VALUATION TRIBUNAL SERVICE

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Valuation In Practice

VALUATION TRIBUNAL SERVICE

News in Brief

Increase in receipt of CTL appeals

A recent IRRV professional project study by one of our members of staff has revealed some interesting statistics about council tax liability appeals.

There was a significant increase in the number of appeals made during 2007-08. As there has been no new legislation or ground-breaking case law, the reasons for this may lie in the increasing media coverage of council tax .

Although council tax liability (CTL) appeals represent 0.6% of the total of appeals VTs receive, they account for about 15% of all contested cases. 12.6% of attendances at hearings are in respect of CTL appeals.

There is also great variation around the country in the numbers of these appeals received and dealt with. For instance, the Isles of Scilly VT has never had a CTL appeal, and only five have been received by Central London VT. At the other end of the scale, Merseyside VT has received 303. Other areas of higher activity for CTL decisions are within the other London VTs (London North East (256 appeals), London North West (248), London South West (231) and London South East (145)), Kent (213), Lancashire (217), Nottinghamshire (111), South Yorkshire (182), West Yorkshire (176) and East Yorkshire (104)).

Pre Budget Report

The Chancellor announced that empty commercial properties with a rateable value (RV) of less than £15,000 would be exempt from rates for 2009-10.

CLG Ministerial Changes

Mr Sadiq Khan MP has been appointed Minister for Community Cohesion and the Fire and Rescue Service, with special responsibility for community cohesion, communities, equalities and local government.

The Non-Domestic Rating (Communications Hereditaments) (Valuation, Alteration of Lists and Appeals and Material Day) (England) Regulations 2008 SI 2333

These regulations allow BT to make a proposal to alter its entry in the 2005 central rating list and subsequent rating lists, as a consequence of the full unbundling of local loops. (Unbundled local loops are the copper wires that allow telephone and broadband services to be provided via a connection between individual telephones and the telephone exchange.)

Inside this issue:

Special points of interest:

- **VT decision– rating of coffee shops within bookstores– page 4**
- **VT decision– CTL person prevented from occupying a property by a Tomlin Order– page 8**
- **Revenues &Taxation in & out of the Dark Ages– Geoff Parsons– page 11**

Decisions from Superior Courts

High Court (HC)-Wirral BC& Farthing [2008]-Student on a condensed course of study

This appeal challenged the decision made by the Merseyside VT to award a student discount to Mr Farthing, who had been enrolled on a mathematics enhancement course at Liverpool Hope University for the period 5 January 2007 to 28 June 2007.

The dispute centred on whether Mr Farthing met the requirements of paragraph 4 (1) (a) of Part II of Schedule 1 to the Disregard Order, to allow him to receive a 25% discount. Under these regulations a 'full-time course' is defined as one that subsists for 'at least one academic year', or in the case of an educational establishment, which does not have academic years, for 'at least one calendar year'. In addition, these regulations set out that a student would normally be expected to attend the educational establishment concerned for periods of at least 24 weeks in each academic or calendar year and be required to spend at least 21 hours a week on study, tuition or work experience.

Mr Farthing's course had been condensed into a period of 26 weeks, with the required hours of study being double that envisaged by paragraph 4. Whilst noting that his course lasted neither an academic nor a calendar year, the VT had allowed the appeal, given its belief that many full-time courses were being condensed into shorter periods, to allow the educational establishments to offer more courses in the same academic year.

In allowing the billing authority's appeal in the High Court, Judge Hodge QC, indicated that it was impossible to reconcile the VT's decision with the requirements set out in paragraph 4. He also pointed out that if it had been the intention of Parliament to have had regard to condensed courses, then they would have provided for that situation. He concluded that, "However desirable it might be for the VT to adopt a pragmatic view, it had to remain within the boundaries of the legislation enacted by Parliament".

Court of Appeal decision-Chilton-Merryweather Listing Officer [LO] & Hunt & Ors [2008] – M61 Motorway

This appeal considered whether the Manchester North VT and the High Court had been correct to allow the owners of four houses that were located next to the M61 motorway, to apply for a reduction of council tax, on the grounds that in recent years traffic noise and pollution had increased.

The issue was whether a change in the volume of traffic (noise and pollution) was a 'change in the physical state of the dwelling's locality' as envisaged in section 24 (10) of the Local Government Finance Act 1992.

The Court of Appeal's attention was particularly drawn to the statutory definition of 'material reduction' -

*'in relation to a dwelling, means any reduction which is caused (in whole or in part) by the demolition of any part of the dwelling**, any change in the physical state of the dwelling's locality** or any adaptation of the dwelling to make it suitable for use by a physically disabled person'.*

The Court also examined past legislation and case law, including:

- the definition of Section 20 of the 1967 General Rates Act, together with the guidance that was provided by the House of Lords case *Clement (VO) v Addis Ltd [1988],* where the creation of an enterprise zone was held to be something that could be considered as providing a change in a property's locality for rating purposes; and
- the fact that for the Local Government Finance Act 1988, the legislation had been changed to make it clear that only *'physical'* changes could be taken into consideration.

