VALUATION TRIBUNAL SERVICE

Issue 2

May 2006

# Valuation In Practice

VALUATION TRIBUNAL SERVICE

## Legislation

**The Non-Domestic Rating and Council Tax (Electronic Communications) (England) Order SI 2006/237**

This Order came into force on 1 March 2006 and updates the definition of 'electronic communication' to bring it into line with the Electronic Communication Act 2000. However, it makes no change as to how or on whom billing authorities (BAs) may serve demand notices electronically.

**Future Legislation**

**Office of the Deputy Prime Minister's Consultation paper- Proposed amendments to the central list- Local loop unbundling again!**

As reported in VIP issue 1, in December 2005 the ODPM had issued a consultation paper asking for views on local loop unbundling in the telecommunication industry. A summary of the 12 responses made, including that submitted by the Valuation Tribunal Service (VTS), was reported in April 2006. In addition, the ODPM has re issued the original paper and extended the consultation period to 31 March 2008.

*Following recent changes in the cabinet, the ODPM has been succeeded by the Department for Communities and Local Government (DCLG), which comes under the leadership of Ruth Kelly. Phil Woolas, remains the Minister for the VTS.*

## News round up

**Revaluation 2005 – Roger Messenger BSc FRICS IRRV MCIArb, Partner at Wilks Head & Eve Chartered Surveyors**

At an IRRV meeting of the Yorkshire & Humberside and Lancashire & Cheshire Branches, Roger Messenger set out a professional agent's point of view of many of the issues that had occurred following the 2005 revaluation exercise.

He explained that given 1 April 2003 was a relatively good time in the rental market, agents had expected to see serious increases in the rateable values (RVs) between the 2000 and 2005 rating lists. Whilst the agents had no problems with 'low tones', the lower values set in some areas had raised the suggestion amongst some, that this may have been a deliberate act by the Valuation Office Agency (VOA) to reduce the number of appeals. This said, he pointed out that one of the largest increases in RVs had occurred on retail warehouses, which generally had risen by 150%. Moreover, this *(Continued on page 2)*

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**Special points of interest:**

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- *LT decision- completion notice- Spears Brothers v Rushmoor BC 2006 - page 4*

was proving to be a heavy burden to many, given that occupiers of this type of property were currently experiencing a slump.

Roger explained that a lot of ratepayers did not understand that their RV was supposed to equal the property's annual rent and envisaged that most difficulties would occur in 2009, when the present cushion offered by transitional relief expired. He added that many properties such as leisure assessments, pubs, clubs and WCs had never been out of transition and therefore these properties had never paid their full rating liabilities since 31 March 1990.

Roger stated that the 2005 appeal regulations had brought quite a few changes and made the following comments:

1. Appeals against material changes of circumstances (MCCs) still had to be made within six months of the change, but in some cases it had not proved possible to deal with these appeals because the agents had still to make a proposal against their compiled list entries.

2. The removal of a time limit to submit an appeal against a compiled list assessment meant that currently only a third of the number of appeals had been made, in contrast with those made against the 2000 list.

3. Whilst the regulations now required the ratepayer to give the rent passing at the date of the proposal to submit a valid appeal, if the appeal was not made until late on in the list, then this had little relevance to the antecedent valuation date (AVD).

4. Late changes to the 2005 regulations had meant that the VOA's software to allow electronic submission of rent returns, proposals, correspondence and settlement forms had only gone live in October 2005.

5. The VOA's system was still unable to deal with invalid appeals electronically. Additionally, the frustration of their system not being able to accept the insertion of a zero or peppercorn rent had led to some agents to serve manual appeals with a peppercorn sellotaped to it.

6. The agents had discovered that the BA reference numbers were not unique and that the same number had been allocated to different types of properties in more than one area.

