Association of Independent Museums

Helping Heritage Organisations Prosper

Success Guides

SUCCESSFULLY NEGOTIATING BUSINESS RATES

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INTRODUCTION

This updated guide on 'Successfully Negotiating Business Rates' covers the basics required to understand Business Rates and, importantly, how the related appeal systems work in England, Wales, Scotland and Northern Ireland.

It takes account of changes to the rating appeal system in England and recent case law and case studies which potentially affect museums anywhere in England, Wales, Scotland and Northern Ireland.

Act Now

It is important to consider taking action now in respect of your Rateable Value if you believe it is excessive. Although, as will be seen in the comments below there have been significant successes on behalf of museums at Upper Tribunal these will not lead to automatic changes to the Rateable Values of other museums. Reductions are only likely to be made if your museum engages with the appeal system. The appeal system is cumbersome and slow and so the sooner action is taken the sooner the benefit of any reduction will be felt.

The Next Revaluation in England is now set for 1st April 2023. This may seem a long way off but the argument on the reduction of the Rateable Value will potentially be back-dated to 1st April 2017 based on evidence relevant to 1st April 2015, the further away from those dates that action is taken the harder it becomes to prove the now historic evidence.

But the first action should be to take professional advice.

What's Covered

The Guide covers specific advice on the following:

1. How museums are, or should be valued for rating (see pages 4-10)
2. The potential effect of having a trading subsidiary (see pages 11-12)
3. The appeal process (see pages 13-15)
4. Case law in relation to Business Rates (see pages 16-20)

Free Consultation

Note that it is advisable that you take professional advice before embarking on any appeals as the Rateable Value can be increased if it has been under-assessed. If you have any queries on the information provided within this guide, Colin Hunter of Lambert Smith Hampton will provide AIM members with a minimum of 15 minutes free consultation. Contact Colin on 0113 245 9393 or chunter@lsh.co.uk.

Front cover image courtesy of the Chatham Historic Dockyard

SUCCESSFULLY NEGOTIATING BUSINESS RATES

Business Rates may well deserve a place in a museum exhibition: in one form or another they have been with us since the 1601 Poor Law. Thankfully, the legislation has been updated since its inception and the current primary legislation for England and Wales is the Local Government Finance Act 1988 (LGFA).

History and Background

While Business Rates may be surrounded by myths and legends, understandable given their 400+ years of history, they are, in their most basic form, a tax on the right to occupy commercial premises.

Following devolution, England and Wales operate slightly different systems under the same legislation, whereas Scotland and Northern Ireland have always operated under similar but separate legislation. The general principles apply to all four countries but the specifics vary. The commentary set out below relates to England; comparison of the differences between England and the other legislative areas is set out at the end of this guide.

Business Rates became a National Tax in 1990, with Local Authorities acting as the collectors and receiving support grants from Central Government drawn from the rates collected nationally.

The system of grant support for local authorities in England changed on 1 April 2013. Although the rates bills did not change, the political and economic landscape for Local Authorities in England has changed significantly and is discussed in a separate section below. This is, in part, driven by the Localism Act 2011 which places greater emphasis on the provision of local services by Local Government. It is the biggest change to Local Government funding since the introduction of the ill- fated Community Charge in 1990.

Business Rates are a significant cost to businesses producing in the region of £27 billion of revenue for the Treasury and Local Authorities in England and will be an increasingly significant cost to museums over the next few years.

THE BASICS

The basis of the tax is the Rateable Value which is set, for England and Wales, by the Valuation Office Agency (VOA); an executive agency of HMRC. In Scotland, the Rateable Values are set by the Scottish Assessors and in Northern Ireland the Rateable Values are set by the Land and Property Services Northern Ireland.

Arriving at a rental value is relatively straightforward for shops, offices, factories and warehouses but is far from simple for properties which are normally never let, or which are unique.

The Rateable Value is an estimate of the rental value of the property ('hereditament') which is being charged Business Rates.[1] Arriving at a rental value is relatively straightforward for shops, offices, factories and warehouses but is far from simple for properties which are normally never let, or which are unique. The definition of a Rateable Value is set out in the legislation but has a track record of case law to 'assist' in working out what is being valued and what is being ignored.

In its simplest form, the rates liability is arrived at from the multiplication of the Rateable Value by a nationally set multiplier, which varies from year to year, based on the Consumer Price Index (CPI) increase for September of the previous year. (NB: increases were based on the Retail Price Index prior to 2018). However there are other adjustments to take into consideration. In England there are limitations on increases and decreases in the amount payable from one Rating List to the next so it may be several years after the start of a new Rating List before the rates liability is directly related to the Rateable Value. This is known as transitional relief or phasing. There is some limited transitional relief in Wales.

The system of transitional relief is governed by Statutory Instruments. As noted above, Scotland, Wales and Northern Ireland operate different regimes; please refer to the section at the end of this guidance if your museum is not located in England.

There are also various reliefs and allowances that may be applicable, the most important of which for independent museums is Charity Relief which reduces the liability for rates to 20%, i.e. an 80% relief.

Ratepayers are unable to influence the multiplier or the transitional allowance scheme. Therefore, the only part of the basic liability which can be addressed is the Rateable Value.

<u>Revaluations – Resetting the Clock</u>

Rateable Values are reset periodically by a Revaluation of all properties which are designed to reflect any changes in the property market. The LGFA sets out a statutory period of five years between Revaluations, the first being in 1990, followed by five yearly reviews up to 2010. The Growth and Infrastructure Act deferred the next Revaluation to 2017. It has long been argued that the interval between revaluations is too long and it was announced in 2018 that the 2017 List would only be for 4 years and that subsequent revaluations would be every 3 years. However due to the impact of Covid 19 the 2017 List in England and Wales is now set to run until 2023. The dates may vary in Scotland and Northern Ireland.

[1] Para 2 Sch 6 LGFA 1988

The valuation date for each Revaluation is two years prior to the Revaluation coming into force (known as the Antecedent Valuation Date (AVD)); therefore the 2017 Revaluation is based on rental values in April 2015.

Charities receive a mandatory
80%
relief from Business Rates for properties they occupy for their charitable purposes.

Some Local Authorities give further discretionary relief which will further reduce the liability, potentially to
zero.

