VALUATION TRIBUNAL SERVICE

Issue 7

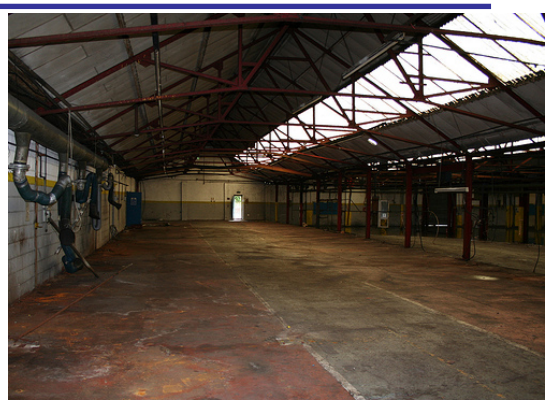
August/September 2007

VALUATION TRIBUNAL SERVICE

Valuation In Practice

Changes to Empty Property Rate Relief

The Rating (Empty Properties) Act and subsequent regulations will amend the Local Government Finance Act 1988 from April 2008, by limiting Empty Property Relief (EPR) for warehouses and industrial hereditaments to six months from becoming vacant, whilst relief on offices and retail premises will be limited to three months. After these free periods, 100% rate liability will apply, so the owner will become liable to the full rate. The EPR for community amateur sports clubs and properties which were last occupied by charities will be zero.



So what is the background to these changes?

Sir Michael Lyons took on board the recommendations that had been made by Kate Barker in her Review of Land Use Planning, which detailed a reform of empty property relief on economic and environmental grounds.

With rents in English and Scottish cities comprising 6 of the 15 highest in the world, and with up to 25% vacancy rates for properties in areas of both high and low demand, the Government considered that a relief which costs £1.3 billion, (at the expense of other ratepayers), is perhaps no longer appropriate. A formal consultation document is now out for comment until 1 October 2007. Comments are particularly sought on anti-avoidance measures, the treatment of empty buildings protected by the planning system and the liability of companies in administration. A copy of the consultation document can be found at: http://www.communities.gov.uk/index.asp?id=1511767.

The statutory changes are expected to increase annual revenue by £950 million. Not surprisingly, commercial property owners and their agents are critical of the changes and assert that property is not left vacant deliberately in order to avoid tax. However, for example, the Federation of Small Businesses welcomed the moves, having themselves proposed a reduction in the relief to ensure better use of commercial properties.

How will this affect VT hearings?

Firstly, it must be acknowledged that many issues involved with EPR concern liability and 'billing, collection and enforcement' and do not fall within the VT's jurisdiction. Secondly, a number of compiled list appeals will have been made and settled by parties without the knowledge of their increased liability from 2008.

(Continued on page 2)

Inside this issue:

Special points of interest:

- *Hardy v Sexton MBC High Court (2007) – Page 5*
- *Harrods v Baker (VO) Lands Tribunal (2007)– Page 6*

In the past, appeals on empty industrial properties were often withdrawn because “there was nothing in it for the owner”. The result of this was that a potentially incorrect RV remained in the list, unchallenged.

VTs may therefore see a surge in compiled list appeals on industrials followed by a stream of material change of circumstance appeals, as owners use every opportunity available to have their rateable values reduced. With significant levels of liability at issue, one could expect an increase in contested cases.

In addition, the Act inserts a section 66A to LGFA 1988, about anti-avoidance regulations. We may see more appeals made on uneconomic repair, splits, obsolescence and oversupply, and there may even be more activity on the completion notice front.

VTS assists Northern Ireland to introduce a fairer rating system

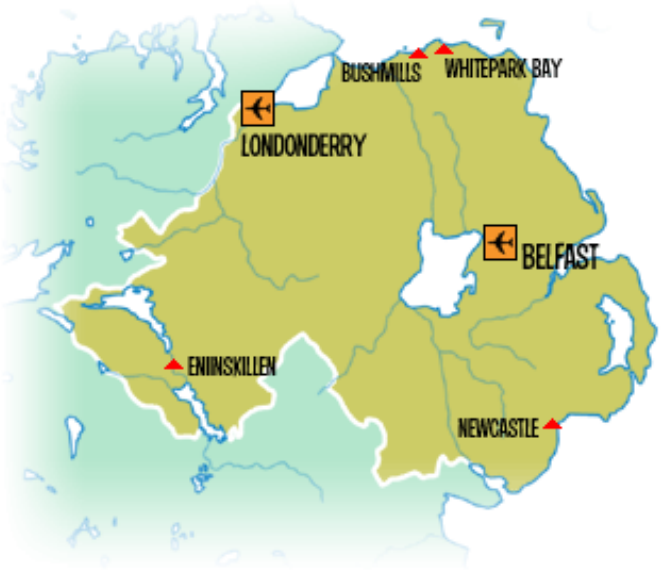
Following the outcome of a wide-ranging public consultation in 2004, the Government introduced a number of key reforms to the domestic rating system in Northern Ireland from 1 April 2007. These were the first significant developments in this area for over 30 years and involved a move from the outdated rental value method of assessment to a capital value system based on individual assessments.

