VALUATION TRIBUNAL SERVICE

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Valuation In Practice

VALUATION TRIBUNAL SERVICE

News in Brief

Empty Property Rates & Appeals

VTs are just starting to receive the first appeals following the changes in legislation relating to empty property rates: Early indications suggest that there may be a rise in the number of completion notices. Meanwhile, agents continue to voice their concerns.

To demonstrate some of the current issues that are being discussed, we include details relating to the research that has been carried out by Lambert Smith Hampton, Chartered Surveyors.

Empty Property Rates survey- Research from Lambert Smith Hampton

In March 2008, Lambert Smith Hampton (LSH) Chartered Surveyors carried out a survey of over 100 leading occupiers, investors and developers to understand what impact the introduction of empty property rates (EPR) is likely to have from 1 April 2008. The LSH's key findings were:

- More than 80% of respondents believed that the EPR changes will have a detrimental effect on town centre regeneration, with one respondent expressing the view that it would create urban waste lands, as property was likely to be demolished rather than left vacant.
- The EPR would ultimately lead to a two-tier market, where new and modern property let at market rates on longer leases with less flexibility, while older, secondary stock was left empty until it was let at low rents or demolished.
- 70% expected capital values to drop; whilst 53% believed rents would fall initially, which would be good for occupiers in the short term, in the longer term, rents would rise as space dried up; older stock could well be demolished and not replaced. This would be a retrograde step for small or start-up businesses, which traditionally occupied older, less attractive properties.
- 80% disagreed that the legislation would bring more properties to the market. The view expressed was that properties were not kept empty out of choice and if a building was vacant long term, it was because demand was low or the market was oversupplied. EPR would not change this.
- The industrial sector would suffer the most and speculative development was likely to suffer across all sectors, as risk increased and profit margin narrowed.
- More than 50% of respondents indicated that they will be reviewing their portfolios, either by:

⇒ selling or demolishing properties that are unattractive; or

⇒ slowing their development programme, seeking pre-lets prior to starting construction or leaving buildings partially completed until a tenant can be found.

Information supplied by Richard Wackett BA (Hons) FRICS IRRV Director of Lambert Smith Hampton, Leeds

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Property and Taxation in Pre-history– Guest Article by Geoff Parsons

There are of course no contemporary written accounts of the resolution of disputes or of taxation in the period of pre-history. Local services existed and, no doubt had to be paid for by the population. What follows is conjectural but not thought to be unrealistic. The period covered is from the first settlement of land to the years before the Roman occupation of the British Isles. In this period it is likely that chosen family, local and tribal leaders were accepted in part at least for their abilities:

- To peaceably settle disputes between their followers or their neighbours.
- To successfully get projects planned, managed and completed.
- Raise and allocate surplus resources for defence and other projects.

Whether the population thought of the latter as such it was *taxation*.

Initially, a paucity of population meant that land became settled sparsely. Space allowed possession for dwellings and husbandry to be taken on a first come basis. Eventually, as an extended family developed, a leader would have emerged to 'oversee' a growing area of cultivation with fields and boundaries – the latter being ditches and hedges or paled areas for livestock.

As the decades passed and the generations were born tenure of the land would probably have become thought of as being alloidal - owned by the tribe as such. From early times as members of the population died it became fitting to accord them special burial *rights* – leaders to mounds: others to special areas.

The alloidal lands of one extended family eventually abutted that of neighbouring families. No doubt conflict arose from the ambitions of leaders or from a lacking of resources. In other instances a slow osmotic joining of the populations came about – initiated by the young in heart. Wise leaders merged their extended families – partly to avoid conflict. As the generations passed, tribes came about. Tribal areas came to be recognised – that of the Icenii, the Cantii and many others.

Eventually agricultural surpluses, minerals and other tradable commodities enabled exchange with similar tribes in what became Roman Gaul. Traders also travelled from the seas enclosed by Africa and Europe. It is not known but surmised that knowing local leaders would have seen foreign and indigenous traders as a source of *taxation* - a target for licence fees and fines. Although coins were about before the Roman conquest, it might be conjectured that dues *in kind* would have been appreciated.

If the idea of a regime for import and export taxation had become embedded in the littoral fringes of the British Isles it would be interesting to speculate whether it was native born or derived from knowledge the

proclivities to tax of successive Roman emperors'.

However, to go back in time - eventually customary laws may well have developed within the extended family for allocating land to families. *Customary* in the sense that wise decisions of successive leaders became precedents for the later resolution of disputes.

