Issue 6

May/June 2007

Valuation In Practice

VALUATION TRIBUNAL SERVICE

Lyons Inquiry into Local Government-Final Report

Lyons Final Report March 2007

The long awaited findings of Sir Michael Lyons' inquiry into local government have finally been published. Of particular interest to us are the findings on:

Council Tax

Lyons reports that public awareness of the tax is at 99%, making it the most visible and well-known tax in the country. The most commonly cited source of council tax (CT) unfairness relates to 'ability to pay', given that there is no correlation between a household's income and the value of their home.

Lyons supports the revaluation of CT and regular revaluations thereafter to:

1.Underpin the credibility of a property tax by maintaining a meaningful relationship between property values and bills.

2. To provide an opportunity to make changes to CT.

In respect of proposed changes Lyons suggests that the government should be:

- Adding new top bands and a new lower band.
- Introducing separate bands for inner London.
- Making sure that grants to areas that have Large student populations are based on realistic data.
- Consulting on the possibility of allowing Local Authorities (LAs) to levy a local supplement for second homes.
- Restructuring CT benefit; currently only 62-68% of households entitled to it actually receive it; the vast majority of unclaimed benefit is owed to pensioners.

(Continued on page 2)

Sir Michael Lyons

Stop Press—Announcement of VTS' New Chief Executive

Dr Tina Townsend has been appointed to the role of the Chief Executive for the Valuation Tribunal Service (VTS). Tina is likely to take over her appointment in early July.

Tina has over 20 years experience as a Chief Executive having previously held this post at the Appeals Service Agency and Edexcel.

Inside this issue:

New faces at the Department & Welsh VTS	2
General Rating News	3
LT decision- Ebury (VO): Victoria Centre	5
VT decision - Hospital Outreach School	6
VT decision—State or repair –self catering holiday unit	8

Special points of interest:

- *LT decision– Baker (VO) v Citibank NA (2007)– Page 4*
- *VT decision-Banding of an Eco House– Page 6*
- *VT decision– Tearoom, Garden & Premises– Page 9*

To increase take up of this benefit he suggested that the government should:

- ⇒ Rename T benefits as CT rebate, and so remove any incorrect connotations with its name.
- ⇒ Increase the scope for data sharing between the pension service, other agencies and LAs.
- ⇒ Increase the eligibility criteria for CT rebates, such as increasing the capital thresholds for pensioners from £16,000 to £50,000.
- ⇒ Look at schemes such as those that ensure that no household pays more than a set proportion of their income in property tax and those that allow pensioner homeowners to defer payment of their taxes against the equity in their homes.

Local Income Tax

Whilst many people seemed to like the idea that CT should be replaced by a local income tax, Lyons considered that this idea may not be based on a true understanding of what it would mean to their own bills. To replace CT completely would require a local income tax of 7.7p in the pound.

The key failing of a local income tax scheme was that revenue would fall during bad economic times. He considered the idea of introducing it as a supplement to CT was likely to be unpopular as respondents might consider that they were paying the tax twice.

Whilst Lyons did not recommend a local income tax at this time, he pointed to its feasibility, which would remain a choice for future governments. However, he considered that it would be complex and need a lead in time of 6-7 years.

Lyons considered that a tax on tourism would only be acceptable if a LA was able to demonstrate that there was a robust evidence base and social support for the tax.

Other suggestions included giving LAs powers to charge for domestic waste collection to reduce household waste and removing restrictions on the use of road pricing revenues.

Business Rates/non-domestic rates (NDR)

Lyons pointed out that in recent years businesses as a whole had been protected from real term increases in rates. In 1990 NDR provided 29% of local government revenue; in 2006/7 it was only expected to contribute 20% of local government spending.

Although he accepted that business rates could be transferred back to LAs' control, Lyons did not favour this approach: he considered there was no need to create a direct link between businesses and LAs and pointed out that even if it was moved back around 20 authorities would still have to pay some of their tax revenues to central government to support other authorities. Whilst he acknowledged that Business Improvement Districts had introduced some flexibility to the relationship between taxpayers and LAs, this had only occurred in tightly defined geographical areas.

Lyons proposed that the government should re-examine the current reliefs and exemptions given to NDR, in particular, he referred to:

- Possible changes to empty property relief to ensure that all developed land is used effectively and people cannot avoid taxation by deliberately making their property derelict.
- Whether the current reliefs and exemptions remain justifiable; in particular he pointed out that £700 million was lost by granting relief to charities and £450 million lost on exemptions for agricultural land and buildings.

