

UPPER TRIBUNAL (LANDS CHAMBER)



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Case No: RA/20/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – Valuation – historic buildings used as museums and galleries – whether to be valued on contractor’s basis or receipts and expenditure basis – hereditaments – whether to include events venue, museum shops and cafes – occupation – whether for sufficiently distinct purpose to require entry as separate hereditament – appeals allowed in part

BETWEEN:

STEPHEN G HUGHES (VO)

Appellant

- and -

YORK MUSEUMS AND GALLERY TRUST

Respondent

**Re: The Castle Museum, The Yorkshire Museum,
York Art Gallery, and The Heritage Centre, York**

Martin Rodger QC, Deputy Chamber President and Peter D McCrea FRICS

Royal Courts of Justice, London WC2A 2LL

6, 7, 8 and 10 February 2017

Cain Ormondroyd, instructed by HMRC Solicitor, for the Appellant
Timothy Mould QC and *Luke Wilcox*, instructed by Stuart Ward Solicitors, for the Respondent

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The following cases are referred to in this decision:

Courtney plc v Murphy (VO) [1998] RA 77

Coventry and Solihull Waste Disposal Co Ltd v Russell [1988] RA 427

Esso Petroleum Co Ltd v Walker (VO) [2013] UKUT 52 (LC)

Gilbert v S Hickinbottom & Sons Ltd [1956] QB 40

Hoare (VO) v National Trust [1999] 1 EGLR 155

John Laing & Sons Ltd v Kingswood Assessment Committee [1949] 1 KB 344

Leda Properties Ltd v Howells (VO) [2009] RA 165

Monsanto plc v Farris (VO) [1988] RA 107

NI Transport Holding Co v Commissioners for Valuation for Northern Ireland [1997]
RA 14

North Eastern Railway Co v Guardians of York Union [1900] 1 QB 733

R v Northamptonshire Local Valuation Court [1990] RA 93

Ratford v Northavon Council [1987] 1 QB 357

Roxburghe Estates v Assessor for Scottish Borders Council [2004] RA 15

Westminster Council v Southern Railway Company [1936] AC 511

Woolway (VO) v Mazars [2015] UKSC 53

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Introduction

1. On 7 April 1739 Dick Turpin was taken from a cell in York Castle to the city gallows at Knavesmire where he was hanged for the theft of three horses. He is said to have put on a good show, dressing in a new frock coat, bowing to spectators and paying three pounds ten shillings for the services of five professional mourners. With the assistance of the Victorian romantic novelist, William Ainsworth, Turpin's reputation as a loveable rogue grew; he is now English history's most celebrated highwayman, and the cell from which he contemplated his mortality is an attraction in the York Castle Museum, where it is seen by visitors from around the world.

2. The same visitors to York might cross the city's historic centre to The Yorkshire Museum, purpose built by the Yorkshire Philosophical Society in 1830 amid the ruins of an eleventh century abbey, and set in extensive botanical gardens enclosed on one side by the substantial fortifications of the former Roman encampment and on another by the River Ouse. On leaving the Museum the visitor might pause at the adjoining Yorkshire Art Gallery, another grand Victorian building housing the works of Yorkshire artists, or divert to the thirteenth century church of St Mary's, now a heritage centre and occasional exhibition space.

3. Each of these historic buildings is occupied and run by the York Museums and Gallery Trust ("the Trust"). Each is also the subject of this appeal from a decision of the Valuation Tribunal for England ("VTE") given on 25 March 2015 which determined their rateable values and how they should appear in the non-domestic rating lists for 2005 and 2010. Both the Valuation Officer and the Trust have appealed against different aspects of the VTE's decision.

4. The main issue in the appeal concerns the method by which historic buildings used as museums and visitor attractions are most appropriately valued for the purpose of rating.

5. The Valuation Officer was represented at the hearing of the appeal by Mr Cain Ormondroyd, and the Trust by Mr Timothy Mould QC and Mr Luke Wilcox. Expert evidence was given by Mr Michael Mulroy FRICS and Mr Brian Mansfield AssocRICS in support of the Valuation Officer's appeal. Mr Colin Hunter MRICS and Mr Jon Anderson MRICS gave expert evidence for the Trust, and additional evidence was given by Mr Alan Wadsworth, the former Financial Controller of the Trust, Dr Matthew Tanner MBE, Chairman of the Association of Independent Museums, and Dr John Oxley, City Archaeologist for the City of York Council. We are grateful to them for their assistance.

6. We inspected the hereditaments on 2 February 2017, accompanied by Mr Mansfield and Mr Hunter.

The appeal hereditaments

7. The appeal concerns buildings on three separate sites, all in the occupation of the Trust. It is convenient to identify them at this stage.

8. The York Art Gallery in Exhibition Square is a Grade II listed building erected in 1879 on a site formerly within the grounds of St Mary's Priory, close to the northern edge of the city walls and two minutes' walk from York Minster. The purpose built gallery was restored and extended in 1952, following war damage, and further major renovation and extension occurred from 2013. The building is predominantly of brick with an elaborate sandstone façade decorated with tiled panels depicting Leonardo da Vinci and Michelangelo beside appropriately modest representations of Yorkshire artists, including William Etty, whose statue stands in front of the Gallery looking towards the city walls he campaigned successfully to save from demolition.

9. Internally the building has been much altered since 1 April 2010, the later of the two material days for the purpose of these appeals. At that time a false ceiling concealed the original Victorian cast iron and glazed roof structure which now allows light into the upper gallery. With basement space and a rear extension added in the 1950s the building had at the material days a gross internal area of 1,815 m² including its café and a shop.

10. The Yorkshire Museum is also a purpose built nineteenth century building which had undergone only modest alterations before 1 April 2010. The building is adjacent to the Art Gallery and only a short distance from York Minster, but away from the City's main tourist areas. The gardens in which the Museum now stands were formerly in the grounds of St Mary's Abbey, the substantial medieval ruins of which are still to be seen both outside and within the building.

11. The same gardens accommodate a number of other buildings of relevance. The largest of these is the Hospitium, a medieval pilgrims' guest house now in use as a wedding and events venue. A twelfth century building now known as St Mary's Lodge was the Abbey's gatehouse but is now used as offices by the Trust, as is Manor Cottage. A Victorian observatory which once housed the largest refracting telescope in the world completes the buildings of interest in the gardens.

12. On the opposite side of the city centre and within the city walls on the southern edge of the prime tourist area is the site of York Castle. The only remnant of the original castle, Clifford's Tower, is not one of the buildings with which we are concerned, but it overlooks the Castle Museum which is. The Museum is housed in two former prisons, the debtors' prison erected between 1701 and 1705, and the women's prison dating from the 1780s. The prisons were converted for museum use in the 1930s and have been linked since the 1960s by a single storey entrance building which also accommodates the ticket desk and museum shop. The Castle Museum's café is also now in the link building, but was located elsewhere on the material days.

13. One of the attractions of the Castle Museum is Kirkgate, an extensive recreation of a Victorian street occupying the former recreation yard of the women's prison. The area was adapted to receive the street by Dr John Kirk, the museum's first curator, who roofed over the prison yard to create the exhibition space and used some of the cells to re-imagine a Victorian police station and temperance refreshment house.

14. The final subject of these appeals is a Grade 1 listed medieval parish church, York St Mary's, located adjacent to the Jorvik visitor attraction between Castlegate and St Mary's Square in the tourist and retail centre of the city. Of Saxon origin but predominantly 13th century construction, it boasts the tallest steeple in York. Although deconsecrated in 1958, the building is still recognisably a medieval church with a single open space to which a mezzanine floor was added at one end in the 1970s giving it a gross internal area of 600 m². Used by York City Council as a heritage centre until 2001 the building was re-opened by the Trust as a visual arts venue in 2004. It is not open to the public every day and no charge has been made for entry at any relevant time. It was referred to in the appeals as the Heritage Centre.

15. The Castle Museum, Heritage Centre and Art Gallery are occupied by the Trust under long leases granted by the City Council at a rent of £1 a year on full repairing and insuring terms. The Yorkshire Museum is occupied under a trust scheme, with no rent payable, but with the Trust responsible for repairs and insurance.

The proposals and the procedural background

16. Because there is an issue concerning the Tribunal's jurisdiction to which it is relevant, it is necessary to describe the procedural history of this matter in a little detail. On 14 March 2011 the Trust's agents made a proposal to alter the 2010 rating list by reducing the rateable value of the Yorkshire Museum from the £106,000 shown in the compiled list to £10 with effect from 1 April 2010 on the grounds that the entry was incorrect, excessive and bad in law. Proposals were made at the same time and for the same reasons to reduce the entries in the 2010 list for the Castle Museum from £183,000, for the Art Gallery from £72,500, and for the Heritage Centre from £28,500, in each case to £10. At that time earlier proposals by the Trust to reduce the values shown in the 2005 list for the Castle Museum, the Yorkshire Museum and the Heritage Centre (but not the Art Gallery or other buildings) remained unresolved.

17. The Valuation Officer did not accept that any of the proposals were well founded and referred them to the VTE as appeals.

18. Not long before the appeals were due to be determined by the VTE the Valuation Officer made further alterations to the 2010 list of which he gave notice to the Trust in November 2014.

19. In the case of the Castle Museum the effect of these alterations was to split the existing single entry into two entries: the Castle Museum itself (£178,000) and the shop and café (£24,500).

20. In the case of the Yorkshire Museum and the Art Gallery the alterations created entries for four separate hereditaments: the Yorkshire Museum and Art Gallery (£233,000); the shop at the Yorkshire Museum (£7,600); the shop and café at the Art Gallery (£17,750); and the Hospitium (£45,000).

21. The Valuation Officer treated the Hospitium, shops and cafés as separate hereditaments on the grounds that they were sufficiently defined units of property and were in the separate occupation of York Museums Enterprises Ltd (“the Company”), through which the Trust’s commercial activities were undertaken. In the case of the Hospitium the Valuation Officer also considered that it should appear separately because the purpose for which it was occupied was entirely different from the purpose for which the Trust occupied the remainder of the Yorkshire Museum site. In 2014 the fact that the Yorkshire Museum and the York Art Gallery were quite separate buildings, or that the café and shop were in different parts of the Castle Museum, was not thought to prevent them from being listed together as single hereditaments.

22. On 24 November 2014, in response to these latest variations to the 2010 list, the Trust’s agents made the further proposals which gave rise to these appeals.

The appeals

23. By its 25 March 2015 decision the VTE deleted the entries made by the Valuation Officer in the 2010 list for the shop at the Yorkshire Museum, the shop and café at the Art Gallery, and the Hospitium. The effect was to leave only the original single entry in respect of the Yorkshire Museum and Art Gallery (which included the other units) to which the VTE attributed a rateable value of £205,000 with effect from 1 April 2010. At the Castle Museum the VTE deleted the separate entry for the shop and café, substituting a merged hereditament with a rateable value of £154,000.

24. The parties now agree that, following the Supreme Court’s decision in *Woolway (VO) v Mazars* [2015] UKSC 53, the Yorkshire Museum and the Art Gallery cannot be regarded as a single hereditament and must be split and a rateable value determined for each.

25. The Valuation Officer now appeals against the deletion of the hereditaments he had included in the 2010 list, and invites the Tribunal to restore the Hospitium and the shops at the Yorkshire Museum and the Castle Museum as separate entries in their own right at the rateable values he originally ascribed to them. He accepts, for reasons which do not matter, that the Art Gallery shop and the cafés should not appear separately in the 2010 list.

26. The first part of the Trust’s cross appeal is against the rateable values attributed to the Castle Museum, the Yorkshire Museum and the Heritage Centre in the 2005 list. It agrees that as the Yorkshire Museum and Art Gallery must be split, new rateable values must necessarily be found for them. It also challenges the rateable values given to the Hospitium and the Yorkshire Museum shop, and to the Castle Museum and its shop if they are to appear as separate hereditaments in the 2010 list. It is that aspect of the Trust’s appeal that the Valuation Officer contends is beyond the Tribunal’s jurisdiction.

Agreed valuations

27. The parties were able to agree (without prejudice to the merits of their respective arguments) that if the Hospitium and the two museum shops are to be included in the 2010

list as separate hereditaments they should appear with the following rateable values: Hospitium - £35,500; Yorkshire Museum shop - £4,850; Castle Museum shop - £12,000.

The issues

28. The following issues arise for determination in these appeals:

- (1) Whether for the purpose of the 2010 rating list the Hospitium, the Castle Museum shop, and the Yorkshire Museum shop were in the rateable occupation of the Company, rather than the Trust, so that they should be entered in the list and valued as separate hereditaments.
- (2) Whether, in any event, the Hospitium was used for a sufficiently different purpose from the remainder of the Yorkshire Museum hereditament that it should be entered as a separate hereditament in the 2010 list.
- (3) If the first or second issues are answered affirmatively, so that those units are properly considered to be separate hereditaments (as contended by the Valuation Officer), whether the scope of the relevant proposals was wide enough to confer jurisdiction on the Tribunal to determine the rateable values of those separate hereditaments.
- (4) Whether the contractor's basis of valuation or the receipts and expenditure basis should be preferred as the better technique for valuing the hereditaments.
- (5) What rateable values should be entered in the 2005 and 2010 rating lists for the various hereditaments.
- (6) Whether the York Museum gardens are exempt from rating pursuant to paragraph 15 of Schedule 5 to the Local Government Finance Act 1988 ("the 1988 Act").

29. It was also agreed that various ancillary questions could safely be left to one side until after the Tribunal had reached a determination on the main issues.

Issue 1: Identifying the hereditaments

30. This issue concerns the correct units of assessment to be entered in the 2010 rating list. The Valuation Officer contends that the Hospitium, the Castle Museum shop, and the Yorkshire Museum shop are distinct units of property in the occupation of the Company and should be separately assessed; the Trust contends that the VTE was correct to merge these units back into the larger museum hereditaments.

The hereditament

31. Non-domestic rates are a tax on individual units of property, referred to as hereditaments. Valuation officers are required by sections 41 and 42 of the 1988 Act to

prepare and maintain a local rating list for the area of each billing authority showing each hereditament.

32. Section 64(1) of the 1988 Act defines a hereditament as anything which, before the passing of the Act, would have been a hereditament for the purposes of section 115(1) of the General Rate Act 1967 i.e. “property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list.” Whether a property falls to be shown as a separate item in the valuation list is determined by applying principles developed through the cases.

33. The leading authority on the identification of hereditaments is the recent decision of the Supreme Court in *Woolway v Mazars* [2015] UKSC 53 which concerned the proper treatment of geographically distinct units with a common occupier. The issue was whether the second and sixth storeys of an eight storey office block, which were in the occupation of the same person, comprised a single hereditament or two separate hereditaments. The primary test of whether distinct spaces under common occupation are to be assessed for rates as a single hereditament was held by the Court to be geographical rather than functional (although functional considerations are relevant in a minority of cases).

34. Whether a unit of property is a separate hereditament is a mixed question of law and fact, to be determined by applying three broad principles derived from a series of leading cases in Scotland which considered whether distinct spaces under common occupation comprised a single hereditament. The principles identified by Lord Sumption JSC (at [12]), and endorsed by the other members of the Court, were these:

“First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second *Bank of Scotland* case illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Third, the question whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects. The application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law.”

35. At paragraph 39 of his concurring opinion, referring to *Roxburghe Estates v Assessor for Scottish Borders Council* [2004] RA 15, Lord Gill JSC gave the pertinent example of “a tourist attraction in a castle and the associated gift shop in the castle grounds” as illustrating the kind of objective functional interdependence which should result under the second principle in a geographically distinct unit nevertheless being treated as part of a single larger hereditament rather than as a separate hereditament in its own right.

36. The decision of the Lands Tribunal for Scotland (Lord McGhie and A R MacLeary FRICS) in *Roxburghe Estates* also illustrates the primary geographical test. The Floors Castle coffee shop was within the grounds, but at some distance from the Castle itself, and was entered as a unit of assessment in its own right. The facts taken into account by the Tribunal in so treating the coffee shop included that it had its own access and was not within the area to which entry was available only by buying a ticket to the Castle, it was open all year round, unlike the Castle, and most of its customers were not also visitors to the castle.

