



VIP 'New Look'

I am pleased to welcome you to the first edition of VIP.

What is it?

For our regular readers, it is the new look newsletter produced by the Valuation Tribunal Service (VTS) Legal and Publications Advisory Committee (LPAC).

And with a new look comes a new name!

This publication is designed to bring together matters of interest within the rating and council tax world, drawing articles from experts in their field.

We will highlight changes in legislation, and summarise interesting decisions from the Lands Tribunal (LT), higher courts and valuation tribunals (VTs) in England and Wales.



LPAC Team—left to right, Phil, Catherine, Michelle, Helen, David, Diane, Brian and Lester

We will also feature guest articles from practitioners from the Valuation Office Agency (VOA), private practice and billing authorities (BAs) concerning current rating and valuation issues of interest.

We hope that you enjoy our first edition. We are always interested in our readers' views.

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Future Legislation

Office of the Deputy Prime Minister's (ODPM) Consultation Papers

In December 2005, the ODPM issued the following consultation papers:

Proposed amendments to the central list

The ODPM asked for comments on how it should deal, in the short term, with the rating of unbundled local loops in the telecommunication industry. Local loop

unbundling (LLU) is the process by which the BT network connection between a customer's premises and the telephone exchange is disconnected and connected to a competing provider's network. (Continued on page 2)

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Special points of interest:

- *Pat Doherty on the postponement of the CT revaluation*
- *Fitness First test cases*
- *Feedback from the IRRV conference*
- *Valuation of Park Homes*

The problem is that, under the current regulations, BT is designated as being in "rateable occupation" of all of the LLUs. This arrangement is due to lapse on the 31 March 2006 and the paper outlines four options and the respective complexities that could occur.

1. **Do nothing.** After the 31 March 2006, the rateable occupation of each LLU would change from BT to the other operator and would need to be listed as a separate hereditament in the local lists. This would be a huge task for valuation officers (VOs) and would require BAs to issue demands for hundreds of assessments with very low values.

2. **Aggregate all of the local loops that are occupied by the same operator in each area as one hereditament.** The easiest way to do this would be to group these by telephone exchanges rather than by BA area, but this too has problems given that many lines cross different

areas' boundaries.

3. **Create a single hereditament for each LLU operator in the central list.** This would require the regulations to be amended whenever a new LLU operator entered the market.

4. **Extend the current arrangement, with BT treated as being in rateable occupation of all LLUs.**

The VTS has backed the ODPM's recommended option 4, as a temporary measure, given that there does not appear to be any viable alternative. However, we have also commented that a permanent solution should be achieved in the next two years. The closing date for responses was the 26 January 2006.

The Council Tax Exemptions and Unoccupied Dwellings where a planning condition prevents occupancy.

This seeks to amend Class G of the Council Tax (Exempt Dwellings) Order 1992, to clarify the exemption

of an unoccupied dwelling where a planning condition prevents occupancy. The ODPM consider that chalets and caravans that are prevented from being occupied for periods of time under Section 70 of the Town and Country Planning Act, should fall into Class G, given that this is an action under powers conferred by an Act of Parliament. However, as some BAs are interpreting the legislation differently, the ODPM are seeking views on whether the legislation should be amended. The current regulation reads:

"An unoccupied dwelling the occupation of which is prohibited by law, or which is kept unoccupied by reason of action taken under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it".

The VTS will be making a response before the deadline of the 17 March, 2006.

News round up

Pat Doherty IRRV CPFA, of PKD Consultancy Ltd provides his personal views on the postponement of the 2007 council tax revaluation in England.

Pat Doherty, in an address to Yorkshire and Humberside Branch of the Institute of Revenues Rating and Valuation (IRRV) in October 2005, expressed the view that the Government's postponement of the 2007 council tax revaluation in England was a political decision fuelled by:

- the scaremongering in the press that recent increases in property prices would automatically result in huge council tax rises; and
- the publicity about pensioners being committed to prison.

