UPPER TRIBUNAL (LANDS CHAMBER)

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RATING – hereditament – alteration of rating list – wedding venue and premises – proposal to divide single assessment into two hereditaments following letting of part for storage use – mode of use of retained part – whether reversion to single hereditament as wedding venue following termination of letting – effective date – regulation 38(7) Valuation Tribunal for England (Council Tax and Rating Appeals) Regulations 2009 – appeal allowed in part

IN THE MATTER OF AN APPEAL FROM THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN: **ANTHONY ARNOLD** **Appellant**

and

TRACY A DEARING (VALUATION OFFICER) **Respondent**

Re: The Crooked Spaniard, Cargreen, Saltash, Cornwall, PL12 6PA

Determination on written representations

The following cases are referred to in this decision:

Williams (VO) v Scottish and Newcastle Retail Limited [2001] EWCA Civ 185
Fir Mill v Royton UDC and Jones (VO) (1960) 7 RRC 171
Re Thorntons plc and Another's Appeal [2018] UKUT 109 (LC)
Johnson v Gore Wood & Co [2002] 2 AC 1

DECISION

Introduction

1. This is an appeal by the ratepayer, Mr Anthony Arnold, against a decision of the Valuation Tribunal for England ("VTE") dated 18 July 2018 refusing to divide the hereditament known as the Crooked Spaniard, Cargreen, Saltash, Cornwall, PL12 6PA into two separate hereditaments.

2. The hereditament is shown in the 2010 local non-domestic rating list as a "wedding venue and premises" with a rateable value of £18,000. The 2010 compiled list entry was £27,250 for "public house and premises". The present rateable value of £18,000 and the revised description resulted from a consent order dated 17 July 2017 agreed between the parties pending an earlier appeal before the Tribunal.

3. The Crooked Spaniard ceased to be used as a public house in September 2008. Following building works to the first floor to convert the manager's flat into letting rooms the hereditament was used from February 2009 only as a wedding venue for hire, with the option of on-site catering. This use stopped in December 2010 and the property remained vacant for several years until part of the premises, described as "1st Floor, Function Room, Kitchen, Store and Rear Bar only", was let on 1 June 2014 on a tenancy at will to Mr James Branton at a monthly rent of £200. The permitted use was for storage.

4. Mr Branton's tenancy ended on 1 April 2015 following an agreement made on that day between Mr Arnold and the BBC for the purposes of using the Crooked Spaniard as a film location. The initial filming agreement ran from 2 April 2015 to 27 July 2015 at a fee of £5,000. A second agreement was entered into between 2 February 2016 and 31 July 2016 at a fee of £6,000 (including a contribution of £1,000 towards rates, electricity and water).

5. The parties now agree that the effect of the letting to Mr Branton was to create two separate hereditaments (the let area and the remainder) out of the pre-existing hereditament shown as a wedding venue and premises.

6. It is agreed that the material day (the date of the change in occupation) was 1 June 2014. The time from which the agreed alteration is to have effect is defined by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations"). Regulation 14 states, insofar as relevant:

> "(1) This regulation has effect in relation to alterations made on or after 1st October 2009 to a list compiled on or after 1st April 2005.
>
> (1A) Paragraphs (2) … do not apply in relation to a list compiled on or after 1st April 2017.

...

(2) Subject to paragraphs (2A) to (7), where an alteration is made to correct any inaccuracy in the list on or after the day it is compiled, the alteration shall have effect –

…

(c) From 1st April 2015 if the alteration is made in order to give effect to a proposal served on the VO on or after that date and the circumstances giving rise to the alteration first occurred before that date."

7. It is agreed that the application of regulation 14(2)(c) in the present case means that the alteration shall have effect from 1 April 2015. The respondent therefore agrees that the VTE was wrong to dismiss the appeal and should have altered the list by creating two hereditaments for such period as appeared to it to reflect the duration of the circumstances giving rise to this division.

The Issues

8. The parties do not agree about the period for which the list should be altered. The appellant contends that the division into two hereditaments is ongoing whereas the respondent says it came to an end on 2 April 2015 following the determination of the letting to Mr Branton.

9. The valuation of the two separate hereditaments is disputed. The appellant says that the rateable value of the storage hereditament should be £2,250 and that of the remainder of the property, described by him as "former wedding venue", should be £1. The respondent says that the respective rateable values should be £12,750 and £5,000 for one day (1 April 2015) and thereafter there should be a single hereditament, described by her as "wedding venue and premises", with a rateable value of £18,000.