37. What Lord Sumption described as “visual or cartographic unity” requires that the boundaries of a hereditament be capable of definition. In some cases it may be necessary to rely on the extent of the occupation of a particular occupier as determinative. A unit of property, such as an office building, may be a single hereditament if let to and occupied by a single occupier, but comprise a number of separate hereditaments if let floor by floor to separate occupiers, as Lord Neuberger pointed out in *Mazars* at [49]. In other circumstances the degree of visual or cartographic unity required to define spaces in separate occupation as distinct hereditament may only be slight; in *Coxhead v Brentwood UDC* [1972] RA 12 the Lands Tribunal (H P Hobbs FRICS) found that the boundaries of individual car parking spaces were sufficiently identifiable by their surrounding white lines or concrete expansion joints to constitute separate hereditaments.

Rateable occupation

38. Non-domestic rates are payable by the person who is in occupation of the hereditament for rating purposes. A single hereditament can have no more than one person in rateable occupation, but the same premises may simultaneously be occupied by more than one person. A set of judicially developed rules is applied to identify who is in rateable occupation of any hereditament.

39. The only statutory definition of rateable occupation is the statement in section 65(2) of the 1988 Act that whether a hereditament is occupied, and who is the occupier, is to be determined under the rules which would have applied under the General Rate Act 1967. It is common ground that those rules were correctly summarised by Tucker LJ in *John Laing & Sons Ltd v Kingswood Assessment Committee* [1949] 1 KB 344, 350:

“... there are four necessary ingredients in rateable occupation First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period.”

40. Where the same unit of property is occupied concurrently by more than one occupier, each occupying for a purpose of their own, the person in rateable occupation is identified by asking which of them is in “general control” so that their position in relation to occupation may be seen as “paramount” and that of the other occupier as “subordinate”. The proper approach was described by Lord Russell in *Westminster Council v Southern Railway Company* [1936] AC 511, at page 530:

“The general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in occupation by himself or his servants) retains to himself general control over the occupied parts, the owner will be treated as being in rateable occupation; if he retains to himself no control, the occupiers of the various parts will be treated as in rateable occupation of those parts.”

41. The corollary of control is interference, as Lord Russell explained at page 532:

“In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case; and in my opinion in each case the degree of the control must be examined, and the examination must be directed to the extent to which its exercise would interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons.”

42. In more recent times the same principles were applied by the Tribunal in *Esso Petroleum Co Ltd v Walker (VO)* [2013] UKUT 052 (LC) where it concluded on the facts that Esso was in paramount occupation of a petrol filling station managed on its behalf by Roadchef, the proprietor of the adjacent motorway service area.

43. In *Southern Railway* (at page 533) Lord Russell had emphasised that the form of the document under which a unit of property was occupied was of little consequence: “the crucial question must always be what in fact is the occupation in respect of which someone is alleged to be rateable, and it is immaterial whether the title to occupy is attributable to a lease, a licence, or an easement”. Despite that observation, in *Esso* the Tribunal took into account the fact that Esso itself was the owner of the freehold of the petrol filling station and had granted no right of occupation to Roadchef, as it explained at [81]:

“The fact that the land is held by Esso, its owner, and not leased to Roadchef, in contrast to the remainder of the MMSA, is not without significance although it is certainly not conclusive. ... It is relevant to consider the nature of the rights under which occupation is achieved by both Esso and Roadchef. That is not contrary to authority. ... It is right that “rateability does not depend on title to occupy but on the fact of occupation” but that does not mean the title to occupy is irrelevant. An essential fact of occupation is the relative position of the parties and the rights under which each party occupies. That may well, in turn, depend on the “title” to occupy, however lawyers would label that title. In our view the respective rights of the occupying parties form an essential part of the factual setting.”

44. Where the person who occupies a hereditament does so as an agent for another, the principal or employer is in rateable occupation through the agent, and not the agent in its own right. That was clearly stated by Slade LJ in *Ratford v Northavon Council* [1987] 1 QB 357, 371 which concerned the liability of a receiver appointed by a debenture holder:

“It is a general principle of rating law that where an agent is required to occupy a hereditament in order to secure the better performance of his duties as agent, his occupation is for rating purposes ordinarily treated as that of his principal. If, on the other hand, an agent occupies his principal’s property otherwise than in his capacity as agent, the occupation will be treated as his own for rating purposes.”

The relationship between the Trust and the Company

45. The Company is a wholly owned subsidiary of the Trust. It is a distinct legal person whose property is its own and whose acts cannot be attributed to the Trust, except to the extent that the Trust has conferred authority on the Company to act as its agent. In opening the appeal Mr Mould QC suggested that the involvement of the Company in the operation of the various hereditaments was, in all cases, as agent for the Trust, so that its activities should be regarded as those of the Trust. In closing, that view of the relationship was not pressed and it is clear to us that the Company is the agent of the Trust only to a very limited degree (principally in the negotiation and management of commercial concessions).

46. Mr Wadsworth, who was the Financial Controller of the Trust at all material times, explained that the Company was incorporated on the advice of the Charity Commission in June 2002, before the Trust commenced trading later the same year. Retail trading is not a charitable activity, but visitors to museums and galleries expect to find shops and cafes and the income from such trading is an important source of revenue to charities like the Trust. The purpose of the Company is to carry on trading complementing the charitable activities of the Trust without jeopardising its status or exposing it to commercial risks. All of the income generated by Company is donated to the Trust in a tax efficient way.

47. When the Trust and the Company first began trading a number of individuals were both trustees and directors, but by the financial year 2009-10 a separation at board level had been implemented to provide stronger commercial leadership for the Company.

48. The Company does not employ staff, but the salaries and employment costs of staff employed by the Trust who work in the business of the Company are fully recharged to the Company. One full time member of staff is employed as a venues manager, with responsibility for lettings of the Hospitium and other parts of the Trust’s estate; her salary and costs are fully recharged. Other staff, including Mr Wadsworth, are engaged to a lesser degree in Company business and a proportion of their employment costs are recharged as an expense in the Company’s accounts.

49. All stock in the Museum and Gallery shops belongs to the Company, which accounts for the VAT on sales of goods, and the retail areas are managed by staff whose time is

recharged. To aid accounting, separate tills are designated for the sale of tickets and of merchandise and while this division may not always be rigorously maintained at the point of sale (especially at busy times) ultimately all income is recorded and accounted for separately.

50. The resolution of issue 1 requires the determination of two questions. The first is whether the various disputed buildings or spaces are capable of being entered in the valuation list as separate hereditaments in their own right. The second, which arises only where the answer to the first question is affirmative, is whether the Trust or the Company is in rateable occupation of that hereditament.

(1) The Yorkshire Museum shop

51. The space within the Yorkshire Museum building occupied by the Museum shop can be readily identified. It is located to the right of the main entrance hall from which it is separated by three arches. The layout we saw when we inspected the Museum does not accord with the agreed plan which we take to be indicative of arrangements at the material day. At that time there were doors in two of the arches, which divided the shop from the entrance lobby and defined its extent. The third arch was blocked by a reception desk on the lobby side and a sales desk on the shop side. Another door led from the shop to one of the galleries. The doors are no longer present and the reception desk has been moved to a different location, but we consider that it would have been clear at the material day where the boundaries of the shop began and ended and it could in principle be valued and entered in the list as a separate hereditament.

52. Had there been only one occupier of the shop and the Museum there would have been no case for treating them as separate hereditaments. However, there is no doubt that at all material times the Company was occupying and carrying on business from the shop, and that the Trust was in occupation of the Museum as a whole. The Trust was not excluded from occupation of the shop, either legally or practically, as its staff were a daily presence there, passing to and fro to other parts of the building and providing retail services which were recharged to the Company. The question is therefore whether the Trust or the Company was in paramount and therefore rateable occupation.

53. There is no sense in which the Trust and the Company were rivals in their concurrent occupation of the shop. No payment is made by the Company for the use of the space and no rights are granted to it. The purposes for which the Company was incorporated are entirely complementary to those of the Trust. Although the Trust's use of the shop is commercial rather than charitable it is difficult to regard that as a relevant consideration when the presence of a shop is so integral to the operation of a modern museum and the whole of the profits of the Company's enterprise are gifted to the Trust at the end of each year. It is true that while the area adjacent to the entrance is used as a shop it cannot be used for the display of the Museum's collection of artefacts, but that seems to us to be insignificant for the same reason.

54. We therefore find it unhelpful to apply a conventional *Southern Railway* test of control to the concurrent occupation of the shop. In reality neither party controls or

interferes with the occupation of the shop for the purposes for which the other is in occupation. Their interests and activities are completely aligned. Nevertheless, focussing as we must on the shop alone, we consider that the occupation of the Company is paramount and that of the Trust incidental or subordinate. Although the Trust has granted no specific right of occupation to the Company, the whole of the daily retail activities carried on in the shop are the activities of the Company. For retail purposes the Company's occupation is exclusive. The location of the shop is fixed and there is no practical possibility of the Trust requiring that it be relocated to a different part of the building or insisting that it be allowed to make some separate use of the space. We are satisfied that these are sufficient reasons to regard the Company rather than the Trust as being in rateable occupation of the shop.

55. The Valuation Officer entered the Yorkshire Museum shop in the 2010 list as a separate hereditament. For the reasons we have given we consider he was right to do so.

(2) The Hospitium

56. We prefer to deal with the Hospitium on a different basis. The Hospitium is a separate building in the grounds of the Yorkshire Museum and no difficulty of definition or identification would arise in entering it as a separate hereditament if the facts concerning its occupation justified that approach.

57. The building is owned by the Trust and is entirely surrounded by the gardens of the Yorkshire Museum which are also occupied by the Trust. No right to use the Hospitium has been granted to the Company, but the use of the venue for weddings and other functions is managed by the venue manager, an employee of the Trust whose salary and employment costs are recharged to the accounts of the Company. The venue manager takes bookings, shows potential clients around, holds a set of keys, arranges routine repairs and liaises with the catering company with which the Trust (not the Company) has entered into a concession agreement allowing it to run a bar and provide catering services for functions in the Hospitium.

58. In 2009-10 and 2010-11 the Hospitium was used for fewer than 100 functions (about 80 of them weddings). The venue was also used occasionally for meetings of Trustees, arranged after the calendar of wedding bookings had been settled so that no clash ever arose. At other times the building was empty and unused, with no public access. The building is fitted with a lift, a bar counter, toilets and a kitchen but is otherwise sparsely furnished. Given this relatively low level of use and the limited manifestations of occupancy by either party we find it difficult to regard the Company as being in paramount occupation of the Hospitium. The Company has little or no physical presence in the building and the senior employees of the Trust, who are key holders, have as much right of access as the venue manager. The Company manages lettings of the building and receives payments which are recorded in the Company's accounts, but the whole of the profit eventually finds its way to the Trust. It is the Trust which selects and grants rights of access to the concessionaire, whose staff, apart from the wedding or conference party themselves, are the only people on site when the building is in active use.

59. The Valuation Officer's analysis proceeded on the assumption that the Trust made no day to day use of the Hospitium and that its only actual occupation was for occasional meetings of the Trustees; the Company was said to be in daily control of the building. We regard that as an incorrect analysis. The Trust is in occupation of each and every part of the site, including the gardens, the Hospitium and the ruins of the Abbey of which historically the Hospitium was an important part, for the purpose of conserving and maintaining them as a unique part of York's heritage. The Trust occupies and maintains the gardens and the group of buildings for the enjoyment of the public and for the sake of their own preservation. Although the public has no access to the interior of the Hospitium we do not consider that detracts from the Trust's actual occupation of it, or alters the purpose of that occupation. The Trust is also responsible for any significant repairs which are required. The primary purpose of the Trust's occupation of the Hospitium is its preservation as a feature of the Abbey landscape. It has not relinquished control of the Hospitium to the Company. On the contrary, the Company, its subsidiary, is permitted to facilitate the use of the Hospitium by others as a means of defraying the Trust's expenses, including its expenses of ownership of the Hospitium. No day to day physical presence within the building is required to give effect to the Trust's occupation.

60. On these facts, we consider the Trust to be in occupation of the Hospitium at all times. We do not find a test of control to be helpful for the reasons we have already given, but we are satisfied that the occupation by the Trust is paramount and rateable, and that of the Company is subsidiary.

(3) The Castle Museum shop

61. The position on the ground at the Castle Museum is far less clear. The shop is located in the 1960s "link" building which was created by enclosing the space between the two eighteenth century prisons. From the entrance to the link building it is possible, by turning right, to enter the debtors' prison, or by turning left to enter the women's prison.

62. The only evidence we have concerning the layout of the link building at the material day is an agreed floor plan and a listed building consent dated 19 March 2010 giving permission for external and internal alterations which, amongst other changes, were intended to facilitate the relocation of the museum café to the link building. The Valuation Officer's statement of case includes an undated photograph of the shop and café area which does not appear to correspond either to the current layout or to the agreed plan.

63. At the material day the link building housed the Museum's main information and ticket desk to the left of the main entrance, with the shop to the right. No barrier or other division existed between the two areas. From the agreed plan there appears to have been an enclosed area in the centre of the space to the right of the entrance which was accessed through three doors into what we take to have been stock rooms, cleaner's cupboards or other back-of-house facilities. Surrounding the enclosed area there appear to have been shelves and, we assume, a sales desk.

64. The parties agreed a floor area of 120 m² for the shop which takes into account an allowance of 10% to reflect shared access and circulation areas. In his statement of case

the Valuation Officer had originally relied on an area of 174.50 m² as the combined area of the shop and café (before it became apparent that the café had not moved to the link building until after the material day).

65. Nothing on the agreed plan identifies the boundaries of the area occupied by the shop, and there is nothing in the evidence which allows us to find that any physical boundary existed at that time. Nor did any document define the area from which the Company was to operate the shop. We were invited by Mr Ormondroyd to find that the retail area was capable of separate definition by reference to a change in floor covering to the right of the main entrance, but we reject that invitation for two reasons. First, the listed building consent shows that after March 2010 (the date of the consent) the whole area was rearranged and refurbished to accommodate the relocation of the café, and there is no reason to assume that the current floor covering was present on the material day. Secondly the agreed plan indicates that there were physical features (possibly the cash desk or a display of some sort) straddling the line now marked by the change in floor covering. Notwithstanding the ability of the parties to agree a floor area notionally attributable to the shop, we are therefore unable to be satisfied that there was any physical or visual separation of the retail area from the non-retail area at the material day.

66. Nor was there any strict functional division between the different areas on the material day. The whole of the shop was a circulation area which visitors could pass through on their way to the debtors' prison, and back again on their way to the women's prison or when exiting the building. At busy time the tills at the ticket desk were also used to serve customers wishing to purchase goods displayed in the shop.

67. Our conclusion is therefore that on the material day the Castle Museum shop was not a separate unit of property, distinct from the Castle Museum itself, and was not capable of being entered as a separate hereditament in the list. The issue of rateable occupation does not arise.

68. Had we reached the opposite conclusion we would have found it more difficult to regard the Company, rather than the Trust, as the party in paramount occupation. The same difficulty of defining where the occupation of one began and the other ended would have complicated the decision over whether the Trust has surrendered general control of the area to the Company. We consider the better view in that event would have been that the Trust, which granted no formal rights of any sort to the Company, would have remained in rateable occupation.

Issue 2: Is the Trust's occupation of the Hospitium for a sufficiently distinct purpose to require that it be entered as a separate hereditament?

69. In *Woolway v Mazars* the Supreme Court accepted that the primary test for identifying separate hereditaments was geographical rather than functional, but nevertheless acknowledged the continuing part which a functional test could properly play. At [6] after referring to Scottish cases which establish the relevant principles Lord Sumption explained:

“These cases establish that the primary test is geographical, but that a functional test may in certain cases be relevant either to break up a geographical unit into several subjects for rating purposes or to unite geographically dispersed units in *unum quid*. By far the commonest application of the functional test is in de-rating cases. In these cases, the functional test serves to divide a single territorial block into different hereditaments where severable parts of it are used for quite different purposes. Thus a garage used in conjunction with a residence within the same curtilage will readily be treated as part of the same hereditament, whereas a factory within the same curtilage which is operated by the same occupier may not be.”

70. The parties agreed that the test to be applied in determining whether the different parts of a single property in one occupation ought nevertheless to be regarded as separate hereditaments, was whether those parts were used for wholly different purposes. That approach derives from the judgment of Channell J in a case coincidentally concerning the rating of York railway station, *North Eastern Railway Co v Guardians of York Union* [1900] 1 QB 733, 739. Had it been necessary to decide whether the station hotel was a separate hereditament from the rest of the station he would have been inclined to find that it was because “the hotel and the railway station are used for wholly different purposes.”

