VALUATION TRIBUNAL SERVICE

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Valuation In Practice

VALUATION TRIBUNAL SERVICE

News Update

Disclosure and exchange of evidence for 2010 rating list appeals

The Practice Statement governing the disclosure and exchange of evidence came into practice on 1 January 2011, so what does this mean for the Tribunal User?

- There is a clear expectation that parties will hold negotiations between Start Date and Target Date so that at Target Date only those appeals genuinely requiring a hearing proceed to the hearing stage.

- Not less than six weeks before the hearing, the Valuation Officer (VO) must serve on all parties any rental evidence on which he intends to rely. Failure to do so *could* result in any rental evidence being excluded at the hearing

- Not less than 4 weeks before the hearing, the appellant has to send a statement of case (an outline of the issues in dispute, summarising the evidence and any legal arguments on which he wishes to rely) on the Valuation Tribunal for England (VTE) and VO. Failure to submit their statement of case by 5pm will result in the appeal being automatically struck out by the VTE.

Not less than two weeks before the hearing, the VO must serve a copy of his statement of case on the VTE and any other party. Failure to do so results in the VO being barred from taking any further part in the proceedings.

To assist tribunal users regarding the ingredients of a statement of case, an example is available on request from either of our VTS offices in Doncaster and Whitechapel.

The 17 Practice Statements published by the President of the VTE is available on www.valuationtribunal.gov.uk

Amendments to the Council Tax Discount Disregards Order 1992- Summary of responses to consultation April 2011

A Government consultation paper was issued in August 2010 on proposals to revise the above Order. The intention of the proposed changes was to:

◊ allow students studying within educational establishments in the European Union (EU) member states to be disregarded for the purposes of council tax.

◊ reflect the changes that had occurred since 1993, including the increase occurrence of distance learning courses via the internet.

The views of Billing Authorities (BAs) were considered to be especially important due to the difficulties they could face in verifying the status of establishment situated outside of the UK. Whilst the 1992 Order places a statutory duty on UK educational establishments to provide students with a certificate, the UK Government has no power to extend this duty outside the UK.

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Special points of interest:

- *Admin Court decision-Feller v Cambridge CC– PhD student—Page 3*
- *VT decision—Test Case– Oversupply of Offices, Leeds —Page 6*

News Update Continued

Of the 28 responses the Government received, most agreed that the legislative changes that were being proposed would meet the intention expressed. However concerns on the verification process for EU establishments, the possibility of scam establishments appearing on the internet and the confusion that could occur when another country joined the EU were highlighted. Those making a response also asked for the Government to provide guidance and offer clarification of the term 'distance learning'.

Amended Regulations have now been issued - The Council Tax (Discount Disregards) (Amendment) Order SI 2011/948.

Communities and Local Government Guidance on Students and Council Tax- May 2011

Treatment of distance learning - The Government has amended the definition of a fulltime course in paragraphs 3 and 4 of Schedule 1 to the Discount Disregards Order to replace the requirement for 'attendance' with the requirement to 'undertake a course' to allow the exemption to be given to students undertaking study on line and by correspondence.

Verification of courses/educational establishments in the EU - The Government has suggested that BAs request information which includes a copy of the student's confirmation of acceptance on the course, enrolment details, course details including duration, hours and syllabus, confirmation of payment and the name/details of the course administrator. It also suggested that BAs use the Erasmus Charter, a list that covers more than 4000 of the main educational institutions in the 33 countries in the EU.

Research by Joseph Rowntree Foundation calls for the reforming council tax

'Tackling housing market volatility in the UK' was published by the Joseph Rowntree Foundation in May 2011. In concluding that the UK has one of the most persistently volatile housing markets, with four boom and bust cycles since the 1970s, the paper looked at a number of issues, including The use of credit controls (e.g. maximum loan to value ratios) and the reform of stamp duty.

It also set out a case for the reform of council tax. This included making council tax fairer by:

- extending the number of bands; and
- moving towards a point value system based on a fixed percentage of property value.