In order to consider options on the way forward, the Department of Finance and Personnel (DFP) in Northern Ireland asked the VTS to provide some advice and make a series of recommendations. One of the main considerations was to ensure that the tribunal was independent of DFP and its associated agencies, who deal directly with valuation and billing.

The main two options to be considered by the VTS were whether to set up the tribunal to be managed and administered locally or as an arm of the VTS.

The remit for the VTS included:

- An examination of the legal aspects of the VTS working in association with, or administering the tribunal.
- Developing an outline organisational structure for both options, covering the administrative and judicial functions.
- To examine the anticipated workload.
- To identify the risks and advantages/disadvantages associated with both options.
- To explore and articulate associated resource, logistic, administrative and financial projections.



The VTS Team, paid a number of visits to Northern Ireland in the spring of 2005 to fact-find, obtain documentation on other tribunals and systems in place and talk with a wide range of interested parties and organisations.

Apart from the issue of how the tribunal would be administered, the Team looked at a range of practical implementation areas such as appointment procedures for the members of the tribunal, the makeup of the membership and what expertise might be required; ensuring relevant training would be in place; addressing appropriate accommodation; having adequate systems and procedures in place; managing the casework, particularly in the early months following the revaluation in 2007; and trying to project the financial costs.

One of the big unknowns, and a key consideration, was how many appeals would be made as a result of the new system of assessment of 700,000 properties and how many initial challenges to valuation would reach the new tribunal. There would be 3 tiers of appeal,

(continued on page 3)

an application for review to the District Valuer, an appeal to the Commissioner of Valuation and finally an appeal to the new tribunal.

In discussions with the VTS, the Valuation and Lands Agency (VLA - the VOA equivalent in Northern Ireland), estimated that, in 2007-2008, with the introduction of the capital value system, numbers of appeals could be:

- 140,000 telephone enquiries between April 2006 and April 2007 (20% of total number of assessments);
- 70,000 applications to the District Valuer (10% of total assessments);
- 15,000 reviews with the Commissioner (2.1% of total assessments); and
- 4,000 appeals to the Valuation Tribunal (0.6% of total assessments).

In parallel with the VTS' considerations, a member of the DFP policy team visited Kansas in the United States to explore the award winning appeals system for residential taxes in Johnson County. The Report produced of that visit was taken into account and formed part of the final Feasibility Report from the VTS.

From the outset the VTS Team and DFP were aware of a number of factors which would have implications. These included:

- The Leggatt Report published in 2001, on the future structure of tribunals in England and Wales and how that might spread across to Northern Ireland. Therefore, the appointment procedures and associated membership criteria would need to align with comparable tribunals in Northern Ireland, as the new tribunal may eventually form part of a unified Tribunal Service for Northern Ireland.

- The anticipated volatile appeal rate, an unknown quantity. Flexibility would need to be factored into all the considerations, including the terms of appointment, tenure of members and the chair and the general administration functions.

In its final Report published on 23 August 2005, the VTS concluded that a local administration option would be preferable. If the VTS was to administer the tribunal it would require an amendment to the Local Government Act 2003 – the time-scale available and the need to secure a time slot in the Westminster legislative programme would present significant difficulties. Furthermore it was considered that DFP was better placed to take account of local conditions and respond expeditiously and with flexibility to changing conditions; there are major differences between GB and NI in the remit, appointment, terms of tenure/expenses of members of the tribunal and the strong possibility of a unified Northern Ireland Tribunal Service being set up with a need for compatibility between the varied tribunals. Having said that it was recognised that the VTS could still be involved in a supporting role, such as IT advice and training of members, if and when required.

Some time after the Report from the VTS had been received, an approach was made to the DFP by the Northern Ireland Court Service offering to set up and run the tribunal. This was seen to be within its evolving remit to set up a unified Tribunal Service for Northern Ireland. The offer was considered by DFP and accepted by the Minster as the best way to provide an independent and cost-effective service to ratepayers.

The Court Service subsequently agreed, on 29 November 2005, to set up and run the Valuation Tribunal, with the necessary funding from DFP. Since then DFP has continued to work with the Court Service providing assistance and advice on the background to the policy and the appeals system. The information and analysis in the VTS Report proved invaluable to the Court Service in progressing the setting up of the tribunal.

On 21 March 2006 it was announced that a combined Courts and Tribunal Service was to be set up. As a result the Court Service is progressively bringing all new tribunals being established by Northern Ireland Departments, as well as existing ones, within its remit.

The DFP is extremely grateful to the VTS for the expertise it brought to the reform process, in providing an excellent report along with financial profiles and recommendations. Thanks go to the VTS Team which was headed up by Vince Turner assisted by John Darling and with considerable input from Antonio Masella (Corporate Director). Last, but by no means least, the DFP is most grateful to the then Chief Executive of VTS, Laurence Barnes who was fully supportive from the outset and gave every encouragement to progress the Feasibility Study to conclusion.