By the time a Rating List expires it is often a long way out of date and doesn't reflect changes in the property market. Therefore at the start of a new Rating List, there is often a significant adjustment between different property sectors and regional locations meaning that some properties face significant increases in liability and some benefit from significant reductions. Without regular revaluations the Rating List not only becomes increasingly out of touch with the property market but also increasingly unfair as the burden of rates is not redistributed.

As noted above, in England there are restrictions on the amount by which the rates liability can change from the year immediately prior to the Revaluation. The restriction applies to both increases and decreases in liability and is dependent upon the size of the Rateable Value set in three bands £0-£20,000, £20,001-£100,000 and £100,000+.

The amount of increase permitted is higher for the higher valued properties and the amount of reduction permitted is lower for the higher valued properties. The intention is that the system should be self-financing.

Reliefs

Charities receive a mandatory 80% relief from Business Rates for properties they occupy for their charitable purposes. Some Local Authorities give further discretionary relief which will further reduce the liability, potentially to zero. The number of authorities giving discretionary relief has been falling since 2013 and that trend is likely to accelerate due to the latest changes to the funding regime for the councils which is considered later in this note. According to the Treasury, Charitable Relief for 2018/19 was worth a total of £2.2 billion.

Charitable Relief [2] is however not simply based on occupation. The property must be used wholly or mainly for the charitable purposes of that charity or that charity and other charities. Prior to 1 April 2013, there was often an assumption by local councils that if a charity occupied a property, it would receive relief. That assumption is now being reconsidered due to the cost to the local councils in having to fund half of the reliefs given and the impact of austerity on their budgets.

The assumption had not always been the case because prior to 1990 councils had to fund all of the relief from their budget. In the 1970s Birmingham City Council challenged whether relief should be given to charity shops which culminated in a hearing before the House of Lords in the case of Oxfam v Birmingham City Council (the Oxfam case).[3]

In that case, the use of the shops was retailing to raise funds for the charity. In determining whether the use was wholly or mainly for charitable purposes the House of Lords looked at the receipts from three different sales streams, i.e. sale of donated goods, sale of new goods bought for trading and sale of third world goods linked to charitable

[2] S43(6) LGFA 1988
[3] Oxfam v City of Birmingham DC [1976} AC 126

projects. Only the latter was held to be a charitable purpose. The sale of donated goods was accepted as being fundraising but fundraising is not classed as a charitable purpose.

The decision went against Oxfam but was then over-ridden by a change in legislation defining the sale of donated goods, where the net proceeds are used to fund the charity, as a charitable purpose. There is no other definition of charitable purpose in rating legislation, nor is there any definition of "wholly or mainly" or any guidance on how to measure use. There is a definition of Charitable Purpose in the Charities Act 2011 which may be relevant to rating.

Small Business Rates Relief can reduce liability to £0 for properties below a certain level of Rateable Value (£12,000 in England, £6,000 in Wales).

Whether or not charitable relief should be given is being challenged more frequently now and that is particularly relevant for charities who share properties with their trading subsidiaries.

The case law considering whether or not a property is "wholly or mainly" used for charitable purposes is still developing. Simply looking at income, which is how the Oxfam case was decided, may not be the appropriate way to determine the degree of use. In a recent case Sheffield Council refused to give charitable relief to the Kenya Aid Programme.[4] Kenya Aid occupied two large adjoining warehouses to store office furniture before being sent on to Kenya. The Council looked at the efficiency of the use of space as part of their argument against giving relief. The charity lost the case at Magistrates, had the Magistrates decision quashed on review by the High Court and then lost again at Magistrates when the case was re-heard.

This is something to pay very careful consideration to, especially if there is a separate trading arm generating significant income from shops, cafes, weddings, filming rights etc.

It is worth noting that the definition of a Charity in the rating legislation is not limited to registered charities.[5]

Discretionary Relief [6] is available to not for profit and charitable occupiers. However, due to austerity and the fact that since 1 April 2013 local authorities have to fund 50% of Charitable Relief, many local authorities have changed their policy. This is a matter of local discretion and councils are now moving away from giving relief to charities unless the charity is providing a local service which the council considers to be essential to the local community. With the continuing squeeze on funding, it is likely that more councils will have little option other than to cut costs by reducing this indirect funding.

Small Business Rates Relief can reduce liability to £0 for properties below a certain level of Rateable Value (£12,000 in England, £6,000 in Wales). However, charities are not eligible for this relief, but it may apply to properties, or parts of properties occupied by trading subsidiaries.

[4] Kenya Aid Programme v Sheffield CC [2013] EWHC 54 (Admin)
[5] S64(10) LGFA 1988
[6] S47 LGFA 1988

HOW ARE MUSEUMS VALUED FOR RATING?

As aforementioned, the Rateable Value is a notional rent for the property but, before it is possible to arrive at that rent, it is necessary to understand what is being valued. The word museum normally conjures a mental image of a Victorian red brick, stone or terracotta-faced, purpose built municipal building. But a museum is not the building or land, it is the organisation that occupies it and any type of building could be occupied as a museum.

Most museums occupy unique buildings, some of which are purpose built but many are adapted from older properties. The property itself may be the reason for the museum's existence. There are a small number of museums, such as Beamish in the North East, which are a collection of older buildings relocated onto a single site to provide a new setting.

The true value of museums is cultural, educational and social. However, the Rateable Value should only be a measure of financial value, i.e. the rent the tenant would be willing to pay, assuming the tenant has responsibility for all repairs, running costs and insurance.

There are three tried and tested methods of arriving at this notional rent for rating purposes:

1. Rental Comparable Method
2. Receipts and Expenditure Method
3. Contractors Method

There are also two secondary methods of valuation:

1. Rateable Value Comparison
2. Shortened Profits Method

Rental Comparable

This method depends on there being a body of rental evidence that can be analysed and then re-applied to other properties. While there are rented museums, the rents are often at nominal figures, not arms-length arrangements or linked to other factors such as management agreements. There is therefore no body of rental evidence that can be used to value other museums. However, this does not mean that the rental evidence cannot be used as a final check against the outcome of other valuation methods.

Receipts and Expenditure

The second method, Receipts and Expenditure, is commonly used when valuing leisure attractions. Museums are in the market and competing for visitors with other leisure attractions. Indeed, some are described as visitor attractions in the Rating List and not museums (for example, SS Great Britain). There is a strong case for arguing that this is the appropriate method for valuing all museums but this argument runs into several difficulties. Firstly, there is a general resistance from the VOA to consider the full receipts and expenditure of museums.