10. The appellant applied on 12 October 2018 for the respondent's case for the reversion to a single assessment as a wedding venue to be struck out. The appellant said this "goes beyond the appellant's appeal on values effective at April 1st 2015" and required the respondent to specifically alter the list and to notify the appellant that she had done so. The appellant said the restoration of a single entry as a wedding venue and premises had no basis in fact on 2nd April 2015 and was wholly unsupported. The Tribunal ordered on 29 October 2018 that the appellant's application to strike out would be considered when it determined the appeal.

11. The appeal was heard under the Tribunal's written representations procedure. Mr Adrian Johnson FRICS, FCIA, of Johnson's Chartered Surveyors, gave expert evidence for the appellant by way of a report and a reply. Ms Galina Ward of counsel made submissions on behalf of the respondent, and the valuation officer ("VO"), Ms Tracy Dearing BA (Hons), MRICS, gave expert evidence in person by way of a report.

Facts

12. The Crooked Spaniard is located in Cargreen, a small village on the western side of the River Tamar estuary. It enjoys a waterfront location with views of the estuary and surrounding countryside. Cargreen is a 15-minute drive from Saltash to the south and is approximately 4km east of the A388 along minor roads. The property is detached with an adjoining car park and has a slipway and moorings on the river.

13. The original part of the property comprises a two-storey cottage style building with two bar areas at ground level and living accommodation above. There is a street entrance into the front bar area. To the rear is a single-storey extension with a restaurant/function room, bar, kitchen and toilets. There is also a side entrance. There is a patio area with access from the function room with steps down to the car park which is accessed from Fore Street. Underneath both parts of the building are stores which are only accessed externally.

14. The area of the part of the building let to Mr Branton was 465.57m^2. The use of a further 75.86m^2 (cellar store, WCs, main entrance) and the car park at the rear of the property is apparently disputed. The front bar area, amounting to 58.36m^2, was not let to Mr Branton and remained vacant.

Issue 1: The period for which the list should be altered

15. The respondent argued that as the letting to Mr Branton continued until the end of 1 April 2015 the list should be altered, albeit only for a single day, because of Regulation 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) Regulations 2009 ("the Procedure Regulations") which states:

> "Where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances."

16. The circumstances giving rise to the alteration in this case were that part of the premises were let for storage purposes on 1 June 2014 but only with effect from 1 April 2015 because of Regulation 14(2)(c) of the 2009 Regulations. There were no physical alterations to the premises resulting from the letting and therefore once the letting finished the circumstances which had given rise to the alteration ceased to exist and the premises were, as a matter of fact, once again "a former public house and wedding venue". The ending of the temporary division was demonstrated by the "overt act of use of the whole" premises by the BBC under the terms of the agreement for filming commencing 2 April 2015.

17. Ms Ward noted that the appellant relied in its statement of case upon *Williams (VO) v Scottish and Newcastle Retail Limited* [2001] EWCA Civ 185 which upheld the Tribunal's decision that Parliament intended to provide a statutory enactment of the *rebus sic stantibus* rule[1];

[1] Now known as "the reality principle": see *Newbigin (VO) v Monk* [2017] UKSC 14 at paragraph 12 and *Merlin Entertainments Group Ltd v Cox (VO)* [2018] UKUT 0406 (LC) at paragraph 42

that the rule had a second limb relating to the user of the hereditament; and that Parliament intended to adopt the formulation of the second limb provided by the Lands Tribunal in *Fir Mill v Royton UDC and Jones* (VO) (1960) 7 RRC 171 at 185:

> "The second assumption … is that the mode or category of occupation by the hypothetical tenant must be conceived as the same mode or category as that of the actual occupier. A dwelling-house must be assessed as a dwelling-house; a shop as a shop; but not as any particular kind of shop; a factory as a factory, but not as any particular kind of factory."

18. Ms Ward argued that the reality principle applied to both the physical state and the use of the premises, both of which had to be taken as they actually are, not as they may be at some future date. She said this principle was directly contrary to the appellant's case in this appeal. The property was a former public house and wedding venue, it was not a storage facility with a bar attached; rather part of it was used temporarily for storage pursuant to a letting agreement, creating a separate hereditament while that arrangement lasted. Those circumstances had ceased to exist and it would have been appropriate for the VTE, and for the Tribunal on appeal, to order that the alteration be made only in relation to the period during which they existed, i.e. for one day, pursuant to regulation 38(7) of the Procedure Regulations.