The Joseph Rowntree Foundation considered that a national property tax, under which revenues would rise and fall in line with property values, would mark the best way forward. However, the Foundation recognised that changes would have to be made in the way local government was funded, since the tax base would be too unstable in itself to fund local services. It also warned that such a reform would need to be introduced gradually so not to either affect house prices or disturb the financial planning undertaken by households. Suggested reforms included the use of block grants and a local income tax.

Decisions from Higher Courts

Feller v Cambridge City Council 2001

This case concerned an application for a student exemption that was being made by a PhD student. In reaching a decision in October 2010, the VTE had found that Mr Feller failed to qualify for the student exemption, as he did not have to 'attend' the University premises to obtain his qualification. The VTE was of the opinion that the requirement for physical attendance at a particular educational establishment in the legislation was clear and backed by the High Court (HC) decision of *Fayed v London South East Valuation Tribunal [2008].*

In the background information it was identified that all PhD candidates were expected to submit their dissertations within one year of the minimum research period i.e. by the end of the fourth year for full time students or within two years of the end of the minimum part time research period i.e. by the end of the seventh year, unless an extension of time had been given by the University for 'good reasons'.

In Mr Feller's case, the BA had awarded a student exemption in line with the original student certificate he had produced, covering a period up to 2009. Mr Feller's request for his student exemption to continue up until his graduation in 2011 had been declined.

In finding that the VTE had erred in rejecting the appeal, the HC considered that the real issue rested on paragraph 4 of Schedule 1 of The Council Tax (Discount Disregards) Order 1992. Attention was drawn to the case of *Wirral BC v Michael Farthing [2008]* which specified that all requirements had be met in order for a course to be a full time course of education. Unlike in the *Wirral* case, there was no dispute that Mr Feller met paragraph 4 (a) i.e. he was on a course for at least one academic year at a relevant educational establishment (University of Cambridge). The issue instead was whether Mr Feller was normally required:

- ◊ Under 4(b) to attend (whether at the premises of the educational establishment or otherwise) for periods of at least 24 weeks.
- ◊ Under 4(c) to undertake period of study to an average of 21 hours per week.

In considering the latter point first, the HC noted the BA's acceptance that at least 21 hours of study would be expected from any PhD student throughout the duration of Mr Feller's course.

The HC also noted that whilst the BA had always given an exemption to PhD students up until the end of the fourth year, if their stance on attendance was right, i.e. that someone had to physically 'attend the University', then no one undertaking a PhD degree could qualify under paragraph 4 in any year.

Looking at the issue of 'attendance', the HC, with reluctance and respect, disagreed with the interpretation that had been given by the HC Judge in the case of *Fayed.* Instead, it was considered:

"that in the ordinary use of language a person can attend a course or attend a university without being physically present at a particular place for any length of time. .. it is a natural use of language to speak of a person attending a course if he is subject to a degree of supervision, in some appropriate contact with the academic authorities, but doing the substantial part of his work in a library, or at home...

The words (whether at premises of the establishment or otherwise) are significant, in that the words 'or otherwise' are used, as opposed to 'or elsewhere'. The words 'or otherwise' in my view reflect the wide range of situations in which the test falls to be applied."

Accordingly, the HC ruled that Mr Feller was a student and exempt for council tax purposes until 2011 when he received his PhD degree.

Malik v Tower Hamlets London BC [2010] RVR 2011 Volume 51 page 74

This appeal upheld a decision made by the VT to hold the appellant liable to pay the council tax as the owner of a house in multiple occupation (HMO). The basis of Mr Malik's appeal was the sole occupier had been a Mr Ahmed who had lived at the appeal property under a complimentary licence between 2003 and 2009.

Evidence presented by the BA included numerous examples of where other people had been living at the house, which included:

- ◊ In 2003 the BA had received a document which indicated that the appellant and his family had been living at the appeal property.
- ◊ In 2007 a 75 year old woman had presented a utility bill from the appeal property, in support of her application for parking vouchers to park at that address.
- ◊ Five or six people had been registered to vote at the appeal property up until 2009.
- ◊ A family of six had been found to have been living at the appeal property on a visit made by the BA on 14 August 2009.
- ◊ The appeal property had been given as the last address by other taxpayers.