New faces at the Department and the VTS Wales

Change of Minister responsible at the CLG

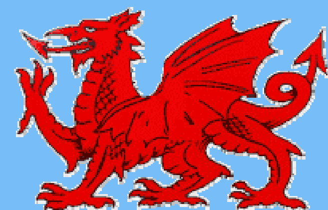
Angela Smith MP (Basildon and East Thurrock), Parliamentary Under Secretary for State, has taken over within her portfolio, the direct responsibility for the VTS and valuation tribunals (VTs).

Ms Smith replaces Phil Woolas MP, the Minister for Local Government and Community Cohesion.

Angela Smith

New Chief Executive for Wales

Simon Wright has taken over the role of the new Chief Executive for the Valuation Tribunal Service Wales (VTSW) from 2 April 2007.



The 2007 budget

From 1 April 2008 complete exemption from rates will only be given to empty properties held by charities and Community Amateur Sports Clubs, following the Empty Rates Bill.

- Properties will have to pay 100% rates instead of 50%, as soon as the initial 3 month empty period has passed.
- Industrial properties (which previously paid no empty rates) will have to pay 100% rates once the initial 6 month empty period has passed.

Interestingly G L Hearn Property Consultants, commented on these changes in their April newsletter that whilst this will have a substantial effect on the industrial and distribution sector, it will also have a significant effect on other property sectors. For example the current aggregate RV of retail property stands at over £38 billion and of this stock it is estimated that 7% (£2.5 billion) is currently vacant.

The High Court judgment *Exeter City Council v Baistow, Martin and Trident Fashions PLC* [2007] EWHC

This is the first case on liability for rates following changes to the insolvency laws in 2002. Whilst the case confirmed the previously held understanding that administrators would be liable to pay occupied rates in respect of properties occupied and trading in administration, the case also decided that the administrators will be liable to pay empty rates where leases are held by the company in administration.

G L Hearn point out that this goes against the previous position where liquidators and the like were exempt from empty rate liability. They also consider that this may force companies into liquidation that might previously have been rescued by administration.

2005 revaluation update

G L Hearn consider that the 69% fall in NDR appeals, comparing the levels received by the Valuation Office Agency (VOA) at 30 September 2006, against the 2005 list and 30 September 2001, against 2000 list, are due to a number of reasons, which include:

- *the VOA's 'Right first Time' which resulted in many under-valuations.*
- *the removal of the time limits which has encouraged some to delay making appeals; and*
- *the requirement to state the passing rent for an appeal to be valid, which has dissuaded some from appealing.*

As a consequence the VOA significantly overestimated the number of appeals it would receive and settle. Accordingly most appeals had to be targeted for immediate discussion, which in turn has brought the programming process into disrepute placing serious pressure on VOA, appellants and the VTS to process and clear huge numbers of appeals. It has also caused many of the VOA's self imposed rules of stopping discussions at target date to be abandoned as being unworkable.

The comments made by GL Hearn have been taken from various publications that they released in April 2007. We thank GL Hearn for allowing us to reproduce them.

The introduction of small business rate relief (SBRR) in Wales– A simpler system

SBRR has been introduced in Wales from 1 April 2007. It is much simpler than the English scheme and will benefit almost half of all businesses in Wales.

The Welsh scheme does not require an application form and is based purely on the RV of the property concerned. To qualify, the property must be occupied and in an attempt to exclude obvious larger businesses it excludes advertisements, car parks/spaces, sewage works, electronic communications, beach huts or properties in crown occupation. Otherwise, properties with RVs of £2,000 or less receive 50% relief from their rates bill. Properties over £2,000 but not more than £5,000 receive 25% relief.

In addition, in an attempt to encourage Post Offices to remain open in Wales, Post Offices with RVs not more than £9,000, receive 100% relief and those between £9,000 and £12,000 50% relief.

(Source IRRV Insight- March 2007)

Superior Court Decisions

Lands Tribunal decisions

Baker (Valuation Officer) (VO) v Citibank NA 2007

These appeals concerned office premises at Canary Wharf during periods in which additional accommodation was being added in stages to the premises the respondent already occupied.