71. Channell J’s approach was endorsed by the Court of Appeal in *Gilbert v S Hickinbottom & Sons Ltd* [1956] QB 40, and again in *Coventry and Solihull Waste Disposal Co Ltd v Russell* [1988] RA 427, from which it is apparent that whether there is a single hereditament or more than one is a question of fact.

72. More recently, in *Trafford MBC v Pollard* [2007] RA 49, 62-63, the Lands Tribunal (George Bartlett QC, President), considered whether a school and a sports centre used by the community, schools and clubs and situated on two parts of one local authority site should be entered as one hereditament. While acknowledging that the difference in use of the two parts of the site was the most important consideration, the Tribunal also took into account a wider range of matters. These included whether the parts could be occupied separately, the nominal purpose for which they were each used, the activities comprehended in their use, the extent to which both parts were used by the same people for their respective purposes, the history, financing and management of the two parts and the degree of their physical separation.

73. For the Valuation Officer Mr Ormondroyd emphasised that the use of the Hospitium was as a wedding and conference venue, a use which he maintained did not overlap at all with the use to which the rest of the Yorkshire Museum and gardens were put. No use was made of the Museum’s facilities by wedding parties and the public visiting the Museum or gardens had no access to the Hospitium. Mr Mould QC relied on the fact that there was now nothing unusual in museums offering facilities for weddings, conferences or receptions and reminded us that the Kirkgate area within the Castle Museum was licensed for weddings. The use of the Hospitium for similar purposes, as well as for occasional meetings of the Trustees, was entirely consistent with the purposes of any modern museum.

74. We do not place any great weight on the slender overlap between the variety of uses to which a modern museum may be put and the use of the Hospitium as a wedding and conference venue. A much greater overlap, in our judgment, is in the spatial, visual and historical relationship between the Hospitium and the gardens and Abbey ruins, to which we have previously referred. The whole of the hereditament is a scheduled ancient monument. The gardens, the Hospitium and Manor Cottage are Grade II or II* listed, while the observatory, St Mary's Lodge, and the Museum, including the remains of the Abbey, are Grade I. The Hospitium and gardens comprise a single historic landscape, within a defined boundary, of which the Museum itself also forms part. But for his treatment of the Hospitium the whole of that enclosed area would also be recognised by the Valuation Officer as a single hereditament.

75. We are mindful that the use of the Hospitium as an events venue and the use of the Museum and gardens are different in many important respects, the one a Museum and its grounds open to the public without charge all year round and doing its very best to attract visitors, the other a separate building of a much earlier period and function which is never open to the public and is used relatively infrequently for private celebrations, conferences or meetings. Few wedding guests or conference delegates are likely to visit the Museum and no access is available to the interior of the Hospitium for visitors to the Museum and gardens. Guests using the Hospitium may come and go long after the Museum and gardens have closed to the public. We also have regard to the physical relationship between the buildings and their relative lack of proximity to each other.

76. Nevertheless, the Museum, the Hospitium, the Abbey ruins, the gate house and the cottage are all enclosed within the same walled gardens, and substantial parts of the Abbey are physically incorporated into the Museum building, not as re-located exhibits but where they stood for centuries before the Museum was built around them. The gardens do not just provide an attractive backdrop for wedding photographs, they define and delimit a single historic landscape which is occupied and preserved as a whole by the Trust. Although the buildings and historic structures within the gardens are widely dispersed, in different states of preservation, and in a variety of uses as offices, gardeners' accommodation, museum, observatory and meeting place, there is no difficulty in regarding them objectively as a single unit of property comprising the Museum and its historic grounds created in and from the ruins of the medieval Abbey.

77. The functional unity of the Museum with all the structures within its grounds is recognised by the Valuation Officer except so far as the Hospitium is concerned. The original purpose for which this building was constructed played an indispensable role in the life of the Abbey in providing hospitality to visitors. The primary purpose for which it is now occupied is the Trust's purpose of its preservation as an historic building in an historic landscape. That is the same purpose as, or is sufficiently allied to, the purpose for which the Trust occupies the Museum itself and the remainder of the grounds to enable it to be concluded that the Hospitium is not used for a wholly different purpose from the Museum and the remainder of the hereditament.

78. For these reasons we consider that the Valuation Officer was wrong to enter the Hospitium in the 2010 list as a separate hereditament in its own right.

Issue 3: the Tribunal's jurisdiction

79. The Valuation Officer asserted that, as a matter of jurisdiction, if the Hospitium or the shops at the Castle Museum and the Yorkshire Museum were properly included in the 2010 list as separate hereditaments, the Tribunal had no power to alter the rateable values which he had entered for those units or for the Castle Museum itself. The basis of that submission was that the proposals made on behalf of the Trust in November 2014 were limited to challenging the manner in which the hereditaments had been split by the Valuation Officer from their parent sites, and on a fair reading they did not dispute the rateable values ascribed to those hereditaments if they were properly entered as discrete units.

80. This issue is relevant only to the extent that the Valuation Officer's appeal against the VTE's units of assessment is successful. In determining issues 1 and 2 we have already found against the Valuation Officer's appeal concerning the Castle Museum shop and the Hospitium, so the jurisdiction issue is live only in relation to the Yorkshire Museum shop. Nevertheless, we heard full argument in relation to each of the hereditaments and their constituent parts and we will deal with them all.

The Tribunal's approach to disputes over the scope of proposals

81. The Lands Tribunal (P H Clarke FRICS) explained in *Courtney plc v Murphy (VO)* [1998] RA 77, 85 that the jurisdiction of the VTE and of the Tribunal on an appeal against a valuation officer's refusal to give effect to a proposal is limited to the issues raised by the proposal giving rise to the appeal.

82. What those issues are is obviously a question of interpretation of the proposal itself. That question should be answered by applying the ordinary principles of the construction of documents. In *R v Northamptonshire Local Valuation Court* [1990] RA 93, Nicholls LJ encapsulated those principles by posing a single question: "how would the proposal reasonably be understood by those on whom the proposal is to be served?" In answering that question the proposal must not be considered in a vacuum, but in its proper legislative and procedural context and with an appreciation of all the relevant facts which would inform the recipient's understanding of it.

83. In *Galgate Cricket Club v Doyle (VO)*[2001] RA 21 the Valuation Officer took a similar jurisdiction point, arguing that a ratepayer who sought alterations in the list in the alternative but used a single proposal form should be confined to a single issue. The Tribunal (George Bartlett QC, President) was not disposed to adopt a restrictive approach to the interpretation of the proposal for reasons he explained at [6]:

"The words quoted are indeed wide enough to encompass the question of rateability, and I can see no reason to limit their scope so as to prevent the ratepayer from advancing a legitimate argument and this Tribunal from ordering the list to be corrected if it finds it to be inaccurate in this respect. Indeed, since it is desirable that inaccuracies in the list should be corrected and since the valuation officer has had sufficient notice of the point, there are strong reasons against adopting such a restrictive approach. The valuation

officer certainly understood that rateability was raised by the proposal. He conducted his case in the valuation tribunal on this basis, and invited it to amend the entry to take account of the non-rateability of the cricket ground and the pavilion.”

84. We agree that it would be wrong to adopt a restrictive approach to the meaning of a proposal, especially when both parties have prepared to conduct an appeal on all issues. We find it disappointing that the Valuation Officer should regard it as his duty, while devoting considerable efforts to meeting a legitimate case on valuation which he has always known the Trust wishes to advance, at the same time to advance an unattractive technical point on the Tribunal’s jurisdiction to consider that case. That disappointment is compounded in light of the valuations which have now been agreed (see paragraph 24 above), and the fact that the 2010 list is now closed and cannot be altered by the Valuation Officer. If the Valuation Officer’s argument on jurisdiction is correct the 2010 list will remain in a state which he acknowledges is inaccurate and unsatisfactory.

Relevant statutory provisions

85. The local rating lists maintained by valuation officers are required by section 42 of the 1988 Act to show the rateable value of each hereditament which appears in the list. Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (“the NDR Regulations”) provides for the circumstances in which proposals for the alteration of a list may be made:

- “(1) The grounds for making a proposal are –
- ...
 - (d) the rateable value shown in the list for a hereditament by reason of an alteration made by a VO is or has been inaccurate;
 - ...
 - (k) property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments;
 - ...
- (3) No proposal may be made –
- (a) by reference to more than one ground unless, for each ground relied on, the material day and the effective date are the same;
 - ...”.

86. The statutory grounds for making a proposal in regulation 4(1) do not specifically include a ground contending what ought to be the rateable value for a single hereditament resulting from the success of a proposal under paragraph (1)(k). The general valuation ground under paragraph (1)(d) would not appear to be appropriate as it depends on the inaccuracy of “a value shown in the list for a hereditament.”

87. Regulation 6(1) contains general provisions relating to proposals and requires that a proposal should “identify the respects in which it is proposed that the list be altered” and should include a statement of the grounds for making the proposal.

88. A valuation officer who considers that a proposal is well founded is required by regulation 10 to alter the list accordingly. If of the contrary view the valuation officer must refer the disagreement to the VTE as an appeal by the proposer against a refusal to alter the list (regulation 13).

89. The procedure and powers of the VTE are provided for by the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation 38(4) of which provides:

“After dealing with an appeal under regulation 13 of the NDR Regulations (disagreement as to proposed alteration), the VTE may, subject to paragraph (6), by order require a [valuation officer] to alter a list in accordance with any provision made by or under the 1988 Act.”

Regulation 38(10) then provides:

“An order under this regulation may require any matter ancillary to its subject matter to be attended to.”

90. Regulation 42(5) of the 2009 Regulations provides that on an appeal to the Upper Tribunal in respect of a decision or order given or made by the VTE on an appeal under the NDR Regulations, the Tribunal may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made.

The proposals in detail

91. Each of the proposals was made on the standard form provided by the VOA, which requires that details of the proposed list alteration be given, and the grounds of the proposal be specified. A series of prescribed options is available to be ticked, but this is not intended to be exhaustive as the person making the proposal is invited to provide further information and reasons as necessary.

92. The substance of the Trust’s proposal in respect of the Castle Museum was as follows:

“13. I propose that the Rating List entry shown for the above should be altered as follows:

D The existing 2 entries merged into 1 entry(ies) with effect from 01/04/2010

15. I have reason to believe that the rating list is inaccurate and that the alteration proposed in PART B of this form should be made because:

I The properties should be shown as one or more different assessments

16. My detailed reasons for believing that the rating list is inaccurate are:

The alteration to the List by the Valuation Officer on 14/11/14 splitting the assessment of the Museum into two hereditaments with effect from 1/4/10 is incorrect and bad in law and should be reversed to create a single assessment at Rateable Value £37,000.”

93. The Castle Museum proposal was accompanied by a separate document (which all accept forms part of the proposal) on which the existing entries for the Castle Museum and the shop and café were identified, including their rateable values.

94. The proposal for the Yorkshire Museum and Art Gallery was similar and included details of the existing entries and their rateable values. The proposal sought the following alteration: “the existing 4 entries merged into 3 entry(ies) with effect from 1/4/10”. Detailed reasons for the proposal were provided in an accompanying letter which, it is agreed, may be considered as part of the proposal.

95. The letter began by referring to various emails which had passed between the Trust’s agents and Mr Mansfield and the Valuation Officer over the previous 8 weeks. We have been shown those emails, which demonstrate that the Valuation Officer’s November notices and the Trust’s rejection of them had been the subject of discussion between the parties for some time before the formal documents came into existence. That is hardly surprising as the parties were preparing for a hearing before the VTE which was then due to take place in four months’ time and in respect of which the Valuation Officer wished to move the goal posts by some distance.

96. The letter went into some detail in suggesting that the Valuation Officer had been in error when splitting the original hereditaments into the four disputed entries and proposed that they be reconstituted into an exempt park and 3 separate entries (the Yorkshire Museum, the Art Gallery and the former barracks building which, having been demolished since the compiled list was prepared, had been overlooked by the valuation officer’s notices). There is no express mention anywhere in the letter of the suggested value of these proposed hereditaments.

97. Shortly after the November 2014 proposals were formally referred by the Valuation Officer to the VTE, the original 2011 proposals challenging the rateable values in the 2010 list were all withdrawn by the Trust. The withdrawals were appropriate as the entries against which the original proposals were directed no longer appeared in the list.

Submissions

98. Mr Ormondroyd submitted on behalf of the Valuation Officer that although the Trust’s November 2014 proposals for merger necessarily raised the question of the value of any merged hereditament which might be produced, they did not, in the alternative, challenge the valuations of the ‘un-merged’ hereditaments then in the list. The scope of the Valuation Officer’s appeals was therefore limited to a consideration of whether the

merger of hereditaments ordered by the VTE should be reversed, and encompassed the need to value the Yorkshire Museum and Art Gallery as well. If the Yorkshire Museum shop and Hospitium were restored to the list, and the Castle Museum was split into the Museum and the shop, the Valuation Officer contended that the Tribunal would have no jurisdiction to alter the rateable values of the hereditaments which he had entered in the list in November 2014, namely the Castle Museum (minus its shop), the shop at the Castle Museum, the shop at the Yorkshire Museum, and the Hospitium.

99. On behalf of the Trust Mr Mould QC submitted first that it was clear that the question of rateable value was properly raised in respect of the Castle Museum hereditament, even if the Trust's proposed merger was not accepted. The proposal included a specific rateable value for the merged units, £37,000, and was concerned not merely with the units of assessment at the Castle Museum site, but with the valuation of that site. Moreover, the Trust's concern was plainly not limited to the valuation of the merged hereditament. The existing entries which the proposal challenged included valuations of £178,000 for the Castle Museum and £24,500 for the shop and café. The Trust's proposal sought a rateable value of £37,000 for the combined hereditament. On any analysis, such a significant difference could not be referable solely to the question whether the component hereditaments should be merged or split, and necessarily engaged the individual values ascribed to those components.

100. Mr Ormondroyd described this analysis as too sophisticated. There might, he suggested, be many reasons why the Trust might be willing to accept the separate values given to the split hereditaments by the Valuation Officer. In any event, no specific value was attributed in the proposal to the separate units, so the Valuation Officer could not consider whether an implicit proposal on rateable value was well founded or alter the list accordingly if he accepted that it was.

101. Mr Mould made similar submissions concerning the Yorkshire Museum site. The proposal had recited the rateable values currently in the list for the split hereditaments and required their merger. It was not in dispute that, as a consequence, the rateable value of the Yorkshire Museum itself was properly in issue. In the course of the same VTE proceedings the Trust sought the merger of the shop and Hospitium hereditaments into the single Museum hereditament. The only sensible way of interpreting that matrix of challenges was that the Trust was concerned not only about the units of assessment, but about the assigned rateable values as well. It was inherent in the proposal to reduce the rateable value of the combined hereditament to £1 that the values of each of the component hereditaments were also under challenge.

102. Mr Ormondroyd responded that the Valuation Officer could not have known what rateable value was being put in issue by the proposal. Not only did the proposal and covering letter make no reference to the value of the split hereditaments, but the Trust's approach had always been to value the collection of Yorkshire Museum units at a nominal figure, on the basis that any profitable use of the Hospitium and shop was rendered irrelevant by the very substantial deficit at which the Museum itself operated. It was not suggested in the explanatory letter that the Hospitium and shop were not profitable and a

recipient of the proposal might reasonably assume that the Trust accepted the Valuation Officer's figures.

Conclusions

103. In *Leda Properties Ltd v Howells (VO)* [2009] RA 165, the Lands Tribunal (George Bartlett QC, President) explained (at paragraph 19) that “the purpose of requiring that the alterations proposed should be identified and that the reasons for the alterations should be specified is so that the VO is able to deal with the proposal in the way that he is required to deal with it under the Regulations.” A valuation officer, as the person responsible for maintaining an accurate list, will obviously be unable to consider whether a proposal is well founded and requires an alteration to be made in the list, or should be referred to the VTE as an appeal, unless it is clear what variation in the list the proposal seeks to achieve. It is not sufficient that the proposal demonstrates that the ratepayer is dissatisfied with the current state of the list; it must indicate what the ratepayer wants the valuation officer to do about it.