7. The present wording of the regulations had created anomalies, especially for mergers. In one case the Valuation Officer's (VO's) decision to merge a £10,000 RV assessment with the main football club assessment of £2 million RV had generated a rate demand of £1½ million due to losses of transitional relief. He added that even the BA had been reluctant to action this change. However, it was hoped that the amended regulations due out in June 2006 would allow the VO to certify a merged figure at the end of the 2000 rating list.

Roger considered the relationship between the VOA and professional agents was possibly at an all time low, and highlighted what he considered to be two of the main problems:

1.The lower appeal rate had caused problems to the VOA in organising their workload.
2. The inability of the VOA to concede reductions below the levels set in their quality control manuals.

He envisaged the impact to be that more cases would appear before valuation tribunals (VTs).

In addressing the VOA's defence of the list, Roger stated that this included setting up 'A Teams' to defend assessments at the VT. The concern to agents was that this could mean that the person taking the case would not have inspected the properties under appeal and, therefore, not be aware of many of the issues being contested. He added that agents were working together in setting up their own defence teams.

Roger expressed his reservations regarding the VTS' approach to move to an 'Appeals Direct' culture for non-domestic rating appeals. He felt that this would require agents to make a second appeal to the VTS following their initial rejection by the VO.

Finally, Roger drew attention to the recent changes in the Lands Tribunal (LT) in respect of its move to a single national Tribunal Service. Such changes would include LT cases being heard by High Court judges with some background in property.

**Failure of the Inter Bank Rating Forum's (IBRF) Appeal Strategy**

Roger Littlewood

At the end of February 2006, Roger Littlewood of the Halifax Bank of Scotland, sent the VTS details relating to the failure of the IBRF's Appeal Strategy for the 2005 revaluation.

The original aim of the strategy had been for members of the IBRF to try to settle any disputes concerning their rating assessments with the VOA without the need to raise a formal appeal. A proposed pilot to consider retail hereditaments had been set up in three Group VO locations to cover South East Group VO (Tunbridge Wells and Maidstone), Leeds Group VO (Halifax and Dewsbury) and Birmingham Group VO (Coventry and Sutton Coldfield.)

The scheme was set to run from January – March 2006, with members providing a schedule of relevant hereditaments including their addresses, RVs and passing rents. The members also had initially agreed to withhold serving appeals. Roger reported that they had received assurances that any discussions would be held on a 'without prejudice' basis, which would not prevent members from making a formal appeal if deemed necessary. However, unfortunately by the end of February 2006, the VOA indicated that they would have to withdraw from the scheme due to a misunderstanding of the IBRF's proposals. Roger expressed his disappointment, but was still keen to draw attention to the excellent relationship that had been built up between the IBRF and the VOA over the last 3-4 years.

**New regulations may help in Council Tax Liability (CTL) hearings.**

CTL appeals involving disputed Houses in Multiple Occupation (HMO) designations might find assistance in the new licensing laws in force from April 2006.

New housing regulations covering HMOs in England mean that all larger properties will need a local authority licence, a fact which may be helpfully indicative in CTL appeals disputing the HMO designation. The rules cover all HMOs with three or more storeys (including attics) and which are occupied by five or more persons forming two or more households. Some 500,000 properties in England are affected.

The regulations entitle local authorities to apply a stricter interpretation of the rules so to require all rented properties within an area to be licensed, not just the larger ones. Authorities can apply a 'fit and proper' test on landlords applying for a licence. While fees for a five-year licence vary between £270 and £1,100 per property, the fines for not having one rise to £20,000.

http://www.odpm.gov.uk/index.asp?id=1151996

**Article from Estates Gazette- Experts to conclude homes should not be built near power lines.**

On 25 April 2006, the Estates Gazette reported that : "Government-appointed experts are expected to conclude that homes should not be built near overhead power lines because of possible links with childhood leukaemia.

A change in planning guidelines is likely to be recommended so homes cannot be built within 230ft of power lines or anywhere that exposes residents to electromagnetic fields of a certain strength.

Two reports will be presented in June containing recommendations on the proximity of power lines to both new and existing houses. There was no new evidence to suggest a link between power lines and childhood cancers although it realised more research needed to be done".

