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**2 OCTOBER 2017**

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## Notice of Decision

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The appeal shown below was heard by the Tribunal on:

<b>Hearing Date:</b>	Tuesday 5 September 2017	<b>Time:</b>	10:30 am
<b>Venue:</b>	NSPCC National Training Centre 3 Gilmour Close Beaumont Leys		
<b>Appeal Number:</b>	242028110671/537N10/7		
<b>Appeal Type:</b>	2010 Rating List Appeal		
<b>Appellant:</b>	C Brown - Hinckley Squash & Racketball Club		
<b>Proposal Date:</b>	23 November 2016		
<b>Appeal Property:</b>	Hinckley Squash & Racketball Club Maple Drive Hinckley Leics LE10 3BE		

The Tribunal's decision is attached.

Please read the enclosed leaflet as this gives you important information.

**Registrar**

**Decision Record****Appeal Number : 242028110671/537N10/7**

Appellant : C Brown - Hinckley Squash & Racketball Club  
Appellant's address : 6 Grosvenor Crescent  
Burbage  
Leicestershire  
LE10 2BQ

Matter appealed against : 2010 Rating List

Date of hearing : 5 September 2017

Appearances : Wilks Head & Eve LLP agent for C Brown - Hinckley Squash & Rac  
Valuation Officer

Date of decision : 2 October 2017

Decision of Tribunal : see attached

Tribunal taking officer : Mr J Hewitson BA(Hons) IRRV (Hons)

Reasons for decision

see attached document

**General Details**

**Rating List Details Under Appeal**

SQUASH & RACKETBALL CENTRE

Hinckley Squash & Racketball Club

Maple Drive

Hinckley

Leics

LE10 3BE

Rateable Value : £29250

Effective Date : 7 September 2015

**Tribunal Decision**

SQUASH & RACKETBALL CENTRE

Hinckley Squash & Racketball Club

Maple Drive

Hinckley

Leics

LE10 3BE

Rateable Value : £18000

Effective Date : 7 September 2015

VALUATION TRIBUNAL FOR ENGLAND



*Non Domestic Rating Appeal; Squash & Racketball Centre; Use; Rebus sic Stantibus; Comparables Appeal allowed.*

RE: Hinckley Squash & Racketball Club, Maple Drive, Hinckley, Leics LE10 3BE

APPEAL NUMBER : 242028110671/537N10

BETWEEN: C Brown - Hinckley Squash & Racketball Club Appellant

and

Mr D Virk  
(Valuation Officer)

Respondent

PANEL: Mr A Maskell (Chairman)  
Mr A Mehta

SITTING AT: NSPCC, 3 Gilmour Close, Beaumont Leys, Leicester LE4 1EZ

ON: Tuesday 5 September 2017

APPEARANCES: Mr R Messenger (Wilks Head & Eve LLP - representing the Appellant)  
Mr T Daniel (Wilks Head & Eve LLP - representing the Appellant)  
Mr M Allis (Representing the Valuation Officer)

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### Summary of Decision

- 1 The appeal was allowed and the assessment was determined at rateable value £18,000 with effect from 7 September 2015.

### Introduction

- 2 This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

- 3 The appeal resulted from a proposal submitted by the appellant's representative on 23 November 2016, seeking a reduction in the assessment of £29,250 rateable value on the basis that the 'property has been placed in the incorrect valuation category'
- 4 The subject hereditament comprises a squash and racketball club located adjacent to / within a purpose built trading / industrial estate. The property was built in 2015 and is of portal frame construction with brick and steel profile external walls. The property was purpose built and the planning application was made to allow the 'development of a new 4 court squash club including changing room and club facilities.'

### Issues

- 5 The dispute before the panel related to the correct method of valuation and the appropriate level of value to be adopted.

