VALUATION TRIBUNAL SERVICE

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Valuation In Practice

VALUATION TRIBUNAL SERVICE

News Update

All Change at the VTS

From 4 March 2011 all of the VTE panels will be administered out of two offices:

- Hepworth House, 2 Trafford Court, Doncaster DN1 1PN; and
- Second Floor, Black Lion House, 45 Whitechapel Road, London E1 1DU.

Precise details of which of the 374 billing authorities are covered by each office can be found on: www.valuationtribunal.gov.uk.

In general terms all areas in the north/midlands including Herefordshire, Worchester, Warwickshire, Northamptonshire, Rutland and Lincolnshire will now be administered by the Doncaster office and all areas south of that line; will come under our London office in Whitechapel. With this change comes a national telephone number 0300 123 2035, which will be operational by 1 May 2011.

We have reshaped ourselves as an organisation and although we have reduced the size of our workforce, we have retained highly skilled staff that are able to deliver what is expected of us by our stakeholders. We now have a cadre of technically qualified staff who advise hearing panels, working peripatetically from their home-base with high expectations of improved professional standards and productivity, working to targets. We have deleted the previous grade of 'Clerk' and have separated the planning and service delivery functions so that there is a greater focus in these areas.

This change will move us on in becoming a more modern and

responsive organisation that is able to react promptly in providing the effective administrative and consistent support required by our users pre and post hearing. We have also introduced a new operational management team.

We congratulate:

- Glen McDougall on his promotion to Team Leader (Planning) in Doncaster;
- David Slater on his promotion to Team Leader (Service Delivery) in Doncaster;
- Dawn Dickens on her promotion to Office Manager in Doncaster;
- John Darling on his promotion to Team Leader (Planning) in Whitechapel; and
- Shirley Gibson on her promotion to Office Manager in Whitechapel.

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Special points of interest:

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News Update Continued

We also welcome our new appointments:

- ◊ John Parkin IRRV (Hons) as Service Delivery Manager in Doncaster - who will join us from his post as Revenues Manager, Herefordshire Council.
- ◊ Helen Cracknell as Service Delivery Manager – who joins us from the commercial sector.
- ◊ Kevin Sutch IRRV (Hons) as Team Leader (Service Delivery), who joins us from the Audit Commission.

New Practice Statements

Sending and Delivering Documents- Practice Statement A8

This practice statement sets out that first class mail is deemed to have been received on the second working day after posting and second class mail on the fourth working day, unless there is proof to the contrary. Any disputes concerning the service of a document will be referred to a senior member or dealt with by the panel at the hearing.

It also warns users that any single email of more than 10 megabytes will be rejected.

Publication of Decisions- Practice Statement C3

This explains that Tribunal decisions are public documents that will appear on the website, as well as being sent to the parties.

Council tax liability decisions are expected to be placed on the website from June 2011; names and other identifying information will be removed in the interests of privacy and family life.

All other decisions will appear in full. However, a party may apply to the Tribunal for a decision to be edited or anonymised. Applications have to be made in writing, supported by full reasons. Applications would be expected to be allowed in cases where it is in the interests of one or more of the following: national security, public safety or public order, personal safety, privacy and family life, protection of children and protection of commercially sensitive information.

Applications made at the hearing will be determined by the panel; those made at other times will be referred to a senior member. The Tribunal's reasons for granting or refusing an application will be issued in writing to the parties.

Empty Property Rate relief Threshold

From 1 April 2011, the RV for empty properties will revert to £2,600 RV. (The previous threshold was £2,200 RV, before it was temporarily increased in 2009 and 2010.)

The Localism Bill

This bill proposes:

- ◊ Extending the limited circumstances in which Billing Authorities (BAs) can currently give discretionary relief under S47 of the Local Government Finance Act 1988, to allow them to grant relief to any local ratepayer.
- ◊ Removing the legal requirement for ratepayers to submit an application form to obtain small business rate relief. Secondary legislation will also be amended to allow this relief to be obtained irrespective of the number of properties someone holds.
- ◊ Giving the Secretary of State powers to allow backdated 2005 non domestic rates to be cancelled in certain cases. (This is to help in situations such as arose with the Ports' assessments.)

Scottish Government Committee votes against a special rates levy in Scotland

The proposals to levy an extra tax on occupiers of retail properties over £750,000 RV in Scotland have been rejected by the Local Government Committee, which means that the scheme is now unlikely to go ahead in its present form. It had been unclear what would have been included under the term 'retail'. Opposition raised included fears that it would reduce any plans to create jobs and have an adverse impact on the rents of large units. However, there is still a further vote due on the full Scottish Budget plan for 2011/12.