*The question of whether a property's band should be reduced due its proximity to power lines has arisen in the past and these reports may assist VTs in reaching determinations on this issue.*

**Appointment of a Chief Executive for the Welsh VTS**

Our congratulations go to Chris Owen IRRV, the Clerk for the North Wales VT, who has just been appointed as the Chief Executive for the Welsh VTS.

**VTS exhibition stand at the Federation of Small Businesses (FSB) conference**

The FSB has a membership of 195,000 representing small and medium enterprises. Its annual national conference this year was held in Manchester and attracted over 700 delegates. Many of the delegates were branch organisers, recruitment officers and policy officers. There were over 20 exhibition stands from a range of different companies and organisations. The exhibition was open Friday 24 - Saturday 25 March. The Stand Team comprised Lester Bertie (Central Region), Helen Warren (North Region) and Diane Russell (Corporate Development Manager). The Team carried out the planning and organisation of the stand content, and manned it with the help of Grahame Hunt (IT Support).

The main aim was to raise awareness of the VTS as the independent appeals service for business rates. In a flyer sent to all delegates in advance of the event we advertised our stand in terms of an advice service for anyone with queries about their business rates (or council tax). The VTS stand had 112 visitors who spoke to staff and/or took away VTS literature. This represents approximately 15% of all delegates. It was an interesting experience in raising awareness, and we have been promised a feature article in the FSB journal. We have also received a number of requests for VTS leaflets and invitations for VTS speakers to address various Branch meetings.

# Superior Court Decisions

**Spears Brothers v Rushmoor Borough Council –LT 2006**

The owner of a workshop appealed to the LT against a decision of a VT dismissing an appeal against a completion notice served by the BA. The completion notice was issued on 26 September 2003 and stated that the appeal property was completed on that date.

The relevant statutory provisions are contained in Schedule 4A to the Local Government Finance Act 1988, which includes the following provisions:

*"Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is not completed, the authority shall propose as the completion day such day, not later than 3 months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed…*

*Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is completed, the authority shall propose as the completion day the day on which the notice is served…*

*Where a person appeals against a completion notice and the appeal is not withdrawn or dismissed, the completion day shall be such day as the tribunal shall determine."*

At the LT hearing the owner said that as at the 26 September 2003 the building could not reasonably have been completed within three months because there was no permanent electricity supply; no electric wiring; no electric lighting; no power trunking; no fire alarm; no heating; no decoration and the joinery was incomplete. There was only a temporary electricity supply which was insufficient to operate a machine shop.

The BA said that the property was substantially complete in September 2003 as it was watertight, the windows and doors were fitted and the building satisfied the BA's guidelines for deciding whether a property was substantially complete.

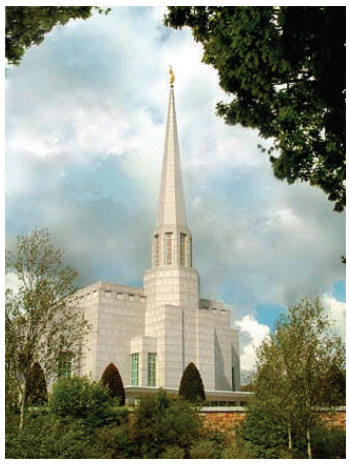
The LT quashed the completion notice. It rejected the appellant's arguments about incomplete joinery, lack of heating and plastering/painting as these could have been provided, respectively, within a few days, independently, or did not render the property incapable of occupation as a workshop. However, the LT held that the lack of electrical wiring and lighting and the absence of a fire alarm system meant that the workshop unit was not complete as at 26 September 2003 and there was no prospect that an independent electricity supply could be made available within three months.

It is interesting to note that the LT quashed the completion notice in the absence of any express legal provision enabling it to do so, as regulations provide that:

"*the Lands Tribunal may confirm, vary, set aside, revoke or remit the decision or order of the valuation tribunal, and may make any order the tribunal could have made*".