At the hearing, the LO pointed out that the 1988 Act gave two limbs to allow non-domestic rates to be considered under '***matters affecting the physical state/enjoyment of the hereditament***' and '***matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there*'.** It was argued that, the language of the Local Government Finance Act 1992, governing council tax, was much more confined and could only reflect a change in the physical state of a dwelling's locality. To add further support to this opinion, the LO noted that the legislation stated that a material reduction was to take effect from 'the day on which the circumstances which caused that reduction arose'. Therefore, he did not consider that it could apply to any fluctuating matters such as changes in traffic flow, as the legislation envisaged a change that

(Continued on page 3)

could be identified and dated to a specific event.

In accepting the LO's interpretation, Lord Justice Rix noted that the 1992 Act gave tighter limitations, restricting an appellant's right to make an appeal against his council tax band, and gave a narrower interpretation of 'physical changes' than that in the non-domestic rating legislation. Therefore, he rejected the interpretation applied by the VT and the High Court, both of which had accepted that the increase in traffic/pollution was a 'physical change'. He further indicated his belief that these interpretations would be akin to permitting an alteration for a reason which was part of a nationwide trend.

In contrast, he explained that a physical change would be created if a motorway had had another lane fitted or had been altered in some other way. He also envisaged that a 'physical change' could occur if the character of a road changed, for example in cases where a road was re-categorised or a quiet road had become a 'rat-run'.

HC- McKenzie (LO) v Marshall (2008) RA 269

The HC upheld the LO's appeal against the Norfolk VT's decision to reduce the council tax band of a taxpayer's house from band C to B, with effect from 17 May 2005. The appeal dwelling was a newly built house. The LO entered an entry of band C, in the valuation list, with effect from 1 January 2004. On 22 June 2004, the council taxpayer made a proposal, challenging its entry in band C, and sought a reduction to B, with effect from 1 January 2004.

The appeal dwelling's estate was subject to a Section 106 agreement, whereby properties could only be sold or let to persons who were over 55 years old. The effective date of the VT's decision was significant because on the date in question, 17 May 2005, the responsibility for the management of the estate was officially transferred from the builders to the owners of the dwellings in Oakleigh Drive, who had set up an owners' management company. The appellant found that, the service charge levied by the owners' management company was significantly greater than the £50 annual maintenance charge that had been levied by the builders.

The HC quashed and set aside the VT's decision and the matter was remitted back to the VT for a further consideration for the following reasons:

- The VT had erred in law by reducing the band, with effect from 17 May 2005. If the council taxpayer's appeal was to be allowed, the effective date should have been 1 January 2004, being the date when it had been entered in the list and the effective date contended for by the appellant, in the proposal.
- The VT failed to ask itself all of the right questions and it was unclear why the VT came to the conclusion that it did.
- As the VT was the fact finding tribunal, the HC was of the opinion that the VT, properly advised of its powers, should re-consider the case and decide, with appropriate reasons, what the correct level of assessment should be, with effect from 1 January 2004.

Lands Tribunal- Ash (VO) v no respondent [2008] - Knaresborough Market

This case arose from the VO challenging the decision that had been made by the North Yorkshire VT to reduce the 2005 rating list assessment for this outdoor market from £17,500 to £6,100 RV. At the LT hearing the VO sought a revised assessment of £14,300 RV, based on 20% of its gross receipts.

The market attracted thousands of visitors each year and had room for around 100 stalls; it was authorised by Royal Charter and operated by the council. On non-market days, the land was used for pay and display car parking.

At the VT hearing the council's surveyor had put forward a valuation of £6,100 RV, based on 8% of the annual £76,600 gross takings, over a four year period. This valuation had been accepted, the VT paying particular attention to:

- The fact it could not envisage any other person would be able to take over the running of the market due to the existence of the Royal Charter.
- The Court of Appeal decision *Hoare (VO) v National Trust [1998] RA 391*, which it considered questioned the use of the shortened profits method, especially in cases where no rental information was available.
- Its belief that the scheme that had been proposed by the VO had been derived from a limited amount of rental evidence, equating to only 5% of all single market assessments.

In allowing the appeal and confirming the VO's revised figure of £14,300 RV, the LT Member agreed that:

- The VT was wrong to conclude that due to the existence of the Royal Charter, no other party would be able to take it over. (He also noted that in the statement of agreed facts, even the council had accepted that it could have left the running of the market to a private sector third party operator).

(Continued on page 4)

- The right to hold a market to the exclusion of others within a certain radius of Knaresborough was more likely to enhance its value rather than to reduce it.
- The council incurred significant wage costs because of their decision to erect, dismantle and store the stalls when not in use and a different method of operation would probably occur if it was taken over by a private contractor.
- The VT was wrong to conclude that the *Hoare* decision had put into question the shortened profits method. Equally, it was inconsistent for the VT to criticise this approach and then to proceed to accept the valuation that had been put forward by the council, which had also been based on the same method.