(1) Castle Museum and shop

104. We can deal with the Castle Museum without much difficulty. We are satisfied that if (contrary to our determination under issue 1) the Castle Museum and its shop ought to be entered in the list as separate hereditaments then, however the Trust's proposal of 24 November 2011 is to be understood, the rateable value of those separate hereditaments is properly before the Tribunal.

105. The Trust's proposal, which was made a week or two after the hereditament was split, sought the reinstatement of the combined unit at a rateable value of £37,000. At that time the list showed the rateable value of the Castle Museum as £178,000 and of the shop and café as £24,500. We do not see how the Valuation Officer can have been in any doubt that the Trust did not accept the values he had ascribed to the separate units. Despite the disagreement being clear, however, the Trust did not make any alternative proposal of its own in the event that the units were to remain split. For this reason we consider that the correct view of the proposal is that it was not sufficient to confer jurisdiction on the Tribunal to consider afresh the rateable values of the split hereditaments.

106. We nevertheless consider that the limitations in the Trusts' proposal have been overtaken by events. The split entries made in the list by the Valuation Officer were for the Castle Museum on the one hand, and for its shop and café on the other. It was agreed at the start of the hearing of the appeal that, on any view, the evidence now demonstrates that the café was not in its current location and did not form part of a separate hereditament with the shop on 1 April 2010. The Valuation Officer's case before us has therefore been that the shop should appear in the list as a separate hereditament in place of the shop and café.

107. Had we accepted that case the shop would have appeared in the list for the first time and a rateable value would have had to be ascribed to it. The entry of that rateable value would be ancillary to a determination that the shop was a separate hereditament and could

therefore be the subject of a direction under regulation 38(10) of the 2009 Regulations. The rateable value of the Castle Museum including the café, but excluding the shop (a combination which has never previously appeared in the list), would also require to be determined as a matter ancillary to the new entries. As we are satisfied that the Castle Museum shop was not a separate hereditament in any event, no such ancillary order is required.

(2) Hospitium and Yorkshire Museum shop

108. We consider the position in relation to the Yorkshire Museum site to be more difficult.

109. Nothing in the letter of explanation which accompanied the Trust's proposal to revise the four entries which had been included in the list by the Valuation Officer (which included the Museum shop) said anything about the value of the individual units. Although the value of the previous hereditaments (which did not separately include the shop) was already before the VTE, and the existence of a general dispute about value was apparent, it was not clear what the Trust was proposing regarding the value of the split hereditaments. In reality at that stage the Trust had no proposal on that issue and was focussing all its attention on reversing the recent changes. On that basis the Valuation Officer had received no proposal which he could accept and act on by altering the list to include some different value for the hereditaments he had entered. Nor could he refer the proposal to the VTE as an appeal, except on the issue of the proper composition of the hereditaments.

110. In the absence of a proposal putting forward some alternative value for the Yorkshire Museum shop, which we are satisfied should be restored to the list as a separate hereditament, we are prevented from giving effect to the parties' recent agreement that the entry of £7,600 in the list is excessive. That is unsatisfactory but as a matter of jurisdiction it is not something we have power to correct.

Issue 4: The valuation of historic buildings used as museums and visitor attractions

111. The statutory basis on which the rateable value of a non-domestic hereditament is to be determined is prescribed by section 56 of and Schedule 6 to the 1988 Act. In the ordinary case the rateable value is equal to the rent at which the hereditament might reasonably be expected to let from year to year at the material day but having regard to values at the antecedent valuation date. The hereditament is assumed to be in a state of reasonable repair (but excluding any repairs which a reasonable landlord would consider uneconomic), with the tenant undertaking to pay all usual tenant's rates and taxes and to bear the cost of repairs, insurance and any other expenses necessary to maintain the hereditament. For the purpose of the 2005 list the material day was 1 April 2005 and the antecedent valuation date was 1 April 2003; for the 2010 list they were 1 April 2010 and 1 April 2008 respectively.

112. Ascertainment of the rent at which premises might reasonably be expected to let on the statutory assumptions is a question of fact, not one of law. The selection of the most

appropriate technique to be employed in answering that question is a matter of valuation judgment rather than legal precedent.

113. The best evidence of rental value is provided by rents for comparable properties agreed in the open market. The greater the adjustments required to be made to mirror the statutory valuation assumptions or other differences, the less reliable a guide the comparable may be, but valuation by the comparative method always has the advantage over other methods of being rooted in evidence of the behaviour of real landlords and tenants in the market in which it is to be assumed the subject premises are being let. Regard may also be had to evidence of comparable assessments, which in most cases are likely to be based on evidence of lettings in the market.

114. Where sufficient evidence of comparable lettings or assessment evidence is not available some other approach to valuation must be employed. Three alternative approaches were relied on by the experts: the contractor's basis, the receipts and expenditure basis, and the "shortened receipts" basis. Given the evidence we have received of some surprising practices in the valuation of historic buildings for rating purposes, we will consider these alternative techniques in a little detail.

The rival valuations

115. The rival valuations for the appeal hereditaments in the 2005 list were as follows:

	VO	Trust
Castle Museum (including shop and café)	£134,000	£96,000
Yorkshire Museum and Gardens (including shop and Hospitium)	£106,000	£1
Heritage Centre	£13,250	£1

116. For the 2010 list we have already found that the shop at the Yorkshire Museum should be entered as a separate hereditament, but that the Hospitium should not. Neither party provided valuations on this basis. The respective contentions so far as they remain relevant (including those which were agreed in the course of the hearing) were these:

	VO	Trust
Castle Museum (including shop and café)	£183,000	£96,000
Yorkshire Museum and Gardens (including shop and Hospitium)	£130,000	£1
Shop at Yorkshire Museum (agreed)	£4,850	£4,850

Hospitium (agreed)	£35,000	£35,000
York Art Gallery	£70,500	£30,000
Heritage Centre	£17,500	£1

117. A disagreement over the most appropriate technique to be employed in determining the rateable values of the various hereditaments is at the root of these wide divergences of view. Mr Mansfield, for the Valuation Officer, adopted the contractor's basis of valuation. Mr Hunter, for the Trust, relied principally on receipts and expenditure valuations.

The receipts and expenditure basis of valuation

118. The receipts and expenditure basis of valuation (alternatively described as the "revenue" or "profits" basis) was concisely described by Lord Dunedin in *Port of London Authority v Assessment Committee of Orsett Union* [1920] AC 273, 295:

"Now there are several ways of attacking the problem. One way is to consider what the hypothetical tenant could make out of the hereditament, not in order to rate that profit, but in order to find out what he was likely to give in order to have the opportunity of making that profit."

119. The receipts and expenditure method seeks to arrive at the annual rental value of premises by assessing the gross receipts which a prospective tenant would expect to achieve from a business carried on at those premises, and by deducting operating expenses, including the cost of repairs, and a sum to reflect the return on capital and profit the tenant would require, to determine the surplus which it is assumed the tenant would be prepared to pay to the landlord in rent in return for the annual tenancy. Another way of looking at the assessment is to regard its first stage as being the ascertainment of a net profit (or "divisible balance") which may then be apportioned between the tenant, to provide a return on capital and a profit (in aggregate, the tenant's share) and the landlord, as the rent in return for the annual tenancy (the landlord's share).

120. This approach was originally adopted to overcome the difficulty of valuing the property of statutory undertakers and other properties which were in fact never let, as well as properties which extended into more than one parish. It is now commonly used in the valuation of pubs, clubs, hotels and other premises which cannot reliably be valued using the comparative method because their rental value is so dependent on the profit making capacity of the premises rather than their size or other characteristics.

121. In *Bluebell Railway Ltd v Ball (VO)* [1984] RA 113, 130 the Lands Tribunal (J H Emlyn Jones FRICS) explained that after identifying the unit to be valued it was necessary "to ascertain something of the character and resources of the hypothetical tenant". Although the parties and the letting are both hypothetical, there is of course no reason why, in an appropriate case, the actual occupier should not be regarded as

amongst the potential candidates for the notional tenancy, or even as the only potential candidate.

122. Unless there is some reason to regard the actual occupier as more, or less, successful than the reasonably competent hypothetical tenant, the annual accounts of the actual occupier are usually taken as representative of the gross receipts which the hereditament is capable of yielding and of the expenditure likely to be incurred in achieving them. The effect of paragraphs 2(1)-(4) of Schedule 6 to the Local Government Finance Act 1988 is that the rateable value of the hereditament is to be ascertained on the assumption of a letting on the date on which the rating list comes into force or such preceding date as may be specified by the Secretary of State. In the case of the 2010 list, 1 April 2008 was specified as the valuation date, while for the 2005 list 1 April 2003 was specified. The relevant accounts (or other data) are therefore those which demonstrate the capacity of the hereditament to generate receipts and to incur expenditure before the valuation date, and not those which evidence performance after that date, which could not be known to the hypothetical negotiators. Some latitude may be appropriate to admit accounts compiled after the valuation date, on the basis that the occupier would be privy to the information they contained concerning the performance of his own business up to that date (see the decision of the Lands Tribunal for Northern Ireland in *NI Transport Holding Co v Commissioners for Valuation for Northern Ireland* [1997] RA 14, 30).

123. Although a valuation may be based substantially on the accounts of the occupier, it should not be forgotten that it is the hereditament which is to be valued and not the business of the occupier or, in the case of a museum, the exhibits displayed there. In *Scottish Exhibition Centre Ltd v Assessor for Strathclyde Region* [1994] RA 209, 211, Lord Clyde emphasised the necessity of leaving out of consideration receipts attributable to “considerations other than the lands and heritages which are to be valued, such as, for example, the expertise and business acumen of the particular occupier or the nature or character of moveable equipment in the premises or the quality of the goods or services which he provides.”

124. A particular problem with the receipts and expenditure basis is the difficulty of its application where the hypothetical tenant can be assumed to have a motive for taking the tenancy which is not, or is not only, the making of a profit. Examples of non-profit motives to which we were referred include the statutory, social or moral duties of local authorities to run unprofitable cemeteries (*Bingley UDC v Melville* (1969) 16 RRC 173; *Gudgion v Croydon BC* (1970) 16 RRC 305), the desire of a railway preservation society to maintain heritage assets and to support them with voluntary efforts and donations (*Bluebell Railway*), and the wish of a local or regional council to promote commerce or tourism (*Lowestoft BC v Scaife* (1960) 7 RRC 296; *Scottish Exhibition Centre*). In such cases the return for which the tenant looks when considering what it might be willing to offer as rent may be impossible fully to quantify in financial terms.

125. These cases demonstrate that there is no hard and fast rule where the nature of the hereditament lends itself to occupation by someone to whom it has more than a

purely pecuniary value. A variety of different solutions to the problems of valuation have been adopted. The receipts and expenditure basis of valuation has sometimes been rejected altogether in favour of the contractor's basis (*Gudgion; Scottish Exhibition Centre*); sometimes it has been employed on the assumption that voluntary assistance or donations available to the actual tenant would continue to be available to the hypothetical tenant (*Bluebell Railway*); and sometimes an allowance or "overbid" has been assessed as representing the additional amenity value to the district which motives a public provider (*Lowestoft*). In *Bingley* the Lands Tribunal (Sir Michael Rowe QC, President) considered that "in negotiations conducted by reasonable people" a local council would not seriously seek to induce a landlord to accept a nil rent for a burial ground which it was obliged to provide, and that "the result of the "higgling" would be something more than a nominal rent".

126. The additional difficulty of ascribing a rateable value to properties which cannot generate sufficient income to cover their maintenance costs and for which no tenant could be found in the real world who would be willing to take a tenancy on the prescribed statutory terms was considered by the Court of Appeal in *Hoare v National Trust* (1999) 77 P. & C.R. 366. On the evidence the only prospective bidder for tenancies of two historic houses occupied by the National Trust was the Trust itself, which would not have agreed to take them at a rent and would have required a substantial endowment in accordance with its usual policy. The Court of Appeal found no legal principle requiring an assumption, contrary to the facts, that the sole hypothetical tenant would overbid for a tenancy of premises from which it would derive no profit and which its interest in occupying was not commercial. It concluded that the hypothetical landlord would be willing, in those circumstances, to accept a peppercorn to be relieved of its responsibility for the upkeep of the buildings, and that the hypothetical tenant would not agree to pay more.

127. It is clear from *Hoare v National Trust* and from *Scottish Exhibition Centre* that the fact that the receipts and expenditure method suggests a nominal or nil rateable value is not a reason for rejecting its use and resorting to the contractor's basis where it provides a reliable guide to the rent which would be offered for premises if let on the statutory hypothesis. On the contrary, in cases where premises cannot be occupied profitably, the receipts and expenditure method is often likely to be the better guide. As Lord Prosser stated in *Scottish Exhibition Centre* :

"If it appears that particular lands and heritages could not give an occupier any return, then prima facie he would pay no rent, regardless of whether his loss might be large or small, and regardless of whether the magnitude of his loss would depend on extraneous or individual matters. Just as inherent non-profitability appears to me to suggest that the revenue principle might provide the appropriate means for achieving an accurate (i.e. nil) valuation, so inherent non-profitability seems to me to suggest, at least prima facie and in general, that the contractor's principle will not provide a reliable guide to an accurate valuation."

128. We mention in passing the shortened receipts approach which seeks to determine the rent at which a hereditament would be expected to let by basing the assessment on a percentage of turnover, rather than on a full appraisal of both receipts and expenditure. Where, in respect of a particular mode of occupation, a consistent relationship can be demonstrated between the turnover of businesses of that type and the levels of profit they generate, a shortened approach can be useful. Mr Mansfield relied on it in his valuation of the Hospitium, but as that value was eventually agreed is not necessary for us to consider the applicability of the method in this appeal.

The contractor's basis of valuation

129. The contractor's basis of valuation is a further alternative when a valuation by the comparative method is not possible. In *Port of London Authority v Assessment Committee of Orsett Union* Lord Dunedin said:

“Another way is to see what it would cost the owner to produce the hereditament in the present form, and then to see what a tenant who had not himself the money to be an owner would give the owner yearly, it being assumed that the sum must bear some relation at ordinary rates of interest to what has been spent.”

130. The assumption underlying the contractor's basis is that, for certain types of property, annual rental value bears a relationship to the capital cost of providing the building from scratch. But it is important not to allow an assumption about the relationship between cost and value to become an assumption about the behaviour of the parties to the notional letting. In particular it should not be assumed that in practice either the landlord or the tenant would consider reproducing the hereditament or could do so. As the Lands Tribunal (T Hoyes FRICS and PH Clarke FRICS) emphasised when rejecting too literal an application of the contractor's basis in *Monsanto plc v Farris* [1998] RA 107, 141: “an alternative hereditament ... is neither built nor valued, it is a total fiction and as such it should not be dressed in the clothes of supposed reality, because that produces even greater unreality and an array of problems”.

131. The contractor's basis is often described as a method of last resort and ought not to be employed where there is material on which to base a comparative or receipts and expenditure valuation. Although theoretically sound, in practice the method can involve the making of allowances or adjustments with little evidence to support them which may appear arbitrary and unjustifiable and which, though small in themselves, can have a substantial effect on the end value.

132. For a detailed exposition of the contractor's basis we were referred to a guidance note prepared in 1995 by the Rating Valuation Forum entitled *The Contractor's Basis of Valuation for Rating Purposes*. The note explains at paragraph 1.2 that “the method is employed in the case of properties which are not normally let, which by their nature do not lend themselves to valuation by comparison with other classes where rental evidence does exist, and which are not of the type where a valuation by reference to the accounts of the undertaking would be appropriate.” Examples of the type of properties where the contractor's basis has been adopted include airports, oil refineries, major chemical works

and municipal buildings which cannot be valued by other methods (paragraph 1.3). The significant common characteristic of these properties is that they are not normally let and are not susceptible to valuation by other methods.

133. Stage 1 of a valuation on the contractor's basis is an estimation of the replacement cost of the building or structure, including site works and rateable plant. We adopt the sentiment of the Forum, that in most cases the costing exercise should be related to the notional reinstatement of the actual property which is the subject of the valuation exercise. But some departure from what is "on the ground" is permissible. A new replacement property is likely to be built in modern materials, at least as far as the heritage status of the building and site permits, and might not be identical to the actual property.