The VO had made a succession of 14 alterations to reflect the increasing area of occupation, in each case replacing the previous entry with one containing an altered address (referring to the floors), a higher RV and a later effective date.

The respondent had made proposals in respect of all 14 alterations and the London North East VT had determined the appeals by ordering the deletion of all of the alterations except the last one, given its belief that the offices had at all times remained one hereditament: the VT had looked at the leases and the fact that the offices were contained in two contiguous buildings that were planned and built to become inter-communicating.
The issue therefore rested on whether the addition of a floor to the existing assessment reflected the coming into existence of a new hereditament, as argued by the VO or was a material change of circumstance affecting the value of the existing assessment, as argued by the respondent.

In reaching his judgment George Bartlett QC, President of the LT stated:

- It was incorrect for Citibank to have occupied various parts of the appeal property from early 2002 onwards, but to only want to pay rates from 1 March 2003.
- The respondent had misconstrued the material day regulations, whose function related purely to valuation not to determine the identity of the hereditament that fell to be valued.
- Each floor was being completed so as to form part, on completion, of the respondent's occupation, and at no time could it have been appropriate to have regarded each floor as a separate hereditament.

- The VO was correct to make alterations to the list to include each floor as they came into the occupation of the respondent and as the extent of the hereditament changed so should its entry and rateable value.
- Each alteration to the list was in line with paragraph (6) of regulation 13A of the Appeal Regulations:

Where an alteration is made so as –

a) *to show in the list a hereditament which, since the list was compiled –*

b) has come into existence… the alteration shall have effect from –

Therefore in the case of alterations 3 to 15, the effective date was the day when the new hereditament came into existence. In the case of alteration 2, which was made on 12 March 2003, the new hereditament had come into existence prior to 1 April 2002; therefore the effective date was 1 April 2002.

- Mr Bartlett noted that the agent and VT had placed a great amount of weight on the LT decision *Institute of Orthopaedics v Harrow Corporation* [1962]. However, in this case Goulding J had decided whether the hereditament entered in the list as "Laboratories, Animal House and Premises" remained the same hereditament (after development had been carried out on the site and its RV increased to reflect this) to ascertain its right to mandatory relief as a charity . Therefore, Goulding J did not have to decide the extent of the hereditament for purposes of making an entry in the valuation list. Accordingly this judgment should not be treated as supporting that the boundaries of a hereditament must, as a matter of law, be treated as being determined by the boundaries of the ratepayer's ownership. Mr Bartlett also pointed out that this proposition would also be contrary to the Court of Appeal decision of *Gilbert v Hickinbottom* [1956] where the extent of the occupier's occupation was the prime determinant.
- Any areas could not become part of any hereditament until they were capable of occupation.

Accordingly the appeal was allowed and all of the original entries made by the VO restored.

Ebury (VO): 244-245 Victoria Centre, Nottingham 2007
This appeal stemmed from a

decision made by Nottingham VT to reduce the 2000 Rating List assessment of a unit in a shopping centre, following problems the occupiers had experienced from a leaking roof, from £100,000 RV to £50,000 effective from 1 April 2004. At the LT, the VO appeared in person but the ratepayer did not respond to the appeal.

The VO challenged the VT's decision given:

- Two other shops in the centre had suffered similarly but neither had received reductions in their rates or rents.
- The landlord had conceded a 50% reduction in the appeal property's rent from 6 August 2004 **solely** because of the company's trading difficulties: a letter from the landlord confirmed that they had given the occupiers a reduced rent to see if they could get over their trading difficulties or failing that, allow them a period of time to enable an orderly handover be made to a new tenant.
- The leaks had largely been repaired by March 2004.

In allowing the appeal the LT Member, A J Trott FRICS, agreed with the VO that the appeal property's entry in the 2000 Rating List should be reinstated at £100,000 RV. However, Trott J pointed out that the VT had been strongly influenced by the summary evidence it had received from the ratepayer's agent and noted that one of the letters that had been placed before the LT had not be presented at the VT hearing. Appeal allowed.

Scottish case- United Kingdom Atomic Energy Authority v Highland and Western Isles Valuation Joint Board Assessor [2006] RA153

This appeal followed a decision of the LT for Scotland allowing the appeal on a decommissioned nuclear power plant but only to the extent that its assessment in the 2000 valuation roll was reduced from £2.100 million rateable value to £1.435 million rateable value.

