would construct and install his own improvements. What must be assumed is that the rateable property, plant and equipment contained within the hereditament, as a whole, is present at the material day and is the subject of the negotiation between the hypothetical parties, reflecting values at the AVD.

62. I accept, of course, that in assessing rateable value, regard can be had to how the level of assessment is arrived at, with reference to how component parts of comparable assessments have been agreed. But in my judgment, for Miss Deeley to be correct, hypothetical tenants around the country would have to be willing to pay exactly the same amount in rent for gallops, irrespective of location when, as is common ground, they would not be willing to pay the same amount per box for the stables to which those gallops are attached. Acknowledging that this is the ratepayer's appeal and the onus is on him to prove his case, does the evidence bear that out?

Evidential value of agreement forms

63. As regards Pond Farm - the only comparable about which both Miss Deeley and Mr Simpson can speak with equal knowledge - they both indicated that they had provided the other with a breakdown of their respective valuations prior to the proposal being settled, but neither of them were able to provide evidence of any emails or faxes which showed their breakdown of the figure at the time. Mr Simpson's evidence was that, in the end, the decision to settle any outstanding proposal was made by the ratepayer client and in some instances that decision will be driven more by the effect of a settlement on the actual rates bill than any desire to necessarily agree a specific rate for an individual item of the assessment. I accept that evidence. Mr Simpson said that he had never caveated an agreement form to indicate that whilst an assessment had been agreed the breakdown of that assessment had not. I also accept that evidence. I am not persuaded that simply by signing and returning an agreement form, a ratepayer can be assumed to have agreed the breakdown which the valuation officer is seeking to attribute to it. If, of course, there is admissible correspondence showing that a specific rate or breakdown had been agreed, that would be another matter.

64. Mr Simpson said that he understood from other ratepayer's agents that the only way in which a settlement could "be got through the VO's computer system" was if the gallop rate was seen to be £600 and that whilst other elements of assessment were open to an element of negotiation or flexibility, the gallop rate was not. I also accept that evidence which is consistent

[3] Mr Singh said that whilst the VO had objected to the email being included in the bundle, there would have been time taken up in disputing it, and in the end the VO allowed the document to be included. Mr Ormondroyd said that the document was not marked without prejudice, and there was no reason for it to be excluded.

with Miss Deeley being able to produce primary and secondary comparables all of which show a £600 gallop rate. However Miss Deeley was not able to produce any evidence that those gallop rates were specifically agreed in each case by ratepayer's agents. As I recently observed in *ELS International Lawyers v Prekopp (VO)* [2016] UKUT 0423 (LC) the breakdown of an assessment on the VOA website does not always show how the agreement of the proposal has actually been negotiated, or reflect the ratepayer's understanding of a particular settlement.

65. Accordingly, I am not persuaded that Mr Simpson agreed the outstanding proposal at Pond Farm on the basis of £600 per furlong for the gallops.

66. As regards Thorne Farm, this was subject to a proposal that was subsequently withdrawn, and is of less evidential value. And as regards Whitcombe Moneymusk, there is little reliable evidence either way. Mr Simpson said that Mr Marriott had told him that £600 had not been agreed, but there was nothing in writing to that effect, but neither could Miss Deeley produce any evidence to show that it had been. The only other of Miss Deeley's primary comparables which she said showed a gallops rate of £600 when there was an agreed box rate of £360 was Huntshaw Racing Stables, against which there is Mr Simpson's outstanding proposal. The remaining five comparables are of less assistance because the base box price in each case was £600 and Mr Simpson's position was that he was happy to agree £600 per furlong for gallops where the box price was £600.

67. Even if I was satisfied that Pond Farm, Thorne Farm and Whitcombe had been agreed at a rate of £600 per furlong for gallops, these would only represent three assessments, whereas there were at least eight outstanding appeals in that scheme reference. Accordingly, I am not satisfied that Miss Deeley's primary comparables show that a tone of the list has been established.

68. Before considering Miss Deeley's secondary comparables, I consider Mr Simpson's evidence concerning the apparent inconsistency between location having an effect on box price, canterways and equine swimming pools, but not on gallops.