19. For the appellant Mr Johnson argued that the respondent had glossed over the "crucial point" of who she proposed was the rateable occupier and had not shown that anyone met "the established criteria for rateable occupation". Mr Johnson said that the valuation officer appeared to be saying, in describing the use of the premises following the end of the letting to Mr Branton as being "once again a former public house and wedding venue", that because the BBC were filming a series using the property as a fictional public house the property was actually in use as a public house. *Scottish and Newcastle* established that an occupier was rated on its actual mode or category of occupation and it followed there could be no assessment as a public house when there was no actual (rather than fictional) use for this purpose. Use as an actual public house ceased in September 2008 and that of a wedding venue in December 2010.

20. Mr Johnson submitted that the respondent was trying to use regulation 38(7) to create a new hereditament by conflating earlier uses of the property (a public house and a wedding venue). But that regulation was primarily intended to cover a temporary change in circumstances where the affected hereditament did not itself change and Mr Johnson considered that:

> "one cannot agree that pub use ceased in 2008, agree re-assessment as a wedding venue w/e April 2010, then agree a change of use on 1st June 2014 w/e 1st April 2015 then validly claim joint pub/wedding venue use resumed whilst openly admitting the property was used on 2nd April 2015 as an actual film location for a purely fictional pub."

If on 2 April 2015 the property ceased to comprise two hereditaments there should have been a "re-assessment as a single hereditament on normal statutory procedures". Mr Johnson submitted that regulation 38(7) could not be used as a short cut to enable such procedures to be circumvented. Furthermore, he considered that the respondent's reliance on regulation 38(7) was misplaced since the previous uses of the premises for a public house and subsequently a wedding venue had both ceased and had not resumed. It was not possible to revert to a use that had ceased because

> "The VOA's own dictum that *rebus* applies '*to both the physical state and use of the premises, both of which [must] be taken as they actually are*' is not satisfied."

21. Mr Johnson said that the material change of circumstances represented by the letting of part of the premises to Mr Branton in June 2014 continued after that letting ceased at the end of 1 April 2015. He said:

> "A property falling empty is not a material change of circumstances requiring re-assessment. There was no material change of circumstances to be considered on April 1st 2015.
>
> The material change of circumstances established on 1st June 2014 remains in force to this day."

22. Mr Johnson went on to deny that the BBC was in rateable occupation of the premises. Paragraph 16 of the respondent's statement of case stated that it "specifically does not agree … that there is no rateable occupation" by the BBC although the respondent acknowledged it was questionable whether the BBC's four-month period of occupation was too transient to constitute permanent occupation. But if the BBC was not in occupation on 2 April 2015 then, said the respondent, the appellant was.

23. The respondent has produced no evidence or argument to support the suggestion that the BBC was in rateable occupation after the end of Mr Branton's tenancy at will. Ms Ward states in her submissions that:

> "For the avoidance of doubt, it is not the VO's case that this occupation, whether in law the occupation of the BBC or the Appellant himself, caused the two hereditaments created by the letting to re-merge; rather, this overt act of use of the whole shows that the temporary split had come to an end, such that the VTE's power under regulation 38(7) was engaged."

24. In line with these submissions Ms Dearing concluded in her expert report that following the end of Mr Branton's tenancy the premises reverted to the previous single hereditament of "wedding venue and premises" at a rateable value of £18,000. I do not understand the respondent to be arguing in terms that there was a new mode or category of use of the premises, i.e. for filming purposes, as from 2 April 2015.

Discussion

25. In the light of the respondent's position it is not necessary for me to consider Mr Johnson's arguments about the rateability of the BBC's occupation; it is not an issue in this appeal. Nor is it necessary for me to consider Mr Johnson's arguments about whether the appellant was in rateable occupation for filming purposes if the BBC was not; as is clear from Ms Dearing's evidence the respondent considers the premises were a single hereditament for use as a wedding venue and premises as from 2 April 2015. Nothing turns on whether there was rateable occupation and, if so, by whom, of the premises as a film set.

26. There is no dispute that the hereditament should be divided to reflect the letting to Mr Branton of part of the premises for use as a store, nor that this division took effect from 1 April 2015. The parties agree that the VTE were wrong not to do this.