Their arguments are that:

1. Museums are occupied by charitable or public bodies and so there is a perception that they are not run on a truly commercial basis and that the income generated is not as much as a well-managed commercial operation would produce
2. The costs and expenditure are influenced by the charitable nature of the business and so do not give a true economic picture.
3. The true value of the museum should reflect the socio-economic value to the community.

This ignores the increasing professionalism of museums over the last four decades, with marketing and promotion of the attraction on a local, regional, national or global scale, the advent of e-commerce and the enhanced promotion of retail sales.

There is a limited degree of truth regarding costs and expenditure in that the charitable objectives of a trust are different to the commercial objectives of a for profit business. The reality is that for this sector, the charitable trusts are now the market and so the considerations of a charity are the relevant considerations when deciding what a willing tenant could, or would, pay in rent to a willing landlord.

Secondly, not all museums charge admission. There are three main models of funding:

1. Admission charges
2. Voluntary donations from visitors
3. Grant funding (direct or indirect) from Local or Central Government in lieu of admission charges

This then raises the question of how to measure income in the rating world for museums which do not charge admissions.

The advantage of this method is that the Rateable Value will be proportionate to the level of cost that the museum can afford as rent. Inherently loss making museums will have nominal values, whereas successful museums capable of producing a large surplus will have significant levels of value.

The Upper Tribunal (Lands Chamber) considered whether this method should be used for four properties in York and in a separate case for one museum in Exeter (the York case and the Exeter case). [7 & 8] The Tribunal found that receipts and expenditure should be the appropriate method of valuation for these properties, all of which are listed buildings and, in some cases the property is part of the museum exhibit.

Three of the properties were free to enter (York Art Gallery, the Heritage Centre York and Royal Albert Memorial Museum Exeter). In all three cases the Upper Tribunal accepted that the potential income from admissions could be calculated by reference to the known visitor numbers and the cost of entry to equivalent attractions in the same locality. However it is noted that the income figure produced on this basis may overstate the potential income because if an admission charge is introduced visitor numbers may fall.

[7] Stephen G Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 0200 (LC)
[8] Stephen G Hughes (VO) v Exeter City Council [2020] UKUT 0007 (LC)

Contractors Method

The final method, Contractors Method, is often referred to as the method of last resort. Contractors Method assumes that if the property did not exist the potential tenant could build an equivalent property and that the cost of interest on the money borrowed or the loss of interest on money spent from savings would represent the maximum amount that a tenant would be willing to pay to rent the building. The valuation is adjusted for age and obsolescence of the actual building and for any disadvantages the building has, for example poor access. The adjusted cost of constructing a replacement property, plus land costs and fees, is then multiplied by a statutory percentage to arrive at the Rateable Value. There is then a final stage at which adjustments are made to allow for any factors relevant to the rental bid that haven't been reflected in the first 4 stages of the valuation.

But this methodology always produces a high positive value even for properties which are inherently loss making, for which no reasonable tenant would pay a rent.

This approach is adopted for most municipal buildings and specialised properties such as steelworks, chemical works, etc.

Where the construction cost is met, in full or part, from grants, there is an argument that the costs should be reduced to reflect the availability of the grants. This argument has been dismissed by Upper Tribunal (Lands Chamber) (formerly the Lands Tribunal) which is the final court in England and Wales for determining valuation matters.

AIM and several of its members were contacted by the VOA following the outcome of an appeal for Sport England in respect of Bisham Abbey.[9] This is the decision which took away any allowance to off-set the benefit of grants in the valuation. The VOA had previously made allowances (up to 50%) when valuing a range of properties funded by grants. It was made clear that following the Tribunal decision, the VOA would not make any adjustment for funding in Contractors Method valuations. This however raises the question of how valid this valuation method is for a sector which relies on grant funding for all major projects.

The Exeter case found that the Bisham Abbey decision was incorrect. A number of factors said to be reflected in the statutory percentage in the Bisham Abbey decision are not actually relevant to the way in which the percentage has been set by successive governments. The percentage only reflects the cost of money and not ability to pay, grant funding or other factors. At the time of writing, this change in case law is not reflected in the VOA's revised guidance issued following the Exeter case.

This method normally produces far higher values for museums than the Receipts and Expenditure approach. Using the VOA's Coding system and interrogating the 2017 Rating List, at the time of writing 1,424 galleries or museums have been valued using Contractors Method, at an average Rateable Value of £136,098. Whereas 1,555 galleries or museums have been valued using other methods at an average Rateable Value of £14,377.

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[9] Allen (VO) v English Sports Council/Sports Council Trust Company [2009] UKUT 187 (LC)

The imprecise nature of this analysis is because not all museums and galleries have been coded correctly and some are coded as different uses, such as visitor attractions or even industrial properties or shops. Both categories include very large and very small museums, however all of the national museums look to be included in the first category. Despite this, the difference in the Rateable Value from using the Contractors Method compared to the Receipts and Expenditure Method is stark, and the impact of changing methods is clearly demonstrated in the case studies for Waltham Abbey Royal Gunpowder Mills, York Museums, Royal Albert Memorial Museum and Chatham Historic Dockyard.

In the revised guidance the VOA have accepted that where the property is historic the Contractors Method may not be applicable and receipts an Expenditure method may be appropriate. However, the VOA is still arguing in favour of using this method for modern museums. There is no definition of historic or modern and potentially a large swathe of museums that will not fit into either category.

Rateable Value Comparison

Towards the end of a Rating List this method is often used instead of the rental comparable, partly on the basis that agreed assessments will provide a good guide to what the rents are showing and partly because it becomes a matter of established levels of value being set as the List is changed to allow for corrections to meet the rental evidence.

As with rental comparables, there must be a basis of comparison between properties to apply this approach. This is not possible with museums.

Shortened Profits Method

This method is sometimes said to be the equivalent of Receipts and Expenditure Method, however that is not quite right. The method adopts a level of gross income, usually taken from the accounts but adjusted to reflect the fair and sustainable level of trade. A percentage of this gross income is then taken as being the equivalent of the rental value, irrespective of the actual net surplus or profit that the property generates.

