VALUATION TRIBUNAL SERVICE

Issue 9

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Valuation In Practice

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Recent legislation and News in Brief

The Council Tax (Valuations, Alteration of Lists and Appeals) (England) Regulations 2008 SI 315 and The Council Tax (Electronic Communications) (England) Order 2008 SI 316

The Council Tax (Valuations, Alteration of Lists and Appeals) (England) Regulations 2008 and The Council Tax (Electronic Communications) (England) Order 2008 have now been laid before Parliament and will come into force on 1 April 2008.

The introduction of appeals direct for council tax is a major development for valuation tribunals (VTs) and is a further step forward in reinforcing our independence, given that it separates the Valuation Office Agency (VOA) and the VT processes and will enable us to demonstrate more effectively that we are separate, and independent from the body (VOA) whose decision is being appealed.

Appeals direct will require the Listing Officer (LO) to issue a decision within four months, in respect of valid proposals, and four weeks in respect of invalid proposals. The LO's 'decision notice' will state that there is a right of appeal and will provide address and contact details of the relevant VT. Our appeal forms will be available on our website.

The appellant then has three months in which to submit an appeal to the VT, which will be based on the grounds identified in the initial proposal. Reasons for appealing can always change but the grounds will remain the same.

There is also an additional change and that is to provide an authority that allows VT Presidents to entertain an out of time appeal if they are satisfied that the reasons for not making the appeal within the time limits were beyond the taxpayer's control. This mirrors the procedure for liability cases.

The Council Tax (Electronic Communications) (England) Order 2008 enables notices to be sent electronically.

Modernising Empty Property Relief- The Government responds

Following the 175 responses to its consultation, the Government has determined:

- Vacant non-domestic buildings that are listed or enjoy statutory protection would continue to enjoy permanent exemption from empty rates, recognising that a greater degree of work could be involved in bringing these types of properties back into beneficial use. (Continued on Page 2)

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Special points of interest:

- **Robert Brown Director of Sanderson Weatherall Chartered Surveyors on Empty Rates– page 2**
- **Chilton-Merryweather (LO) v Hunt & Others [2007]- page 4**
- **VT decision– banding of a basement in a mansion– page 4**

back into beneficial use.

- To introduce permanent exemption for empty non-domestic properties owned by companies in administration. This would continue the Government's focus on promoting a rescue culture for insolvent companies and be consistent with the exemption from empty rates that is already enjoyed by companies in liquidation and individuals subject to bankruptcy proceedings.
- To defer a decision on introducing any anti-avoidance regulations until a later date, allowing the impact of the Rating (Empty Properties) Act 2007 to be monitored and time to assess if there was any evidence that any avoidance activity was taking place.
- To retain the six week period of occupancy, after which a property could qualify for further periods of exemption.

Of particular interest was a proposed suggestion that disputes about liability and relief for non-domestic rating should be vested with valuation tribunals rather than Magistrates, as is the case for council tax.

Robert Brown- "Empty business"

In an address given to the Yorkshire and District Association of the Institute of Revenues, Rating and Valuation, Robert Brown BSc FRICS IRRV (Director of Sanderson Weatherall Chartered Surveyors) presented his views on the future of business rates and empty property rating.

He expressed concern at the Valuation Office Agency's (VOAs) proposed use of the automated valuation model to ascertain the assessments for the 2010 rating list. He also questioned whether the VOA's proposals to introduce a system, whereby assessments were agreed before the rating list came into force was realistic, expressing the view that ratepayers were highly unlikely to instruct their agent to look at preliminary valuations or reach settlements before a list came into force.

Robert outlined his concerns regarding empty property rating by highlighting the fact that one of his clients would see their empty rates bills rise from £80,000 to £800,000 per annum. He explained that properties were often left empty

because there was little or no demand for them. Periods of vacancy were also unavoidable in cases where a person was awaiting the outcome of a planning application. One of his clients had been advised that in future unnecessary planning delays should lead them to submit an application to the council for compensation.

Robert believed that empty property rates should be 'nil' where a genuine planning application had been submitted or a property had been vandalised or damaged by fire. In making the point that currently interest payments can only be claimed in respect of reductions given to occupied properties, he believed that interest should also be paid on any overpayment made in respect of an empty property following the settlement of an appeal.

Robert also felt strongly that ratepayers should be given the right to make a new appeal, noting that appeals had previously been withdrawn or agreed without too much interest purely because they were not paying any rates.

Superior Court decisions

R (on the application of Daniels) v Barnet London BC (2007)

The High Court upheld the decision made by London NW VT that the billing authority (BA) was entitled to rescind the unoccupied property discount that it had awarded since October 2003.

On 9 October 2003, Mr Daniels had informed the BA that the appeal property was 'presently empty' and as a result it had increased his discount from 25% for sole occupancy to 50% for non occupancy.