The irony of this decision is that other countries, particularly from the Middle East and Eastern Europe, are currently looking to the UK to share ideas because they consider that we have a good tax system!

Pat Doherty offered the opinion that

the original Lyons Review remit had been too narrow and the new remit

"Government's postponement of the 2007 council tax revaluation in England was a political decision fuelled by scaremongering ...that recent increases in property prices would automatically result in huge council tax rises."

would now allow Sir Michael to look at the function and finance aspects of local government.

He considered that the Government was taking a braver stance in proceeding with the 2007 revaluation in Northern Ireland and explained that properties in Northern Ireland have not been revalued since 1976; their current valuations being based on 1965 rental values. The Northern Ireland revaluation would be based on discrete capital values and include an appeals system mirroring the English one. The IRRV had developed a new rate relief scheme, which will be adopted in Northern Ireland.

Pat continued by predicting that the council revaluation in England would be delayed until at least 2010, by which time the system would probably combine a property based tax and could even include a local income tax. He explained that Sir Michael had been interested in some of the IRRV's proposals, including those that looked at an enhanced benefit system and reductions/discounts, which targeted vulnerable groups and considered ability to pay.



Pat Doherty

The Home Information Pack Draft Regulations

In December 2005, the VTS made an observation about the content of the forms being suggested by the ODPM. We highlighted the fact that very often council tax payers were unaware:

- of the banding of their newly purchased property;
- that the banding may increase following the sale, where there has been a material increase in the property, (for example, if the home had been extended since it was originally banded); or
- that they have a time - limited opportunity of six months to make an appeal when they purchase a new property.

A view was expressed that the Home Information Pack would be a logical place to include this information. We wait to see if our view was taken on board.



New Look website too!

We are delighted to report that the VTS website has also undergone a face lift.

Visit www.valuation-tribunals.gov.uk to see our new screen design, in corporate colours with clearer layout. Over the coming weeks all of the contents will be checked and updated to provide a better service for users.

Pages include FAQs, where we are, newsletters, guidance leaflets, annual report and accounts, council tax guidance manual, publications scheme, links to other websites and details of valuation tribunal listings and decisions.

If you have any comments about the website, please e mail the webmaster via the link on the home page.

Superior Court decisions

Abbey National Plc v O'Hara (VO) 2005 LT - 'banana zoning' rejected (RVR September 2005)

A ratepayer's attempt to value a bank that was situated at a crossroads, by zoning it from both of its frontages 'banana zoning' was rejected. Instead, the LT confirmed the approach taken by the VO (and preferred by the VT) to zone it from the street on which it had the greater proportion of its display windows and a direct entrance into its

banking hall (Queen Street).

In reaching its decision, the LT considered that the ratepayer had:

1. been 'selective' in his choice of comparable evidence, one of which had been valued by 'banana zoning' and the other where it had received allowances for the lack of a retail frontage, excessive front to depth ratio and no addition for its return frontage;

2. disregarded the 1995 agreements that had been achieved on the appeal property and the other properties that were located on the other three corner positions; and

3. been unable to address the anomaly that by valuing the appeal property by 'banana zoning', this would result in it having a lower valuation than properties on Queen Street, which had no return frontages.

Tretton's Treats

David Tretton, Director of Rating at the VOA expresses his views in providing his quarterly update of recent cases.

LT Decisions

Vtesse LT appeal

This decision has now been published. It was held that Vtesse Networks Ltd is in rateable occupation of leased fibres, and that

its network of own build and lease fibres constitutes a single hereditament.

VT decisions

Didcot A Power Station

This case concerned a 2000 list proposal on the power station. The proposal sought to merge the sports and social club, £42,375 rateable value (RV), with the power station



David Tretton

(RV £18,905,000). Because the power station's rateable value is determined according to a formula based on generating capacity, if the club was part of the power station hereditament, the RV of £42,375 would effectively disappear. The Utilities Rating Team resisted a merger on the basis that the club committee rather than RWE Npower is the rateable occupier. The VT's decision was in favour of the VO.

