VALUATION TRIBUNAL SERVICE

Issue 3

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Valuation In Practice

VALUATION TRIBUNAL SERVICE

Legislation

Council Tax (New Valuation Lists for England) Act 2006 May RVR

This Act removes the requirements set out in the Local Government Finance Act (LGFA) 1992 for there to be a council tax (CT) revaluation in England on 1 April 2007, and then at intervals of not more than 10 years. It replaces these requirements with a power for the Secretary of State to set any future revaluations following the agreement of a resolution in the House of Commons.

Future legislation changes to Class G exemption

The legislation will be changed from 1 April 2007 to make it clear that Class G will apply where a planning restriction prevents occupancy. This decision follows the outcome of the consultation process.

A summary of the responses the Department for Communities and Local Government (DCLG) received is available on: www.local.communitites.gov.uk/finance/ct.htm.

Stop press!! DCLG consultation paper on amendments to CT and NDR legislation (England)

Responses by 31 October 2006. www.communities.gov.uk/index.asp?id=1502036

This latest consultation paper asks for responses on minor changes that would update financial limits, and definitions, change the effective date of increased liability where the List has been amended, and make changes relating to demand notices.

News in brief

Valuation Tribunals – consultation on modernisation and reorganisation

The DCLG has published a consultation paper asking for views on the following proposed changes to the valuation tribunals (VTs):

- the amalgamation of the 56 tribunals to one VT for England;
- the creation of one president and a number of vice presidents; and
- appointments to be selected by the Judicial Appointments Commission and made by the Lord Chancellor.

The consultation period closes on 8 September 2006. A copy of the paper can be found at: www.communities.gov.uk/index.asp?id=1017165

The Non-Domestic Rating (NDR) Alteration of Lists and Appeals Amendment Regulations 2006

The regulations are still expected to come into force on 1 October 2006.

The preliminary results of the consultation exercise undertaken in January and February 2006 have been collated by the DCLG and draft regulations are expected shortly.

Inside this issue:

Special points of interest:

- *LT decision Mohammed V Walker VO - page 2-3*
- *VT decision Power Station at Malton - page 6-7*

The impact of changes to child benefit on disregards for council tax

Changes to the rules on child benefit means that in certain circumstances it is now payable in respect of 19 year olds. The DCLG in its Council Tax Information Letter 2/2006 states:

"It is our view that, under Schedule 7 to the Local Government Finance Act 1992, (these) 19 year olds will fall to be disregarded for CT purposes".

Business rates (Civil Penalties) (RVR June 06)

On 11 May 2006 Mr Phil Woolas, Minister for Local Government and Community Cohesion, reported in the House of Commons that 809 Civil Penalty notices had been issued by the Valuation Office Agency (VOA) for failure to provide information requested for NDR. The total amount collected since these penalties were introduced was £178,350. All penalties had to be paid into the consolidation fund, which could not be accessed by the VOA.

CT overhead power lines- (RVR July/August 06)

In June 2006 Mr Phil Woolas reported in the House of Commons that neither the VOA nor the Valuation Tribunal Service (VTS) had made an overall assessment of the potential effect of overhead power lines on the valuation of domestic properties for CT purposes nor had any specific guidance been published by them. He stated:

"Whether the existence of overhead power lines would affect the open market value of a dwelling, on which the council tax is based, is a question of fact and degree in individual cases. Such matters would be considered by listing officers and, if their decision on banding were subject to an appeal, by valuation tribunal panels, on a case by case basis".

"Whether the existence of overhead power lines would affect the open market value of a dwelling, on which the council tax is based, is a question of fact and degree in individual cases."

A summary of a CT valuation decision which included the consideration of two pylons that were situated close to the appeal property is contained on page 8

Proposed Amendments to Small Business Rate Relief (SBRR) scheme

Proposals to make it easier for small businesses to apply for SBRR have recently been considered. A consultation paper setting out the different options was available at www.communities.gov.uk. Comments were requested by 28 July 2006.

Superior Court Decisions

Mrs Mohammed v Walker (VO) LT 2006

This case concerned a shop and premises known as 1-3 Marine Parade, Whitby, North Yorkshire, which had originally been entered into the 2005 draft rating list at £15,750 RV. However, following a review of all of the rateable values in Whitby town centre, the VO had made 100 alterations to the assessments in this area and had increased the appeal property's assessment to £25,500 RV from 1 April 2005. Mrs Mohammed had appealed to the VT against this figure, but her appeal had been dismissed.