27. The circumstance giving rise to the alteration in the list was the letting to Mr Branton and that circumstance ceased at the end of his tenancy at will on 1 April 2015, upon Mr Arnold signing an agreement with the BBC for filming, such use to commence on 2 April 2015. There is no dispute that, even though the agreement with the BBC did not specify the extent of the property to be used, it was sufficient to require the termination of the letting to Mr Branton. In my opinion regulation 38(7) of the Procedure Regulations (albeit discretionary rather than mandatory) properly applies in this case. This was a temporary letting which, as Ms Ward says, ended with an overt act and an order to divide the hereditament should reflect the duration of the relevant circumstances, in this case one day.

28. Mr Johnson does not engage with the content of regulation 38(7); rather he criticises its invocation by the respondent as a "short-cut" to avoid proper procedure for the alteration of the list. He says it "does not work even on its own terms" because it assumes reversion to a mode or category of use (wedding venue) that ceased in December 2010. (Despite the wording used in paragraph 5 of Ms Ward's submissions I do not understand the respondent to suggest that the former use was a "public house and wedding venue". Confusingly Mr Johnson describes the property in the appellant's proposal as "public house and premises".) Instead Mr Johnson considers the property should continue to be treated as two assessments, a former wedding venue (rateable value £1) and a store and premises (rateable value £2,250).

29. I do not consider the application of regulation 38(7) is a device to deny the appellant proper procedural compliance. There was, as a matter of fact, a temporary letting of part of the hereditament for storage use and that use ceased upon the overt act of the appellant in allowing the BBC to use the premises for filming. The changed circumstances occasioned by the storage letting lasted for a limited period and thereafter the premises reverted (absent any new rateable occupation for filming purposes) to their former mode or category of use, namely a wedding venue. Although I agree with Mr Johnson that vacating a hereditament is not of itself a material change of circumstances, that is not to the point; what matters here is the acknowledged cessation of the material change of circumstances that gave rise to the creation of two hereditaments and which, in my opinion, engages regulation 38(7).

30. The fact that a hereditament is unoccupied and is likely to remain so does not mean that it is wrongly included and/or described in the local list. A shop does not cease to be a shop merely because the particular retail user has ceased trading. It is the same with a wedding venue and that use is not vitiated by a temporary storage use of part of the premises. Mr Johnson recognises this in his reply to Ms Dearing's expert report concerning the "part vacant" area not let to Mr Branton:

> "It is accepted rating practice that an empty property that is not newly constructed is to be valued for its use when last occupied unless there has been a material change. This follows the general rule that there is no special treatment for valuing empty property simply because it is empty."[2]

[2] Mr Johnson contradicts this view when rejecting the reversion of the whole property to its previous use as a wedding venue under regulation 38(7). He says (at page 13 of his reply) that "The former assessment as a wedding venue is purely historic as this actual use has never resumed" and therefore, he says, regulation 38(7) cannot apply to reinstate this use.

31. Mr Johnson submitted that to justify an assessment as a single hereditament the respondent must correctly identify a rateable occupier. He said there were established criteria for rateable occupation and that the respondent had failed to show that any person satisfied those criteria. However, the appellant became liable to a non-domestic rate in respect of any day in a chargeable financial year if on that day none of the hereditament was occupied, he was the owner of the whole hereditament (i.e. the person entitled to possession of it), the hereditament was shown in a local non-domestic rating list in force and the hereditament falls within a class prescribed by the Secretary of State by regulations[3].

32. It follows from my decision on the first issue that I do not consider the appellant's application to strike out the respondent's case is well founded. The respondent was entitled to rely upon the application of regulation 38(7) to justify the reversion to a single hereditament described as a wedding venue and premises and she did not need to make a specific alteration to the list.

Issue 2: the rateable value of the separate hereditaments

33. It is necessary to assess the rateable value of the two hereditaments, albeit only for one day. Ms Dearing considered the part of the premises excluded from the letting to Mr Branton should be described as "bar and premises" and valued at £5,000 whereas Mr Johnson said it should be described as "former wedding venue" and valued at £1.

34. Ms Dearing said this part of the property formed a new hereditament that was physically fitted out as a bar and would be used as such by an occupier coming to the property vacant and to let. It did not have an established mode or category of occupation because it had not previously been occupied separately from the rest of the Crooked Spaniard.

