VALUATION TRIBUNAL SERVICE

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VALUATION TRIBUNAL SERVICE

Valuation In Practice

VTS 'Valuation Team of the Year'

Valuation Tribunal Service (VTS) Valuation Team of the Year!

Being nominated by the IRRV for the Valuation Team of the Year Award was a privilege, but to actually hear Sir Trevor McDonald announce the VTS as the winners of this category was incredible. I cannot put into words how fantastic this feeling was (and I am never usually short of them!).

This was the first year that the IRRV has adopted a nomination system, and to be recognised by the Institute as a nominee at this stage is really down to the hard work and continued dedication of staff and members. The whole evening was electric. The VTS was competing against some major leaders in the valuation field, namely the Valuation Office and the Northern Ireland Valuation and Land Agency. Diane Russell, Helen Warren, Grahame Hunt and Lester Bertie

walked the short steps to the stage to receive the award from Sir Trevor, Suzanne Dean (the IRRV President) and the sponsor of the award, Peter Coles, Public Sector Consultants. The award has taken pride of place in the Board Room in the Angel office as a reminder to our visitors that we remain at the forefront of the appeal system. **Tony Masella, Corporate Director of the VTS**

Inside this issue:

Special points of interest:

- *Colin Hunter Bissett Kenning Newiss on why agents appeal– page 2 & 3*
- *Jorgenson (LO) v Gomperts 2006– High Court decision on a self - contained unit– page 3 & 4*

Recent Legislation

Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2006/SI 2312

The above regulations came into force on 1 October 2006. The Government decided to implement most of the proposals in the consultation paper subject to certain amendments. In summary, the amending provisions now:

- allow ratepayers until 31 March 2007 to make proposals to alter the 1995 rating lists as at 31 March 2000 in certain defined circumstances where properties have been split or merged;

- allow ratepayers until 30 September 2010 to make a proposal in the light of a tribunal or court decision made in relation to another property;

- require the person making a proposal to state the capacity (e.g. owner, occupier) in which the proposal is being made;

- require rental details to be provided when proposals are made on certain specified grounds (e.g. where a property is shown on the list as one property but should be shown as more than one);

- remove the requirement to provide rental details where proposals are made by former owners or billing authorities;

- clarify that occupiers making proposals are required to provide details of the amount they pay under their lease, easement or licence to occupy and that others making proposals are required to provide details of the amount they receive;

- enable a valuation officer to serve an invalidity notice beyond the current four-week period, but only with the agreement of the proposer; and

- provide that, following an invalidity notice, any re-served proposal shall be treated as being served on the day on which the original proposal was served for the purposes of ascertaining the effective date of an alteration to the rating list.

Agent's viewpoint

Colin Hunter, a chartered surveyor with Bissett Kenning Newiss shares his experience on 'Why Do We Appeal?'

Around 35% of business ratepayers have traditionally appealed against their rates. It has been suggested that this would indicate that 65% of ratepayers are happy with their lot. This is certainly what I was taught in the Valuation Office (VO). However, two decades of experience as a surveyor have taught me that this is not only a simplistic view, it is highly misleading.

Ratepayers are confused by the rating system. This has been made far worse since 1990 with the advent of transitional relief, small business relief schemes etc. I sympathise with my clients because I often find myself struggling to work out what is going on with rates demands and payments when I receive fresh instructions from a client or revised bills after an appeal has been settled. The layout of the rates bills and the various reliefs, allowances and adjustments are confusing. Add to this a lack of comprehension of the basis of the Rateable Value (RV), fear that the rates may go up, and the human tendency to inertia and you will understand that the majority of ratepayers do nothing.

The trigger to action is either based on better knowledge of the rights of appeal and the financial implications; or an action by the local council or VO (normally confused as being from the council) that causes resentment and leads to an appeal. An example of the second cause can be seen in the case of Mrs Mohamed in Whitby whose appeal to the Lands Tribunal (LT) was reported in September's issue. Ratepayers never instigate an appeal as a point of principle based on case law or valuation principles. These issues come later when a professional such as myself has been instructed to make the appeal for them.