Article by Ivan Millen, Rating Policy Division, Department of Finance and Personnel, Belfast, Northern Ireland.

Ivan Millen

Council Tax in England

The Valuation Office Agency (VOA) has posted information on its website www.voa.gov.uk, which attempts to put the record straight on a number issues that have been circulating in the media.

The VOA's responses include that:

- Listing Officers (LOs) do not have any powers which allow its staff to force their way into people's homes. Reports of a 'snoopers' charter' are completely without foundation and have caused unnecessary anxiety to many households particularly the old and vulnerable.

- It does not hold personal information about people's pets, holidays nor has it any other "big brother" database. It only holds information that is relevant to value properties.

- There will be no extra charges for characteristics like living in a quiet area or having a nice view, other than these are factors that are likely to contribute to the overall value of the property; garden sheds, rabbit hutches or garden gnomes clearly do not affect property values at all, and would never be taken into account.

- No revaluation is currently taking place, however, the VOA is maintaining the automatic record of sales that was set up prior to the postponement of 2007 revaluation in September 2005. A 'revaluation by stealth' is a pure invention.

- There is no connection between the Home Information Inspectors collecting information on preparing homes for sale and the LOs working on valuing properties for council tax.

- The VOA does not have huge numbers of inappropriate or intrusive photographs. It currently holds photographs for 3% of the properties in England; the overwhelming majority are external elevations. Internal photographs are only taken when there is an internal feature that has a bearing on value. In these cases internal photographs are taken with the permission of the occupier and are deleted as soon as they have served their purpose. The VOA only views aerial or satellite photographs that are freely available to the public on the internet to help determine whether a visit is needed, for example where it appears something has been demolished. However, it does not have any contractual arrangements to use these types of photographs and it does not rely solely on these images to decide on changes to council tax bands.

"in 1993, … only 4.4% of bandings were challenged. Since then there have been further challenges to 2.6% of dwellings".

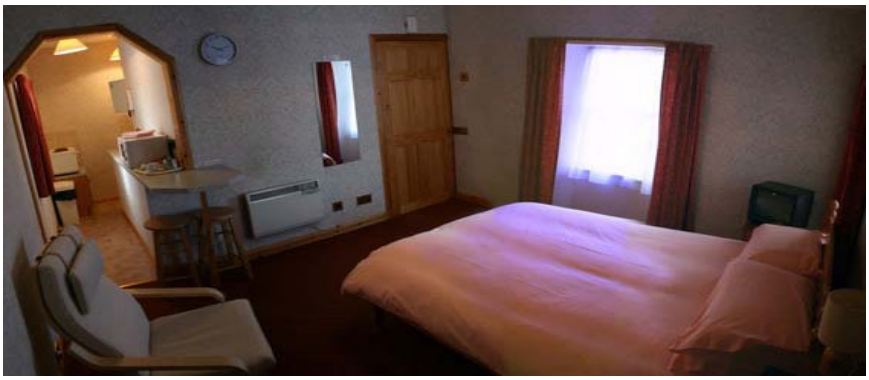
- Adding energy efficient measures such as double glazing, cavity wall insulation, solar panels or wind turbines will have no effect on the current banding of a property. When a property is sold they may have an effect, but only if they are such that they push the value of the property into the next band range. The VOA also states that these types of energy efficient measures are, in isolation, unlikely to have any effect.

- There was an open right for people to challenge their bandings in 1993, at which time only 4.4% of bandings were challenged. Since then there have been further challenges to 2.6% of dwellings. The VOA advises that there are now only limited circumstances when people can challenge their bandings and warns that requests for banding reviews can lead them to increase as well as reduce bandings.

Superior Court Decisions

Hardy v Sexton MBC- High Court

This case concerned a decision made by the council to hold Mr Hardy liable to pay the council tax as the owner of a property which was held to be a house in multiple occupation (HMO). This decision had been upheld by the Merseyside VT.



In his appeal Mr Hardy raised two issues.

1. The single household issue: irrespective of the fact that he had signed separate tenancy agreement forms for each of the three occupiers of the appeal property, he considered that they still constituted a single household.
2. The demand notice issue: he disputed that the billing authority had served a demand notice on him "as soon as practicable after the billing authority set an amount for council tax for the relevant year."

The demand notice issue also gave rise to a third, a judicial issue, raised by the billing authority (BA), that the VT had no jurisdiction to consider issues relating to demand notices.

Turning to the first issue, Mr Justice Walker noted that between May 1998 and August 2001, the appeal property had been occupied by three tenants. Each tenant had a tenancy agreement to occupy a specific room and had been awarded housing benefit for the parts of the property they had been liable to pay rent in respect of. Following the last tenant vacating the appeal property on 5 August 2001, the appeal property had been granted a 6 month exemption.

Between October 2002 and April 2004, the BA had entered into correspondence with Mr Hardy, who had disputed his liability to pay the council tax.

