UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2012] UKUT 61 (LC)
UTLC Case Number: RA/6/2010 (consolidated)

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – exemption – rebus sic stantibus – valuation – abattoir – whether lairage exempt as an agricultural building – whether abattoir to be valued by reference to local industrial tone – held lairage is rateable – abattoir is a separate mode or category of occupation and should not be valued by reference to industrial tone but by reference to agreed assessments of similar abattoirs – rateable value assessed at £170,000 – Local Government Finance Act 1988 Schedule 5 para 5

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

BETWEEN **CHEALE MEATS LIMITED** **Appellant**

and

JOHN PHILIP RAY **Respondent**
(Valuation Officer)

Re: Abattoir
Orchard Farm
Little Warley Hall Lane
Little Warley
Brentwood
Essex CM13 3EN

Before: The President and A J Trott FRICS

Sitting at 43-45 Bedford Square, London, WC1B 3AS
on 19-21 December 2011

David Park QC instructed by Elliotts, Chartered Surveyors of Liverpool, 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:

Fatstock Marketing Corporation Ltd v Morgan (VO) [1958] 1 WLR 357
Unipork Limited v Commissioner of Valuation [1981] RA 172
Scottish and Newcastle Retail Ltd v Williams (VO) [2000] RA 119
Williams (VO) v Scottish and Newcastle Retail Ltd [2001] RA 41
Leda Properties v Howells (VO) [2009] RA 165

The following further cases were referred to in argument:

Garton v Hunter (VO) [1969] 2 QB 37
Allen (VO) v English Sports Council and Sports Council Trust Company [2009] UKUT 187 (LC)
Monsanto plc v Farris (VO) [1998] RA 217
Black v Oliver [1978] RA 117
Fir Mill Ltd v Royton UDC and Jones (VO) (1960) 7 RRC 171
Cartwright (VO) v Cherry Valley Farms Ltd [2003] RA 21
Meat and Livestock Commission v Stirlingshire Assessor [1975] RA 234
Sheffield United Tours Ltd v Elliott (VO) and Sheffield MDC [1983] RA 81
Ladies' Hosiery and Underwear Ltd v West Middlesex Assessment Committee [1932] 2 KB 269
Whitsbury Farm and Stud Farm Ltd v Hemens (VO) [1987] RA 277
Belmont Farm Ltd v Minister of Housing and Local Government (1962) 13 P&CR 417

DECISION

Introduction

1. This is a consolidated appeal against a decision of the Valuation Tribunal for England (VTE) dated 8 February 2010. It concerns a hereditament that was entered in the 2005 non-domestic rating list for the Brentwood billing authority as "Factory and Premises, Cheale Meats Ltd, Orchard Farm, Little Warley Hall Lane, Little Warley, Brentwood, Essex CM13 3EN" at a rateable value of £205,000. On 2 April 2008 Mr Michael J Elliott FRICS of Elliotts, Chartered Surveyors, made a proposal on behalf of the ratepayer to alter the list contending that the rateable value was excessive when compared to similar plants and seeking a reduction in the rateable value to £50,000. The valuation officer did not consider the proposal to be well founded and the disagreement between the parties was referred by him as an appeal to the VTE.

2. The hereditament is an abattoir. Before the VTE the ratepayer contended that, in addition to the assessment being excessive, that part of the hereditament consisting of lairage was exempt under the provisions of paragraph 5 of Schedule 5 to the Local Government Finance Act 1988. The ratepayer contended for a rateable value of £58,400 or alternatively £62,600 if the lairage was not exempt, and the VO supported a rateable value of £202,000. The VTE rejected the contention that the lairage was exempt, but it reduced the assessment to a rateable value of £150,000.

3. Both parties appealed against the VTE's decision. The ratepayer appealed on the main grounds that the VTE had erred in law by not finding that the lairage building was exempt and by valuing the abattoir, a sui generis use, in line with local industrial units and discounted by only 20% (appeal reference RA/6/2010). The VO appealed on the grounds that the VTE was wrong to have made any discount to the headline rental values derived from local industrial comparables (appeal reference RA/7/2010). The appeals were consolidated under reference RA/6/2010 with the ratepayer as the appellant and the VO as the respondent.

4. In the hearing before us the appellant pursued its contention that the lairage building was exempt. While the valuation spoken to by Mr Elliott showed a value of nil, Mr David Park QC, who appeared for the appellant, accepted that the Tribunal did not have power to reduce the assessment below that contended for in the proposal, ie a rateable value of £50,000. Mr Sarabjit Singh appeared for the respondent and called the VO, Mr John Philip Ray BSc MRICS, who contended for a value of £202,000. Both valuers valued the hereditament by reference to comparable assessments, Mr Elliott abandoning in the course of the hearing reliance on a contractor's basis valuation that he had produced; but, whereas Mr Elliott relied on assessments of abattoirs elsewhere in England, Mr Ray based his valuation on assessments of industrial premises in the locality.

The hereditament

5. The Cheale family have occupied Orchard Farm since the 1960s, and the abattoir operation began at the site in the late 1960s. The appeal hereditament, which is located on the farm, is located on Little Warley Hall Lane, a country road about 4.5 miles to the south of Brentwood town centre, and 5.8 miles to the west of Basildon. The M25 motorway is less than 2 miles away by road, and the A127 London to Southend Arterial Road is approximately 0.4 miles to the north of the site. Central London is just over 20 miles distant. The surrounding area is mainly rural in nature, although there are several industrial estates in the vicinity. The land is within the Metropolitan Green Belt.

6. The appeal property was originally built in 1968, with additions being made at various dates after that time, particularly in the 1970s and the 1990s. The accommodation comprises main slaughter and chill store areas, a lairage, a vehicle maintenance building, offices and an amenity block. There is also an effluent treatment facility (adjoining the lairage), an effluent lagoon and a car park to the north of the offices.

7. The abattoir and chill store buildings are principally of steel portal frame construction and are clad mainly in profiled protected metal, although parts have asbestos sheet cladding. The interior of this part of the property is fitted out for the specific functions of an abattoir. There are areas with channels in the floors for drainage, pits and ducts, wipe-down walls and coated floors. The chiller areas and the offices are temperature controlled.

8. The lairage areas were built in three sections and comprise part concrete frame 'Atcost' and part steel portal frame construction, with brick and concrete lower walls and slatted timber upper walls. The unlined roof is built mainly of corrugated asbestos. The interior is divided into pens for the animals prior to slaughter and the floors have drainage facilities.

9. The offices are of single-storey brick construction with a tiled roof. The building was erected in 1993, and the accommodation is air conditioned. The vehicle maintenance unit, located on the east side of the site, was built in 1991. It is of steel portal frame construction with brick lower walls and upper walls. The roof is clad in profiled protected metal. The amenities block is of brick single-storey construction with a flat felt covered roof.

10. The site is level and has circulation space within it. All areas are readily accessible. There is an area of some 3.6 hectares of agricultural land within the licensed curtilage of the abattoir.

11. The abattoir slaughters an average of 600 cull sows and 500 clean pigs per day during weekdays. No slaughter takes place at weekends. All of the sows are exported to Germany and all of the pigs are sold in the UK. The animals are sold as carcasses and no processing or packaging of the meat takes place on site.