The appeal property comprised the ground floor of an imposing four storey building which had originally been constructed as a brewery.

The appeal property had a number of disabilities including:

- part of its frontage on the harbour side had no display windows and limited natural light;
- it had an irregular layout, varying floor levels (reached by six and seven steps) and pillars; and
- part of the area within Zone C was masked .

The LT member N J Rose FRICS agreed that the Zone A value should be £300/m². However, he considered that the VO had significantly underestimated its lack of display frontage onto Marine Parade and determined that an end allowance of 50% was appropriate for this part of the shop. (continued on page 3)

Although he accepted that the VO's 15% end allowance reflected the differences in levels between the shops, the dividing walls and pillars, he considered the VO's offer of 2.5% for the masked area in Zone C to be insufficient and increased this to 10%.

Whilst the appeal was allowed in part, N J Rose **rejected** Mrs Mohammed's suggestions that:

- The fact that the billing authority had initially issued a demand on the appeal property's draft entry in the rating list of £15,750 RV should prevent the VO from subsequently revising the appeal property's assessment. He explained that the VO's authority to increase the appeal property's assessment was in line with the LT decision *Corus UK Ltd v VOA (2002)* RA1.
- The VO should be unable to give evidence as an expert witness, as he was a party to the dispute. He explained that the VO had a duty to maintain an accurate list and, to comply with that duty the VO must act as an independent expert.
- Parking charges which did not come into effect until a year after the material day could be reflected in the valuation.

The appeal property's assessment was reduced to £18,500 RV.

Sewage case- LT decision

Winchester CC appealed to the LT against the decision of the Hampshire North VT to retain entries for the sewage treatment works at St. Andrews Green, Southampton (RV £650) and Southbrook Lane, Winchester (RV £4,225) in the 2000 rating list. At the hearing, Mr J P Scrafton, Solicitor, appeared for the appellant, and Mr T Mould, instructed by Solicitor's Office, HM Revenue and Customs, for the respondent. The parties had agreed a statement of agreed facts and evidence, but there remained three principal issues between them:

1.Did the two sewage works comprise domestic property within the meaning of section 66 (1) (b) of the LGFA 1988, and therefore they should not be held to be rateable?

The LT found that neither sewage treatment works fell within the curtilage of any of the dwellings it served. Whilst "the right to use" passed on conveyance, it was the physical hereditament comprising the sewage treatment works that had to be within the curtilage of the dwelling (or dwellings) if it was to be classed as an appurtenance. It was noted that:

- St. Andrews Green – each dwelling stood on its own plot, within its own boundaries and had its own curtilage whether it was freehold or held on a tenancy from the same landlord as houses on either side of it. Whilst the sewage treatment works appeared to adjoin the curtilage of No 1, they were not in the same curtilage, no more than No 2, which it also adjoined.

- Southbrook Lane – the sewage treatment works was well away from the 58 dwellings it served. Each of the 58 dwellings appeared to have their own curtilages with the works not lying within any dwelling or group of dwellings it served.

2. If the works were rateable, should the contractor's basis be applied using a modern substitute comprising a series of individual septic tanks in the gardens of the houses currently served by the appeal hereditaments?

The LT determined that whilst the consideration of a modern simple substitute was a tool for the contractor's valuation, a hereditament must be valued '*rebus sic stantibus'*. The substitute therefore must bear a sufficient relationship to the hereditament in question to be a useful method of valuing and not some other quite different hereditament.

3. If the direct replacement of the existing structures had to be assumed, what deductions should be made at Stage 2 (obsolescence) and Stage 5 (stand back and look stage)?

Stage 2

Both experts were in agreement that the *Monsanto Plc V Farris (VO) (1998*) case was a helpful starting point. However this decision related to a very substantial chemical works and the appellant's valuation had made no adjustment to reflect the characteristics of the appeal hereditament. The LT preferred the VOA's scale of allowances as they had been widely accepted in negotiations on the 2000 list assessments for sewage treatment works throughout the country. This meant the obsolescence allowances for St Andrews Green was determined at 12.5% overall and for Southbrook Lane at 5.6% overall.