Schedule 4A does not expressly give VTs power to quash completion notices. In the light of this LT decision, however, VTs may be inclined to quash completion notices where there is no reasonable prospect of completion within a determinable period of time.

**Gallagher (VO) v Church of Jesus Christ of Latter–Day Saints- LT 2006**



The LT held that only certain parts of a Mormon temple near Preston were exempt from non-domestic rating under the provisions of paragraph 11 of Schedule 5 to the Local Government Finance Act 1988. The property consisted of the Temple itself, the Stake Centre (a large chapel and hall), the Missionary Training Centre, the Patrons' Services Building, the Grounds Building and Patrons' and Temple Missionaries' Accommodation. Paragraph 11 provides as follows:

*"Places of religious worship etc*
11.—*(1) A hereditament is exempt to the extent that it consists of any of the following—*

*(a) a place of public religious worship which belongs to the Church of England or the Church in Wales… or is for the time being certified as required by law as a place of religious worship;*

*(b) a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public religious worship in that place.*

*(2) A hereditament is exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious worship in a place falling within sub- paragraph (1)(a) above, and -*

*(a) is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place; or*

*(b) is used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes."*

Paragraph 11 (3) defines "*office purposes*".

The appeal lay against a VT decision (see LPAC newsletter, issue 2) that:

1.The Temple, the Training Centre and the Patrons Accommodation were exempt under paragraph 11 (1) (b).
2. The Patrons' Services Building and the Grounds Building were exempt under paragraph 11 (2) (a).

The LT held that the Stake Centre was exempt as it was part chapel and part chapel hall. As a chapel it was a place of public religious worship and as a chapel hall it was used for typical church or chapel hall purposes.

The Temple was not exempt as admission to it was restricted and it was not therefore a place of public religious worship. It was indistinguishable in terms of function from the London Temple in *Church of Jesus Christ of the Latter-Day Saints v Henning (VO) [1963] RA 177*.

The activities referred to in para 11 (2) (a) must be activities relating to the "organisation" of the conduct of public religious worship and not just to the conduct of religious worship and the relationship had to be substantial. The rest of the hereditament was not used for activities that related to such organisation of conduct, or did not relate sufficiently to such organisation. Nor did they satisfy the criteria in paragraph 11 (2) (b). Those other parts of the hereditament were not therefore exempt under paragraph 11.

With regard to evidence that VOs had granted exemption in similar circumstances elsewhere, the LT President commented:

" …*since what I have to do is to determine, on the basis of a proper construction of the provisions, the extent to which the subject hereditament attracts relief, it is of no assistance for this purpose to know what valuation officers have done elsewhere since relief may or may not have been correctly given*"

**Parry v Dales District Council High Court 2006**

Mr G Parry appealed against the decision made by the Derbyshire VT that the 'cottage' was his main residence for the period December 2003 to June 2004, even though he did not live in it during that period. He was held liable for 75% council tax. (If he had been held liable as the owner, his liability would have been 50%).

Mr Parry purchased the cottage in 1999, and lived there until September 2002, when he had gone to work in Spain on a two year contract. He rented accommodation and was legally a Spanish resident, paying Spanish taxes.

He let out the cottage unfurnished for two years under a written tenancy agreement from September 2002. At the end of November 2003, his tenant left the cottage and Mr Parry accepted the premature termination of the tenancy. He did not return to the UK but continued to work in Spain. He only returned to the cottage in June 2004 following an unsuccessful attempt to secure alternative employment in Spain.

The following facts were established:

1. He had no matrimonial or family ties in Derbyshire.
2. He did not stay at the cottage whilst employed in Spain.
3. He had greater security of tenure at the appeal property.
4. *Navabi v Chester-le Street DC* had held that a property did not have to be furnished for it to be identified as someone's sole or main residence.
5. *Williams v Horsham* had required the VT to consider all factors and not to attach too much weight to security of tenure and intention to return. It also had to view the situation in a way any reasonable onlooker would.
6. The cottage was his home prior to taking up employment in Spain and he had returned to it once his employment had ceased.