This method is the normal method for valuing pubs and hotels, some restaurants and other leisure attractions. However, to be applicable it is necessary to have a body of rental information that can be analysed by comparison to gross income in order to derive the appropriate percentage. The courts have criticised the use of this approach where there is no such body of rental evidence to determine the appropriate percentage. In particular, the Court of Appeal rejected the use of this method when valuing National Trust properties. [10]

That said, the VOA has valued a significant number of museums using this approach despite the lack of any evidence base from which to determine the percentage. The VOA is now accepting that, where the buildings or settings form part of the exhibit, this method of valuation can be applied. *See case Study Chatham Historic Dockyard.*

As with the Contractors Method, this method always produces positive values.

[10] Hoare and Another v National Trust

Other methods

Whilst the above notes cover all of the approved and well used methods of valuation the Upper Tribunal in the Exeter case criticised both sets of experts for not considering other methods of valuation. It is acknowledged that museums create socio-economic benefits. There is the potential that the occupier of a museum may be willing to pay a rent above and beyond the rent that is indicated by the receipts and expenditure method in order to generate that benefit to the wider community. This is only likely to apply to properties occupied by local councils or other government bodies with a wider responsibility for business generation. This is known as an overbid and might be represented by the shortened profits method referred to above or by some other means of equating the socio-economic benefit to a financial commitment that the museum occupier would be willing to make in terms or payment of a rent.

Overbids are based on the judgement of the valuation expert, but that judgment must be underpinned by some factual evidence.

There are two problems with calculating this overbid. The first is that of determining what the financial equivalent of the socio-economic benefit is and the second is to equate this benefit to the locality to the benefit to the occupier of the property being valued. AIM provide an excellent toolkit for calculating the financial gain to the locality due to the museums presence but that requires detailed study. In the Exeter case the AIM toolkit was used in 2012 (after the refurbishment and extension) and showed financial benefit to Exeter and the immediately surrounding area of Devon, of between £2 and £2.6 million. Any overbid on this benefit would not have outweighed the costs of funding the losses made by the museum which were already being supported by the Council. Therefore loss making museums being funded by the local council may still not attract an overbid.

What About Trading Subsidiaries?

In line with Charity Commission guidance, many charities have trading subsidiaries. This allows:

- The charity's assets to be protected from any trading misadventures;
- Clear separation of non-charitable income from charitable income; and
- Gift aid of profits to the charity, removing liability for corporation tax.

However, the involvement of the trading company can complicate matters for Business Rates. Rates liability is due to the occupation of (or for empty properties, the right to occupy) a property or, more accurately, a hereditament. The hereditament could simply be one room in a larger building. If the hereditament is shared, then the ratepayer is the legal individual (in this case the trust or the trading company) which is in overall control. This then raises the question of who occupies the shops, cafés and other areas of a museum which are not core parts of the charity's activities and what is the relationship between the Trust and the subsidiary.

This question has been posed in a number of appeals. Appeals in respect of Hidcote Manor and another property were heard by the Valuation Tribunal.[11] The reason for the appeals was that the VOA had decided to separately assess the cafés and shops within the grounds of the National Trust properties. The argument being that National Trust Enterprises were the occupiers not the National Trust. The VOA won the case. The same issue was considered in the York Museums Trust appeals (see Case Study) at Upper Tribunal (Lands Chamber). The Upper Tribunal considered three different scenarios:

1. The shop and café in Castle Museum located in the entrance building;
2. The Hospitium located in the grounds of Yorkshire Museum and used as a wedding venue as well as for Trustees meetings; and
3. The shop in Yorkshire Museum located in a side room off the entrance.

Where the use is shared, the Upper Tribunal held that there was no separate hereditament. The shop at Yorkshire Museum on the other hand, could be clearly identified and was only used for retailing so was held to be occupied by York Museums Enterprises Ltd and not the Trust and should therefore be separately assessed.

This shop is the only property occupied by York Museums Enterprises and has a very low value, the rates liability is Nil due to receiving 100% Small Business Rates Relief.

In the Exeter case the café in the ground floor of Royal Albert Memorial Museum could be clearly identified. The café is run by a third party who have a lease over the café space. It was therefore agreed, prior to the appeal being heard by the Valuation Tribunal for England that the café should be separately assessed.

Since 2014, the VOA has been looking for additional hereditaments to include in the Rating List, which is one of the reasons why it pushed to have the shops, cafés and Hospitium separately assessed at York. There has been a moratorium by the Valuation Office on making such splits, sometimes referred to as disaggregation. The moratorium was due to appeals running through the Courts in respect of ATMs (cash machines) in supermarkets. Those cases have now been decided by the Supreme Court.[12]

The Supreme Court considered a number of appeals made by a cash machine provider 3 supermarket operators and 3 banks or finance companies. The Valuation Office had decided in 2014 to separately assess the ATMs at the supermarkets, resulting in approximately 50,000 appeals. The courts had to decide firstly if there was a separate hereditament (unit of property) that could be valued for rating and then who was the occupier. The courts agreed with the Valuation Office that there was a separately identifiable hereditament, which is the same as the decision in the York case in respect of the shop at Yorkshire museum.

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[11] National Trust v J Chilcott (VO) [2004]

[12] Cardtronics Europe Ltd and Others v Sykes (VO) and Others [2018] EWCA Civ2472

The second question was less straight forward. Clearly the banks and other cash machine providers had some investment in the machines because it provided a service to their customers, but the supermarkets also had an interest in providing that service to their customers and the Court of Appeal and Supreme Court accepted that this was a service customers would expect within the general range of services in a modern supermarket. This is very similar to the provision of shops and cafes in museums.

Because of the collaborative nature of the provision of the cash machines, despite the cash machine providers being unconnected companies to the supermarket operators, the Court of Appeal and Supreme Court held that this was a collaborative venture and the overall occupier of the supermarket, including the cash machine site was the supermarket and therefore there should be no separate assessment.

Had this Supreme Court decision been available before the York and Exeter cases were decided then the outcome of separate assessments for the shop at Yorkshire Museum and café at Royal Albert Museum might have been different.

However, there may be benefits to having retail and café space separately valued. In the example of Yorkshire Museum, because the shop is separately assessed, the income from the shop is not considered in the valuation of the museum and York Museums Enterprises receives 100% Small Business Rates Relief.