35. Mr Johnson said the vacant part of the property was last used as a wedding venue and should still be assessed for that mode of use. There had been no overt act to change anything in this remaining part. Although part of the Crooked Spaniard had been let for storage use the remainder of the premises was physically untouched and Mr Johnson submitted that for rating purposes it must still be assessed for its last use as a wedding venue. Confusingly, Mr Johnson described the use as "former wedding venue" in his submissions, the addition of the adjective suggesting that it was no longer, contrary to his argument, a wedding venue. I take Mr Johnson's argument to be that the remaining part should still be valued as a wedding venue but that it would command only a nominal (£1) value.

36. Ms Dearing valued the hereditament as a public house at between £2,880 and £3,960 by reference to the actual wet trade in 2007/8 of the whole of the property when still in use as a public house. She assumed 50% of this trade was attributable to the front bar (the new hereditament) and applied a range of 4 to 5.5% to this according to the valuation scheme and the categorisation of the property as being within band 2 in accordance with the Approved Guide for the Valuation of Public Houses. She then considered the assessment of two very small public houses in Bury St Edmunds

[3] Section 45(1) of the Local Government Finance Act 1988 and the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 (as amended). The hereditament falls within the class of non-domestic hereditaments prescribed for the purposes of that section.

in Suffolk (£7,250) and Godmanstone in Dorset (£9,500) and concluded that "it is safe to say that a RV of £5,000 is fair and reasonable."

37. Mr Johnson said there was no reason why Ms Dearing had departed from a valuation based on a nationally agreed scale. She had arbitrarily identified two out of "hundreds of small public houses around England and Wales". Mr Johnson said that if the hereditament was to be valued as a public house the appropriate rateable value was £3,400. But Mr Johnson preferred to value the hereditament as a club room similar to the local yacht club which had a rateable value of £3,900. This was much larger (141.7m^2) than the subject hereditament (58.36m^2) which did not have WCs or a kitchen. The yacht club had been valued at a main space rate of £30 per m^2 and applying this to the subject hereditament gave £1,750 which Mr Johnson discounted by 25% to £1,300 to reflect the lack of facilities.

38. Ms Dearing valued the storage hereditament at £12,750 pa. The rent paid by Mr Branton was £200 per month or £2,400 pa. Ms Dearing reduced this by 10% to bring it line with the full repairing and insuring statutory terms of the hypothetical tenancy, giving an adjusted rent of £2,160 pa or £4.63 per m^2 (excluding shared accommodation). She did not think this represented the open market value at the antecedent valuation date (1 April 2008) for the following reasons:

(i) the property had been empty for over three years by the material day and this would have affected the presentation of the property;

(ii) the tenancy was not for a fixed term and was taken on a month by month basis which meant the tenant had little security and might have to vacate at short notice;

(iii) the landlord was concerned to obtain planning permission to redevelop the site and was not seriously trying to exploit the commercial potential of the existing building; and

(iv) by comparison with the tone of the list of other assessments for storage use, the rate of £4.63 per m^2 was clearly too low.

39. In valuing the storage hereditament Ms Dearing relied upon three sources of evidence:

(i) A schedule of five storage comparables close to the subject property and with similar postcodes. These showed storage rates of between £29.25 and £39 per m^2.

(ii) The assessment of the Anchor Hotel in Watchet, Somerset, a former public house that was used as storage pending its change of use to a museum. It was valued at £17 per m^2 less 2.5% to reflect the lack of heating. Ms Dearing said that by comparison the subject property had better access and proximity to main roads, good car parking/loading, external storage and a better (less obstructed) layout.

(iii) Valuation scheme 126166 which covered rural industrial properties situated in village locations across Cornwall. This showed a range of values from £17.50 to £70 per m^2 including car parking. Ms Dearing said the value for 466 m^2 of accommodation was £40 per m^2 for the ground floor and half that rate for the first floor.

40. Ms Dearing's valuation specifically referred to the last of these sources. She therefore valued the ground floor at £40 per m^2 and the first floor at £20 per m^2. This gave a total of £16,134, excluding shared accommodation. She then deducted 20% to allow for the poor internal layout, giving £12,907 which she rounded to her adopted figure of £12,750.

