UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – valuation – steelworks and premises – contractor's method of valuation – whether an additional end allowance should be applied at stage 5 to reflect fact premises operated in conjunction with a second property nearby - appeal dismissed

IN THE MATTER OF AN APPEAL FROM THREE DETERMINATIONS OF THE VALUATION TRIBUNAL FOR WALES

BETWEEN:

CELSA STEEL (UK) LIMITED — **Appellant**

and

STEPHEN CLIVE WEBB
(VALUATION OFFICER) — **Respondent**

Re: Tremorfa Steelworks, South Park Road, Cardiff CF24 2LU

Before: His Honour John Behrens (sitting as a Deputy Judge of the Upper Tribunal) and Paul Francis FRICS

Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
15 and 16 February 2017

Jacqueline Lean (instructed by The Beattie Partnership) for the Appellant.
Hugh Flanagan (instructed by Solicitors Office, HM Revenue & Customs) for the Respondent.

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The following cases are referred to in this decision:

Dawkins (VO) v Royal Leamington Spa BC and Warwickshire CC [1961] RVR 291
Eastbourne BC v Allen (VO) [2001] RA 273
Berry (VO) v Iceland Foods Ltd [2015] UKUT 0014
National Trust v Hoare (VO) (1999) 77 P & CR 366
Newbigin (VO) v SJ & J Monk (A Firm) [2015] 1 WLR 4817 and (2017) UKSC14
Robinson Bros v Durham Assessment Committee [1938] AC 321

DECISION

Introduction

1. This is an appeal by the ratepayer, Celsa Steel (UK) Limited ("Celsa Steel"), the owner and occupier of premises at Tremorfa Steelworks, South Park Road, Cardiff CF24 2LU ("Tremorfa Works") against a decision of the Valuation Tribunal for Wales ("VTW") dated 7 October 2015.

2. The VTW allowed in part, in its decision dated 21 October 2015, three appeals by Celsa Steel relating to the 2005 and 2010 rating list entries for Tremorfa Works. As a result of the appeal the rateable values for Tremorfa Works were determined at:

Rating List	Effective Date	Rateable Value
2005	29 Jan 2007	£2,070,000
2005*	1 Sep 2008	£2,170,000
2010	1 April 2010	£2,650,000

* The increase which was effective from 1 September 2008 was to reflect a merger of the original steelworks hereditament with the Carrington SW Wire and Strand Manufacturers' hereditament – adjacent premises which Celsa Steel had acquired.

3. In addition to occupying Tremorfa Works, Celsa Steel is the owner and occupier of the nearby steelworks known as Castle Works, East Moors Road, Cardiff ("Castle Works") which is about a mile[1] from Tremorfa Works and is connected to it by a rail link operated by Network Rail.

4. As was common ground between the parties, the valuations were carried out on the Contractor's Basis. Furthermore, by the date of the hearing before the VTW Stages 1 to 4 had also been agreed. The dispute before the VTW related solely to Stage 5 – the final adjustments or "stand back and look" stage. The VTW accepted the Valuation Officer's ("VO") suggestion that the figures arrived at the end of Stage 4 fell to be reduced at stage 5 by 12.5% in respect of the 2005 valuations (7.5% for site/layout and 5% to reflect the state of the market at the Antecedent Valuation Date ("AVD"). In respect of the 2010 valuation the adopted stage 5 allowance was retained at 7.5% for site layout, the allowance for the state of the market having been removed. However, the VTW rejected a claim by Celsa Steel for an additional 15% reduction (on all three assessments) to reflect its argument that the close proximity of Castle Steelworks would be considered a risk by the hypothetical tenant and that his bid would be reduced accordingly. It is that 15% deduction which is the only matter in issue before us.

[1] 1 mile by rail or 2 miles by road.

5. Tremorfa Works comprises a melt-shop and caster for the production of steel billet (a semi-finished product produced principally from scrap metal) which is then converted by a rolling mill and a section mill into steel rods and coil of differing lengths and varying sections. A new melt shop was built by Celsa Steel to replace an old, inefficient and energy hungry electric arc furnace and was commissioned in 2007. It includes a new electric arc furnace and a new caster, used to form the molten steel into billet. It has a capacity to produce 1.2 million tonnes of steel billet per annum of which 350,000 tonnes can be processed into finished product in the on-site section mill.