Local Government Finance Act 1998 S 66 definition of domestic property - Appurtenances - District Heating Undertakings – Mansfield DC and Bassetlaw DC.

The VO has appealed to the LT against the Nottinghamshire VT's decision that three District Heating Undertakings (DHUs) in Mansfield and Worksop are domestic property.

The DHUs in question supply heat in the form of hot water to a number of detached houses, bungalows, semi-detached and terraced houses and some flats. Each DHU is

physically separated from the domestic buildings by roads, paths or distance.

Forthcoming VT cases- Boathouse, Windermere

This case concerns the non-domestic rating assessment that has been placed on a boathouse located on the main shoreline of Lake Windermere. The appeal property serves an historic and substantial residence on an



island in the middle of the lake-Belle Isle House. The curtilage of the dwelling is therefore restricted to the island. The owners occupy two boathouses on the main shoreline

and in 1991, purchased the appeal hereditament along with the adjoining bungalow and other jetties. Until recently the bungalow was let as self-contained, self-catering accommodation and along with the other jetties, was assessed as a non-domestic hereditament.

The ratepayer contends that the boathouse and jetty used to access Belle Isle should be treated as an "other appurtenance" and accordingly it is 'domestic property' under the provisions of s.66 (1)(b).

The VO considers that as the boathouse falls outside the curtilage of Belle Isle House, it cannot be an 'other appurtenance' to that property, on the authority of *Martin & Others*. However, the case also raises other issues. The ratepayers have instructed counsel to represent them at VT. Legal representation has been sought for the VO.

- David Tretton

Interesting VT cases

Truro College - Cornwall VT

This appeal concerned the entry in the 2000 rating list for a property occupied by Truro College, which was used exclusively for the purposes of adult and further education. The property had been built in 1983 and was originally leased to BT, who had used it as office premises. In 1994, BT had sub-let part of the property to Truro College and a year later the college had taken occupation of the whole hereditament under a lease, before purchasing the freehold in 1998. Planning permission had been required for the change of use from offices, and for some physical alterations.

The issue before the VT was whether the hereditament should be valued on:

1. The 'office' basis, (having regard to well-established levels of office rents in the locality); or
2. The 'college' basis (the contractor's method being the method ordinarily used for college premises for which no established rental market existed.)

The parties were agreed on the RV that should apply in either eventuality. The parties made reference to the decisions of the LT and the Court of Appeal in *Williams (VO) v Scottish and Newcastle Retail Ltd*. The agent said that the case reinforced the principle that regard should be made to the actual use of the property and not other potential users. He argued the hereditament should be valued on the contractor's basis, in line with other colleges. He confirmed that the premises were used for educational purposes only and that there was no administrative function on the site.

The VO noted that the *rebus sic stantibus* rule had two limbs: physical state and mode or category of occupation. He considered that any works needed to restore the appeal hereditament to office use were minor and the physical limb therefore encompassed its use as offices. With regard to the second limb, he said that the Court of Appeal in *Williams* had held the LT to be wrong in having regard to "methods of valuation commonly adopted by surveyors" as a

determinant of mode or category of occupation. He also noted that planning use classes were similarly not determinative, and considered that an application for planning permission for office use in respect of the appeal hereditament would probably be granted. The VO pointed out that a rent had been paid by the college, which reflected the competition and level of value attributable to office use. This had formed the basis of the agreed 1995 RV, which was greater than the RV for the hereditament in the 2000 list. The VO noted that the rent passing was ordinarily the best evidence and he said that the contractor's approach to valuation was a method of last resort used for campus type hereditaments for which there was no rental market. He referred to a number of comparables in the region where the assessments had been agreed on an office basis and contrasted these with campus type hereditaments that had been assessed using the contractor's method.