41. Mr Johnson considered the best evidence of the value of the part of the property let to Mr Branton for storage was the rent he paid in 2014. Under the tenancy the tenant paid for internal repairs and therefore the rent needed to be adjusted onto the statutory basis. Mr Johnson therefore deducted 5%[4] to give a net rent of £2,280 pa which Mr Johnson rounded to £2,250. Mr Johnson considered that despite the tenancy being monthly the rent reflected the value to a tenant with a reasonable expectation of staying for a year or more.

42. The subject hereditament was not a standard industrial/storage shed. There was no direct (or even proximate) vehicular access to the building for loading/unloading and all goods had to be manhandled in and out. Ceiling heights were low (about eight feet) and floor loadings were not to industrial standards. There was very little clear space in a building that had been constructed and used for eating and drinking rather than storage. The floor level changed several times with steps up and down. Physical security was poor.

43. Mr Johnson said that the respondent had not explained the relevance of the schedule of local storage sites. Valuation scheme 126166 was concerned with "standard industrial units situated in village locations throughout Cornwall" and applied to "industrial type properties". This type of property was completely different to the subject hereditament and Ms Dearing had ignored this fundamental difference in her analysis. The scheme could not be used to value the part of the Crooked Spaniard let for storage.

44. The Anchor Hotel was nearly 100 miles away from Cargreen and Watchet was a much larger market town with over seven times the population. It had an established tourist trade with a strong emphasis on heritage; there were six museums and the West Somerset Railway. It had 12 eating establishments, four public houses and numerous shops. Cargreen had none of these attractions and Watchet would inevitably command higher values.

45. Ms Dearing said that upon cessation of the storage use the rateable value should revert to the previously agreed figure of £18,000 for use of the single hereditament as a wedding venue. She supported this figure by assuming (which was not disputed by Mr Johnson) that there would be 25 wedding events per annum. She said each wedding would generate income (venue hire only) of £5,000 giving a fair maintainable trade of £125,000. She took 15% of this figure to derive the rateable value using the shortened receipts and expenditure method and adopting the top of the percentage range contained in the relevant section of the Valuation Office Agency's Rating Manual.

46. Mr Johnson said that the turnover from the last year of trading as a wedding venue was £77,000 which he thought was the best indicator of fair maintainable trade. Ms Dearing adopted

[4] Mr Johnson said this deduction was made for internal repairs but to adjust onto the statutory terms the adjustment should be a deduction for the landlord's outgoings which he is assumed to pay from the rent received.

a figure of £5,000 per event based on a misunderstanding of the appellant's 2008/9 accounts. The correct figure was just over £3,000 per wedding. He did not understand why Ms Dearing had assumed no catering would be provided when she had acknowledged catering was an available option at paragraph 14 of her report. The recommended percentage scale for catered events was lower than for venue only events, i.e. between 4%-10%, and Mr Johnson thought that 4% of the fair maintainable trade was an appropriate allowance. This gave a rateable value of £3,080 which he rounded to £3,000.

Discussion

47. I prefer the respondent's approach to the valuation of the part of the Crooked Spaniard not let to Mr Branton. The material change of circumstances represented by the change in the mode or category of use of part of the premises to storage had a concomitant effect on the mode or category of use of the remaining part which itself became a separate hereditament. I agree that a hypothetical tenant fresh to the scene, considering this hereditament vacant and to let, would use it as a public house/bar or, as Mr Johnson says if the Tribunal accepts the respondent's case, a local club. I do not think that it would, or could, continue to be used as a wedding venue.

48. Ms Dearing assumes that the WCs would have been shared between the occupiers of the remaining part of the Crooked Spaniard and Mr Branton. This accords with the wording of the tenancy at will which does not refer to the WCs as part of the demise. But the kitchen was not available to the occupier of the remaining area. In my opinion Mr Johnson's description of the likely use of this part of the premises as a club room is more realistic than Ms Dearing's suggestion that it would be used as a public house. I think the local yacht club assessment is a useful guide to values and I accept Mr Johnson's adoption of a figure of £30 per m^2. I deduct 10% for the absence of a kitchen but make no allowance for the lack of WCs since I agree with Ms Dearing that these would be available to the hypothetical tenant. This results in a rateable value of £1,575.