6. Castle Works was developed as a bespoke facility for the production of steel rod. The major part of the works was commissioned in 1976 although there are some older buildings. It forms a separate hereditament for rating purposes and consists of a rod and bar mill which has a capacity of 850,000 tonnes per annum. Thus, 350,000 of the 1.2 million tonnes of steel billet produced by the new melt shop are processed by the section mill within Tremorfa Works with the remaining 850,000 tonnes transported by rail to Castle Works and processed there.

7. Celsa Steel contends that the relationship between Tremorfa Works and Castle Works justifies the additional 15% reduction at stage 5 of the valuation exercise. The basis of the argument can be summarised in this way:

> Castle Works could be operated as a viable, stand-alone facility without Tremorfa Works. It would be able to buy in billet from elsewhere, and the cost of doing so would be a 'close match' with that of using billet produced at Tremorfa Works;
>
> Tremorfa Works could not be operated as a viable, stand-alone facility without Castle Works;
>
> Tremorfa Works is unlikely to be an attractive proposition for a hypothetical tenant who is not also the occupier of Castle Works, having regard (inter alia) to the excess steel billet which would need to be sold on the open market (only around 25% being used by the Sectional Mill at Tremorfa) and the state of the market for the sale/export of that product;
>
> In the event that there was a potential tenant other than the occupier of Castle Works, it is likely that their rental bid would be at least substantially discounted to reflect those factors (inter alia);
>
> The most likely hypothetical tenant of Tremorfa Works would therefore be the occupier of Castle Works (e.g. Celsa Steel).

8. By reason of the foregoing, the occupier of Castle Works (the most likely hypothetical tenant) would therefore be in a strong bargaining position vis-à-vis the hypothetical landlord, given the absence of any real competition for the hereditament, and the fact that Castle Works could be viably operated without Tremorfa Works (i.e. the occupier of Castle Works does not need to source its billet from the Tremorfa Works Melt Shop, and is not therefore "dependent" upon also occupying Tremorfa Works).

9. It was argued that because Castle Works and Tremorfa Works are a mile apart there are significant additional or duplicated costs which would not be incurred if they were adjacent hereditaments. These factors, put together, would result in a rent being agreed between the hypothetical landlord and hypothetical tenant which was lower than the value reached at stage 4 of the Contractor's Basis. The appropriate reduction as proposed by the appellant ratepayer, as already noted, should be 15%.

10. The VO did not accept those arguments. In summary he did not agree with the contention that the relationship between Castle Works and Tremorfa Works is asymmetric. There are considerable advantages to Castle Works in having a ready and guaranteed supply of steel billet on its doorstep as opposed to importing it from elsewhere. The value of Tremorfa Works should take into account the actual use. In any event the most likely hypothetical tenant of Tremorfa Works would be Celsa Steel, and Celsa Steel would operate the two facilities together as is the situation at the moment. Equally the VO did not accept that Celsa Steel had established any significant additional costs by virtue of the distance between the two plants. Any such additional costs were small, and therefore immaterial, when compared with the overall costs of the operation. Thus neither of these factors would have an effect on the rent payable by the hypothetical tenant and, as was argued before, and accepted by, the VTW, the claim for the additional 15% discount should be dismissed.

11. Ms Jacqueline Lean of counsel appeared for the appellant. Mr Michael Perry, Group Internal Control Manager and Finance Manager for the appellant Company provided evidence as to the operation of the steelworks at both the appeal hereditament and Castle Works, and as to the state and condition of the steel industry. Expert valuation evidence was called from Mr Donald Beattie BSc (Hons) MRICS IRRV (Hons) of The Beattie Partnership.

12. Mr Hugh Flanagan of counsel appeared for the respondent VO and called Mr Stephen Webb BSc (Hons) MRICS CDipAF, the authorised representative of the Valuation Officer, who gave expert valuation evidence, and Mr Roger Emmott BSc (Hons) MBA MA C Eng FIMMM FCMI FIC a Principal Consultant for Metals Consulting Limited who provided evidence relating to the relevant steel manufacturing processes at both the appeal hereditament and Castle Works.

The facts

13. We have been provided with a helpful statement of facts and issues from which it is evident that there is a great deal of agreement between the parties as to the material facts. Many of the factual issues which appeared in the original statements have narrowed as a result of ongoing discussions. In those circumstances and in the light of the limited issues before us we do not intend to record the facts and evidence in anything like the detail that appears in the documents in the bundle. We shall confine ourselves to those matters we consider directly relevant to our decision.