The drive to reduce costs is the only true motivation for the ratepayer. This influences their initial action and also the instructions given to their advisors for the conduct of the appeal.

"The VO have painted themselves into a corner with right first time."

When I advise a client I will look at the probability of success of an appeal and the merits of the case based on legislation, case law, rental or other evidence and general valuation considerations. The only question they want me to answer for them is will their rates bill go down and if so by how much. This means that agreements reached with the VO are tempered by the result for the client and the cost/benefit of pursuing an appeal to a Valuation Tribunal (VT) or beyond. For example if my client vacates a property before the end of the

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Rating List and due to the effect of transitional relief the offer from the VO produces the maximum reduction in rates payment, then it is highly likely that my client will instruct me to settle. The offer of course may simply be "no reduction, but if you go away quietly we won't increase the assessment". Appeals are pursued to the bitter end only when the cost/benefit of the appeal to the ratepayer makes the appeal worthwhile. The net result is withdrawals and settlements that do not reflect an agreed basis of value, and some agreements which carry weight.

Of course the VO have similarly biased motives when negotiating or taking cases to VT. The rating system provides revenue to the Treasury who distribute the monies to the local authorities. The VO are paid by the Treasury and act as advisors to the Treasury. When I was first inducted into the Inland Revenue (before joining the VO and training as a surveyor) I was told that the taxpayer should be given the benefit of the doubt. I was then given instruction manuals that explained to me why there was no room for doubt. Ironically that training was in the Development Land Tax office, with a piece of legislation that made sure everything was open to doubt. The present day VO not only have a whole series of instructions, which exclude the possibility of doubt, but also a computerised system that tries to do away with the valuer's final input of common sense, the "step back and look" element.

The VO have painted themselves into a corner with "right first time" and a reversion to a defence of the list mentality. They will often defend assessments on the basis of "tone of the list", even when that tone has been questioned and and evidence exists to throw it into dispute or there was no reliable evidence to start with.

We all have a role to play. None of the parties at a hearing are impartial, and the same is true for the parties to the agreements and withdrawals set before the VT as evidence. I believe that it is important that the VT members understand the motives of the parties when looking at the cases before them and weighing the evidence from comparable rating assessments. Although the burden of proof rests with the appellant, VT members should bear in mind that the hearing usually provides the ratepayer with his or her last chance of putting right an actual or perceived injustice. VTs have a duty to be impartial, but can I add a plea that if there is doubt the benefit should go to the ratepayer.

Colin Hunter

Superior Court decisions

R (on the application of Hanson) v Middlesbrough BC 2006

The High Court allowed the council taxpayer's appeal and overturned the VT's decision not to allow disabled relief for an additional en-suite bathroom.

Deputy Judge James Gouldie QC determined that the VT had misdirected itself on three counts:

Firstly, it had reformulated the statutory test of being "essential or of major importance" into what he judged to be a more stringent requirement of being "physically or extremely difficult".

Secondly, the VT had erroneously concluded that the additional en-suite bathroom was not essential or of major importance to the disabled person because, even without it, she could still occupy the property.

Thirdly, the VT had also erred in importing a further test into the equation. Would a future purchaser be able to detect that the property had been altered to meet the needs of a disabled person?

The Deputy Judge determined that the en-suite bathroom was of major importance to the appellant because it reduced the risk of her getting injured whilst bathing. Therefore the VT should have applied the statutory language and should not have misapplied or failed to apply the test of being of "essential or of major importance"

Jorgenson (Listing Officer) (LO) v Gomperts 2006 RA September 2006

The issue before the VT was whether a dwelling on Hungerford Road, London N7, should be entered in the valuation list as a single dwelling or two separate dwellings as stated in Article 3 of the Council Tax (Chargeable Dwellings) Order 1992.

The VT directed that the property was one dwelling, and in making its decision considered:

- the question of separate access;
- the features of self-containment – sleeping/living area, kitchen and bathroom facilities;
- that the flat did not have a lockable entrance door; and

there was no evidence to indicate that the property had been constructed/adapted for use as a separate living accommodation.

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The LO appealed against the VT decision to the High Court, contending that the property comprised two dwellings:

- Maisonette - basement, ground and first floor, and
- Flat – second floor.