49. Regarding the storage value of the hereditament let to Mr Branton, I do not find Ms Dearing's evidence helpful. The schedule of five storage sites is not analysed by reference to the subject property and is referred to without comment or explanation. It may be that, properly presented, these assessments might be of some assistance but absent any analysis by the respondent I do not give them weight. Valuation Scheme 126166 is concerned with purpose-built standard industrial units in village locations. The subject property is not such a unit and cannot sensibly be compared with them. I gain no assistance from such a comparison. Finally, Ms Dearing relies upon the assessment of the Anchor Hotel in Watchet which was a former public house now used for storage on the ground floor. It was assessed at £16.58 per m^2. The change of use of part of the Hotel is ostensibly similar to that at the subject property but Mr Johnson rightly points out that Watchet is geographically distant from Cargreen, is not as remote in terms of its accessibility (albeit Watchet is a coastal town) and has more facilities and attractions. I do not think it is appropriate to make a direct comparison between the two properties but I note that the assessment of the Anchor Hotel is based on a much lower rate per m^2 than Ms Dearing's other two sources of evidence but seems to have been overlooked in her choice of a ground floor rate of £40 per m^2.

50. There are also problems in relying upon the rent paid by Mr Branton in 2014. It was negotiated some six years after the antecedent valuation date and there is no evidence of how, if at all, values changed over the intervening period. The property had also been vacant for three and

a half years and was let on a monthly tenancy at will. In my opinion the rent of £2,400 per annum is not reflective of a letting on the statutory terms which require the assumption of a letting from year to year with a reasonable prospect of continuance. Those terms also require a letting on full repairing and insuring terms. According to the tenancy agreement Mr Branton only appears to have been responsible for internal repairs, leaving responsibility for external repairs and insurance[5] with the landlord. That requires an adjustment to be made for the landlord's (not the tenant's) outgoings.

51. Doing the best I can with the limited evidence available I consider that the value of the storage hereditament at the antecedent valuation date on the statutory terms would be £3,500 or approximately £7.50 per m^2.

52. The assessment of the Crooked Spaniard as a wedding venue at a rateable value of £18,000 was determined by a consent order of the Tribunal issued in a previous appeal under reference RA/40/2016. Mr Johnson now says that this was not agreed as being the correct figure but was a commercial decision taken by the appellant and reflected the likely cost of pursuing the appeal. That may be so, but the parties agreed a settlement of the previous appeal which was concerned with the same hereditament, both physically and in terms of its mode or category of occupation, which is the subject of this appeal. There is no new evidence before the Tribunal that was not available to the parties in the previous appeal. I take Ms Dearing's valuation to be an explanation of how the (accepted) sealed offer of £18,000 was formulated. Mr Johnson said "I must put my hands up" and acknowledged he had wrongly interpreted the appellant's accounts previously and had overlooked the fact that the property was closed for five months while being converted into a wedding venue. But that is not new evidence.

53. In *Re Thorntons plc and Another's Appeal* [2018] UKUT 0109 (LC) the ratepayers made proposals to alter the list under regulation 4(1)(a) of the 2009 Regulations. The VO did not consider the proposals to be well founded and referred them to the VTE as appeals. The appeals were settled by agreement before being heard by the VTE. The VO duly altered the list in accordance with the agreement and the proposals were treated as having been withdrawn. Some time later the ratepayers made further proposals to alter the list, this time under regulation 4(1)(d), i.e. on the ground that the rateable value shown in the list by reason of an alteration made by the VO was inaccurate. These new proposals were referred by the VO to the VTE as appeals. The VTE, acting upon the advice of its clerk, held that the second proposal was invalid under regulation 4(3)(b)(i), the effect of which is that no proposal may be made by an interested person where that person has previously made a proposal to alter the list in relation to the same hereditament on the same ground and arising from the same event. The Tribunal found that regulation 4(3)(b)(i) was not engaged and remitted the proceedings to the VTE for reconsideration. In doing so it suggested the appropriate course of action was to leave it to the VO to consider whether to apply to strike the appeals out either on the grounds of abuse of process (if applicable) or because the issue of the rateable value of the hereditaments in the 2010 list was *res judicata* and barred from further challenge in view of the settlement of the original appeals.

54. The Tribunal set out its reasoning on abuse of process in paragraphs 43 to 46 and went on to consider *res judicata* in paragraph 48 of its decision:

[5] I agree with Mr Johnson that clause 4.2 of the tenancy agreement does not oblige the tenant to pay for insurance.