LT- Womersely (VO) v Hart District Council and Rushmoor District Council (2008/RA 279

In January 2000, GVA Grimley, on behalf of, both Hart DC and Rushmoor DC, served proposals on the appellant VO, challenging the assessments of various car park hereditaments, as shown in the 1990 rating list.

Normally, a proposal made in January 2000 would have been deemed out of time. However, the proposals had been made on the basis that there was a relevant VT decision, in accordance with Regulation 4 (4) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993. The decision that was cited was one that had been made by the London (NE) VT, in relation to a car park in East London.

On receipt of the proposals, the VO had formed the opinion that they had been invalidly made and notices of invalidity were served. The agent appealed against the invalidity notices and the appeals, in relation to three "test" cases, were heard by the Hampshire North VT, which found that the proposals were valid. The VO did not appeal against the VT's decisions.

Subsequently, the VT issued its decisions in relation to 15 other appeals. Again, the VO did not appeal against the VT's decisions that the proposals were validly made.

In 2006, the substantive appeals came before the VT for hearing and determination on the valuation issues. However, the VO again contended that the proposals had been invalidly made.

In its decision the VT reiterated that the proposals were validly made and went on to determine the rateable value for each appeal hereditament. On this occasion, the VO appealed to the LT.

The LT held that, as the VO did not appeal against the VT's earlier decisions that the proposals were validly made, he was not entitled to re-argue the same point at the hearing of the substantive appeals .

The VO contended that 7(11) of the 1993 Regulations allowed him to contend that the proposal that gave rise to the appeal was invalidly made. However, the LT was of the opinion that Regulation 7(11) did not apply in cases where a VT had issued a judicial decision. There was a general principle of law, known as "estoppel", which prevented a party from re-litigating the same point on the same facts again.

The LT also upheld the fact that there was a causal link between the London (NE) VT's decision that was cited on the proposals giving rise to the appeals, which had led the agent to form an opinion that his clients' properties were wrongly assessed. As a corollary, the proposals were validly made.

Valuation Tribunal Corner

a round-up of interesting VT cases

Non-domestic rating list cases

Rating of coffee shops within bookshops- Hertfordshire VT

The three subject properties were occupied by Borders and Ottakars and each contained within their accommodation a concession to Starbucks or Costa Coffee to provide refreshments. The VO contended that two hereditaments existed at each address; one for the bookshop element and a second for the coffee and refreshment area. The appellants contended that only one hereditament existed.

In determining whether or not there was a separate hereditament, the VT considered:

- What physically existed on the ground.
- The identification and the purpose of the occupier.
- The precise terms of the contract to occupy the accommodation, which had been agreed between the parties.
- How the facts of the subject case fitted the legal precedents cited.

In each case:

- The coffee sales were performed towards the back of the shop; the refreshment area was only accessible through the bookstore and had no external frontage/direct passing trade.

(Continued on Page 5)

- The space for refreshments comprised an area of seating and a counter from which refreshments were served, all enclosed within a larger store retailing books and related items.
- No value had been specifically attributed to the seats or the counter; such items were tenant's chattels and were not rateable.
- It was accepted by the VT that the coffee shop hereditament identified by the VO comprised an open area delineated on the ground by a change in flooring

and lighting; there were no perimeter walls enclosing the hereditaments.

The appellants contended that the book retailers were keen for their customers to remain in the shop as long as possible. Serving refreshments supported this, as customers could take a book to the seating area and have a drink before deciding on a purchase. The purpose of the coffee shops' occupation was to provide a service to the bookstore customers, to enhance the shopping experience.

The VO contended that the coffee shops were commercial companies, entirely separate from the bookstores. They were in occupation to make a profit, not to provide a service to the customers of another company.

The seating area was used for book clubs, knitting groups and quizzes, plus children's clubs; the parents could buy coffee and consume it away from the seating area. From this it was noted that the seating area was used by both the book and coffee companies.

The agreement between the companies set out the terms and limitations imposed on the coffee concession. The pertinent clauses were:

1. If the concessionaire failed to open; compensation was payable.

2. The concessionaire could only sell permitted products.

3. The concessionaire could not sell any of the same items as the bookshop.

4. The trading hours were set by the bookshop.

5. The concessionaire could not be or become entitled to any estate or tenancy or proprietary interest in or to exclusive possession or occupation of any part of the concession area, but should only be entitled to share occupation of the concession area with the bookshop…and no relationship of landlord and tenant was created.

6. The bookshop could relocate the concession area within the store at any time for operational reasons.

7. The concessionaire had to inform the bookshop of the names and locations of all of the staff it employed. They could not engage any employee without the agreement of the bookshop. The bookshop had the right to reject any person they considered unsuitable.

8. The bookshop had to provide back of house facilities for the concessionaire, including shared use of rest facilities, WCs and washroom facilities.

9. Only the bookshop managers held keys to the property and were assigned alarm codes.

10. Staff receiving deliveries for the concessionaire had to be accompanied by a bookshop key holder, when the rear door was opened.

