VALUATION TRIBUNAL SERVICE

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VALUATION TRIBUNAL SERVICE

Valuation In Practice

Important News Update from the VTS

Valuation Tribunal for England (VTE) Practice Statements

On 1 April 2010, Prof. Zellick CBE, QC published twelve practice statements. These statements have the force of regulations and are available on the Valuation Tribunal's website www.valuationtribunal.gov.uk. (Click on the 'Publications' tab).

The most fundamental change concerns practice statement B3, General Notice of Direction, which provides the rules for an Appellant's Non Attendance. All Notices of Hearings issued since 1 April 2010 have been sent with this Direction Notice. For any appeal to be heard in the appellant's absence, the panel and any other party must have received a copy of the written submission at least 14 days before the hearing. Failure to comply means the appeal may be 'struck out', with the panel giving no further consideration to it.

This outcome can also apply where an appeal is 'verbally agreed' or 'verbally withdrawn' and the necessary documentation has not been completed before the hearing. A panel will no longer ratify the verbally agreed figures or dismiss appeals due to lack of signed forms. Therefore, it is important that any settlement forms issued by the respondent VO or LO are signed and returned in good time by an appellant.

Prof. Zellick CBE QC

Procedures covered in practice statements include:

- Clarification that any observation or advice given to the panel by its clerk should be done in open tribunal before the panel retires to decide the appeal, thereby allowing the parties the opportunity to comment on it. [See practice statement B1].
- Any request for a panel's decision to be reviewed is first referred to the President of the Tribunal who will normally give the other party 14 days to respond and comment on the request received. Only in cases where the President is satisfied that the criteria has been met, will the application actually go before a different panel for it to consider whether the decision should be set aside.[See practice statement C1]
- VTE panels have the power to summons witnesses. Applications made before a hearing will be referred to a Vice President; those applications made at a hearing will

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Special points of interest:

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- *VT decision—British Waterways—Page 6*

be considered by the panel. All applications must demonstrate that the evidence of the witness is crucial, that the person is unlikely to attend without a summons and that the applicant agrees to cover the witness' expenses in attending the hearing. [See practice statement A4]

The practice statements also set out the powers of the senior member, which includes anyone who acts as a Chairman of a panel and/or a Vice President. The powers given to senior members include:

- Consideration of requests for rating appeals to be heard outside of a VOA programme; the views of other parties to the appeal will be sought before the determination is made. [See practice statement A2]
- Senior members will be responsible for the management of complex cases, such as those with national implications or involving complex questions of law. Options open to a senior member include to hold a case management hearing (similar to the old pre-hearing reviews) or to issue directions [See practice statement A3].
- Where the clerk does not agree to postpone a case, a party can ask for a referral to a senior member (if there is time) before the hearing. [See practice statement A4].
- The senior member will determine whether an application to dispose of an appeal solely by considering the written statements of all parties can be undertaken; the process is known as 'a decision without a hearing'. Whilst similar to the former 'written representation' procedure it is less cumbersome. Referrals will be made to a senior member in cases where both parties are in agreement to this method being used. If accepted, each party sends a copy of their statement to the Tribunal and the other party, who then have 21 days to respond prior to a panel determining the case [See practice statement A6].

Council tax liability decisions to appear on the VTS website

On 4 May 2010, it was decided that the decisions for any new council tax liability appeals that are registered by the VTS, from this date, will be able to be viewed on our website. To make the search engine more effective, we have categorised decisions as follows:

- exemption classes;
- houses in multiple occupation;
- sole or main residence;
- joint and several liability;
- disabled reduction;
- students;
- discount disregards.

Decisions should therefore start to appear from July 2010.

Variable CT discounts set by different billing authorities (BAs)

In a reply to a parliamentary question in February 2010, Ms B Follett, Under Secretary for Communities and Local Government, indicated the following discounts had been given by various BAs using their discretionary powers:

Pensioners: Bury, Hillingdon, Kirklees, Lincoln, Southampton, Wirral.