69. I place weight on Mr Simpson's analysis of the value of canterways, where he can show four assessments at £5,000 within the Newmarket area whereas these varied from £3,000 - £3,750 outside Newmarket. I did not find Miss Deeley's criticisms of this evidence to be very persuasive, and whilst location might not be the entire reason for the difference in my view it is more likely than not to have played a substantial part.

70. Similarly in respect of swimming pools, I do not accept Miss Deeley's evidence that the three swimming pools within the Newmarket area, which had been valued at £5,000, were necessarily of better quality or of higher construction cost than the four outside Newmarket including the appeal property. There was no real evidence of cost. The handwritten notes which Miss Deeley reproduced for Moulton Paddock seemed to indicate a cost of either £150,000 or £200,000 whereas the handwritten notes attached to the information for Heath House indicated a cost of £73,000, so broadly half, yet both of these had been valued by the valuation officer at £5,000. Again, location might not have been the entire reason for differences but Mr Ormondroyd's submission that the valuation officer was unable to provide any evidence of either canterways or swimming pools outside of Newmarket at a figure of £5,000 had considerable force.

71. Casting the net wider did not, in my judgment, assist Miss Deeley. She did not place as much reliance on her secondary comparables, which are susceptible to the criticisms I have made above in respect of her primary comparables. There was no evidence that ratepayers had specifically agreed £600 per furlong, Miss Deeley was not particularly familiar with any of the assessments, and she accepted that there was at least another 17 outstanding appeals across the country. I am not persuaded that a tone of the list has been established.

72. In his closing submissions, Mr Singh submitted that since gallops were generally tenant's improvements, the VOA's rating manual practice note "Cost of improvements and the virtual rent" provided a helpful framework to assist in ascertaining the effect on the assessment of the inclusion of gallops.

73. The practice note referred to the Lands Tribunal's decision in *Dorothy Perkins Retail Limited v Casey (VO)* RA/148/1992 in which a three step approach was adopted. Step one was to look at rental evidence to see if it could be clearly established how tenant's improvements were quantified in the rental market. Step two was to consider rating settlements to see if they clearly establish in value terms the effect on the assessment of such improvements. Then (and only then), if these steps failed to provide the required evidence, step three was to have regard to the individual cost of providing those improvements or a modern alternative on the hereditament so as to determine their value to a tenant.

74. I am not persuaded that *Dorothy Perkins* provides assistance. It concerned an air conditioning system, which must, in itself be an addition to a property, whether added by a tenant or a landlord. Mr Simpson did not accept that gallops were always a tenant's improvement, and they do occasionally constitute a hereditament in themselves. Even if I were persuaded that Dorothy Perkins was relevant, I do not consider it comes to Miss Deeley's rescue. There was no relevant evidence and no clear conclusions are possible from rating settlements. Assuming I had reached Step three, I now consider Miss Deeley's cost-based approach.

75. Miss Deeley accepted that cost did not equate to value but based on her secondary argument that is exactly what her figure represents – simply a percentage of a cost with no refinement. No contractor's basis valuation was provided, which meant that there had been no stage 2 adjustment for age or location, and no stage 5 "stand back and look" consideration.

76. The notion that £600 per furlong was the appropriate figure for both the woodchip gallops and the polytrack gallops despite the woodchip gallops having an agreed cost in the order of £17,600 per furlong and the polytrack gallops having an agreed rate in the order of £45,000 per furlong shows the weakness of that cost based approach. This discrepancy can only be magnified when one considers that the valuation officer is seeking to show the same rate for gallops across the country, irrespective of type, actual cost, location, quality, or age. It is also inconsistent with Miss Deeley's case that the variation in the value of canterways or equine pools is down to quality or build cost.

77. It might be said that the agreed costs for the appeal property gallops show that if anything a rate of £600 is too low. In my judgment that argument does not get off the ground. Had a full contractor's basis valuation been carried out, there might have been various deductions applied, which might, in the end, have arrived at a completely different result to that arrived at by applying a simple 5% de-capitalisation.