Following a change in the legislation from 1 April 2004, the BA had decided to amend the properties from 1 April 2006 and had issued a notice to Mr Daniels setting out its intentions to reduce the discount.

In response Mr Daniels had informed the BA that the appeal property was his 'main home' and as such he should be entitled to a

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25% discount as the sole resident. The BA had then rescinded the previous discount of 50% per annum that had been applied to the appeal property since October 2003 and reinstated the 25% discount throughout. Mr Daniels had appealed against the BA's actions, as he was aggrieved that it had applied this alteration retrospectively.

In dismissing Mr Daniels' case at the VT hearing, the VT had determined that:

- At all material times Mr Daniels had been the sole resident of the appeal property.
- The appeal property had never been a second home, so Mr Daniels should have never received a reduction of 50%.
- The BA had acted correctly based on the information supplied by Mr Daniels at the relevant times.
- It was satisfied that there was no time limit within which the BA had to determine retrospective changes in liability.

The High Court confirmed that in the case before it, the BA did have the power to correct the rate of discount that it had previously allowed.

Fishers Bistro v Lothian Assessor [2007] - Scottish Lands Valuation Appeal Court

This appeal concerned the valuation of a property in Edinburgh, which had originally been valued and described as a public house at £60,000 RV in the 2000 valuation roll.

Prior to the hearing before the valuation appeal committee, the assessor had conceded a 13% allowance for 'over performance' to reflect its' higher than average turnover, due to its reputation for food. This in turn had reduced the appeal property's assessment to £52,306 RV. However, the ratepayer contended that the appeal property should be valued at £19,650 RV, as a restaurant with a public house licence.

In confirming that the appeal property's predominant character was that of a public house, the Lands Valuation Appeal Court noted:

- The appeal property had operated as a traditional public house for over a century. The appeal property had planning permission for use as a public house and it had been acquired with, and continued to have, a public house licence.
- Although the emphasis towards the service of food had changed since 1991, the licensees still held a licence which allowed them to sell drink throughout the day, unrelated to the service of food, and drinks at night after the service of food had ceased.
- The appeal property had an impressive bar area, in contrast with other premises which only had a restaurant licence.
- The ratepayer's request for the 13% 'over performance' allowance to be increased to 25% or 33%, if it was held to be valued as a public house, could not be considered. This was because they had not given fair notice of it in their grounds of appeal and the amount of the allowance was a matter for the valuation appeal committee to determine, not the Lands Valuation Appeal Court.

Halliday (VO) v Waltam Abbey Gunpowder Mills Charitable Foundation Ltd [2007] RA/45/2005

This Lands Tribunal (LT) decision purely concerned the application for costs that had been made by the Valuation Officer (VO) following the settlement of its appeal, against the VT's decision to reduce the appeal property's then existing RV of £140,000 to nil, by consent order, with a revised agreed assessment at £5,000 RV.

In rejecting the VO's application for costs, the LT noted that:

- The VO originally contended for an assessment of £140,000 RV and had ultimately agreed by consent to a revised RV of £5,000. Consequently, it could hardly be said that the VO had been a successful appellant having conceded a reduction of this magnitude.
- The appeal's progress had been delayed by numerous applications that the VO had made for extensions of time between December 2005 and April 2007.
- It was only after the VO had obtained the advice of Counsel and details of relevant documents that he had reassessed his whole approach. In the LT's opinion, the VO should have should have obtained proper advice at the outset of the appeal process and before taking the case to the VT hearing.

Therefore, it was an inappropriate case for the award of costs.

Chilton-Merryweather (LO) v Hunt & Others [2007] EWHC 3190 (Admin) - Tribunal makes sense of motorway madness.

In a ground-breaking decision, the High Court has dismissed an appeal by the Listing Officer (LO) against four decisions of the Manchester North VT (see VT decision 4205406180/113C on the VTS website) and upheld the VT's decision that the proposals had been validly made.

Mr Justice Collins agreed with the VT's finding that the increased noise and pollution levels had caused a change in the physical state of the dwellings' locality and, together, they had had a negative impact on the value of the dwellings. Section 24(10) of the Local Government Finance Act 1992 provides a number of meanings of 'material reduction', one being "any change in the physical state of the dwelling's locality". On a finding of fact, Collins J said the VT had been correct to hold that the facts "put forward … are such as can, as a matter of law, fall within the expression in the Act".

The M61 motorway had been constructed prior to 1991, the antecedent valuation date. The appellants argued at VT that the increase in magnitude of noise and dust had had a significant impact on the capital value of their dwellings. They presented sales evidence to prove the point. The respondent LO argued that a material reduction could only be caused by a physical change. He had no doubt that the traffic using the M61 in 2006 was heavier than in 1991, but categorised the change as environmental. Defending his invalidity notices, the LO said that there had been no 'physical' change(s) to the locality and therefore the appellants were not entitled to make proposals on the basis that there had been a material reduction in the value of their dwellings.