The VO sought confirmation of the existing assessment, which took into account potential competing bids for 'office' use of the hereditament.

The VT accepted that the appeal hereditament was still physically suitable for occupation as office premises. However, consideration of mode or category of occupation required a departure from the real world. Hypothetical tenants were confined to consideration of the generic use to which the hereditament was in fact put. On the evidence the VT found that use to be educational (as college premises) and that use was not in the same mode or category of occupation as office use. The appeal was therefore allowed.

The decision raises questions about the usefulness of any rental evidence where in the real world competing bids for a variety of uses would be made, but for rating purposes, a more specific less valuable use can only be considered. This decision was not appealed to the LT.



Student Exemption –Manchester South VT

The appellant in this case was undertaking a new type of course to obtain a degree in Health and Social Care at the University of Bolton, which meant that she spent four days per week combining full-time employment with her learning. The fifth working day was spent in lectures and full-time study.

“The BA disputed that a person could meet both definitions simultaneously.”

The course was approved jointly by her employer (who was the local authority to add further irony to this case), the local Strategic Health Authority and the University. Within the work environment, the local authority provided her with a dedicated quiet space for theoretical analysis and case-study report writing. The appellant, accompanied by a lecturer from the University, explained that the nature of the course meant that she fulfilled both the definitions full-time employee and full-time student. She was one of 50 students on the course, 17 of whom resided in the same BA area, and none of whom had been refused exemption. Only an internal

audit sweep by the authority had found the anomaly of a student exemption/full-time employee.

The BA disputed that a person could meet both definitions simultaneously. In their opinion, the appellant could not meet the minimum 21 hour per week study requirement, as she attended the University premises only one day a week. The BA cited sub paragraph 4 (3) of the Council Tax (Discount Disregards) Order 1992 and said that a course could not be a full-time course of education if the (normal) total of time spent on work experience was greater than the time spent on tuition or study.

In its decision, the VT held that the BA’s interpretation of the 1992 Order was restrictively narrow. Paragraph 3 identified who may be regarded as a full-time student. Sub paragraph 4(1) defined a full-time course of education at which students are **normally** required to attend premises provided by the establishment for at least 21 hours per week for a minimum of 24 weeks in an academic year (*emphasis added*). Both the appellant and the course met statutory criteria and in 4(1) (b), the VT found that the legislation envisaged circumstances where

tuition could be given outside the University building. Again, the use of the word ‘normal’ was included which suggested a lack of rigidity in the terms.

Allowing the exemption, the VT was also mindful of the University lecturer’s prediction that, within 10 years, most University courses would have a similar “hands on learning” approach and that tuition- only degree courses would be rare.

Council tax liability decisions do not appear on the VTS’ website.

Banding of self - contained units - West Yorkshire VT

These appeals followed the service of listing officer (LO) notices which had removed the band Ds that had originally been placed onto two mid terraced properties at No 110 and No 112, and placed band As on each of the 12 flat/rooms within the two properties.

In reaching its decision the VT observed that none of the case law cited by the parties was on all fours with the appeal properties. The VT found the appellant’s observations regarding the relevance of *James v Williams* (VO) (1973) to be

interesting and accepted that the case had not examined the issue of 'self-contained' as set out in the CT (Chargeable Dwellings) Order 1992/549. However, this case law had been used and found to be relevant in recent cases, including *Beasley (LO) v National Council of YMCA (2000)*, *R v London SE VT and Neale (LO) ex parte Moore (2000)* and *Clement (LO) Byran and Others (2003)*, where the issue of disaggregation had been considered by different learned justices.

Therefore, the VT considered that unless a direction was received from a higher court, it had to assume that the lack of some facilities did not prevent a unit from being considered to be self-contained. The grey area for the VT to address was where the cut off line fell between, at one end of the spectrum the student room, which shared all communal facilities and was not self-contained and luxury flats, which contained all facilities and were clearly self-contained.