At the date of the original hearing Mr Hardy presented a copy of a tenancy dated 17 April 1999, which appeared to show that one of the tenants had taken a tenancy for the whole property, and as such the rent was £150 per week. However, this document conflicted with a copy that the BA had in its possession, from the same date, which showed that the tenant had continued to occupy one room for £50 per week.

Mr Hardy contended that if the BA had visited the appeal property it would have been able to see that there were no locks on the doors. He also explained that all three tenants had come to the property as a group of friends on the same day. There were no numbers on the bedroom doors, they shared food and bills, they had decided on who should have each room and they had also been responsible for filling vacancies. He added that the tenancies were a fiction created so that the individuals in question could claim housing benefits.

Mr Hardy felt that the original intention of Parliament was for HMOs to deal with hostels/bed-sits where people were transient. He did not think that the appeal property fell into this category, particularly given that it had only been occupied by three tenants.

In reaching his decision, Mr Justice Walker held that the appellant's arguments had no legal merit, as since 1 April 1995 the definition of a HMO had changed and so it no longer required a property to have been constructed or adapted for occupation by persons who did not constitute a single household. Instead, it only required that a property was occupied by a person or by two or more persons who had a licence to occupy part of the dwelling and were not liable to pay rent or a licence fee in respect of the whole property. Mr Justice Walker considered that the VT in dismissing the appeal had been entitled to look at the 'position on the ground', and on the evidence presented (concerning the separate tenancies), it was entitled to conclude that during the period in question that these premises fell within the wording. He added that he did not think that it was open for the appellant to raise any suggestion that the tenancies were a sham at this hearing.

Finally whilst the VT had commented on whether it believed that the BA had acted correctly in backdating Mr Hardy's liability, Mr Justice Walker held that this was outside the scope of the VT's jurisdiction. Whilst Mr Hardy had referred to decision by the West Midland (West) VT that had considered billing issues, Mr Justice Walker concluded that these were issues for the Magistrates to determine and a VT had no powers to investigate whether the respondent was in breach of Regulations 18 and 19 of the Administration and Enforcement Regulations.

Harrods v Baker (VO) 2007 – Lands Tribunal

This case concerned the 2000 rating list entry for the Harrods department store, which had been originally inserted into the rating list at £19,750,000 RV and had been reduced to £18,850,000 by the London (South West) VT. Both parties had appealed against the VT's decision and the two appeals were consolidated. The appellant contended for a RV of £11,450,000 and the VO for £19,500,000. The case was heard by the Lands Tribunal President, George Bartlett QC, together with Mr N J Rose FRICS.

Both parties agreed that the property should be valued on an overall method, applying a single rate per metre, which should be derived from the passing rents from department stores in Oxford Street. They also agreed that if the value of Harrods was derived by comparing it to stores that had air conditioning, an agreed deduction would be made to reflect the lack of this facility at the appeal property.

In the main their disagreements concerned:

- Location: the ratepayers contended that Knightsbridge was less valuable than Oxford Street and concluded that a 5% allowance should be made.
- The level of allowance for its internal layout: Harrods was only partly built as a department store; most of it consisted of converted mansion flats. Therefore, the ratepayers wanted a higher allowance to reflect the irregular location of escalators and lifts.
- Modernity: there was a disagreement particularly in respect of the fact that Harrods lacked a central court (atria) to create a feeling of spaciousness and light.
- Quality: whether the uplift proposed by the VO for the exceptional quality of its internal fittings and external appearance was appropriate.
- Maintenance costs: both parties accepted that an allowance was appropriate, but the size of it was not agreed.
- Goods delivery facilities: the parties disagreed on the amount of allowance that should be made to reflect that Harrods' storage and delivery facilities were separate from the store, connected by tunnels under Brompton Road.
- Quantum: this was the most important difference. It was accepted that Harrods was very much larger than any other department store (4.5 times the size of House of Fraser, 2.3 times the size of John Lewis and 1.5 times the size of Selfridges). However, where the agent had made a 20% quantum allowance, the VO had made none.

In reaching its decision the LT determined that the basic rate should be £135/m2, which had been derived from the assessments placed on Marks and Spencer, Debenhams and John Lewis. As these stores had air conditioning, the LT applied the agreed adjustment of £161,154 to reflect the lack of air conditioning at the appeal property. However, it also made the comment that it had found the reasoning behind this adjustment to be confusing.

The LT acknowledged the differences in the location of Oxford Street, which had the highest foot fall and was the best known shopping location in the UK for mass fashion and Knightsbridge which was a much smaller retail area with higher value retailers and a lower footfall. However, it did not consider that there was any justification in making a 5% allowance for location, given that Harrods was seen to have an outstanding location for the particular retailing being carried out there. Harrods was set in high class residential area, accessible to tourists and immediately adjacent to the tube station. It also considered that the lack of other shops in this area gave Harrods a positive advantage and emphasised its uniqueness.