Properties affected by flooding and other environmental matters: Doncaster, East Lindsey, Forest of Dean, Gloucester, Herefordshire UA, Hillingdon, Malvern Hills, North Lincolnshire, Northumberland, Rotherham, Wakefield, Wychavon.

People who have been disadvantaged by changes in discount regulations: Adur, Exeter, Horsham, North Norfolk, Waveney.

Various classes of empty properties, difficult to let properties, hardship, properties that did not have the benefit of mains services, including beach chalets and properties where access is restricted unoccupied:
BAs were not specifically identified to each category, so as to avoid the potential identification of individuals who had received these exemptions. However, BAs that gave one of the above exemptions included Bradford, Brighton & Hove, Cambridge, Canterbury and Copeland.

Decisions from Higher Courts

Lands Tribunal for Scotland

Selecta UK Ltd v Lothian Valuation Joint Board Assessor LTS/ VA/2008/689.

Are some vending machines at Waverley station in Edinburgh separately rateable? Whilst a Scottish case, the decision may have relevance given that the vending company operates throughout UK and Ireland.

In reaching its decision that the machines were not separately rateable, the Lands Tribunal for Scotland gave the following reasons:

- The sites could not constitute separate units of rateable occupation, as the railway retained control of the site. It was noted that on five occasions the railway had ordered various machines to be removed whilst refurbishment works were undertaken. Notice under the licence could require the removal of a machine with only three days' notice.
- It was relevant to consider the small size of each site in proportion to its surroundings, the fact that there were no lines of demarcation and that nothing had been changed in any way, the areas remaining parts of the platforms or concourses. None of the machines, which measured 200cm high x 155cm wide x 115 cm deep and weighed around 500kg, were fixed to the ground. Their installation took about four hours, their removal less. The machines were connected to the stations electricity supply and unless the ground was uneven, they just stood on the platform; otherwise a concrete plinth was laid on a plastic membrane.
- The appellant's position was subordinate to the station operator who retained control of the site and benefited by train travellers being able to purchase snacks.

Interesting VT Decisions

Class I – person requiring care elsewhere - Durham

The matter in dispute was whether Mrs T was entitled to receive a Class I exemption even though she did not have a freehold or material interest in the appeal property?

Mr and Mrs T had purchased and lived in the property since 1989. On Mr T's death in 1997, his 50% share of the appeal property had been left to his two daughters on the condition '*that my share shall remain as home for my wife as long as she shall remain my widow*'. Later in 2006, Mrs T had transferred her 50% share to her daughters but had remained living at the appeal property.

In November 2008, Mrs T become ill and after being discharged from hospital, she moved in with a friend so that she could receive a high level of care. Mrs T's daughters indicated that the move was not considered to be permanent and all of Mrs T's possession had remained at the appeal property in the hope that she could return there.

It was not disputed that Mrs T was receiving personal care by reason of illness. However, the grievance rested with the decision made by the BA not to award Class I exemption, as there was no resident of the dwelling under section 6 of the Local Government Finance Act (LGFA) 1992. Therefore, the BA believed that **(Continued on page 4)**

Interesting VT decisions continued

the liability to pay council tax fell on Mrs T's daughters, as the owners of the appeal property.

To support its case, the BA produced guidance obtained from the Institute of Revenues, Rating and Valuation (IRRV) stating a personal opinion of a member of the IRRV's technical panel that:

' *If the mother had a life interest in the property under a will or trust she could be regarded as a tenant, because a life interest is properly referred to as a 'life tenancy'. However, she has completely divested herself of the property, so cannot have the benefit of a Class I exemption. The transfer of the property two years ago may well have been to avoid local authority charges for home care or residential care.'*

Prior to retiring, the clerk drew the panel's attention to the fact that the definition of a tenant contained in The Council tax (Exempt Dwellings) Order 1992, as amended, was different to that set out in section 6 of the LGFA 1992: In addition to someone with a leasehold interest of 6 months or more, it included a person who '*has a contractual licence to occupy a dwelling'.*

The panel noted that Class I was applicable where someone had had to leave a property to receive care due to illness and the unoccupied dwelling had previously been the sole or main residence of a person who was the owner or tenant of the dwelling.