The LO continued the same theme at the High Court by contending that the expression 'change in the physical state', must mean that there is something done that is visible, causing a change to something in the locality which creates the effect in question. He said an increase in traffic levels did not qualify.

The rationale behind the Court's decision follows Collins J's orthodox construction of the word 'physical', as provided by s.24 (10) of the 1992 Act. He said "… I would suggest that the general approach where the word 'physical' is used, without any need to narrow it in context, is that it is something which has an effect upon the senses of an individual, whether those senses be hearing, feeling, sense of smell or vision. And that, generally, would be, in my view, a proper approach to the construction of the word 'physical'.

We will be watching with interest what implications this may have for the VTs? At the time of writing, we are aware that the LO has lodged papers with the Court of Appeal.

VT Corner

Council tax banding

Banding of the basement of a mansion- Oxfordshire VT

This case concerned an appeal against the entry of the basement area of a house at Foxley Farm, Stanton Harcourt Road, Eynsham, Winey, in band F.

The owners/occupiers contended that this entry should be deleted from the valuation list with effect from the 24 December 2005, as the accommodation formed part of the main house and was not a separate property.

The background of the appeal was that Foxley Farm had originally been included in the valuation list at Band G (Composite). By 1 August 2000 the property had been substantially demolished and was deleted on the 10 April 2001, as it was no longer capable of beneficial occupation.

On 24 December 2005 a new property had been completed on the old site, to which the LO had prescribed the following entries in the list, effective from that date:

- Band H - the 8 bedroom mansion.
- Band F– the basement area.
- Band C – the 3 bedroom staff flat above the separate garage block.

There was no dispute as to the separate banding of the staff flat, only with that of the basement area. The basement area itself had an internal measurement of 263m², to which access could be gained internally and externally. It contained a snooker room, games room, gun room and two separate toilets.

There were several lobby areas and a corridor leading to an office,

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plant room, shower room and a large kitchen which had a "dumb waiter" linked to a kitchen in the building above. A wine cellar and laundry room were also located off the corridor.

The LO contended that the actual use of the basement was irrelevant, as the potential use was more important. He believed that the self contained basement constituted a dwelling and should be shown as an entry in the valuation list. Reference was made to the statutory framework as contained in the Local Government Finance Act 1992 and the Council Tax (Chargeable Dwellings) Order 1992, whereby consideration must be given to whether the unit had been "constructed or adapted for the purpose of use as separate living accommodation".

The LO made reference to case law in which a self contained unit was capable of use as separate living accommodation: *Batty (LO) v Burfoot and Others (1995); Batty (LO) v Merriman (1995); Gilbert (LO) v Childs (1995)* and *Rodd (LO) v Richards (1995)*. He considered that the basement and the main house were physically capable of use as separate living accommodation to a greater extent than the Batty cases. Whilst selling the basement separately from the rest of the house would be highly impractical, as the two areas shared interconnecting staircases, it did not prevent them from being self contained units. The basement could be "ring fenced" and easily identified, as it comprised an entire floor. And any degree of communal living between a hypothetical occupier of the basement and the main house would not preclude either area from constituting a self contained unit. With regards to access, a self contained unit did not need to have its own access. The basement contained all the standard facilities for cooking and washing, with the rooms currently used as office, games room and snooker room being used for living and sleeping. Whilst he considered the absence of an actual bathroom may affect the amount a hypothetical tenant may be willing to pay in rent for the basement, it would not affect it being capable of being separately occupied from the main house.

At the hearing the owner/occupiers were represented by a professional agent who confirmed that the issue in dispute was disaggregation; the property having been constructed as a single dwelling with a separate staff flat over the garage. The intention of the owners was to cater for large amounts of people, who would need greater facilities than those provided for in the ground floor kitchen. The basement kitchen was a working kitchen, with the ground floor kitchen only having a small built-in oven used as a warming device.

He pointed out that there was one common factor in all cases on self contained units – the areas subject

to disaggregation had been occupied as separate flats or annexes. He referred to the *Clement (LO) v Bryant and Other (2003)* and the fact that whether a building was occupied was irrelevant in determining if a unit was self contained. In the *Jorgensen (LO) v Gompers (2006)* it was decided that the "bricks and mortar test" mattered, not the intention of the council taxpayer, and that the importance of cooking facilities depended on the actual facts of the actual case: a VT should have regard to the particular circumstances of the case and look at the physical characteristics of the building.