The HC found that nowhere in the VT decision had it specified that the persons it had found to be living there lived there as licensees.

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Decisions from Higher Courts

However, this was the inference that must be drawn and this omission did not affect the validity of the judgment. The appeal was dismissed.

Reeves (VO) v Tobias & Others [2010] RA 2011 part 3 page 149

This case concerned a car park that was owned by East Devon District Council that contained 69 marked spaces, 23 of which were linked to commercial premises, 46 to residential properties. All of the parking spaces, with the exception of one that directly abutted a dwelling house had been entered in the rating list at £230 RV.

The VT had determined that 10 of the spaces that were licensed to residential properties were exempt, under section 66 (d) of the Local Government Finance Act (LGFA) 1988 (private storage premises used wholly or mainly for the storage of articles of domestic use). The VO had appealed this decision.

The Upper Tribunal (Lands Chamber) determined that the appeal must be allowed, as the car parking spaces were not domestic property. Looking at section 66, George Bartlett QC, President, determined they were not:

(a) living accommodation;

(b) a yard, garden, out house or other appurtenance enjoyed with the living accommodation, the latter failing as they were outside the curtilage of the living accommodation;

(c) a private garage;

(d) storage used wholly for mainly for articles of domestic use.

George Bartlett QC considered the existence of paragraphs (c) and (d) strongly suggested that two specific additions were being made that were separate and did not overlap. He also considered that car parking could not normally be described as 'storage premises' or that cars would normally be referred to 'articles of domestic use'. Furthermore, as paragraph (c) dealt expressly with premises used for the accommodation of private motor vehicles, there was no justification for treating paragraph (d) as doing so as well.

Interesting VT decisions

Council Tax Liability decisions

Please note that at present no Council Tax Liability decisions are available on our website.

Student exemption for Navy student - Kirklees Council

The appellant in this case was a full time student at South Tyneside College, enrolled on a Merchant Navy Deck Officer Trainee Scheme (Foundation Degree). The sole issue was whether the time he had spent at sea (50% gaining work experience and 50% being tutored) could be determined as studying at the premises of the educational establishment or 'otherwise'.

In reaching the decision to allow the appeal, the panel noted that, with the exception of trainee teachers, in all other cases where periods of work experience exceeded the aggregate of all periods of study or tuition, it was not to be treated as a full time course and this in effect was why the BA had rejected the request for student exemption.

Official information on the College website showed it to be a three-year course during which 65 weeks were spent at college and 85 weeks at sea (14 of which related to periods of leave).

The evidence given at the hearing showed that whilst at sea the appellant took formal periods of study in a classroom, being tutored, set reports and given items of work that required marking and monitoring. The fact that 50% of the time spent at sea was classed as periods of study rather than work experience was also backed by a letter from the course tutor.

In reaching a decision on 12 April 2011, before the outcome of the *Feller* case was known, the panel decided that whilst the regulations did not define the meaning of 'to attend' (whether at the premises or otherwise), the only logical interpretation was that it would relate to formal study that occurred away from the normal college or university base. Therefore, the appeal was allowed in full.

Interesting VT decisions continued

Class C and Class L – Metropolitan Borough of Wirral

The appeal was made against the BA's decision not to award a Class C exemption.

The appellants had purchased the property on 11 June 2010, following its repossession. Their intention was to renovate the property with a view to letting it. They applied for a Class C exemption but this was refused with effect from 21 June 2010, as the property had previously received the full six-month exemption under Class C since it was last occupied. The appellants contended that the BA should have applied a Class L exemption before their purchase, and a Class C from 11 June 2010.

The BA was not aware that the property had been repossessed, but advised that if the conditions required for granting Class C and Class L exemptions were both present at the same time (i.e. the property was vacant and the mortgagee was in possession) then both exemptions would apply from the same date and run concurrently.