Having regard to the last will of Mr T, this indicated that the appeal property had to remain Mrs T home, so long as she remained his widow. This will was legally binding on his daughters and meant that Mrs T met the criteria to be regarded as a tenant under the Exempt Dwellings Order, as she had a contractual licence to remain in the appeal property. In addition, the panel noted that Mrs T's belongings had remained at the appeal property and her daughters had left it open for her to return home. Therefore, the appeal was allowed.

Sole or main residence - single serviceman - Kingston-Upon-Hull City Council

This case concerned whether the main residence of Mr X, a corporal in the army, was at the HM forces base in Lindsey or with his mother, who lived nearby in Hull. The BA had cancelled Mr X's mother's single person discount on the grounds that they believed that Mr X's main residence was also at this property.

In evidence, Mr X indicated that forces personal were being treated differently by other local authorities and he was aware of council tax discounts being allowed elsewhere.

The respondent BA said that in taking their approach, they had obtained the view of the IRRV. Although Mr X paid a contribution in lieu of council tax to the barracks, the panel was of the view that these payments did not in themselves determine that his main residence was there (High Court case of *Doncaster BC v Stark & Stark [1998]* RVR 80). In acknowledging that earlier case law was different, i.e. it mainly related to married couples, the panel applied the principle established in *R (On the application of Williams) v Horsham DC* [2004] EWCA Civ 39, [2004] RA 49, adopting the 'reasonable onlooker' approach and to weigh 'factors for' and 'factors against' before treating Mr X's mother's home in Hull as his main residence.

In applying this approach, the panel found Mr X's main residence to be at his mother's house in Hull, based on the following:

- 50% of Mr X's possessions were kept at his mother's house.
- His car was registered at his mother's house.
- His mail was sent to his mother's house.
- He stayed at his mother's house one or two nights each week and longer when on leave.
- If he left the army before his retirement, he would go to his mother's house.

Interesting VT decisions continued

Flat above a derelict pub – is it still a dwelling? - Leicester

The appeal sought a deletion from the valuation list of a flat above a derelict pub because it was uninhabitable.

To defend its Band A entry, the Listing Officer (LO) referred to legislation relating to the meaning of a 'dwelling' and the 'hereditament test'. The LO also referred to the basis of valuation and the statutory assumptions including that "the dwelling was in a reasonable state of repair", as outlined in the the Council Tax (Situation & Valuation of Dwellings) Regulations 1992.

The dwelling was a second floor self-contained flat with a kitchen, living room, bedroom, bathroom and WC. The pub had a RV of £1,000 to reflect its poor state of repair (and was therefore exempt from empty property rates) but the BA continued to levy CT and, because the flat still existed, the LO would not delete it from the valuation list. The appellant was the under the impression that the value of the flat had been subsumed into the revised and agreed RV for the public house as a whole.

The appellant had owned and operated the pub for 17 years using managers. If the managers were not local, they could use the flat but they became responsible for the CT. In 2004, the company switched from managers to tenants, the last of whom absconded in 2008 with the stock, leaving considerable disrepair. Subsequent attempts to sell the property as a pub or with another permitted use had failed, its value falling by over 50% in 18 months.

An estate agent's report on the dwelling found severe vandalism

and the property in need of work to provide safe gas and electricity supplies. In addition, there were no water tanks, pipes, heating, washing or adequate food preparation facilities. It was uninsurable and failed compliance with Fire Regulations. The appellant estimated that to make the domestic part habitable would cost them "thousands of pounds", a figure far more than the current market value. The local authority was not forthcoming in its support for regeneration.