Day to day disputes, about the likes of boundaries between holdings and the straying of animals, may well have been settled by neighbourly force until a strong local leader emerged. The leader would enjoy the backing of the tribal elders in enforcing the remembered rights and obligations of the tribe, i.e. *the laws*. In some instances remedies and sanctions would have been invoked - they were thought necessary, no doubt, to control the wilder members of the tribe away from their disturbing excesses. At the same time the non-monetary fines and confiscations would have swelled the stored wealth of the leaders – in vogue were fine gold torques and ornamental axe heads!

As the role of secular leader developed some members of the tribe might specialise in remembering the laws and become a sage or *lawyer* – seeking to assist the leader. Where the clouds of the unknown were hindering the settlement of differences, the spirit of the tribe might be evoked by one or more insightful individuals. If they proved right – perhaps on several occasions – a second form of leadership emerged. Again, these tenets came about by custom and precedent, but of a spiritual nature. They would be used to resolve certain kinds of conflict. It is doubtful that the 'lawyers' of a tribe would ignore such development, so the body of 'law' grew – perhaps as a mix of the 'secular' and 'spiritual'.

The early spiritual tenets could have resulted in families allocating land and labour to local burial mounds and burial grounds. One might presume that much later, tribes exacted huge resources for special spiritual areas - for large mounds and circles of stones. The human levies utilised to build these ancient monuments were substantial in *man hours* alone. The management resources were elaborate and skilled. One might suppose that materials, transport, accommodation, victuals and materials were garnered from the local tribal populations by means of taxes in kind – no doubt requiring assessment, collection and enforcement.

 lectures on the subject of rating and valuation and has past involvement with both the Royal Institution of Chartered Surveyors and the Institute of Revenues Rating and Valuation.

Decisions from Superior Courts

Judith Schofield (VO) v RBNB LT [2008] (RA/42/2004 and RA/43/2004)

These appeals related to decisions made by the Manchester South VT to reduce the rateable values on both the Jolly Miller (£9,600 RV) and the New Victoria (£10,750) to £1,400 RV, given that they had become 'public houses without a licence' from June and September 1997. The reason for the lack of licences was that during 2006, the police had objected to a number of licence renewals for public houses owned by RBNB, on the grounds that the identities of the shareholders were unknown, and so it was impossible to know whether the applicant for a licence in each case was a fit and proper person.

On 15 December 1999, following a judicial review of a Crown Court decision in Warrington, it was held that the identity of shareholders was irrelevant to the question of whether an applicant was a fit and proper person to hold a licence. The two public houses in question re-opened in December 2000 and March 2001.

In reaching its decision the VT noted that the police's objection had been made against the owning company, who could not be replaced: RBNB were prohibited from using both premises as public houses by law, also the premises could not be let to anyone else. Accordingly, whilst rejecting the appellant's application for a description of stores, the VT confirmed his proposed valuations with amended descriptions of public houses (without licences).

At the Lands Tribunal (LT) the VO argued that there was no reason to think that in the hypothetical world of rating anyone would have objected to the hypothetical landlord and tenant, and pointed out protection orders had been granted following the Court of Appeal decision, which was also only five days after the proposals had been made.

In reaching his decision, George Bartlett QC, President, held that there was neither a change in the mode nor category of use of the appeal properties. This factor had been acknowledged to some extent by the VT deciding not to amend the appeal properties' descriptions. Bartlett QC noted that whilst the respondent had contended that both premises could have been occupied as stores, there was no evidence that any steps had been taken to achieve this purpose. The appeal properties were physically public houses, had only ever been occupied as such and could expected to be occupied once again as public houses, Therefore, he held that a property should be entered into the rating list under a description and with a value that took into account the mode and category of purpose for which it was designed or last occupied and for which it could be expected to be occupied in future.

For this reason the President of the LT went onto consider what if any effect did the lack of a licence at the material day have on each of the appeal properties rateable values. He determined that the VO was again correct in holding that the inhibition attached to RBNB would not have attached itself to any other hypothetical landlord or tenant. Therefore, the VT had erred in valuing both of the premises as public houses (without a licence).

Accordingly, the appeals were allowed and the appeal properties' former entries in the rating list were restored.

J D Wetherspoon plc v Mark Charles Vincent Day (VO) LT [2008] (RA/11/2005)

This appeal concerned the Hamilton Hall, public house, which was located at Liverpool Street Station in London. Following a hearing by the Central London VT, the VO was defending a revised valuation of £370,000 RV and the appellant £275,000 RV.