The issues

12. The issues that arise are as follows:

(a) Whether the lairage is exempt;

(b) Whether the hereditament should be valued by reference to the assessments of abattoirs or by reference to assessments of industrial herditaments in the locality;

(c) Whether there was a demand for the premises as an abattoir at the antecedent valuation date;

(d) The appropriate base value at a rate per m^2 to take;

(e) The adjustment factors to be applied to the base value in order to value different parts of the abattoir;

(f) The treatment of parts occupied by the ratepayer but unused.

We will deal with these issues in turn.

Issue (a): whether the lairage is exempt – facts and contentions

13. Within the complex of buildings at the abattoir are three contiguous buildings used for lairage, identified as areas 1, 1a and 1b. Areas 1 and 1b are used as lairage for pigs and sows (or the housing of animals before they are moved to the slaughter hall, which is immediately adjacent). Area 1a was previously used as lairage for cattle but the slaughter of cattle ceased in October 2003 since when this area has not been so used. In cross-examination Mr Elliott said that this former cattle lairage was now used as pig lairage. The total area of lairage (including area 1a) is 1,694.2 m^2 and in the VO's valuation this accounts for £37,046 out of a total of £202,381 (both figures reflecting a 12% deduction for access and layout). The contention of the appellant is that these are agricultural buildings as defined in Schedule 5 to the Local Government Finance Act 1988 and so are exempt from rating. The VTE, as we have said, rejected this contention.

14. The relevant provisions of Schedule 5 are these:

"1 A hereditament is exempt to the extent that it consists of any of the following –

(a) agricultural land;

(b) agricultural buildings.…

3 A building is an agricultural building if it is not a dwelling and –

(a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or any other agricultural land, …

5 (1) A building is an agricultural building if –

(a) it is used for the keeping or breeding of livestock, …

(2) Sub-paragraph (1)(a) above does not apply unless –

(a) the building is solely used as there mentioned, …

(4) A building (the building in question) is not an agricultural building by virtue of this paragraph unless it is surrounded by or contiguous to an area of agricultural land which amounts to not less than 2 hectares….

8 (5) In paragraphs 5 and 7 above 'livestock' includes any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land."

15. There is no dispute between the parties that the requirements of paragraph 3 are satisfied including the requirement that the building is used solely in connection with operations on agricultural land. We doubt whether this is correct, since the lairage is used not only in connection with operations on agricultural land but also, and predominantly, in connection with the slaughterhouse itself. However, in view of our later conclusions, there is no need to go outside the position that the parties have agreed. The issue, therefore, is whether the lairage buildings are used for the keeping of livestock within the meaning of paragraph 5(1).

16. Mr Elliott, who is an experienced pig farmer and wholesale butcher as well as a Chartered Surveyor, gave a detailed description of the use of the lairage at the hereditament, the main points of which are summarised below:

(i) Upon arrival at the appeal hereditament an animal welfare officer (who had similar skills to those of a stockman on a farm) accepted responsibility for the pigs and checked for signs of injury or distress. Any seriously injured or severely stressed animal was removed for immediate slaughter. The remaining animals were put into the lairage buildings.

(ii) The pigs dehydrated during transport and were rehydrated in the lairage where they rapidly regained the weight lost during transportation.

(iii) Most pigs were kept overnight before slaughter and on average 60% of the animals were kept in the lairage for at least 12 hours.

(iv) Hundreds of sows and clean pigs were routinely kept in the lairage over weekends since the appellant only operated the slaughterhouse on weekdays. The animals were fed at 12 hour intervals and received fresh bedding daily. Pens were regularly cleaned out.

(v) Sows arrived at the abattoir in varying states and those which were drying off were kept in the lairage for 3 to 4 days on a regular basis with some remaining for up to 7 days.

(vi) The abattoir was operated in compliance with recognised standards such as the Tesco Pork Standard, the standards of the British Meat Processors Association and the Animal Welfare and Slaughter (Pigs) Standard. These standards required sustained acts of animal husbandry that were no different to those carried out at pig fattening units.

(vii) Everything done to the live animal in the lairage to prepare it for slaughter was part of the cycle of livestock keeping and involved animal husbandry. While in the lairage the pigs grew at the fastest rate of their lives.

17. Mr Elliott drew attention to a letter to superintending valuers dated 21 January 1991 from the Chief Valuer's Office which said:

> "The agreement reached with agents is that in general a slaughter house is a rateable hereditament. However, where the slaughter house is contiguous with two or more hectares of agricultural land and the lairage meets the requirements of the above legislation [Schedule 5 of the 1988 Act], the lairage may fall to be exempt as a building used for the keeping or breeding of livestock. It is envisaged that the exemption will be in respect of the lairage only and cease where the lairage ends."

In subsequent practice notes concerning abattoirs and slaughterhouses issued in 2000, 2005 and 2010 by the Valuation Office Agency this advice was not followed and in the two most recent practice notes the guidance was revised to read:

> "There are no elements of rearing or husbandry which are considered to be the essential elements of 'keeping' and therefore lairage yards forming part of an abattoir or buildings should not be treated as exempt from rating."

18. Mr Elliott said that there had been no change in the law since 1991 to justify this revised guidance and the significant acts of animal husbandry undertaken in the lairage at the appeal hereditament justified its exemption from rating.

19. Mr Ray said that keeping animals in lairage prior to slaughter was not an agricultural operation but an integral part of the industrial process of a slaughterhouse. There was no animal husbandry involved but simply the normal care of animals before processing. The lairage was a transit holding facility where animals were kept for short periods before slaughter. As such the lairage was rateable. The words "keeping" and "breeding" which appeared in paragraph 5(1)(a) of Schedule 5 to the 1988 Act should be read together since they were both concerned with rearing rather than slaughtering animals. Lairages were simply used to hold animals prior to slaughter which necessarily involved actions to protect the animals' welfare but which was not animal husbandry sufficient to constitute rearing and the addition of value such as to invoke the exemption under Schedule 5.

20. Mr Park submitted that, using what he described as a neutral term, Mr Elliott's evidence had convincingly shown that there was a systematic programme of care provided in the lairage. The respondent's case that these acts of care were most directly connected with killing rather than keeping the animals was misconceived as was the assertion that the care of pigs in the lairage was merely incidental to their holding until killed.

21. The respondent had sought to apply a gloss on the phrase "…used for the keeping…of livestock" in Schedule 5 by suggesting that the word "keeping" when read in conjunction with the word "breeding" connoted the rearing of livestock. But the word "keeping" was not defined in the 1988 Act and should be given a broad meaning. It seemed plain from paragraph 2A of Schedule 6 to that Act (which was to be read together with Schedule 5) that the framework of the Act distinguished between "keeping" and "rearing". The Valuation Office Agency's rating manual on

stud farms addressed paragraph 2A of Schedule 6 and distinguished between animals that were reared and those that were kept.

22. It was clear, Mr Park said, that the primary purpose of the slaughter house was to produce meat for human consumption and that the slaughter of animals was subsidiary to that main purpose, see *Fatstock Marketing Corporation Ltd v Morgan* (VO) [1958] 1 WLR 357. Accordingly the requirement in paragraph 8(5) of Schedule 5 to the 1988 Act was met.

23. There was no requirement under Schedule 5 that the animals should be kept for the purpose of increasing their value and the respondent was wrong to introduce such wording. Even if the appellant was wrong in its submissions and it was concluded that within the lairage it was necessary to construe the "keeping…of livestock" as:

> "the keeping [which term shall mean the provision of a significant amount of animal husbandry or the rearing of animals so that their value is increased] or breeding of livestock"

then Mr Elliott's evidence demonstrated that such an extended definition was satisfied.