The appeal was heard at the High Court on the 3 July, 2006 with Kenneth Parker QC sitting. The appeal was upheld, with Kenneth Parker QC holding that the VT had not applied the correct legal test and had not addressed the correct question. The matter was remitted back to another VT to reconsider the application of Article 3 of the 1992 Order for the following reasons:

- From the authorities referred to, the test was an objective bricks and mortar test. Intention and use, actual or prospective were not relevant;
- The VT had not addressed the question - was the second floor flat, in terms of its objective physical structure, constructed or adapted as separate living accommodation?;
- In reaching its conclusion, the VT had referred to the purpose for which the relevant part was constructed or adapted and the historical use of that part; and The VT needed to consider whether, having regard to the particular circumstances of the case, the physical characteristics of the building constituted a separate living accommodation.

Bond-fire Treats

Patrick Bond, the Deputy Director of Rating at the Valuation Office revisits recent cases.

European Inquiry into alleged state aid to British Telecom (BT)

The European Commission's press release on their investigation into alleged state aid for British Telecom and Kingston Communications was issued on 12 October. Their final report will be issued in a few months time.

The Commission concluded that BT and Kingston have received no aid through UK property taxation and closed the formal investigation. The VOA has maintained that the non-domestic rating valuation of all telecom networks has been correctly applied throughout.

David Tretton, Laurence Hatchwell and Alan Bradford (CEO Local Taxation - Rating) along with the Department for Trade and Industry and the Department for Communities and Local Government, provided several detailed written responses (and also formal presentations in Brussels) for the extensive investigation by the European Commission [under Article 88(2) of the EC Treaty).

The BT rating assessment was reached following extensive discussions and negotiations between the VOA and BT. The 1995 assessment was also subject to an independent VT hearing and a subsequent appeal to the LT.

Court of Appeal decisions

Vtesse v Bradford (VO)

The Court of Appeal handed down their decision on 19 October dismissing Vtesse's appeal from the LT. The Court found no error of law in the LT decision. Fibres, both leased and own build were a relevant hereditament occupied by the operator who lit the fibres. It is understood that Vtesse do not intend to apply to appeal the decision to the House of Lords. The VO was awarded costs.

The case revolved around paramount occupation following the well established rules in Westminster Council v Southern Railway. It is interesting in that even though the network was extremely small in width, albeit not in length, the LT found it to be a hereditament.

The LT appeal concerned a fibre optic telecommunication network running between Henley-on-Thames and London with various spur extensions running through a number of billing authority areas. The ratepayers leased fibre pairs between customer sites from existing companies with spare capacity (unused fibres known as "dark fibres" because they have not been "lit") and constructed their own short length of cable from their clients' premises to the leased fibres. (Fibres are very small, not very much greater in circumference than a human hair. They are contained in cables of 12-296 fibres. The cables are in ducts and sub ducts often in trenches.)

The ratepayers argued the right was not exclusive, it did not relate to specified fibres though once connected the contractual right did relate to the lit fibres. The fibres were physically integrated into the cables and ducts. Vtesse had no access to the fibres or in fact knew where they were.

. Whilst the fibres were capable of forming part of a hereditament, as they were mentioned in the Plant and Machinery Regulations, the logic of these regulations was that the fibres formed part of the cable, duct and trench hereditament in the occupation of the landlord. This was a common-sense approach, as adopted for let copper pairs (where copper rather than glass fibre is used as the data transmission medium) by BT, which were regarded as in BT's occupation by VOs.

The LT considered the issue fell to be determined on the principles established in Westminster v Southern Railway. It noted the fibres were physically part of the leasing companies' cables but what needed to be considered was whether a separate occupation had been carved out of the cables by virtue of the use of the fibres by the ratepayers. It noted three factors of Vtesse's use of the leased fibres as decisive in determining that they were in rateable occupation:

1. Entitlement to use of leased fibres - the leasing companies were not providing a service through the routing of signals along any fibres available to them but were providing specific fibres for the use of Vtesse.