The parties' attention was drawn by the panel to:

a) the High Court judgment in *R v East Sussex Valuation Tribunal ex parte Silverstone* [1996] RVR203, which stated that the statutory council tax valuation assumptions were not rebuttable by the facts; and

b), the Council Tax (Exempt Dwellings) Order 1992, which allowed BAs to grant exemptions for specified periods, provided that certain criteria are met.

For Class A, the criterion was that a dwelling required major repair work to render it habitable. This, and the statutory assumption as to reasonable repair, indicated that the legislation was designed to keep dwellings that were in need of repair in this valuation list.

Both parties had referred to the appeal property as a "flat" and by definition a flat was domestic property, within the meaning of Section 3, Local Government Finance Act 1992. The appellant's belief that the value of the flat had been subsumed into the overall non-domestic rate valuation for the public house as a whole was tantamount to an acceptance that the flat had a value for rating purposes. Had the General Rate Act 1967 remained in force, the flat would have had a rateable value albeit a nominal one. It therefore passed the hereditament test, as it would have been a property liable to a rate. However, as the flat was domestic property, it fell to be assessed for council tax purposes and the lowest possible value was Band A. The appeal was therefore dismissed.

A full copy of this decision is available on the VTS' website- see appeal 2465548775/044CAD

Blight –compulsory purchase order- Leeds

The proposal before the panel asked for a reduction to £1 RV, to be effective from 19 June 2008, when a compulsory purchase order (CPO) had been applied to 8.835 hectares of land in Leeds city centre, including Vicar Lane, where the appeal property was situated.

After noting the definition of RV contained in the Rating (Valuation)

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Interesting VT decisions continued

Act [1999] and *Dawkins v Ash Brothers & Heaton Ltd [1969]*, the panel did not consider that the hypothetical landlord would concede any reduction in rent, if there was a likely prospect of the tenancy continuing for more than one year. However, the material date was 3 February 2009 (the date the proposal had been put in) and the evidence suggested that the CPO had been put on hold: Letters sent from the parties acting for the council and the developer in September 2008 indicated that the project would be moth balled as a result of the credit crunch and that the earliest vacation date would be April 2010. Subsequent information indicated that the project was now unlikely to commence until 2011 at the earliest.

The panel noted that the antecedent valuation date for the 2005 rating list was 1 April 2003, a time when the economy was more buoyant. Whilst any subsequent decline in economic factors could not be taken into account, it was nonetheless evident that many businesses were struggling in the current recession and this in turn could seriously affect any location or set of trading accounts.

At its site inspection the panel noted a significant number of customers in the appeal property; the trading information produced was not conclusive and did not show massive falls, albeit this could have been down to the good trading ability of the appellant concerned. Accordingly, the appeal was dismissed.

A full copy of this decision is available on the VTS' website- see appeal 472015051388/244N05

Value of air conditioning in retail warehouse- West Yorkshire

The appeal before the panel in this case related to a retail warehouse that was occupied by Currys in Batley, entered into the rating list at £995,000 RV. The appeal property was located just off the M62 motorway, on one of the most successful retail parks in the north of England. It had been built in 1999 and benefitted from a ducted air conditioning system.

The issue for the panel to determine was whether the value of the air conditioning system at the appeal property, was best reflected by:

- a standard 5% uplift to the basic price per m², as proposed by the Valuation Officer, which in this case led to an addition of £12.50/m²; or
- a value based on the estimated replacement costs for the same air conditioning system, as requested by the appellant's representative, which when adjusted for depreciation and decapitalised at 5%, was £2.05/m².

The panel largely favoured the appellant's approach, determining the value of the air conditioning present at the appeal property to be £2.79/m². The only element of the appellant's case that was not upheld was the adjustment for depreciation, given that costs on which his case was based related to values obtained from other properties around the country close to the antecedent valuation date of 1 April 2003.

The panel determined a revised assessment of £961,000 RV.