11. The bookshop manager was authorised to search bags and other personal items.

From the case law presented the VT recognised that it was paramount control over the whole property which had to be considered, not just over the area of the concession. The VT considered that the bookstore retained sufficient control to prevent a separate rateable occupation being determined.

The existence of a coffee concession within a bookstore was not a rival occupation, and it did not interfere with the enjoyment of that part of the bookstore; on the contrary it provided a benefit the bookshop sought to obtain. The areas were complementary to each other: it was accepted that in the process the concessionaire made money, but the purpose of allowing the coffee stores into the accommodation was to encourage customers to remain.

The VT allowed the appellants' appeals and determined that only one hereditament could be identified in each location.

A full copy of this decision can be found on the VTS website- see appeal no: 19309270761/017N00.

Caravan and Pitch and Premises- query on VO's decision to enter it in the 2005 rating list at £750 Rateable Value- Cumbria VT

This appeal related to a single private caravan plot. The appellant contended that because the plot had no waste disposal facilities and the certificate for its use was restricted to nine months seasonal; plus occasional, it could not be rented out. The appellant considered that the appeal property's current assessment of

(Continued on Page 6)

£3,750 RV was excessive and requested that it be reduced to £50 RV. On the proposal form he also asked for the effective date of its entry in the rating list to be changed to the date of the certificate granting the right to site a caravan on this plot.

The plot purchased in 2005, was 91 m² in size and located near to Ambleside. Due to access problems, it was difficult to install a static caravan, so the appellant had placed a touring caravan on the site. He had been advised by the National Park Authority to apply for permission to site the caravan there, and this had been obtained in May 2006. There was no electricity on site until May 2007, only a rudimentary water supply and no sewage disposal facility.

The appellant raised the following points:

- Sewage – The caravan had a chemical toilet, which, if there were four persons present, would need emptying every day. There was no septic disposal facility on the site and currently the appellant took the sewage home with him after they had used the caravan, a situation which he felt would be totally impractical for holiday makers and as such made it impossible to rent the caravan out.

- Water supply – Though the water supply had been improved, the source was a stream, which was good in winter, but very poor in summer. The water was routed to a storage tank, filtered and UV sterilised. The storage tank held 3500 litres, which would only last about one week, if four persons were in the caravan; this insecure water supply also made renting the caravan difficult.

- Legal certificate – The site had a legal certificate for occasional holiday use during the period 1 March to 30 November each year, which restricted possible rental periods.

- Valuation – He believed that the current value attached to the plot was based on it being occupied by a fully serviced 38' by 12' static caravan, which would have a potential income of £4,800. The appellant contended that this potential income should be reduced by 50% for the appeal property, as the caravan was not a static one. A further 50% reduction should then be applied to reflect the appeal property's reduced use, in accordance with its legal certificate. Finally, a 75% reduction should be applied to that figure to reflect the sewage and water supply problems. All of these deductions led to a gross receipt of £300 and a RV of £60, which supported his request for a nominal entry of £50 RV.

As regards the issue of the effective date, the appellant explained that the legal certificate

had been granted on 4 May 2006. Electricity was installed on 1 May 2007 and an improved water supply was installed around 30 June 2007. The appellant therefore contended that the revised effective date should be 1 June 2007.

The VO stated that the caravan plot was situated in a pleasant rural setting. It had a hard surface, with stone and timber boundary walls and timber gates. It had been brought into the 2005 rating list from 1 April 2005..

He noted that whilst a caravan by itself was not rateable, being a chattel, when it was enjoyed with a piece of land and had a degree of permanence, then its value had also to be reflected in the rating assessment.

In respect of the planning issue, the VO advised the VT that there had been a caravan on the site for a number of years prior to the appellant obtaining the certificate. In the VO's opinion, the previous lack of this certificate would not have affected its rental value. In support of this, the case of *Regent Lion Properties Ltd v. Westminster City Council [1990]* was cited. As no enforcement action had been undertaken in respect of the appeal property and the certificate granted appeared to formalise the situation, the assessment should remain to be effective from 1 April 2005.

In rating a single caravan, he explained that there may be an element of business use, if the caravan could be let out for certain periods of the year, but it also had to reflect that the property was available to the occupier for his own leisure use, which was the primary use in the appeal property's case. He believed that the value of this personal use, would lead a single caravan to have a greater individual rental value than a similar caravan on a large commercial site. Therefore, he proposed that a figure of 20% of the likely gross receipts should be used.

The VO explained that the likely letting for a static caravan on the appeal site with no disabilities would be £4,800. To reflect the appeal property's disabilities, he considered that the following allowances should be made: 50% for it being a touring caravan: 10% for age (between 10 and 15 years old); and 15% for partial services.

This resulted in a net income figure of £1,800, which taken at 20%, gave a RV of £350. Accordingly, the VO requested the VT to confirm a revised RV of £350, with effect from 1 April 2005.

The VT concluded that the revised assessment proposed by the VO was fair and reasonable, noting (Continued on Page 7)

that this valuation was based on the older caravan installed by the appellant, with allowances being conceded for its poor access and the partial services to the site. Despite these problems, the VT also noted that the appellant had paid £32,500 for the plot; therefore it was only fair and reasonable that its entry in the rating list correctly reflected its value, rather than a nominal value of £50 RV.

