IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 224 (LC)
Case No: RA/70/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – VALUATION – self-catering holiday cottages – receipts and expenditure valuation – composite hereditament – fair maintainable trade – whether ratepayer's performance better than that of a reasonably competent tenant – expenditure – whether allowance for notional tenant's labour appropriate – appeal allowed in part

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

BETWEEN:

ANDREW WISHART **Appellant**

and

LAURIE HULSE
(VO)
Respondent

Re: Self Catering Holiday Unit and Premises
Cottages R/O Elmfield,
Stone Street,
Stelling Minnis,
Canterbury,
Kent. CT4 6DL

Martin Rodger QC, Deputy Chamber President and A J Trott FRICS

Royal Courts of Justice, Strand, London WC2A 2LL
on
29 – 30 May 2018

The Appellant in person
Mr James Feltham, Technical Advisor at the Valuation Office Agency, for the Respondent

The following cases are referred to in this decision:

Atkinson v Lord [1997] RA 413
Beaconside Country House & Cottages v Gidman (VO) [2016] UKUT 497 (LC)
Dennett v Crisp [2013] UKUT 35 (LC)
Redrose Limited v Thomas (VO) [2014] UKUT 311 (LC)

Introduction

1. This is an appeal by the ratepayer, Mr Andrew Wishart, against a decision of the Valuation Tribunal for England (VTE) dated 20 September 2017 concerning the rateable value of a property described in the 2010 rating list as a "self-catering holiday unit and premises" at "Cottages r/o Elmfield, Stone Street, Stelling Minnis, Canterbury, Kent".

2. In the language of rating, and as we will explain below, the property with which the appeal is concerned is a "composite hereditament". It comprises three elements: Elmfield, which is a three-bedroom bungalow occupied by Mr Wishart and his wife Mrs Harriet Wishart as their family home; the adjoining 28 acres of grazing land; and four self-catering holiday units. Although the hereditament is occupied as a single unit from which Mr and Mrs Wishart conduct a small-scale farming and holiday enterprise, the four holiday units are the only part of the composite hereditament to fall within the scope of non-domestic rating and it is on them that the appeal has focussed.

3. In general terms, the rateable value of a hereditament is represented by the rent at which it is estimated it might reasonably be expected to let from year to year from the date of determination, on the assumption that it is in a state of reasonable repair and that the notional tenant will be responsible for maintaining it in that state (para 2(1), Schedule 6, Local Government Finance Act 1988 (the 1988 Act)). The valuation is to be undertaken as if the letting takes place at the antecedent valuation date (AVD), which in this case is 1 April 2008.

4. The parties agree that the appropriate method of estimating that rent in the case of the Elmfield holiday units is by adopting the receipts and expenditure method of valuation. The dispute concerns the application of that method, in particular with respect to:

(i) the level of income which the notional landlord and tenant, negotiating the rent, would assume a reasonably competent operator of the holiday units would be capable of achieving over a sustained period (a measure referred to as the "fair maintainable trade" or "FMT"); and

(ii) the level of working expenses that the same reasonably competent operator would be expected to incur in order to achieve that level of income.

The parties agreed that the outcome of the hypothetical negotiation would be that the balance left after deducting the anticipated expenses from the expected income (i.e. the net profit of the business before rent) would be divided equally between the landlord and the tenant. Since the parties did not agree whether certain important items should be taken into account in the assessment of net profit, their agreement of the appropriate division of that sum was of only limited significance.

5. Although the appeal was heard under the Tribunal's simplified procedure, it was well presented, including by Mr Wishart, the appellant, who in addition to giving detailed evidence of fact, demonstrated an impressive practical command of the relevant valuation techniques. Mr James Feltham BSc, MRICS, a technical adviser with the Chief Valuer Group of the Valuation

Office Agency (VOA), appeared for the respondent and called the valuation officer, Mr Laurie Hulse BSc, IRRV as an expert witness. Mr Hulse has considerable experience of receipts and expenditure valuations in the context of self-catering holiday units and other business premises valued by that method.

The appeal hereditament

6. Mr and Mrs Wishart purchased Elmfield in November 2006, at which time only two of the holiday units existed. These were detached brick and tile single-storey cottages, known as Dilly and Gilt, which had been built in 1998. Each cottage has four single bed spaces (the number of single bed spaces, or "SBS", is used to compare cottages of different sizes). These units had also been let out by the Wisharts' predecessor.

7. Mr and Mrs Wishart subsequently built a terrace of three larger, two-storey cottages of which the two end units, known as Straw and Clay, have been completed and are let out as self-catering holiday units. The names chosen for the two cottages reflect their innovative "eco" design – they are made of clay and straw, and each provides 6 single bed spaces. The third unit is not currently completed.

8. Each cottage has a patio area and a private garden. There is on-site parking with access from Stone Street along a short lane which passes the Wisharts' home, Elmfield. Some modest farm buildings and a children's play area are adjacent to the cottages while the surrounding agricultural land completes the unit.

9. The hereditament is close to Canterbury, Folkestone and Dover and is located in an area of outstanding natural beauty. Other visitor attractions in the area include a zoo and a safari park. Easy access is available to London by road (M20) and by high speed rail link from Ashford.

Rating history

10. The hereditament was entered in the compiled 2010 non-domestic rating list at a rateable value of £4,400 with effect from 1 April 2010. At that time the non-domestic element of the hereditament comprised only the cottages known as Dilly and Gilt, having a total of 8 SBS. Each SBS was valued at £550.

11. The valuation officer increased the assessment to £7,700 with effect from 30 September 2013 to reflect the completion of the cottage known as Clay, with its 6 SBS also being valued at £550 each.

12. The valuation officer further increased the assessment to £11,000 with effect from 27 February 2014 to reflect the addition of the cottage known as Straw to the appeal hereditament. Once again its 6 SBS were each valued at £550.

13. A third alteration was made to the list with effect from 22 December 2014 when the valuation officer increased the assessment of the four cottages to £13,250. He valued the smaller cottages (Dilly and Gilt) at £700 per SBS (£5,600 in total) and the larger cottages (Clay and Straw) at £650 per SBS (£7,800 in total). The total was rounded down to the nearest £250.

14. Mr Wishart appealed against each of the three alterations to the list made by the valuation officer (but not against the original compiled list entry).

15. The VTE heard the three appeals together in July 2017 and issued its decision on 20 September 2017. It determined that the rateable value of the appeal hereditament should be:

(i) £7,400 with effect from 30 September 2013 (a reduction of £300 from the valuation officer's assessment). Dilly and Gilt were valued at £550 per SBS (£4,400) and Clay was valued at £500 per SBS (£3,000).

(ii) £10,250 with effect from 27 February 2014 (a reduction of £750). Dilly, Gilt and Clay were valued as before and Straw was valued at £500 per SBS (£3,000). The total of £10,400 was rounded down to £10,250.

(iii) £10,250 with effect from 22 December 2014 (a reduction of £3,000). The VTE did not accept the valuation officer's case for increasing the assessment for each of the cottages.

The appeal

16. Mr Wishart made a consolidated appeal against each of the VTE's decisions. The valuation officer responded but did not cross-appeal.

17. The parties' valuations in respect of each appeal are set out in the following table:

Material Day	Cottage* (SBS)	VTE	Appellant	Respondent
30.09.2013	D(4), G(4), C(6)	£ 7,400	£4,182	£ 8,000
27.02.2014	D(4), G(4), C(6), S(6)	£10,250	£5,810	£11,000
22.12.2014	D(4), G(4), C(6), S(6)	£10,250	£5,810	£11,000
*D = Dilly C = Clay G = Gilt S = Straw				

On behalf of the Valuation officer Mr Feltham informed the Tribunal that, as no cross-appeal had been lodged against the VTE's decision, he would not be asking the Tribunal to direct the entry of figures higher than those of the VTE. Despite the valuation officer's view that the VTE's assessments were marginally too low he would not seek to disturb them.