> "In both appeals the appellants say the alteration made by the VO to give effect to the agreed compiled list rateable value was inaccurate because it was incorrect, excessive and bad in law. It is possible that since the agreements were reached fresh evidence has come to light that could not have been obtained by reasonable diligence beforehand and that such evidence entirely changes the previous cases upon which the agreements were based. That seems unlikely, but we cannot say it is impossible. Whether, in such a case, it would be open to the ratepayer to make a second proposal is open to doubt. To do so might be thought to engage another legal rule (separate from but closely related to the type of abuse of process of which *Johnson v Gore Wood & Co* is an example), namely the prohibition on re-litigating the same dispute once it has been decided by a court or tribunal. The rule is referred to either as the *res judicata* principle or as "cause of action estoppel". It prohibits the making of a second claim where the basis of the claim is identical to a claim in earlier proceedings between the same parties. In such a case the bar on the second proceedings is absolute (unless fraud or collusion is alleged) and even the discovery of new evidence which could not have been found before the previous proceedings were settled or determined will not allow the dispute to be re-opened (see *Arnold v National Westminster Bank plc* [1991] 2 AC 93)."

55. Such considerations are also relevant in this appeal where the appellant is arguing, albeit in the alternative, that should the Tribunal decide (as it has done) that from 2 April 2015 there was again a single hereditament comprising a wedding venue and premises, the rateable value should not revert to the previously agreed figure of £18,000 but to one sixth of that amount, namely £3,000. There is no new evidence on the point, just an explanation that the evidence previously considered was misinterpreted. In my opinion the agreement reached between the parties on the previous appeal in 2016 concerns the same hereditament, the same mode or category of use and the same physical condition of the property. It is not open to the appellant to argue the point for a second time and it does not matter that in the previous litigation before the Tribunal the case was settled by agreement rather than proceeded to judgment. As Lord Bingham said in *Johnson v Gore Wood & Co* [2002] 2 AC 1 at 32-33:

> "A second action is not the less harassing because the defendant has been driven or thought it prudent to settle the first; often, indeed, that outcome would make a second action the more harassing."

56. In any event the appellant's alternative argument did not form part of the proposal made on his behalf by Mr Johnson. The details of the list alteration being sought were that the rating list entry for "the above property" should be altered with effect from 2 April 2015 to a rateable value of £1. The property is stated to be the Crooked Spaniard and is described as "public house and premises" despite Mr Johnson's evidence that "Use as a public house ceased earlier on September 17th 2008 when the previous public house closed permanently." The appellant's reason to believe the list was inaccurate and should be altered as proposed was that "The properties should be shown as one or more different assessments." The detailed reasons were given as "The assessment in the list is incorrect, excessive and bad in law. This proposal is contingent on alterations being made based on a previous proposal."

57. The proposal as worded is opaque but it appears that, having originally challenged the validity of the proposal, the VO accepted it as a valid proposal to divide the assessment into two. The contingency referred to in the proposal is not clearly identified but presumably refers to the

agreed alteration of the list from a public house to a wedding venue at a rateable value of £18,000. The proposal is therefore not concerned in terms with revisiting the previous agreement upon the cessation of the divided assessment on 2 April 2015. As Mr Johnson says at paragraph 5.15 of the appellant's statement of case:

> "We contend that the use of the property on April 2nd 2015 is not an issue in the present proceedings."

And, of course, the appellant sought to strike out the respondent's case for the reversion to a single assessment as a wedding venue.

Determination

58. The appeal is allowed to the extent the parties agree the VTE's decision was wrong that there was no separate rateable storage occupation for which a separate entry was warranted.

59. The list shall be altered as follows:

Rating list address	Description	Effective date	Rateable value
Part ground floor and first floor, The Crooked Spaniard, Cargreen, Saltash, Cornwall PL12 6PA	Storage and premises	1 April 2015	£3,500
Part ground floor and car park, The Crooked Spaniard, Cargreen, Saltash, Cornwall PL12 6PA	Club and premises	1 April 2015	£1,575
The Crooked Spaniard, Cargreen, Saltash, Cornwall PL12 6PA	Wedding venue and premises	2 April 2015	£18,000

60. The appeal was heard under the written representations procedure. Costs are only awarded in this procedure if a party has acted unreasonably or the circumstances are otherwise exceptional. I do not consider that is the case in this appeal and I therefore make no award of costs.

Dated 30 July 2019

A J Trott FRICS
Member Upper Tribunal (Lands Chamber)