The BA referred to guidance from a Council Tax Information Letter No.20, issued by The Department for Communities and Local Government, which discussed the granting of Class C, following Class A:

Every class of exemption applies on a day a dwelling meets the criteria for exemption. Therefore because to be exempt under Class A requires the dwelling to be vacant (the same as for Class C) the day exempt Class A applies to a dwelling, exempt Class C will also apply.

The appellants did not believe that this was relevant as it referred to Class A, not Class L.

The BA also had sought guidance from the Institute of Revenues, Rating & Valuation (IRRV) Forum; the response implied that Class C could not be granted if an exemption had previously been granted for at least six months.

The appellants believed this response to be ambiguous.

The panel decided that the BA was correct to refuse a Class C exemption; the requirement for Class C is:

A vacant dwelling which has been such for a continuous period of less than six months ending immediately before the day in question.

The appellants had purchased the property on 11 June 2010, at which time the property had been empty since 21 December 2009. A Class C exemption could not therefore be awarded post 21 June 2010.

Council Tax Valuation decisions

Material reduction and grounds of appeal- Northampton

The appeal property was a substantial house which, prior to the appellant's purchase, occupied a large plot. When the appellant bought the house about half of the garden had been sold off separately (for £200,000) and planning permission had been granted to build a new house on this plot. Work had not yet started on this development and the divide between the appellant's garden and the area that had been sold off had just been marked by a peg boundary. The appellant argued there had been a material reduction in the value of his dwellings and the band should be reduced. The Listing Officer (LO) argued that plot size was not relevant in council tax valuations and, in any case, there had not been any change in the dwelling or the state of the locality since 1 April 1993, that being, in his view, the relevant date for this appeal.

Having regard to section 3 (4) of The Local Government Finance Act 1992, the panel determined that while not a dwelling in its own right, the garden formed part of a larger property which was a dwelling, so any value (other than development value) it may have as a garden and/or land was relevant for CT purposes. However, the panel concluded that there had not been a material reduction in the value of the dwelling, as the selling of part of the grounds did not constitute "demolition of part of the dwelling" and the placing of a peg boundary between the two areas of land was not a "change in the physical state of the dwelling's locality". The appellant had not contended that the valuation band was incorrect when it was first shown in the list (only that it was wrong following the sale of half the land). Therefore, as there had not been any "material reduction" in its value, the band could not be altered (Reg 3 of the CT (Alteration of Lists and Appeals) (England) 2009 SI 2270).

A copy of this decision is available on the VTS' website- see appeal no. 2825574690/045CAD

Interesting VT decisions continued

Test case- Oversupply of Office Space- Leeds city centre

This case concerned four offices of varying ages and sizes in Leeds city centre which had been selected through a case management hearing to represent some 750 appeals that had been made on the same grounds.

The issue the panel determined over a three-day hearing was whether a material of change of circumstances (MCC) had occurred on 1 December 2008 following the building of new offices in the centre of Leeds, which were cited to have included the developments of Latitude Red, Toronto Square, Broadgate, 2 Wellington Place, 14 King Street and R8 Park Row.

The appellants' representatives were represented by Mr C Lewsley, who contended that the oversupply of office space had reduced the value of offices in the centre of Leeds by 17.5%.

The Valuation Officer represented by Mr T Mould QC, contended that no allowance was applicable.

Looking first at whether a MCC had occurred, the panel noted the VO's acceptance that the building of 2 Wellington Street in itself was a material change, as it had added more than 119,900 ft² of office space onto the market.

Whilst both parties agreed that rents had fallen by 35%, the panel had to determine whether rents would have fallen at the antecedent valuation date (AVD) in 2003, if the extra supply of offices had been present then. Any decline caused by the fall in the economy between the AVD and 2008 had to be removed.

Looking at the amount of new office space on the market, the panel considered that it should include those with practical completion dates i.e. within the next 6 months. The panel accepted the arguments put forward by Mr Lewsley that these properties where 'physically manifest' at 1 December 2008 and their availability to let had been demonstrated in the evidence given by the ratepayers. Accordingly, as their presence would be reflected on the actual rental market, they should also be taken into consideration in the hypothetical world of rating.