The LT decided that it should look at a number of facts when examining the quality factors. Whilst it accepted that the standard of finish and fitments was far higher than other shops, it acknowledged that there were disadvantages in the lack of atria and in the poor location of lifts and escalators; this latter point being intensified by Harrods' size and the fact that its floor space had been created from converted mansion flats. Accordingly, the LT concluded that the positive and negative factors balanced themselves out. Therefore, it made no additions or deductions to the main space rate.

Both parties agreed that an allowance was appropriate for the exceptional maintenance costs associated with such a large Grade II listed building. The external repair costs alone, on a ten year cycle, were estimated to be £10 million. In making a total deduction of £1,586,000 for all repair costs, the LT placed more weight on the agent's costings, which were supported by information gained from other stores. In contrast, it did not find the VO's evidence on this

(Continued on page 7)

matter to be convincing and noted that he had repeatedly changed his calculations.

After inspecting the delivery arrangements, the LT concluded that the agent's request for an allowance of £586,222 did not overestimate the difficulties caused by the remote location of loading facilities and service lifts at the appeal property. The LT noted that of the three stores on which the main space had been derived, only Debenhams had remote storage facilities. Moreover, the distance between the start of the tunnel and the mid point of the goods lifts at the appeal property was 224.6m, which was five times the equivalent distance at Debenhams.

Finally, on the issue of a quantum allowance, the LT noted than none of the other stores had received quantum allowances and thus there could be no inference that because of its considerable size, Harrods should be valued at a lower rate per m2. The LT accepted that Harrods would have been the only bidder for the hereditament at the valuation date, but considered that this factor in itself did not suggest whether Harrods would have been prepared or could have negotiated a reduction for quantum. Instead the LT considered the determining consideration was whether the amount of floor space was excessively large for Harrods purpose. Looking at the history of the store, the LT noted that it had been one of expanding its retail space and that Harrods made effective use of all of its floor space.

Therefore, the LT concluded that a case for quantum had not been made and determined that the appeal property's entry in the 2000 rating list should be £16,575,000 RV.

Valuation Tribunal Corner

Billing Authority's (BA's) refusal to exercise its powers to reduce council tax under Section 13A of the Local Government Finance Act 1992- Lincolnshire VT

This case concerned an appeal that had been made by the appellant under section 16 of the Local Government Finance Act 1992. The appellant's grievance stemmed from the BA's refusal to exercise its powers under section 13 A of the same Act. At the VT hearing the appellant was represented by the Lincoln and District Citizens' Advice Bureau (CAB).

Before it gave consideration to the appeal, the VT had to determine as a preliminary issue whether or not it had jurisdiction to hear and determine an appeal against a BA's refusal to, in effect, write off a council taxpayer's debt.

The BA representative contended that the VT did not have jurisdiction to hear the appeal. He accepted that if his Authority had passed a resolution to reduce the council tax liability for a particular council taxpayer belonging to that class had not been given a reduction, then it would be appropriate for a VT to hear an appeal. However, if there was no resolution and a BA had made an individual determination not to reduce a person's liability, then the only way to challenge the BA's decision was by making an application for a judicial review to the High Court.

He acknowledged that this opinion was different to that contained in the Council Tax Information Letter 8/2003 dated 22 December 2003, from the Office of the Deputy Prime Minister, which had given advice to BAs that any decision by a BA not to make a reduction under Section 13A could be challenged under Section 16 (2) (b) of the Local Government Finance Act 1992. However, he pointed out that there was no Section 16 (2) (b) and presumably the letter should have stated Section 16 (1) (b). Even allowing for the possible typographical error, the BA contended that this advice was flawed.

On behalf of the appellant, the CAB contended that the VT had the jurisdiction to hear his client's appeal. The legislation stated that a BA "may" give a discount and a council taxpayer was entitled to appeal to this VT under Section 16 of the 1992 Act if she was aggrieved by the amount of council tax that the BA had determined that she was liable to pay.

(Continued on page 8)

The CAB contended that the BA's interpretation of the legislation was incorrect and not sustainable. If the BA was correct, the legislation would have been drafted differently so that there would be a clear distinction between reductions for classes of people and reductions in individual cases, and in the avenues for any appeal(s).

The VT gave the following reasons for deciding that it had no jurisdiction to hear this appeal:

- Section 13A was inserted into the Local Government Finance Act 1992 by Section 76 of the Local Government Act 2003. Section 13A was as follows:

"(1) Where a person is liable to pay council tax in respect of any chargeable dwelling and any day, the billing authority for the area in which the dwelling is situated may reduce the amount which he is liable to pay as respects the dwelling and the day to such extent as it thinks fit.

(2) The power under subsection (1) above includes power to reduce an amount to nil.

(3) The power under subsection (1) may be exercised in relation to particular cases or by determining a class of case in which liability is to be reduced to an extent provided by the determination."