2. The use of the fibres was exclusive - no one else could use the fibres.

3. Vtesse activated the fibres for the transmission of signals - Vtesse's own equipment provided the laser pulse. The leasing companies simply provided and maintained the fibres.

Although Vtesse did not know where the leased fibres were and had no right to access them physically, this did not affect their ability to enjoy their use.

The LT noted the ratepayers' suggested a common-sense approach of treating the fibres as forming part of the landlord's cable and ducts hereditament, as they were really too small to be sensibly treated as a hereditament. The LT considered that this larger hereditament might indeed be a sensible starting point but where separate occupations had been carved out of component elements of the cables, those elements, no matter how small in diameter, were properly to be treated as parts of the hereditament with which they were occupied.

The LT considered the VO had been correct to enter the hereditament including the leased fibres into the local list.

Valuation Tribunal decisions

Next plc– Air Conditioning (AC) – 88-92, Moorgate, London.

The Central London VT decided that an AC system installed by the tenant in a shop unit on Moorgate added £11.54/m2 to the rateable value of the area benefiting from the AC system; this increased the RV by £4,573. All elements of the valuation had been agreed prior to the hearing apart from the addition, if any, to be made to reflect the presence of the AC system.

The appeal arose from a proposal made on 16 December 2005 by G L Hearn, as agent for Next plc, the occupier of the property. The property was described in the 2005 rating list as a shop and premises, basement and ground floor, with a rateable value (RV) £307,500. The proposal disputed the accuracy of the 2005 Rating List.

Mr Penfold estimated the cost of installation of the AC system to be £32,000, loosely based on figures supplied by the VOA to the British Retail Consortium in 2003, during discussions being held at that time. Mr Penfold stated that AC systems were rateable; however the rents payable for the appeal property and other shop properties in its locality did not in his view support increasing the RV for having this facility. He went on to say that if an addition should be made, the amount should be much nearer the £3.50/m2 (applied to the area benefiting), this being agreed and adopted by the VO for past rating lists. There had been no increase in the cost of AC systems over the years and the VO had provided no evidence to show why the figure of £3.50/m2 used in previous lists should be changed substantially. Next plc was a substantial buyer of air conditioning systems, so why should they be charged 7.5% when they could borrow money at 4.5%?

Mr Penfold submitted that the correct RV, based on the rent payable and the agreed zone A value, which reflected the value of the AC system, was £294,500 at 1 April 2005. In the alternative, if an addition for the AC system was considered appropriate, the correct RV was £296,000 at 1 April 2005, incorporating an addition of £1,505 (£3.79/m2) for the AC system, based on an estimated replacement cost of £32,000 at 1 April 2003, annualised over 18 Yrs at 5%, less for 45% for age and depreciation.

Regarding the cost of the system, the VO relied upon the expert report of Mr Gresham, who provided detailed statements of costs as at December 1999 and 1 April 2003 price levels, (£75,431.25 and £85,387.50 respectively.)

The VO considered that the opportunity cost of money and cost of borrowing were not appropriate considerations when making rental valuations. In the Edma Jewellers and Dorothy Perkins cases, the figures added for tenants' improvements were based on property market yields.

Comparable assessment evidence offered no assistance in determining the value attributable to the AC system in the appeal property. This could only be assessed by reference to its cost, amortised at an appropriate
(Continued on page 6)

property market yield, over an appropriate period.

The VO adopted £67,443 as the cost, applying a YP of 7.5% for 20 years (10.688) to produce an annual value of £6,322, equating to £15.95/m2 over 396.35m2.

The agreed element of the valuation (£294,586) plus the addition for AC (£6,322) resulted in a valuation of £300,908. The VO asked the VT to confirm a rateable value of £300,900 from 1 April 2005.

In summary, the VT was not persuaded that air conditioning was reflected in the Zone A Price and noted the guidance given by the LT in the Dorothy Perkins case regarding the valuation of AC systems. It felt Mr Penfold's cost estimate was on the low side, and Mr Gresham's appeared on the high side. It also decided that costs should be amortised using a property market rate, not the cost of borrowing, and no allowance should be made for age and obsolescence.

The VT determined the rental value of the air conditioning to be £4,573, estimating the cost of AC at 1 April 2003 to be £50,387, annualized over 20 years at 6.5%.