134. At stage 2 the estimated replacement cost is adjusted. The purpose of this adjustment was explained by the Forum as follows:

"The replacement costs estimated at Stage 1 relate to the provision of new buildings, structures, plant and machinery etc. As it is the actual property which has to be valued, in its existing physical state, adjustments may properly be considered at this stage to reflect certain deficiencies in comparing the actual property with the "new" property costed at Stage 1." (paragraph 3.2.1)

The deficiencies to which these adjustments are referable are those which render the actual property physically, functionally or technically obsolete. The rental value of the actual property will take into account the prospect of increased maintenance costs over time, compared to those which would be experienced with a new building, the extent to which the original design does not meet modern standards and requirements, and the extent to which the original building or plant have become redundant.

135. In *Monsanto* the Lands Tribunal determined the rateable value of a Welsh chemical works on the contractor's basis. The chemical works had been constructed in the late 1940s and the Tribunal accepted that an allowance was necessary at stage 2 of the valuation to reflect obsolescence. The Tribunal received evidence in the form of a 1986 research study entitled *Depreciation of Commercial Property* that depreciation occurred at a fairly constant rate over the first 20 years of the life of a building. Relying on this research the ratepayer's expert witness gave evidence which the Tribunal accepted that an appropriate allowance for physical obsolescence in the buildings at the chemical works was 0.5% per annum for the first 10 years of the building's life and 1% per annum thereafter up to year 50. None of the buildings was more than 50 years old and no consideration was given to what, if any, further allowance would have been appropriate if they had been.

136. As the Valuation Officer's approach in this appeal adopted the same scale of allowances as was used in *Monsanto* we asked the parties if any of them had considered the research study which was before the Tribunal in that case, but none of the experts had seen it and no copy was available to us.

137. At stage 3 of the valuation an addition is made to reflect the capital value of the land on the assumption that it is undeveloped and available for its current use. The aggregate sum is therefore an estimate of the capital value of the existing building and the land on which it stands taking into account its deficiencies.

138. At stage 4 the effective capital value of the building is decapitalised at a rate prescribed by statute to produce an annual equivalent. The statutory decapitalisation rate for both the 2005 and 2010 lists is 5%. Its application to the capital sum arrived at by the end of stage 3 is the only step in the contractor's basis of valuation which does not involve any element of skill and judgment on the part of the valuer.

139. Stage 5 is a review of the value arrived at and provides an opportunity for the valuer to make any adjustments or allowances (upward or downward) which affect the value of the property as a whole and which have not been taken into account at stage 2. These may include site-specific factors such as access or layout, or wider economic factors which have an impact on the rent which would be agreed for the premises. This stage is sometimes referred to as an opportunity to "stand back and look" but it should not be used to manipulate the result achieved by the preceding steps, each of which has a more or less principled basis, in order to arrive at a rental value which feels right but which is incapable of objective justification.

140. Where it is necessary to resort to the contractor's basis it remains essential to make use of any evidence of market behaviour which is available to check that the valuation has not become unacceptably remote from the statutory question, namely: for how much would the hereditament reasonably be expected to let on the assumed terms?

The choice of method in these appeals

141. Although some argument was presented by the parties that their preferred method ought to be adopted as a matter of principle, we will not approach the choice of method in that way, and prefer to do so after reviewing the available evidence. We nevertheless acknowledge that there are difficulties of principle in applying each of the favoured approaches to these properties.

142. The receipts and expenditure method finds it difficult to cope where the motive for occupation is not the making of a profit. In the case of a museum or other visitor attraction it is also difficult to determine the extent to which income shown in relevant accounts reflects the attraction of the exhibits which are on display rather than the value of the occupation of the premises themselves.

143. Where there is no reason to believe that a building like the subject to be valued would ever be constructed, the contractor's basis is unattractively detached from reality, and the existence of the theoretical relationship between capital cost and value is difficult to accept in the case of historic buildings used as museums or for other cultural purposes. The difficulty is compounded where, as a result of age and history, the building itself is, as it

was put in argument, “part of the exhibit”. That appears to us to be a particular difficulty in this case.

Issue 5: Valuation

144. Before explaining our own valuations, we will review the principal details of the valuation evidence which was presented to the Tribunal.

Rental evidence

145. It was agreed that no evidential weight could be placed on the lettings of the appeal hereditaments to the Trust at peppercorn rents in 2002. Those lettings were complicated by the desire of the City Council to divest itself of responsibility for the upkeep of the buildings and collections, by its assurance of continuing financial support for the Trust, and by the expectation that the Trust would have access to assistance from the Heritage Lottery Fund which would not have been available to the Council.

146. There was very little evidence of the letting of premises directly comparable to the appeal properties. Such evidence as there was nevertheless useful as demonstrating the terms on which historic buildings are let for use as museums or visitor attractions.

147. The only letting of relevance in York was of the 15th century St Anthony’s Hall in the city centre for occupation as a museum and offices by the Quilters Guild of the British Isles. The lease was on internal repairing terms for 30 years with effect from 1 March 2008 (within one month of the antecedent valuation date) at an initial rent of £30,000 rising after two years to £40,000, with a rent free period and five yearly rent reviews. The rent was to be further increased when visitor numbers exceeded 25,000, but they never did. The museum was not a success. In January 2010, the landlord agreed not to insist on the imminent increase to £40,000 and subsequently reduced the rent to £25,000 from December 2012, rising to £30,000 and then £35,000 in the subsequent two years. In October 2015 the museum closed and the Guild took a new lease of the ground floor at £18,000 for office and storage use. The first floor is now let separately for use as a church.

148. The gross internal floor area of St Anthony’s Hall was 751.7 m². Mr Mansfield devalued the agreed rent on a present value basis to £46.50 per m². Evidence of a single letting was insufficient to support the use of the comparative method, but he was prepared to use the St Anthony’s rate as a sense check for his own 2010 valuations of the appeal properties on the contractors’ basis. Making standard allowances for quantum that exercise produced a tolerable correlation (except in the case of the Heritage Centre) from which Mr Mansfield took comfort.

149. Mr Hunter disputed the usefulness of the St Anthony’s letting. It was much smaller than the appeal properties and had a far higher ratio of offices to public exhibition space and stores than other museums. Additionally, the tenant was not responsible for structural or external repairs and since St Anthony’s was a Grade 1 listed building, an adjustment of as much as 15% would be required to reflect the statutory repairing hypothesis.

150. Although we understand the limited purpose for which Mr Mansfield sought to rely on the St Anthony's letting, we have placed little weight on it. Some of Mr Hunter's observations seem to us to have merit. In particular the need to make a significant adjustment to reflect the statutory assumption that the tenant will assume liability for all repairs would require a high level of speculation in the case of a Grade I listed building.

151. Mr Hunter's research identified a further five transactions: two lettings on a "rent plus turnover" basis, one at a low rent, and two at peppercorn rents. He did not rely on these as being directly comparable, but used them to demonstrate the terms on which historic buildings are typically let for use as museums or visitor attractions to commercial operators and registered charities.

152. The Museum of Kent Life occupies a large rural site, which was let to Continuum (Kent Life) Ltd for 25 years from 2008 at a peppercorn rent, plus 30% of net profit before tax. The tenant was paid a premium of £122,000 at the start of the lease. In the event no turnover rent was paid, and the lease was terminated by the tenant in 2013.

153. Oxford Castle is a medieval building which was let by the Oxford Preservation Trust to Heritage Projects (Oxford Castle) Ltd for 15 years from 1 February 2007 on internal repairing and insuring terms. The total rent under two leases was £10,000 plus 30% of the net profit (including a contribution to head office costs but before tax). Acting for the tenant Mr Hunter had agreed the 2010 rateable value at £25,000, based on the base rent of £10,000 plus 30% of an agreed net profit of £50,000.

154. Mr Hunter also referred to the Chard and District Museum which occupies a Grade-II listed building on a lease from South Somerset District Council for a term of 21 years from 1 April 2000. The initial rent of £6,000 was reviewed to £9,000 from 1 April 2010. The tenant is responsible for internal repairing only, with the Council retaining responsibility for the repair of the structure and for insurance. Mr Hunter regarded the transaction as evidence that willing landlords will let historic buildings for use as museums at low or nominal rents even where the landlord retains responsibility for external repairs.

155. The Tetley Museum at Leeds occupies the former head office of Tetley's Brewery and is now a museum devoted to the history of the Brewery. The building is owned by Carlsberg and was let to a charitable trust for 35 years from 28 November 2013 on full repairing and insuring terms at a rent of £1 per annum.

156. The Museum of Carpet at Kidderminster occupies part of a Victorian carpet factory, refurbished by the landlord as a condition of obtaining planning consent to develop a supermarket on adjoining land. On 29 March 2011 the listed building was let for use as a museum for a term of 50 years at a peppercorn rent on full repairing and insuring terms.

157. Mr Hunter said that these comparables show that the open market rental value of historic buildings is dependent on their commercial viability as museums or visitor attractions. In appropriate cases a positive rent with an element based on turnover may be

agreed, but where occupation of a historic building on commercial terms is not viable, a landlord will accept a nominal or peppercorn rent in exchange for passing on responsibility for maintenance to a third party with an interest in the preservation of the property and easier access to lottery funding. This assessment was corroborated by Mr Tanner, who told us that in his experience charitable trusts were often solicited to take over responsibility for listed buildings which could not be used commercially because of their listed status.

158. Mr Hunter considered that this pattern indicated that the receipts and expenditure method was the appropriate method of valuation for museums housed in historic buildings.

159. Mr Mansfield disagreed and said that a landlord would not accept a nominal rent when there were tenants available who would derive what he called socio-economic benefit from occupation. The preservation of the appeal properties is not the primary motive for their occupation and he envisaged that the hypothetical tenant would seek occupation for the purpose of exhibiting historic artefacts and works of art.

160. We agree with Mr Hunter that the evidence of listed buildings taken under lease by charitable trusts or commercial operators intending to use them as museums or visitor attractions is relevant to the issues in these appeals. The limited evidence shows that such buildings are sometimes let on internal repairing terms with the tenant paying a relatively modest base rent with an additional sum becoming payable once visitor numbers pass a certain threshold. In contrast, the examples of lettings on full repairing and insuring terms were at only nominal rents.

Assessment evidence

161. Other than Oxford Castle, there was little relevant assessment evidence, and none on which either expert relied in support of his valuation. We need refer to only three of the properties mentioned by Mr Hunter.

162. The Treasurer's House and Goddard's House, both in York, are historic Grade I listed houses, owned and managed by the National Trust. Each is entered in the 2010 list at £0 RV in accordance with the practice of the Valuation Office Agency in relation to National Trust properties following *Hoare (VO) v National Trust*. At Goddard's House the hereditament has been split so that part of the building occupied as offices is entered with a rateable value of £50,000, which we assume is based on a commercial office rate.

163. Mr Hunter also referred to Waltham Abbey Royal Gunpowder Mills, a collection of nineteenth century industrial buildings now used as a visitor attraction. An assessment for the 2000 list of £140,000 on the contractor's basis was reduced by the VTE to nil adopting a receipts and expenditure approach; an appeal to the Lands Tribunal was subsequently compromised at £5,000. The entry in the 2005 list was agreed at £6,000, which was then the subject of a token increase to £7,000 in the 2010 list.

164. It was common ground that there was insufficient rental or assessment evidence to properly inform a reliable valuation of the subject properties. Both Mr Mansfield and Mr Hunter had therefore prepared valuations using the contractor's basis, and the receipts and expenditure basis. We begin with the contractor's basis.

Evidence on the contractor's basis

165. Mr Mansfield considered that the contractor's basis produced robust valuations of the appeal properties and pointed out that it had been employed for the York Art Gallery in 2005 when a rateable value of £52,500 was agreed, as well as for other museums and art galleries in both the 2005 and 2010 rating lists. The 2005 list was closed, and the 2010 rating list was over six years old and he suggested that a "tone of the list" for both the methodology and the scale of building costs could be demonstrated by reference to settled assessments.

166. Mr Hunter considered the method to be unreliable. His principal objection was based on the evidence of Dr Tanner that all new museums were constructed with the assistance of lottery funding, so that no tenant would contemplate spending its own capital on constructing a museum. This seemed to the Tribunal to be an example of the literal approach to the contractor's basis which the Lands Tribunal had warned against in *Monsanto*. Whether a hypothetical tenant would or would not be prepared to spend its own capital on such a project is nothing to the point. The theoretical underpinning of the method is that the annualised cost of constructing a fictional alternative building would appear to the parties to be a suitable measure of the rental value of the actual building, and not that the construction of an alternative building would be a course of action which either of them would contemplate in reality.

167. Mr Hunter also made the point that the contractor's basis was inappropriate when the building itself, as he put it, "formed part of the exhibit". Where the subject to be valued was an historic listed building, the cost of constructing a modern equivalent would be no guide to value. A notional replica of the original would have to omit so much of the embellishment of the prototype which served no functional purpose that it would be a different building; if it did not, the cost would bear no relation to the value to a modern occupier. While allowances for age and obsolescence could be made, their quantification would be entirely subjective. Mr Hunter therefore considered that the use of the contractor's basis to value historic buildings used as museums was fundamentally flawed: the greater the level of adjustment required, and the more subjective the assumptions, the less reliable the answer.

168. In support (or so it might have been anticipated) of the valuations of Mr Hunter and Mr Mansfield, expert evidence on building costs was given by Mr Mulroy for the Valuation Officer and by Mr Anderson for the Trust.

169. Mr Mulroy has more than 40 years' professional experience in the construction and civil engineering industries and has been employed as a Senior Quantity Surveyor by the Valuation Office Agency since January 2012. He was asked by the Valuation Officer to consider the rebuilding cost of the hereditaments using the substitute building approach,

assuming modern replacements using modern materials. Mr Mansfield considered that it would be too costly for a hypothetical tenant to replicate the grand style of the existing buildings and suggested that the tenant's rental bid would take account of the cost of building a modern substitute of an appropriate size on the same sites which fulfilled the same functions as the originals. He provided guidance to Mr Mulroy by identifying six modern galleries or exhibition centres which he considered comparable in quality and function to the appeal hereditaments.

170. For the Trust Mr Anderson assumed the replacement of the hereditaments largely in their existing form.

171. It would have been more helpful to the Tribunal had the experts each been asked to consider building costs on both the replacement and the modern substitute bases. Had they done so it is likely that the substantial consensus between Mr Mulroy and Mr Anderson would have emerged at an earlier stage and the cost of their attendance would have been avoided.

172. As it was, the most striking feature of Mr Mansfield's contractor's basis valuation was that for both the 2005 and 2010 valuations he used building costs for museums, art galleries and exhibition centres which were at least 50% below the bottom of the range given by Mr Mulroy in his evidence. Rather than relying on that evidence, or reconsidering his approach in the light of it, Mr Mansfield adopted the indicative costs for museums, art galleries and civic buildings provided in the Valuation Office Agency's own Rating Manual. This provides a range of costs including for a category of "medium quality museums" described as purpose built Victorian museums under local authority or private occupation, which Mr Mansfield adopted.

173. Mr Mulroy's view was that, as at 1 April 2003, to construct a modern museum or art gallery would have cost between £2,000 and £3,000 per m² (net of professional fees and ground works) and that by 1 April 2008 these costs would have risen to between £3,000 and £4,000 per m². Mr Mansfield nevertheless based his valuations on assumed building costs of £1,000 per m² in 2003 and £1,250 per m² in 2008. The discrepancy in the case of exhibition centres (the category in which Mr Mansfield placed the St Mary's Heritage Centre) was just as marked.

174. Mr Mansfield readily admitted in his oral evidence that the indicative building costs he had adopted were too low but suggested that they should be preferred, not for their own intrinsic value, but because they formed the basis on which the rateable values of other museums had been settled. They represented a "tone of the list" for museum building costs which, in Mr Mansfield's view, trumped the evidence of the two building costs experts. In essence, Mr Mansfield said, "all those professional practitioners cannot, in my opinion, be wrong". The practitioners he was referring to were, of course, rating professionals, rather than experts in building costs. It would also be unfair to the Trust, Mr Mansfield suggested, for higher building costs to be used when applying the contractor's method to its museums than those which had formed the basis of other museum settlements.