Turning to all of the case law presented, the VT noted the following guidance to help determine whether or not the appeal properties met the relevant criteria to be regarded as self-contained:

1. What was the degree of sharing of common facilities such as kitchen, bathroom?
2. Had the flats/rooms been adapted to provide separate living accommodation?
3. Could the units be separately identified?

The case law also indicated:

1. The fact that a bathroom and WC had to be shared by four people in the *James* case and by 13 people in the *Moore* case, had not prevented them from being considered to be self-contained.
2. The provision of communal facilities including meeting rooms, laundry and a kitchen, had not prevented flats from being held to be self-contained in the *Beasley* case.
3. The fact that someone had to pass through communal areas was not of paramount importance in

McCull v LO (2001) and Batty v Burfoot and Others (1995).

In the appeal properties the VT noted:

1. Some of the flats/rooms had no or only partial en suite facilities.
2. All flats/ rooms enjoyed access to a communal kitchen.
3. The common issue in dispute was whether the flat/rooms, which had stainless steel sink units (SSSUs), provided a kitchenette area.

The VT was well aware of the danger of being seen to value the presence of white goods in a flat/room. However, it noted:

1. Prior to March 2005 the individual flats/rooms contained fridges and microwaves.
2. The photographs clearly showed that most flats/rooms contained not only a sink but also a draining area, cupboards/shelves and work surfaces for them to be classed as a kitchenette.
3. The flats/rooms were being advertised for let as studio apartments, with microwaves and fridges in the rooms, and a shared kitchen.
4. No standard cookers could be used in the flats/rooms. However, microwaves, electric hobs and fridges could be plugged back in as quickly as they had been taken away to allow the SSSUs to function as a kitchenette.
5. For the past 20 years the appeal properties had been in multiple occupation, with the provision of facilities so arranged to allow a substantial degree of independent living.
6. Whilst there may have been some disagreement as to how the flats/rooms should be described, each was identifiable and capable of being let under separate shorthold tenancy agreements. Accordingly, on the evidence presented, the VT was satisfied that the LO had in general acted correctly in determining that separate bandings should be applied to the flats/rooms.

This case was heard prior to October 2005 and therefore it does not appear on the VTS website.

Fitness First Test Case - West Yorkshire VT

Five appeals were treated as test cases in relation to the valuation of Fitness First premises in the 2000 rating list.

The issues in dispute were:

1. Should Fitness First premises be valued in accordance with the nationally agreed scheme for valuing health and fitness clubs?
2. What weight should be given to post antecedent valuation date (AVD) rental evidence?
3. What adjustments should be made to take account of rent free periods, shell rents and fitting out costs?
4. What weight should be given to sale and leaseback rental evidence?
5. Had the 'tone of the list' be established?
6. What relativity should be applied to the mezzanine/upper floors?
7. What allowance was appropriate for Fitness First, Keighley to reflect the problems associated with flooding?
8. What allowance was appropriate for Fitness First, Leeds to reflect its poor access?

The VO had placed great weight on the national valuation scheme for valuing health and fitness premises. The shell rent on Fitness First, Rotherham had provided his key rent. He had then transposed the fitting out costs from Fitness First, Ipswich onto his key rent. In relation to the mezzanine floors, the VO had valued them at 100% if the property had been purpose built, or at 90% if it had been a conversion.

The agent had based his case on rental evidence, some of which had been set several years after the AVD. The agent's key rent was Fitness First, Rochdale. He had valued the mezzanine floors at 75% in line with a Lancashire VT decision regarding a health and fitness club in Preston.

After a three- day hearing, the VT decided that the appeal properties should be valued in line with the national valuation scheme, given that all of the other health and fitness clubs had been valued in line with this scheme.

However, the VT noted that the VO had not specified into which of the scheme's groups each of the appeal properties fell. Consequently, the VT gave careful consideration to each of these groups and identified where it considered each of the appeal properties should be placed. The national valuation scheme contained six groups, which looked at whether the health clubs had been purpose built or situated in converted premises and the quality of the accommodation on offer. Different values were then applied depending on whether it was a wet/dry club, or a dry only club, and on its geographical location.