14. Celsa Steel is a subsidiary of a Spanish company with steel making operations in a number of European countries. It was established in 2003 when it purchased the assets of

ASW (Allied Steel and Wire) after it went into administration. The assets purchased included both Tremorfa Works and Castle Works. The Company's business model is to produce steel products for sale in the construction industry. These are produced by the rolling mills at either Tremorfa Works or Castle Works. It is not to produce billet in the melt shop and sell this to external customers.

15. The melt shop purchases scrap metal from a wide variety of external suppliers. There are multiple grades available to purchase. The difference between the scrap grades is reflected in price and the chemical composition of the steel being produced. The melting process involves the addition of additives and the removal of most (but not all) of the impurities in the scrap. As we have said above, when purchased in 2003, Tremorfa Works had an old inefficient melt shop which was limited to a maximum annual steel billet production of 800,000 tonnes. As the total capacity of the mills across the two sites was 1,200,000 tonnes there was insufficient billet produced to meet it.

16. In 2013 Celsa Steel appealed against the 2005 rateable value of Tremorfa Works. On that occasion the material date was a date when the old melt shop with a capacity of only 800,000 tonnes was being used. As was noted in the VTW decision, that appeal was agreed by consent, and an allowance under stage 5 was applied to reflect the imbalance between the supply of billet and the total capacity (1.2 million tonnes) of the two rolling mills.

17. In 2006 Celsa Steel invested approximately £130,000,000 in replacing the old melt shop with a brand new state of the art melt shop with a capacity of 1,200,000 tonnes per year. As we have noted, this came on stream in 2007. When Mr Perry gave evidence he expressed the opinion that the decision to replace the old melt shop was a bad commercial decision as steel billet could have been purchased elsewhere. However, he agreed that he was not employed by Celsa Steel at the time the decision was made. In any event the decision would have been made at Board level by the parent company. It was consistent with its business model in other sites in Europe.

18. There was a good deal of evidence in the experts reports about the state of the worldwide steel market both generally and in respect of steel billet, the cost of purchasing and transporting it from abroad, and of producing it in the new melt shop. In the light of the agreed statement of facts and the issues between the parties we do not consider it necessary to set this evidence out in detail. However, the following brief summary will be helpful.

19. A steel billet has no immediate use, and is classed as a semi-finished or commodity product. It can be traded but must be converted by a rolling mill (such as a sectional mill or a rod and bar mill) to create a finished product with an end use. There are suppliers of billet located worldwide. Between 2003 and 2010 trade statistics show that billet was imported to the UK in quantities of thousands of tonnes from countries that included France, Germany and Poland. The low cost steel billet producers are mainly the countries of CIS (Commonwealth of Independent States), perhaps the most important of these countries being Ukraine. The UK is one of the highest cost steel billet producers (due principally to the high cost of energy).

20. There are multiple grades of steel produced, all of which have to meet minimum specified standards (such as chemical content). Steel to a specific grade produced by different suppliers can be expected to be similar, but by no means identical in terms of quality. Whilst the quality of product from two steel producers may differ, if they were both making a certain grade of steel, the end rolling mill user could use the billet produced by either company.

21. When he gave evidence Mr Emmott enlarged on this point. He said steel billet from Ukraine is likely to have been made in old Russian designed blast furnaces. There were likely to be quality issues with some of the billets. These might relate to blemishes and/or dimensional issues. He did not suggest that these made the billets unusable. They might need to be cleaned or in a worst case scenario melted down and recast. He pointed out that billets from a modern melt shop such as Tremorfa Works would be likely to be of consistently high quality.

22. The UK generates around 10 million tonnes of scrap per year of which around 7 million tonnes are exported. Thus if UK scrap consumers such as Celsa did not purchase it, there still remains a massive worldwide market to take it.

23. The cost of the scrap metal (68%) and electricity (10.1%) form 78.1% of the billet cost at Tremorfa Works. This cost structure is typical for a melt shop of the type at Tremorfa Works. In most of Europe (and many other countries) the energy costs would be lower.

24. If Castle Works were to be a standalone operation, it could potentially purchase its billet elsewhere (in fact it was agreed that it has done so) including from the CIS. Celsa Steel also source billet from other group companies in Europe.