- Under Section 16 (1) of the Local Government Finance Act 1992 *"a person may appeal to the valuation tribunal if he is aggrieved by –*

Any decision of a billing authority that a dwelling is a chargeable dwelling, or that he is liable to pay council tax in respect of such a dwelling; or

Any calculation made by such an authority of amount which he is liable to pay to the authority in respect of council tax."

- Looking at the wording of Section 16 (1), it was apparent that (a) above did not apply as there was no dispute that the appeal dwelling was a chargeable dwelling or that the appellant was the liable person. The crux of the dispute related to the BA's refusal to write off her debt.

- In the VT's opinion, the wording of Section 16 (1) (b) restricted the remit of its jurisdiction to any dispute concerning the actual amount that a person would normally be expected to pay. As a corollary, it would be legitimate under Section 16 (1) (b) for an appellant to challenge the BA's determination of the period when she was liable for council tax. It would also be in order for an appellant to challenge the BA's failure to award any mandatory discounts that she believed she was entitled to under the 1992 Act, for instance if he was the sole occupier or if the dwelling had been vacant.

- The VT could hear an appeal from an aggrieved council taxpayer against a BA's refusal to abide by its own resolution. Although the power to make a resolution was discretionary, once that resolution was passed by the Council, it was binding on the BA.

- The position regarding a BA's failure to exercise its discretion in an individual case was a different matter. If, as in the case under consideration, the BA refused to reduce a council taxpayer's liability to nil, it was not within the VT's jurisdiction to investigate the reasonableness of the BA's decision not to write off her outstanding debt. In the VT's opinion, an application for a judicial review before the High Court would have been more appropriate. In appeals of this nature, the VT was not empowered to substitute its own discretion for that of the BA.

Council tax liability decisions do not appear on our website.

Student Exemption- West Yorkshire VT

This case concerned whether a trainee probation officer (PO)

should be exempt from council tax due to his full time student status.

The appellant had been in receipt of a student certificate from Sheffield Hallam University. However, the BA contested that it was for them to decide whether the certificate led to a person being awarded an exemption. The BA believed that the stumbling block to granting the exemption lay in regulation 4 (3) of Schedule 1 of the Council Tax (Discount Disregards) Order 1992. This explained that except in the case of trainee teachers, if the periods of work experience exceeded the aggregate of course work, a course could not to be treated as a full time course.

In forming its view, the BA had considered:

- A letter from the Course Administrator at the University stating that the appellant had been enrolled on a full time course between 27 September 2004 and 6 October 2006. The course had equated to 35 hours per week and had not been classified as a Distance Learning Course.

- A letter from the Programme Manager at the Probation Service, explaining that the two year diploma that allowed POs to practice, comprised of an Honours degree from Sheffield Hallam university and 12 NVQ certificates

(Continued on page 9)

The letter also explained that the qualification had been compressed into two years, by avoiding lengthy breaks at Christmas, Easter and the summer. Since the inception of the course in 1998, students had occupied dual status as both employees of the four boards in the region and full time students of Sheffield Hallam. This was the first time a challenge had been made by a BA.

- Notes taken from a telephone conversation with the Course Administrator which stated the majority of the appellant's course had been done online.

- Answers provided by the appellant that stated that he had spent between 2-3 days in the office, 2-3 days attending lectures at the University and 2-3 days on work experience.

The BA did not consider that the appellant was any different to many other professionals who had to study to obtain the necessary qualifications to further their career and asked the VT to consider what had been in the Government's mind when they had created this exemption, contending it was never envisaged that the exemption would apply to a salaried employee.

The BA acknowledged that not all trainee POs were being treated the same, as evident from the debates on the Probation Service's website. He considered the reason for this was that BAs were not always in possession of all of the facts.

The appellant explained that he had qualified as a PO in October 2006 and was no longer a student. Whilst on his course, he had only worked 7-15 hours a week; the rest of the time had been spent studying. The typical caseload for a fully qualified PO was 40-60 offenders. His caseload began with one case in October 2004 and progressed up to 12 cases by the end of the course in October 2006; these were mainly low risk/low maintenance cases. He also presented the VT will a schedule setting out a typical week whilst he had been a student.

The appellant explained that he had spent a maximum of two days a week in the office in term time. During the summer recesses he had spent 3-4 days in the office doing an NVQ foundation course. At all other times he had been at home or at the library.

Whilst it was an unusual course, the aggregate amount of time he had studied had exceeded the amount of work experience that he had done. He added that most of the NVQ worked flowed from the work that he had done with offenders on a Wednesday.

The appellant acknowledged that he had been fortunate to receive a salary whilst he was undertaking his studies. As a trainee PO he had received a salary of £14,500 per year, (this had doubled since he had qualified).

" What had been in the Government's mind when they had created this exemption... it was never envisaged that it would apply to a salaried employee."

In allowing the appeal the VT noted that the BA Hon degree on Community Justice (Probation) was an unusual, but bespoke course, which had been compressed to allow the appellant to achieve the qualification within two years. In addition, the course had ran alongside NVQ work and incorporated different amounts of work experience.