Statutory provisions

18. A local non-domestic rating list must show every relevant non-domestic hereditament at least some of which is neither domestic property nor exempt from local non-domestic rating (1988 Act, sections 42(1) and 64(4)). Agricultural land is exempt (1988 Act, Sch.5, para. 2). Under section 64(8) a hereditament is non-domestic if it consists entirely of property which is not domestic, or it is a composite hereditament. A hereditament is composite if only part of it consists of domestic property (section 64(9)). In the case of a composite hereditament the whole hereditament falls to be entered in the local rating list, notwithstanding the domestic element.

19. The hereditament in this appeal comprises exempt, domestic and non-domestic elements, namely, the agricultural acreage (which is exempt), the bungalow (domestic), and the holiday units (non-domestic). Paragraph 2(1B) of Schedule 6 to the 1988 Act provides that:

> "The rateable value of a non-domestic hereditament which is partially exempt from local non-domestic rating shall be taken to be an amount equal to the rent which, assuming such a letting of the hereditament as is required to be assumed for the purposes of paragraph 2(1)[1], would, as regards the part of the hereditament which is not exempt from local non-domestic rating, be reasonably attributable to the non-domestic use of property."

20. The effect of this direction is that, in a case where part of a hereditament is exempt, the rateable value of the hereditament is to be determined by identifying the extent to which the rent which would be agreed for a letting of the whole hereditament would reasonably be attributable to non-domestic use.

21. Paragraph 2(1B) is not prescriptive about how an assumed rent for the whole property is to be apportioned, or attributed, to different uses. In *Atkinson v Lord* [1997] RA 413 the Court of Appeal considered the analogous provisions of the Council Tax legislation (reg. 7, The Council Tax (Situation and Valuation of Dwellings) Regulations 1992) and accepted that in determining the valuation band into which the domestic element of a composite hereditament should be placed, the regulation did not require a particular method to be adopted. As Schiemann LJ explained (at p.421):

> "The method which the legislator has adopted in relation to the valuation of composite hereditaments is in some respects similar for the non-domestic rating regime and the Council Tax regime. In each case the valuer is required to consider a value for the whole of the composite hereditament and then to consider what part of that whole is attributable, in the one case to non-domestic use of property, in the other case to domestic use of the property. In each case the legislature prescribes what is to be valued but does not prescribe how or by what valuation techniques that valuation is to be arrived at."

[1] In summary the letting assumptions are:
(i) The tenancy begins on the day by reference to which the determination is to be made;
(ii) Immediately before that day the hereditament is in a reasonable state of repair excluding repairs which a reasonable landlord would consider uneconomic; and
(iii) The tenant pays for repairs, insurance and usual outgoings.

22. It should go without saying however, that whatever technique is adopted it is essential to respect the statutory hypothesis of a single letting of the whole of the hereditament including its domestic, non-domestic and exempt components. Where the value of the non-domestic part is to be ascertained by a receipts and expenditure valuation, the attribution of a separate value to the non-domestic use of property requires careful consideration, especially in a case such as this where the domestic and exempt parts of the hereditament each contribute to the success of the business conducted from the non-domestic part. On the statutory hypothesis the residential accommodation is included in the letting and must be taken to be available for occupation by the tenant who will carry on the business of letting the holiday units; the exempt agricultural land is also included, and may make an important contribution to the character of the business, for example by allowing guests using the holiday cottages to have access to livestock kept on the exempt part. The residential and agricultural uses may have important consequences for the way in which a business is conducted from the non-domestic part and for the income and expenses involved.

23. In this appeal we were concerned that little consideration appeared to have been given by either party to the requirement to assume a letting of the whole hereditament. Both parties were happy to proceed on the basis that a conventional receipts and expenditure valuation of the non-domestic element of the hereditament was all that was required, without apparently acknowledging the complications created by the composite nature of the hereditament. At the conclusion of the hearing we offered the parties the opportunity to make further submissions in writing on this aspect of the case, but both indicated that they were content to proceed on the basis we have described. As we have said, the statute does not prescribe a method of arriving at the amount of the rent attributable to the non-domestic use of the hereditament and, for that reason, though with some misgivings, we are prepared to adopt the same approach as the parties.

Valuation principles

24. Before considering the details of the rival valuations it is worth identifying some of the assumptions which underpin a receipts and expenditure valuation of a composite hereditament which includes holiday cottages.

25. The hereditament is to be valued on the assumption that the whole was vacant and to let on 1 April 2008. As with any open market valuation, the landlord and tenant whose assumed negotiation leads to the agreement of a rent for the hereditament are abstractions, rather than real people. The notional tenant is not assumed to be the ratepayer. Since the property is taken to be vacant and to let, the ratepayer must be assumed to be out of occupation on the valuation date.

26. The notional parties are taken to be willing to reach agreement on the statutory terms, even though, as the evidence in this appeal demonstrated, the assumed transaction (an annual letting of a small holding, with a house and self-catering holiday units) is not one which is encountered in reality.

27. The basis of the valuation is the assumption of a letting to a reasonably competent or efficient operator who will expect to achieve a level of income, or turnover, and to incur a level of expenditure, which are broadly representative of an average level of performance. That is not to exclude the possibility that, on a letting in the open market, the successful tenant might be significantly better than average. Nevertheless, since the object of the valuation is to determine a letting value for the hereditament provided by the notional landlord, it is assumed that an above-average tenant would not be prepared to pay more in rent because of any particular attributes of his or her own (whether in terms of skill, experience or resources) which might result in a better level of performance than would be achieved by an average operator.

28. Since the negotiation is assumed to take place in advance of a letting on 1 April 2008, the only trading information which could be available is information about the performance of the business run by the ratepayer or a predecessor before 1 April 2008 (whether that information would in fact be available is a different question).

29. As we have explained, the incoming tenant is assumed to be reasonably competent and of average ability, being neither especially skilled nor particularly inept. The parties are assumed to base their agreed rent on the performance which that tenant, or any other broadly average tenant, would be capable of achieving. It follows that the turnover to be considered is not that of the actual occupier but that of a reasonably efficient hypothetical tenant, i.e. the FMT.

30. The performance achieved by the actual occupier may be a useful starting point in the assessment of FMT, but it cannot be adopted uncritically, or as necessarily representing the trade which might be expected to be achieved by the notional tenant. If the actual occupier is not of average ability or reasonably competent, but instead is of outstanding ability, or, for that matter, is conspicuously incompetent, the income generated by the actual operator's business may require to be adjusted. Moreover, in any case where the assumed tenure (an annual letting) is different from the basis on which the business of the ratepayer has been operated (which in the case of self-catering holiday businesses is almost invariably by a freehold proprietor) it is necessary to bear in mind the possibility that the performance of the actual occupier may not reflect the performance of an annual tenant (albeit one with a reasonable expectation of continuing in occupation).

Issue 1: fair maintainable trade

31. The basis of Mr Wishart's appeal was that the VTE had over-estimated the fair maintainable trade and under-estimated the expenses which should be taken into account in a receipts and expenditure valuation.

32. The FMT of a self-catering holiday unit depends mainly upon its occupancy rate and pricing structure. The starting point taken by both parties for the analysis of the occupancy rate at Elmfield was the gross turnover (before commission paid to letting agents) achieved by the ratepayer in the trading year 2007–2008. They did not agree whether that turnover was representative of the performance to be expected of a reasonably competent operator, Mr Wishart's case being that the occupancy rates he and his wife achieved were significantly better

than those he had been advised by the VOA it would normally assume would be achieved by a typical operator.