25. A careful analysis and comparison has been carried out between the cost of production of steel billet at Tremorfa Works and the cost of purchasing it from CIS. It shows that there is quite a close match in all the years between 2003 and 2010 apart from 2007 and 2008 (where there were major economic and supply issues in the global steel market). The agreed figures are shown in the following table:

Year	Celsa Melt Shop Production Cost + Overheads v CIS Delivered Price
2003	101%
2004	100%
2005	103%
2006	102%
2007	90%
2008	80%

2009	103%
2010	98%

26. It was common ground between Mr Perry and Mr Emmott that there was a world market for steel billet and that the UK market as a whole was far smaller than the 850,000 tonnes of billet currently processed by Castle Works. Whilst there was some difference between the experts as to the size of the UK market, that difference is immaterial. Thus, if the 850,000 tonnes surplus had to be sold, much would have to be exported involving significant delivery costs. That would have made it commercially unprofitable to sell the billet except in 2007 and 2008. 2008 was a year of unusual volatility for steel worldwide. Billet prices ranged from $650 per tonne in January 2008 to a peak of $1,390 per tonne in July 2008 before falling to £350 per tonne in December 2008. This led Mr Perry to suggest that we should ignore the figures for 2008.

27. Whilst Castle Works could obtain its billet from a source other than Tremorfa Works there are obvious advantages in obtaining it from there. There is virtually no difference in price. There is the advantage that the billet is close by, the quality is likely to be better, and there would be no difficulties in the supply chain. It is in accordance with Celsa Steel's business model both in the UK and in Europe to manufacture the billet and the end product "in house". It was Mr Perry's opinion that it would take about two weeks to ship the billet from Ukraine to Castle Works.

28. The evidence on the additional costs that Celsa Steel incurs in having to transport the billet by rail for a distance of about 1 mile was, to put it mildly, limited. It was not contained in Mr Perry's witness statement but it appears to have emerged for the first time in the evidence before the VTW. It was unsupported by any documents but consisted of an assertion that there were five logistical issues that created increased costs. Examples were the need for two rather than one permanently manned weighbridges (one at each location) (£250,000), additional fork lifts and other capital equipment (£16,667) interest on capital in stores (£140,000), and duplication of certain other functions. These were not accepted by the Valuation Officer who in any event pointed out they were a very small part of the overall costs of Tremorfa Works. Further, there were some advantages in the two sites being reasonably proximate, including the fact that the steel can be kept (quite) hot on the journey (which in total takes about 40 minutes), whereas obtaining billet from abroad means it would be cold when it arrived at Castle Works, thus increasing the processing costs.

The Legal framework

29. The law was largely agreed between Counsel. There were however some differences between them in relation to the principle of reality.

30. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

"(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions—

(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

(c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(7) The matters are-

(a) Matters affecting the physical state or physical enjoyment of the hereditament,

(b) the mode or category of occupation of the hereditament,

(c) the quantity of minerals or other substances in or extracted from the hereditament,

…

(e) the use or occupation of other premises situated in the locality of the hereditament."

31. There are a number of means by which RV can be assessed. The parties are agreed in the present appeal that the appropriate method to use is the contractor's basis. As Ms Lean noted in her skeleton argument the seminal explanation of the contractor's basis was that articulated by Lord Denning in *Dawkins (VO) v Royal Leamington Spa BC and Warwickshire CC* [1961] RVR 291:

"As I understand it, the argument is that the hypothetical tenant has an alternative to leasing the hereditament and paying rent for it; he can build a precisely similar building himself. He could borrow the money, on which he would have to pay interest; or use his own capital on which he would have to forego interest to put up a similar building for his owner/occupation rather than rent it, and he will do that rather than pay what he would regard as an excessive rent – that is, a rent which is greater than the interest he foregoes by using his own capital to build the building himself. The argument is that he will therefore be unwilling to pay more as an annual rent for a hereditament than it would cost him in the way of annual interest on the capital sum necessary to build a

similar hereditament, it will be in his interest to rent the hereditament rather than build it."

32. It is common ground between the parties that the contractor's basis is the appropriate way of valuing steelworks. The five stages of the valuation are as follows:

> Stage 1: Estimate the cost of construction of equivalent premises;
>
> Stage 2: Adjust the cost of construction to reflect differences between the actual hereditament and the imaginary alternative, thus arriving at the 'effective capital value';
>
> Stage 3: Estimate the value of the land;
>
> Stage 4: Apply the appropriate statutory decapitalisation rate to decapitalise the value of the buildings and the land;
>
> Stage 5: Make final adjustments on a 'stand back and look' basis.