A further advantage of having a separate assessment would be if the museum is at risk of not being "wholly or mainly" used for charitable purposes and therefore at risk of losing its Charity Relief. This is an unlikely scenario for most museums but a small museum or gallery, with a very successful café or restaurant may, on balance, have more commercial use than charitable use. By separately assessing the commercial element, the remainder of the property will still be eligible for Charitable Relief.

Therefore, where there is a trading subsidiary operating in a museum or gallery, careful planning is required in deciding what space is used by the subsidiary and how the commercial activity may impact on any rights to reliefs.

RIGHTS OF APPEAL

While the Rateable Value can be appealed against, there is however, only one right of appeal for every ground (reason). It is therefore imperative that if an appeal is made, it must be carried out by a qualified professional who not only has experience of Business Rates but understands museums and the wider leisure market.

The appeal system in England was radically amended with effect from 1 April 2017 and is now very different to the systems in Wales, Scotland and Northern Ireland.

Check, Challenge, Appeal

The new English process is called Check, Challenge, Appeal (CCA) and, as the name suggests, is a three step system. However, before the process can be started, the ratepayer must register with the Government Gateway, claim their property or properties and then either deal with the process themselves or appoint an agent who must also be registered on the Gateway.

1. CHECK - this first step is intended only to deal with facts used by the VOA in its valuation. If the ratepayer disputes the basis of valuation this stage cannot deal with the dispute so it is necessary to deal with the VOA facts and either agree them or provide evidence to prove them to be wrong, even if the facts are irrelevant to the reason for considering the Rateable Value to be wrong. There is no requirement for the VOA to enter into discussions over the facts. The VOA will issue a decision either amending the Rateable Value (up or down) or finding that no change is warranted.

2. CHALLENGE - if, on conclusion of the Check, the Rateable Value is still not agreed (which will be the vast majority of cases) the ratepayer or ratepayer's agent can submit a Challenge. The Challenge must include: a detailed valuation, all of the ratepayer's evidence, and the reasoning behind the ratepayer's opinion that the Rateable Value is excessive. The ratepayer may not be allowed to produce any additional evidence after the initial Challenge has been made. The VOA is under no obligation to discuss the Challenge or provide evidence. However, the VOA has committed to responding to the details of the Challenge and, where it deems appropriate, providing proportionate evidence. At the end of the process, if the VOA decides an alteration to the Rateable Value is appropriate, the revised value will be set out in a Decision Notice. If the VOA rejects the Challenge, the Decision Notice will state that there will be no change.

3. APPEAL - if at the end of the Challenge stage the ratepayer does not agree with the VOA's decision, an appeal can be made to the Valuation Tribunal for England. The appeal must be based on the Challenge documentation and can only include further evidence if agreed with the VOA.

CCA timetable

CHECK – if the VOA has not issued a decision within 12 months, the ratepayer can assume the Check has been rejected and move to the Challenge Stage.

CHALLENGE – if the VOA has not issued a decision notice within 18 months, the ratepayer can assume the Challenge has been rejected and move on to the Appeal stage.

RATEPAYER'S RESPONSE – the ratepayer has four months from the completion of the Check or Challenge (or the expiry of the 12 or 18 month deadline) to initiate the next stage.

Other changes to the English appeal system from 1 April 2017 are:

1. There is now a fee for appealing to the Valuation Tribunal for England of £300 (£150 for small proposers) unless the Appeal is made when the VOA has failed to issue a Decision Notice within 18 months. The fee may be refunded if the appeal is successful; and

2. If the ratepayer provides incorrect information there may be a penalty of £500.

Grounds of appeal

There are 15 grounds for making a Challenge.[13] These range from the Rateable Value being too high at the start of the Rating Lists to administrative issues concerning whether or not the Rating List entry includes all of the required elements.

The three most commonly used grounds are:

1. The Rateable Value at the start of the List is incorrect;
2. An alteration made to the Rating List by the VOA is incorrect (but this can only be used if the Rateable Value has been altered);
3. There has been a material change of circumstances during the life of the List.

The first two are self-explanatory. However the VOA can still amend the rating List for one year after it has come to an end and so the right of appeal on the second of these grounds is either to the end of the List or within six months of the alteration, whichever is the later.

The third ground is more complex. In all rating valuations the economic background is fixed at the AVD, but any physical changes to the property or its locality, or which are physically manifest in the locality, or due to a change of use, may give rise to a change in the Rateable Value. When preparing a valuation on this basis, the valuer has to assume that the material change was in place at the AVD and value the property accordingly. Material changes can be permanent or temporary.

[13] Regulation 4 Non-Domestic Rating (Alterations of List and Appeals) (England) 2009

The next three most commonly used grounds are:

1. Deletion - when a property has ceased to exist or been converted to either an exempt or residential use;

2. Split - where a property with a single entry in the Rating List is now in multiple occupation;

3. Merger - where several entries in the Rating List for adjacent properties are now in one occupation.

Splits and mergers may also be compounded by the need to change several entries into several different entries. As an example, consider an office building on three floors which had a single tenant. The whole building would be a single hereditament with one entry in the Rating List. If the tenant moves out and each floor is let to a different tenant, then the assessment would be split into three hereditaments. If the ground floor tenant then takes on the first floor as well, then the two entries for the ground and first floor would be merged into one entry in the Rating List. Finally, if the tenant of the ground and first floor vacated half of the first floor and another tenant took the vacant first floor offices plus the second floor then the entries for the ground and first floor, plus the entry for the second floor would be reconfigured into two different entries for the ground and part first floor and for the part first floor and second floor.

A further ground of appeal which is of significance is the right to appeal based on a decision of the Tribunals or higher courts. The decision has to be relevant to the appeal property. Appeals on this ground can be made up to six months after the Rating List has closed. A number of appeals were made at the end of the 2010 Rating List following the decision in the York case even though there had been previous appeals that had been agreed or withdrawn.

CASE STUDIES

There have been some notable successes with rating appeals for museums. In the main, these successes stem from persuading the VOA, or the appropriate Tribunal, to adopt a Receipts and Expenditure approach to the valuation. This can potentially result in a Rateable Value of £1.