The whole property had not been constructed or adapted for the basement to form a separate dwelling; it was a "grand house" with the amenities in the basement being part of the facilities to be enjoyed with the main house. He concluded that in order to look at the issue objectively one had to look at the property as a whole. The ground floor kitchen had not been constructed to cater for 16 people nor had the basement being constructed for separate occupation; however he accepted that it was a possibility.

The VT considered the case to be an unusual but interesting one. The appeal was allowed with the entry in the valuation list relating to the basement to be deleted for the following reasons:

- It was not unreasonable to expect such a house to have the facilities provided in the basement area;
- It was unlikely for such a dwelling to have a small kitchen without the support of the larger more practical one in the basement, which could meet the needs of the house when fully occupied;
- The basement kitchen could be considered "the hub" for this type of household it had a range cooker, separate ovens and a "dumb waiter" to allow it to be used in conjunction with the main house.
- This type of case required an objective "bricks and mortar" test. One had to look objectively at the physical state of the property on the basis that the whole property was a "grand dwelling". Thereby disregarding any intended use, potential or actual, by the occupier.
- The separate access and shower room in the basement were for the area's use as a games room; they had not been constructed to allow it to be occupied separately.

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- The size of the property made it different to the norm, in having a number of entrances.
- The basement had not been constructed for the purpose of being a separate dwelling, and whilst it possibly could be, its present use was not as a separate dwelling.
- One had to look at the building as a whole and not just at the basement. The property was an imposing house of substantial size designed and constructed in the manner of, and for the purpose of being, a grand family dwelling.

This case was reported in the December issue of Rating Appeals [Peros v Brian (LO)] and appears on the VT website- see Appeal No 3125429552/163C

Banding of a barn conversion in a rural location next to a working farm- South Yorkshire VT

This appeal concerned the banding of a large barn conversion of 332m², which was located on a 97 acre working farm in Ashton. The appeal

property had neither a private entrance nor a defined curtilage. It had a septic tank and no mains gas. The appeal property had been entered into the valuation list at band G. It was detached, but had previously formed part of a farm building and had been converted with the intention of it becoming a holiday let. However, the appeal property was presently being occupied by the owner whilst he was repairing the farmhouse.

The owner explained that formerly he had bred cattle, but following the BSE crisis, he had diversified and his farming business now encompassed horse breeding, hay and silage. Given that farming was fairly fluid, he did not rule out the possibility of returning it to a cattle farm in the future. However, it was accepted by both parties that if the nature of the farm changed in the future, then a further appeal could be made to reflect the change in its locality.

In reducing the appeal property to band F, the VT commented that:

- Size alone did not determine a property's value, and that its location and the facilities it offered, also affected its value.
- The appeal property was ¾ mile from the main road up a narrow track. The property had many positive aspects, but its remote location would not appeal to everyone and would also have had an affect on its value.
- Whilst the LO's comparables were generally smaller, they were all located in highly desirable village locations, which clearly commanded prices in band G: unlike the appeal property they all enjoyed defined curtilages, mains services, gardens and private accesses off main roads.
- Although the property was a desirable building in itself, its value would be reduced by its small plot size, its lack of privacy from the farm/ farmhouse and the fact that it was located on a working farm (albeit at the present time this was largely handling horses and ponies).

A full copy of this decision can be found on the VTS website- Appeal No 4415477695/257C

Non Domestic Rating

Material Change of Circumstances- closure of North Bridge, Hull- East Yorkshire VT

The appeal before the VT was one of six city centre test cases that had been selected out of 300 appeals that had been made following the closure of the North Bridge in Hull between 7 March 2005 and 18 November 2005.

Requests for three of the cases to be adjourned, until the outcome of an outstanding Lands Tribunal case was known (where the VT had determined that a 5% allowance was appropriate for BP Chemical Works) were rejected because:

- The VO opposed the request, citing that there was no or little relevance between the issues affecting a decision on a chemical works six miles out of Hull and retail premises in the city centre.
- The appeals had protracted histories: the VT had previously issued a number of directions to the parties in relation to the exchange of evidence and in September 2007, all parties had agreed for the matter to be disposed of by setting aside a two day hearing in December 2007 to hear the evidence.

However, on day one of the two-day hearing, the VT allowed the parties' time to determine how they should proceed. Only one of the test cases was progressed and two of the other cases were ultimately uncontested before the VT.

As a 'scheme of allowances' had, in the main, been agreed for properties on the other side of the bridge (Witham), the appeals which had been received from properties which were not part of the city centre, had been settled.

In respect of the remaining test case appeal, the VT considered that the evidence presented by the appellant was somewhat limited in nature and largely reflected his and the other agents' surprise that the VO had conceded allowances of up to 20% for properties on one side of the of the bridge and nothing on the other side.

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The VO provided more evidence, but her rental evidence was deemed inadmissible because the relevant legal notice had not been served.