24. The respondent had relied upon the decision in *Unipork Limited v Commissioner of Valuation* [1981] RA 172, a decision of the Lands Tribunal for Northern Ireland, to support his contention that the use of the lairage was part of an industrial process. But the facts of that case were distinguishable from those in the present appeal and the acts of husbandry at the appeal hereditament were on a far more extensive scale than those in *Unipork*, which were confined to the single purpose of providing a regulated supply of pigs to the slaughter hall. That was the inevitable consequence of keeping pigs overnight or for days at the appeal hereditament in contrast to the 1.5 to 2 hours that they were kept penned in *Unipork*.

25. Mr Singh submitted that the exemption contained in Schedule 5 of the 1988 Act was an agricultural exemption that was intended to exclude a building from rating where an agricultural operation was carried on. There was no such exemption in respect of an industrial building or process. The killing of animals in a slaughterhouse was an industrial process and the use of the lairage was an intrinsic part of that process, as the Lands Tribunal for Northern Ireland said in *Unipork*. Animals that were stressed and/or dehydrated on arrival were relaxed and rehydrated and cull sows were allowed to dry off. This required basic care commensurate with the avoidance of cruelty but it did not amount to the agricultural operation of "keeping" the pigs; it merely conditioned the animals for slaughter. The VTE's decision that the lairage was not exempt was therefore correct.

Issue (a): conclusion

26. It is clear that the word "keeping" has a number of different meanings or shades of meaning. It can mean simply to contain physically, and in its statement of case the appellant defined it as meaning "confining or detaining", implying that the lairage buildings are used for the keeping of

animals just because the animals are housed there. We do not consider that this could possibly be correct. "Keeping" used alongside "breeding" necessarily implies, in our view, that the livestock are looked after and not just contained.

27. The alternative way in which the appellant's case is put is to assert that the pigs are indeed more than housed: they are cared for through being fed and watered and their health being looked after; and additionally, in the case of the sows, by their being dried off. The care element is, we think, an essential part of what amounts to keeping for the purposes of the statutory provision. But the concept in our view goes beyond that. The essence of the keeping of animals for the production of food, where the food consists of the meat of the animals, is the rearing of them – bringing them to the state of maturity that fits them for slaughter.

28. Mr Park contended that if "keeping" implied the rearing of animals, the provisions would have used the word "rearing" instead. It was a word that was used elsewhere in the Act in paragraph 2A(1)(a) of Schedule 6, which referred to "…the breeding or rearing of horses or ponies…". That contention, however, misses the point that the keeping of livestock extends to activities other than rearing, which we take to mean the raising of animals or birds to a greater state of physical maturity. Dairy cattle and hens used for egg production are not reared for slaughter. They are kept for the production of food, and are thus livestock as defined, and the "keeping…of livestock" clearly extends to them.

29. As far as the clean pigs are concerned (we leave aside for the moment the sows) the function of rearing has been completed when they are sent for slaughter. The care that they receive at the abattoir – resting and watering and, sometimes, feeding – is only made necessary by the fact that they have been transported. It is no part of the rearing process, and it would not be required to any significant extent if the abattoir was sited on the farm where the pigs had been reared. The purpose of the housing of the pigs in the lairage, their segregation and the care that is given to them is to fit them for slaughter after their journey from the farm. It is properly to be seen as part of the process of slaughtering rather than the keeping of livestock.

30. Somewhat different considerations arise in relation to the sows. Some, possibly most, of them need to be dried off to allow their teats to shrink, thus avoiding or reducing the trimming of the carcass. To that extent they are undergoing conditioning that is not attributable to the journey that they have made from the farm. Nevertheless we do not think that this means that they are being kept, within the meaning of the Act, at the abattoir. The time they spend there is so short, in contrast to the long-term nature of keeping and breeding livestock, and the purpose of the drying off is so closely associated with the requirements of the slaughterer (to avoid or reduce the amount of carcass trimming) that we do not think that their housing in the lairage constitutes keeping them for the purposes of the Act.

31. In our judgment, therefore, the lairage buildings are not used for the keeping of livestock within the meaning of paragraph 5(1)(a) of Schedule 5 and the buildings are accordingly not agricultural buildings within paragraph 1(b). We would add that if, contrary to our view, the housing of the sows does amount to their keeping for this purpose, the buildings would still not be agricultural buildings. That is because under paragraph 5(2)(a) they would only qualify as such if

their use was solely for the purpose of the keeping of livestock. The fact that not all the sows need to be dried off and the use of the buildings for the housing of clean pigs as well as sows are matters that are fatal to the contention that the buildings are exempt.

Issue (b): the method of valuation – evidence and contentions

32. It was agreed by the parties that:

(i) there was insufficient direct rental evidence of the open market letting of abattoirs to be of assistance in this appeal;

(ii) an abattoir is a sui generis use; and

(iii) the appeal hereditament could not be used other than as an abattoir without physical works which would be more than minor.

33. Mr Elliott said that the appeal hereditament should be valued rebus sic stantibus, which meant that it had to be valued as it existed on the material day in terms of both its physical state and its mode or category of occupation. There was no dispute that any physical works that would be required to enable the hereditament to be used for industrial purposes would not be minor. It should therefore be valued as an abattoir and not by reference to local industrial values since that approach would contravene the rebus sic stantibus rule.

34. In his report Mr Elliott said that, in his opinion, the fairest way to value an abattoir was on the contractor's test basis. However, on the second day of the hearing he acknowledged that in valuing the appeal hereditament by that approach he had adopted the wrong methodology and he was now certain that his contractor's test valuation was wrong. Consequently he withdrew his valuation and relied instead upon his conclusion that the property had no value on the rating hypothesis. He had reached this conclusion following a review of the declining state of the industry, the over supply of slaughtering capacity in the region leading to the closure of many abattoirs, the particular geographical and locational disadvantages of the appeal hereditament and the fact that it had no cutting, packing or processing elements. If he was wrong in that conclusion he still placed reliance upon his analysis of settlements reached in respect of seven comparable abattoirs in various locations in England and Wales. The average rateable value of these abattoirs was £15.73 per m^2 compared with the average figure of £30.76 per m^2 for floor space at the appeal hereditament.

35. Mr Ray said that the appeal hereditament was an industrial building housing an industrial process. He had valued the abattoir as an abattoir in accordance with the rebus sic stantibus rule but in doing so its value was best found by reference to the rental value of other industrial buildings in the locality. He said that this was the approach adopted in respect of all abattoir assessments in the area for which he was responsible. He said that his investigations and inspections had shown that it was a universally accepted practice, and was also used in respect of the valuation of other specialist properties such as cold stores and chilled storage facilities.

36. Mr Ray emphatically rejected Mr Elliott's view that an abattoir should be valued at the same figure regardless of location. The correct approach was to consider the local tone for industrial property in the relevant area and then make any appropriate adjustments. Mr Ray also said that he found the contractor's test to be of little assistance where there was a consistent agreed approach to the rental valuation for abattoirs on a national basis. Although Mr Ray produced a contractor's test valuation he emphasised that he did not regard that method of valuation as appropriate for an abattoir.

37. Mr Park submitted that, in the absence of a tone for abattoirs in the locality, the respondent's case was built upon the tone of local industrial rental levels. That was convenient but it was not correct. It ignored the general problems of the abattoir industry and the specific problems of the appeal hereditament's location.