Five case studies involving historic buildings are given in this guide covering different aspects of the problems found in dealing with the VOA's approach. The author was directly involved in the appeals for Waltham Abbey Royal Gunpowder Mill, York Museums & Gallery Trust, Chatham Historic Dockyard and Mary Rose Trust.

Case Study: Waltham Abbey Royal Gunpowder Mill

Waltham Abbey Royal Gunpowder Mill is a large site which was used for the production of gunpowder when Guy Fawkes was a customer. In later years, it was used for production of other explosives and as a research site during and after the Second World War.

When the Waltham Abbey Royal Gunpowder Mill first opened as a museum, it was entered in the 2000 Rating List with a Rateable Value of £140,000. Despite 80% mandatory relief, this created a level of rates liability which was unaffordable.

The property had been valued by reference to the Contractors Method. After initial discussions, the VOA revised its approach to include only those buildings accessible to the public or used as offices and ancillary buildings by the Foundation. This resulted in an offer to settle at £95,000. At a hearing of the Valuation Tribunal, the VOA defended this level of value and Waltham Abbey's advisor argued for a reduction to £0 based on Receipts and Expenditure method. The Valuation Tribunal found for Waltham Abbey.

The VOA appealed to Lands Tribunal (now Upper Tribunal (Lands Chamber)). A compromise settlement was agreed at £5,000 which is based on receipts not cost of construction.

The 2005 Rateable Value was drastically reduced from £136,250 and agreed at £6,000 on the same basis as the 2005 agreement. The 2010 Rateable Value came into the Rating List at £7,000 and was not appealed.

Rating List	Original RV	Agreed RV
2000	£140,000	£5,000
2005	£136,250	£6,000

Case Study: York Museums and Gallery Trust

York Museums and Gallery Trust occupy four museums and galleries in central York: Castle Museum; Yorkshire Museum; York Art Gallery, and; The Heritage Centre (aka St Mary's Church). These are all listed buildings, Yorkshire Museum and York Art Gallery are purpose built, whereas Castle Museum is two converted 18th Century prisons and The Heritage Centre is a converted mediaeval church.

Yorkshire Museum

Castle Museum

Castle Museum, The Heritage Centre and the Art Gallery are all on the main tourist routes through York. Castle Museum is located next to the iconic Clifford's Tower. The Heritage Centre is located close to Castle Museum and next to the Yovik Centre. The Art Gallery is located next to the City Walls and is a drop-off/pick-up point for the open topped tourist buses. Yorkshire Museum is adjacent to, but outside, the City Walls and set away from the main tourist routes.

Castle Museum is a major attraction in its own right and generates a healthy surplus.

Prior to 2015, the Art Gallery was free to enter. The Heritage Centre is and was free to enter.

There were four issues in dispute:

1. Should the shops, cafés and Hospitium (used as the main wedding venue) be separately assessed?
2. How should the museums and galleries be valued?
3. The Tribunal's jurisdiction to alter the List.
4. Whether or not the Museum Gardens are an exempt public park?

The appeals were heard as one case by the Upper Tribunal in the case of Stephen G Hughes (VO) v York Museums and Gallery Trust [2017] UKUT. All four of the above issues applied to Yorkshire Museum.

The Tribunal decided that:

1. Any buildings or parts of buildings in shared occupation between the Trust and its trading subsidiary should be in a single assessment with the Trust as the ratepayer. However, the Yorkshire Museum shop is in a separate, clearly defined area only used for retailing and so should be separately assessed as being occupied by the trading company.
2. Contractors Method was rejected as being the appropriate method of valuation and, with some reservations, Receipts and Expenditure Method was adopted. Yorkshire Museum is inherently loss making and the Rateable Value was reduced to a nominal £1.
3. The Tribunal accepted that any matter not specifically referred to in the proposal (or directly inferred from the proposal that gave rise to the appeal) could not be addressed by the Tribunal.

Continued..

Case Study: York Museums and Gallery Trust continued

4. As the question of exemption for parks was not relevant to the outcome of the decision, no judgement was given.

Because the Art Gallery and the Heritage Centre were free to enter, the potential income was estimated from the known visitor numbers and a reasonable admission charge based on the competitive charges for other museums in York.

	Original RV	Determined RV
Castle Museum	£183,000	£183,000
York Art Gallery	£72,500	£70,000
The Heritage Centre	£28,500	£10,000
Yorkshire Museum	£106,000	£1
Yorkshire Museum Shop	-	£4,850

Therefore the prominent and surplus producing Castle Museum has the same value whether by contractors or receipts but the other properties have successively lower values.

Had the Valuation Officer succeeded in separately assessing the shop and café at Castle Museum and the Hospitium in the grounds of Yorkshire Museum, the additional rates liability for York Museums for 2010 to 2017 would have exceeded £300,000.

Case Study: Royal Albert Memorial Museum, Queen Street, Exeter

The Royal Albert Memorial Museum is an impressive Grade II Listed building. The building was originally constructed by a charity in the 1860s as a museum, library and college of art. In 1870, the museum was transferred to the city council because the charity could not afford the upkeep of the property. Between 1870 and 1900, the building was extended several times adding in a college of science as well as additional galleries and public spaces.

By 1990, the building was in very poor repair with major structural problems due to the failing foundations at the rear. Between 2008 and 2011, a major project was undertaken involving some demolition, stabilisation of the foundations, a new extension at the side and rear and realignment of internal access within the building creating a central spine connecting the front and rear areas. The extensions were funded by the Heritage Lottery Fund.

The refurbished and extended museum was entered into the 2010 Rating List from the date it reopened. An appeal was lodged against the new entry and settled on the basis of Contractors Method. Following the outcome of the York case a fresh appeal was made resulting in a reduction to £1 at Valuation Tribunal. The Valuation Office appealed to the Upper Tribunal (Lands Chamber) and the decision of the Valuation Tribunal was upheld, however due to restrictions on back-dating the decisions only have effect from 1st April 2015.

2010 Rating List	Rateable Value	From	Basis of Valuation
Original Entry	£520,000	15th December 2011	Contractors
Revised Entry	£445,000	15th December 2011	Contractors
UT(LC) Decision	£1	1st April 2015	Receipts & Expenditure
Cafe	£14,750	1st April 2015	Rental comparison

Case Study: Chatham Historic Dockyard

Chatham Historic Dockyard is a former Naval Base where ships have been built for over 400 years. The site covers 80 acres with a range of covered slips, dry docks, stores and workshops, a Smithery, houses and ¼ mile long ropewalk.