33. In both her opening and closing submissions Ms Lean drew to our attention two authorities which make it clear that stage 5 reflects a negotiation between the hypothetical landlord and the hypothetical tenant, and that the valuer must consider how far the stage 4 figure is likely to be pushed up or down in their negotiations having regard to their bargaining strengths.

34. In *Eastbourne BC v Allen (VO)* [2001] RA 273 the Lands Tribunal (George Bartlett QC and N J Rose FRICS) held in relation to stage 5:

> "This stage is potentially important in a contractor's valuation. The contractor's basis, though proceeding in formalised stages, is not a magic formula for reaching a rateable value independently of any exercise of valuation judgment. It is at stage 5 that the valuer must look at all relevant factors that have not so far been reflected in the valuation and must make such allowances as may be appropriate, so that he is satisfied that the resulting figure is what would have been agreed on the statutory hypothesis. We can envisage that there could be evidence, relevant at stage 5, that would reasonably cause a valuer to make a substantial reduction. For example, he might be satisfied that the [tenant] could not afford, or would not be prepared to pay the rent arrived at by stage 4. ... Alternatively, there might be available rental evidence that was insufficient for use on a comparative basis or to justify the application of the shortened profits basis, but might still be sufficient to cause a value to conclude that the [tenant] would not pay more than a certain amount psm, or more than a particular proportion of its outgoings."

35. In *Berry (VO) v Iceland Foods Ltd* [2015] UKUT 0014 (upheld in the Court of Appeal) the Lands Chamber (Martin Rodger QC and P D McCrea FRICS) held:

> "A stage 5 adjustment is made to ensure that a figure arrived at by decapitalising the cost of providing the plant is true to the statutory hypothesis that the rateable value is an amount equal to the rent at which it is estimated the hereditament might reasonably be

expected to let from year to year; to achieve that assurance the valuer must stand back and look at the figure produced in the previous stages of assessment and must consider whether the result is truly a figure which would be paid on such a letting. The contractor's basis of assessment is a method of last resort, where there is no more reliable evidence of value. In principle it should produce the same outcome as a valuation based on other methods, and where there is useful evidence from other methods it ought to be taken into account when scrutinising the valuation at stage 5."

36. It is common ground between the parties that the valuer can consider the actual occupier as one of the potential hypothetical tenants. It is also common ground that there is some scope for having regard to the characteristics of the actual occupier. This is the reality principle. The extent of that principle is controversial as between the parties.

37. We were referred to *National Trust v Hoare (VO)* (1999) 77 P & CR 366 which concerned the rateable value of Petworth House in West Sussex. It had been ascribed a positive rateable value notwithstanding that it was not profitable. The Lands Tribunal, whilst broadly accepting that no profit could be made from the properties, nevertheless held that an "overbid" would be made by the National Trust, who could be treated as a hypothetical tenant, to reflect the great historical and cultural value of the properties, notwithstanding that there was no money to be made from being a tenant of them. That conclusion was reached in the face of evidence that the Trust would not, in reality, consider taking such a tenancy. The decision was overturned on appeal. In the course of his judgment Peter Gibson LJ said:

"The statutory hypothesis is only a mechanism for enabling one to arrive at a value for a particular hereditament for rating purposes. It does not entitle the valuer to depart from the real world further than the hypothesis compels. The Tribunal rightly accepted that in some respects it has to stay in the real world. It looked at the hereditament as it was; it took the actual assets of the hypothetical tenant, in the present case the Trust, into account. In my judgment it erred, however, in failing to take two further matters into account: 1) that all the evidence pointed against any willingness on the part of the Trust to meet from its existing assets net outgoings in respect of any property in respect of which it was considering obtaining an interest; and 2) that all the evidence suggested that the hypothetical landlords would be delighted to be relieved of the task of meeting the net deficit for each of these properties whilst retaining for themselves the freehold reversion and obtaining from the hypothetical tenant a covenant to keep them in repair. As Mr Anderson put it, every £1 of expenditure which the landlord will save is worth no less to him than every £1 of rent which he will receive. The Tribunal, although it had rightly posed for itself the question "what are the characteristics of the hypothetical landlord?" never stayed to answer it."