38. Mr Elliott's evidence had shown that livestock producers were in thrall to the purchasing power of supermarkets and that they bore the brunt of adverse conditions such as increased hygiene/biodiversity costs, competition from imports and the effects of diseases such as BSE and foot and mouth. The combined impact of these factors had been a dramatic reduction in cattle and pig numbers; for instance the number of breeding sows had declined by 40% between 1997 and 2007. This in turn had led to a significant over provision in slaughtering capacity leading to multiple abattoir closures (70% of red meat slaughterhouses closed between 1979 and 2002) and to a move towards integrated single species processing plants which included the more profitable cutting and packing end of the process. The appeal hereditament was not such a plant.

39. The appellant had located in Brentwood for historic reasons and at a time when the industry structure was very different. Today that location was not economically advantageous. South Essex was a low density area for livestock production and there was an imbalance between the (over) supply of slaughtering capacity and the (reduced) demand for it. Transport costs were key in an industry with such low margins and the appeal hereditament was remote from the main areas of British pig production.

40. Reliance upon local industrial rents to value the abattoir at the appeal hereditament did not take account of the economic, geographical and business factors that were specific to this mode or category of occupation.

41. Mr Singh submitted that the VTE had not made an error by relying upon the local industrial tone when valuing the appeal hereditament. Abattoirs were industrial units and should be valued as such, subject to suitable adjustments being made. All 32 comparables that had been submitted in evidence were valued by reference to local industrial values. Mr Ray had provided half of these comparables but had not, as suggested by Mr Elliott, picked the best of them to suit his purpose. He had chosen them because he had personal knowledge of them, they were similar in size to the appeal hereditament and because they completed an extensive geographical coverage.

42. Mr Singh submitted that the VTE had been wrong to discount local industrial values by 20% when deriving the rateable value of the appeal hereditament. There was no example in the

comparables of any such downward adjustment to industrial values to reflect use as an abattoir. Indeed the comparables showed an increase over industrial values to reflect the adaptation of industrial buildings for an abattoir use. Having abandoned his contractor's test valuation Mr. Elliott continued to rely upon schedules of comparable abattoir assessments from which he derived average values to support his criticism of Mr Ray's figures. But Mr Ray had distinguished these comparables from the appeal hereditament by reference to location, size, access, fit out, quality and the state of local industry.

43. On the evidence, Mr Singh submitted, the location of the appeal hereditament was not disadvantageous. It was accepted that animals were not generally reared close to it but it was in a very good location for exporting sow meat via Felixstowe or Dover and enjoyed excellent communications to the markets for clean pigs in south east England. In a time of overcapacity and reduced demand in the industry only the best abattoirs would survive. Such an abattoir would be attractive and the hypothetical tenant would pay more rather than less for it. The appeal hereditament had survived over time. It had been continuously occupied over many years and was a good, well located property of its type. There was a demand for its products. Orchard Farm was an attractive proposition at the antecedent valuation date.

Issue (b): conclusion

44. Mr Ray's view was that it would be wrong, and contrary to rating practice, to exclude as comparables all hereditaments that are in a different mode or category of occupation to the appeal hereditament. Whether the rents from these hereditaments should carry weight was a matter for valuation judgment in each case, but any such evidence which was relevant was admissible. Mr Singh in his closing submissions seemed to go further and urged that an abattoir was an industrial unit used for an industrial process and that it should therefore be valued as such. We do not accept that analysis. An abattoir, as the parties agree, is a sui generis use. It is not in the same mode or category of occupation as an industrial building. While evidence of industrial values is not on that account rendered irrelevant (see *Scottish and Newcastle Retail Ltd v Williams (VO)* [2000] RA 119 at paragraph 152, approved sub nom *Williams (VO) v Scottish and Newcastle Retail Ltd* [2001] RA 41) care clearly needs to be taken when having regard to values of hereditaments in another mode or category of use or, where the use is sui generis, to values of hereditaments outside that more restricted class. Underlying the rebus sic stantibus rule relating to the mode or category of use is the recognition that the value to the owner of the subject hereditament – which is what has to be determined – may be different from the rent that the hereditament might command if let in the open market for some other purpose.

45. It appears to be the case that valuation officers have in fact valued abattoirs by reference to local industrial values, and where rental or other evidence relating specifically to abattoirs is not available this is understandable. When, for want of anything better, local industrial values have to be taken, they should, however, only be the starting point. In the present we do not need to use local industrial values because there is substantial evidence relating specifically to abattoirs in the form of comparable assessments. Such assessments, whatever the approach adopted by the valuation officers in making the original list entries or by ratepayers' rating surveyors when

accepting or contesting them, represent values that have been either accepted or agreed, and in our judgment they provide the best evidence for valuing this sui generis hereditament.

46. The best evidence before us of the value of this abattoir to its occupier is, in our opinion, the settlements which have been reached in respect of other such hereditaments across England and Wales. Both parties were assiduous in preparing such evidence and Mr Ray undertook the considerable task of visiting all of the 32 comparables. Our conclusion means that we favour Mr Elliott's general approach rather than Mr Ray's but we do not adopt Mr Elliott's practice of averaging the overall rateable value for groups of abattoirs (his appendices 41 and 47) and comparing these with the appeal hereditament. Instead we prefer to identify those of the comparables which most closely resemble the appeal hereditament in terms of the following factors:

(i) location: proximity to producers and markets, access and transport communications;

(ii) size;

(iii) age, condition and layout; and

(iv) facilities

Issue (c): the demand for the premises as an abattoir

47. We deal with this issue shortly. The appeal hereditament has been consistently used during the 50 years or so of its existence. While there have undoubtedly been far reaching changes in the livestock industry upon which its use as an abattoir depends, we are satisfied that there would be a market demand for its use on the rating hypothesis. Mr Elliott's contention that there would be no rental bid from a hypothetical tenant was based upon the final "stand back and look" stage of the contractor's test valuation which he subsequently withdrew. It is otherwise dependent on the various trading factors that we have described above (see paragraphs 34 and 38 to 39). But those factors do not, in our opinion, justify Mr Park's submission that the hypothetical tenant would not have made any rental bid for the appeal hereditament at the AVD. Nor is that submission supported by Mr Elliott's alternative approach of adopting the average overall rateable values from comparable abattoirs. Mr Park correctly concedes in any event that the appellant cannot before this Tribunal seek a rateable value less than that for which it argued before the VTE (see *Leda Properties v Howells (VO)* [2009] RA 165).

Issue (d): the base value

48. Mr Elliott identified two sets of comparables. Firstly, he referred to the assessments of four abattoirs used solely for the slaughter of pigs. Mr Elliott analysed the rate per square metre for the elements of lairage, slaughter hall, chillers and offices for each comparable and then gave an overall rate per square metre for each of them which he then averaged to give a figure of £20.12 per m^2. He compared this with the equivalent overall figure at the appeal hereditament, based on

Mr Ray's valuation, of £30.76 per m^2 including the cattle line, or £34.95 per m^2 excluding it. All four comparables operated solely as pig abattoirs in areas of high density pig production and all of them had processing and packaging facilities. Mr Elliott said that this meant they were not the best comparables for valuing the appeal hereditament but that they could be used as a cap for the assessment of its rateable value.

49. Mr. Elliott considered his second set of comparables to be better since, like the appeal hereditament, they were not all single species abattoirs. They were spread over a wide geographical area and included examples both with and without integrated processing facilities. There were seven such comparables. Mr Elliott gave brief details of each abattoir and analysed them to give an overall figure of rateable value. The average figure was £15.73 per m^2 (ranging from £12.91 per m^2 to £19.08 per m^2).