The VO explained that:

- A case on 104 Witham, Hull had been progressed to LT at an earlier date. This case had been settled by way of a consent order, which had increased the allowance for the North Bridge closure from the 15% that had been determined by the VT, to 20%. This settlement had led to other appeals being agreed in Witham, which was a tertiary area and not akin to shops in the city centre.

- Allowances of up to 20% had been conceded to properties in Witham, as the evidence had shown that this area had been the worst affected and the volume of passing traffic had reduced by up to 67%. In adjoining areas 5% and 10% allowances had also been agreed, but there was no evidence to indicate that the scheme should be extended any further into the city centre.

- At all times during the bridge closure, all of the other roads in the vicinity had remained open, although some traffic had been re-routed. The predicted chaos had never materialised, North Bridge being only one of a number of routes into the city.

- No evidence had been produced to show that the bridge closure had had any affect on the rents in the appeal property's area.

- No significant turnover evidence had been provided by any of the agents and the additional evidence that she had requested relating to footfall evidence was also inconclusive.

In reaching its decision the VT referred to the issue of burden of proof and to the LT case of *Irving Brown and Daughter v Smith (VO) RA 1996*, principally that 'he who asserts must prove'.

The VT considered that the appellant had fallen very short of discharging that burden and as more than two years had elapsed since the event had occurred, ample time had been given to allow a case to be prepared. Accordingly, on the evidence presented, the VT had no alternative than to confirm the appeal property's entry in the rating list.

A full copy of this decision can be found on the VTS website- Appeal No 20049218014/257N00

Part 1- Valuation of Dudley House, Leeds, a former office block which suffered from a 'cocktail of disabilities'- West Yorkshire VT

This case concerned 101 proposals that had been made against the various office assessments in Dudley House, a multi storey office block in the centre of Leeds; in both the 1995 and 2000 rating lists. All of the appeals had been the subject of a pre-hearing review to help manage them more effectively.

Dudley House was a concrete framed building, constructed in 1972 to provide offices over fifteen floors, a plant room and storage on the 16th floor and a car park in the basement. With the exception of the 10th floor, which had remained in Crown Occupation until July 1997, all other parts had been vacated by 1 April 1995.

Following a report in 1993, the owner had concluded that Dudley House had reached the end of its economic life as an office block and required complete redevelopment either by demolition or substantial reconstruction for another use.

Planning permission for a change of use had been acquired in April 2001, after which the upper floors of the tower block had been converted to residential use and the podium offices for retail, leisure and office use. Following its redevelopment Dudley House had become known as 'The Cube/K2'.

At an initial hearing held on 27 November 2006, the VT was asked to determine, as an interim issue, whether the existing 14 hereditaments should remain in force or if all of the properties should be merged to form one hereditament.

In summary, the appellant's key argument was that as Dudley House was predominantly empty and in one ownership, it should be treated as one hereditament.

In response, the VO highlighted that at no time since 1972 had Dudley House ever been occupied by a single occupier. Each floor had four separately metered areas to allow different occupiers to have their own circuits and charges. Even three years after the building was vacated, it was apparent that many of the adaptations relating to its multi occupied past were still in place. Accordingly, all parts remained capable of being separately assessed at each of the three material dates. Between May and December 2004, efforts had been made to let parts of the building on a short term basis. In addition, in 1996, 62 basement car parking spaces had been let outside the terms of the Landlord and Tenant Act to ensure their redevelopment plans were not thwarted.

Referring to the LT case of *Osbourne v Williamson (VO) and Norwich CC [1979]*, which was unreported, the VO considered that the pattern of occupation apparent when the last occupier moved out should be maintained, unless there was evidence of an overt act taken to change the position. In the VO's opinion no overt action was taken; the owner's only priority from 1993 to 2001 appeared to have Dudley House preserved for redevelopment.

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The VO also pointed out that the Court of Appeal case of *Gilbert (VO) v S Hickinbottom & Sons [1956]*, cited by the appellant, related to occupation matters not to ownership: the motivation for pursuing a merger was to secure a reduction in empty rates liability through a quantum allowance. In short, the VO contended that the appellant was seeking the creation of an unnatural hereditament which had never been occupied or adapted for use as a single assessment. The only things that the Dudley House assessments had in common were that they were in the same building and in the same ownership. He also referred to the Court of Appeal decision of *Vtesse Networks Ltd v Bradford (VO) [2006],* which set out that ownership, was not a relevant factor to be considered when determining if a property was a hereditament.