The VT noted that the only factor on which the exemption had been challenged was the BA's belief that the appellant had spent more time working than studying during the period in dispute. This decision appeared to be at odds with:

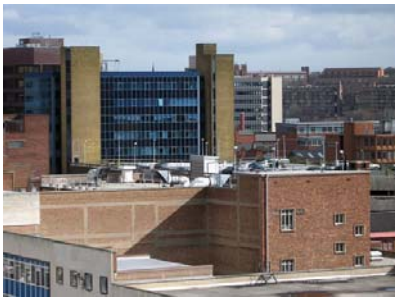
- The documentation, certificate and
- The breakdown of the appellant's typical week during his period of training.

Turning to the issue of the appellant's dual status both as an employee and a full time student, the VT accepted that the BA may well be correct in his assertions as to what had been the Government's intentions when drafting this legislation. However, the VT could only look at the statute as it was written. Based on the existing legislation, the VT considered that there was nothing to indicate that any level of earnings would prevent an exemption from being awarded.

Looking at the case as a whole it considered that the level of study the appellant had done during the working week was well above that normally followed by employed people studying on a part time basis. The VT also considered the appellant's position was not dissimilar to that of students sponsored by organisations to undertake degree courses, on the understanding that they would commence working for that organisation once they had qualified. To a lesser extent, it was similar to those students who worked after their lectures had finished in the evenings and during holidays.

Based on the evidence presented, the VT considered that the aggregate of course work on the degree clearly exceeded the appellant's work experience. Therefore, the appeal was allowed.

Council tax liability decisions do not appear on our website.



Rotherham District Hospital- Application for an end allowance due to the presence of asbestos – South Yorkshire VT

The matter in dispute was whether an end allowance should be given to reflect the presence of asbestos at the appeal property.

The appeal property was built and designed as a 'Best Buy' hospital; the first phase had opened in 1977, the second in 1984. The agents explained that the most cost effective method of construction at this time, which also provided the required fire resistant of one hour, used material which included asbestos in its construction. The problem for the Hospital Trust now was that they had difficulties managing the site and incurred additional costs even to carry out routine work. To highlight this, the agents produced an invoice which showed that the hospital had been charged £1692 to drill two holes in an asbestos floor, to take a sample and to dispose of the materials. In all they estimated that repair costs were 25% higher at the appeal property.

In setting out their request for a 25% end allowance, the agents drew attention to:

- An asbestos survey of the appeal property, including the information that it would take £80 million to remove all of the asbestos from the site.

- A letter from the Trust saying that, as the hospital provided a 24/7 service, when contractors were carrying out works, surrounding areas had to be closed off. On occasions this had limited access to equipment that should be readily available.

- Three comparables, the Prince Charles Hospital at Merthyr Tydfil, Hull College and one of the Hull University's sites. These properties had received end allowances of between 23.79% and 50% to reflect the presence and disabilities presented by asbestos at these properties.

The VO explained that asbestos had been commonly used in buildings that had been constructed between 1956 and 1980. Turning to information produced by the Health and Safety Executive (HSE) and the University of Cambridge, he noted:

- As long as the asbestos was in good condition and was not disturbed there was no health risk.

- Not all asbestos materials attracted the same risks and licensed contractors were not needed to work on asbestos cement, the type present at the appeal property, as this was much less dangerous.

- Removing asbestos could be more dangerous than containing it. The safest thing was to identify the asbestos, eliminate the risk and then plan to manage this risk.

The VO presented a spreadsheet that he had compiled from the appeal property's full asbestos report. This demonstrated that the vast majority of the hospital attracted low risk, a few parts medium risk and no parts were at high risk. He also noted that the report had found all of the asbestos to be in good condition.

The VO did not consider that a 25% end allowance was appropriate. He explained that the rebuilding costs set in the memorandum of agreement for 1960s-1980s buildings were already low and that further deductions had also been applied to the appeal property to reflect that it was for a 'Best Buy' design. Added to this, a 7.5% reduction had been given for obsolescence.

No allowances had been conceded locally or nationally for the presence of safe asbestos. The asbestos present in the comparables was in a dangerous state that required its removal. He also alleged that the reason that agents had not supplied him with details of the surveys that had been carried out on Hull College and Hull University after their end allowances had been removed was because these would show that there was no longer any asbestos present at these properties.

He concluded that his proposed valuation already reflected the age, quality and any problems that existed at the appeal property. There were no on-going works at the property because the asbestos at the site was in good order, low risk and well managed. The hypothetical landlord would be unwilling to reduce the rent any further, given that similar buildings were on the market and none of these had received an allowance.

(Continued on page 11)

In reaching its decision, the VT accepted that there was asbestos present at the property, but the survey showed that it was in good condition, well managed and fell mainly into the low risk category. As it did not need to be removed, the removal costs cited were largely irrelevant, envisaging a tenancy from year to year.