In reaching his decision Mr Justice Stanley Burnton held:

1. The essential submission Mr Parry had made throughout was that during the period in question his main residence was in Spain, not England.

2. The VT had failed to appreciate the judgment in *Williams* that Section 6 (2) of the 1992 Act distinguished between ownership and residence and held that for a property to be a person's sole or main residence, he must reside in it.

3. It was impossible to say that Mr Parry, who went to Spain to work for a minimum period of two years, had a residence in Spain and paid tax there, and did not return to live in the cottage during that period, had resided solely in the cottage.

4. His status for income tax purposes may not been determinative of his liability for council tax, but it seemed to be anomalous that he should have been resident in Spain, paying Spanish taxes and therefore non-resident in the UK for income tax purposes, but mainly resident at the cottage for the purposes for council tax liability.

5. The fact that he intended to return to live in the cottage, could not of itself lead to the conclusion that immediately on the termination of the tenancy on the cottage, it would become his main residence. It was necessary to know when a person intended to return to determine at what date a property became his main residence again. The termination of the tenancy simply removed the legal impediment to Mr Parry being able to reside in it.

6. Mr Parry had not returned to the cottage on the termination of his initial contract but only after he failed to secure alternative employment in Spain.

7. Residence was a question of fact, not simply of law.

Mr Justice Burnton allowed the appeal concluding that during the period in question Mr Parry was the owner within the meaning of Section 6 (f) and not a resident.

**Clockfair Limited v Harrington VO LT 2006**

This was an appeal by the ratepayer against the decision of West Midlands (West) VT confirming the assessment of the appeal property as a casino of £82,500 RV in the 2000 rating list. Mr J P Scrafton appeared for the appellant and proposed a revised assessment of £35,000 RV. The appeal property was originally built in 1940 and had been occupied for many years as a garage/car showroom before being converted into a snooker hall. Further alteration works in 1999 had then changed its use into a casino. On the 1 April 2000 the appeal property had been the only casino in Dudley. The appellant put forward three different valuations:

1.A valuation of £39,000 RV based on statistics comparing the appeal property's assessments in the 1995 and 2000 rating lists, with four other casinos in the West Midlands.
2. A valuation of the freehold interest in the appeal property which had been prepared for capital gains tax (CGT) by the VO in 1996, which the agent had then adjusted to give a value of £35,000 at the AVD.
3. A valuation of £33,500 RV having a regard to the value of other snooker halls.

The VO explained that casinos in the West Midlands had been valued at basic shell rates of £60 to £107.50/m² for the 2000 rating list. His rate of £82.80/m² reflected that the appeal property was at the lower end of the range of values, but not at the bottom.

In reaching his decision NJ Rose FRICS stated, "This is the first occasion when a CGT valuation has been considered by a court or tribunal and I have found that it is an unreliable basis for a rating valuation". The appellant's third valuation was also of little value, given that the appeal property would have required substantial alterations to make it suitable for use as a snooker hall. Therefore, it should be valued as a casino, as the VO proposed.

# Interesting VT cases

**Former offices awaiting residential redevelopment- West Yorkshire VT**

The proposal challenged the appeal property's entry in the 2000 rating list at £144,000RV and asked for a reduction on the grounds:

"The present rating assessment is excessive, unfair and bad in law and should be reduced to £1RV. With effect from 1 August 2003 the property has undergone refurbishment for conversion into residential apartments."

The agent explained that the appeal property was a large six storey detached building of 2533.54m$^2$ with a basement, which had been vacant since 1999. The former occupier, Nat West had remained liable to pay the rent and rates until 2002, when they had paid a reverse premium to get out of the lease.