The appeal property itself was a Grade II listed building that retained the original plaster features of its former use as a ballroom. It was located within the commercial centre and in an area where the footfall was very high.

Both parties accepted that the appeal property should be valued by reference to its fair maintainable receipts (FMR), the only disagreement being whether any adjustment was necessary following the outcome of the supplementary guidance that had been negotiated between the brewers and the VOA. This supplementary guidance indicated that:

- In cases where the personality of the actual licensee attracted or deterred trade, then an adjustment should be made from the outset.
- Any particular over or under trading of a group or chain may be a factor that should be reviewed at the 'stand back and look' stage.
- Whilst no allowances were to be made for pricing policies; these may be a relevant consideration in determining the specific point within a valuation band.
- Where a valuation of a pub was patently out of line, and inconsistent with other comparables, then its valuation should be reviewed.

The agent argued that an adjustment was necessary because Wetherspoons had always operated on a completely different basis from their competitors, selling real ale at far lower prices (10-15% below their

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competitors) offering food all day, employing more staff than their rivals and paying them higher bonuses. In applying an adjustment, she disregarded the passing rent which Wetherspoons had agreed with British Rail of £380,500 in August 1997, as she believed that it was above the open market rent and was tied to being the highest of a) the rent for the preceding year, b) the open market rent and c) 16% of the average turnover of the two preceding years.

To support her contention that the appeal property was over-trading she referred to six other comparables in the locality, breaking their RVs down to a rate per square metre. Whilst her proposed RV was in line with these comparables, the one proposed by the VO was 51% higher.

In contrast, the VO argued that the appeal property's FMR was attributable to its prominent physical character and unrivalled position and noted that it had received a rave review in the 1996 Evening Standard London Public House Guide because of its grandeur and had been cited as being possibly the most successful public house in the country.

The VO considered the agent's decision to break down public house assessments to a rate per square metre to be of little assistance and supported this by drawing attention to the wide variation even in properties that had similar floor spaces. He also noted that his proposed RV was within 5% of the appeal property's passing rent. He accepted that in outlying locations there could be an advantage in the Wetherspoons' lower pricing policy; however in the centre of London there was no evidence that this policy resulted in higher turnovers.

In making his decision George Bartlett QC, held that there was no evidence that the way Wetherspoons operated gave lower margins or that the initial valuation based on the actual FMR was patently out of line. He considered relatively small differences in locations could give rise to substantial differences in turnover and considered the appeal property to be 'uniquely placed' and having an 'unrivalled position' to which its large and spacious interior was also a significant attraction. Therefore, he was of the opinion that the level of FMR merely reflected its location and the nature of the premises. He disagreed with the agent's contention that the appeal property's passing rent was in excess of the market merely because it was so structured to allow British Rail to take a profit on future reviews if things turned out better than expected. Accordingly, he dismissed the appeal.

Valuation Tribunal Corner

Council tax liability

Reductions for disabilities- West Yorkshire VT

This appeal was made by Mr X who lived alone, was blind and suffered from diabetes and angina. The appeal concerned a former dining room that was used by Mr X to house and use various pieces of equipment, which included a computer with a large VDU, hands-free phone and braille machines.

Mr X explained that the room in question had not been used as a dining room for the past ten years. Instead, it was used exclusively by him to house and use the equipment, apparatus and medications relating to his disabilities. Mr X used the room for a minimum period of three hours each day.

In allowing the appeal the tribunal noted:

- There was no dispute that Mr X was a qualifying individual or that the room in question could be considered under s.3(1) (a) of the Council Tax (Reductions for Disabilities) Regulations 1992/554, as amended, as it was not a bathroom, kitchen or lavatory.

- Mr X lived alone, used the room for a minimum period of three hours each day and due to the amount of equipment in it, it could no longer function as a dining room; therefore the room was exclusively used for meeting his needs.

- The tribunal accepted that it was the use that the disabled person made of the room that determined whether or not they were entitled to the discount and there had to be a 'causal link' between the equipment and the use of the room.

- Both parties had acknowledged that Mr X's appeal was not on all fours with the cases that had progressed to superior courts, given that unlike the other cases, the room in question was 'additional', in that it did not serve another purpose such as a living room or a bedroom.

- The case law clearly identified that it had not been the intention of parliament to automatically grant a reduction for every disabled person. However, the tribunal did not consider that it had been parliament's intention to prevent any property from qualifying unless it contained a dialysis machine, which was the only example that had been able to be identified by the billing authority (BA), as to when it could give a reduction.