50. Mr Elliott explained that he had previously considered that the location of an abattoir had a minimal effect upon its rental value because occupiers were all buying and selling in the same markets. But in recent years the distribution of the livestock producing areas had changed making some abattoirs, including the appeal hereditament, vulnerable to increasing transport costs. This was the explanation for the demise of its cattle slaughtering business. He illustrated the effect of transport costs by a hypothetical comparison between the locations of Malton, North Yorkshire and Great Warley, Essex (the appeal hereditament). He assumed that there would be identical abattoirs conducting identical business at each location. In its final form this comparison showed that the total transport costs at Great Warley would be greater by £1,374 per day than those at Malton.

51. The remaining five abattoirs that Mr Ray referred to as being the ratepayer's comparables were Romford Halal Meats at Upminster, Essex, which was cited by Mr Elliott to demonstrate an inconsistency with respect to the valuation of lairage; Moor Farm, Banham, Norwich which was purchased by the appellant in 2000 but sold again in 2008; A&G Barber's abattoir at Purleigh, Chelmsford which was closed in June 2010 (Mr Elliott accepted that this closure was due to allegations of animal cruelty and not lack of demand); and two abattoirs in Norwich and Powys, neither of which were referred to by Mr Elliott in his evidence to this Tribunal.

52. Mr Ray accepted that Mr Elliott's comparables were useful and relevant. He produced a further 16 comparables based upon three criteria: similar size to the appeal hereditament; personal knowledge and involvement in the rating assessments; and the completion of geographical gaps. Mr Ray's view, as discussed above, was that abattoirs should be valued by reference to the local industrial tone and his analysis of each of the comparables (both his and Mr Elliott's) was supported by details of local industrial assessments. Mr Ray did not use these abattoir comparables to inform his opinion of the rental value of Orchard Farm; he relied upon them solely to support his method of valuation and to justify his adjustments for fit out. Mr Ray made upward adjustments to the local industrial tone to allow for the interior fit out of an abattoir. He said:

> "In my opinion it goes against all valuation principle and logic that a landlord should spend money improving or converting an industrial building, only to achieve a reduction in rental income."

53. Mr Ray outlined the changes to the meat production industry in recent years and noted that despite all the setbacks the appellant's business had survived. He concluded that:

> "[the appeal hereditament's] locational advantages will have played a huge role in that survival. It would be unfair on the operators of abattoirs in other parts of the country if the assessment of Orchard Farm were to be based on some national level of value."

Issue (d): conclusion

54. We set out at paragraph 46 above the criteria which we consider should be used when comparing the appeal hereditament with the 32 comparable abattoirs referred to in the evidence. These criteria act as a series of filters but in several cases the comparables can be distinguished from Orchard Farm on more than one criterion. We do not consider it necessary to identify where this is the case.

55. We start by considering what we take to be the key criterion: location. Orchard Farm enjoys good road communications, being only a short distance from the A127 and the M25. The A12, which gives access to East Anglia, is also nearby. The channel ports are within easy reach and London is only 20 miles away. In terms of communications we consider the appeal hereditament to be well located.

56. Orchard Farm is less well located in relation to the main pig and cattle producing areas of Great Britain. The former are concentrated further to the north, notably around Humberside and North Yorkshire. But two of the counties with the highest densities of pigs are Suffolk and Norfolk, both of which are readily accessible from Brentwood. Orchard Farm is located in the centre of the area of the lowest density of cattle production in Great Britain.

57. We have considered the 32 comparables (as referenced by Mr Ray) in terms of their comparability of location and access to the appeal hereditament and have excluded from further comparison those which we consider are too remote from producers, markets or main roads. Generally we have found that the comparables identified by Mr Ray match Orchard Farm more closely using these criteria and we have only excluded four of them (VO9 and VO14 to 16). Mr Elliott's comparables are, in many instances, located in remote and inaccessible areas which we do not consider can be compared with the location of the appeal hereditament. We have excluded ten of these sites (RP1 to 4, 6, 8, 9, 11, 13 and 15). This leaves 18 comparables.

58. We next consider the size of the comparable abattoirs. We have defined the relevant size range as being from 3,250 to 13,250 m^2 or approximately half to double the size of Orchard Farm (6,564.9 m^2). Although this range of areas is wide there are a further seven comparables which have been excluded on the basis of this criterion (VO3, 11, 13 and RP5, 7, 14 and 16). Most (five) of these sites were rejected as being too small. We have made one exception to the application of the size filter to the list of comparables: the Romford Halal abattoir in Folkes Lane, Upminster (RP10). Although this is a small abattoir (2,145 m^2) it is the closest comparable to the appeal hereditament in terms of location. It is approximately two miles away from Orchard Farm and

about the same distance to the west (London) side of the M25 as the appeal hereditament is to the east. To all intents and purposes the two sites enjoy identical road communications and access to producers and markets. We consider that it should be retained as a comparable.

59. The third criterion for the selection of comparables is age, condition and layout. Many of the abattoirs are mixed age developments, similar to Orchard Farm. Others were built generally in the 1970s and 1980s. Only one comparable, RP12, is relatively modern, being built in two phases in 1990 and 2003. This site is also at the upper end of our designated size range at 13,030 m^2. Mr Ray expressed the view that it is not accessible. On balance, and considering the cumulative effect of these factors, we have excluded this comparable from our analysis.

60. The final criterion of comparability concerns the facilities at each abattoir. We have little information about such facilities, but the two main features of this criterion are whether the abattoir is equipped for single or multiple species slaughter and whether it has cutting and/or packaging facilities. Mr Elliott said that processing of meat was undertaken in all of Mr Ray's comparables. This did not happen at Orchard Farm where the only operation was the slaughter of the animals. These and other differences in the component elements of the abattoir accommodation of the comparables are dealt with by adjustments to the base rate used.

61. Before analysing the remaining ten comparables we comment briefly upon three further issues that were raised during the hearing. Firstly, both parties referred in evidence to abattoirs other than the 32 which we have considered in detail. We do not consider that it is necessary or helpful to include any of these within our analysis. Secondly, Mr Elliott said that Mr Ray's comparables consisted only of the best abattoirs. In our opinion that observation is unwarranted. We consider that Mr Ray identified comparables objectively and fairly. That is shown by the fact that nine out of the ten remaining comparables are those identified by Mr Ray. Thirdly, Mr Elliott referred in his evidence to both riding schools and livestock markets. We derive no assistance from these comparisons and do not consider them further.

62. We summarise the details of the ten remaining comparables in Appendix 1.

63. All of the comparables shown in Appendix 1 are assessments. In two of them there was no appeal, in three cases the appeal was withdrawn and in the remaining five the assessment was agreed with the ratepayer's professional adviser. There is a mixture of single and multiple species abattoirs and many of the comparables appear to have packing and processing facilities. We take these assessments as representing in each case the value of the ratepayer's occupation on the statutory rating hypothesis. They inform the Tribunal about how much such a ratepayer would be prepared to pay for abattoir premises that are broadly similar to the appeal hereditament in terms of location, size and age.

64. The abattoir at Bridlington, East Yorkshire (VO6) is notably out of line in terms of value with all of the other comparables. It was built in 1978 and its base value of £13.45 per m^2 is half that of the other 1970s built accommodation. The property is located just south of Bridlington between the A614 and A165 (both single carriageway roads) approximately 40 kilometres north of

Hull. It is therefore close to the main pig producing areas of the country and is well located for exports. But the local road access is relatively poor compared with that of the appeal hereditament. We also note that no appeal was made against the 2005 list assessment. Although we include this comparable as satisfying the criteria we have given above we accord it reduced weight in our analysis.