In June 2002 the appeal property had been marketed widely but it had attracted the interest of only one other developer. The new owner had never had any thoughts to occupy the appeal property as offices. In August 2003 he had carried out a series of preparation/ investigative works at the appeal property. Following investigative work into the condition of the building, he had applied for planning permission to convert the appeal property into 56 residential apartments on 10 May 2004 and full planning permission for this had been granted on 26 July 2004.

The internal photographs that had been presented to the VT showed that some areas of the appeal property had been damaged. However, whilst some had been the result of vandalism, most of the damage had occurred during the exploratory works on the structure of the building.

No further work on the appeal property had taken place since the investigative works had been carried out. This was because a lot of other converted properties currently on the market were unoccupied.

The agent had prepared two valuations for the appeal property as offices, should his request for £1RV fail. He did not consider that this exceeded the scope of the proposal, given that it had been

submitted on the grounds that the present assessment was "excessive, unfair and bad in law". The agent considered that the appeal property had had its day in the real world. However, the question for the VT to answer was whether it had also had its day in the rating world. His preferred alternative valuation at £83,000 RV was based on valuing the office space at £40/$m^2$, with a 12.5% end allowance to reflect disabilities and layout problems and a further 10% allowance to reflect the problems caused by the redevelopment of Bradford centre from 1 April 2004.

The VO assured the VT that prior to the investigative works the appeal property had been structurally sound and able to be occupied as offices. Turning to the definition of RV, the VO highlighted that the second assumption set out that the appeal property must be considered to be in a state of reasonable repair, unless they were repairs which a reasonable landlord would consider uneconomic.

He explained that the appeal property had been valued, in line with comparables, at a rate of £65/$m^2$ for the offices on the 1, 2 and 3 floors, which had been refurbished in 1995 (only three years before the AVD) and had included new suspended ceilings and air conditioning. The remaining offices that had been refurbished in 1973 had been assessed at £50/$m^2$. A 5% end allowance had been conceded to reflect quantum.

To support this valuation the VO made the following points:

The appeal property's valuation at £144,000RV had been agreed with Chestertons Chartered Surveyors on 26 February 2002.

At the material date of the proposal, the appeal property did not have planning permission for it to be redeveloped as residential apartments. Therefore, it should be valued as offices.

The appeal property should not be deleted from the rating list. He drew attention to cases where deletions had been sought on the grounds of serious vandalism and others that were due for demolition following compulsory purchase orders, which had been withdrawn.

He noted none of the seven comparable properties in the immediate locality, valued at rates between £50/$m^2$ and £65/$m^2$ ,had made any appeals on the mcc grounds cited.

In making its decision, the VT made the following observations:

1.At the date the proposal had been submitted the appeal property had no planning permission other than for use as offices.
2.The proposal that had been completed on 10 May 2004 could at best be described as misleading, given it had asked for a reduction to £1RV from 1 August 2003, had also ticked the box for the property to be deleted and had incorrectly stated that on 1 August 2003 the appeal property had undergone refurbishment for conversion into residential apartments.
3. As at 1 August 2003 the appeal property was structurally sound and other than some investigative works having been carried out, it remained as 'office space' even at the present date. Additionally, no costs had been presented to indicate that the damage caused by any vandalism to the appeal property was beyond economic repair.
4. The VT accepted that in the real world some uncertainty could exist as to whether the appeal property had any future as offices. However, the fact that the delay in redeveloping the property principally stemmed from the new owner's wish to reassess the residential market in Bradford at the present time could not be taken into account.
5. The proposal had made no mention of any mcc due to ongoing works and no evidence had been presented to support this contention. No allowances had been conceded for this on other properties in the area. Accordingly, the VT agreed with the VO that no allowance was warranted on these grounds.
6. The VT accepted in principle that two rates should be applied to reflect whether the offices had been refurbished in 1973 or 1995 and noted that the main space rates indicated by both parties' comparables fell within the range of £40/$m^2$ - £77/$m^2$. Therefore the VO's proposed rates of £50/$m^2$ for the '1973' offices and £65/$m^2$ for the '1995' offices, which had also been agreed with Chestertons, seemed fair and reasonable.