The case for the appellant

33. Mr Wishart produced unaudited accounts showing that turnover in the year to 5 April 2008 had been £29,154. This related to the Dilly and Gilt cottages which had a total of 8 SBS. Accounts were also available for the last two full years of trading for Mr Wishart's predecessor, Mr F K West, since these had been made available when the property was sold in November 2006. They showed gross turnover of £20,654 in the year ended 31 March 2004 and £20,433 in 2005. No accounts were available for the 2005-06 or 2006-07 trading years, but Mr Wishart produced figures for the five low season months from November 2006 (when he and his wife took over) to 5 April 2007 during which the gross turnover was £9,950.

34. Mr Wishart said the turnover he had achieved reflected overtrading (i.e. a better than average performance) and that, following the Tribunal's decision in *Dennett v Crisp* [2013] UKUT 035 (LC) at paragraph 22, it was appropriate to make an adjustment to allow for this. He explained that he and his wife had been very motivated and enthusiastic to make the venture work from the beginning. For them it was a new start and a new lifestyle. They brought relevant qualifications and significant business and marketing experience to the venture. They had increased the advertising spend and had targeted niche publications and websites; these included the magazine of the National Childbirth Trust and websites for dog owners, both of which they saw as target markets particularly suited to the facilities they could offer. They had achieved national tv and press coverage for their innovative eco-cottages (which, although this was after the base year 2007-08, is indicative of their approach to publicising their business). They nagged their lettings agency to get bookings and were prepared, unlike some owners, to take last minute bookings. They were early adopters of internet and social media advertising. They provided cots, high chairs and welcomed families with dogs. They had space for children to play and allowed them to feed their animals. They stressed the importance of customer care and were available on site to help their guests as required. This level of personal service was appreciated and led to repeat bookings which now constituted more than 50% of trade. Many owners were content to instruct an agency and set up a simple website. Mr Wishart stressed that he and his wife brought enthusiasm and energy to the business and had gone the extra mile to make their guests' visits enjoyable. Those were the reasons for the suggested over-trading.

35. Mr Wishart sought to prove that over-trading had occurred by comparing the actual occupancy rate achieved by his business with the occupancy rate that a reasonably efficient operator would expect. He explained that it was possible to measure occupancy in different ways. The cottages were available to be let either for full weeks or for short breaks of four nights. Short breaks were priced at 75% of the weekly rate and the number of short breaks could therefore be expressed as equivalent weeks. For the year 2007-2008 Dilly and Gilt were let for a combined total of 56 full weeks and 39 short breaks. Short breaks therefore represented 29.25 equivalent weeks. The total occupancy of the two units was 85.25 weeks out of a possible 104 weeks which represented an occupancy rate of 82%. This was Mr Wishart's preferred method of expressing the occupancy rate but he recognised that it was also possible, as Mr Hulse had done, to express occupancy based on the number of days that the units were let. Using that method Mr Wishart

calculated the occupancy rate at 72%. In his evidence he adopted a compromise occupancy rate of 75% (it was a recurring feature of Mr Wishart's evidence that on matters where he and Mr Hulse disagreed he was usually prepared to suggest a compromise at a level noticeably closer to Mr Hulse's figure than to his own).

36. Mr Wishart said he had adopted an assumed occupancy rate of 60% (31 weeks) when assessing FMT because that was what he had been told was a reasonable rate at a meeting with the valuation officer originally responsible for his appeal in February 2015. In his statement of case he stated this as a fact agreed with the valuation officer, but at the VTE hearing the valuation officer had sought to distance himself from the 60% benchmark. Mr Hulse, who had not been at the original meeting attended by Mr Wishart, said that while 60% may have been mentioned as a figure used where no accounts were available; it was only a broad average across the country and included both prime and secondary locations, including areas where there was an oversupply of holiday units.

37. Mr Wishart explained that once the valuation officer had backed away from the 60% occupancy rate he had initially been led to believe was standard, he had searched for evidence to establish what level of occupancy a reasonably competent operator might expect to achieve. Several sources provided relevant information. He had asked his current letting agency, Kent and Sussex Holiday Cottages, what occupancy rate they would expect for the type of holiday units (offering 4 and 6 SBS) found at the appeal hereditament. They advised that between 18-22 weeks (35%-42%) could be expected in the current market (September 2017). Mr Wishart also considered the 2014 income guide for cottage owners issued by his previous letting agency, Cottages4You (part of the large Hoseasons Group). The guide gave income figures at occupancy rates of between 15 and 30 weeks (29%-58%) which Mr Wishart said clearly indicated that 30 weeks was at the upper end of the range which most operators might reasonably expect to achieve.

38. Mr Wishart said that this evidence suggested a more realistic occupancy rate for a reasonably efficient operator might be 50%. Nevertheless, he was content to continue using the 60% originally suggested to him by the valuation officer in his analysis of the FMT. Taking 60% occupancy as the benchmark and comparing it to the 75% rate he had achieved meant that he was over trading by 25%[2]. If the actual 2007-2008 gross turnover figures were adjusted accordingly the FMT would be £23,323 for the two 4 SBS units (Dilly and Gilt). This represented £2,915 per SBS.

39. Mr Wishart sought to validate his calculation of FMT by reference to other 4 SBS self-catering holiday units in Kent which were represented by Cottages4You. The agency allocated each cottage to one of 22 price categories depending on size and facilities; both Dilly and Gilt were categorised as L3, i.e. in the middle of the range. There were 46 such 4 SBS properties, including Dilly and Gilt. Using an assumed occupancy rate of 60% and the agency's pricing matrix Mr Wishart calculated that only two of the 46 4 SBS cottages would have achieved a FMT per SBS greater than £2,900 (in 2008 prices). Using the same approach (60% occupancy at the

[2] (75%-60%) ÷ 60%

agency's 2008 prices) Dilly and Gilt would be expected to achieve a FMT of £2,460 per SBS. Mr Wishart concluded that his adopted FMT figure of £2,915 per SBS was more than fair.

40. Turning to the two 6 SBS cottages (Clay and Straw) Mr Wishart undertook a further analysis of the FMT of cottages in Kent available through Cottages4You using the 2008 price list. This showed that the more bed spaces a cottage had, the lower was the average price per SBS. Assuming a 60% occupancy rate Mr Wishart said the average FMT per SBS for a 6 SBS cottage (£2,072) was 80% of the average FMT per SBS of a 4 SBS cottage (£2,588).

41. Mr Wishart refined this analysis further by comparing the FMT per SBS of 4 SBS cottages in the L3 category (the same category as Dilly and Gilt in the Cottages4You brochure) with that of 6 SBS cottages in the S3 category (the same category as Clay and Straw). This showed that the average FMT per SBS of a 6 SBS cottage (£2,098) was 85% of that of a 4 SBS cottage (£2,460).

42. Mr Wishart adopted the higher figure of 85% in calculating the FMT of Clay and Straw. Applying 85% to his adopted value of £2,915 for the 4 SBS cottages gave £2,477 per SBS for the 6 SBS cottages. His total FMT was therefore £53,060[3] when all four cottages are taken into account, and £38,182 when only one of the "eco-cottages" was available.

The case for the respondent

43. Mr Hulse considered that the FMT should be calculated by reference to the actual turnover of Dilly and Gilt in the year to 5 April 2008. He reduced the figure of £29,145 to £28,000 because this period contained two Easters[4]. This gave a turnover of £3,500 per SBS for the 4 SBS cottages.

44. Mr Hulse did not think an adjustment should be made for over trading. Mr Wishart compared his turnover to average figures without explaining why he thought his level of trade could not also be achieved by a reasonably efficient operator. In Mr Hulse's view the level of turnover was inherent in the favourable location and reflected the attributes of the cottages on offer; it did not depend upon any special qualities that the appellant brought to the business. In 2008 the appellant was new to running a holiday letting operation and certainly had no more experience than a reasonably efficient operator might be expected to have. Furthermore, the appellant used an agency (the same agency as his predecessor) which charged a high level of commission (30%). An exceptional operator would not need to rely on an agency to this extent. Mr Hulse considered that the use of an agency indicated that the turnover achieved could not be taken to be above the market norm.