65. We have also given less weight to comparables where the age of the accommodation is different to that at the appeal hereditament and we have taken no account of any accommodation that is significantly older than that at Orchard Farm, eg we have ignored the accommodation built in the 1910s at VO4 and in the 1900s at VO8.

66. Our analysis of the ten comparables produces the following base values for the different ages of accommodation at the appeal hereditament:

1960s: £25.00 per m^2

1970s: £28.50 per m^2

1990s: £36.50 per m^2

67. There are two further elements of accommodation that need to be considered: car parking and storage land.

68. Appendix 10 of the statement of agreed facts sets out the relative levels of value that Mr Ray applies to his valuation of Orchard Farm and to the comparables. In respect of car parking it states:

> "Valued on a per space basis or reflected in the basis in some locations."

None of the assessments of the ten comparables upon which we relied when determining the base values include a separate valuation of car parking on a per space basis. Indeed none of Mr Ray's 16 comparables include car parking as a separate figure. Only three of Mr Elliott's 16 comparables show car parking separately (RP8, RP9 and RP15). From the evidence, and particularly the photographic evidence adduced by Mr Ray, we are confident that at least seven of the ten comparables that we use in our analysis have car parking spaces, with several of them (VO6, VO8, VO10 and VO12) having significant numbers of spaces. In our opinion, having based our analysis of value upon comparables where the car parking is "reflected in the basis" it would be double-counting to make a separate allowance for car parking in our valuation. The provision of car parking spaces at Orchard Farm is reflected in the base values that we have stated in paragraph 66 above.

69. The second element of accommodation that needs to be considered is "storage land". This expression includes lorry parking and, from Appendix 10 of the statement of agreed facts is:

> "Valued in line with levels of value established in the particular location."

The use of such land at Orchard Farm and at the comparable properties appears to be predominantly for lorry and trailer parking. Two of Mr Elliott's comparables, RP2 and RP8, value lorry spaces on a per space basis. All of the other fifteen comparables where storage land is included are valued by reference to value per square metre and, sometimes, by reference to whether such land is surfaced or unsurfaced.

70. Surfaced storage land is identified in ten comparables, unsurfaced land in four comparables and is not distinguished in five comparables. (Four of the fifteen comparables have both surfaced and unsurfaced storage land.) Orchard Farm has surfaced storage land and the value of such land is between £2 and £3 per m^2 in nine out of the ten comparables. The tenth comparable, RP10, values surfaced storage land at £12.50 per m^2. RP10 is the Romford Halal Meats abattoir in Upminster which is the closest comparable to Orchard Farm. Mr Ray relies upon four local industrial comparables when analysing the rateable value of RP10. Only one of these has storage land and this is valued at £8.75 per m^2. We can see no evidence that supports the adopted figure of £12.50 per m^2 and we see no justification for any difference in value between RP10 and Orchard Farm (where the storage land is taken by Mr Ray at £7.50 per m^2) given the proximity of the two properties. We also note that in his rebuttal report Mr Ray expressed reservations about the valuation of RP10 generally, it not being one of the properties that he had valued personally:

> "From the valuation in the VOA database, there are concerns about the level of value and the structure of the valuation of this property."

71. There is considerable variance in the 15 comparables in the ratio of the area of storage land to the area of the buildings. Omitting the two outlying values (1.9% at VO4 and 228% at VO6) the average ratio of storage land to built area is 1:4 (24.6%). The figure for Orchard Farm is slightly less at 1:5 (19%).

72. We have analysed the ten comparables which have surfaced storage land by calculating the percentage of the weighted base value represented by the value of the storage land. ("Weighted base value" is obtained by multiplying the area of each age of accommodation by its adopted base value, adding the results and dividing that figure by the total floor space.) The results range from 7.2% to 22%, apart from RP10 which gives a much higher figure of 40%. We do not find RP10 to be a helpful comparable in this context and we do not consider it further. The average percentage omitting RP10 is 12.6%. Mr Ray's valuation of Orchard Farm shows that the value of the storage land (£7.50 per m^2) is 20.4% of his weighted base value (£36.77 per m2). Only one other comparable, RP1, has a figure which is higher than this (22%).

73. In our opinion the appropriate value of the surfaced storage land to the occupier of Orchard Farm is 15% of its weighted base value using the figures in paragraph 66 above (£32.56 per m^2). This gives a figure of £4.88 per m^2 which we round upwards to £5 per m^2.

Issue (e): adjustment factors

74. Appendix 10 of the statement of agreed facts sets out guidelines for the relative values adopted by Mr Ray in the valuation of the appeal hereditament and the comparables. A disputed issue at the hearing was the appropriate adjustment that should be made to the base value in respect of lairage. This adjustment is not referred to in Appendix 10. The Valuation Office Agency's Practice Note (PN) on abattoirs and slaughterhouses which gave guidance on the 1995 and 2000 lists states that:

> "The valuation relativities that should be adopted for the sake of consistency, are as follows:
>
> Lairage 0.25 …"

The equivalent PN for the 2005 list (with which we are concerned) is silent about the relativities to be used when valuing abattoirs. The PN for the 2010 list states:

> "Valuation relativities for the main component parts are, for consistency, recommended in the following ranges:
>
> …Lairage 0.5 ('Atcost' style) to 0.75 (modern full-height-wall animal pens)"

Mr Ray's evidence was that he always uses 75% of the base value as a starting point. Mr Elliott said that historically the adopted figure had been 25% of the base value.

75. The other adjustment factor that was in issue at the hearing was in respect of packaging and processing space. Mr Elliott accepted the possibility that such accommodation would be worth more than the value of a slaughter hall. Mr Ray said that he had used a guideline increase of 15% in respect of food processing and for chill stores. This increase relates to industrial base values and reflects the additions and improvements that various elements of an abattoir contain by comparison with industrial comparables.

Issue (e): conclusion

76. There are 41 entries for lairage (excluding separate entries for lairage pens) in Mr Ray's analysis of the 32 comparables adduced by the parties. 15 of these are valued using an adjustment factor of 0.75. There are 13 such entries in respect of the ten comparables upon which we rely to determine the base values of the appeal hereditament of which nine are valued using an adjustment factor of 0.75. There is no apparent correlation between the adjustment factor and the age or height of the lairage. For instance, accommodation built in the 1900s is valued at 0.75 (VO8) as is accommodation built in the 1990s (VO1). Lairages which are 4m high (VO8) and 6.1m high (VO1) are both valued at 0.75.

77. In examination in chief Mr Ray said that lairage was valued by regard to its type and quality of construction, including its drainage facilities. The agreed description of the lairage at Orchard Farm contained in paragraph 26 of the agreed statement of facts states that:

> "The lairage buildings are of part concrete framed 'Atcost' type and part steel portal framed construction, with brick and concrete lower walls and slatted timber upper walls."

We note that the latest PN for the 2010 list recommends a relativity of 0.5 in respect of the 'Atcost' type of construction. According to the appellant's expert report of Mr Moules (who was not called to give evidence) the Atcost element of the lairage (identified as area 1) was built in 1968 but adapted in 1977. The other area of older lairage (area 1b) was built in 1968 from steel portal frames as was that part which was constructed in 1998 (area 1a). We are satisfied from the detailed technical descriptions and photographs contained in Mr Moules' report that none of the lairage accommodation at Orchard Farm is of a quality, design or layout that would justify a reduction in the adjustment factor from 0.75, which is the arithmetic mode of the comparables before us. We therefore accept Mr Ray's view that an adjustment factor of 0.75 is appropriate to value the lairage at the appeal hereditament.