*To see a full copy of the reasons search for appeal number 47058619167/244N00 on our website.*

**Toll Ferry & Premises, Hythe Pier, Southampton- Hampshire South VT**

The occupier, White Horse Ferries, challenged the property's entry in the 2000 rating list. The basis of the appellant's case was that he objected to an increase in the assessment from £2,500 RV on the 1995 list to £3,200 RV on the 2000 list, given this was two and a half times the rate of inflation.

At the VT hearing the VO defended the existing assessment pointing out that a valuation based on:

1.Gross receipts would indicate that an assessment of £18,350 RV

was more appropriate.
2. Comparables would indicate an assessment of £14,900RV.

The VO explained that a valuation based on gross receipts was too simplistic, especially given the repair costs that were involved. Therefore, he had asked for account information to be provided to enable him to consider the appeal property's income and expenditure before arriving at its

RV. However, the appellant had not given him this information.

He explained that a report from the council in 2001 had set out that that the pier had required repairs in the region of £1,300,000. However, as the pier played a vital role in providing public transport in this area, the council had responded by meeting 90% of the costs of repairs by providing:

1. £650,000 to cover items requiring early attention; and
2. further grants of £90,000 per annum between 2001-2006.

Accordingly, the VO was confident that the hypothetical tenant would anticipate that the council would meet most of the repair costs when considering his rental bid.

Although the VT adjourned the hearing to allow the appellant to provide the receipts and expenditure information that had been requested, this was never produced. Instead, at the reconvened hearing, a number of other ferry facilities were brought forward, which in the VO's opinion included more modest operations and also indicated that the RV on the appeal property was if anything too low. In addition, the VO pointed out that the fact that the repairs to the pier had been carried out demonstrated that they had not been uneconomic.

After looking at the evidence that had been presented by the VO, the VT agreed that the appeal property's valuation at £3,200 RV was too low. However, as the VO had not asked the VT to increase the assessment, it dismissed the appeal.

*To see a full copy of the reasons search for appeal number 17408143562/176N00 on our website.*

**Sole or Main Residence- West Yorkshire VT**

This appeal followed a notice of objection that had been made by a retired Captain and his ex wife against the BA's decision to treat the appeal property (103A) as a second home from 1 April 2004 and 10 October 2005. The BA had levied a charge of 90% council tax on the basis that the appeal property was unoccupied. Prior to this date the appeal property had been treated as being occupied solely by the ex wife and had attracted a discount of 25%. However the BA understood that the ex wife had moved out in April 2004 to look after the Captain's elderly mother and to run a hotel.

The BA explained that the appeal rested on which property was the Captain's main residence, given that he jointly owned the appeal property with his ex wife and jointly owned the neighbouring property (103) with his carer/friend. Whilst the BA explained that it was not unusual for a person to own more than one property, rarely did the situation arise where the properties in question were adjacent and in joint ownership with others.

The BA's decision to treat the Captain as being resident at 103 rested on the fact that this had been his declared place of residence for many years, and it was where he received 24 hour care from the other resident and joint owner. The BA did not question the Captain's right to move between the two properties as he pleased.

The BA also accepted that the Captain regarded both properties as his home and considered himself as head of his family, which included both his carer and ex wife. It was clear from the answers provided that the Captain controlled the household budgets and gave both his carer and his ex wife an allowance of £50 each week to cover their food and personal needs. The BA was also aware that due to his carer's age, she was no longer able to claim a carers allowance and that this was now being claimed by his ex wife.

The Captain explained that originally all three of them had lived together at the appeal property. However, 103 had been purchased two years later. He had eight children, two of which were his carer's, whom he had adopted.

The Captain explained that due to various ailments he had retired from the Army in the 1960's and he received a number of pensions and benefits. He believed that he had reached an agreement with the Council's Housing Benefit Fraud Officer in 1994/95 that he lived between both properties, but should be treated as occupying 103. He was happy for this arrangement to continue until 1 April 2004, when his ex wife had moved out .