In reaching its interim decision that each of the existing assessments should remain in the rating lists, the VT expressed its surprise that the matter of an office building becoming progressively empty pending its redevelopment had never previously been considered throughout the history of rating. Having regard to the burden of proof, the VT considered that this had been dispelled by the VO. Although the VT expressed some reservations as to whether the case of *Osbourne v Williams*, which concerned a flat and a maisonette, was on all fours with the case before it, the VT attached most weight to the findings of the *Vtesse* case and noted the comments of Channel J from the case of *North Eastern Railway Co v York Union*, which was referred to in the *Gilbert & Hickinbottom* case:

One thing I think is clear, that 'property must be rated according to what it is, and not according to what it might be'

The VT considered that historically the facts spoke for themselves and that the appeal properties had always been occupied and advertised separately.

We believe that the agent has appealed this decision to the LT. A full copy of this decision can be found on the VTS website- Appeal No 47202577770/244N95. Part 2 of the Dudley House case which examines its valuation will follow in VIP 10

Valuation of a factory manufacturing food and drink cans - Leicester VT

This appeal challenged the appeal property's entry in the 2005 rating list of £1,170,000 RV. At the hearing, the agent sought an assessment of £1,070,000 RV, whilst the VO defended a revised assessment of £1,160,000 RV.

The appeal property comprised a 1970s factory which was linked to a modern, 2002-built, main distribution warehouse. The appellant company manufactured food and drinks cans from aluminium sheets. The main issues in dispute related to the following:

- The level of the end allowance that was applicable for the sloping nature of the site, the mixed age range of buildings and the configuration of the site. A 5% allowance was agreed for the 2000 list assessment, but the agent sought an increased end allowance of 10%.
- The rateability of the electrics and the hydraulics under the Valuation for Rating (Plant and Machinery) (England) Regulations 2000:

⇒The first Plant and Machinery (P&M) issue in dispute related to the electricity supply. There was a dispute between the parties over who was in control of the electricity substation, the appellant or the East Midlands' Electricity Board. The VO believed it was the latter, although he was not sure of his facts. He contended that the 11 kV cables and the 11kV/415v were not part of the first distribution board and were not rateable.

⇒The second P&M issue in dispute related to the hydraulics, in particular the electric motors driving the clutch and brake mechanisms on the 5000 Bodymaker machines. These machines punched the aluminium into shape to produce food and drink cans. The agent contended that an electric motor on its own was not rateable. The VO, however, contended that the electric motor was rateable because it drove the hydraulic pump which powered the clutch and brake mechanisms.

In allowing the appeal in part, the VT dismissed the agent's case for an increased end allowance above what was previously conceded for the 2000 list, because there was no evidence to show that any physical changes had taken place to the site since the agreement for the 5% allowance had been reached. In any event, the VT noted the comments made by the LT in the case of *Peter Dixon & Sons v Elliott (VO),* that disabilities must be markedly noticeable if not indeed substantial to justify an allowance.

With regard to the P&M issues, the VT upheld the agent's argument on both counts. As a finding of fact, the VT found that the appellant company was in control of the main distribution board. Consequently, the cabling and the transformers leading from it were not the first point of supply and therefore not rateable. With regard to the electric motors on the Bodymakers, again as a finding of fact, the VT found that these motors were providing power for the machines. Since electrical equipment beyond the first distribution point was not rateable, the agent's contention that these machines were not rateable items of P&M was upheld.

The VT determined an assessment of £1,150,000 RV.

A full copy of this decision can be found on the VTS website: Appeal No 246510131031/044N05

Lotus Cars- Norfolk VT

This case looked at whether or not a separate hereditament existed within the curtilage of the property occupied by Lotus Cars Ltd, given that the ground and part of the first floors of a building known as 'the White Building' was occupied by Proton Cars, who had bought Lotus out.

The VO considered that a separate hereditament existed, as the ground and first floor of the building were let to Proton Cars on a 10 year lease, with the landlord responsible for both internal and external repairs and insurance, at a rent of £88,431. There was also a service charge.

The VO referred to the LT case of *Gilbert (VO) v Hickinbottom & Sons Ltd* [1956] which established the principles that there could only be one rateable occupier of a hereditament and in determining the extent of the hereditament, it was essential to first identify the occupier, then the extent of the occupation, then the occupation in relation to a geographical and purpose test.

He went on to point out that as Proton Cars (UK) Ltd and Lotus Cars Ltd were registered as separate UK Companies there was a 'Corporate Veil' between them and there were clear divisions in the building marking the parts occupied by each company. Where two or more people used the property, one of them had to be in 'paramount occupation' and from this he contended that:

a) Proton Cars (UK) Ltd was in paramount occupation.

b) Lotus's occasional use of the conference rooms was subordinate.

c) The services offered by Lotus – opening/closing the main gate and the provision of services – were nothing more than would be expected from the Landlord of any multi-occupied site.

In contrast the agent argued that Proton Cars (UK) Ltd constructed 'The White Building' so that it could be used jointly with Lotus Cars, as a design workshop. The offices were used for admin purposes, with the workshops and other offices to the rear of the ground and first floors shared by both Companies.