- Different VT decisions referred to by the parties had both refused and allowed reductions on cases that were similar to the subject case. Clearly, different interpretations existed of what the regulations actually meant. Whilst the tribunal was not bound by any VT decision, it preferred the interpretation reached by a London (NW) VT, which had distinguished its case from that of *Howell Williams v Wirral BC* (CA) (1981), noting their appellant:

> "needed all the equipment to be in a specific place. For his safety as a blind person and for all other considerations it was stated that this equipment should not be sited in different locations around the house…a room is taken up for use in this way and whilst it is so used is unavailable for any other use."

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- The case of *South Gloucestershire Council v Titley & Clothier* (HC) (2006), had referred to three VT decisions which had upheld claims for reductions for disabilities for blind taxpayers. This included reference to a West Sussex VT case, which had concerned a taxpayer who had his voice aided computer and other equipment in a two metre square box room. It was recorded that it was essential for the equipment to be placed in a separate room not used by other members of the family, to give him peace and quiet and stop other members of the family moving the equipment around. Had he not been disabled, it would not have been necessary to set aside this additional room and Counsel for the appellant council had not challenged the correctness of this decision.

- The Department of the Environment in its practice note had indicated that the room or space must be 'extra'. However, a reduction could be granted in respect of an extension or any existing room: there was no requirement that the accommodation had been specifically adapted or constructed.

- The solicitor representing Mr X indicated her belief that the original idea behind the reductions for disabilities was that a person should not be penalised because they needed more space because of their disability; the tribunal agreed. The tribunal also agreed that in rejecting Mr X's appeal the BA had confused the room's use as being 'for convenience', rather than it allowed the maximum use of the equipment for Mr X's benefit.

- To allow Mr X to communicate, follow his hobbies and carry out day to day activities, the equipment had to be housed together. It would not be possible to separate them, as they had interdependent functions. In addition the tribunal noted that if they were relocated to other rooms, Mr X would have difficulty relocating and connecting them; and due to his angina he would also be unable to carry items such as the VDU or the Braille machines.

- Mr X was adamant that his equipment and the separate room was essential and of major importance to him. Therefore, the tribunal considered that the additional room was essential to his mental and general health.

- When the BA's own inspector had visited the appeal property to examine how Mr X used the room, he had referred to the quantity of equipment that 'had to be together in one place-none of it could be placed anywhere else'.

- The tribunal had no doubt that the room, together with the equipment it contained, was of major importance to Mr X's well-being. The tribunal considered the BA had erred in trying to separate the role played by the equipment itself and whilst the BA's representative indicated that they would allow a reduction for disability in the case of a dialysis machine, which was a larger piece of equipment needing a sterile environment, in the end it was still the machine itself that was of major importance to the user.

The tribunal considered that if the case before it was rejected, where a separate room was required to be set aside to allow a substantial amount of equipment with interdependent functions to be used on a daily basis, it would be very difficult to see a case ever being successful.

VT decisions relating to council tax liability cases do not appear on the VTS website.

We understand that Leeds City Council are not appealing against this decision.

Council tax valuation case

Material reduction- building of a four storey care unit– West Yorkshire VT

Several appeals were lodged on the grounds that there had been a material reduction, caused by the proximity of a four storey extra care unit (still under construction) immediately to the rear of the appeal properties. The appeal properties were detached and semi-detached houses located on a new estate that had been built in 2001/2002, placed in bands E to C. The appellants were seeking reductions to band A.

As the Listing Officer (LO) was in agreement that the appeal properties had been detrimentally affected by the building development to the rear, the dispute focussed on the level of reduction.

The extra care development comprised 60 self contained flats with a communal lounge, café and kitchen. There were also to be 24 two bedroom bungalows alongside this development. Changes agreed by the local authority to the original planning permission meant that the building under construction was directly to the rear of the appeal properties.

The subject properties, although built in 2001/2002 had had their original bandings based on the sale prices of similar properties, which had been in existence in 1991. As these bands had not initially been challenged, these were considered to form the starting point to consider the appeal properties' original value and the amount of reduction following the change in the locality.

The LO explained that one of the local estate agents had suggested that the appeal properties had fallen in value by as much of £40,000. This fall was supported by the fact that one of the properties had been placed on the market for £230,000, had been reduced by £35,000, and still had not sold.

The LO had taken the estate agent's estimated loss of £40,000 and worked it back to 1991 values. This equated to around £15,000. After assuming that the properties were at the lower end of their bands

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and then deducting £15,000, a reduction of one band had been supported. This one band reduction had been offered to the homeowners in the area. Out of the 17 appeals received, nine had accepted the reduction. The LO felt that a one band reduction was fair, even though he accepted that some of the properties had been affected more than others.