Stage 5

Both parties relied on *Eastbourne BC and Wealden DC v Allen (VO) (2001).* However, the LT considered that there was no evidence to support the contentions of the appellant that access to Southbrook Lane was less than adequate for its purpose, or that the St Andrew's Green works would have been designed differently if it had been originally intended to serve nine houses rather than ten. The two further matters referred by the appellants – the inability to charge a sinking fund for the eventual replacement of the works and the alleged unfairness of the CT system on householders without mains drainage - were not considered to be facts that would influence the bid of a hypothetical tenant of a sewage treatment works on a year to year basis.

The appeal for St Andrews Green was dismissed (RV £650) and that for Southbrook Lane allowed to the extent conceded by Mr. Handcock (VO Special Rating Unit) (RV £4,000).

"The substitute must bear a sufficient relationship to ….be a useful method of valuing and not some other quite different hereditament."

Tretton's Treats

David Tretton

David Tretton, Director of Rating at the VOA expresses his views in providing his quarterly update of recent cases.

Lands Tribunal decision

Nissan Motor Parts BV v Reeds (VO) Magna Park, Leicestershire

This case involved a car parts distribution warehouse with a number of claimed disabilities: the principal one being the relatively small number of loading doors and absence of dock levellers. At VT a 10% allowance was awarded. The agents appealed claiming that an allowance of approximately 25% was merited. Although the VO thought that there should be no allowance and attempted to make a late cross-appeal, this was ruled out of time.

The case was heard over five days in December. The VO Counsel called evidence from the VO and a building surveyor. The appellant's Counsel called evidence from the occupier and two valuation experts.

The VO was successful on all counts with it appearing that the LT considered the assessments on the low side: the appellant's case being dismissed. However, as the VO was not allowed to cross appeal and appeared as respondent only, the VT figure was, in effect, confirmed.

VT decisions

Sewage Treatment Works - Severn Trent - Sludge Digesters- Overcapacity.

The appellant acting for Severn Trent Water Authority contended that sludge digesters present on sewage treatment works were exhibiting overcapacity by virtue of a change in industry standards announced in 1998.

Prior to 1998, sludge was held in the digesters for approximately 20 days at 20 degrees Celsius. The new standards require sludge to be held at a higher temperature in order to neutralise a higher proportion of harmful bacteria, which in turn permits the sludge to be treated in a shorter period of time, around 12 days. The appellant contended that

the overall volume of received sludge had not materially altered and as such the digesters exhibited overcapacity, which was quantified at around 30%.

The VO argued that capacity was required in the industry to deal with peaks and troughs so no allowance was warranted.

The VT decided an allowance of around 9% on the Actual Replacement Cost (ARC) of the digesters was justified.

Farm Attractions

The Surrey VT heard appeals against the assessment of the farm attractions at Horton Park and Godstone Farm.

The agent for the ratepayers argued that the hereditament comprised only the pertinent parts that were accessible to the public and that the rental method of valuation should be used to arrive at the assessment. The VO's valuation was on the receipts and expenditure basis as no reliable rental evidence was available for farm attractions.

The VT confirmed the VO's approach and valuations. Further, the VT accepted that the hereditament comprised the whole of the premises in the same occupation. Therefore, the whole premises had to be valued in the first instance before allowances were made to reflect any part of the hereditament which may be exempt as agricultural land or buildings under Schedule 5 LGFA 1988.

Church of Jesus Christ of Latter Day Saints (CJCLDS) – 751 Warwick Road, Solihull

Appeals by the Church seeking exemption of their Solihull Head Office under the provisions of paragraph 11(2) Schedule 5 LGFA 1988 had been adjourned on two previous occasions because the Church had failed to produce information relating to their corporate structure and use of the hereditament. The appeals were re-listed for VT on 16 January by which time sufficient information was forthcoming from the Church for the VO's Counsel to decide that the occupation by CJCLDS (Great Britain), an unlimited company with objectives relating to the promotion of religion, was sufficient to pass the first hurdle in sub paragraph (2) relating to the "organisation responsible for the conduct of public religious worship".

As the premises were used as office accommodation and the European headquarters of the CJCLDS (although some work carried out by the company related to other companies owned by the 'Church') exemption was conceded under paragraph 11(2) (b) and (3) of Schedule 5.