Turning to the Lands Tribunal (LT) case of *Jafton Properties Ltd V Prisk (VO) [1996]* to which both parties had referred; the panel considered the stance taken by Mr Lewlsey more accurately reflected the guidance given. *Jafton* indicated the correct approach was to take physical circumstances at the material days and the trend discernable at those days and then relate them back to the levels of value at the AVD.

Whilst the VO contended that the only reason rents had fallen was a decline in the economy, he had offered no data to support this contention. In contrast, the ratepayers had supplied evidence on supply and demand of offices at the AVD, 1 April 2005 and the end of 2009, as well as economic data.

Looking at the data provided by the ratepayers this indicated:

- In 2005 there were 812,620 ft² of offices in Leeds LS1, LS2 and LS11 (of which 134,594 ft² was not in the rating list).
- In 2008, there were 1,335,258 ft² in the same Leeds postcode areas (of which 623,362 ft² was not in the rating list).

Accordingly, the comparison of available office space in 2008, with that available in 2003 (99,185 ft²), indicated that there would have been more than a year's supply/ half million ft² of offices left unoccupied. Therefore, even in a rising market, the amount of office space available would have outstripped demand.

In examining the reasons for the oversupply, the panel considered that it was partly due to the economy and partly due to the stance taken by developers to undertake speculative builds in anticipation of a demand that had never materialised. Using a subjective judgement, the panel considered that whilst the evidence indicated that it would have been more of a buyers' market had this amount of office space existed in 2003, of the 35% fall, 25% was more likely to have been due to the severe economic recession that the country had experienced, leaving only 10% due purely on the oversupply element.

The panel finally noted that the appeals before it were test cases on which some 750 properties in Leeds also relied. The panel was happy to conclude that the allowance of 10% should apply across the board to Leeds city centres irrespective of a property's age or size. Whilst some disagreement existed over what constituted a 'city centre' location, the panel believed the ratepayers had greater knowledge of the market. Therefore, in addition to LS1, the panel felt that 'city centre offices' could include offices in LS2, LS11 and other well established offices areas within a 10-15 minute walk of the train station.

Whilst the VO originally appealled against this decision to the Upper Tribunal (Lands Chamber), it was subsequently withdrawn. A full copy of the decision is available on the VTS website- See appeal number 472016304600/538N05.

Interesting VT decisions continued

Request for merger of assessments dealing with printing & binding processes – Scarborough

The panel was asked to determine whether two premises belonging to a commercial printers should be merged. If it was accepted that this should occur, the RV had been agreed, except for the amount of end allowance applicable to reflect any disabilities associated with the merged units.

The ratepayer's representative explained that the printers carried out the pre-press operations and printing at 'Pindar House' and then the documents were transported to 'Grice House' for gathering, binding, trimming, packaging and dispatching. The two sites were separated by a 6.1m wide road.

Both parties had drawn attention to *Gilbert (VO) v Hickinbottom & Sons [1956]* which allowed in exceptional cases for properties separated by a highway to be treated as one single hereditament. The panel therefore had to decide whether the appeal properties were so essentially functional to one another, that they should be merged.

In the case of *Gilbert*, the panel noted that this concerned a bakery on one side of the road and a maintenance repair depot on the other. The essential functionality was established by the fact the bakery operated for 16 hours per day and it was essential that the repair depot was located close by to ensure the machines were kept operational at all times.

The panel went onto look at other cases including *Harris Graphics Ltd v Williams (VO) [1987], Re :Appeal of Evans [2003] Rennick (VO) v Weathershields Ltd [1957] and Newbold (VO) v Bibby & Baron Ltd [1959].*

In reaching the decision that the appeal properties remained two separate assessments, the panel drew attention to the following facts:

◊ Both had historically been let as two units.

◊ The operations between the two properties were not time critical nor did they involve delicate or perishable goods, but ones that could be stock piled.

◊ Whilst it was undoubtedly convenient and cost effective for the appeal properties to be located across the road from each other, production would not fail if one property was located further away.