45. Mr Hulse also considered occupancy rates for Dilly and Gilt calculated from information provided by Mr Wishart in October 2014, which showed occupancy rates (based on the number of

[3] 8 SBS @ £2,915 plus 12 SBS @ £2477 = £53,044
[4] 8 April 2007 and 23 March 2008.

nights let rather than the weekly equivalent method) averaging 69% in 2010 and 60% in 2013[5]. Occupancy rates supplied for 2014 were for the first nine months only and were therefore higher because they excluded the quieter autumn period. They showed an average occupancy rate of 81.5%. Mr Hulse did not consider these rates to be exceptional or indicative of over trading. He supported this conclusion by reference to the occupancy rates provided by a ratepayer in a form of return for five holiday cottages at Reach Court Farm near Dover, Kent. These comprised three 6 SBS units, one 4 SBS unit and one 2 SBS unit. The ratepayer said that the occupancy rate (number of nights let) for each unit for each of the years 2012 to 2014 was "Approx 70%".

46. No other evidence was provided by Mr Hulse in support of his view that the appellant had achieved only average performance. He explained that information about occupancy levels was rarely provided by ratepayers. He drew no conclusions from the significantly higher turnover achieved by the appellant than had been shown in the accounts of his predecessor, Mr West, in the two years for which accounts were available.

47. Mr Hulse said there were specific reasons why the Tribunal had found over trading in *Dennett v Crisp*. The ratepayer had employed a manager, which was very unusual in this type of business, and nearly all the marketing was internet based, again unusual in 2008. The Tribunal said at paragraph 22:

> "If, because of the employment of a manager and effective internet marketing, the actual turnover was greater than would be expected from a reasonably efficient operator, it should be adjusted downwards to reflect the difference."

Mr Hulse thought there were no such factors in this appeal.

48. Mr Hulse accepted that a 6 SBS cottage would generate a lower turnover per SBS than a 4 SBS cottage. He calculated the difference by reference to the turnover of the business in 2015, the first year that all four cottages were let. Turnover in the year ending 5 April 2015 was £76,205, a figure taken from the form of return completed by Mr Wishart on 9 June 2015. Mr Hulse adjusted this figure for inflation back to the AVD by reference to the Retail Price Index. This showed that values in 2008 were 17% lower than in 2015. Applying this discount gave an equivalent turnover of £63,322 which Mr Hulse rounded to £63,500. He deducted his estimated turnover for Dilly and Gilt (£28,000) from this total to give turnover for Clay and Straw of £35,500 or £17,750 each. This represented £2,958 per SBS for a 6 SBS cottage or 85% of the figure for a 4 SBS cottage (£3,500). Mr Wishart had arrived at the same relationship by a different method.

49. Mr Hulse explained that his FMT figures per SBS for Elmfield (an average of £3,175) were higher than those at Reach Court Farm (an average of £2,333) because Dilly and Gilt were detached cottages (unlike those at Reach Court Farm) while Clay and Straw were new eco-friendly cottages, which would command premium prices.

[5] Mr Hulse miscalculates the figure for Gilt in 2013. The occupancy rate is 58.6% and not 64.5% as he states.

Discussion

50. The parties agree that the correct starting point is the appellant's actual turnover in 2007-2008. They also agree, by different routes, that a 6 SBS cottage will generate 85% of the turnover per SBS of a 4 SBS cottage. But they disagree about whether the appellant was over-trading so as to require an adjustment in the turnover he achieved to reflect the turnover of a reasonably competent tenant.

51. Mr Hulse suggested that to merit an adjustment of the actual results achieved by the ratepayer to take account of over-trading it would need to be demonstrated that the ratepayer had performed significantly better than the broad level of business achieved by an operator of a reasonably efficient standard. We accept that approach, and do not consider that such adjustments should be made too readily, or without persuasive evidence. Nevertheless, it will be necessary in every case to consider whether the ratepayer's performance is representative of a broad average performance by an annual tenant, bearing in mind, as we have pointed out in paragraph 30 above, that in this sector the basis on which the ratepayer occupies the hereditament will almost invariably be different from the basis to be assumed for the purpose of the valuation.

52. The turnover achieved by the appellant in his first full year of business was significantly higher than that of his predecessor in the years ending 31 March 2004 and 2005. Mr Wishart compared this increase with the annual rate of turnover growth of Mr Hulse's comparable units over the same period, which Mr Wishart calculated at 3%. He said that if the turnover at the appeal hereditament had grown at this rate the expected turnover in 2007-2008 would have been £23,246 instead of the actual figure of £29,154 (which represented a growth rate of 5.8% pa). We accept that is what the accounts show. There is very limited evidence about how Mr Wishart's predecessor ran the business. We know that he used the same agency as Mr Wishart; we do not know whether turnover may have been affected by the owner's prospective retirement; we do know, as Mr Hulse agreed in cross examination, that in 2005, Mr West achieved a turnover per SBS which was about 10% higher than that achieved at the most comparable unit, Reach Court Farm, in 2006. We note, however, that Mr West operated two 4 SBS cottages (Dilly and Gilt) whereas at Reach Court Farm there was one 2 SBS, one 4 SBS and three 6 SBS cottages. Since both experts agree that each bed space in a 6 SBS cottage is worth only 85% that of a bed space in a 4 SBS cottage we would expect the FMT per SBS at Reach Court Farm to be lower than that at Dilly and Gilt, other things being equal.

53. Mr Wishart relied upon an occupancy rate of 60% as the benchmark which a reasonably efficient operator could be expected to achieve. He said the previous VO had proposed this figure to him in early discussions, which we have no reason to doubt given Mr Hulse's acceptance that it was regarded as a national average, but nevertheless it was not accepted by Mr Hulse as appropriate in this case. Mr Wishart supported his argument with corroborative evidence from two lettings agencies which suggested that an occupancy rate of 60% might be too high, or at least right at the top of the normal range. There may be reasons why a letting agency might wish to temper its clients' expectations, but we bear in mind that data of this sort would be likely to be available to a person considering taking a tenancy of holiday cottages who made enquiries of potential letting agents, and might therefore be taken to influence such a person's expectations of

what might be achieved. No published data which we have been shown supports a typical occupancy rate higher than 60%.

54. Mr Hulse said that the 60% figure quoted to Mr Wishart had been "derived from national statistics" but he did not produce those statistics. He implied that higher occupancy rates were to be expected in Kent, but he produced no data to support that view, which was based on a general assertion that there were fewer holiday cottages in the south east than in Devon and Cornwall. We do not accept that reliable conclusions can be drawn on the basis of such assertions. Some of Mr Wishart's data was derived from a more local source, Kent & Sussex Holiday Cottages, which suggested lower occupancy rates might be normal in its area than were suggested by the national operator's figures.

55. We place little weight on the form of return for Reach Court Farm which suggests an occupancy rate of approximately 70%, and which Mr Hulse used to justify taking the ratepayer's actual occupancy as representative of a broad average. The "approx. 70%" response seems to us to have been provided as a blanket answer for a succession of years, which suggests little attention to detail. At the hearing Mr Hulse adduced a copy of the 2015 form of return, signed by the owner of this property; although it states the current range of tariffs for each of the five units it gives no details of the turnover of the business and there is therefore no way of checking the stated occupancy rate. It was difficult to reconcile 70% occupancy with the assumed FMT and the known pricing structure of the Reach Court Farm units. In any event, reliance on a single property as representative of a broad average is not a satisfactory approach.