The Captain presented the VT with a series of photographs and explained how he occupied the two properties.

1. His bedroom was located in the appeal property. The Captain drew attention to his TV, special bed, ensuite shower room and the wardrobes that were full of his clothes. Also in the appeal property were his workshop, soldiers' room and train track in the attic, which together with his bedroom, made up 'his world'.

2.His ex wife's and carer's bedrooms and bathrooms showed that they all had independent facilities. The ex wife's rooms were in the appeal property and his carer's in 103. However, if he required a bath he would use the one in 103.

3. He spent very little time in 103, as it was much smaller and had no dining area. The appeal property had a dining area, a children's room, the main lounge and his storeroom.

4. His external train set was in the gardens of both properties.

5. He had been on the electoral role at the appeal property since autumn 2004. All of his mail came to the appeal property. He was registered at the doctors and received his prescriptions at the appeal property.

6. His main concern was to bring an end to the dispute. However, under no circumstances did he wish the Council to imply that his carer and he had been cohabiting 103.

The VT first considered any precedence set by case law concerning the determination of a person's main residence. In particular it found the Court of Appeal decision of *Williams v Horsham DC (2004)* to be very useful, as this had examined all of the previous case law and gave guidance.

The VT then turned to the facts that had been presented in the unusual case before it. The two properties under consideration were next door to each other and the Captain owned a 50% share in each property. He saw both properties as providing his home, with him living between both of them. Whilst his ex wife and his carer lived at the appeal property and 103 respectively, both came under his care as head of household. However, he had indicated that neither of them was or should be treated as occupying the title of his spouse. Therefore, the residency of his ex wife or his carer in either the appeal property or 103 did not help to determine where the Captain's main residence was.

Whilst the VT had only been asked to consider the position from 1 April 2004, it made the following observations:

1. From the evidence presented there had been no change in the way that the Captain had used either the appeal property or 103 before or after 1 April 2004.

2. A person's main residence should not be determined or changed purely on whether there was any greater financial benefit for either the appellant or for the BA.

On balance, the VT considered that there were more factors to determine that the Captain's main residence should be treated as being at the appeal property than 103.

Therefore, the VT allowed the appeal and ordered the BA to determine the following charges for the appeal property for the following periods:

1 April 2004 – 9 October 2005 – 75% charge based on this property providing the main residence of the Captain.

10 October 2005 – 100% charge, given that from this date it provided the main residence of the Captain and his ex wife.

*Council tax liability decisions do not appear on our website.*

**Truro college– Correction**

**In issue 1 of VIP we stated that the VT decision in the Truro College case had not been appealed to the LT. It later became apparent that the VO had in fact made an appeal but the LT Registrar had failed to inform the Clerk of the receipt of the appeal. Written confirmation of that receipt was sought and recently obtained. We apologise for unintentionally misinforming readers.**

VALUATION TRIBUNAL SERVICE

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**Any views expressed in this newsletter are personal views and should not be taken as legal opinion.**

## And finally...

We draw attention to two old articles, which have appeared in local papers concerning VTs:

**'Guitars make TV dance'**

Mr W applied for a reduction in his rates because of his proximity to a working men's club, which meant that his TV picture was distorted whenever a band appeared at the club. He also complained about the alleged nuisance of people using the club car park late at night. In rejecting the appeal, the chairman of the valuation court stated that a reduction had to fail as the current assessment of £32 RV did not reflect that Mr W's home had a bath and hot water system!

**'Wise men on rating panel now rated too old for the job'**

In 1976 a local paper reported that 19 of the 21 members of the valuation court had been ruled too old to continue to sit. Mr M, a former Lord Mayor, who at 85 was 13 years over the limit stated: "it's sad to think I've been pensioned off after all these years, but if I'm too old, I'm too old. I don't feel it...and I've a few other things to keep my time occupied."


**We record our thanks to our contributors.**