Decisions from Higher Courts

Goremsandu v Harrow London BC [2010] RA 469- Dwelling not a House in Multiple Occupation

The appeal made by the appellant was allowed for the following reasons:

- Whilst the appeal had been submitted four working days late, the BA had not been prejudiced and had only raised a challenge a few days before the hearing.
- The appellant had failed to identify the point of law, however, the VT had erred by applying the wrong test in concluding that individual rent charges gave rise to 'multiple occupation'. The statutory test was whether the rent charges gave rise to a licence whereby the tenants occupied or paid for part only of the dwelling. The Administrative Court found that the individual rent charges still allowed each tenant to occupy the whole property.
- Although the tenants had agreed to allow the owner to lock and store her furniture in the conservatory, the tenants remained tenants of the conservatory, their rent had not been reduced and they could have asked for keys to gain access to this area if they so wished.

Interesting VT Decisions

Council tax liability decisions

Student disregard- lack of a definition of a theological college- Huddersfield

This appeal concerned the decision made by Kirklees Council (BA) not to award the appellant a student discount disregard for the second and third years of a course at the Charis Bible College, in Walsall; a religious body that awarded a diploma, linked to Andrew Wommack Ministries. (There are 16 such colleges around the world and the organisation has been established for 20 years.)

The appellant explained that the first year of the course had been undertaken by correspondence (watching lectures on DVDs, much in the same way as Open University students.) However, he had not claimed exemption for this period, as he had been working full time.

For the second and third years, he had attended the Charis Bible College renting a room and only travelling home at weekends. He had been required to carry out research, write essays and take examinations that required a 60% pass mark: He contended that the Charis Bible College would meet the Oxford English Dictionary definition of a theological college, as it involved 'the study of God'. Students were accepted at the College providing they were good citizens.

The BA's case included the fact that there was no minimum entry requirement at Charis Bible College, grades being based on 'spiritual growth'; the diploma awarded was not listed on the National Qualifications Framework for Higher Education. Instead, the College aimed to produce a 'lifestyle or servant hood' with students expected to complete domestic tasks and admin work such as mail shots. Students were also expected to raise funds to earn 'mission points' to fund trips abroad to give sermons.

The panel considered that the case rested on whether the Charis Bible College was a theological college. Although accepting it was somewhat of a grey area, as the term was not defined by statute, it noted that the entry requirements, study undertaken and qualifications awarded were far different in recognised theological colleges, all of which appeared to be affiliated to Universities.

In contrast, the Charis Bible College had no academic entry requirements, none of the people delivering the lectures were professors or theologians, students were not entitled to student loans, no entry appeared in UCAS, which dealt with admissions to college and higher education in the UK or on the list with the Register of Sponsors, which indicated recognised places of study for immigration purposes.

Therefore, the panel did not consider that the Charis Bible College could be described as a theological college for council tax purposes. The appeal was dismissed.

Interesting VT decisions continued

Disabled Reduction- Cumbria

This appeal concerned a dispute over a decision made by Allerdale Borough Council (BA) only to award a council tax disabled person's reduction from 11 June 2010, rather than 1998, (when the appellant had altered his home) or from 2003 (when the appellant had qualified for Disability Living Allowance).

In refusing to backdate the reduction, the BA pointed out:

- It had no evidence to support that either an extra bathroom had been added or that the appellant had been substantially and permanently disabled in the past.
- Section 9 of the Limitation Act 1980 set a limit of six years for actions in terms of sums recoverable by statute. Therefore, the BA considered that this placed a duty on taxpayers to apply for reliefs diligently.

The appellant's case included:

- Reference to the Disability Rights Handbook, published by the Disability Alliance, which indicated that there was no time limit and disability reductions could be backdated.
- Details that his health had deteriorated since 1996 and that he had first been awarded disability living allowance in 2003.
- He had not applied for the reduction previously as he had not been aware of it.

- An extra bathroom had been fitted in 1998 and an extra kitchen in 2001. However, he had been unable to provide any evidence to the BA , as the necessary documentation had been lost when his property had been flooded five years ago. If the panel needed evidence to authorise his claim, he would request old bank statements to show the payment of invoices.

In reaching a decision, the panel determined that it would allow the appeal but only to the extent that the reduction should be backdated to 1 April 2010.