175. With equal candour, Mr Mulroy agreed that Mr Mansfield's figures were too low, and observed that if the building costs of the various hereditaments were limited to those adopted by Mr Mansfield, only very basic buildings could be constructed. He also considered that the rate of 13% adopted by Mr Mansfield for professional fees was too low, and that even his own rate of 15% ought probably to be increased to 20% for modern museum buildings and might be even higher if the notional building was to be assumed somehow to be constructed on the site of a scheduled ancient monument. Mr Mansfield's allowance for professional fees was once again based on VOA guidance from which he was unwilling to depart.

176. For the Trust Mr Anderson provided spot figures for the cost of building the various hereditaments on a replacement basis; these generally fell within the ranges given by Mr Mulroy and in cross examination Mr Mulroy said that he and Mr Anderson were broadly in agreement. No evidence was given by any witness in support of the indicative building costs in the Rating Manual and their inclusion in that publication does not confer any evidential status on them, especially in the face of a consensus amongst the expert witnesses that they were too low.

177. We do not accept Mr Mansfield's suggestion that there is an established "tone" based on the VOA's indicative costs. No examples were given in evidence of settlements based on those figures. If it is the practice of the VOA to adopt building costs which are 50% or more below those which its own quantity surveyors consider to be appropriate, we can well believe that settlements will be achieved, but as an approach to valuation such a practice has nothing to commend it and is not rescued by the acquiescence of ratepayers and their advisers in the resulting valuations.

178. At stage 2 of his valuation Mr Mansfield considered that it was necessary to make an allowance for the obsolescence of the appeal hereditaments. He relied upon what he described as a long established practice, underpinned by numerous local agreements on a range of hereditaments. This was to adopt the scale of adjustments used by the Lands Tribunal in *Monsanto*, which is reproduced in the VOA's Rating Manual. The *Monsanto* sliding scale provides for an allowance of 0.5% per annum for the first 10 years of a building's life, then an additional 1% per annum for each year up to the fiftieth year giving a maximum allowance of 50% for buildings more than 50 years old. Mr Mansfield's stage 2 deduction for obsolescence, across the board, was therefore 50%. This deduction was unrelated to any consideration of the characteristics of the individual hereditaments themselves other than the fact that they were all more than 50 years old. In his oral evidence Mr Mansfield said that with so many hereditaments to deal with in a valuation scheme, the exercise of arriving at individual rateable values was a mechanical one.

179. Mr Mansfield made his *Monsanto* adjustments despite the VOA's rating manual stating that these general allowance scales "are intended to apply to large industrial hereditaments involving a high number of P and M [plant and machinery], valued on a contractor's basis." Elsewhere in the same guidance under the heading "age related disabilities" it is said that:

“It should not be automatically assumed that because a building is old it merits an allowance. In certain circumstances age may be a positive asset as with, for example, prestige buildings such as town halls, art galleries, or universities.”

Unsurprisingly the guidance note does not offer any specific assistance on the appropriate age related allowance for 13th century churches or former monastic buildings.

180. Mr Hunter ignored the *Monsanto* scale on the basis that it was applicable to chemical works but not to the appeal hereditaments. He agreed that there were few objective factors to inform a stage 2 allowance, which was part of his objection to the use of the method at all. Nevertheless, having regard to the age of the buildings, the quality of materials and the consequent cost of repairs compared to a modern equivalent, and the inefficiencies of layout and problems of disability access, he considered that in both lists the appropriate stage 2 allowances were 60% for the Art Gallery, 75% for the Yorkshire Museum, 80% for the Castle Museum, and 90% for the Heritage Centre.

181. Having added what he considered to be an appropriate figure for the land in each hereditament and after applying the statutory decapitalisation rate Mr Mansfield made two further allowances at stage 5 of his valuation. These were a site dispersal discount of 5% for the Yorkshire Museum, and a layout discount of 5% for the Castle Museum. Mr Mansfield’s valuations on the contractor’s basis are those relied on by the Valuation Officer set out in paragraphs 115 and 116 above.

182. The allowances Mr Hunter applied at stage 5 of his valuation were more substantial and comprised a further reduction of between 13.36% and 14.37% for the comparative cost of repairs to listed buildings and 7% for additional insurance costs. In each case Mr Hunter’s contractor’s basis valuations produced substantial positive values for both lists; the Castle Museum, for example would have had a rateable value of £94,000 in the 2005 list and £130,000 in the 2010 list, while the equivalent figures for the Yorkshire Museum would have been £89,500 and £111,000 respectively.

183. The quality of the evidence we received on the contractor’s basis was disappointing. Despite producing substantial reports neither Mr Mansfield nor Mr Hunter provided much explanation of the valuations themselves. Spreadsheets with little or no commentary to explain how rates, figures or allowances had been arrived at were of limited assistance and necessitated detailed questioning from the Tribunal, which should not have been required. We would have been helped by much more cooperation between the experts and by a more detailed statement explaining where they agreed and disagreed and why.

184. In the event, these deficiencies in the evidence have not proved critical because we are satisfied that the use of the contractor’s basis for the purpose of these valuations is not appropriate. At the most fundamental level we can see no justification in the case of historic buildings used as museums or visitor attractions for the assumption underlying the contractor’s basis that notional costs of construction bear some consistent relationship to rental value. Such buildings are often, as the evidence demonstrates, inherently unprofitable yet would be very expensive to construct either in their original form or as a modern substitute. The statutory rating hypothesis requires the assumption of a letting of

expensive and inefficient historic buildings on terms which the evidence suggests could not be achieved in reality; it does not require that the commercial viability of the enterprise or the risks of assuming responsibility for the maintenance of such premises be ignored. Nor does the statutory hypothesis permit the making of an assumption, without evidence, that the sort of tenant who might take a tenancy of an historic building for use as a museum would have external sources of revenue sufficient to enable the payment of a commercial rent where the purpose for which they wish to occupy the premises themselves is likely to be loss making.

185. In any event, the buildings occupied by the Trust are not of a type which are rarely or never let, and although there is insufficient transactional or settlement evidence to enable comparative valuations to be undertaken, such evidence as there is suggests strongly that, for non-profit-making museums at least, the contractor's basis produces valuations which are manifestly too high. The general pattern is of peppercorn lettings or modest rents linked to visitor numbers or turnover, which suggest that tenants in this sector are either unable or unwilling to accept the risks and responsibilities which the statutory valuation hypothesis assumes. The reduction in the rateable value of the Waltham Abbey Royal Gunpowder Mills following the instigation of an appeal from the figure of £140,000 arrived at using the contractor's basis in the 2000 list, to the £6,000 at which the 2005 list entry was on the receipts and expenditure basis is a striking illustration of the dangers of an inappropriate use of the contractor's basis.

186. Mr Ormondroyd pressed us to note that, at the end of stage 2, the competing valuations were roughly equivalent. In our view, any equivalence was the accidental consequence of applying arbitrary allowances to unrelated costs. Both parties used very substantial allowances at stage 2 and (in Mr Hunter's case) stage 5. Mr Mansfield suggested on the one hand that these were a matter for valuation judgment and on the other that they were the application of a mechanical formula necessitated by settlements agreed on other museum assessments. Mr Hunter did not support the use of the contractor's basis at all, and he was right to reject it, but the allowances he adopted were picked from the air.

187. We also specifically reject the use of the *Monsanto* scale in these valuations. Allowances employed in the valuation of a post-war chemical works have no relevance to historic listed buildings used as museums and art galleries. The limitations of the scale were acknowledged by Mr Mansfield when he accepted that it did not differentiate between a building of 50 years old and one of 1,050 years old – both would attract an allowance of 50%. That the scale stops at 50 years is not the result of any valuation principle but simply a reflection of the age of the buildings with which the original *Monsanto* proceedings were concerned. We do not criticise the widespread adoption of the *Monsanto* allowances in contractor's basis settlements relating to industrial buildings, but their use in industrial settlements lends them no additional credibility or relevance as a tool for valuing other types of building. We have seen no evidence of the use of the scale in the valuation of historic buildings. The VOA's own rating manual lends no support to its employment for that purpose and in our judgment it has no place in a rational scheme of valuation for such hereditaments.

Evidence on the receipts and expenditure basis

188. We therefore turn to the parties' receipts and expenditure valuations. Both experts produced valuations on this basis, although Mr Mansfield considered that the method was inappropriate because the Trust's motives for occupying the hereditaments were different from those of a normal commercial occupier and included what he referred to as "socio-economic" considerations. Entry to York Art Gallery and the Heritage Centre was free and Mr Mansfield found it difficult to see how a satisfactory valuation based on receipts could be prepared where there were little or no receipts. Mr Mansfield also expressed concern about the use of unaudited management accounts prepared by the Trust's accountant, Mr Wadsworth. These were the only source of information identifying income and expenditure for the individual sites, but they did not include details of revenue subsidies, grants and donations available to the Trust at the material days which he considered ought to be taken into account.

189. Mr Mansfield derived his basic receipts and expenditure data from the consolidated accounts of the Trust which included the activities of both the Trust and its trading subsidiaries and covered receipts and expenditure for hereditaments which are the subject of these appeals and others locations which are not. Mr Mansfield sought to make adjustments to allow for these factors.

190. Mr Mansfield assumed that the incoming tenant would wish to make a charge for all of the sites, including the Art Gallery and Heritage Centre. For the 2010 rating list he analysed the accounts for the three years prior to April 2008. For the 2005 list, he had regard to the two full years after April 2003 as there were no appropriate accounts available for any earlier period. The accounts included aggregated receipts from admissions charges at the Castle Museum and the Yorkshire Museum, which Mr Mansfield accepted were reasonable. He used these together with actual visitor numbers to produce notional receipts for the other hereditaments, including a proportion of free admissions for York residents on the assumption that these would be a condition of local authority revenue funding. He added other sources of income available to the Trust, derived from its accounts, including donations, grants and revenue funding from York City Council.

191. Mr Mansfield also derived figures for expenditure from the Trust's consolidated accounts for the same periods, adopting averages or making adjustments where these seemed justified.

192. For the 2005 list, Mr Mansfield calculated that the Trust's five sites achieved an average annual gross income of £3,477,581, incurring expenditure of £2,786,276, leaving a net profit before rent of £691,305 or, after a small amount of depreciation a balance of £687,650. He assumed that an incoming tenant taking tenancies of all five sites would be prepared to pay half of that figure in rent and on that basis he arrived at aggregate rateable values for the five appeal hereditaments of £343,825. Using a similar technique for the 2010 list, Mr Mansfield arrived at aggregate rateable values of £476,543.

193. For each list Mr Mansfield then apportioned the aggregate rateable value to each of the five appeal hereditaments pro rata by reference to their respective gross internal floor

areas (Yorkshire Museum 33%, York Art Gallery 18%, Castle Museum 44% and Heritage Centre 6%) to arrive at the following rateable values:

	2005 list	2010 list
Yorkshire Museum:	£113,000	£157,000
Castle Museum:	£151,000	£209,000
Heritage Centre:	£20,500	£28,500
York Art Gallery:		£85,500

194. Mr Hunter based his receipts and expenditure valuation on the Trust's management accounts prepared by Mr Wadsworth, which identified income and expenditure for each individual site. For the 2010 list, Mr Hunter relied on the accounts for the three-year period ending 31 March 2008, but also considered later years. He believed that the consolidated accounts on which Mr Mansfield relied did not lend themselves to analysis on a property by property basis as they related to the performance of the Trust as a whole.

195. In each case Mr Hunter began by considering historic visitor numbers and actual or notional income, making no allowance for grants, donations or local authority subsidy.

196. Visitor numbers at the Heritage Centre had fluctuated from a low in 2007 of below 20,000 to a high in 2008 of nearly 36,500. As 2008 had been an exceptional year Mr Hunter assumed an income stream from an annual average of 25,000 visitors (most of whom would be adults, with a small number of children and other concessions) based on a notional adult entry fee of £3.50, boosted by gift aid of 25% from half of the visitors. On these assumptions total annual income for the purpose of the 2010 list was taken to be £86,875.

197. Based on the management accounts Mr Hunter adopted a median figure of £20,000 for historic annual operating costs at the Heritage Centre, but noted that this did not include any staff costs associated with the collection of an entry charge. To reflect the notional cost of two additional full-time members of staff Mr Hunter therefore tripled the actual staffing cost of £18,000 to £54,000. He accepted in cross-examination that the resulting figure might be too high. Taking into account marketing, administration and utilities costs Mr Hunter calculated that the total notional expenditure to run the Heritage Centre on a pay for entry basis would be £93,000.

198. The result of Mr Hunter's receipts and expenditure assessment was therefore a net loss before rent of £6,125, and on that basis he considered that the rateable value of the Heritage Centre in the 2010 rating list should be £1. A similar set of calculations produced the same rateable value for the 2005 list.

199. Mr Hunter adopted the same approach to the Art Gallery which had also operated without charging for entry at the material day, although before the Trust's involvement the City Council had collected a small charge from visitors.

200. Income from visitors was based on an annual average of 145,000 adults who were assumed to pay £4 per head for entry. After allowing £10,000 for the catering concession, Mr Hunter arrived at total income of £634,500. His total expenditure, taken from the management accounts, was £483,000, resulting in a net profit before rent of £151,000. He considered that 30% of this net profit, or £45,300, would have been agreed as the annual rent for the Art Gallery to allow for a return on the tenant's assets. Mr Hunter therefore contended that the rateable value of the Art Gallery in the 2010 rating list should be £45,250. There was no appeal against the agreed entry in the 2005 list of £52,500.

201. The Kirkgate attraction at the Castle Museum had been renovated during 2005/06 and 2006/07, at a cost which had been offset by grants from the Heritage Lottery Fund and the government. Mr Hunter believed that it was essential that any attraction should refresh its offer to ensure repeat visits. He therefore attributed a net figure of £100,000 to operating expenses over and above the anticipated grants and other income assumed to fund the actual exhibitions. Otherwise basing himself on the management accounts, Mr Hunter arrived at total annual income of £1,630,000, and total expenditure of £1,230,000, resulting in a net profit before rent of £400,000, of which he considered 30% would be paid in rent, giving a rateable value for the Castle Museum as at 1 April 2010 of £120,000.

202. For the purpose of the 2005 valuation of the Castle Museum, and in the absence of actual receipts and expenditure figures for 2003, Mr Hunter simply reduced his 2010 figure for receipts by 20% to reflect the lower admission charges which had applied in 2003 and left all other elements of his 2010 valuation undisturbed. This resulted in a rateable value for the Castle Museum as at 1 April 2005 of £96,000.

203. As regards the Yorkshire Museum and gardens, Mr Hunter considered this could be valued as three distinct elements, which should then be aggregated to provide a single rateable value. He valued the main museum building including the observatory and Manor Cottage on the receipts and expenditure basis but found sufficient evidence in the locality to enable the offices in St Mary's Lodge to be valued on a comparative basis. The Hospitium would also have been valued by Mr Hunter on the receipts and expenditure basis but in the course of the hearing it was agreed that, if it was to appear as a separate entry in the 2010 list, it would be with a rateable value of £35,500.

204. The Yorkshire Museum had been closed for part of 2009/10 and 2010/11 for major refurbishment and income was significantly higher in later years. 2007/08 had also been a poor year and Mr Hunter adopted the 2006/07 income level as being more indicative of anticipated performance as at 1 April 2008; on that basis he arrived at total receipts of £303,000. He took total expenditure of £669,000 from the management accounts resulting in a net loss before rent of £366,000 for the museum building itself. 2007/08 also showed a significant loss, as had every year from 2003 to 2014.

205. Mr Hunter valued St Mary's Lodge at £13,779 based on a main space rate of £95 per square metre, reduced rates for other areas and an end allowance of 10% for access and poor natural light. Mr Mansfield did not argue with this valuation, although he did not

agree that different valuation methods should be employed in valuing different parts of the same hereditament.

206. By aggregating the agreed rental value of the Hospitium (£35,500) and his own assessment of the rental value of St Mary's Lodge (£13,779) with the loss making potential of the main museum building (£366,000) Mr Hunter reasoned that no tenant would be prepared to take a tenancy of the hereditament as a whole at other than a nominal rent and concluded that the rateable value of the Yorkshire Museum and gardens, including the Hospitium, in the 2010 list should be £1. A similar set of calculations produced the same rateable value for the 2005 list.