This resulted in an end figure of £299,000 RV for the appeal property.

Next Plc have made an appeal to the LT.

Bureau West Centre, Horton Road, Devizes, Wiltshire

This case concerned the valuation of a computer centre and Premises, built around 1970 that had subsequently been internally stripped to the shell. The key issues at the hearing were:

a) Interpretation of regulation 44 of the Non Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 and the power it bestows upon tribunals;

b) Obsolescence - the hereditament was a first generation data centre and issues were centred on its value in the market place at the valuation date.

The appellant's agents argued that the VT was empowered, by regulation 44, to reduce the assessment or impose a new assessment with a different description. It was further argued that the hereditament was a specialised property, being a first generation data centre designed originally for the Ministry of Defence, with no prospect of letting in its present use and form at the material dates. The property also suffered from considerable dilapidations, with a claim for £1.435 million made against the outgoing tenant. They therefore claimed total obsolescence of the hereditament and cited *Sheil (VO). Borg Warner* 1982 adding that the hereditament with a description of computer centre and premises should be deleted or alternatively be revalued as something else with a new description. The property was vacant on each of the material dates.

The VO argued that the proposals were limited to the grounds stated on the proposal, namely, deletion from the list; a reduction in the assessment was outside those grounds. Further he argued that at the material days (dates of proposal), the hereditament was capable of beneficial occupation (judging the economic factors as at the AVD). Large portions of the dilapidations were non-rateable plant items and these fell to be disregarded in any judgment of repairs for rating purposes.

The VT accepted the VO's view on regulation 44 adding that it was limited to the wording of the proposals and that it did not consider the ordering of a reduction of the assessment or the determination of a new assessment and description to be 'a matter ancillary to the subject matter'.

Secondly, it concluded that very little repair to the hereditament (as opposed to the hereditament and non-rateable plant and machinery which was the subject of the dilapidations claim) was needed to be made in order to secure the agreed rental level. The repairs were therefore judged to be economic. The decision has been appealed to the LT by the ratepayer.

Patrick Bond

Valuation Tribunal Corner

In this section members of LPAC provide summarises of recent cases that have been heard by our colleagues that you may find of interest.

Sewage treatment works Scarborough- North Yorkshire VT

This appeal concerned the 2000 rating assessments for some sewage treatment works at Scalby Mills and Burniston Road, Scarborough, North Yorkshire. The questions to be addressed were:

1.Had the functionality of Scalby Mills changed from a waste water treatment works (WWTW) to an accessory to a sewer following firstly changes in European Union (EU) (Continued on page 7)

directives, which meant that it was no longer able to operate as a fully compliant WWTW and secondly in the building of a new up to date plant at Burniston Road in 2002?

2. Was the material that was being transferred by pipe from Scalby Mills to Burniston Road final effluent?

In making its decision the VT had regard to case law, the most pertinent it considered to be: *Northumberland Water Authority v Little (VO) 1986* LT; and *Gudgion (VO) v Erith BC and London CC 1961* LT.

The VT accepted that Scalby Mills was still screening and degritting sewage as it had always done, but, since the commissioning of the Burniston Road site, its functionality had changed.

Having regard to the higher standards demanded by the EU directive, the VT was of the opinion that the material transferred to Burniston Road could not possibly be regarded as final effluent as it did not conform to these standards.

It was the opinion of the VT that the function of Scalby Mills since 2002 was to provide primary treatment to the sewage, which was essential to the transfer of that sewage to the Burniston Road site. This primary treatment ensured protection to the pipes and the inverted siphon, which would not function effectively without the screening and de-gritting, as this prevented blockages in the pipe transfer system.

The VT noted that three pumps had been installed at Scalby Mills in order to transfer materials to the WWTW at Burniston Road. It considered that the movement of materials from Scalby Mills to Burniston Road was by sewer via the inverted siphon. It therefore concluded that the Scalby Mills site was an accessory belonging to the sewer. As such it fell to be exempt.

Given that valuations in the alternative were agreed, the VT ordered the VO to amend the Rating List to show the assessment of the WWTW at Burniston Road with a rateable value of £286,500 effective from 1 April 2002.