A full copy of this decision is available on the VTS website - see appeal no 471515274849/244N05. This decision has been appealed to the Lands Tribunal by the Valuation Office Agency (VOA).

British Waterways Board (BWB), Canal Hereditament, England and Wales

All property occupied by BWB is included in the Central List unless it forms an excepted hereditament. The hereditaments include some 1500 miles of canal in England and 72 miles in Wales. It also includes a large number of aqueducts, bridges, reservoirs, locks and other assorted canal associated items and various operational buildings.

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Interesting VT decisions continued

The issue before the panel in this five-day hearing was to establish the rent that the hypothetical landlord and tenant would agree on the basis of the statutory assumptions. The extent and cost of the repairs required was a major issue affecting the rent. The panel heard the cost of repairing the principal assets stood at £139.1 million, as at 1 April 2005.

BWB had concentrated on maintaining on the principal assets, but had done so at the expense of the non-principal assets (tow paths, bank protection etc) whose repair had declined as a result. The optimal state was to have no more than 15% of assets being more than 85% life-expired. In practice, the actual maintenance of the canal network resulted in 'asset condition drift', where the network was gradually deteriorating, creating a situation where excess maintenance costs would arise from having too many near life expired assets, which reduced the funds available for repairs and led to even higher maintenance costs.

Ideally, it would be necessary to spend approximately £80 million on routine maintenance, plus £40 million on dredging and repair each year. However, BWB had maintenance arrears of £100 million, which compared to available funding, meant the appropriate level of investment was never achievable. Consequently, even allowing for the reduction in repairs to the principal assets, the network was falling progressively from the optimal repair condition.

The issue of "repairs or improvements" was raised, as the subject property was some 200 years old and comprised many separate elements.

It was determined that the works required to maintain the canal track, locks and the other elements would fall into the nature of a repair, even if new parts were included, simply due to the huge scale of the hereditament. The Valuation Officer (VO) argued that the term 'fit for its purpose' equated with the requirement to keep in a reasonable state of repair. The panel determined that 'fit for its purpose' and being in a 'reasonable state of repair' were not necessarily the same thing, as a hereditament could operate even if its condition was very poor.

The financial position of BWB and the effect of the grant paid by Government (DEFRA) was raised and it was established that were it not for the grant, the canal network would not be viable and the hypothetical tenant bereft of public funds would be insolvent. The VO calculated that there were £500 million of socio-economic benefits of the canal network to the public each year. The panel did not accept such benefits could be included as part of the deal between the hypothetical parties to the tenancy in cash terms. The hypothetical tenant was looking to establish the value of the occupation to himself; he may view any non-monetary benefits flowing from his occupation as a side benefit, but these would not form part of the agreement with the landlord.

The VO made reference to other Government funded properties, such as schools and court buildings, which did not make a profit but still had an RV; but once a large repairing liability was included in the calculation, a different answer emerged.

The VO's case was that much of BWB's £100 million funding of repairs and other contractual obligations was covered by DEFRA's grant. Having funded such a large sum to provide the canal network, it would not be unreasonable for further grant to be available to cover the contractual obligation to pay a rent. In return the Government would provide the socio-economic benefits to the public, as well as supporting those businesses that relied on the canal network for their existence.

Having examined details of the grant received, the panel held that the money provided centrally was not enough to cover the costs of running the canal network. Where DEFRA had insufficient funds to meet all its obligations (as happened in 2007), the grant to BWB was cut, leading to works to the network being delayed or postponed. The panel concluded **(continued on page 8)**

Interesting VT decisions continued

therefore, that the grant provided was not sufficiently reliable for a tenant to commit to a rent totalling £1,800,000 for England and Wales, when the costs of maintenance and insurance premiums were also taken into account.

The hypothetical landlord and tenant would be aware of the costs of running the hereditament, which would be deducted from the income. If a negative sum was achieved, as in this case, the tenant would look at the available grant to see if sufficient funds were reliably available to run the canal network and also to pay rent and insurance.