In considering the case the Lands Valuation Appeal Court found the appellant still to be in rateable occupation of the whole site given:

- The appellant was in positive occupation of the site for the necessary purpose of storing its materials (radio active waste) for long-term purposes; the quantities involved were substantial and the role of decommissioning and environmentally restoring the site

was expected to take over 50 years.
- For safety reasons in 1998 the appellant had to shut down all processing activities in the fuel cycle area, other than operations to maintain it in a safe condition, but at the valuation date it was expected that this direction would be lifted during 2000.
- Large parts of the site were occupied and used in accordance with their original purpose.
- The correct way of valuing any parts that were purely redundant was through allowances.
- It was not open to the appellant to argue that the radio active materials contained in the stores were not to be treated as materials of the hypothetical tenant since the appeal had been conducted from the outset on the agreed footing that they were.
- The cost of care and maintenance and eventual decommissioning would be at best a bargaining factor in the tenant's favour and would not result in no rent being paid. This should be reflected by an end allowance, the amount of which was for the professional discretion of the valuer.

Accordingly, the appeal was refused, leaving an assessment of £1.435 million rateable value to remain in the 2000 valuation roll.

Update on Truro College

The LT has reversed the decision made by Cornwall VT in respect of Truro College, which we featured in VIP issue 1. The VT had determined that the college should be assessed using the contactors basis, based on its mode or category of use as a college at £28,500 RV.

The LT allowed the VO's appeal, holding that Truro College should be valued on rental evidence. Although potential office use was outside the rebus sic stantibus rule and could not be considered, the passing rent for use as an open learning centre was broadly in line with other office rents in the locality.

Accordingly the LT restored the appeal property's entry to £67,500.

Valuation Tribunal Corner

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

Banding of an Eco house- Hertfordshire VT

The VT was asked to consider the banding of an Eco house, which had been placed by the Listing Officer (LO) in Band C.

The appeal property was a one bedroom detached house of 83m2, built in 2005. It had a timber frame, timber walls and an earth and turf roof. The only heating was a wood log fire: central heating was unnecessary due to the thickness of the insulation in the walls. The accommodation was largely open plan. However, there was a bath in the bedroom and two compost toilets on a half landing. The appeal property faced out onto open fields and it was set 80m back from the road. The only access to the property was on foot, vehicular access not being allowed due to planning restrictions.

A mortgage valuation carried out on the appeal property in August 2005 had indicated its value to be £150,000. Although the LO did refer to seven comparables, only one of these, a larger four bedroom detached house, which had been valued at £700,000, was of an eco design. Therefore, there were no direct comparables.

The appellant explained that in March 2000 he had purchased the land for £105,000 along with planning permission for a small dwelling. It had been a self build project which had taken five years to complete.

The timber for the house had been taken from skips and from building sites where it had been surplus to requirements. The plot and planning permission were so unique that no high street bank had been willing to give them a mortgage and funds for the development had been obtained from Eco Security.

To support his application for band A the appellant produced details of annexes to houses that had been placed in band A. He also pointed out that:

- When the council had first visited the site they had indicated that the property would be placed into band A.
- None of the comparables presented by the LO were comparable as they had no planning restrictions and all of them had flushing toilets.

Given the appeal property had been valued at £150,000 in 2005; it would have achieved a value of £39,577 in 1991, after having regard to rises in the housing market over the last 10 years.

The VT accepted that the comparables presented provided little assistance, other than to indicate how the market had changed between 1991 and 2005. In particular it noted that there had been a fall in the housing market between 1991 and 1994, after which it had risen sharply.

The VT then looked at the cost of the land, the appeal property's construction and its mortgage valuation. Whilst it accepted that the appeal property suffered a number of problems, it also noted that a traditional house of the appeal property's size would be in band E or F. After weighing up the positive and negative elements of the appeal property, it found on balance that an environmentally friendly house would have a place in the housing market and would attract a higher value than that indicated by the appellant.

Accordingly the VT determined that it should be in band B, as it would have attained a value slightly in excess of £40,000 in 1991, albeit it would have been around the bottom of the banding. Therefore, the appeal was allowed in part.

A full copy of this decision can be

found on our website- Appeal Number 1915408017/011C.