He went to explain that 'the White Building', which was constructed in 2003, had never had a separate entry in the rating list. Lotus controlled the opening and closing of the main gates because of industrial espionage. For this reason Proton was unable to assign or sub-let parts and if Proton moved out, no-one would else occupy the property. He concluded that Lotus was in paramount occupation, as they:

- Dictated what happened internally and externally.
- Provided all the utilities, security and fire prevention, the cleaning, heating and air conditioning and the external landscaping.

Whilst Lotus and Proton shared the canteen, offices and car park spaces, he likened Proton's occupation to that of M&S in Manchester following the mid 1990's bombing, where they subsequently occupied part of the John Lewis store whilst their own premises were being re-built. This was contested at VT where it was determined that John Lewis had paramount control and many department stores now operated on the same basis.

Finally, he referred to a number of newspaper cuttings to show the 'closeness' of Lotus and Proton Cars and believed that despite the combination locks, there was free movement of staff between the different parts of 'The White Building'.

Further evidence was taken from the Finance Director and Facilities Manager at a site inspection of the property, which emphasised:

a) The 'incestuous working relationship' between the two companies.

b) The site's poor location and logistical problems.

c) That Lotus has no control over Proton's use of 'The White Building'.

In reaching its decision that there was a separate unit of assessment within 'The White Building', the VT had regard to the following facts:

1. Proton's lease specified a definite area of occupation.

2. Lotus Cars Ltd answered to Proton Malaysia and had no connection to Proton (UK) Ltd. Therefore the VT considered Proton Cars (UK) Ltd was not part of the Lotus Company and was a separate entity.

3. The *Westminster CC v Southern Railway Co, Railway Assessment Authority and WH Smith & Sons LTD* [1936] case was of particular assistance in identifying who was in paramount control. The VT concluded that Proton was in paramount occupation and therefore had exclusive occupation given they could vary the opening/closing times of the main gates when requested, signage indicated that Proton was in occupation of the building, Proton employed their own staff in 'The White Building' and controlled the access between their part and that occupied by Lotus, via combination locks. The degree of 'incestuous ness' was not so well developed as to make occupation of 'The White Building' indistinguishable between the two Companies.

(Continued on page 10)

The tribunal then moved on to consider the method of assessing the two separate hereditaments and determined the following revised entries:

- Lotus Cars- RV reduced from £980,000 to £900,000: end allowance increased from 12.5% (to reflect mixed age, layout and access) to 20% (further 7.5% to reflect location difficulties).
- Proton Cars- RV reduced from £106,000 to £100,000: main space reduced from £115.5/m² to £110/m².

A full copy of this decision can be found on the VTS website- Appeal No 263011003397/022N05

Review of 2005 Non-Domestic Rating Revaluation in Wales

The following is a summary of the Valuation Tribunal Service for Wales' (VTSW) response to specific questions raised by Welsh Assembly Government (WAG) with a view to enhancing arrangements in readiness for the 2010 Non-Domestic Rating (NDR) Revaluation.

(i) What worked well for the 2005 lists?

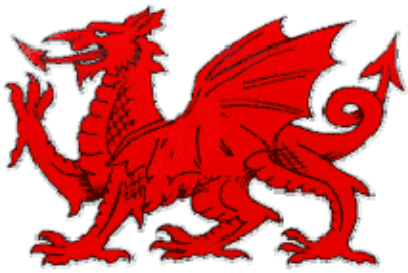
The perceived improvement is that information was made more widely available to ratepayers - summary valuations were provided with the notification of assessments and far more information has been made accessible via various websites.

(ii) What problems were there / what did not work well?

The 2005 Regulations allow proposals to be lodged (subject to restrictions) at any time during the life of the list and the effective date provisions provide no incentive to encourage the early submission of proposals. This had an adverse effect on the timely submission of appeals, which in turn had a detrimental knock-on effect on the programming of NDR appeals.

Under the current regime, those appeals considered early in the life of the list may possibly be at a disadvantage because all the relevant rental information may not be available at that time as not all proposals will have been submitted.

Established tones of value could be overturned later on in the life of the list because evidence that is in existence, but not known at the time that a small number of early appeals



are considered, becomes available at a later stage.

There is also the risk of duplication in effort in the consideration of appeals in respect of the same type of property purely because the respective appeals are lodged at different times during the life of the list and before tone has been clearly established.

(iii) What changes if any should be made for 2010 that do not require changes to regulations including how to resolve any problems identified in (ii)?

It is difficult to suggest any improvements that will not require legislative changes. However, the increased openness that has been a feature of this rating list should continue to be encouraged.

(iv) What changes if any should be made that do require changes to regulations (for the purposes of this exercise assume that appeals direct will not be implemented)?