207. We have already decided that neither the Hospitium, the cafes, or shop at the Castle Museum should be separately assessed, but that the Yorkshire Museum shop should appear in the 2010 list at the unchallenged value ascribed to it in the VO's November 2014 notice. Taking those decisions into account, the competing positions on a receipts and expenditure basis are as follows:

2005 List	VO	Trust
Castle Museum	£151,000	£96,000
Yorkshire Museum	£113,000	£1
Heritage Centre	£20,500	£1
2010 List		
Castle Museum	£209,000	£120,000
Yorkshire Museum	£157,000	£1
Yorkshire Museum Shop	£7,600	
Heritage Centre	£27,000	£1
York Art Gallery	£85,500	£45,250

By comparing these valuations with those in paragraphs 116 and 117 above, it will be noticed that Mr Mansfield's receipts and expenditure valuations are significantly higher than those he arrived at on his preferred contractor's basis, while Mr Hunter's figures using this method are those which he adopts as his valuations.

Discussion and determinations

208. We did not find the approach of either of the experts to receipts and expenditure wholly persuasive.

209. Mr Mansfield's technique must be rejected as being inconsistent with the requirements of the statutory rating hypothesis. In determining an aggregate rateable value for all of the appeal hereditaments, which he then apportioned by reference to relative floor area, Mr Mansfield did not at any stage consider the rent at which each individual hereditament would be let on its own to a prospective tenant. Although all five hereditaments are the subject of this appeal, the statutory hypothesis must be applied to them each individually, with all other facts being taken to be as they were on the material day in accordance with the reality principle. It must therefore be assumed for the purpose of each valuation that the only building available to be let is the subject of that valuation, with the remaining buildings being occupied, as they were in reality, by the Trust. Despite it being clear from the management accounts that the Castle Museum is, as Mr Wadsworth described it, the Trust's "cash cow", Mr Mansfield's method assumed that each museum was equally profitable and would command a rent in proportion to its area, irrespective of the location or other characteristics of the particular building or the expenses associated with running it. The result was to increase the values of unprofitable buildings and to reduce those of the more profitable sites. That is not a permissible approach.

210. We understand why Mr Mansfield felt it necessary to adopt this technique, and we appreciate that he regarded the receipts and expenditure method as secondary, but we do not feel able to base our own valuation on his approach.

211. Mr Mansfield was driven to adopt his unorthodox method because of the difficulty he encountered in understanding the Trust's management accounts and in relating them to the consolidated accounts. Having tried to compare the two sources of information we sympathise with Mr Mansfield.

212. For the purpose of their 2010 valuations both experts relied principally on the 2007-08 management accounts. When the figures for each of the appeal properties are looked at together they show aggregate income in round terms of £2.9 million and aggregate expenditure of £3.2 million, suggesting an operating deficit of around £300,000. For the same period the Trust's consolidated accounts show income in excess of £5 million and expenditure of £4.7 million, producing a surplus of £370,000 before taxation. Mr Wadsworth confirmed that the Trust achieved an operating surplus without which it would be unable to function.

213. Mr Hunter explained that the consolidated accounts reflect all sources of income and expenditure of the Trust including a historic Gate House and off-site storage facilities and offices at five different locations which are not the subject of this appeal, as well as a former barracks building which we have not mentioned as its value has been agreed, and the maintenance and upkeep of the York Archives which are stored at the Art Gallery. We assume these additional properties are not directly income producing, but they obviously have their own overheads. Mr Hunter offered very little explanation of his expenditure figures which appeared to us to be low. From what we understand of the Trust's activities we would have expected a greater correlation between the management accounts and the consolidated accounts than is apparent. While do not suggest that the management accounts are an inaccurate reflection of what they purport to record, without further explanation (which was not provided) we are not satisfied that they are sufficiently

transparent or comprehensive to provide a solid foundation for a receipts and expenditure valuation.

214. A further difficulty is that the Trust's accounts show a level of support from the City Council which had been negotiated at the time the Trust took over responsibility for the City Council's collections and museum buildings, but which may not have been available to a tenant taking a new tenancy in 2005 or 2010 of a single building. We were informed that the City Council was reducing its support and we do not consider that it can be assumed that the notional tenant (whether the Trust or some other museum operator) would attract the same level of support, especially if its business model assumed that entry charges would apply to all of the sites. Nor was there any evidence of the attitude of grant making bodies to requests by non-profit making museum operators for revenue funding to support the payment of rent on leasehold premises. Neither Mr Mansfield nor Mr Hunter grappled with these complexities.

215. A number of significant assumptions were made by both parties. They assumed that the hypothetical tenant would expect to attract the same number of visitors as the Trust actually achieved. They also assumed that the performance of the Trust, as demonstrated by its accounts, was a reliable guide to the performance which the hypothetical parties would anticipate could be achieved at the sites for which the Trust currently charges for entry. Finally, they assumed that the parties would negotiate a rent in the expectation of the introduction of charges at the Art Gallery and the Heritage Centre, but anticipating that such charges would have no adverse effect on visitor numbers. We find that optimistic assumption surprising, and note that when it first took control the Trust dropped the City Council's policy of charging for admission to the Art Gallery; nevertheless, as it was common ground we will make the same assumption.

216. Making those assumptions it is possible to come to some clear conclusions about the income which the hypothetical parties would expect a museum or gallery run from each of the various sites to be capable of achieving. We will first consider the paying sites.

217. Data on total receipts from admissions is available for the year 2007/08 from both the consolidated and management accounts and from admissions income records. Although not identical, each of these sources suggests receipts of £1.3 million from the charging sites. According to the management accounts this figure was net of gift-aid of £214,000 and although the position is not confirmed as clearly by the other sources we will assume it to be correct.

218. In the Trust's 2008 accounts, income from charitable activities included £200,000 of exhibition income, and £94,935 of "miscellaneous" income. There was no evidence of what these lines in the accounts actually comprised. In the absence of any evidence to the contrary, we have provisionally adopted Mr Hunter's approach of excluding both the exhibition and miscellaneous income, offsetting it against operating costs. This is less than satisfactory, but there is insufficient evidence of what these sources of income were for or of whether they would be available to the Trust or an alternative tenant taking a new tenancy, to enable us to proceed on a more reasoned basis.

Castle Museum (including shop and café)

219. For the Castle Museum, both valuers relied on the actual admissions income for 2008 of £1.16 million or thereabouts. From the management accounts gift-aid of £170,000 is to be added to this figure giving receipts from admissions and gift-aid of £1.33 million.

220. Trading income from the Castle Museum shop and café must also be taken into account. Mr Hunter assumed retail income of £275,000 and a further £25,000 from the catering concession. From the fluctuating figures in the management accounts these assumptions appear to us to be a realistic assessment of the expectations of an incoming tenant.

221. The management accounts for the Castle Museum show additional income from grants and other unidentified sources of £430,000 in 2007-08, £277,000 in 2008-09 and £73,000 in 2009-10. The greater part of this income appears to have related to grants towards the renovation of the Kirkgate attraction. Mr Hunter assumed that net operating expenditure on refreshing exhibits and new exhibitions would exceed such grants and other contributions by £100,000 annually and for that reason he left this fluctuating additional income out of account and made an allowance against operating expenses.

222. On the basis that an incoming tenant would make the same assumption we consider that it is realistic to proceed on the basis that the negotiation of a rent for the Castle Museum in April 2008 would take place against the background of assumed receipts (based on the previous three years' performance by the Trust) of around £1.63 million.

223. Mr Hunter based his assessment of expenditure broadly on the management accounts for 2007-08. Staffing costs of £770,000 (for both retail and museum staff) were the largest item, with premises and utilities costs of £160,000, net operating expenses of £100,000, the cost of goods for resale of £150,000 and other smaller items bringing the total to £1.23 million. Mr Hunter therefore calculated that the net profit before rent (based on income and expenditure in 2007-08) would be £400,000.

224. On that basis it would be clear to the hypothetical parties that the Castle Museum is capable of sustaining a significant cash generative enterprise – the Trust's cash cow. It has long been established as an important tourist destination in a city which attracts many visitors. Its location and its status as the City's historic prison draw paying visitors to its gates in very large numbers.

225. In our judgment whether the letting was to a commercial operator or to a charitable trust it is probable that a rent would have been agreed on the basis of a fixed payment plus a share of net profits. Oxford Prison let from 1 January 2007 at base rent of £10,000 plus 30% of a net profit which proved to be £50,000. Accepting Mr Hunter's assessment of outgoings, the net profit available from the Castle Museum is significantly higher and we consider it would be likely to let at a higher base rent; if that base rent bore the same relationship to the eventual net profit as at Oxford Prison it might have been as high as £80,000. If the same share of 30% was adopted by the hypothetical parties (net of the base

rent) the anticipated profit of £400,000 would be expected to yield a further sum of £117,000, giving a total rent of almost £200,000.

226. Of course, for the purpose of establishing a rateable value, a letting on a profit sharing basis cannot be assumed, even where the evidence indicates that the market would behave in that way, but it is relevant to have in mind how lettings for similar purposes are approached in the market. The letting of Oxford Prison was also on significantly different terms from the notional letting of the Castle Museum. Not only was the rent structured as we have described, but the term was one of 15 years and the tenant was responsible for internal repairs only. In contrast, the statute assumes an annual tenancy on full repairing terms, the landlord having first put the premises into a reasonable state of repair.

227. The fact that the subject of the letting is a Grade 1 listed building would obviously be a matter of concern to an incoming tenant taking a full repairing lease. However, in the case of a letting on the rating hypothesis there are a number of features of the assumed transaction which we consider would be likely to mitigate that concern. The first is that the building is taken to have been put into a state of reasonable repair immediately before the commencement of the tenancy. Secondly, the anticipated premises and operating costs taken into account in the receipts and expenditure assessment are based on the costs incurred by the Trust under its own lease, which is on full repairing terms, and Mr Hunter has not suggested that they are inadequate or that any additional provision would be made by an incoming tenant. Thirdly, the notional annual tenancy is one from which the tenant can readily exit. Finally, at least in the case of the Castle Museum, the incoming tenant might take some comfort from the fact that the building itself is of a notably rugged construction. Having regard to these features, and to the potential of the Castle Museum to generate significant profits, we do not believe that the incoming tenant (whether a commercial operator or a charitable trust) would be unnerved by the prospect of assuming responsibility for the maintenance of the building despite its listed status.

228. Mr Hunter suggested that in a negotiation the hypothetical parties would agree to apportion only 30% of the anticipated net profit to the payment of rent leaving the tenant with the balance. This was unrelated to the risk of assuming responsibility for the repair of the listed structure, but was said to be to provide a return on the tenant's capital, meaning the exhibits which it would display at the Museum. We doubt that in the case of the Castle Museum the outcome of a negotiation would be as favourable to the tenant. On our inspection, and with the exception of Kirkgate (which neither party suggested would be let as part of the hereditament), the current contents of the Museum appeared largely unremarkable and of limited intrinsic value. The building itself and its history and associations, on the other hand, are of considerable interest and, whatever the nature of the artefacts displayed within it, would be likely to attract visitors. We are satisfied that those characteristics of the building itself would not be lost on the negotiating parties and that the tenant would not succeed in achieving the attractive split Mr Hunter anticipated.

229. Mr Ormondroyd suggested to Mr Hunter that the Oxford Prison letting pointed to an equal division of net profit, with the landlord taking half as rent. We do not think that conclusion can reliably be drawn from a letting on such different terms. We prefer to base our own assessment on our conclusion that the 2010 figure contended for by the Valuation

Officer for the Castle Museum including its shop and cafe, being the £183,000 shown in the 2010 compiled list and representing just under 46% of the net profit before rent on Mr Hunter's figures, is not too high. In those circumstances we allow the Valuation Officer's appeal and restore the original entry of £183,000.

230. The entry in the 2005 compiled list for the Castle Museum including the shop and café was £112,000. The parties were hampered by the absence of accounts for the years pre-dating 1 April 2003. The only reliable information related to admission prices, which were 20% lower in 2003 than in 2008. This led Mr Hunter simply to reduce his 2010 rateable value by 20%. If we were to do the same (assuming a letting value in April 2008 of £180,000) we would arrive at a rateable value of £144,000. We are therefore satisfied on the evidence that the rateable value of £112,000 in the 2005 compiled list for the Castle Museum was not too high and we dismiss the Trust's appeal on that issue.

The Yorkshire Museum

231. The Yorkshire Museum was closed for major refurbishment during part of the years ending March 2010 and 2011, and its admissions income was noticeably higher after it re-opened than it had been before the April 2008 valuation date. In order to respect the assumption required by paragraphs 2(6)-(7) of the 1988 Act that the physical state of the hereditament must be taken to have been as it was on the material day (1 April 2010 in the case of the 2010 list) Mr Hunter based his valuation for 2010 on the receipts of around £209,000 which were recorded for 2006-07, despite the fact, as he noted, that that year had been considerably more successful than previous years or the following year. In contrast Mr Mansfield's used the 2008 figure of £141,750. Mr Hunter's approach is to be preferred as more representative of the expectations of the hypothetical parties who must be taken to have foreseen the financial consequences of improvements which were not yet reflected in the Trust's management accounts.

232. A further £44,000 in gift aid was received in 2006-07 bringing total receipts from admissions and gift aid to £253,000. As we have already determined that the Yorkshire Museum shop is to be separately assessed in the 2010 list no trading income needs to be added to this figure, but grants, donations and other income of £293,000 are shown in the management accounts as having been received in that year. If all of those prospective sources of income are taken into account as being available to the hypothetical tenant (which for the reasons already given we are unable positively to find) total receipts of £545,000 would be anticipated from the Yorkshire Museum itself (excluding receipts from the Hospitium) based on the 2006-07 management accounts; the figure based on performance in 2007-08 would be £383,000.

233. The expenses incurred in connection with the Yorkshire Museum site are substantial. Total expenditure shown in the 2006-07 management accounts was £908,000 (having exceeded £1 million in the previous year); for 2007-08 the figure was £702,000. As a result, even taking grant income into account in full, the Yorkshire Museum made an operating loss of £363,000 in 2006-07 and of £319,000 the following year.

234. It is common ground that the notional letting of the Yorkshire Museum in 2008 must be taken to include offices at St Mary's Lodge with an annual rental value (as we find) of £13,779. Because of the conclusions we have already reached on the composition of the hereditament, the letting also incorporates the Hospitium with a stand-alone annual rental value of £35,500. It would be an unorthodox method of valuation simply to aggregate these rental values (ascertained in isolation by the comparative and shortened receipts bases of valuation) with a value for the Museum and to call the resulting figure the rateable value of the combined hereditament. It is necessary to consider the rental value of the site as a whole, including each of its elements, which may not equate to the sum of the values of its individual parts assessed separately.

235. In this case, however, given the scale of the losses which would be expected to be sustained by a tenant of the Yorkshire Museum, we are persuaded that neither of the fringe properties would be sufficient to motivate that tenant to pay a positive rent for the hereditament as a whole. The offices could either be occupied by the tenant's own staff or sub-let with the resulting income combining with the net income from the Hospitium to contribute towards defraying part of the operating loss. In either case that operating loss would remain substantial.

236. There is no evidence that additional sources of income would be available to the Trust or another hypothetical tenant to bridge the operating losses at the Yorkshire Museum sufficiently to persuade or enable it to pay a positive rent for the site. The reality of the Trust's finances is that losses at the Yorkshire Museum are underwritten by the profits made at the Castle Museum. We do not consider that it can be assumed that, on a new letting of the Yorkshire Museum site alone, the Trust itself would be prepared to increase that cross-subsidy to enable a positive rent to be paid. It was not suggested to Mr Wadsworth that the Trust would act in that way and we can see no reason why it would wish to do so at the same time as assuming responsibility for the maintenance of the buildings and grounds themselves. There was no evidence that any other potential tenant would have sufficiently deep pockets or benevolent sponsors to enable it to pay more than the Trust.

237. Unlike the Castle Museum, the Yorkshire Museum is not such a draw in its own right that the hypothetical landlord would have any expectation of being able to let it to a commercial operator. It is, and is likely always to be, an attractive but loss making museum incorporating medieval ruins and set in expensive gardens. It is likely always to be dependent on public funds to support it and, in the absence of an occupier with access to such funds it would be likely to represent a considerable drain on the resources of its owner. In all the circumstances we are satisfied that the owner would consider themselves fortunate to find a tenant willing to assume responsibility for the maintenance and insurance of the Museum and other buildings without themselves having to pledge a substantial subsidy of their own (as the City Council had to do when the building was first let to the Trust for £1).