However, because DTZ Tie Leung had served the proposals on the VO in March 2004 this was not the end of the appeals. Regulation 13A (8A) only applies to deletion of entries in the rating list ***"since the list was compiled".*** In this case it was argued (one of the proposal grounds) that the hereditament was exempt on compilation day but sub paragraph (8A) only applied if the hereditament was exempt after the day the list was compiled and this meant that the provisions contained in sub paragraph (2)(a)(iii) applied. Therefore, the only effective day the VO could agree was the first day of the financial year in which the proposal was served, 1 April 2003.

The Church would not accept this legal interpretation and referred to other settlements where VOs had backdated the effective day to the start of the list. It was accepted that this was a very common error and VOs should note this when considering sub para (8A) as the vehicle for backdating. The VOA's Material Effective Date Indication Chart (MEDIC) sets out the guidelines that VOs should be applying.

At the hearing the Church's Solicitor argued that the VT had power to backdate to 1 April 2000 even though the VO did not. He relied upon:

Regulation 44(1)

In this case there was a disagreement under regulation 12 and the VT had the power to make a decision under the Local Government Finance Act (LGFA) 1988. Schedule 5 of that Act granted exemption to this property. Therefore, since the VT had power to make a decision under the Act, they could make a decision under Schedule 5 to delete the entry from 1 April 2000.

Regulation 13A (12)

This gave the VT power to set an effective date if the list was inaccurate. This could either be done as a springboard from their own decision in this case or from another case. For example, they could use the VT decision in relation to Lister House, Leeds, which had been granted exemption from 1 April 2000. This was the deletion of a comparable property and therefore a deletion in this case should be from the same date.

The VO relied upon the wording of the regulations and argued that if the effective date could be amended under Regulation 44 it undermined the very regulations which parliament had set to govern effective dates. The VT's decision was reserved.

The VT's decision is reported on page 7

Anglian Water Laboratory Cambridgeshire

On 10 February, the Cambridgeshire VT gave a decision concerning offices at an Anglian Water Laboratory located on an industrial estate in Huntingdon, which the VO claimed was an excepted hereditament which ought to be in the local list. The VT made an order requiring the VO to delete the assessment in its entirety and to insert a similar hereditament and RV in the Central List. The VO has been advised to apply to have the decision reviewed and set aside. Depending on the outcome, the excepted hereditament question may proceed to the LT in due course.

Masts-Causal Link

The East Wales VT determined that an appeal on a mast in its areas was invalid due to lack of a causal link with a Devon mast VT decision. The agent argued the link was the vacation of a site sharer. The mast valuation had previously been agreed with a restricted effective date and the new proposal, on the back of the Devon VT decision, was an attempt to go back beyond the effective date restriction without there in fact being a material change of circumstances. The VO argued that in order for the proposal to be valid there had to be the removal of rateable plant and machinery, as had occurred in the Devon VT case. The mere vacation of a site sharer was not enough.

Vacant offices in single ownership - Part 4th and 6th Floors, Celtic House, Part Ground Floor, Saxon House, Heritage Gate, Derby, DE1 1NL

On 13 October 2005 the Derbyshire VT merged three vacant office assessments into one assessment as they were in the same ownership and considered to be within the same curtilage. This decision relied in part on precedents set by the VO incorrectly merging comparables assessments based on ownership without due consideration of the rateable occupier and extent of occupation.

The three assessments comprised an office on the ground floor of a multi storey block (Saxon House) and offices located on the 4th and 6th Floor of the adjoining block (Celtic House), separated by the 5th floor in separate occupation.

I believe the VT's decision was contrary to the principles identified in *Gilbert (VO) v Hickinbottom & Sons (1956) 1 RRC 46 CA,* namely that properties in a single occupation and contiguous are usually to be treated as a single hereditament. Whilst the owner was identified as and agreed to be the rateable occupier, the three vacant parts were not contiguous (touching) or within the same curtilage.

They were physically separated from one another by other properties in different rateable occupations.

Had this decision been left to stand it could have been cited to support further such mergers elsewhere and would have resulted in completely artificial assessments based on ownership rather than the rating hypothesis.