The VT decided that the mezzanine floors should be valued at 80% of the main space rate. This was in line with the agreements in the 1995 rating list assessments.

Fitness First, Keighley received a 10% allowance for flooding. Fitness First, Leeds received a 10% allowance for poor access, the only means of access being over a single width bridge.



Due to the disposal and acquisition information that is contained in this decision, the agent requested that it be removed from the VTS website.

Valuation of Park Homes - West Wales VT

The West Wales VT heard and determined a number of appeals, in relation to the council tax valuation of park homes at Mill Gardens, Swansea.

In making their appeals, the appellants were aggrieved that:

- the LO had placed each of the park homes in band C; and
- their dwellings had been valued based upon assumptions rather than facts.

The dwellings were large mobile homes situated on a park site. The dwellings were not freehold, since the ownership of the land on which the mobile homes were pitched remained with the site owner. Neither were the dwellings leasehold, as the appellants did not hold a lease for the specified period.

In requesting a reduction to either band A or band B the appellants explained that:

- They were unable to sell their dwellings without first gaining the approval of the site owner. (The site owner was entitled to receive 10% of the selling price, following a private sale. Alternatively, the dwelling could be sold to the site owner for set price.)
- It was difficult to insure the dwellings, as the mobile homes were not classed as conventional dwellings. Consequently, the appellants had to go to specialist insurance companies for cover.
- Park homes had a restricted life span.

In his evidence, the LO explained that park home estates were, by definition, locations where caravans/mobile homes were permanently sited and occupied by taxpayers as their sole or main residence. In these both instances, the pitch and caravan/mobile home fell to be valued for council tax purposes. The valuation basis and statutory assumptions that had to be borne in mind made no distinction for park homes. He had therefore assessed each caravan/mobile home by firstly adjusting its sale price, in order to arrive at a reasonable price as at the AVD. Having arrived at a reasonable price, an addition was made to reflect the value of the pitch. Since the sales evidence at the LO's disposal clearly supported his assessments of band C in each case, the VT decided to dismiss the appeals.

Feedback and Updates

The VTS stand at the 2005 IRRV Annual Conference in Manchester

The IRRV conference attracted over 1250 delegates and provided us with an opportunity to raise VTS awareness with the audience.

The VTS exhibited its stand in the G-Mex Centre, attracting in the region of 400 visitors. 286 completed our raising awareness questionnaires. If you were a visitor we would like to thank you for taking the time to come and talk to us. We also hope that we have plugged a few gaps that may previously have existed about our field of work!

We have analysed the completed questionnaires and here is a brief synopsis:

- 50% of all visitors believed that we dealt with non domestic liability appeals. Sorry no, these matters go before the magistrates' courts.
- 15% of all visitors thought that we dealt with council tax benefit appeals. Sorry no, these appeals go before the Appeals Service.
- 14% thought that we dealt with housing benefit appeals, which again go before the Appeals Service.

We received some very useful suggestions for our Board to consider. Of the 34% of the stand visitors who had attended a VT hearing:

- 87% thought that appointment times would be an improvement.
- 37% thought that holding tribunals out of normal hours would be useful



Ann Galbraith Chairman of the VTS races ahead at the IRRV Conference



Fair, effective and efficient

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

And finally...

A file giving details of old cases has been found in a VTS office, which included the case of an elderly lady who failed to have her domestic rated reduced following her neighbour's decision to build a glass covered swimming pool in his garden.

Her complaint was that Mr X, was middle aged and as he often held nude bathing parties, this would put off buyers if she wanted to sell her house.

The old lady explained "I'm afraid Mr X is no Greek god. The pool glass isn't frosted and the panes never seem to steam up!"

Our thanks go to everyone who has contributed to this newsletter!