38. *Newbigin (VO) v SJ & J Monk (A Firm)* [2015] 1 WLR 4817 concerned a proposal to reduce office rates to £1 because of a material change of circumstances, namely, that it was undergoing a scheme of refurbishment which rendered it incapable of beneficial occupation. This Tribunal had accepted the argument but the decision was reversed by the Court of Appeal because of the assumption in paragraph 2(1)(b) of Sch 6 that immediately before the tenancy began the hereditament was in a state of reasonable repair, but excluding from that

assumption any repairs which a reasonable landlord would consider uneconomic. The Court of Appeal held that as it could be repaired economically the Valuation Officer had been right to assume that it was in reasonable repair. Much of the judgment is concerned with whether the works necessary amounted to a repair. However Lewison LJ discussed "the reality principle" in these terms:

> "It is a well-known principle of valuation, not confined to rating, that in principle you must value the property as it stands on the valuation date. This is the principle of reality; or as classicists prefer to call it, the principle that property must be valued rebus sic stantibus. This principle can be displaced by contrary instructions in the statute or contract under which the valuation takes place. In our case paragraph 2(1)(b) is a required assumption which is potentially counterfactual. The issue is whether it applies and, if so, to what extent."

39. Permission was subsequently granted to the ratepayer to appeal to the Supreme Court. Judgment in that appeal was handed down on 1 March 2017 ((2017) UKSC14). In a unanimous judgment overturning the Court of Appeal, the Supreme Court determined that on the facts found by this Tribunal the premises were undergoing reconstruction at the material day, and it was therefore entitled to alter the rating list to reflect that reality.

40. In reality there is no real inconsistency between the two decisions in terms of principle. Both make it clear that the reality principle exists. The statutory hypothesis does not entitle the valuer to depart from the real world further than the hypothesis compels. However, in *Monk*, it was Lewison LJ's view that the statutory hypothesis contained in para 2(1)(b) did compel the VO to assume that the hereditament was in a reasonable state of repair. As noted above that decision has now been overturned.

The views of the valuers

41. Mr Beattie's views are encapsulated in paragraphs 44–50 and 56 of his report and 6 -10 of his rebuttal report. He considers that the most likely hypothetical tenant would be the occupier of Castle Works. He identified a number of factors that would be taken into account by a potential tenant who was not the occupier of Castle Works. These are:

> The fact that they would be taking a tenancy of a hereditament which produced a surplus of 850,000 tonnes per year;
>
> The absence of any profitable market for the sale/export of billet;
>
> The lack of any other examples in the UK or Europe of a successful melt-shop which did not have guaranteed downstream user of the billet produced;
>
> The potential to supply Castle Works – but that there would be no guarantee that they could secure that supply;
>
> Nor would there be a guarantee that there would be a market at Castle Works (i.e. continued operations at Castle Works) throughout the life of the potential tenancy;

The fact that Castle Works could buy in billet from another source at a marginal cost difference to the cost at which it could be produced at Tremorfa Works;

42. Looking at the position from the view of a tenant he would only bid a nominal amount for the tenancy. However, Mr Beattie also considered that there would be a minimum the landlord would be prepared to accept. Thus there would be a necessity to strike a deal or compromise. In his view such a compromise would take into account the tenant's ability to pay - that being affected by the additional costs caused by the separation of Castle Works and Tremorfa Works. He would take a broad brush approach and assess this at 15%. In cross-examination he attributed 5% to the additional costs and 10% to the bargaining position because of the surplus production.

43. Mr Webb accepts, of course, that there is a relationship between Castle Works and Tremorfa Works. However, he does not accept that it is "asymmetric". In his view there are advantages both ways. Whilst it is true that it would theoretically be possible for Castle Works to purchase billet on the open market, the present arrangement is in accordance with Celsa Steel's business model all over Europe and other steel manufacturers. There are advantages of quality, quality control and continuity of supply. In his view the occupier of Castle Works would inevitably come to a deal with the occupier of Tremorfa Works.

44. Mr Webb criticises the lack of detail in Mr Perry's evidence as to the additional costs. In any event, he points out that they comprise only a very small part of Tremorfa Works' overall costs; certainly not enough to justify a reduction in the rental payable because of Celsa Steel's ability to pay.

45. He also commented on the fact that the arguments being used in this appeal were not raised in the 2013 appeal, where it was part of Celsa Steel's case that the inability to produce more than 800,000 tonnes of billet per annum was an under supply because of the combined capacity of the two rolling mills on the two sites. In his view the argument in 2013 that the capacity of the two sites should be looked at together was inconsistent with the arguments being presented in this appeal to the effect that because Castle Works is a separate hereditament there is an oversupply of billet totalling 850,000 tonnes.