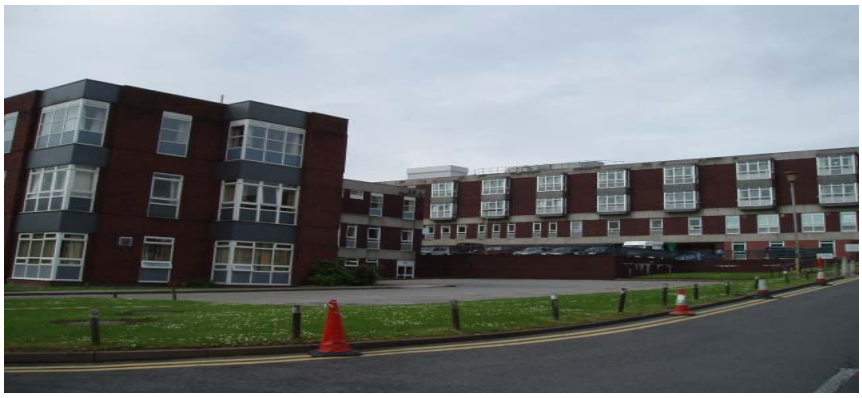
The VT acknowledged that asbestos was a common building material for buildings of this age and that the agreed level of value that had been attached to the appeal property, having regard to the memorandum of agreement, already reflected its age and some of the disabilities that it experienced.

The VT considered that the VO's evidence indicated that the asbestos in the appeal property would only present a problem if it was disturbed. It also considered that the VO's evidence showed that the appeal property was not on all fours with any of the comparables cited by the agents. In those cases, the asbestos present was in a dangerous state, and required removal. Moreover, even though the allowances had been given to these properties whilst the asbestos was present on site, these appeared to be directly related to the severity of the contamination. In addition, in the cases of Hull College and Hull University, they were also linked to the cost of removing the material.

The VT noted that no allowances had been conceded by VOs where asbestos was present in a building, but in good order. It considered that the agents' refusal to provide details of surveys on Hull College and Hull University after their end allowances had been removed had weakened their case.

Under the Rating (Valuation) Act 1999, a property had to be assumed to be in a reasonable state of repair

" the removal costs cited (£80 million) were largely irrelevant, envisaging a tenancy from year to year".



"**but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic.***"* Whilst there was no suggestion that the appeal property was in any disrepair, it was accepted by both parties that the maintenance costs for any building that contained asbestos would be higher. However, on the evidence presented the VT felt unable to ascertain whether or not this factor would have affected the hypothetical tenant's rental bid. The VT also noted the information from the HSE indicating that licensed contractors would not be needed to work on asbestos cement in the appeal property.

Accordingly, the VT concluded that the agents had failed to dispel their burden of proof.

A full copy of this decision can be found on the VTS website- Appeal number 44150045513/257N00.

Rotherham District Hospital- Application for the property to be deleted – South Yorkshire VT

The fundamental issue to address in this case was whether an administrative mistake which had occurred whilst the VO had been amending the 2000 rating list on 31 March 2006, rendered the appeal property's assessment inaccurate and so require it to be deleted from the rating list.

In reaching its decision, the VT noted that the error had occurred because the VO's computer system required a valuer to merge and then delete former historic assessments before the list could be amended. During this process a wrong code had been entered onto the computer by the VO, which resulted in the duplication of a £500 RV assessment for Patientline, which provided the TVs for patients in the hospital. Patentline had previously been split from the hospital's main assessment of £1.02 Million RV from 1 April 2000, given that it was in separate occupation.

Due to the effective date regulations the VO was prevented from removing the duplicate entry for the Patientline assessment and whilst the agent could have asked the VO to have restored the entries that had existed prior to the service of his last notice, he had chosen not to do so. Instead the agent contended that the existence of the duplicate entry at the close of the 2000 rating list meant that the appeal property had been incorrectly identified by the VO and therefore should be deleted.

The VT rejected these contentions noting that the duplicate entry was for an unrelated property: the appeal property had remained in rateable occupation throughout and its entry in the list had shown its address, description, RV and the effective date. The VT noted that no legislation or legal precedent had been put forward by the agent. The VT agreed with the VO that a greater error would occur if the appeal property was deleted from the list. Accordingly, the VT dismissed the case noting that the error lay in a administrative process rather than an error in law, and only the latter would have required the appeal property to be deleted.

A full copy of this decision can be found on the VTS website- Appeal number 441510057667/257N00.

VALUATION TRIBUNAL SERVICE

Fair, effective and efficient

VALUATION TRIBUNAL SERVICE

LPAC Team
Wendy Bowen Benyon IRRV
Phil Hampson
Brian Hannon Tech IRRV
Diane Russell BSc MCLIP
David Slater IRRV
Helen Warren MA (Hons) IRRV –Editor

Grahame Hunt - Graphic Design, IT support

Chief Executive's Office
VTS
Block One
Angel Square
1 Torrens Street
London
EC1V 1NY

Tel no. 0207 841 8700
Fax no. 0207 837 6131

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

www.valuation-tribunals.gov.uk