78. I reiterate that the gallops only form a part of the hereditament. It is common ground that box price varies with location, and I am satisfied that the value attributable to canterways and equine pools is also affected by location. In those circumstances, it cannot be right that hypothetical parties up and down the country would all agree an element of the hypothetical rent that completely ignored the location of the hereditament, when other elements of it, and therefore the rent as a whole, were location sensitive. The fact that the valuation office has analysed settlements in a certain way to appear to show a uniform tone is not, in my judgment, persuasive.

79. In summary therefore, I do not consider that a tone of the list has been established at £600 per furlong, nor am I persuaded that a costs based approach supports Miss Deeley's view.

80. I now turn to Mr Simpson's approach that, in the absence of any better evidence, the most appropriate way to value gallops in this particular case is to apply the same ratio as the box price at the appeal property bears to the Newmarket box price and therefore £330 per furlong. He reached this by applying what might be termed the Newmarket proportion to Miss Deeley's rate of £600.

81. There are two obstacles to adopting his approach. The first is that I cannot completely ignore that in the case of the appeal property, the cost of the polytrack gallops is around double that of the woodchip gallops. Whilst cost is not value, in my judgment a full contractor's basis valuation would be likely to arrive at a higher rate per gallop for the polytrack gallops than the woodchip gallops. The rate might not be double, but there would be *some* difference. Secondly, Mr Simpson has agreed gallops at £600 per furlong when the box rate was £600, whereas the Newmarket proportion would arrive at a rate of just over £550.

82. Doing the best I can, I determine that the appropriate rates per furlong in this case are £375 for the polytrack gallop, and £350 per furlong for the woodchip gallop.

83. As regards location, I am not persuaded by Mr Simpson's arguments. It has not been shown that the appeal property suffers detrimentally to any significant degree greater than the comparable evidence. I accept there might be some disadvantage and, whilst she rowed back from this in her answers to me, I accept Miss Deeley's view in 2014 that an appropriate end allowance of 2.5% should be made, and I have done so in this case.

84. I therefore determine the rateable value as follows:

Agreed elements:	
Stables:	
37 boxes @ £360	£13,320
51 boxes in American barn @ £342	£17,442
14 timber boxes @ £290	£4,060
Outdoor arena	£504
Indoor horsewalker	£1,500
Schooling field	£500
Equine pool	£2,000

	£39,326
Gallops	
Woodchip: 5 furlongs @ £350	£1,750
Polytrack: 2.31 furlongs @ £375	£866
Total	£41,942
Layout -5%	-£2,097
Quantum – 20%[4]	-£7,967
Location – 2.5%	-£797
Total	£31,079
Rateable Value	**£31,000**

85. I conclude my mentioning one further point. In the course of his cross examination Mr Simpson said that he was aware of other assessments of racing stables around the country which included gallops that had been assessed at less than £600 per furlong. He indicated that he had not included these in his expert evidence, despite the fact that they might be relevant to my decision, because he feared that revealing these details would cause the valuation office to increase the assessments to reflect gallops at £600 per furlong, which he said would put him in a very difficult position.

86. Mr Singh submitted that this admission should cast doubt on the reliability of Mr Simpson's evidence. I am not persuaded that it should, and I accept Mr Ormondroyd's mitigation that the withheld evidence strengthened, rather than weakened, Mr Simpson's case. However, Mr Simpson accepted in answer to a question from me that effectively withholding relevant evidence was incompatible with his duty to the Tribunal as an expert witness.

Disposal

87. The appeal is allowed. I direct that the hereditament known as Sandhill Stables, Bilbrook, Minehead, Somerset, TA24 6HA must be entered into the local non-domestic rating list at a rateable value of £31,000 with effect from 1 April 2010.

88. This decision is final on all matters other than costs. The parties may now make submissions in writing on costs and a letter containing further directions accompanies this decision.

Dated: 23 February 2017

P D McCrea FRICS

[4] Both parties applied their end allowances on a compound basis, and I have adopted this approach

Costs

89. Following receipt of this decision, the parties agreed that the respondent valuation officer shall be responsible for the appellant's costs, to be assessed if not agreed. Accordingly, I direct that the respondent shall be responsible for the appellant's costs on the standard basis, such costs to the subject of detailed assessment by the Registrar in the absence of agreement.

Dated: 28 February 2017

P D McCrea FRICS