The hypothetical tenant would be aware that whilst it may be possible to delay or postpone works, should the grant prove insufficient, it was not be possible to defer paying the rent and insurance beyond their due dates. The result being, that even more work to the canal network would be postponed, leading to a greater risk of a breach or other safety related issue. A tenant would not be willing to take this further risk. In view of this the hypothetical landlord would be willing to let the canal network for a £nil rent, in order to absolve himself from the obligations to maintain it, whilst retaining the freehold interest.

The panel therefore determined a £nil assessment in respect of both English and Welsh hereditaments.

A full copy of this decision is available on the VTS internet- see appeal no 1945M25992/017N05. This decision has been appealed to the LT by the VOA.

Rating of private stables- Surrey

The appellant sought a deletion of a non-domestic entry for stables and premises on the grounds that the land formed an 'other appurtenance' to a dwelling, a scenario described in the VOA's own Practice Notes.

The appellant had occupied the premises adjacent to the land used for stables since 1976, when the subject land had formed part of a large farm. The farm had become redundant and the land split up. The common boundary between the appellant's original garden and the additional land was about 150 metres. The stables had been built about 30 metres from the original boundary.

Referring to the VOA's Practice Notes, the appellant said that the stables qualified as 'domestic' because of the 'equestrian facilities' test. The horses were owned by the residents and the appurtenance belonged to, or was enjoyed with, the living accommodation. It was not disputed that the stables were entirely for the appellant's own use.

Paragraph 4.3 of the Notes stated that it was not essential the stables were within the curtilage of the dwelling provided that they belonged to or were enjoyed with the living accommodation. It was a question of fact and degree whether property was appurtenant to living accommodation but it was considered that the dwelling and the appurtenance should be in close proximity to each other. The appellant said the two 'parcels' of land met this test. There were only four horses on 11 acres and the planning permission restricted the use to domestic only.

The appellant believed that combined, the land would command £200,000 more, than if the plots were sold separately and that he had satisfied every test in the Practice Notes. He would not dispose of the stables on its own.

In rejecting the case to delete from the rating list, the VO contended that the hereditament was a composite, with the dwelling banded for CT, and the stables correctly assessed to NDR. He said the boundary between domestic and non-domestic was not always easy to determine but referred to sections 64 & 66 of Local Government Finance Act 1988, in particular s.64(1), s.64(8), s.64(9) and s.66 (1)(b).

Referring to Oxford English Dictionary's definition of '*appurtenance'*, the VO said this could mean "belonging; appendage; or accessory". It was important to note that the statutory wording was "*or other appurtenance".* The effect of the word '*other'* was to import the *ejusdem generis* rule which meant that it was not sufficient to simply

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consider the meaning of *'appurtenance'.* In determining whether the appeal premises could be considered as '*other appurtenance',* it was necessary for the meaning of '*yard', 'garden'* and *'outhouse'* and the genus they created to be taken into account.

The VO cited *Martin and Others v Hewitt (VO)* [2003] RA275 where George Bartlett QC had concluded; "*That, in my view, is a clear indication that "appurtenance" in s66 (1) (b) was not intended to encompass land or buildings lying outside the curtilage of the property referred to in s66 (1) (a)."* A similar point was made by the LT in *Winchester City Council v Handcock (VO)* [2006] RA265.

A key test in this case was where the stables stood in proximity to the dwelling's cartilage; as a natural garden or yard area of the dwelling would be considered appurtenant. However, if the stable block was sited in a paddock outside the domestic curtilage, then it would not be appurtenant. In *Head (VO) v Tower Hamlets London Borough Council* [2005] RA177, it was suggested that an appurtenance must be capable of passing in a conveyance, together with the principal property, without identification or express mention.

The panel reviewed the facts, legislation and case law. Subsection 66(1) of the 1988 Act provided the criteria for domestic property and whether the appeal property could be said to be '*other appurtenance'* was set out in paragraph (1) (b).