### Evidence and Submissions

- 6 In their detailed submission to the panel the appellant's representatives provided plans and photographs of the property and its location and provided unaudited accounts of the business highlighting the receipts for 2014, 2015 and 2016. The submission also included a copy of the planning application and details of the other properties on the estate. The panel was also provided with the valuation list entries in respect a number of other squash clubs that, it was argued, supported the proposed valuation. They explained the history of the property and contended that it should be valued as a squash club and premises. The property was purpose built, as supported by the planning application and had never been used for anything else. It was argued that to value the property as a warehouse, in line with other nearby properties, was incorrect. The unit should be valued as it stood, having regard to fundamental rating principles.
- 7 It was argued that the hereditament should be valued on a rentals basis, with fair reflection of the receipts. To support their revised valuation, the appellant's representatives referred the panel to squash clubs in Nottingham, Leicester and Stone which showed that the value placed on the 'clubhouse' facility ranged from £22.50 pm<sup>2</sup> and £35 pm<sup>2</sup> with the squash courts being valued at between £1,500 and £2,500 per court.
- 8 On this basis, it was argued that the subject property should be valued within its own mode and category, as a squash club. The property was built as D2 use class and, given that it was more than 150 m<sup>2</sup>, a change to D1 use would require planning permission. In accordance with established principles and, as stated in *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960] R&IT 389, 'The mode or category of occupation by the hypothetical tenant must be conceived as the same mode or category as that of the actual occupier.' Having regard to the comparables cited the appellant's adopted a rate of £30 on the lounge area, with appropriate adjustments for ancillary areas and £2000 per squash court, contending for a revised rateable value of £18,000.
- 9 In his capacity as advocate, Mr Allis argued that the subject property is a 'hybrid' industrial built property situated on a modern industrial estate built between 2009 and 2015. Referring to an aerial photograph showing the property and other units

on the site and a series of photographs and plans, it was argued that the subject property is similar, in terms of construction, to the other units on the estate. It was argued that, as a 'hybrid' property, the occupant is able to do internal fittings suitable to their business when it is vacant and to let in the open market.

- 10 Mr Allis argued that the property was correctly assessed in line with other units on the development and referred to a schedule detailing the basic rate that had been adopted at many of the other units on the estate. He argued that the adopted rate of £44 pm<sup>2</sup> was in line with other the other warehouse units and suggested that this could be seen as £30pm<sup>2</sup> plus a fit out cost.

### Decision and Reasons

- 11 In considering the appeal, the panel was bound by the evidence presented and, given that the Valuation Officer had not provided the panel with an alternative valuation, based on rates adopted in respect of squash clubs, found that once it had decided the correct valuation approach, the decision would follow automatically.
- 12 The Valuation Officer had, in essence, argued that the property should be valued vacant and to let. He submitted that, on this basis, the appeal property was no different from any of the other warehouse units on the estate that were of similar age and construction. He argued that a hypothetical landlord would not accept a lower rental bid from someone wishing to occupy the unit as a squash and racketball centre and thus, he argued that the existing value based on comparable units on the estate was correct.
- 13 The panel found this approach to be fundamentally flawed. Quite apart from the fact that the appeal property was physically different and distinct from a typical warehouse / industrial property, in that it had an external balcony (not a typical feature in a warehouse) and did not have a roller shutter door (typical of many such properties), the Valuation Officer had failed to reflect the mode and category of use of the property.
- 14 The appeal property is a squash and racketball club. The planning permission sought and granted was for use as such, falling within use class D2. The property was thus purpose built and has not been used for any other purpose. For rating purposes, the principle of *rebus sic stantibus* is fundamental and a hereditament is valued on its current use. Whilst the panel recognise that any alteration that is not substantial would not change the current use, the panel found that this did not apply to the appeal property. Any change, such as the demolition of the brick walls of the squash courts, the installation of roller shutters and the demolition of the bar and changing rooms would offend *rebus*.
- 15 The panel found these principles as considered in *Fir Mill* and *Scottish and Newcastle Ltd v Williams (VO)* to be well established and the panel found no support for the approach adopted by the Valuation Officer.
- 16 Having found that the property should be valued as a squash club, the panel had regard to the comparables submitted by the appellant. In the absence of any details relating to other squash clubs, the evidence of the appellant was determinative. He submitted that the comparables provided a good basis and

showed that a range of values had been adopted. He supported the values adopted by reference to these comparables and the panel found that he had fully supported his revised valuation. On this basis the panel determined the assessment at rateable value £18,000, with effect from 7 September 2015.

**Orders:**

- 17 Under the provisions of Regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the rating list entry of the appeal property to rateable value £18,000, with effect from 7 September 2015.
- 18 Under Regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

**Date:** 2 October 2017

**Appeal Number:** 242028110671/537N10