Hospital Outreach School, Kettering- Northamptonshire VT

The appeal arose out of a proposal asking for the appeal property's entry in the 2005 rating list to be deleted from 1 April 2005. The appellant sought exemption under Schedule 5 of the Local Government Finance Act (LGFA) 1988, on the grounds that the property was used exclusively for the out of school education of pupils with physical or mental health issues.

The appeal property was a detached, two storey, former caretaker's house that was situated within the grounds of a primary school in Kettering. The ground and first floors were both used for the provision of Hospital Outreach Education for children who medically were unable to attend school. The object of this facility was to support the reintegration of pupils back into full or part time education at the earliest opportunity. In the interim, the school continued to be responsible for the education of

(Continued on page 7)

any pupil on the roll who was likely to be absent for more than three weeks due to hospitalisation, illness or injury.

It was agreed between the parties that the majority of the appeal property was exempt for rating purposes, being premises used exclusively for providing education on site for the children.

The crux of the dispute centred on Room 16 on the first floor, which although partly used for providing education on site it was also used for other purposes and was known as the 'Staff Office'. Other uses to which this room was put included providing an administrative base for external teaching, where children were being educated within their own homes, if it was impossible for them to attend on site, lesson planning, storage of resources, photocopying, a base for staff meetings, marking registers and making confidential telephone calls to parents.

In the event that the VT found the first floor Room 16 to be rateable, the parties were in agreement that the assessment should be £1,125 RV.

Both parties placed a different interpretation of the wording of Paragraph 16 of Schedule 5 of the LGFA 1988 and in particular the key phrase was "to the extent that it was used wholly".

In his case the agent stated:

- The appeal property as a whole should be exempt. Schedule 5 of the 1988 Act explicitly related to Disability.
- The Valuation Office Agency (VOA) exempted special schools.
- With regard to the interpretation of paragraph 16 of Schedule 5, nowhere did it state that the training should occur within the premises. Consequently "wholly used" was satisfied and 100% qualifying use occurred in the premises.
- Room 16 should be exempt under paragraph 16 (1) (a) or failing that 16 (1) (b).

In response, the VO considered:

- Based on the facts, the appeal property was in the nature of a special school. As a result, the VOA treated it as a concessionary case for exemption, in accordance with paragraph 16 (1) (a) of Schedule 5.
- Room 16 was rateable as it was used for teaching and administration. Consequently, it was not wholly used for the purposes of paragraph 16 (1) (a).

- Room 16 did not qualify for exemption under paragraph 16 (1) (b) because the welfare provisions for which exemption was intended was aimed at those provided by Social Services Departments as opposed to Education Departments. His revised assessment of offices, school and premises (part exempt) with a Rateable Value of £1,125 was correct.

The parties referred to the following case law :*Evans v Suffolk County Council (1997), Samaritans of Tyneside v Newcastle Upon Tyne City Council (1985), Halliday (VO) v Priory Hospital Group of the Nottingham Clinic (2001), Church of England Children's Society v Southwark LBC (1981)* and *Gallagher (VO) v Church of Jesus Christ of Latter Day Saints (2004)*

After due consideration of all of the evidence submitted before it, the VT decided to allow the appeal but only to the extent that had already been conceded by the VO for the following reasons:

1. The crux of the dispute centred on the wording of Paragraph 16 of Schedule 5 of the LGFA 1988, which granted exemption from non-domestic rating for 'property used for the disabled' and read as follows:

16 (1) A hereditament is exempt to to the extent that it consists of property used wholly for any of the following purposes –

a) the provision of facilities for training, or keeping suitably occupied, persons who are disabled or who are or have been suffering from illness;
b) the provision of welfare services for disabled persons;
c) the provision of facilities under section 15 of the Disabled Persons (Employment) Act 1944;
d) the provision of a workshop or of other facilities under section 3 (1) of the Disabled Persons (Employment) Act 1958.

(2) A person is disabled if he is blind, deaf or dumb or suffers from mental disorder of any description or is substantially and permanently handicapped by illness, injury, congenital deformity or any other disability for the time being prescribed for the purposes of section 29 (1) National Assistance Act 1948.

(3) "Illness" has the meaning given by section 128(1) of the National Health Service Act 1977.

(4) "Welfare services for disabled persons" means services or facilities (by whomsoever provided) of a kind which a local authority has power to provide under section 29 of the National Assistance Act 1948.