The panel held:

- The stables fell beyond the boundary despite sharing services.
- The fact that the adjoining land had been purchased separately and could again be sold separately, indicated that the stables would fall outside the domestic curtilage.
- '*Or other appurtenance'* meant something similar to '*yard, garden, outhouse' and* therefore this did not include stables.
- Whilst the paddocks adjoining the stables may qualify for exemption from non-domestic rating, the stables would not meet the statutory requirement and held they had been correctly entered into the rating list.

A full copy of this decision is available on the VTS internet- see appeal no 364513778757/154N05.

Bank in a hospital complex - rating of one of the smallest banks in the country- Cambridge

This appeal concerned a bank adjacent to the shopping concourse and the food court area of the Addenbrookes' hospital complex, which was occupied by Barclays. Having an area of only 81.5m², including ATM space, it was one of the smallest banks in the country and had been entered in the rating list at £34,500RV.

The property's own rent was unreliable for rating purposes because of contractual obligations and a link to the retail price index (RPI). The rental evidence on some neighbouring units was equally unreliable, with most linked to 'turnover' and which also did not conform to standard open market terms.

Contending that there was little demand for banks located in hospital complexes, the appellant referred to University Hospital Cardiff (agreed basic overall rate of £223m² for a 79.41m² unit) and to a bank in Nottingham City Hospital (an overall rate of £71.25m²).

The appellant said the 2003 rent of £12,500 was clearly at odds its current assessment. Summary valuations on neighbouring units indicated prices of £425m² for the smaller units) or £725m² for the larger units, although the turnover element suggested these figures were themselves excessive.

The panel was referred to the Court of Appeal decision in *Williams (VO) v Scottish and Newcastle Retail Ltd and Allied Domecq Retailing Ltd* [2001] EWCA Civ185; [2001] RA41 where the court held that the lease restricting the use to a public house was relevant. In the subject appeal, relying on case law and available rental evidence, the appellant contended for an RV of £26,000, based on a price of £375m², less a 15% allowance for the fact that the unit was a bank.

The VO proposed a reduction to £33,250 RV. Demand for space was evident, as Addenbrookes was one of the top UK Hospitals **(Continued on page 10)**

and hosted 850 staff living on site, in effect forming a 'village' within a wider residential area. The landlord maintained a mix of tenants; the retail units' leases incorporated 'turnover' elements, whilst 'service provider' occupiers had rents agreed on recognised standard terms. The head lease gave Barclays exclusivity on the concourse site and a restrictive covenant limited reassignment only to another bank.

Referring to the statutory definition of rateable value and the LT judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA141, the VO said the best evidence was provided by rents synonymous with the statutory definition which required little or no adjustment. Whilst the current rent was agreed close to the AVD there were a number of user restrictions and it should be disregarded for rating purposes, as per the precedent arising from *Evans (VO) v Farley* (1972) 17 RRC 356.

The panel firstly addressed the *Rebus* rule and found the appellant had not provided the necessary evidence to show that it would take substantial costs to convert the property from its current use as a bank, back to a shop; the rule in *Evans (VO) v Farley* was applied, rather than the *Scottish and Newcastle* approach.

Nor did the appellant justify his case for an overall 15% allowance in recognition that it was being used as a bank. The panel also rejected the appellant's Cardiff and Nottingham comparables because of their remoteness and did not believe them to be particularly helpful. They considered the best evidence derived from the concourse area itself. Whilst finding that 'turnover' rents were not of particular assistance, it appeared that from the evidence of agreed assessments that a 'tone' had been reached for the smaller units within the concourse at £425m². However, a reduction to £375m² was given to reflect the hereditament's location within the "service corridor", which had also been applied a neighbouring unit. Further adjustments (-5% allowance to reflect the size and a £7m² addition for air conditioning) were adopted. The panel determined the appeal at £29,600 RV.

A full copy of this decision is available on the VTS internet- see appeal no 050510207295/017N05

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