The VO appealed to the LT (RA/59/2005 Mr R J Ebury (VO) v Smith Partnership).

Following Counsel's advice the respondent agreed the case would be settled by consent order reinstating the three separate units of assessment with no order to costs.

The comparables quoted at the VT hearing have been reviewed and correctly assessed.

The Music School Culver Road Winchester SO23 9JF

The appeal arose from a proposal to merge nine hereditaments, all occupied by Winchester College into one, thus bringing all the premises occupied by this public school into one hereditament. The hereditaments would have been contiguous were it not for the fact that they were separated by public roads.

The agent therefore relied upon there being an essential functional connection between them. The VT was impressed by the extent and regularity of movement between the buildings. It was also satisfied that in this public school all the premises were functionally interdependent, and that this interdependence was sufficient to unite the nine premises, which were separated from each other by distances not exceeding 20 metres.

Interesting VT cases

NDR appeal- Scottish Power, Power Station, Malton- North Yorkshire VT

The North Yorkshire VT was asked to consider whether the limited gas supply available to the appeal property could be taken into consideration when determining its entry on the 2000 rating list.

Both parties accepted that the appeal property:

- should be valued in accordance with the Electricity Supply Industry (Rateable Values) (England) Order 2000;
- was capable of generating 41 megawatts; and
- was unique being the only power station that solely used natural gas from underground wells.

The issue in dispute was whether the appeal property's Declared Net Capacity (DNC) could be adjusted to reflect that faults in the gas field restricted the supply of gas substantially so as to reduce the amount of power it could produce to 22.95 megawatts.

DNC is defined in the legislation as:

"the highest generation of electricity at the generator terminals which can be **maintained indefinitely** without causing damage to the plant, less so much of that generation as is consumed by the plant, expressed in megawatts to the nearest one hundredth part of the megawatt and calculated on certain assumptions".

The agent argued that the drop in gas supply was relevant, given that 41 megawatts could not be 'maintained indefinitely' without causing damage to the plant.

The agent cited a decision concerning a hydropower station at Dolgarogg, where the North Wales VT was of the opinion that 'maintained indefinitely' meant

that the power station should be capable of running at an output sustainable throughout the reasonable expected life span of the turbines.

The VO had previously conceded a reduction in the appeal property's assessment between 10 October 2000 and 31 March 2001 to reflect that the supply of gas during this period had limited the appeal property's output to 23 megawatts.

The agent considered the appeal property's reliance on its own gas supply was unique and could not be compared to a coal burning station where an interruption in a coal supply from one source could be met by obtaining coal from another source. The legislation also set out that it was only in the case of power stations that were generated by either water or wind that one had to assume that they were in receipt of the maximum power at all times.

After re-examining the legislation, the VO believed that he had previously made a mistake in reducing the appeal property's RV; the depletion in the on-shore gas field was not a factor that could be taken into account. In his opinion the formula did not let him differentiate between the appeal property and a power station that was constantly supplied by a gas connection to the national network. The existence of the Statutory Instrument (SI) meant that electricity generators in England were not subject to the conventional rules of valuation for non-domestic rating, which could allow the constraints on the appeal property's gas supply to be taken into account.

He argued that the DNC must reflect the maximum capability of the plant and to achieve the highest generation one would have to have an adequate supply of gas. The Oxford English Dictionary definition of 'indefinitely' meant for an undefined period or for an unspecified period; it did not mean 'forever' or 'for a year' or 'for a day'. He drew an analogy between the appeal property's operating at less than 41 megawatts and a pint glass; even if the glass contained less than a pint of liquid, it still remained a pint glass.

The VO then drew attention to landfill gas generator sites where their gas yield tended to decline as the organic content of the site progressed to full decay. Whilst numerous challenges had been made against the formula assessment of landfill gas generators citing reductions in methane gas and seeking reductions in their DNC, no reductions had been conceded and all such proposals had been withdrawn.

Finally, the VO questioned the relevance of the North Wales VT decision given that it related to a hydropower station and the key problem in that case was that damage was more likely when the water flow was at its highest. In the appeal property's case, the problem was the drop in the level of gas to power it.

During cross examination, it was established that landfill gas generator sites were much smaller than the appeal property, generally producing 2-5 megawatts of power. The agent also indicated that the only reason the appeals on the landfill gas generator sites had been withdrawn was due to the high costs associated in pursuing these cases any further.