56. We have also considered the (limited) information that Mr Hulse was able to give about the occupancy rate of other holiday letting units which he relied on as comparables. Mocketts Farm, Sheerness had four cottages of different sizes ranging from 4 SBS to 12 SBS units. These had occupancy rates in 2014 of between 26% (4 SBS) and 40% (12 SBS). Pilgrims Nook Farm, West Studdal is said to have had an occupancy rate in the region of 60% in 2014. St Johns Cottages, Sandwich appear to show average occupancy rates declining from 42% in 2012 to 28% in 2014. Great Field Farm, Stelling Minnis had three cottages which in 2014 had occupancy rates of 20%, 26% and 33% respectively. We appreciate that these are occupancy rates for later years than 2008 and that Mr Hulse considers Reach Court Farm to be the most comparable property but the equivalent occupancy rates for Dilly and Gilt were (on average) 69% in 2010, 60% in 2013 (when the business was closed for part of the year while the eco-cottages were being built) and 82%[6] in 2014. The average occupancy rate of Clay and Straw in 2014 was 75%[6].

57. Having heard Mr Wishart's explanation of the steps taken to promote his business and encourage repeat visits, and taking into account the evidence on the performance of his predecessor and other indications of general levels of turnover, we are satisfied that he and his wife operated the business from the time they took it over at a turnover which exceeded that which the reasonably efficient tenant would expect for the reasons summarised in paragraph 34 above. We do not think the level of trade was, as Mr Hulse believes, the result of the inherent

[6] These figures are for January to September 2014 and therefore exclude the quieter autumn months. The annual occupancy rate was likely to have been lower.

characteristics of the appeal hereditament (which were no different in the time of Mr West and are broadly shared by the Kent comparables). Nor do we accept that the use of an agency is likely to lead to only average performance, or that an outstanding operator would not need to do so; on the contrary, we are struck by the fact that, using the same agency, the appellant achieved significantly better results than his predecessor. We consider that, on the evidence available to us, the occupancy benchmark for the FMT of a reasonably efficient tenant is fairly assessed at not exceeding 60%. This seems to us to be well supported by the comparable evidence and by Mr Wishart's evidence of the expectations of letting agencies (both of which relate to freehold operators, whose performance might generally be expected to be stronger). As Mr Wishart is happy for an FMT occupancy rate of 60% to be assumed, it is not necessary for us to consider whether the evidence suggests that an even lower occupancy rate might be more representative.

58. Mr Wishart's analysis of the turnover per SBS based on categories and prices contained in letting agency brochures appears to be derived from data about the number of nights of occupation rather than the number of equivalent weeks. For instance, his figure of £2,460 for the FMT per SBS of a category L3 4 SBS unit is based on the price list for 7 nights and not that for 3 and 4 nights[7]. That being so we consider the level of over-trading to be 20% based on Mr Wishart's estimate of 72% as his own "day by day" occupancy rate and 60% as the FMT of a reasonably efficient operator. We do not consider it appropriate to make an additional reduction from the actual turnover to reflect the fact that there were two Easters in the financial year 2007-2008. We have no doubt that there are fluctuations from year to year for a variety of reasons.

59. The FMT attributable to Dilly and Gilt is therefore £24,295[8] or £3,037 per SBS. The FMT of Clay and Straw, both 6 SBS units, is 85% of that of Dilly and Gilt, i.e. £2,581 per SBS. The FMT of Dilly, Gilt and Clay as at the AVD is £39,782 and that of Dilly, Gilt, Clay and Straw is £55,268.

Issue (ii): working expenses

60. Having ascertained the FMT which the cottages are capable of achieving in the hands of a competent tenant, it is next necessary to consider the expenses which would be incurred in doing so. There was disagreement both about the items which should be taken into account as representing necessary expenses of the business, and about the method by which the quantum of the expenses should be ascertained.

Evidence and submissions

61. Mr Wishart took his own 2007-08 accounts as the starting point for his assessment, but argued that these needed to be adjusted in several respects.

[7] Total possible income (100% occupancy) for an L3 unit in 2008 was £16,403. Assuming 60% to represent FMT gives £9,842 for a 4 SBS unit or £2,460 per SBS.
[8] (60%÷72%) x £29,154

62. First, and most importantly, Mr Wishart pointed out that he and his wife undertook many tasks the cost of which was not reflected in the accounts of their business, such as cleaning, laundry, the majority of property maintenance, gardening, bookkeeping and a large part of the marketing. He argued that the accounts should be adjusted to include a notional cost for these activities. Mr Wishart also suggested that other conventional accounting items such as depreciation, and travelling and motor expenses, which had been omitted from the accounts, ought properly to be allowable as expenses.

63. Mr Wishart argued that there was no reason why the work which he and his wife undertook should be treated as being done for the joint benefit of the landlord and the tenant. In any negotiation of a rent based on the anticipated net profit of a business, the tenant would insist on his own labour being accounted for as an expense before the net profit was divided; alternatively, the tenant would insist on an unequal division of the net profit if it failed to recognise the cost of the tenant's labour as an expense, so that the benefit of his own effort accrued to him and to his family. After all, if the notional landlord wished to reap the value of his property without letting it, he would either have to incur the expense of employing someone to provide the necessary labour or would need to do the work himself, rather than devoting his time to other activities. Whether the cost of the work was measured in the salary of an employee, or in the value of the operator's own time, it represented a real cost, whether the business was run by an owner-occupier or by a tenant.

64. In support of his case Mr Wishart referred to two recent decisions of this Tribunal in which different techniques were adopted to ensure that the cost of the ratepayer's labour in his own business was properly recognised as an expense of that business.

65. *Redrose Limited v Thomas (VO)* [2014] UKUT 0311 (LC) concerned a hereditament comprising self-catering holiday cottages run by a small company which were to be valued by the receipts and expenditure method. The ratepayer argued that the cost of director's salaries should be allowed as an expense, or alternatively that the cost of the tasks undertaken by the directors should be assessed and allowed as an expense (see paras. 31-32). At paragraph 65 the Tribunal (NJ Rose FRICS) accepted that, in principle, an adjustment should be made for work done by the ratepayer if the hypothetical tenant would employ outside labour to carry out some of the tasks which the ratepayers were undertaking themselves. Alternatively, if such adjustments were too subjective, he considered that: "the amount of work done by the tenant is relevant when quantifying the tenant's share". That was especially so in the case of self-catering operators, for whom the prospect of a capital gain (which would not be available to the notional annual tenant) was an important consideration. The Tribunal had therefore allowed for work undertaken by the ratepayers by adjusting the divisible balance in their favour (75:25), explaining at paragraph 71:

> "If Ms Thomas [the Valuation Officer] is right, two people would be willing to work extremely hard operating the SCHU business at the appeal property for a combined wage of £12,146 per annum (50% of £24,292), in the knowledge that they will be unable to sell their interest in the property when their tenancy ends. That seems to me to be an unrealistic approach. I agree with Mr Meulendijk that a tenant's share of 50% is too low. In my judgment, the tenant's share in the circumstances of this appeal should be 75% of the

divisible balance, providing a joint annual income to the husband and wife (or other two person partnership) of £18,219."