◊ It would be wrong to hold them as contiguous based on the fact that they were served by the same fire sprinkler water supply tank system and cable ducting linking their telephone and networking business systems.

A full copy of the decision is available on the VTS website- See appeal number 273016993719/538N05

Vacant units- MCC allowance Packhorse Walk, Huddersfield

The appellants contended that the presence of nine vacant units within the centre, coupled with a further nine on temporary lets or concessionary rents, out of 29 units in total, represented a MCC, with effect from 9 November 2009.

The appellants' representative referred the panel to the Lands Tribunal (LT) decision of *Lotus and Delta v Culverwell and Leicester City Council (1976)* regarding rents and *Dinwiddy (VO) v Anderson (RA/14/1995)*, which he contended was the leading case for MCC and vacancy. This outlined that only physical factors at the material day could be considered and economic factors should be disregarded.

He also referred to a schedule of 51 cases nationally where allowances for vacancy had been conceded. He highlighted eight cases that his company had dealt with, where vacancy levels of between 20% and 71% had led to allowances of 20% to 50%. As the Packhorse Centre had 31% of its units vacant and a further 31% on concessions, he sought an allowance of 40%. He also highlighted a decrease in footfall from an average of 603,797 in 2005, down to 379,201 by 2009.

Whilst he could not identify any external physical factor to account for the fall in demand and footfall and accepted part of the fall must be due to economic factors, he believed part of it must also be due to the number of vacant units.

The VO referred the panel to the decision of the LT cases of *Kendrick (VO) [2007]*, which addressed the issue of physical factors being 'masked' by other factors and *Jafton Properties v Prisk (VO) [1997]*, which pointed out that rents agreed after the material date could only be used to demonstrate trends.

The VO accepted that the increase in vacant units had constituted a MCC but believed that both the increase in vacant units and the fall in rents were almost entirely due to economic factors/the recession and felt that no allowance should be given.

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Interesting VT decisions continued

He pointed out that four earlier appeals in Packhorse Walk, made on the same grounds had been withdrawn or dismissed and 48 other appeals on the same grounds on various streets around Huddersfield town centre had also been withdrawn or dismissed.

The VO also pointed out that demand for the Packhorse Centre had been high at the AVD, with only one unit being vacant at that time. While rents in the streets around Packhorse Walk seemed to be holding up better, he felt this particular centre had been affected more by the recession than the rest of the town.

In deciding to dismiss the appeals, the panel considered the increase in vacant units and concessions had occurred after the start of the recession. Therefore, it was satisfied that the increase in vacant units and the reductions in rent had been almost wholly due to economic rather than physical factors.

The panel noted the reductions that had been given elsewhere in the country but, as the representative had pointed out, each had been decided on its own merits to reflect the particular circumstances of the case.

Finally, the panel acknowledged that with a vacancy rate in the Packhorse Centre of 31%, in contrast to 10% elsewhere in the town, the Packhorse Centre had suffered to a greater degree. However, the panel could not identify any external physical factor to which this could be attributed.

A full copy of the decision is available on the VTS website- See appeal number 471516656793/538N05

Office and premises, and Factory and premises occupying single site held to be correctly separately assessed- Manchester

The panel was asked to decide if the factory occupied by Kratos Analytical and an office occupied by Shimadzu Research Laboratory should continue to be shown as separate entries in the valuation list or if the two assessments should be merged. Both buildings were physically separate. There was one shared access to the site. Both occupiers were subsidiaries of Shimadzu Corporation of Kyoto, Japan.

The fundamental issue in this appeal was the extent of the connection between the occupiers. The panel found that Kratos Analytical Ltd and Shimadzu were separate legal entities. There was a degree of connection between the two, principally due to a number of shared directorships in Japan. However, there was no doubt that the two occupiers were separate legal entities. Given this finding, the panel thought it reasonable to treat them as separate occupiers.

The panel found that aside from the legal connection, there were some links between Shimadzu and Kratos on the site itself. These included shared security, postal facilities, waste collection and accounting functions. In the opinion of the panel, these connections, although real, were slight. There was no direct functional connection between the activities carried out in the Shimadzu building and that conducted at the Kratos facility.