Regulation 3 (1) (b) of the Council Tax (Reduction for Disabilities) Regulations states: *"as regards the financial year in question, an application is made in writing by him or on his behalf to that authority."* Therefore, the panel considered that providing an application was made in the financial year in question, it should be allowed for the whole of that year.

The panel considered the Disability Rights Handbook only gave guidance and regulation 3 (1) (b) did not allow reductions to be backdated to earlier financial years. If regulation 3 (1) (b) did not apply, then in theory, a reduction could be backdated to 1 April 1993, more than 17 years earlier, when council tax had first been introduced. In the panel's opinion, this would have been an unreasonable proposition, particularly as the BA had publicised the reduction scheme with every annual bill.

Council tax banding decisions

Banding of a 17th century period property- Staffordshire

This appeal concerned a period property that had sold in 1992 for £150,000 and was in Band F.

The appellants argued that the sale price of this property in 1992 had been inflated as, at that time, there had been plans for a by-pass to be built around the village. This had been confirmed to them by the previous owner of the property.

The subject property itself was situated on a main arterial road, which ran through the village. The by-pass had never been built and the appellants argued that the noise and disturbance that they suffered from the road had been reflected in the price they paid for it in March 2010. They argued that the difference in the price they paid and the sale price in 1992 was not in line with increase in values for other dwellings in the area, including some they had owned. This, in their opinion, supported the view the 1992 price was unreliable. Therefore, the band should be reduced.

The VOA listing officer (LO) rested his case solely on the 1992 sale price of the subject property. The panel were advised by the clerk of the decision in *Chilton-Merryweather v Hunt and others [2008],* where it was decided that an increase in traffic volumes was not a physical change in the locality that could give rise to a material reduction in council tax value.

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Interesting VT decisions continued

The panel decided to allow the appeal, as it was persuaded that the recent sale price of the subject property supported the view that the 1992 price had been inflated by the proposed by-pass at that time.

The panel acknowledged that increases in traffic volumes since 1993 were not relevant in this case. However, they took the view that at 1 April 1993, the main road outside the property was a physical fact and the council tax valuation should reflect that. The 1992 sale of the property had been made on a speculative expectation that the by-pass would be built. It was not there on 1 April 1993, the date that the physical state of the locality had to be considered, in valuing for council tax.

The panel was of the opinion that the 1 April 1991 open market value, as defined in the council tax legislation, did not require regard to be had to the possibility that a change in the locality might occur at some point in the future, which would enhance the property's value, even though this proposal would have been in the minds of the parties to the sale that had occurred on the dwelling in 1992.

A copy of this decision is available on the VTS' website-see appeal no. 3245565142/234N05

Council Tax Invalidity decision- criteria for a material reduction- Leeds

The LO asked the panel to determine that the current proposal before it was invalid. This was because he was aware that the issues raised by the appellant, namely the building of extensions on two properties No 6 and No 8, to the rear of the appeal property had already been considered in an earlier appeal. Drawing attention to a Tribunal hearing held on 2 June 2009, he pointed out that the effect of the extensions on No 6 and No 14, as well as some of the other premises in the locality had been considered and dismissed. Therefore, he did not consider the addition of another dormer extension on No 8 would put the appeal property into a lower band or overturn the previous Tribunal decision on the appeal property.

In reaching the decision to allow the appeal, the panel noted the crux of the definition rested with section 24 (10) of the Local Government Finance Act 1992, which indicated that it applied to "any change in the physical state of the dwelling's locality".

The building of the extension on No 8, a house immediately to the rear of the appeal property, had not occurred until a year after the previous Tribunal hearing had been held. Therefore, the matter was both a change to the locality and one that could not have previously been considered by the Tribunal. The proposal also requested a different effective date.

The panel accepted that as the regulations were open to 'any' change, it could be seized upon by a vexatious litigant. However, the current appellant had taken a common sense approach and offered eloquent reasons as to why there was a difference between looking at general changes that had occurred in the vicinity and allowing the consideration of the effect of something that was new and only located a few yards away.

The panel stressed that its acceptance that the building of an extension on No 8 met the criteria of section 24 was not the same as saying it would have affected the capital value to allow a reduction to occur, rather that it allowed the matter to be considered, including the cumulative effect of all of the surrounding properties that had been extended. Whilst the LO was perfectly entitled to form the opinion that the building of the extension on No 8 would not have a significant effect on the appeal property's value, he had erred in trying to circumnavigate proceedings by dealing with matters of validity and value at the same time.