238. Taking all of these matters into account we agree with Mr Hunter's that the rateable value to be entered in the 2010 list for the Yorkshire Museum hereditament is £1.

239. Neither party suggested that the financial position was fundamentally different in 2003 and we therefore determine that the rateable value to be entered in the 2005 list for the Yorkshire Museum hereditament is also £1.

The Heritage Centre

240. In the case of both the Heritage Centre and the Art Gallery the parties agree that the incoming tenant would introduce an entry charge, although in reality no such charge is collected by the Trust. That agreement created an additional complexity by making it necessary to determine the notional anticipated receipts arising from the occupation of the two sites.

241. In Mr Hunter's valuation, notional receipts for the Art Gallery and Heritage Centre were based on the visitor numbers actually achieved with free entry. In the absence of any evidence on behalf of the Trust enabling us to determine the probable impact of charges we have adopted the same approach.

242. Based on the same visitor numbers Mr Mansfield assumed admissions income for the Heritage Centre for 2006, 2007 and 2008 of £78,095, £71,152 and £130,181 respectively. He took the latter figure as the basis of his assessment. We agree with Mr Hunter that visitor numbers in 2008 appear not to be representative of sustainable level of attendance, which he attributed to the popularity of a specific exhibition which also incurred exceptional costs. Mr Hunter assumed notional income of £77,175, which assumed an entry charge of £3.50 for adults, which we adopt. Mr Hunter included no income from 300 group visits by schools; having regard to the receipts from such visits at the other sites we have assumed an additional £1.50 per pupil at the Heritage Centre. We have also allowed receipts of £2.00 for the assumed 2,600 child entries. These additions bring the assumed entry charges up to £90,675. We have adopted £90,000.

243. The position in relation to gift-aid income is not straightforward. Mr Mansfield included the sums shown in the consolidated accounts in full, but he does not appear consistently to have added gift-aid to his assumed income for the non-charging locations. We consider that the hypothetical parties would take it into account and have made an assessment of our own.

244. The number of visitors is recorded in admissions summaries, and total gift-aid receipts appear in the management accounts for the charging sites. Combining these sources of information it is possible to ascertain the extent to which entry charges were supplemented by gift-aid. The figures vary between a low of just below 10% at the Castle Museum in 2006 to a high of 31% at the Yorkshire Museum in 2008. To give one example based on the Yorkshire Museum in 2006, visitors paid £139,552 to enter the Museum and gift-aid of £23,000 was received representing an additional 16.5% of income over and above the entry charge.

245. The average gift-aid income is something in the order of 18%, or if the two apparent outliers of 10% and 31% are excluded, around 17%. We have adopted 17.5%

246. Mr Hunter's assumed gift-aid figure for the Heritage Centre was £7,700. This amounts to only 10% of his assumed adult admissions receipts of £77,000. We consider this to be too low and have adopted 17.5% of assumed receipts of £90,000, yielding £15,750 of gift-aid.

247. It is possible that the modest donations made by visitors to the Heritage Centre and Art Gallery might reduce if a charge was made for entry, but there is nothing reliable upon which form a view on this, and we have therefore left unaltered the figures in the management accounts of £1,000.

248. Combining these different source of revenue we assume that parties negotiating a rent for the Heritage Centre in April 2008 would have proceeded on the assumption that it was capable of generating annual income of about £107,000.

249. Mr Hunter calculated that the total notional expenditure to run the Heritage Centre on a pay for entry basis would be £93,000. As he accepted in cross examination, however, this included a cost for three full time equivalent members of staff which appeared too high. Reducing this element by one third would leave total expenditure of £75,000. The net profit before rent which a prospective tenant might expect to make would therefore be in the order of £32,000.

250. It is difficult to imagine a commercial operator being interested in occupying the Heritage Centre. The building is too large, the risks too great and the return too modest to make its use as an arts venue or exhibition space a realistic prospect. It includes no office space, so could not realistically serve as the administrative base of a small occupier with charitable objects (in the manner of the Quilter's Museum). Its realistic use is an occasional venue for one-off exhibitions, as it is used by the Trust. If the occupier anticipated that it might sustain a loss in any individual year it might have hoped to obtain modest deficit funding to cover it for a short period but we have seen no evidence to suggest that a reliable source of grants or other external funds was available to enable a rent to be paid which could not otherwise be afforded.

251. The building itself is a more elaborate structure than the Castle Museum and features the highest church spire in York. We consider that a non-commercial operator would harbour very substantial concerns over the potential cost of repairs to the building. In view of the very low return and the building's Grade 1 listed status, any return from occupation would be liable to be wiped out by the cost of anything more than the most modest repairs. On the other hand, the building is in an excellent location. Having regard to the pattern of lettings of other historic buildings we think it likely that a peppercorn rent would be agreed if the Heritage Centre was let for a term of years from which the tenant could not escape at relatively short notice. Taking all of these matters into account, and on the less onerous assumption of a letting from year to year, we consider that an annual rent of £10,000 would have been likely to be agreed in 2008.

252. We therefore allow the Trust's appeal against the VTE's determination of £15,750 as the rateable value of the Heritage Centre in the 2010 list and substitute a figure of £10,000.

253. No evidence on which we feel able to rely was given by either party in relation to the rateable value of the Heritage Centre for the purpose of the 2005 list. There are no visitor numbers and no accounts for the year to April 2003. We therefore make the same assumption as at the Castle Museum, namely that receipts would be 20% lower than in 2008 (thus about £85,000). In the absence of a concession by Mr Mansfield we do not feel able to treat outgoings as unchanged and we reduce these also by 20% (to £60,000) leaving a prospective net profit before rent of £25,000. On that assumption we consider that a rent of £8,000 would have been agreed.

254. We therefore allow the Trust's appeal against the VTE's determination of £11,750 as the rateable value of the Heritage Centre in the 2005 list and substitute a figure of £8,000.

The York Art Gallery

255. For the Art Gallery there was little between the valuers on notional receipts. Mr Mansfield's method of *pro rata* apportionment across all five sites assumed notional income of £569,726. We have already explained our lack of enthusiasm for this approach.

256. Mr Hunter assumed total income from admissions to the Art Gallery of approximately £580,000, including gift-aid, equating to £4 per head. However, the admissions summaries suggest adults at the Castle Museum were paying something in the order of £6.35 excluding gift-aid (£547,659 was received from 88,294 adult visitors); at the Yorkshire Museum the figure was £4.63 (15,367 visitors paying £71,167). We conclude that an operator who intended to charge for entry to the Art Gallery would be likely to charge £4 per head. To the assumed receipts of £580,000 we have therefore added gift-aid at 17.5%, amounting in round terms to a further £100,000.

257. Income is also received from the shop and the café at the gallery, which should be taken into account as both are part of the same hereditament. In the hands of the Trust this income is received as a gift-aided donation from the Company in respect of the shop and as a payment in return for the grant of a concession to operate the café.

258. Mr Mansfield's approach was unconvincing in relation to this income as he simply apportioned the average annual trading income of £468,621 for the three years ending in March 2008 generated by all commercial activities equally to the three shops and two cafes. He then attributed two fifths of the total, or £187,448, to the Art Gallery, before aggregating all components of the Trust's total revenue and dividing it again across all of the appeal properties, pro-rata on floor areas.

259. Mr Hunter assumed income from retail activities of £40,000, which accords with the management accounts, with a further £10,000 payment for the catering concession. We make the same assumptions. When added to income from entry charges and gift aid this produces a notional annual income of £740,000.

260. Mr Hunter assumed that annual expenditure of £483,000 would be expected, a figure arrived at by smoothing peaks and troughs in the Trust's management accounts. A prospective tenant who made the same assumption would therefore anticipate a profit before rent of more than £250,000.

261. We consider that a tenant who anticipated a profit before rent of £250,000 would be prepared to pay an annual rent of at least the £70,500 argued for by Mr Mansfield.

262. Mr Hunter considered that the tenant would offer 30% of the net profit figure in rent, although (largely because of his treatment of gift-aid) his own assessment of net profit before rent was only £151,000. If the hypothetical tenant anticipated a net profit at that level we still think it likely that a rent of around £70,000 would be agreed. Mr Hunter reasoned that the tenant would offer only 30% in order to allow a return on the value of its own assets. We disagree. The opportunity to display art works in a purpose-built gallery a few steps from York Minster would be a significant one. The Gallery provides the ideal setting within which to display the work of William Etty and other Yorkshire artists and it is to be assumed that at the valuation date the Trust, which owns such a collection, is in search of a home for it. We think it likely that the prospective landlord would appreciate the contribution which the building itself, in this location, would make to the success of the tenant's enterprise, whether that tenant was the Trust or some other gallery operator.

263. For these reasons we are confident that the annual rent of the Art Gallery as at 1 April 2008, on the statutory assumptions and those agreed by the parties, would have been agreed at £70,000. We therefore allow the Valuation Officer's appeal against the determination of the rateable value of the combined Yorkshire Museum and Art Gallery and substitute a rateable value of £70,000 in the 2010 list.

264. There is no appeal against the entry for the Art Gallery in the 2005 list, agreed between the parties at £52,500. We note that the differential between this agreed valuation for 2005 and our figure of £70,000 for 2010 might be regarded as broadly consistent with the differential at the Castle Museum and the Heritage Centre (although in those examples the 2005 figure was 80% of the 2010 figure rather than 75% in the case of the Art Gallery). We do not rely on that relationship but derive some modest comfort from it.

Issue 6: The parks exemption issue

265. The final issue is whether the gardens at the Yorkshire Museum benefit from the exemption from rating provided by paragraph 15 of Schedule 5 to the 1988 Act, which is in these terms:

“(1) A hereditament is exempt to the extent that it consists of a park which—

(a) has been provided by, or is under the management of, a relevant authority or two or more relevant authorities acting in combination, and

(b) is available for free and unrestricted use by members of the public.

(2) The reference to a park includes a reference to a recreation or pleasure ground, a public walk, an open space within the meaning of the Open Spaces Act 1906, and a playing field provided under the Physical Training and Recreation Act 1937.

(3) Each of the following is a relevant authority—

...

(b) a district council,

...

(4) In construing sub-paragraph (1)(b) above any temporary closure (at night or otherwise) shall be ignored.”

266. It is common ground that the gardens are a park within the meaning of the 1988 Act. The VTE took the view that the gardens were exempt, on the grounds that they were provided by York City Council and were available for the use of the public without charge. The Valuation Officer’s appeal is based on the contention that the gardens were not “provided by” the Council, although it is agreed that it owns the freehold, which it holds as custodian trustee on behalf of the Trust. Mr Ormondroyd suggested that the gardens were provided by the Trust and that the City Council’s role was “to contribute to the support of a park provided by others, rather than providing the park itself”. It was also suggested that the exemption should be interpreted as requiring that a park have been provided by a relevant authority (and not some other benefactor such as the Yorkshire Philosophical Society) at the time it was first made available for use by members of the public.

267. We can deal with this issue briefly. It was not suggested by either party that it is of any significance in terms of valuation in this case but we were told that it will be relevant in future lists and in other cases. There was no evidence concerning the circumstances in which the gardens were originally made available or the terms of any relevant trust; very little argument was devoted to the issue, which is free of relevant authority. Mr Ormondroyd nevertheless pressed the Tribunal to clarify the proper construction of the exemption.

268. We do not consider it appropriate for the Tribunal to determine, on inadequate evidence and limited argument, an issue which may be of considerable significance to other ratepayers but of no importance to these parties. Our provisional view is that the VTE was right, that the capacity in which the park is held is irrelevant, and that the exemption applies, but we do not intend that provisional view to be relied on in other cases. The scope of the exemption should be considered by the Tribunal, or elsewhere, when the question arises in earnest. We therefore make no determination of the Valuation Officer’s appeal on this issue.

Valuation summary

269. Our conclusions can be summarised as follows:

2005 List	Rateable value
Castle Museum (including shop and café)	£112,000
Yorkshire Museum (including shop and Hospitium)	£1
Heritage Centre	£8,000
2010 List	
Castle Museum (including shop and café)	£183,000
Yorkshire Museum (including Hospitium)	£1
Yorkshire Museum Shop	£7,600
Heritage Centre	£10,000
York Art Gallery (including shop and café)	£70,000

270. This decision is final and time for any application for permission to appeal runs from today. We invite the parties to agree a short timetable for the exchange of any submissions they wish to make on the issue of costs and on any consequential directions arising from our conclusions.

Martin Rodger QC
Deputy Chamber President

Peter McCrea FRICS
Member

23 May 2017

Costs

271. The Tribunal has now received further submissions from each of the parties on the issue of costs.

272. The Valuation Officer suggests that the appropriate order is that the Trust should pay either the whole or 80% of his costs of the appeals on the basis that he considers that he has succeeded on most, though not all, of the issues determined by the Tribunal.

273. The Trust takes the opposite view and applies for an order for the payment by the Valuation Officer of 75% of its costs of the appeal.

274. The general rule in appeals from the VTE is that the successful party is entitled to have its costs paid by the unsuccessful party unless there is some reason to make a different order. The parties have analysed their respective success in these appeals in different ways.

275. Looking at the outcome simply in terms of value, the Valuation Officer submits that he was the successful party on the issues of the rateable value of the Castle Museum (including the shop and café) and the Heritage Centre in the 2005 list, and in respect of the value of the Castle Museum, the Yorkshire Museum shop, the Heritage Centre and the York Art Gallery in the 2015 list. Although he acknowledges that the Tribunal allowed the Trust's appeal against the VTE's determinations for the Heritage Centre in both lists, it is said that because the figures for which he contended were closer to the Tribunal's valuations than the figure of £1 proposed by the Trust, the Valuation Officer should be regarded as the successful party.

276. The Trust acknowledges that neither party prevailed entirely but submits that it secured reductions in two of the three challenged entries in the 2005 list and two of the four challenged entries in the 2010 list. It was also successful in persuading the Tribunal to value the premises using the receipts and expenditure method. Looked at in the round it invites the Tribunal to find that it was the successful party.

277. We will first consider the extent of the parties' success in strictly financial terms. For the 2005 list appeals the aggregate of the rival valuations recorded in paragraph 115 of our decision was £253,250 in the case of the Valuation Officer and £96,002 in the case of the Trust. Our own conclusions summarised in paragraph 269 produced an aggregate value of £120,001.

278. The same exercise carried out for the 2010 list appeals shows aggregate values of £405,850 (VO) and £130,852 (Trust) (assuming the Hospitium is not to be valued

as a separate hereditament). The outcome of the appeal was an aggregate value of £270,601, which will produce a significant reduction in the sum payable by the Trust.

279. While this analysis may be crude we think there is merit in looking at the bottom line where the same parties have agreed to contest a number of related appeals at a single hearing. Looking at the matter in that way we consider the Trust has secured a much greater measure of success than the Valuation Officer. We nevertheless bear in mind that, although the Trust's success on the 2005 list was greater than on the 2010 list, the evidence (and therefore the costs) associated with the 2005 issues were very much less substantial than those concerning the 2010 list.

280. Looking at the outcome of the appeals at the level of individual hereditaments discloses some clear victories for one side or the other (for the VO: the Castle Museum and the York Art Gallery in the 2010 list; for the Trust: The Yorkshire Museum in both lists) as well as battles where the Tribunal has taken a position at a significant distance from that adopted by either side, where neither can be said to have won or lost. The Tribunal's conclusions on the Heritage Centre might also be seen as a defeat for the Trust, without being a wholly convincing success for the Valuation Officer.

281. We do not overlook the issues which were not concerned purely with valuation. The Trust succeeded on the issues going to the separate rateability of the Hospitium and the Castle Museum shop; the Valuation Officer prevailed in the case of the Yorkshire Museum shop; the issue of jurisdiction was a score draw. Of all these issues the proper treatment of the Hospitium had the most significant valuation and financial consequences (particularly in view of the Company's inability to claim charitable relief).

282. Taking all of these factors into account we regard the Trust as the successful party by some distance, and we order that the Valuation Officer should pay forty percent of the Trust's costs of these appeals.

283. The parties have agreed the terms of ancillary directions which will be incorporated in an order of the Tribunal.

Martin Rodger QC
Deputy Chamber President

P.D. McCrea
Member

29 August 2017