66. On the other hand in *Beaconside Country House & Cottages v Gidman (VO)* [2016] UKUT 0497 (LC), which also concerned self-catering holiday units, the Tribunal (PR Francis FRICS) allowed for work undertaken by the tenant by making a specific adjustment to the tenant's own accounts (which were used as the basis of the expenditure assessment) and maintaining the divisible balance at 50:50. At paragraphs 57-58 the Tribunal acknowledged that different cases might require different approaches, and explained its own approach in that case:

> **"**So, it is necessary in every case, once the FMT and working expenses have been established, to "stand back and look" and to ask what the hypothetical landlord and tenant would agree would be a sufficient return to reward those efforts. The correct answer is unlikely to be the same in every case. In the case of Beaconside, a divisible balance of just under £30,000 has been established. At 50% of this, the return to the tenant at about £15,000 pa (less than 10% of turnover) would seem on the face of it to be an unattractive level of return for the effort required. However, the allowance made for the cleaning costs at 10% of FMT including laundry which were not referred to in the accounts needs to be reflected also (which it was not in *Redrose*), and this has the effect of bringing the "return" up to a more realistic level of around £25,000.
>
> 58. I do not therefore consider that it is necessary to adjust the apportionment of the divisible balance in this case away from the 50/50 split that had previously been argued for. But, for the sake of clarity, I record here that if the additional allowances to the accounts argued for by Mr Morrish [the ratepayer's valuer] and accepted by me had not been incorporated, then it would have been necessary to adjust the divisible balance. To do so where such allowances have been made would indeed be double counting."

67. Mr Wishart explained that as he and the valuation officer both thought that the net profit should be split equally, it was necessary to reflect the efforts of the notional tenant by making an allowance for his labour in the accounts where none was already included in Mr Wishart's accounts. If no allowance was made, the risk to the tenant of fluctuations in occupancy rate was significant; at 40% occupancy the business would make a loss, yet the landlord's full rent would still be payable.

68. Mr Hulse did not agree that an allowance should be made for tenant's labour, and considered that the notional tenant's remuneration for his own labour was accounted for as part of the 50% of net profit left after paying rent. No such allowance was included in appellant's own accounts, nor those of his predecessor, nor had an allowance featured in accounts prepared as part of a business case for the eco-cottages when planning permission was being sought. Mr Hulse also considered that running a self-catering holiday business from cottages adjacent to the operator's home in an agreeable part of the country offered more than just a monetary return, and conferred what he called "lifestyle benefits" which would be attractive to a prospective tenant. Moreover, the commitment in time which running such a business required was modest, and was compatible with other employed or self-employed activity by the operator, so the receipts of the business should not be expected to be the operator's sole income.

69. Mr Wishart's approach to quantifying the appropriate level of expenses was to begin by taking the actual cost figures from his own accounts for most items of expenditure (he excluded the largest single expense, loan interest) and to express them as a percentage of the actual turnover achieved. On this basis expenses shown in the accounts amounted to 55.2% of turnover.

70. For those categories of expenditure which were included in the VOA's requests for information but where no entry had been made by Mr Wishart in his own accounts, or in the case of repairs, renewals and maintenance where the accounts reflected only items undertaken by external contractors, Mr Wishart made an allowance based on the work he and his wife performed. The additional categories were for cleaning and laundry, repairs, renewals and maintenance, and bookkeeping. These further allowances amounted to 22.9% of turnover, so that total expenses represented 78.1% of turnover.

71. Mr Wishart appeared to us to adopt a moderate approach to the quantification of these expenses. As a cross check he calibrated his own recorded expenditure against the Tribunal's decisions in *Redrose* and *Beaconside* for the same categories of expenses. With one exception (insurance) the figure shown in his adjusted accounts for 2007-2008 (expressed as a percentage of turnover) was less than the average of the three properties with which those Tribunal decisions were concerned and in several cases it was lower than all of them. In no case was it the highest figure.

72. None of the accounts considered by the Tribunal in the decisions to which Mr Wishart referred included a deduction for commission payable to a marketing agency. Mr Wishart used agencies to market his cottages and their commission amounted to £6,976 or 23.9% of his actual turnover; he applied the same percentage to the FMT as an expense. After loan interest (which he did not take into account) this was (by far) the largest single expense in the accounts. He said "This figure is in line with the fees of many agencies" but gave no specific examples. Given that the agency through which Mr Wishart advertised his cottages was one of the largest national operators we have no reason to doubt that its charges were typical of the market generally. Support for that view is provided by evidence recorded by the Tribunal as having been given in *Redrose* (at para. 20) by the retired CEO of the Wales Tourist Board, who considered that "owners who marketed their SCHUs through an agency would normally be charged upwards of 20% of turnover, plus VAT". Interestingly he also considered that an operator who did not rely on an agency would need to spend comparable amounts on advertising.

73. In its decision in this case the VTE determined that expenses should be taken at 65% of turnover, saying that it was "not persuaded that all of the expenses outlined by the appellant are relevant". But it did not specify what expenses it thought were irrelevant.

74. Mr Hulse thought the VTE's approach of allowing 65% of turnover was fair. The expenses shown in the accounts of the appellant's predecessor for 2003-04 and 2004-05 were 65.7% and 67.7% of turnover respectively (with no allowance for owner's labour), and the running expense of the new eco-cottages ought to be lower. Mr Hulse suggested that expenses of 65% were

supported by information from his comparable properties and by the overall allowance for expenses made in each of the Tribunal's decisions upon which Mr Wishart relied.

Discussion

75. Much of the difficulty in applying the statutory valuation hypothesis of a letting from year to year to self-catering holiday cottages arises from the fact that, in practice, such units are not let (whether on annual tenancies or at all) but are owned by the operator on a freehold basis. There was evidence before us of one unit which had been let to the owner of an adjoining pub for use as self-catering accommodation, but that was exceptional, and there was no evidence of any property similar to the composite Elmfield hereditament being occupied under a tenancy. Both parties accepted that such properties are simply not let on annual tenancies. The absence of a letting market might be taken to indicate, as Mr Wishart suggested, that self-catering businesses cannot be run in such a way as to provide both an acceptable rental return for a landlord and an acceptable income return for a tenant. That was also a view expressed eloquently by the ratepayer in *Redrose* (at para.28). The absence of a letting market means no evidence is available of how parties negotiating an annual tenancy might behave, which leaves a great deal to the judgment of the valuer. Nevertheless, the statutory hypothesis must be applied, no matter how difficult the exercise or how artificial the result.

76. As the Tribunal discussed in *Redrose*, the motivation of an owner occupier of self-catering accommodation to grow the business and thus to enhance the capital value of the property must be taken to be absent in the notional case of a letting to an annual tenant whose only return from the business will be in the sharing of the net profit. On the statutory hypothesis any capital growth from the efforts of the tenant will accrue to the landlord, who will also be spared the expense of maintaining the premises, and will incur none of the risks of the business being undertaken from them.

77. We accept that there would be what Mr Hulse called "lifestyle benefits" available to the operator of a self-catering business from the composite hereditament. The opportunity to live and work on a rural smallholding, to run one's own business, part of which is centred on the self-catering units, but with time available to devote to other business or leisure activities, would no doubt be attractive to some, as it was to the appellant and his family. On the other hand, we consider that Mr Hulse overestimated the degree to which those benefits would be valued, at the expense of an income, especially by an operator who was a tenant and who would face the same risks and uncertainties as an owner occupier, together with the additional risk that the tenancy might be brought to an end, all without the prospect of enhancement in the value of a capital asset. We agree with the Tribunal in *Beaconside* (at para. 56) that:

> "The 'labour of love' expended in running the operation and the risks associated with the business therefore need to be reflected wholly in a reasonable annual profit. With the current 'traditional' system of dividing the divisible balance equally, 50% of any additional profit that the operator makes converts into an equal increase in rateable value. This cannot be right."

78. Thus we consider that as a matter of principle it is necessary when undertaking a receipts and expenditure valuation of a composite hereditament from which a small self-catering holiday cottage business is run to include a credible return for the operator's own efforts, either by treating them as an expense of the business, or by reflecting them in an unequal division of net profit. We are satisfied that a prospective tenant would not be prepared to reach agreement on a different basis, and that a prospective landlord would not reasonably expect to achieve a letting without making such an allowance. Mr Wishart's agreement that the divisible balance should be shared equally was conditional upon an adjustment being made in his own accounts in respect of the work that he and his wife contributed to the running of the business. We accept that approach and consider below the appropriate deductions for cost items that do not appear in the Elmfield accounts.