A copy of this decision is available on the VTS' website-see appeal no.4720573632/244CAD

Non-Domestic rating decisions

River Garden- Reading

This appeal concerned an entry in the rating list of "Mooring and Premises" £1,250 RV, with an address of "River Garden". The subject hereditament was a plot of land on the banks of the river Thames, with a small wooden summerhouse on the site. It was agreed that there was no mooring post or stake on the plot and the Valuation Officer (VO) requested the description of the hereditament be altered to "River Garden and Premises" to reflect this fact.

The appellant, who, with three other members of a river boat society, owned the plot, sought the deletion of the entry in the list, as the hereditament was domestic. The VO maintained that it was rateable.

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Interesting VT decisions continued

There was no dispute that the plot of land and summerhouse formed a hereditament, as it had a defined area, was capable of being separately let and was in the actual, exclusive and beneficial occupation of the owners. The issue therefore was whether the hereditament was domestic property, under the provision of s.66 (1) of the LGFA 1988.

Section 66 (1) of the LGFA 1988 states that a property is domestic if:

"(a) it is used wholly for the purposes of living accommodation,

(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,

(c) it is a private garage which either has a floor area of 25 square meters or less or is used wholly or mainly for the accommodation of a private motor vehicle, or

(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use."

The issue turned on paragraph (b): the appellant argued that the appeal hereditament was a garden enjoyed with property used wholly for the purposes of living accommodation. He made the point that paragraph (b) only required it either to belong to **or** to be enjoyed with living accommodation. His argument was that the owners of the hereditament had their own living accommodation and that the river garden, which was solely used for domestic purposes, was enjoyed with this accommodation, despite, in the appellant's own case, his home being over thirty miles away.

The VO argued that the appeal hereditament did not belong to and was not enjoyed with living accommodation and referred the panel to two Lands Tribunal cases in respect of boathouses on Lake Windermere and a mooring plot on the Thames.

The panel dismissed the appeal, confirming that there must be some link between the hereditament in question and the living accommodation concerned, for it to be argued that they were enjoyed with one another. It noted:

- The owners of the plot each had separate homes and there was no connection between any of these dwellings and the river garden.
- The river garden was enjoyed by the appellant and his co-owners and was not enjoyed with their respective living accommodation.
- The owners lived some distance from the hereditament and the title to the land concerned could and indeed had been sold separately, to any living accommodation.

Finally, whilst the panel acknowledged that the appeal hereditament was solely in domestic use, it was still rateable, as it failed to meet any of the criteria laid down in s.66(1) of the 1998 Act.

A copy of this decision is available on the VTS' website-see appeal no. 311516136459/163N05

Environment Agency Huts and Rain Gauge Sites- Cumbria

The two sites were situated on fenced agricultural land measuring approximately 85m² in size. The sites comprised a timber shed (3.17m²) with solar panels on the roof, rainwater gauges, a telegraph pole and a metal self-supporting mast. The issue to determine was whether or not they were exempt under Schedule 5 (14) of the Local Government Finance act 1988:

(1) A hereditament is exempt to the extent that it consists of any of the following-

a. *land which is occupied by a drainage authority and which forms part of a main river or of a watercourse maintained by the authority;*
b. *a structure maintained by a drainage authority for the purpose of controlling or regulating the flow of water in, into or out of a watercourse which forms part of a main river* ***or*** *(appellant's emphasis) is maintained by the authority;*
c. *an appliance so maintained for that purpose.*

[(2) 'Drainage authority' means the [Environment Agency], or any internal drainage board and 'main river' and 'watercourse' have the same meanings, respectively, as they have in the Water Resources Act 1991 and the Land Drainage Act 1991.]"

The appellant considered the existence of 'or' (highlighted in bold in (b) above) negated the need for the hereditament to be situated on the banks or within a water course. The data the Environment Agency collected

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was used to estimate river water levels/implement appropriate flood defences, therefore, it met the criteria. The fact that the data was also accessible to third parties, for whom a non-commercial admin fee was charged, was not relevant. He also pointed out that an identical assessment in Oldham had been held to be exempt by the VO.

If these contentions failed, then the appellant wished to challenge the existing assessments for the rain gauges, by having regard to proposals that requested

£1 RV. The appellant sought revised valuations of £100 RV on the ground that, unlike communication masts, there were no other bidders in the market and this level of value had been agreed on a flood warning mast in Cleethorpes.