The appellants explained that the proximity of the building to the rear meant that the appeal properties were overlooked by about 70 windows, many of which would end up with balconies. The properties had already lost natural light, sky view, privacy in the gardens and living rooms. The development measured about 25 metres in height and at its nearest point was only 10½ metres from the gardens of some of the appeal properties. The development was to be floodlit at night and its occupants would include prisoners and individuals under rehabilitation.

The development had been built closer to the appeal properties than first advertised, as it had been rotated to avoid a drain. With the benefit of hindsight, the appellants contended that no one would have considered purchasing the appeal properties. One appellant had tried to part exchange his property, but had been told that the firm would not even consider taking the property due to the new development at the rear. According to recent valuations reported in the press, the appeal properties had lost up to £70,000 in value.

Before reaching a decision, the tribunal went to see the appeal properties. Different bands had been applied to reflect their differing specifications and the tribunal felt it had to maintain these differentials in any reductions it gave.

The tribunal was convinced that the appeal properties that backed directly onto the new development had been affected to the greatest extent. Therefore, it decided that these properties should receive a two band reduction: The ones in E went to C, D to B and C to A.

The remaining houses were confirmed to have been correctly awarded a one band reduction.

A full copy of this decision can be found on the VTS website: Appeal no 4725479477/244C

Banding of chalets at South Shore Holiday Village, Bridlington- East Yorkshire VT

The appeal properties were timber-built two bedroom chalets located in a holiday village that was situated on the coast. The holiday site, which was closed for six weeks each year, had over 200 cabins and chalets on site, each of which had been placed in band A and benefited from mains electricity, water and drainage.

The sole issue in dispute was whether the appeal properties fell under the definition of a caravan, as contended by the appellants. If they did, then their existing entries in the valuation list would have to be deleted and their value reflected in a non-domestic rating assessment for the site.

Each appeal property measured 444 square feet; the dimensions being 18 feet 10 inches by 23 feet 7 inches. Each chalet had been brought on to the site in two sections and lowered onto dwarf concrete block walls. They had been inspected as new structures in 1962 and prior to council tax had been subject to domestic rating. Both parties accepted that there no evidence of a metal chassis or wheels.

In presenting the case the LO referred to the following:

- The Caravan Site and Control of Development Act (1960), which defined a caravan as:

  " Any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or being transported on a motor vehicle or trailer) and any vehicle so designed or adapted".

- The Caravan Site Act (1968), which increased the size of caravans up to 65 feet, 6 inches long by 22 feet, 3 inches wide and extended the definition to include 'twin units'. It also added that:

  " A structure when assembled, is physically capable of being moved from one place to another (whether by being towed or being transported on a motor vehicle or trailer)."

- The Court of Appeal case of *Carter v Secretary of State* [1994], which indicted that the structure must be capable of being moved as a single structure.

- The Lands Tribunal case of *Oades & Oades v Eke (VO)* [2004], which he considered to be almost identical to the appeals under consideration, as this case related to 123 chalets that had been separately banded and asked for them to be merged into one non-domestic rating assessment. However, these appeals had been dismissed by the LT for four main reasons:

⇒ their under flooring had been too flimsy and there was no provision for any chalet to be transported once installed;

⇒ there were no steel frames beneath a chalet to pass lifting slings;

⇒ the chalets were likely to sustain severe damage if they attempted to move them; and

⇒ in the majority of cases there was insufficient access to allow a crane to move between the units to attempt to lift them.

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- The Lands Tribunal case of *Atkinson (VO) v Foster and others* [1996] which had pointed out that in view of modern technology virtually anything was capable of being moved, therefore it may be necessary to look at practical problems, including the damage it would cause, if a unit was actually moved.

In defending their application for deletions, the appellants referred to:

- The fact that the LO had not banded some solid log units that were three times the size of the appeal properties (albeit the LO pointed out that they were within the permitted size allowed and had been designed with inbuilt mechanisms to allow them to be lifted).
- The Caravan Act did not state that a unit had to have wheels or a chassis for it to be classified as a caravan.
- If money and time had not been factors, the appellants could have found an expert to show that their chalets could be moved in one piece. Using photographs, they demonstrated that the chalets, underneath, were not flimsy and pointed out that each unit had originally been brought onto the site by a lorry in two sections.
- It was irrelevant that none of the chalets had ever been moved, as they were holiday homes and therefore no one would want them to be moved.