This is a very complex site with numerous listed buildings, scheduled ancient monuments and a Grade II listed garden. The majority of the buildings are let out to commercial tenants leaving a range of buildings open to the public with museum displays and a working ropewalk still used to produce rope for sale.

In July 2010, Smithery No 1 was opened to the public following a major conservation and development scheme.

There was a single issue for the appeals against the 2010 Rating List. How should this property be valued?

The VOA had adopted Contractors Method and the Trust argued for Receipts and Expenditure. It was agreed that Contractors Method was not appropriate. The site and buildings are the exhibition. It was also agreed that the accounts are as complicated as the site. The appeals were settled on the basis of 2.5% of the sustainable trade leaving out all of the rents from the buildings which are separately assessed. The accounts used were from the three year period prior to 2008. Therefore, when considering the impact of opening Smithery No. 1, the valuation was adjusted in line with the increase in visitors.

2010 Rating List

Description	Original RV	Agreed RV	From
Museum	£430,000	£57,750	1st April 2010
Museum	£472,500	£66,250	24th July 2010

In 2016 there was a major project undertaken at Chatham including the creation of a new entrance to the museum, revamp of the café and changes to the use of various other buildings and facilities on the site.

As a result the 2017 Rating List was amended by agreement from 1st April 2017. 13 separate rating assessments where merged and then split into 3.

2017 Rating List

Description	**Original Entry**	**Agreed Entries**	**From**
Various properties	£827,150	deleted	1st April 2020
(Museum – inc in various)	(£600,000)	(deleted)	(1st April 2020)
Museum		£70,000	1st April 2020
Mess Deck		£8,750	1st April 2020
Rope Shop		£2,000	1st April 2020

It was accepted that the Mess Deck Café and the Rope Shop should be separately assessed at low levels of value. Chatham Historic Dockyard Trust has two trading subsidiaries, one of which has responsibility for the sales and catering and one has responsibility for selling the rope products. The trading subsidiaries receive 100% Small Business Rates Relief for the Mess Deck and Rope Shop.

Case Study: Mary Rose Trust Museum

Following completion of a major building project, the new Mary Rose Trust Museum was opened in 2013. The remains of the Mary Rose are now housed in a Grade I Listed dry dock in the centre of Portsmouth Historic Dockyard, a new bespoke building has been erected over the dry dock to create the museum.

When the new assessment was put into the 2010, and then 2017 Rating Lists, the VOA separately assessed the museum, shop and café.

Mary Rose's trading company was held liable for the shop and café.

The shop area is part of the entrance/exit for the museum so that visitors have to walk passed the displays either going in or coming out. The café area opens immediately off the entrance and is run by a concessionaire not the trading company.

The VOA had valued the museum on a percentage of receipts however, adopting a full receipts method arrived at the same level of value.

The only issue therefore was should the shop and café be separately assessed or included in the museum? By adopting the full income figures for Mary Rose, the VOA had effectively double counted the shop and café.

It was agreed that the shop and café should not be separately assessed because this is shared space. The valuation was agreed at the existing Rateable Value for the museum, and the separate assessments for the shop and cafe were effectively removed form the Rating List.

2010 Rating List		
Description	Original RV	Agreed RV
Museum	£89,000	£89,000
Shop & Cafe	£34,700	-
2017 Rating List		
Description	Original RV	Agreed RV
Museum	£89,000	£89,000
Shop & Cafe	£43,000	-

THE POLITICAL BACKGROUND - LOCALISM ACT 2011

From 1 April 2013, Central Government has reviewed the funding for Local Authorities. This affects the rates support grant, council tax relief grants and numerous other grants. The change is described as the Rates Retention Scheme and is a consequence of the Localism Act 2011.

Prior to 1 April 2013, all Business Rates collected by Local Authorities were paid over to the Treasury. The amount received from the Treasury in rates support grants was not related to the amount collected except that any discretionary relief granted by the Council was part funded (75% for charities) by the Council. Therefore, Central Government carried the whole cost of mandatory relief and 25% of the cost of any discretionary relief given to charities.

From 1 April 2013, only 50% of rates received are paid to Central Government, the rest is retained by the Councils. Councils now carry the cost of 50% of the mandatory and discretionary rate relief. Therefore, if a museum is granted 100% relief from rates, the Local Authority must find 50% of that lost rates income. Prior to 1 April 2013, the cost to the Local Authority was only 15% of the lost income.

The support grants paid to Local Authorities has been reduced to reflect the fact that the Councils now retain some of the Business Rates income. For the majority of Local Authorities, the reduction in the support grants was greater than the amount of Business Rates retained. As an incentive to efficiency, the support grants have been reducing on an annual basis by 2% in real terms further reducing income.

Councils have no control over the amount of rates charged and little control over Council Tax increases or other revenue streams. They do however have control over whether or not to grant discretionary relief.

The impact of austerity has severely restricted Councils’ ability to fund discretionary relief.

Since 1990, most Councils have operated a very laissez-faire policy toward Business Rates and have been reactive not proactive. The change in funding is changing this attitude. Councils will now be less likely to grant full discretionary rate relief and many have chosen to refuse any discretionary relief to charities, others may follow suit. Councils will also be more likely to challenge mandatory relief requests with greater scrutiny regarding the purpose of occupation and degree of use for charitable purposes. There is a growing body of case law on appeal from Magistrates Courts and the High Court on this topic.

The Charity Commission recommends that charities with significant trading activity should have a wholly owned trading subsidiary. Councils are therefore looking to see if properties, or parts of properties, are occupied by trading subsidiaries and so should either receive no charitable relief or, if part of the property should be separately assessed and receive no charitable relief. Where occupation of a property is shared, Councils are considering whether, based on income, the property is "wholly or mainly" used for charitable purposes.

Councils have no control over the amount of rates charged and little control over Council Tax increases or other revenue streams. They do however have control over whether or not to grant discretionary relief.

EMPTY PROPERTIES

Although Business Rates are a property tax based on occupation, if a property is empty then after an initial three months' void period (six months for industrial and storage properties), the person with the right to occupy is liable for full rates. Empty property rates refer to buildings not land. Empty Listed Buildings are exempt.