Finally, in respect of the effective date, the VT noted that there had been a caravan on site before 1 April 2005 and the appellant had also had a caravan on the plot prior to being granted a legal certificate. Accordingly, the VT determined that the rating list be amended to show RV £350, with effect from 1 April 2005.

A copy of this decision is not available. It was excluded from the VTS website at the appellant's request.

Canal boathouse and premises – East Wales VT

This case concerned a boathouse located on the Monmouthshire and Brecon Canal, constructed of stone walls under a pitched tile roof, which was enjoyed together with 100 metres of wharf/mooring rights. Access to the property was gated, quite tight and became steep towards the canal. The hereditament had been entered in the 2005 rating list as 'canal boathouse and premises' at £4,000 RV, effective from 1 April 2005.

The matter in dispute was the value attributable to the 100 metres of wharf, with mooring rights, which the agent had assessed at £825 and the VO at £3,100. The valuation of the boathouse itself, based on a rate of £15/sq.m, less a 10% allowance for poor access was not in dispute.

The agent contended his client had paid British Waterways:

- A fee of £825 per annum in 2007, to moor his own boats on his part of the wharf.
- A commercial boat license of £1000 per boat, for the shared right to use the canal.

It was argued that:

- members of the public paid £350 per annum for the same shared right;
- his client's commercial license fee of £1,000 per boat was payable regardless of where the boat was moored; and
- the public waterway was outside the client's demise.

No regulation 31 Notice had been served by the VO and hence no rental evidence was admissible at the hearing. The rent passing (mooring fee) was, in the absence of any other information, the best evidence of value. Whilst the appeal property's assessment in previous rating lists had only increased by £100 since 1 April 1990, there had been a 33% increase between its 2000 and 2005 rating list assessments.

The VO explained that the appeal property was owner/occupied. However, a similar hereditament possessing 100 metres of moorings and situated in a nearby village on the same stretch of canal had been assessed at £4,650 RV (£3,175 RV in the 2000 rating list). This comparable assessment had not been appealed and was supported by a rent that was being paid by the occupier to the owner, British Waterways.

In addition, the VO drew attention to an assessment in respect of Delta Marina Embankment in Warwick, which had been agreed with the same agent. In this case over 50% of the valuation for this hereditament had been accounted for by its 150 metres of moorings, which had been assessed at £20/sq.m.

The VT first considered the extent of the hereditament – this was considered to be the boathouse, the surrounding land and the wharf; the public waterway was considered to be outside its curtilage. It decided that the mooring fees were a payment for the right to park boats on the waterway and to occupy the water and canal bed below and were not a rent paid in respect of any constituent part of the appeal property.

In the absence of rental evidence and in accordance with case law, the VT decided that the assessments placed on comparable properties provided the best evidence to determine the appeal premises' rateable value, particularly as this included a property in the next village, with a similar amount of wharf/mooring rights. Therefore, the VT confirmed the appeal premises' entry in the 2005 rating list at £4,000 RV.

A full copy of this decision can be found on the VTS website- see appeal no: 68409656776/204N05.

Large Industrial Workshop used as a private museum – Domestic or Non-Domestic?- Lincolnshire VT

This appeal followed the appellant's receipt of a non-domestic rate demand for empty property rates. The appeal property was a former isolation hospital, which had been converted after World War 2 to industrial use. The property had an existing rateable value of £8,500 RV.

In making his proposal, the appellant sought a deletion of the

(Continued on page 8)

existing entry on the basis that it was domestic property.

The workshop, last occupied for industrial use in 1997,was within the same curtilage as his bungalow. However, the workshop was around four times larger. A planning restriction prevented the workshop being let out to a third party, because occupation of the workshop was restricted to whoever occupied the bungalow.

The appellant had an unusual hobby. He collected old historic industrial machine tools. His private collection was housed in the workshop. Every so often, he fired up these machines to make sure they were in working order.

The appellant contended that the workshop was in the nature of an outhouse or other appurtenance and should be treated as domestic property under section 66(1)(b) of the Local Government Finance Act 1988. Alternatively, it should be classed as private storage premises under section 66 (1)(d).

The VO contended that the workshop was non-domestic, but accepted that the existing entry was excessive and defended a revised RV. However, because the VT's remit was restricted to the scope of the proposal, giving rise to the appeal, it did not hear any evidence relating to the accuracy of the RV.