79. The proportion of turnover represented by the total expenses allowed by the Tribunal in the self-catering holiday property cases it has considered has never been as low as the VTE's allowance of 65% in this case. In *Dennett v Crisp* 69.7% was allowed (although the ratepayer incurred much higher expenses, see para.10); in *Redrose* the corresponding figure was 68%, and in the two *Beaconside* appeals, 71.6% and 78.5%. Mr Hulse suggested that the running costs of older cottages, or converted farm buildings, with which these cases were generally concerned, should be higher than for the modern cottages at Elmfield, while the property showing the higher level of expenses in *Beaconside* included a ten bed Victorian house, and had indoor and outdoor swimming pools, so was not comparable. The latter point has some force, but the evidence does not support the generalisation that newer cottages should necessarily result in lower expenses than older cottages; some expenditure will be the same in each case and it was Mr Wishart's evidence that, while heating costs were lower, some of the other expenses of the eco-cottages (such as insurance) were significantly greater than for the more traditional units.

80. Leaving the larger of the *Beaconside* hereditaments out of account, and bearing in mind that in *Redrose* the Tribunal adjusted the split of the divisible balance in the tenant's favour because it had chosen not to make a greater allowance for the value of tenant's labour, a proportion of FMT at or around 70% seems to be indicated where a labour allowance has been made and the parties have agreed on an equal split of the net profit. We therefore do not agree with Mr Hulse's suggestion that the Tribunal decisions support expenses of only 65% of turnover.

81. The accounts considered in the previous Tribunal decisions, unlike those in this appeal, do not appear to make an allowance for letting agency commission, either as a deduction from gross turnover, i.e. as a cost of sale to give a gross profit before operating expenses (the accounting method adopted by Mr Wishart's predecessor, Mr West), or as an operating expense. There is nothing in those decisions to suggest that letting agents were used or that the adopted FMT was net of agency commission (although typical levels of commission were discussed in the evidence in *Redrose*).

82. The section of the Valuation Office Agency's ("VOA") Rating Manual that deals with the rating of self-catering holiday accommodation states at paragraph 4.1.4 of Practice Note 1: 2010:

"(a) Income should be assumed as being gross, inclusive of commission, which normally varies between 20 and 25%."

The updated guidance dated 6 April 2018 repeats this statement at paragraph 8.2 and goes on to state:

"The analysis of accounts of self-catering units that are wholly commercial should be expressed as [a] percentage of gross receipts before deduction of commission. The actual percentage will be determined by the relativity between the income achieved and the costs incurred in achieving it."

83. The Federation of National Self-Catering Associations agreed a revised form of return (VO 6048) with the VOA for use when making returns for the 2010 non-domestic rating list. It included a pro forma accounting layout which contained the following highlighted headnote:

"When a property is let through an agency the income MUST include any agent's commission and/or booking fees with the commission and/or booking fees shown separately under expenditure"

84. We consider it likely that any departure from this convention would have been mentioned in the Tribunal's previous decisions and neither party suggested that the FMT was expressed net of commission in any of those cases. That being so the previous Tribunal decisions are only indicative of costs being 70% of FMT where no letting agency commission is payable. Where a letting agency is used we would expect that percentage to be greater, although this effect might be buffered, at least to some extent, by a commensurate reduction in direct advertising costs. That expectation is supported by the evidence in this case and in *Redrose*: the advertising expenditure in *Redrose* (5.4% of FMT) and *Beaconside* (5.5% and 4.4% of FMT) was considerably higher than Mr Wishart's figure of 1.4% of actual turnover at Elmfield in 2007-2008, or the £50 spent by his predecessor, Mr West, in 2004 which represented 0.24%.

85. Mr Wishart's analysis of expenditure began with the actual costs recorded in his 2007-2008 accounts. Where such costs "scaled directly with turnover" he adopted the percentage which these represented of actual turnover for that year, i.e. utilities and logs (8.4%); repairs, renewals and maintenance (6.9%); agency commission (23.9%); and other expenses (5.5%). He compared these figures (except that for agency commission) with the corresponding figures adopted by the Tribunal in *Redrose* and *Beaconside.*

86. The cost of utilities in *Redrose* was 8.2% of the FMT and in *Beaconside* it was 12.5% and 11.8%. We have also compared Mr Wishart's figure with the equivalent entries in the accounts for the comparable self-catering cottages adduced in evidence. The average allowance for utilities (taken over several years) was 8.7%. We therefore consider Mr Wishart's figure of 8.4% to be reasonable.

87. The figure of 6.9% for repairs, renewals and maintenance excludes any allowance for time spent on this item by the appellant and his wife. We consider this item further at paragraph 95 below.

88. "Other expenses" is a catch all item that is treated differently in the various accounts depending on how many cost headings are separately itemised. We consider 5% of the FMT to be an appropriate allowance in the case of Elmfield.

89. The figure of 23.9% for agency commission is in line with the evidence of rates charged by letting agencies and falls within the VOA's range of what is normal. It is less than the commission paid by Mr Wishart's predecessor in 2004 (31.1%) and 2005 (34.4%). But it is above the average level of commission recorded in the accounts of the three comparables where this cost is itemised, i.e. 14.1%. The highest level of commission was 24.5% at St Johns Cottages in 2010 (although that follows a year when no commission was paid). On balance we accept Mr Wishart's figure as being reasonable.

90. Mr Wishart also identified several costs which he said did not scale with turnover, i.e. insurance; advertising; telephone, broadband and stationery; TV rentals and licences; bank charges; and business rates. All except advertising and TV rentals and licensing were said to scale with the number of bed spaces. In each case Mr Wishart expressed the actual costs in the 2007-2008 accounts as a percentage of his estimated FMT for Dilly and Gilt (the only two cottages in use at that time) of £23,323. Mr Wishart again calibrated these costs by reference to the Tribunal's decisions in *Redrose* and *Beaconside*. We think his figures are reasonable and we adopt them subject to the adjustments described below.

91. For those items which are scalable to the number of bed spaces we think the actual costs should be expressed as a rate per SBS and then scaled up by the number of bed spaces. Further adjustments are required for insurance (where Mr Wishart said the eco-friendly cottages faced higher premiums) and business rates (where it is agreed that 6 SBS units are valued at 85% per SBS compared with 4 SBS units). The results of these adjustments are shown in the following table:

Cost item	Actual cost 2007-2008 (£)	Cost per SBS (£)	D&G (8 SBS) (£)	D, C & G (14 SBS) (£)	D, G, C & S (20 SBS) (£)
Insurance	553	69.12	553	1,051[9]	1,549[9]
Telephone etc	515	64.37	515	901	1,287
Bank charges	76	9.50	76	133	190
Business	715	89.37	715	1,171[10]	1,627[10]

[9] We take the insurance cost per SBS of Clay and Straw (eco-friendly cottages) at £80 (approx. 20%) more than that for Dilly and Gilt.

rates					

92. We prefer to express advertising and TV rentals, which are said not to be scalable to either turnover or bed spaces, as a percentage of the actual 2007-2008 turnover, i.e. 1.4% and 0.5% respectively, rather than a percentage of Mr Wishart's estimated FMT.

93. There are five cost items where either no or a limited allowance was made in the accounts: cleaning and laundry; repairs, renewals and maintenance; travelling and motor; depreciation; and bookkeeping. We accept the principle that an allowance should be made for the cost of these items.