In its decision the VT considered whether the fact that the definition of DNC made no direct reference to a maximum supply of gas, allowed the appeal property's accepted capacity of 41 megawatts to be adjusted to reflect that it was unable to operate at full capacity due to a lack of a constant gas supply.

In its opinion the North Wales VT decision was not particularly relevant, given that in the appeal property's case there was no question that the station would suffer damage if they had the necessary gas supply to run at 41 megawatts. Equally, the VT considered the VO's reference to landfill gas generator sites offered little assistance given that these generated only 2-5 megawatts of power. Also the agent had informed the VT that the appeals asking for reductions in the assessments of landfill sites because of a decline in methane gas had not been pursued for economic reasons.

The VT considered that the spirit of the legislation implied that one should envisage enough gas to allow the plant to produce its highest generation of electricity. This was supported by the fact that wind and water power stations, like the appeal property, would be unable to work at maximum capacity all of the time, yet it was clearly set out that the wind and water flow had to be assumed to be at a level to enable the highest generation of electricity. The VT also considered that the absence of any reference to a constant supply of gas in the SI probably stemmed from the fact that in all other cases power stations were linked to the national network where the lack of a supply would not be an issue.

Accordingly, whilst the VT had sympathy with the problems that the ratepayers for the appeal property had encountered, it could not see any means by which a reduction could be conceded under the 2000 rating list regulations, which valued power stations on a formula that looked at potential and not necessarily its actual output.

Due to some sensitive information in this decision, the agent requested that it should not appear on our website.

NDR appeal- Church of Jesus Christ of Latter Day Saints (CJCLDS) – Coventry and Solihull VT

The only issue in dispute was whether the VT had the power to give effect to the exemption of the Church's office and premises from 1 April 2000, when a proposal had not been made until 29 March 2004. In reaching its decision the VT examined:

- regulation 13A of the NDR (Alteration of Lists and Appeals) Regulation 1993 (as amended); and
- regulation 44 of the same regulations.

The VT concluded that regulation 13A specifically referred to situations where a hereditament had, *since the list was compiled,* become exempt. Therefore, as the appeal property was in fact exempt at the date the list was compiled this regulation could not apply.

The VT noted that paragraph 1 of regulation 44 stated that a VT "may, subject to paragraph (4), require a valuation officer, in consequence of the decision, by order to alter a list in accordance with any provision made by or under the Act." It was clear therefore that any order the VT made, other than under paragraph (4), *must be in accordance with the provisions made by or under the Act.*

Paragraph (4) limits the order a VT can make for an alteration to the list where the rateable value determined is higher than the amount shown in the list at the date of the proposal or the amount contended for in the proposal. In these circumstances, the VT can only order that the list be altered from the date of the VT's decision.
However, this was clearly not applicable in this case.

The VT concluded that it must follow the rules, unless there were any other specific provisions made by or under the Act that permitted it to go outside of this. The VT was not persuaded that any such provisions were applicable that could apply in this appeal. It was suggested at the hearing that paragraph (7) of regulation 44 might permit the VT to exercise jurisdiction beyond that allowed by regulation 13A.

The VT considered that paragraph (7) did not specifically detail circumstances outside of those already dealt with by provisions made by or under the Act and could not be read to allow any such provision to be incorporated. Instead paragraph (7) allowed matters ancillary to the subject matter to be dealt with.

Furthermore, as the effective date for this alteration was a fundamental matter in this appeal, it could not be considered to be a matter that was ancillary to the subject matter.

Therefore the VT determined that the earliest date the exemption could take effect was 1 April 2003.

A full copy of this decision can be found on our website – appeal no 46258532774/222N00

CT Liability- Class S exemption appeal- Lancashire VT.

An extremely sensitive appeal involving three Class S exemption applications has been determined by Lancashire VT. Finding for the appellant, the decision overturns a decision of the BA, which held that CT was payable by the appellant on three of six flats in a house, respectively occupied by two 13-year olds and a 15-year old. The BA had continued to regard the three flats as empty and the appellant owner (who was the parent of the children and who lived elsewhere) as being liable for the CT.

The VT held that the wording of the particular exemption was unambiguous; that liability to the tax did not arise where a dwelling was occupied solely by persons under 18-years of age.