Ultimately, the VT held that the workshop was a non-domestic property and dismissed the appeal for the following reasons:

1. No evidence was submitted to show that any physical alterations had been made to the property, to make it suitable for domestic use.
2. The planning restriction, which meant that the only business user for the site could have been the appellant was irrelevant.
3. The appellant's use of the workshop as his own private museum to house his collection of industrial machine tools could not be classed as domestic use.
4. An outhouse was normally something that was akin to a shed, outside toilet or a small store, not a large industrial workshop that had been converted out of an isolation hospital. The sheer size of the workshop, although not considered to be relevant by the appellant, was also a relevant factor. The size of the workshop, 690m², and the nature of its use clearly pointed to the fact that it was non-domestic.
5. The workshop could not be classed as an appurtenance, because it would not pass silently, or without express mention, in a conveyance of the principal, in this case the bungalow.
6. Moreover, the workshop did not qualify as domestic property under any of the other criteria under section 66 of the LGFA 1988, because it was not used wholly for the purposes of living accommodation.
7. It was not a private store for storing items of domestic use, as would have been required by subsection 1(d). Although the case of *Andrews (VO) v Lumb* was not entirely relevant, it did highlight the point that if an appellant was contending that a property was being used as a private store, the items being stored should have been articles of domestic use. Large industrial machine tools could not be classed as domestic articles.

A full copy of this decision can be found on the VTS website- see appeal no: 200313889630/257N05

Council tax liability cases

Council tax liability decisions do not appear on the website

Appellant prevented from occupying a property by a Tomlin Order- West Yorkshire VT

This appeal followed a notice of objection that was made by the appellant, who disputed that he should be liable to pay the council tax for the appeal property, on the grounds that Mr B, his ex business partner, had been the 'real owner'; and Mr B had obtained a Tomlin Order in respect of the appeal property.

Under the terms of the Tomlin Order, which had been ratified in Leeds County Court on 3 January 2007, the following settlement had been achieved:

- By 4 January 2007, the appellant had had to vacate the appeal property and hand over the keys at a public house at 12 noon.
- From 4 January 2007, Mr B would assume responsibility for paying the mortgage and would place the appeal property on the open market for sale no later than 31 March 2007.
- Mr B would aim to obtain the maximum sale price and try to achieve a sale by 31 July 2007.
- The appellant would be paid £34,000 in full and final settlement once the appeal property was sold or repossessed, in the event that Mr B defaulted on the mortgage

(Continued on page 9)

The BA stated that up until 6 June 2005, the appellant had been the registered council taxpayer at the appeal property. Between 7 June 2005 and 11 April 2006, he had let the appeal property out for £1,000 per calendar month to Mr B's brother. Mr B had told the BA that his brother had left the appeal property on 12 April 2006, after being evicted by the appellant.

In setting out further facts relating to the case, the BA made the following points:

- The present situation had arisen because of a breakdown in a business deal. In February 2008, the appellant had told the BA that he had been employed by Mr B who had purchased the appeal property from a builder who was about to be made bankrupt. However, the appellant had agreed to be named as 'the owner' on the Land Registry entry.

- The appellant had been incorrect in his assertion that Mr B had moved into the appeal property on 4 January 2007: Prior to 2 August 2007, Mr B had been resident and paid council tax elsewhere.

- On 21 January 2008, the solicitors, who had acted for Mr B, had pointed out that a Tomlin Order was simply a record of a settlement that had been reached between two parties. They suggested that the legal owner of a property should be responsible for paying the council tax and pointed out that until the appeal property had been sold, the appellant had remained its legal owner, with Mr B having a share in its beneficial interest.

- The BA had carefully examined the situation and although it was unusual, it had also concluded that Mr B's solicitors had been correct. The Tomlin Order had only given Mr B the legal right to sell the appeal property and had not transferred an inferior legal interest to him. In contrast, the appellant's legal interest remained as the owner of the appeal property, and this factor had also been verified by the extract it had obtained from the Land Registry in August 2007.

- As the appellant had remained the legal owner, he was liable to pay the council tax on the appeal property under Section 6 (2) (f) of the LGFA 1992, until 1 August 2007, after which Mr B had moved into the appeal property and assumed responsibility to pay the council tax as the resident (under Section 6 (2) (e) of the LGFA).

For the purposes of council tax legislation, 'owner' was defined as a person with a 'material interest' in the whole or any part of a dwelling that was not subject to an inferior interest. 'Material interest' was defined as being 'a freehold or a leasehold interest, which was granted for a term of six months or more'.

In reaching its decision to dismiss this case, the VT made a number of observations.

A person's liability to pay council tax was set out in Section 6 of the LGFA 1992, which gave the hierarchy of persons liable to pay council tax. Accordingly, unless someone occupied a property or held a leasehold interest in it for a period of six months or more, liability to pay the council tax fell on the person that held the freehold interest in the property.

The situation had been clouded by the fact that it had stemmed from a business deal that had later turned sour. Irrespective of the comments that had been made by the appellant, who did not consider that he should be regarded as being the 'real owner', the VT noted that:

- The appellant had **agreed** to be recorded as the **owner on the Land Registry**;

- his own solicitors had told the BA that the appellant had **agreed to purchase** the appeal property with Mr B as a **joint investment**;

- other documents suggested that the appellant had placed at least **£8,000 of his money** into the property;

- he had **lived in the appeal property prior to 6 June 2005**;

- he had **let the appeal property out** to Mr B's brother, prior to evicting him on 12 April 2006; and

- he had been able to **negotiate a settlement** under the Tomlin Order that he should receive a payment **of £34,000** in recognition that he would give power of attorney to Mr B to allow it to be sold.