In dismissing the appeals the tribunal determined that the appeal properties were not caravans, acknowledging that whilst there was no technical reason to prevent the appeal properties from being moved, in reality they had been designed not to be moved. The tribunal also considered that the cases before it were almost identical to those in *Oades & Oades.* Therefore, it had to follow the established legal precedent.

A full copy of this decision can be found on the VTS website: Appeal no 2001478111/254C

Invalid proposal v Material reduction- effect of no licence to drain on a property- North Yorkshire VT

This appeal concerned one of three cottages that had been originally purchased from the then British Railways Board along with a licence to drain waste and ground water. In 2000, the licence to drain was revoked by Network Rail leaving the appeal property with no formal drainage rights for the waste and ground water. An appeal had been made on 17 October 2007 challenging the appeal property's entry in the valuation list at band D and asking for it to be reduced to band A because of the material reduction. However, as the LO did not agree that a change in the licence constituted a physical change, he had determined the proposal invalid.

The appellant had submitted a comprehensive bundle of documents and asked for the appeal to be determined in her absence. She raised her concern that if a property had no drainage then it was unfit for human habitation. She believed that this must therefore have had an effect on value.

The appellant explained that the property had flooded on a number of occasions; the most recent times were, 1977, 1987, 2000 and 2002, which caused significant damage. Two independent valuation reports were compiled which looked into the sole effect of the lack of a licence to drain, on the value of the property. Both reports stated that the licence alone would have a material effect on the property's value. The two reports in summation indicated the remaining value of the property would range from £50,000 to £77,000. The second report also pointed out that if a new drainage system was installed, the cost would be split between the three properties located at Station Cottage, and the overall market value of the appeal property would increase. An equal split of the costs would give a valuation in the range of £100,300 to £109,500.

The LO explained that before any consideration could be given to the valuation band of the subject property, the proposal needed verifying as valid. He referred the tribunal to the Local Government Finance Act 1992, s.24(10), which defined a 'material reduction.'

'A material reduction in relation to the value of a dwelling, means any reduction which was caused (in whole or in part) by the demolition of any part of the dwelling, any change in the physical state of the dwelling's locality or any adaptation of the dwelling to make it suitable for use by a physically disabled person.'

The LO maintained that flooding was not a permanent physical change; it was as a consequence of different weather conditions. Flooding was often a temporary occurrence which happened to the property. Also, any alteration made to a drainage licence was a financial arrangement and was not a physical change subject to a material reduction.

The LO explained that the legislation restricted the definition of a 'physical change' to such an extent that the financial arrangements surrounding the licence to drain could not be considered. He also maintained that at 1 April 1991, the antecedent valuation date, this private drainage arrangement would not have affected the value of the appeal property.

In cross examination, the LO confirmed that the road gullies were a problem. However, flooding had only occurred occasionally and because flooding was a temporary feature it could not be considered a valid factor. He was of the opinion that the market value already reflected the subject property's geographical position and the inherent 'advantages and disadvantages'.

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The LO explained that the independent reports presented were opinions of value at a specific time and he weighted them accordingly. One report was dated March 2000 and the other November 2005 and the LO must have regard to the appeal property's value in 1991.

The LO had also written to the appellant highlighting a key issue from the November 2005 report, namely that a new licence had been offered, which made the licensee responsible for the maintenance of the culvert. The appellant had received legal advice not to enter into such a licence. She had received advice that the costs of alternative drainage (such as connection to mains sewage) were prohibitively expensive, and as a result of this had had the property re-valued on the basis that there was no right to drain through the culvert. This valuation was at a figure reflecting no more than 'hope value.'

The LO asked the tribunal to dismiss the appeal as Invalid.

The tribunal therefore had to consider whether there had been any change in the physical state of the dwelling's locality, which resulted in a material reduction in the value of the dwelling, in order to make the proposal a valid submission.

The appeal hinged on two aspects:

- A change in the licence to drain.
- The repeated flooding.

On the former, the tribunal considered that the change in the licensing arrangement was a private arrangement. It was not seen as a 'physical change' but as a 'financial' alteration.

With regard to the repeated flooding, this was viewed as a temporary factor which could occur from time to time. It did not result in any demolition of all or part of the dwelling and would not fulfil the criteria of a material change.

Therefore, the grounds contained in the proposal submitted by the appellant, did not fulfil the requirements needed to make it valid, as there had not been a 'physical change' to warrant a material reduction. The tribunal determined the proposal as Invalid.