Properties where the ratepayer is a charity may be exempt from the charge. However, this only applies if, when the property is next likely to be occupied, it will be used "wholly or mainly" for charitable purposes.

Some charities have been enticed into entering agreements with landlords to take leases on empty buildings so that the landlords can avoid empty property rates. The Charity Commission has issued a warning about such practices as Local Authorities may refuse to grant charitable relief so that the charity is exposed to the full charge. If there is a genuine need for short-term space then the benefit to the landlord is such that a charity may be paid to occupy the space. However, the occupation must be "wholly or mainly" using the property for charitable purposes or there will be no charitable relief.

As an example of how this can work set out below is an actual scenario in which the author was involved:

- Arts charity takes lease to occupy vacant, two-storey building commencing in January
- Lease can be terminated if landlord finds tenant
- Original intention to occupy whole for a single arts project
- Project falls through, property stands empty
- New projects organised - a music project occupies half of ground floor in June
- Other artists move in and occupy 75% of building in August

Questions

- Is the charity entitled to relief from January?
- What is the liability to the charity from June to August?
- What liability does the charity have from August?

Answers

- Yes, the charity is entitled to relief from empty rates because the intention is to use the property "wholly or mainly" for charitable purposes.
- There is no right to relief from June to August because only 25% of the property is being used.
- From August the property is being mainly used for charitable purposes and so charitable relief is due.

There have been recent High Court decisions involving charities which have taken properties as a means to reduce the landlord's exposure to empty property rates. The schemes have worked for the landlords but the charities have not been given the 80% mandatory relief because the properties are not wholly, or mainly, occupied for charitable purposes.

If your museum is approached to participate in any such schemes, you need to take expert advice of your own.

The political landscape is changing and there will be greater pressure for Local Authorities to maximise the rates revenue in their area and reduce their exposure to reliefs as far as possible.

CONCLUSION

The aforementioned gives a flavour of Business Rates and is by no means exhaustive.

The political landscape is changing and there will be greater pressure for Local Authorities to maximise the rates revenue in their area and reduce their exposure to reliefs as far as possible. Therefore, more museums will be faced with rates bills that only give the mandatory relief and, where there is doubt museums will need to ensure that their occupation of properties fully complies with the statutory requirements for any relief to be given.

The current 2017 Rating List will be in force until 1 April 2023. Museums are very difficult to value for rating purposes; many are not valued on the basis of their finances (Receipts and Expenditure) but on the cost of construction without the benefit of any allowance for grant aid or other funding. Those which are valued by reference to receipts are often valued on a percentage of gross receipts and not with regard to the full accounts. Therefore, most museums are currently overvalued in the Rating List.

Appeals can be made against the Rateable Value but need to be undertaken by a qualified rating surveyor with experience of the museum sector and leisure properties generally.

Comparison between England, Wales, Scotland and Northern Ireland

England

Primary legislation is found in the Local Government Finance Act 1988. The detailed provisions for appeals are set out in Statutory Instruments. The current rights of appeal are open ended until the next Rating List comes into force.

The valuations are undertaken by the VOA, an executive agency of HMRC. Appeals, at first instance, are heard by the Valuation Tribunal England.

The VOA Agency website is www.gov.uk/government/organisations/valuation-office-agency

Wales

The same primary legislation applies as in England. However, the new CCA process included in the legislation does not apply to Wales.

If ratepayers wish to appoint an agent, they must complete an authorisation letter which can be found via this link.

The appeal process is simple, requiring completion of a proposal setting out in very basic terms why the entry in the Rating List is thought to be wrong, the date from which it should be changed and the change being requested. If after three months the proposal has not been settled, it is sent by the VOA to the Valuation Tribunal for Wales.

Scotland

Scottish property law is radically different to the English and Welsh legal framework. The principles of valuation are effectively the same but the primary legislation is the Local Government (Scotland) Act 1975.

Appeals against the 2017 Rateable Values had to be made before 1 October 2017. There are very limited grounds for appeal after that date, these include:

- Change of ownership - new owners or tenants have the right to appeal within 6 months of acquiring the property;
- Material Change of circumstances - however unlike in England there has to be evidence that the rental value at the date of appeal is less than it was at the valuation date;
- Decision of a relevant court - this only includes decisions of the Lands Tribunal Scotland, Court of Sessions (Lands Valuation Appeal Court), or higher courts.

Scotland has a uniform business rate applied to the country and standard allowances. However, the valuations are undertaken by Assessors who are officers of the local councils.

Appeals in the first instance are to the Valuation Appeal Committee. The next revaluation is 2022.

The Scottish Assessors Association website is www.saa.gov.uk

Northern Ireland

As with Scotland, there is a different legal framework for rates in Northern Ireland. Unlike England, Scotland and Wales where there are separate systems of property tax for domestic and non-domestic properties, there is still a simple system applied in Northern Ireland.

The current revaluation is from 2015 and the initial time period for appeals is closed. However, there is a commitment to review Rateable Values if representations are made setting out detailed reasons for believing the valuation to be wrong.

The next Revaluation will be in 2020.

The valuation charging and collection of rates is dealt with by the Land and Property Services Northern Ireland Agency.

Both valuation and collection of non-domestic rates is carried out by Land and Property Services Northern Ireland (LPSNI).

There are no transitional phasing provisions and therefore the calculation of rates bills is simple and any reduction in Rateable Value will produce a proportionate reduction in liability. There are charitable exemptions available if the property is occupied for a number of purposes including educational, or other purposes beneficial to the community. If there is also non-charitable use within the building then the exemption may be apportioned to the charitable part only.

The Land and Property Services Northern Ireland website is www.dfpni.gov.uk/lps.

Commonality between the Countries

The VOA (for England and Wales), Scottish Assessors and Land and Property Services Northern Ireland are all independent of each other and each work in their own way with different guidance on how to value different property types. As stated at the beginning of this guide, the basic principles of valuation apply to all four countries.

Much of the ethos and guidance for rating valuation is derived from case law and the decisions of the higher courts, especially Lands Chamber (Lands Tribunal), Court of Appeal or Supreme Court (House of Lords) will influence valuation practice equally in all four countries. Therefore, decisions such as the Court of Appeal in Hoare (VO) v The National Trust 1998 RA 391 affect every legislative area.

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LSH is the retained adviser on Business Rates to AIM.

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