A full copy of this decision can be found on the VT website – appeal no 273010015140/244N00

Valuation of Smart Pads in Leeds city centre- West Yorkshire VT

This case concerned the council tax valuation for a new type of apartment, known as a 'smart pad' in the heart of Leeds city centre, which had been placed in Band B. The appeal property was located in Central Quarter, a former post office building, which had been converted in 2006 to provide 353 apartments, with a piazza and mini market to the ground floor.

The appeal property effectively was one room measuring 17 m2, excluding the shower room. Whilst the LO accepted that the appeal property was compact, he considered that it featured every home comfort and luxury, including media with the option of plasma screen, audio wiring, with fitted speakers, high tech lighting, as well as modular designer kitchen. Additionally it had slim panel heating, a wide door entry system, double-glazing, CCTV security and a concierge service. The appeal property had been purchased for £85,000 in June 2006.

The LO admitted that there were no similar properties within Leeds in 1991, the closest types being one bedroom flats, that were 10m2 bigger, selling for over £52,000 in Band C. He also drew attention to a number of smart pads, in particular those at Britannia House, where there had been six appeals challenging Band C, which had either been withdrawn or dismissed at VT. Given that the appeal property was smaller and had sold for around £10,000 less than these apartments, he considered that its present placement in Band B was fair and reasonable.

He also explained that for new properties he was required to value them having regard to the physical state of the locality that existed at the date they had been entered into the list. Therefore, he had to reflect the improvement that had been made in Leeds centre by 2006.

The LO explained that the only flats in Leeds city centre that were in Band A were some that were owned by a housing association, which were poorly located between two buildings and some that provided student accommodation.

The appellant appreciated that that there were no true comparable properties but explained that she had accessed indices from the Nationwide, Land Registry, HBOS, none of which estimated that the appeal property would have sold for over £40,000 on 1 April 1991. She also referred to an article that had appeared in The Sunday Times in September 2006, which stated that the average price of flats and maisonettes in Leeds had risen 255% between 1996 and 2006.

The appellant pointed out that her flat was occupied by a student and whilst the LO had taken a photograph showing the side of Central Quarter, overlooking the piazza, her flat was located on the other side of the building that was overlooked and would face housing association flats that were in the process of being constructed. She also indicated her grievance that the LO appeared to be valuing some of the fittings that she had independently financed. The original purchase price had included laminated flooring, a pull down bed, down lights and some kitchen units. She had provided all other furnishings including the plasma TV screen. (continued on page 8)

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Fair, effective and efficient

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In reaching its decision, the tribunal accepted that it was difficult to value the appeal property, given that smart pads were a new phenomena, there was a lack of true comparables and 15 years had elapsed since the AVD. Even the earliest sales on Britannia House in 2005 offered little assistance, particularly as they related to larger smart pads. In determining the correct band, the VT considered that it had to value any fixtures, but disregard any fittings. Whilst indices only ever gave general indications of market conditions, it considered the evidence put forward by the appellant was persuasive enough to indicate that the appeal property was a borderline case, even after reflecting the improvements in the physical location of Leeds between 1993 and 2006.

Given that the appeal property overlooked adjoining buildings rather than the piazza, the VT also considered that this would reduce its market value. Accordingly, the VT ordered that the appeal property be placed in Band A.

A full copy of this decision can be found on the VTS website – appeal no 4720418949/244c

And finally...

Our thanks go to a national newspaper who over the past few months have featured various spurious stories regarding CT, which have included that in future CT will be significantly affected by the existence of:

- rabbit hutches in the garden;
- ponds and water features;
- big gates;
- a pretty view;
- a nice 'middle England' neighbourhood:
- paved driveways;
- roof and cavity insulation; and
- UPVC.

Given that we are still valuing properties at 1991 levels of value and the difference between each of the CT bandings ranges from £12,000 (between band B and band C) and up to £160,000 (between band G and band H), our readers can safely conclude that the existence of these features will have little affect on their CT bills. And as for the existence of a rabbit hutch, well good news for rabbit lovers, we can't see that it is ever going to make any difference whatsoever!