A full copy of this decision can be found on the VTS website: Appeal no 2710486928/105C

Extra Care Sheltered Housing- Birmingham VT

The Birmingham VT was recently presented with a case prosecuted by Retirement Homes Ltd on behalf of two taxpayers of dwellings within "Extra Care Sheltered Housing" developments. The argument in these cases turned on whether these types of dwellings were comparable to other dwellings nearby and whether the amount paid for them fairly reflected their open market value for council tax valuation purposes.

The appellants' representative argued that these were a unique type of developments and that the amount actually paid for the leasehold interest in the dwellings included a number of factors that should be stripped out of the price for council tax valuation purposes. These included fittings within the dwelling, including kitchen appliances and units, fireplaces and fire, carpets and curtains. The appellants' representative also made deductions for the costs of the furniture and fittings which existed in the communal areas of the complex. Finally, a large deduction was made for the liabilities incurred in the provision of the facilities within the complex, which, it was argued, went beyond the normal communal lounge provided with sheltered housing. The provisions in the complexes included a dining room with a full catering kitchen, a laundry and a second "activity lounge". There were a range of staff on site, including five duty managers, fifteen housekeeping assistants, cook and gardeners. The leases restricted sales of properties to people over 60. The leaseholders obtained a share of the communal facilities for which there was an obligation to pay a share of the cost of the services. The leaseholder could only sell their dwellings with the permission of the management company which oversaw the complexes, although a sale could not be unreasonably withheld.

The tribunal was not persuaded by the appellants' representative's arguments. It was felt that the prices of the dwellings reflected their value for council tax purposes. In arriving at that conclusion, the tribunal had particular regard to Regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 SI 550. Having carefully examined the accommodation and service provisions referred to by the appellants' representative, the tribunal concluded that none of these were something which the regulations required the tribunal to ignore. That is to say, the price paid reflected the open market value of these dwellings. Whilst the "extras" referred to by the appellants' representative may have costs in being provided or in having been constructed/included in the dwellings/complex, these were no more or less than any other feature which would add or detract to the price a dwelling would achieve, if it were for sale on the open market. Council tax legislation required the valuations to reflect the 'real world open market' for dwellings as much as possible. Therefore, unless a matter was found to be in breach of any of the assumptions required to be made by Regulation 6, then it should be taken into account. None of the factors referred to be the appellants' representative were found to require such disregard. Accordingly, the tribunal dismissed the appeals, accepting the sales prices were a fair reflection of the appeal properties' value for council tax purposes.

A full copy of this decision can be found on the VTS website: Appeal no 4605482259/221C

It is understood that the company representing the appellants is currently awaiting legal advice to see if this decision can be appealed to the High Court. In the meantime it is known that other cases are being taken to different VTs.

Non-domestic rating cases

Request for merger of 'contiguous' offices-London North West VT

This appeal concerned two seven storey office blocks called 'Clifton House' and 'Bidborough House' which touched at the 2nd to 6th floor level for a length of 10.08m externally. However, there was no internal intercommunication between the two buildings. The accommodation was occupied by the L.B. Camden Housing Department, except for 3rd floor in Clifton House which was occupied by a government department.

The agent for the occupier was seeking a merger on the grounds that the appeal properties occupied by the L.B. of Camden satisfied the definition of 'contiguous' for part of their structure and the single occupation of both buildings satisfied the other requirement justifying a single assessment.

Both parties referred to the case of *Gilbert (VO) v Hickinbottom and Sons* [1956] in their arguments, however, the Valuation Officer (VO), referred to Parker LJ's list of considerations to be taken into account when determining whether a premise in single occupation constituted one or more hereditaments. These were:

- Whether the premises were in more than one rating area.
- Whether two or more parts of the premises were capable of being separately let.
- Whether the premises formed one geographical unit.
- Whether, though forming one geographical unit, the premises by their structure and layout consisted of two or more parts.
- Whether the occupier found it necessary or convenient to use the premises as a whole for one purpose or whether he used different parts of the premises for different purposes.

The VO considered Clifton House and Bidborough House were both capable of separate occupation and were not a geographical unit, as the properties could not be ring fenced: The layout created different properties with different floors. He further contended that:

- The general rules for identifying a hereditament, originally established in the '*Gilbert v Hickinbottom'* case were a starting point only and that each case must be decided on its own facts. The VO accepted that the appeal properties did touch, but considered that there was a physical demarcation between the two buildings and areas of each curtilage.
- They each had a separate structural and external supporting wall with no structural commonality between the two buildings, and in the context of size and site layout the area of contiguity was very minor between the buildings. The fact the appeal properties were joined by a party wall in part did not automatically generate a merger – which seemed to be the line the agents were taking.