78. There are no packaging or processing facilities at the appeal hereditament other than what is required to prepare a carcass for onward transport. Five of the ten comparables from which we derived the base values describe the slaughter accommodation as "slaughter/production" areas. It is not clear from this, or the other evidence, to what extent "production" includes cutting and/or packaging facilities. The maximum increase to the base value for either "slaughter" or "slaughter/production" accommodation is 15%. This applies to four comparables, three of which include "production" areas in their description. The remaining six comparables have adjustments varying from a reduction of 2.5% to an increase of 12.13%. Only two of these contain the description "production". The average adjustment for the five comparables containing the description "production" is 8.5% while that for the five comparables where reference is only made to "slaughter" is 7.9%. In our opinion the appropriate adjustment factor to apply to the slaughter hall accommodation at Orchard Farm is 1.1 (an increase of 10% over the base value).

79. The ten comparables which we rely upon to derive our base values contain 15 entries in respect of chill stores (excluding those entries which relate to accommodation with unusual height or which is on the first floor). Twelve of these are adjusted by increasing the base value by 15% and we adopt 1.15 as the appropriate adjustment factor to apply to the base value of the chill stores at the appeal hereditament.

80. There are several other adjustments that need to be made to the various accommodation elements included within the valuation of the appeal hereditament. We comment on these as necessary in the footnotes to our valuation at Appendix 2.

Issue (f): the treatment of unused accommodation.

81. The use of the appeal hereditament for cattle slaughter was still continuing at the AVD but ceased in October 2003. Until the end of 1999 the appeal hereditament was used in connection with the Over Thirty Month Scheme (OTMS) which had been introduced to deal with BSE. That use ceased when the contract was not renewed and from the end of 1999 to October 2003 the abattoir slaughtered clean beef cattle less than thirty months old. The speed of the beef slaughter

line was 40-50 cattle per hour and the chillers had capacity for approximately 320 cattle depending on their size.

82. Mr Elliott said that the appellant no longer used the cattle slaughter line or the beef chill accommodation. In cross-examination he accepted that the plant and machinery used in connection with these facilities had not been removed and were in good order such that a hypothetical tenant could use it without undue delay for the slaughter of cattle (once a licence was obtained). But Mr Elliott said that such a tenant would lose money on the enterprise. The appellant had well established contacts in the industry and even it lost money on cattle slaughter. A hypothetical tenant would only try to slaughter cattle at Orchard Farm "if he were a fool". The cattle slaughtering facilities had remained empty for eight years.

83. Mr Ray said that he had taken the cattle accommodation "at a very low level of valuation" due to its underutilisation. (He took the beef gut room and the beef slaughter hall at 50% of the base value and the beef chill plant room, the beef chill extension and the quartering hall at 75% of the base value.) He said that there would be some demand for cattle slaughter even in the aftermath of the BSE episode. But the appellant had made a business decision to specialise in the export of sow meat. The rating hypothesis required the assumption of a hypothetical tenant and there could well have been a taker for the cattle slaughter facilities as at the AVD in 2003. Indeed at that time cattle slaughter had not finished at Orchard Farm.

84. Mr Ray acknowledged that there had always been a low level of cattle production in the south east of England and that this had been reduced further following the BSE outbreak. He said that the beef slaughter hall could be brought back into production much more quickly than the chill stores which he said would need more upgrading. But he accepted that the slaughter hall could not be used unless the chill stores were available at the same time. Nevertheless Mr Ray said that the beef slaughter hall was used for storage and for gaining access to other parts of the abattoir. It was covered space that the occupier could not do without and it must have value.

Issue (f): conclusion

85. The hypothetical tenant would not necessarily share the same business model as the appellant and the fact that the appellant chose to stop beef slaughter in late 2003 does not mean that there would be no demand for that use at that time. But we are satisfied that the prospects for cattle slaughter at Orchard Farm were poor as at the AVD, even though the appellant was continuing to use the premises for that purpose at that time. We do not consider that Mr Ray's relativities accurately reflect this position and that they are too high. Nor do we accept that the relativity of the chillers, which Mr Ray admitted required more upgrading, should be higher than that of the slaughter hall. We note that a limited use of the slaughter hall was made following cessation of cattle slaughter and this, together with the limited prospect of a renewed use of the cattle slaughter facilities, leads us to take a relativity for all of the cattle accommodation of 25% of the base value.

Valuation

86. Our valuation of the appeal hereditament is given in Appendix 2 and is in the sum of £170,158. We round this down to a rateable value of £170,000 with effect from 1 April 2005.

Determination

87. We determine that the appeal hereditament must be entered in the local non domestic rating list with an assessment of £170,000 with effect from 1 April 2005. The ratepayer's appeal (RA/6/2010) is dismissed. The valuation officer has succeeded in part in his appeal (RA/7/2010). The parties are now invited to make submissions on costs and a letter relating to this accompanies this decision which will become final when, but not until, the question of costs has been determined.

Dated 26 March 2012

George Bartlett QC, President

A J Trott FRICS

Addendum

88. The appellant has identified four discrepancies in Appendix 1 of the decision which it says are at variance with the information contained on the Valuation Office Agency's website. The respondent has commented on these discrepancies which relate to entries VO2, VO5, VO10 and VO12 of Appendix 1. In the light of the parties' submissions we reach the following conclusions:

(i) VO2: no alteration to Appendix 1 is required.

(ii) VO5: the Tribunal's reference to a rateable value of £230,000 is incorrect. The figure was mistakenly taken from entry VO5b of Mr Ray's comparable sheet at page 885 of the trial bundle. The correct figure, according to the respondent's latest submissions, is £320,000 based upon an area of 8,843.64 m^2 which gives a rateable value of £36.18 per m^2. However the Tribunal's error does not affect the base value figure recorded in Appendix 1 and has no effect upon the base values which we adopt at paragraph 66 of the decision.

(iii) VO10: the last column for this entry should be amended to "appeal withdrawn".

(iv) VO12: the entry shown in Appendix 1 took effect from 15 December 2007. The agreed assessment as at 1 April 2005 was £254,000 although no details are given of any change in area between those dates. As with VO5 this discrepancy does not affect the base value figure recorded in Appendix 1 or the adopted base values in paragraph 66.

In accordance with Rule 53 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 the discrepancies have been corrected in the revised Appendix 1 which is attached to this Addendum. The second sentence of paragraph 63 has also been amended to read:

> "In two of them there was no appeal, in three cases the appeal was withdrawn and in the remaining five the assessment was agreed with the ratepayer's professional adviser".

These amendments do not require us to alter our determination of the rateable value.

89. We have received submissions on costs from both parties. The appellant submits that the Tribunal did not find wholly for the respondent in several respects and that it favoured Mr Elliott's general approach rather than Mr Ray's, relying in its decision upon the "substantial evidence" of comparable abattoir assessments. The VO had therefore incurred unnecessary costs by collecting irrelevant data about industrial comparables. The VO had also forced the appellant to incur unnecessary costs by his failure to accept that any works to make the premises suitable for any other use could not be classified as minor.

90. The appellant's appeal had succeeded to the extent that the appellant would no longer be disadvantaged by the respondent's proposed method of valuation.