94. Mr Wishart said an allowance of 9.7% of FMT should be made for cleaning and laundry. This figure is based on the operator spending a total of three hours work per booking costed at £10 per hour. In *Beaconside* the Tribunal adopted 10% of FMT for this item. Mr Wishart's figure is also broadly in line with the equivalent average figures for most of the comparable cottages referred to by Mr Hulse, i.e. Mocketts: 9.5%; Reach Court Farm: 8.9%; St Johns Cottages: 11.3%; and Pilgrims Nook: 9.5%. The exceptions were Great Higham Barn at 5.7% and Great Field Farm at an unusually low figure of 0.5%. In cross-examination Mr Hulse said an allowance of 8-10% would be reasonable for this item. We agree and we adopt Mr Wishart's figure. This cost is scaled directly with turnover and can therefore be applied to the additional turnover from Clay and Straw cottages.

95. The accounts for 2007-2008 already make a partial allowance (6.9%) for repairs, renewals and maintenance but Mr Wishart said that this represented only the cost of contractors and that he and his wife undertook additional work that would reasonably be expected to be undertaken by contracted labour if they did not do it themselves. He estimated that such work comprised two and a half hours per week which he costed at £10 per hour, giving a total of £1,300 per annum. When added to the figure already in the accounts the total cost was 11.4% of the 2007-2008 turnover. The equivalent figure awarded by the Tribunal in *Redrose* was 12.4% and in *Beaconside* was 16.3% and 10% (including costs of land maintenance which is also a cost at Elmfield). The equivalent figures for Mr Hulse's comparables show no consistent pattern, e.g. for those comparables which included garden maintenance as an expense the average allowance ranged from 5.9% to 52.1%. A similar variation was found where no explicit allowance for garden maintenance was made with average costs ranging from 3.6% to 41.4%. It seems likely that some of the accounts include exceptional items such as improvements but in the absence of further details we do not find this evidence to be helpful. In our opinion an appropriate figure for repairs etc, including an allowance for Mr and Mrs Wishart's own time, is £3,000 or 10.3% of the actual 2007-2008 turnover.

96. Travelling and motor expenses is a small item taken by Mr Wishart at 1% of FMT. The equivalent figure in Redrose was 2.2% and in Beaconside 1.5% and 4.5%. The allowance for travel/motors in the three comparables where this item appears was 1.3%, 1.9% and 2.2%. We therefore consider Mr Wishart's allowance to be reasonable.

[10] The business rates per SBS for Clay and Straw are taken at 85% of those of Dilly and Gilt, i.e. £76 per SBS.

97. Mr Wishart took depreciation at 5.1% of FMT (or 4.1% of the 2007-2008 turnover). This assumes that the fittings at Dilly and Gilt cost £6,000 each and would be replaced every 10 years. Although Mr Feltham suggested this allowance was excessive, it is considerably less than the figures adopted for this item by the Tribunal in *Redrose* (17.1%) and *Beaconside* (10% and 12.7%). Three of the comparables in this appeal included an allowance for depreciation with averages of 9.0%, 21.4% and 34.4% of turnover. We therefore consider that Mr Wishart's allowance to be reasonable and we adopt it.

98. The final item not included in the accounts was for bookkeeping. Mr Wishart allowed a total of £1,500 per annum comprising an hour per week for his time and £1,000 each year for an accountant to prepare the accounts and tax returns. As this expense did not scale with turnover Mr Wishart expressed it as a percentage of FMT. It amounted to 2.8% of his estimated FMT of £53,060 for all four cottages. He adopted the figure of 2.7% that was taken by the Tribunal for Stowford Lodge in *Beaconside*. That figure is also in line with those shown in the accounts of the comparables which ranged from 1.6% to 4.8% of turnover and averaged 2.9%. We accept Mr Wishart's figure of 2.7%.

99. We set out a table showing our conclusions below. The total costs are some 76% of the FMT which we consider to be well supported by the evidence costs are some 76% of the FMT which we consider to be well supported by the evidence.

Cost item	D & G FMT: £24,295 (£)	D, G & C FMT: £39,782 (£)	D, G, C & S FMT: £55,268 (£)
Cleaning & laundry (9.7%)	2,357	3,859	5,361
Utilities & logs (8.4%)	2,041	3,342	4,643
Repairs, renewals & maintenance (10.3%)	2,502	4,098	5,693
Insurance	553	1,051	1,549
Agency commission (23.9%)	5,807	9,508	13,209
Advertising (1.4%)	340	557	774
Telephone, broadband & stationery	515	901	1,287
TV rentals & licenses (0.5%)	121	199	276
Travelling & motors (1.0%)	243	398	553
Depreciation (5.1%)	1,239	2,029	2,819
Bookkeeping (2.7%)	656	1,074	1,492
Bank charges	76	133	190
Business rates	715	1,171	1,627
Other expenses (5.0%)	1,215	1,989	2,763
Total costs	18,380	30,309	42,236
Costs as % of FMT	75.7%	76.2%	76.4%

Other approaches

100. Although he relied principally on the receipts and expenditure method of valuation, Mr Hulse also suggested that there was an established "tone" for self-catering holiday units in the East Kent area which could be expressed as a rate per SBS. The evidence he relied on did not seem to us to indicate any such tone, with rates per SBS varying between £400 and £900. The units Mr Hulse considered most comparable, those at Reach Court Farm, suggested a rateable value per SBS of £425 for a four-bed unit and between £475 and £500 for a six-bed unit, whereas Mr Hulse's assessment at Elmfield analysed to £612.50 per SBS for the four bed cottages and £517.50 for the six bed units. We did not find this exercise helpful.

101. Mr Hulse also used a shortened receipts approach by reference to the rateable values of ten East Kent comparables which had been agreed before the hearing of appeals by the VTE. This showed that rateable values expressed as a percentage of FMT were in a range from 16.5% to 23%, while his own valuation of Elmfield units at £8000 on an assumed turnover of £45,750, and £11,000 on £63,500 represented 17.5%, which was comfortably within that range. The appellant's proposals represented 11% of turnover.

102. From the account of evidence given in other appeals before the Tribunal it appears that there is an expectation amongst valuation officers that the rateable value of self-catering holiday units in different parts of the country should fall broadly in the range spoken of by Mr Hulse: in

Dennett v Crisp (at para.19) the VO's evidence was that "it was generally to be expected that the RV would be between 17.5% and 22.5% of FMT"; in *Redrose* (at para. 34) the range was said to be "normally between 17% and 20% of gross receipts". Yet this range is not consistent with the decisions of the Tribunal. In *Dennett v Crisp* the Tribunal assessed a rateable value which was 15.1% of FMT; in *Redrose* it was 7.9%; and in the two *Beaconside* appeals the relationship of rateable value to FMT was 10.7% and 14.2%.

103. One reason for this disparity appears to be the reluctance of valuation officers to make any allowance for the notional tenant's own input in undertaking routine tasks such as cleaning, laundry and property maintenance which might, in other types of business, be undertaken by an employee. The result has been to underestimate the expenditure reasonably required to achieve the FMT which such hereditaments are capable of. This is now the third appeal in which the Tribunal has made clear its view that such reluctance is misplaced. In those circumstances we do not consider Mr Hulse's shortened receipts and expenditure method to be a useful valuation check and we give it no weight.

Summary and determination

104. We summarise the results of the receipts and expenditure basis in the following table:

	D, G & C	D, G, C & S
FMT	£39,782	£55,268
Costs	£30,309	£42,236
Divisible balance	£9,473	£13,032
Landlord's share at 50%	£4,736	£6,516

105. We therefore determine that the rateable value of the appeal hereditament is £4,700 as from the effective date of 30 September 2013 (Dilly, Gilt and Clay cottages) and £6,500 as from the effective dates of 27 February 2014 and 22 December 2014 (Dilly, Gilt, Clay and Straw cottages).

Martin Rodger QC

Deputy Chamber President

A J Trott FRICS

Member

20 August 2018