In conclusion, the panel found that Kratos and Shimadzu were separate legal entities. The site contained two buildings which were physically separate from one another. The functions carried out in the two buildings were distinct and not reliant upon the tasks being carried out in the other. The panel decided that on this basis the buildings should continue to be shown as separate entries in the rating list.

A full copy of the decision is available on the VTS website- See appeal number 424516735491/538N05

Landlocked warehouse- Carlisle

The appeal concerned a warehouse which the appellant (a local authority) contended was landlocked and consequently any rent achievable was below the normal level for this type premises.

The only access to the warehouse was across public recreation land owned by the appellant or neighbouring land owned by a third party. It was the latter option which had always been utilised in the past, as the appeal warehouse had been built by the appellant as an extension to a property it rented from the neighbouring land owner.

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Interesting VT decisions continued

The appeal warehouse had stood empty for two years and was finally let in 2009 for £3,000 per annum, to an occupier who was also the tenant of the neighbouring warehouse. This was well below the rateable value of £10,250. The appellant sought a 37.5% end allowance because the property was landlocked.

The VO drew the panel's attention to the following:

- ◊ At the time the appeal property was built the appellant had not sought access from the neighbouring landowner.
- ◊ On two occasions, the appellant had proposed to lease the appeal property to the then tenants of the neighbouring land. The proposed lease reserved the normal access rights of a landlord to enter onto its property to check its condition, even though it was not apparent how they could exercise them.
- ◊ The appellant had previously sought to establish a right of way and the owner of the neighbouring land had never actually turned it down. When the neighbouring land owner had been asked in 2005 (at a time when the appeal property was vacant), the decision had been deferred until a potential new tenant had been found. However, when a new tenant had been found the appellant had not bothered to pursue the right of way.
- ◊ Additionally, under case law it was possible to presume rights of access. The courts had implied the creation of a right of way on the basis that the grant of such a right was necessary to avoid land becoming locked (*Sweet v Sommer).*

The panel found that for rating purposes the appeal property was not landlocked. It noted that the rent had not been agreed between a reasonable landlord and tenant, in line with the rating hypothesis. In addition, there had been several opportunities over the years to resolve the right of access issue. Had it done so, the appellant may have achieved a higher rent for the appeal property.

In any case, the panel also noted that the appeal property was not entirely landlocked as the appellant also owned public recreation land on one side of it. Additionally, the case of *Sweet v Sommer* showed that the courts were willing to create a vehicular right of access across neighbouring land to a public highway where land was landlocked.

A full copy of the decision is available on the VTS website- See appeal number 091516671167/124N05

Stables – Cheshire

The panel determined that the VO had acted correctly in entering stables used for leisure purposes into the 2005 Rating List.

A piece of land in Cheshire had been progressively developed as stables and manège, used for leisure purposes, over a period of nine years. The VO had become aware of the existence of the stables in March 2010 and had entered the stables into the Valuation List with effect from 1 April 2005. The ratepayer appealed to the VTE on the grounds that the property was used exclusively for leisure rather than a business purpose, the backdating of liability was unfair and on agricultural exemption grounds.

The panel held that the stables used for leisure purposes were rateable. The fact that they were not a business was irrelevant to the question of rateability. No agricultural exemption was permissible as the property did not meet the requirements for an agricultural exemption under schedule 5 of The Local Government Finance Act 1988.

With regard to the issue of backdating, The panel found that the VO had acted appropriately in this regard. When it came to the attention of the VO that a property exists and should be assessed for non-domestic rates, he or she must enter the property into the rating list. To fail to do so would place the VO in breach of his statutory duty to maintain the rating list. The legislation also required that where a rating list is inaccurate that it be corrected from the date on which the circumstances first occurred. In this appeal, the rating list was found to be inaccurate on 1 April 2005 as there was no entry in respect of the stables. Having established that the stables existed on 1 April 2005, the VO had to make an entry in the list from that date.

The appeal was dismissed.

At the request of the ratepayer this decision was excluded from the VTS website.

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