The VO pointed out that the appeal properties had been rated since 1973. They were not situated on a riverbank or in close proximity to a watercourse. Therefore, the only way the hereditaments could be exempt under Schedule 5 (14) was if they were within an area defined on the statutory 'Main River Map' or covered under section 137 (4) of the Water Act 1991.

The VO did not consider his valuations of £60 for the huts or £720, for the sites where masts and solar panels had been added, were excessive.

Whilst the appellant had indicated that all masts had been removed from the appeal properties by 2006, the actual date was unknown. The VO had inspected the appeal properties when the masts had still been there. For this reason he did not consider that any reductions should be applicable to the appeal properties' 2000 rating list assessments, pointing out that construction costs would be incurred in erecting a mast, no matter for what use it was being put. The VO went on to produce three comparables, a TV mast and two assessments occupied by Orange and North West Water Authority. These comparables had masts, solar panels and attracted values of £1,950 to £4,850 RV.

In rejecting the appeals for exemptions and reductions, the panel had regard to the advice given by Lands Tribunal President in *Gallagher (VO) v Church of Jesus Christ of the Latter Day Saints,* which had been supported by the Court of Appeal. This established that if the main purpose/primary use of something was outside that covered by the exemption, then it could not be exempt.

The panel noted the main purpose of the hereditaments was to gather information or data. The appeal properties had a multi-functional role in assessing water resources/ flood risk potential. However, it was the data from a number of rain gauges, which influenced the appellant's management decisions.

In the panel's opinion the wording of the exemption 'or is maintained by the authority' when read in conjunction with the Water Resources Act 1991 could only apply to structures such as sluices, weirs, outfalls and storage reservoirs, rather than any hereditament owned by a drainage authority.

The panel indicated that it was not aware of all of the facts concerning the Oldham case; however, in this case it was satisfied that the appeal properties were rateable and not exempt.

The appeals against the 2005 rating list assessment were dismissed, noting the VO's undertaking to reduce these assessments if the appellant could supply the date the masts had been removed, (providing they did this before 31 March 2011).

Finally, the panel placed greater weight on the three comparables put forward by the VO rather than the appellant's one comparable in Cleethorpes. It dismissed the 2000 rating list appeals on the grounds that the evidence presented did not show that the existing assessments in the rating list were excessive and the level of values were below masts occupied by Orange/North West Water Authority and used as a TV relay mast.

A copy of this decision is available on the VTS' website-see appeal no.09256258442/126N00

Rating of boats- Cumbria

The appeal property was located on the shores of Lake Windermere and described in the rating list as 'self catering holiday units (five), moorings and premises'. Three of the units were holiday apartments; two were actually boats. The issue for the panel to consider was whether the boats, which were moored at the jetties of the appeal property, were rateable.

For safety reasons, holiday makers were not allowed to use the two houseboats on the lake. Like the other 240 boats on Windermere, the two boats had a commercial boat licence but were the only vessels assessed for non-domestic rates; which meant that the other boat owners had a competitive advantage.

Section 64(4) of the Local Government Finance Act 1988 allows land to be included within the definition of a hereditament,

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Interesting VT decisions continued

the VO highlighting that 'land' included land covered by water by reference to the Interpretation Act 1978.

The panel found the words used by Lord Denning in the Court of Appeal decision in *Field Place Caravan Park Ltd v Harding (VO) (1966)* to be particularly persuasive and decisive. He had stated:

"... although a chattel is not a rateable hereditament by itself nevertheless it may become rateable together with land, if it is placed on a piece of land and enjoyed with it in such circumstances and with such a degree of permanence that the chattel with the land can together be regarded as a unit of occupation. "

Although the boats at the appeal property were chattels, they were rateable because they were placed on, and enjoyed with land, albeit land covered by water. The two boats never went on to the open lake, merely moving from one jetty to another when the water level in the lake changed. The panel was of the opinion that there was a degree of permanence such that the boats and land could be regarded as a unit of occupation. This could be distinguished from the other boats on the lake.

Additionally, the Court of Appeal decision in *Cinderella Rockerfellas Ltd v Rudd (VO) (2003)* supported the rateability of a boat used for commercial purposes where there was a degree of permanence.

Finally, the panel noted its decision appeared consistent with the rating of static caravans at holiday parks, which were rateable, as opposed to touring caravans which were not.

A copy of this decision is available on the VTS' website –see appeal no. 442015635796/539N05

Non-Domestic Rating Invalidity Appeals- Did the fault lay with VOA software or human error? - Yorkshire

The issue that the panel was asked to consider was whether three proposals, lodged at the end of March 2010, had been linked to the 'wrong assessments' by the VOA's software malfunctioning or due to human error on the part of the appellant's representative. The assessments they had been linked to had rendered them all invalid, given two related to properties that no longer appeared in the list and the other was a duplicate of an appeal that had already been lodged against a compiled list assessment.