91. The Tribunal did not uphold the respondent's or the VTE's valuation approach or their figures of rateable value. But the Tribunal's determination was much closer to the VTE's figure than that of the respondent.

92. The appellant submits that it acted reasonably throughout the appeal and that each party should pay its own costs.

93. The respondent submits that the appellant lost his case conclusively and substantially, both on the point of law as to whether lairages are exempt and on valuation, where the Tribunals determination exceeds the appellant's figure by £120,000. Although the VO was not successful in defending his valuation of £202,000, he lost his case by £32,000 compared with the equivalent figure of £120,000 for the appellant. Furthermore the Tribunal's determination was £20,000 more than the VTE's figure against which the VO had appealed.

94. The fact that the Tribunal was prepared to endorse the appellant's general approach should not divert attention from the Tribunal's decision, namely that the appellant lost its appeal whereas the respondent effectively won his appeal. The manner in which the appellant sought to defend its valuations was wholly unreasonable and put the respondent to a great deal of trouble and expense, e.g. by arguing for a nil valuation and adopting, but then abandoning, the contractors test approach.

95. The identification and inspection of 32 comparables by the VO (including those identified by Mr Elliott) gave the Tribunal a full national picture upon which to make a judgment as to value. Mr Elliott had made a number of changes to his valuation approach during the appeal and had altered the comparables upon which he relied. The VO considered it prudent to inspect all of the comparables in case Mr Elliott changed his approach again. The Tribunal had found that the VO had "identified comparables objectively and fairly". Any abortive work was attributable to the appellant's changes in valuation approach. The VO's position had been constant throughout the appeal.

96. The respondent asks for his costs.

97. The general rule for costs is that the successful party ought to receive their costs. The ratepayer's appeal was dismissed. The VO's appeal succeeded because although the rateable value determined by the Tribunal was significantly less than that for which the VO contended, it was substantially more than the VTE's figure. There is no justification in our view for depriving the VO, as the successful party, of any part of his costs and we find no reason to depart from the general rule. We therefore determine that the appellant shall pay the respondents costs of the appeals, such costs if not agreed to be the subject of a detailed assessment by the Registrar on the standard basis.

16 May 2012

George Bartlett QC, President

A J Trott FRICS

APPENDIX 1: COMPARABLES (AMENDED)

Ref	Address	Size (m^2)	Base Value (£/m^2)	RV	RV (£/m^2)	Comments
VOl	Linton, Cambridgeshire, CB21 4NN	7,956.31	22.50 (1950s/60s) 30.00 (1980s) 35.00 (1990s)	290,000	36.45	Settlement
VO 2	Cardington, Bedford, MK44 3SB	11,208.80	29.25 (1960s) 36.55 (1970s) 48.75 (1990s/ 2000s)	375,000	33.46	Settlement 5% allowance (mixed age/layout)
VO 4	Mansfield, Nottinghamshire, NG21 9BG	4,266.24	13.50 (1910s) 30.60 (1990s)	120,000	28.13	No appeal 6% allowance (access/layout)
VO 5	Stapleton, Pontefract, West Yorkshire, WF8 3DD	8,843.64	34.13 (1970s and 2000s)	320,000	36.18	Settlement 4% allowance (access)
VO 6	Bridlington, East Yorkshire YO15 3QY	7,827.32	13.45 (1970s)	144,000	18.40	No appeal 5% allowance on value of buildings (layout)
VO 7	Clitheroe, Lancashire, BB7 4LH	5,769.20	25.00 (1970s)	117,000	20.28	Appeal withdrawn 5% allowance on value of buildings (layout)
VO 8	Preston Lancashire PR5 6AJ	8,549.10	11.00 (1900s) 38.50 (2000s)	216,000	25.27	Settlement 10% allowance (access/location)
VO 10	Shrewsbury, Shropshire, SY1 4AH	8,500.00	22.00 (1950s)	199,000	23.41	Appeal withdrawn
VO 12	Westerleigh, Bristol BS37 8QR	10,823.50	25.00 (1970s)	254,000	23.47	Settlement
RP 10	Upminster, Essex RM14 1TH	2,144.63	31.33 (1980s)	55,000	25.65	Appeal withdrawn

APPENDIX 2: LANDS CHAMBER VALUATION

Ref	Description	Area (m^2)	Base Value (£/m^2)	Adjustment Factor	RV (£)	Note Reference
1	Lairage (old)	810	25.00	0.75	15,187	
1a	Lairage (new)	530.4	36.50	0.75	14,520	
1b	Lairage (old)	353.8	25.00	0.75	6,634	
1c	Canopy	65.1	25.00	0.25	407	
1d	Portakabin office	24.1	36.50	0.75	660	
2	Beef gut room etc	391.8	36.50	0.25	3,575	1
3	Bovine Slaughter hall	252.5	25.00	0.25	1,578	
3a	Former pig slaughter hall	263	25.00	0.5	3,287	2
4	Pig slaughter hall and production area	803.7	36.50	1.1	32,269	3
4a	Boiler room	57.7	36.50	0.75	1,580	4
4b	Loading Bay	87.9	36.50	0.75	2,406	
4c	Canopy	36.1	25.00	0.25	226	5
5	Chill store/despatch	233	36.50	1.15	9,780	6
6	Pig chill areas	798.1	36.50	1.15	33,500	6
6a	Gantry loading	45.5	36.50	0.75	1,246	
7	Beef chill extension	484.5	28.50	0.25	3,452	
7a	Beef chill plant room	30.8	28.50	0.25	219	
7b	Beef quartering hall	52.6	36.50	0.25	480	
8	Amenity block (1970s)	159.5	28.50	1.2	5,455	7
8	Amenity block (1990s)	115.7	36.50	1.2	5,068	7
8a	Portakabin office	12.2	36.50	0.75	334	
8b	Smoke hut	15.2	36.50	0.75	416	
9	Vehicle maintenance unit	447.6	36.50	1.0	16,337	
9a	Mezzanine Store	217.7	36.50	0.2	1,589	8
9b	Portakabin office	12.2	36.50	0.75	334	
10	Offices	264.2	36.50	1.2	11.572	
Sub - total		6,564.9			172,111	
	Car parking	110 (spaces)	--	--	--	9
	Storage land	1,250	5.00	1.0	6,250	10
	Plant and machinery				15,000 193,361	11
Contd…						
	Adjustments			Less 12% for	23,203	12

				access and layout	170,158	13
Rateable value say £170,000 with effect from 1 April 2005						

NOTES TO APPENDIX 2

1. Beef gut room. Part of previous cattle slaughter facilities so taken at 25%. Also open in part. See paragraph 85.

2. Former pig slaughter hall. Now used as a plant room. Allowance for ground floor plant room taken at 75% but underutilised so reduced to 50%.

3. See paragraph 78.

4. Plant. Ground floor. Taken at 75% per Appendix 10 of the statement of agreed facts.

5. Described by Mr Ray and shown on plans as a canopy. Taken at 25% (being of more substantial construction) per Appendix 10 of the statement of agreed facts.

6. See paragraph 79.

7. Increased by 20% by reference to Appendix 10 of the statement of agreed facts.

8. Taken at 20% of base value by reference to Appendix 10 of the statement of agreed facts.

9. Value of car park is included in the base value. See paragraph 68.

10. See paragraph 73.

11. Taken at Mr Ray's figure. Mr Elliott presented no evidence about plant and machinery values having abandoned his contractor's test valuation.

12. Mr Ray's 12% adjustment for access and layout was not disputed by the appellant.

13. £25.92 per m^2 overall.