2. Section 29 of the National Assistance Act 1948 provided that:

A local authority may, with the approval of the Secretary of State, and to such extent as he may direct in relation to persons ordinarily resident in the area of the local authority, shall make arrangements for promoting the welfare of persons to whom this section applies, that is to say ***persons aged eighteen or over*** *who are blind, deaf or dumb or who suffer from mental disorder of any description, and other persons* ***aged eighteen over*** *who are blind,*

(Continued on Page 8)

deaf or dumb or who suffer from mental disorder of any description, and other persons ***aged eighteen or over*** *who are substantially and permanently handicapped by illness, injury, or congenital deformity or such other disabilities as may be prescribed by the Minister.*

The provisions limiting the provisions of Section 29 of the 1948 Act were inserted by the Children's Act 1989 and this was a clear indication that the provisions of paragraph 16 of Schedule 5 were aimed at the provision of services for disabled persons aged eighteen years or over. As a corollary, the provision of educational and welfare services for disabled children did not qualify for relief under paragraph 16 of Schedule 5.

3. The agent's argument that the amendment to Section 29 of the 1948 by the Children's Act 1989 post dated the LGFA 1988 and therefore fell to be disregarded was dismissed by the VT. Since Section 29 of the 1948 Act had been amended, four rating lists had been created and it was inconceivable that if the knock on effect of that amendment for the purposes of paragraph 16 of Schedule 5 was not what Parliament had intended, there had been ample time since the non-domestic rating system came into being to put matters right.

4. In view of the foregoing, the VT came to the conclusion that there was no specific provision within the legislation which allowed special schools to qualify for exemption under either paragraph 16 (1) (a) or (b) of Schedule 5. In his evidence, the VO had informed the VT that the VOA had adopted a policy of giving an exemption to special schools, following discussions with the Office of the Deputy Prime Minister (ODPM) in 2003. However, in the VT's opinion had Parliament or the Secretary of State wanted special schools to be exempt from rating purposes, the legislation could easily have been amended, especially as the case for treating special schools as exempt had the support of the ODPM.

5. In cases of this nature, the VT could only apply the law as it was written and not what it thought it should be and reluctantly concluded that the room at the centre of the dispute was rateable.

The appeal was therefore allowed in part and the VO was ordered to amend the appeal property's entry in the rating list to £1,125 RV.

A full copy of this decision can be found on our website- Appeal Number- 282010008079/045N05.

State of repair of a self catering holiday unit- Norfolk VT

The Norfolk VT considered an appeal that asked for a self catering holiday unit to be deleted from the 2005 rating list, on the basis that it was no longer fit for habitation.

The VO explained that the appeal property was a small, detached, un-modernised inter war bungalow, situated on a good size plot close to the centre of Hemsby. For many years the appeal property had been subject to council tax banding but as nobody had lived there permanently, the council had only charged 50% council tax. However, on 1 April 2004 following the legislation was changed to allow councils to charge up to 90% council tax for second homes. Great Yarmouth Council had amended their charges, after which the appellant had looked to find other ways of reducing his liability.

In June 2004, the appellant had notified the VO that from 1 October 2004, the appeal property would be made available for commercial letting for 140 days or more per year and asked for it to be inserted into the rating list. As a result the following entries were made:

- 2000 rating list- self catering holiday unit & premises- £900 RV from 1 October 2004; and
- 2005 rating list- self catering holiday unit & premises- £1050 RV from 1 April 2005.

The VO pointed out that whilst the proposal before the VT asked for the appeal property to be deleted from 1 October 2004, the 2005 rating list did not start until 1 April 2005. Therefore he had taken 1 April 2005 as the material date as to when the physical factors had to be considered.

The VO turned the VTs attention to the definition of RV set out in the Rating (Valuation) Act 1999, which indicated that a property had to be assumed to be in a reasonable state of repair unless the costs of the repairs would be considered to be uneconomic by a reasonable landlord. Looking at the condition of the appeal property, the VO noted:

- The appellant had indicated in June 2004 that the appeal property was going to be used for commercial lettings from 1 October 2004. There was also various evidence that the property was still being used at this stage and habitable.
- The appeal property's hot water tank and WC were only removed in autumn 2005 and the electricity taken out in May 2006; all of these events had occurred after the material day and irrespective of this, he considered that they would be insufficient changes for the property to be taken out of rating.

However, after having regard to the

nature of the property the VO did not consider that its RV should have increased between the two lists, and so offered to reduce the appeal property's assessment back to £900 RV.