In suggesting the possibility of human error, the panel did not consider that this cast any doubt on the credibility or professionalism of the appellant's representative involved, but merely acknowledged that everyone was capable of making mistakes, particularly when they were under pressure. In this case the appellant's representative had been trying to inspect 150 properties for his new clients and to make proposals within the last three days before the list ended, unaided.

The VOA's electronic process of submitting proposals included many checks and from the evidence provided by the VO, it seemed unlikely that the error stemmed from the VOA software/ system. No other complaints of mis-linking had been received at this busy time or before or since. The panel accepted that if the VOA system was randomly mis-linking assessments, it would have been unlikely to have mis-linked them to properties in the same village as those the appellant's representative meant to challenge and to assessments which he also acted for.

At this time, the appellant's representative had also experienced problems in making proposals in the East Midland VOA's area. Therefore, he was aware that proposals he had submitted several days before the list had closed, had not been successfully linked to properties that he wished to challenge.

The panel determined that ultimately the responsibility had to rest with the appellant's representative to submit proposals on the correct properties. Accordingly, the proposals before it were invalid.

A copy of this decision is available on the VTS' website-see appeal no. 272516793392/538N05

Interesting VT decisions continued

Warehouse and offices brought into rating list without a completion notice being issued- Kingston

The appeal property (2121.53 m²) comprised two warehouses, with 319.98 m² of first floor ancillary offices. At the material date it was agreed that the ground floor warehouse space had a three phase electricity supply to a distribution board. Whilst there was no heating or lighting, the walls and ceilings were lined/ insulated and the floor was finished. There was a standalone kitchen sink, with access to running water but no kitchen surfaces or cupboards.

The first floor offices had suspended ceilings, strip lighting, radiators, smoke detectors, carpets and power sockets in perimeter trunking. Two reception areas had been fitted out with suspended ceilings, lighting, carpets and radiators. There were also WCs that had lighting, heating and running water.

The central heating supply was not connected, the gas supply being capped at the entrance to the building. Car parking and loading facilities were available.

The issue in dispute was whether the appeal property was complete for rating purposes, with effect from 3 July 2006. Whilst both parties accepted that the VO could enter a new building into the rating list without the need for a completion notice, this could only occur where the property was so complete that it would constitute a hereditament.

The panel was referred to case law, including *Laing & Sons v Kingswood Assessment Committee & Others [1949*], from a time when empty rates had not been payable. Therefore, it was decided that the test should substitute 'actual occupation' with 'capable of actual occupation'.

The contention of the appellant was that there were eight key components missing. However, the panel immediately dismissed the need for a security alarm, telecom connections and a telecoms network/broadband: their absence did not mean a property was incomplete.

The panel then looked at the remaining issues:

- lack of partitioning in the office space This was not considered to be essential to enable beneficial occupation. It was also noted that the presence or position of partitioning on other units varied depending on who occupied the units.

- No kitchen facilities. The panel concluded that the provision of the cleaner's sink and tapped hot and cold water, together with furniture (including a microwave oven) would allow the requirements of the Health & Safety at Work Act 1974 to be met.

- Lack of a gas supply, hot water or heating. The panel was satisfied that alternative arrangements could be put in place (electric storage or fan heaters) and the warehouse could be used unheated.

- No distribution power to the warehouse. There was evidence that other units in a similar condition to the appeal property had been let. The panel concluded that the warehouse could be occupied as a warehouse without small power or three phase distribution or socket outlets.

- No lighting. This was the issue the panel considered to be the most difficult. The panel noted that the warehouse had good natural light during the day through roof panels. The panel concluded that if lighting needed to be installed (which would have taken 17 days) then a completion notice would have had to have been served. In reaching the conclusion that the appeal property would be capable of beneficial occupation in its current format, the panel looked at:

  1.The cases of *Watford BC v Parcourt Property Investment Co Ltd [1971]* and *Post Office v Nottingham CC[1976]*.

  2. The views of one of the expert witnesses that a warehouse could be used to store items without any lighting.

  3. Actual examples where warehouses had been used without any lighting.

The decision has been appealed to the Upper Tribunal (Lands Chamber).

A copy of this decision is available on the VTS' website-see appeal no. 041513946815/162N05

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