The VT found in favour of the agent and allowed the appeal. The VO has now referred the case to the LT.

A full copy of this decision can be found on the VTS website- Appeal No 521010035768/258N05

Part 2- Valuation of Dudley House, Leeds, a former office block which suffered from a 'cocktail of disabilities'- West Yorkshire VT

Part 1 which examined whether the existing 14 hereditaments should remain in the 1995 and 2000 rating lists or if all of the properties should be merged to form one hereditament was considered in VIP issue 9.

As neither party appealed to the Lands Tribunal (LT) following the outcome of the interim decision that all of the properties should remain in the rating lists, the VT went on to hear evidence on matters of valuation at a three-day hearing. Following questions by the Clerk over the possible limitations caused by the scope of initial proposals that had been selected to be treated as test cases, both parties agreed to waive their legal rights regarding the service of notices of hearing: 54 additional proposals were then scheduled, so that the VT could consider the appellant's applications.

At the hearing the appellant contended that the hereditaments should have a nil value (NB £1 RV stated on the proposals) or that they should be deleted from the rating lists due to obsolescence, changes in the locality and the fact that the building as a whole suffered from "a cocktail of disabilities".

In contrast, the VO either:

a. defended the appeal properties' entries in the 1995 rating list; or

b. conceded some revised valuations, which took account of various factors.

However, the VO sought reductions for all of the appeal properties entries' in the 2000 rating list to reflect the fall in rental values for secondary offices in the area.

On the issue of disrepair, both parties were in agreement that Dudley House was in a state of disrepair. However, the fundamental difference was whether the agreed costs of repair were uneconomic. Disregarding elements relating to refurbishment, which the VT considered went beyond what was required under the rating hypothesis, and the fact that Dudley House as a whole was said to be worth anything between £1-8 Million, the VT concluded that if the rating assessments proposed by the VO were found to be fair and reasonable, then the repair costs proposed would not be uneconomic. The VT also found the issue relating to the state of repair for the common parts to be irrelevant, given that they formed no part of any of the assessments under consideration.

In reaching its decision, the VT was asked to consider:

a) Layout - the existence of a central core was accepted to be a disability. However, it was thought to affect some assessments more than others. For example, none of the accommodation that had been occupied in the podium would have

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been affected by this disability.

b) Access - the VT did not consider that it was any better or worse than other offices of the same age in this locality.

c) Floor to ceiling height in the tower block - no joint inspection had ever taken place; as a result the appellant contended the floor to ceiling height was 2.2 metres and the VO 2.6 metres. As the VO who had measured the appeal properties appeared at the hearing to give evidence supported by photographs and inspection notes, the VT attached more weight to the VO's measurements.

d) Location - it was accepted that the prime location for office space had moved to the south of the city. However, the VT considered that this issue had been fully addressed by the VO and various rating agents in 2000, in what had become known as the Leeds Office Oversupply' agreement; in this locality 10% allowances had been agreed and these agreements had stood the test of time.

e) Asbestos - the cost of removing it had been indicated to have been £30,000, which the VT considered was *de minimus*.

f) Development proposals - the VT was unable to take the future intentions of the landlord into account. Whilst it was possible that some allowance may have been conceded to reflect nuisance from the redevelopment works that were occurring on a neighbouring building, no allowance was awarded as the appellant had not quantified its effect.

g) The remainder of the building being empty - the VT considered that the impact of this would depend on which hereditament one was looking at and again this had not been quantified by the appellant.

h) Rental evidence - this was very sparse on the building itself. Both parties agreed that the tone was well established. The basic prices that the VO had put forward of £85m² for the 1995 list and £55m² for the 2000 list were at the bottom range of values for office buildings of the same age and type in this locality.

i) Marketing - the VT was not persuaded that any significant or meaningful attempt had been made to market Dudley House at anytime. In particular there was a lack of letting brochures or any adverts in the Estates Gazette.

j) London comparables - the VT attached little weight to two London comparables that had been presented by the appellant. Whilst both of these properties had been deleted from the rating list; the VT considered that each case had to be treated on its own merits.

In conclusion the VT did not consider that the appellant had discharged his burden of proof and in some cases, whilst allowances may have been appropriate, insufficient evidence had been put forward to allow the VT to determine any alternative valuations. Accordingly, the VT confirmed the valuations that had been put forward by the VO.

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

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