Accordingly, even leaving the Tomlin Order and the question of his legal title aside, the appellant had had a number of ties to the appeal property that had been established over a period of time.

Therefore, the VT confirmed that for the period from 12 April 2006 to 1 August 2007, the only person who was legally liable to pay the council tax for the appeal property was the appellant. The VT considered that if the appellant believed that under the terms of the Tomlin Order, Mr B had agreed to make all of the payments that would be demanded for property from January 2007 onwards, then this was a matter that needed to be settled between themselves and was not one that could be pursued or considered by the VT.

Domestic completion notice appeal, BA unable to provide any inspection notes- West Yorkshire VT

The appeal before the VT had been made by X Homes (West) Ltd, the owners of the appeal property. The appeal challenged:whether the completion notice had been correctly served; and the completion date of

(Continued on page 10)

15 January 2007, contained on the completion notice that had been issued by the BA on 22 December 2006.

The appellant company's main grievances were:

- The completion notice had not been served given that the name that appeared on the notice was X Homes Ltd, rather than X Homes (West) Ltd.
- The completion notice had been sent to a property in Leeds, which was not the correspondence/registered address of X Homes (West) Ltd or X Homes Ltd. Therefore, it was contended that the completion notice had never been received.
- Even by November 2007, the appeal property was far from being complete. The kitchen was still to be fitted, the second fix electrical work had not been completed and the plumbing was not complete, as the boiler and radiators had not been fitted. At this time the appeal property also did not have any bathroom sanitary ware or kitchen plumbing connections.
- It had not been until May 2008, when X Homes (West) Ltd had appeared at the Magistrates Court to defend their position in relation to the appeal property that they had been made aware that they could make a 'late appeal' against a completion notice. *An application for a late appeal had been made and accepted by the VT's President.*
- Whilst the BA had initially alleged that it had served completion notices on four of their properties, three had subsequently been withdrawn.

The VT recognised there were two issues in dispute. One related to whether the completion notice had been served correctly on the right owner at the right address and the other related to the date specified on the completion notice itself.

In considering these issues, the VT drew its attention to the relevant extracts from Schedule 4A of The Local Government Finance Act 1988 and decided to examine the issue in relation to the date specified on the completion notice in the first instance.

From the legislation, the VT noted that a completion notice could not be served unless the BA

considered that the work remaining could *reasonably* be expected to be completed within a period of up to three months. The legislation also specified that the BA *shall* serve a notice. Accordingly, in cases where the BA considered that the outstanding works could be completed within three months, it had no discretion and had to serve a notice.

The VT also noted that the BA could issue a completion notice and determine a completion date as being the date the completion notice had been served or any date up to three months in the future. However, a completion notice could not be issued retrospectively. As indicated earlier, this was the reason why the three other completion notices had been withdrawn.

The VT had to decide whether at 22 December 2006, the date the completion notice had been served, it had been correct for the BA to assume that the appeal property could have reasonably been completed by 15 January 2007; the completion date specified on the completion notice. Unfortunately, the only evidence that the BA had offered to support its view that the appeal property could have been reasonably expected to be completed by this date was its inspector's 'opinion' that this had been the case and there was no evidence whatsoever as to how this opinion had been formed. The VT indicated that it would have expected to see inspection notes in relation to the condition of the property, to substantiate the position of the BA.

In contrast, the only 'hard' evidence that the VT had in relation to the appeal property was that provided by the appellant, which related to November 2007, some considerable period of time removed from the dates being considered by the VT. This evidence indicated that the property had not been completed by this date and this evidence had also not been challenged by the BA.

Based on the above, the VT decided that it had little alternative other than to quash the completion notice that had been issued 22 December 2006. Given this conclusion the VT did not need to examine the second issue. However, the VT noted that the BA's evidence had not made reference to the legislation governing the actual *service* of completion notices.

Council tax banding cases

Greater weight attached to sales evidence than to incorrect banding of comparable dwellings – Devon VT

The appeal dwelling was one of about 40 dwellings in the same street, the great majority of which were three bedroomed, semi-detached houses. The property was placed in band C and the appellants sought a reduction to band B.

(Continued on page 11)

The principal reason for their appeal was that most of the properties in the street were comparable with their's, yet their bandings had been reduced some years ago by the LO to band B, with effect from 1 April 1993. They submitted that there must have been a reason for the reassessment and evidence must have been considered which took into account the size and type of the houses.

They had been led to believe, when they made their proposal in late 2007, that the LO could not change the bandings that had been settled by agreement on appeal. The LO had then surprised them by telling them that the policy had changed and that the bands of neighbouring properties would be increased. They submitted that the LO should not implement the revised policy, as it had not been in force at the date of proposal. They felt that the LO had sought to intimidate them and deter them from pursuing their appeal. They did not want to be held responsible for any increase in the banding of neighbouring properties. The catalogue of errors made by the LO should not be detrimental to their case and they therefore sought a reduction to band B, in line with the majority of similar houses in the street.