The appellant explained that the appeal property had been built in the 1920s by a local carpenter. It was of a non standard construction having four courses of bricks and wood partitioning, which had then been rendered on the outside. It had initially been occupied on a long lease until the 1970s when it had become a holiday letting. However, over the years due to the availability of more modern accommodation, it had not been kept as a business and had only been used by past customers over the last 20-30 years who had become friends.

The appellant stated that four factors had led to its decline, these were:

1. Due to his age, he was no longer was able to service the unit.
2. The decline in demand for its use.
3. The 80% increase in the council tax that had been demanded by the council.
4. The poor standard of the accommodation, including problems with its electrical safety.

Having regard to the condition of the property, he noted:

- Some damage had occurred to its wooden structure.
- Its internal floors were uneven.
- Its chimney was cracked, preventing safe usage.
- Its walls were not insulated.
- There were no central heating or storage heaters in the property.
- It had a 1970s dark wood Formica kitchen and faux wood panel walls.
- Its electrical installation was 40 years old.
- The pipe work to the bathroom had been disconnected.
- Repairs had been made to the window frames.
- The carpets and curtains had not been replaced since the 1970s, as could be evidenced by their designs.
- No furniture remained in the property and the garden was overgrown.

The appellant concluded that the cost of refurbishing the appeal property would be £21,000 [£3K electrics; £3K plumbing; £2.5K decoration; £2K wood treatment; £2K new kitchen; £4K insulation works;£3K UPVC doors (2) and windows(6), plus a £1.5K contingency fund] and that it would take 10 years rental income to pay for these repairs. Therefore, the appeal property was only fit for demolition, its only value being in the size of its plot and its location. However, he had been advised not to demolish the property as this could have an adverse impact on any future planning application.

In reaching its decision, the VT noted that:

- The VO was correct to hold that the material day was 1 April 2005 and that it had to look at the condition of the property at this date.
- The definition of RV included the assumption that a property had to be envisaged as being in a state of reasonable repair.
- During some parts of 2005, the appeal property had been let out.

The VT concluded that the revised assessment offered by the VO at £900 RV fairly reflected the value of the appeal property having regard to the age and quality of the building. Therefore, the appeal was allowed in part.

A full copy of this decision can be found on our website- Appeal Number 26159735050/022N05.

Tea Room, Garden and Premises- Norfolk VT

The VT was asked to consider two appeals, the first asked for a deletion of the appeal property's assessment at £950 RV from 1 April 2000, on the grounds that it was mainly used for domestic purposes and should not be rateable, being an outbuilding or appurtenance belonging to domestic property. The second appeal asked for the appeal property's assessment to be reduced to £1 RV on the grounds that it was incorrect and excessive.

The appellant explained that his partner and himself had acquired the house as a private residence in 1973. Initially there had been no intention to open up the gardens to the public but over time its small garden had been extended piecemeal to cover 32 acres. Whilst the gardens had been ranked 27th by the Independent newspaper in Europe's top fifty gardens, Norfolk County Council did not consider that it was open enough to make it a tourist attraction. Furthermore, although it was advertised on their own website, it was not featured in any other publication.

Included in the garden were:

- A small nursery in which plants were propagated for use in the garden or sold to visitors.
- A small tearoom to provide minimal refreshments to visitors, but also used for private entertaining and winter storage.
- A car park which was an open piece of grassland, on which chickens and turkeys were also left to roam.
- A garden shed, which was used as a kiosk and a store for chicken feed.

Neither the nursery nor the tearoom required separate planning consent. A planning application had allowed a change of use from agricultural land to residential garden, open to visiting members of the public. This meant that the garden could only be opened to the public proving that it remained in private residential use as part of their residence and had restricted opening times. Arguments over the rating of the appeal property had begun as far back as September 2001, with the VO regularly revising what she wished to incorporate into the assessment

(Continued on page 10)

The appellant expressed concerns over the validity of the entries made by the VO due to the varying descriptions that had been attached to it.

The appellant considered that the VO had misinterpreted Section 66 of the Local Government Finance Act 1988, by replacing the word 'property' with 'hereditament', whereas the exemption passed to a garden, outhouse or other appurtenance belonging to or enjoyed with a property used wholly for the purposes of living accommodation. To support his case, he referred to a number of LT and VT decisions including *Turner v Coleman (VO)* RA/1/1991.