But the VT was concerned that its straightforward interpretation might give rise to an absurdity; to a reasonable person how can a 13-year old safely occupy a dwelling? In adopting a subjective approach to this concern, the VT said that any issue of absurdity had to be addressed in light of the particular facts. The facts of this case, few of which can be reported here, are that that the children's best interests are served by this arrangement and so the potential issue of absurdity (in the mind of the reasonable person) does not arise.

CT liability decisions do not appear on our website.

CT banding appeal- proximity of power lines- South Yorkshire VT

In July 2006 the South Yorkshire VT heard a case concerning a three storey semi detached house that had been placed in Band C. As well as disputing the banding on the

basis of the sales of comparable properties, the appellant drew attention to the fact there was a pylon 110 metres from the front of the property and another 233 metres away from the rear of the property. In his case he referred to the following facts:

- The appeal property did not have a larger living space than the comparables. However, the listing officer's (LO's) use of external measurements suggested this. He pointed out that a lot of the property's internal space was taken up by it having staircases up to the first and second floors.
- None of the comparables overlooked pylons. The only window which would not afford him a view of a pylon was his bathroom window, which had frosted glass.
- Whilst the location of both of the pylons had been referred to on the survey that had been carried out on the appeal property prior to purchase, they had not received any indication that they should not consider buying it due their close proximity.

In its decision, the VT accepted that:

- The LO measured all properties having regard to their external areas. However, the external measurements of a three storey house were only directly relevant when one was comparing it to another three storey property.
- The sales evidence presented indicated that the appeal property was a borderline case.
- A property's sale price would reflect all advantages and disadvantages that would be apparent to the purchaser. Accordingly, the fact that that the appeal property overlooked pylons to the front and the back would have a negative effect on its capital value.

Therefore the VT allowed the appeal and ordered the LO to amend the appeal property's entry in the valuation list to Band B.

A full copy of this decision can be found on our website- appeal no 4415402981/257c

Welsh News

On the 3 January 2006, the VT (Wales) Regulations 2005 came into force establishing the Valuation Tribunal Service for Wales (VTSW) and its governing Council. This followed representation from the Council of Wales VTs for a more formal and centralised structure to the Services. The VTSW is now the employer of all staff serving the North, South, East and West Wales VTs and can determine that the roles of the Chief Executive and Clerks can be delegated to other staff within the service.

The new regulations set out:

- Where the appellant is a member of a Welsh VT, the VTSW will appoint another Welsh VT to deal with the appeal.
- Where the appellant is an employee, the appeal will be dealt with by a Special Tribunal.
- In cases where it is perceived that there is a "Conflict of interest" or it is not appropriate for the Welsh VT to deal with it, the President will notify the VTSW who will appoint another Welsh VT to deal with it.
- The VTSW can set up Special Tribunals to deal with the appeals of a former member/ employee of an old VT where the President determines that a Welsh VT will not hear it. This includes appointing one of the Clerks of the Welsh VTs to serve on the Special Tribunal.

Fair, effective and efficient

VALUATION TRIBUNAL SERVICE

LPAC Team
Phil Hampson
Brian Hannon Tech IRRV
Diane Russell BSc MCLIP
David Slater IRRV
Helen Warren MA (Hons) IRRV –Editor
Gwen Hazell BA (Hons) - Graphic Design
Grahame Hunt - Graphic Design, IT support

Chief Executive's Office
VTS
Block One
Angel Square
1 Torrens Street
London
EC1V 1NY

Tel no. 0207 841 8700
Fax no. 0207 837 6131

www.valuation-tribunals.gov.uk

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

And finally...

Following the recent British Open it seemed fitting to report on a VT case that was heard in November 1956, which concerned a man who lived near to a golf course. The two grounds on which the appellant sought a reduction were that his car had been hit by golf balls and that he was prevented from holding cocktail parties.

Mr S said: "I can't hold cocktail parties at home because there are no parking facilities. And then there are the golf balls. Local golfers realise the hazard when they drive over the road, but in the summer visitors drive without realising the danger."

Regrettably for the appellant the 'ball did not drop'; the appeal was turned down with the VT noting that his house was already £20 RV below the value of his neighbour's!

We record our thanks to our contributors.