The limits on backdating reductions under previous provisions led to more timely submission of proposals and these should be re-introduced. As a result, the majority of compiled list appeals would again be submitted at the outset of the list. This, in turn, would allow better planning and a more structured approach to be adopted in the resolution/hearing of appeals. It would allow the consideration of all opinions and evidence at the same time for a particular type or category of hereditament situated within the same geographical area.

(v) Are there any ongoing problems?

Programming is continuing to cause problems due to the lower volume of initial appeals. This has led to appeals being grouped by billing authority area rather than by the class of property. The indiscriminate nature of the submission of appeals due to the lack of any penalty for later submission has probably led to a greater number of deferrals because ratepayers and their agents want their appeals to be considered with all appeals submitted against the same type of property within the same geographical area. This has meant that appeals in earlier programmes have been listed and postponed to allow them to be re-programmed with later similar appeals.

Any other operational problems are being addressed by the close working partnership that has been forged between the VTSW and VOA following recent meetings between the Chief Executive and the Chief Valuer Wales of these respective organisations.

(vi) Any other Reval Appeals issues?

As expected, pressure was placed

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on the VTSW, and the VOA, as a result of the dual-revaluation of both domestic and non-domestic property.

It is appreciated that the timely clearance of appeals is desirable. However, when appeals against two different lists are competing for a finite number of arranged hearings, delays are inevitable. Delay in the listing of non-domestic rating appeals was also compounded by the fact that Welsh Assembly Government, quite understandably, sought to prioritise the early resolution of council tax appeals. It is hoped that future revaluations for council tax and non-domestic rating will be staggered to allow more effective use of the limited resources available for dealing with the consequent appeals.

An added disincentive with regard to the timely submission of appeals is the requirement to include the details of any rent passing on the property that is the subject of any challenge. If an agent is aware that the current rent passing on a property is higher than its rating assessment, he may well wait until the very end of the list to submit a protective proposal. If the assessment is under-assessed, the Valuation Officer will not have the time or the opportunity to increase the RV and the agent will avoid any risk of a professional negligence claim. There is nothing to lose by submitting protective proposals in the last few days of the list, particularly as any reduction will apply from 1 April 2005. If this scenario occurs, consideration of appeals against the 2010 rating list will be severely delayed.

There are also defects within the current Alteration of Lists and Appeals Regulations that have been amended or are correct in the corresponding English Regulations.

- Regulation 5– The right of appeal following a decision of a VT or a higher court previously existed for six months from the date of such a decision. The current regulations were drafted in such a way that an appeal on these grounds can only be made within six months of the day on which the next list is compiled. This error has already been corrected in the English Regulations.

- Regulation 26 – Makes provision for Pre-Hearing Reviews but refers to the wrong set of Tribunal regulations.

- Regulation 43 – Miscellaneous Amendments, as above refers to the wrong set of Tribunal regulations.

- Regulations 6(1) and 6(3) of English Regulations have been modified and proposals are now required to state the capacity of the interested person and rent being received or paid by the proposer. The corresponding Welsh Regulations should be amended to be consistent.

And Finally

The Plain English Campaign has a particular award, the Golden Bull Award, reserved for those organisations that have some trouble in communicating clearly. At its recent award ceremony, the Golden Bull Awards went to:

Virgin Trains

In a response to a letter about problems booking online, Virgin said:

'"*Moving forwards, we as Virgin Trains are looking to take ownership of the flow in question to apply our pricing structure, thus resulting in this journey search appearing in the new category-matrix format. The pricing of this particular flow is an issue going back to 1996 and it is not something that we can change until January 2008 at the earliest. I hope this makes the situation clear*".

BAA

For a sign at Gatwick airport which says:

"*Passenger shoe repatriation area only*"

Translink (NI Railways)

For a sign at Coleraine station which says:

"*Every Autumn a combination of leaves on the line, atmospheric conditions and prevailing damp conditions lead to low adhesion between the rail head and the wheel which causes services to be delayed or even cancelled. NI Railways are committed to minimising service delays, where we can, by implementing a comprehensive low adhesion action programme*"'

Warwickshire Children, Young People and Families Division

In minutes of a meeting that said**:**

"*Geoff flagged up that changes will be made to the ways in which the partnerships are assessed this year. The APA will assess all partnership arrangements affecting children, young people and families. In the past APA was not as important as the JAR but this will be reversed. The JAR is no longer being scored: the scores for the CPA will be the APA score so the score we are given as a result of the APA this year will count to the JAR next year so we need to ensure the best possible APA.*

This year's APA will focus on a review of our CYPP. All current forms of assessment will disappear in 2009 when the CAA (Comprehensive Area Assessment) will be introduced"'.

VALUATION TRIBUNAL SERVICE

Fair, effective and efficient

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