He drew distinctions between the appeal property and properties featured in *Fotheringham v Wood (VO)* (1995) and *Bell v Rycroft (VO)* (2000) in that no part of their house was used for non-domestic purposes. He also pointed out that the opening of their garden for a total of 13.5 hours per week during the summer months, did not affect their enjoyment of the appeal property as a domestic property.

Additionally, he referred to the VO's practice notes which only envisaged that gardens which were open to the public all year round would be composite hereditaments and to the 'end of the day provisions', given that at 5:30 their garden closed and reverted back to being for their personal and private use.

He also presented the VT with two schedules:

- The first was a list of 47 comparables, which were private gardens open to the public on a regular basis, 45 of which were not assessed for non-domestic rates and yet most had websites, provided teas and sold plants; indicating an established 'tone of the list.'

- The second contained details of their garden's income and expenditure for the years ending 31 March 2005. This showed that the garden was not run for profit. Shortfalls were subsidised from his partners and his income. However, when he retired, he acknowledged that the situation would probably change.

Finally he explained that they received about 20,000 visitors a year, and although they did employ staff, he took charge of the car park himself.

The VO explained that the garden was open from the end of March to the end of October on Wednesdays, Fridays, Saturdays, Sundays and bank holidays from 2 to 5:30 pm. Admission costs at the material day were £3.80 for adults. There were however additional charges for brochures and guided tours, and coaches were welcome by appointment. She believed that the planning authority considered the site was in commercial use. A number of highway improvements had been required because of the amount of traffic it generated. In 2001 there had been 4,500 cars and 50 coaches visiting the site.
She considered the appellants, rather than planning, restricted the opening hours and believed that even if the house became vacant, the gardens could remain open.

The VO did not consider that the appeal property was wholly domestic; it was not normal to have a tearoom with public toilets, areas devoted to plant sales, a car park capable of taking cars and coaches and for a house's gardens to be widely advertised and open for a substantial part of the year. Accordingly, its non-domestic use was not de minimus and it fell to be a composite hereditament under S 64 (9) of the Act.

Whilst the VO accepted that none of the LT cases were on all fours with the appeal property, she drew attention to the similarities in *Fotheringham,* given that this office was in the same curtilage as the appellant's home, it was used part time, staff were employed and the business was advertised albeit in the Yellow Pages. The VO explained that the VOA's rating manual was a working document that did not carry any force of law. She also drew distinction between the appeal property and the two VT decisions the appellant had produced, given that both of these related to stables exclusively in private use.

In the LT case *Gallagher (VO) v Church of Jesus Christ of Latter Day Saints* (2004), the LT held, "it is of no assistance for this purpose to know what VOs have done elsewhere since relief may or may not have been correctly given". She also explained that the 'end of day provisions' assumed that 'the state of affairs existing immediately before the day ends shall be treated a having existed throughout the day'.

The VO explained that delays in settling the case had occurred whilst she had sought guidance. She also reiterated that the comparables produced by the appellant were under investigation and may be erroneous.

(Continued on page 11)

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In finding for the appellant, the VT noted that:

- The tearooms, plant stall and car park were within the curtilage of the hereditament and met the provisions of S 66 (1) (b).
- Their non-domestic use was de minimus given that it was still a domestic garden and when not open the tearooms were used as storage or to entertain friends; the car park was not surfaced and also provided an area for livestock to graze and the primary use of the entrance kiosk was to store chicken feed.
- The opening of the garden had not materially affected the enjoyment of the residence for domestic use and so in line with Lord Caithness' advice; it should not result in the property being rated.
- Section 4.7 of the VOA's rating manual indicated that there would have to be very considerable use of the garden for non-domestic purposes before the total hereditament could be considered composite and therefore rateable.
- The appeal property's opening hours were similar to the appellant's 47 comparables, 45 of which were not rated: the VT did not consider that it was good practice for the VO to impugn their entries in the rating list.

Therefore the VT ordered the deletion of the appeal property from 1 April 2000, the second seeking a reduction to £1 RV accordingly became redundant.

A full copy of this decision can be found on our website- Appeal Number-26208196440/022N00. The VO has appealed this decision to the LT.

Update on Public Information Pillars (PIPs)

The decision made by East Yorkshire VT in respect of PIPs, which was featured in VIP issue 5, was appealed to the LT and subsequently withdrawn.