46. In Mr Webb's view there is nothing to justify any further stage 5 reduction.

Discussion

47. Perhaps unsurprisingly both Counsel invited this Tribunal to follow the approach of their respective valuers.

48. In our view the subsidiary argument based on the additional costs due to the two sites not being adjacent is not made out for the reasons given by Mr Webb. In particular, the evidence in support of the additional costs is wholly unsatisfactory. It is not contained in the

witness statements and there was no proper opportunity to test it. The figures gave the impression of being plucked out of the air, although Mr Perry did make some attempt in evidence to justify the weighbridge costs. He said that an additional weighbridge was needed and that it had to be manned continuously. Even if the allegations had been established we agree that they represent only a very small proportion of Celsa Steel's overall costs. There is no evidence that they would affect Celsa Steel's ability to pay the rent. In those circumstances we see no basis for a stage 5 reduction on the ground of additional costs.

49. We have no difficulty in accepting that the most likely hypothetical tenant would also be the occupier of Castle Works. Indeed (despite the suggestions of Mr Emmott and Mr Webb) we think it highly unlikely that there would be any other tenant. There are a variety of reasons for this. First Tremorfa Works and Castle Works have always been run as an integrated operation; second there are many of the points made by Mr Beattie. There are no other examples of a successful melt shop without a guaranteed downstream user of its product; the two works are close together and can operate as an integrated operation. The volume of billets that can be produced by Tremorfa Works is precisely that required by Castle Works. Thus Castle Works would have the advantage of a guaranteed supply of quality billets which can be delivered almost instantaneously. We think it highly unlikely that any of the other steel makers would consider taking a tenancy of Tremorfa Works unless they also were in occupation of Castle Works.

50. If our view of the hypothetical tenant is correct most of the points taken by Celsa Steel vanish. There is a guaranteed user for the billets and there is no risk that Castle Works will purchase its billet elsewhere. The operation will continue precisely as it did before. We take this into account under the principle of reality discussed above. It is supported by cases cited by Mr Flanagan in paragraph 19 of his skeleton argument such as *Robinson Bros v Durham Assessment Committee* [1938] AC 321.

51. On this basis most of the arguments suggested by Mr Beattie fall away. The only basis that could be raised to persuade the landlord to reduce the rent would be that there is no pool of tenants and that of itself should justify a reduction under stage 5. However, there are many examples under the Contractor's basis where the occupier is the sole possible hypothetical tenant – Sellafield was cited as a prime example. We do not think that that is sufficient to justify a stage 5 reduction. Thus we agree with the Valuation Officer that there should be no additional reduction in this case.

52. If, contrary to our view, there is a hypothetical tenant who is not also the occupier of Castle Works, we think that the asymmetry arguments have been overstated. In our view the advantages to the occupier of Castle Works in coming to an agreement with the occupier of Tremorfa Works are so strong that some agreement would almost certainly have been reached which would have removed the uncertainties upon which Celsa Steel's case is based. We accordingly think that these uncertainties are more apparent than real. We agree with Mr Webb that they do not justify the making of any further reduction at stage 5.

53. We are therefore satisfied that the rent reasonably to be expected to be agreed on a letting under the statutory hypothesis is that which was determined by the VTW and accordingly, we would dismiss this appeal. The rateable value shall remain in the list at £2,070,000 with effect from 29 January 2007 and £2,170,000 with effect from 1 September 2008 (2005 list) and £2,650,000 with effect from 1 April 2010 (2010 list).

54. This decision is final on all matters other than costs. The parties may now make submissions in writing in the issue of costs and a letter containing further directions accompanies this decision.

DATED 27 March 2017

HH John Behrens

Paul Francis FRICS

ADDENDUM ON COSTS

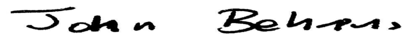
55. Submissions on costs have been received by the respondent seeking an order that the appellant do pay the respondent's costs of the appeal. It was pointed out that the respondent has been wholly successful in this appeal and therefore, in accordance with the general rule as set out in paragraph 12.3 of the Tribunal's Practice Directions, it ought to receive its costs.

56. No suggestion in the alternative has been received from the appellant.

57. There being no grounds for departing from the normal rule, we determine that the appellant shall pay the respondent's costs in the appeal, such costs, if not agreed, to be determined by the Registrar in a detailed assessment.

DATED 13 April 2017

HH John Behrens



Paul Francis FRICS