The LO referred to a number of sales of properties in the street. All of the properties cited were three bedroomed, semi-detached houses with single garages and the sales evidence without exception indicated that the properties would have had values greater than £52,000 as at the Antecedent Valuation Date (AVD).

The LO said that it was regrettable that reductions to band B had been agreed in error on a number of houses in the street. These reductions had been based on the low sale price of one property that was later found to be very different from the majority of other houses, being a terraced property with no rear garden or garage. At the time the proposal giving rise to the current appeal was made, it was VOA policy not to increase a band if it had been reduced in an agreed settlement of an appeal. That policy had recently changed and it was now considered necessary to rectify any such erroneous reductions, although there had not been time to do so in relation to this street before the hearing of this appeal. The best evidence was the sale of clearly comparable dwellings close to the AVD and in this case that evidence clearly supported band C.

The VT accepted that valuation lists would always contain errors and that LOs had a duty to correct those errors when they came across them and were legally able to do so. In the present case, the VT did not find that a valid tone of value at band B had been established for properties similar to the appeal dwelling. It was true that the majority of such properties were placed in band B but, having carefully considered the sales evidence, the VT concluded that it unequivocally pointed to band C being properly applicable.

The VT considered it regrettable that an apparently appropriate reduction to band B in respect of one property in the street, should have been used by the LO, as the basis for reductions to the same band in relation to different, more valuable houses without proper analysis of the relevant sales evidence that was available. It found, however, that the LO's approach in this appeal was correct and was based on strong sales evidence which carried greater weight than the current position in band B of a large number of comparables. It therefore concluded that the appeal dwelling was correctly placed in band C and dismissed the appeal.

A full copy of this decision is not available. It was excluded from the VTS website at the appellant's request.

Revenues and Taxation in and out of the Dark Ages-Guest article by Geoff Parsons

After the Roman administrators and military personnel had left the British Isles, in the period just before 410 AD, it seems that life in many areas continued in previously established patterns. Local administrations were now sufficiently well bedded to provide services and collect taxes and it is thought that for a generation or so, some kind of changed Romano-British life pervaded.

From about 450 to 700 AD, England and Wales were divided into tribal areas and kingdoms.

The Celtish kingdoms became established in Wales and the south west and the rest of the Roman-British area (now roughly southern England) was invaded and settled by Angles, Jutes, Saxons and others – generally "Anglo-Saxons".

After some time leaders emerged to create kingdoms or chiefdoms for themselves and those who followed them. It is in this period that taxation by *annona* was certainly continued in parts of Wales and in the north of England.

However, it is likely that in addition to food, hides and other rural produce provided by *annona* there would be a need to raise additional levies in terms of services, particularly warriors. (It should be borne in mind that within a short period of 410 AD the extensive taxation system based on Roman trading systems, construction and the like had almost completely disappeared. For instance, the use of timber in construction was back within about 30 years.)

(Continued on Page 12)

Rural settlement seemed to be the norm - by individual families with some 'hamlet' developments. Agriculture was local and primitive, but it is likely that field boundaries followed the patterns of the Bronze Age to Roman times. C*ommon land* was a very important resource for grazing cattle or sheep, feeding swine (in season as *pannage),* taking fish (*piscary*), taking timber (*estovers*) and others.

For at least 200 years after many parts of the countryside seemed to ring with the clash of weapons – in battles for kingdoms or chiefdoms. These kingdoms seemed to become feudal-like in their 'administration'. Initially without paper records a newly acquired landholding was:

- Settled or taken on a first come basis.
- Won in conquest – by military or marriage (perhaps as dowry).
- Passed on death by Celtic or customary inheritance laws.

Maintenance of occupation was by custom of alloidal tenure, i.e. there was no superior interest. Trespassers or attackers were repelled by force or by the payment of tribute – or the land was lost. If necessary, evidence of ownership was agreed by those in the locality by 'beating the bounds', i.e. the boundaries on, say, a yearly basis. The collective memory of ownerships would have been settled and any subsequent disputes would be settled by the local chief or, for more serious cases, the king or supreme leader when travelling on circuit or *assize* (as it was later known).

Once the Church had become established in an area, some writing skills were to hand allowing 'word of mouth' to be reinforced by records. The Church reintroduced a variation of Roman land transfer – the *carta* or grant of land, and this became common as the proof of holding land – first by the monasteries and later by secular persons. Many of the boundaries described in the thousands of charters of those days can be traced on the ground today. It is also likely that the monasteries became the foci for towns which were well established by the time Alfred the Great became king.

Mercian kings maintained their administration by tributes under their *hideage* – which might be described as a 'rating list' of settlements. The king's tribute collectors would assess and demand tributes from settlements and the landed estates on the *hideage.*

To mix of *annona* and personal services when 'attaching' to an alloidal system of tenure (if that is what it was) is suggestive of a feudal-like tenurial system developing in the 150 to 250 years after, say, 410 AD. Local kings or chiefs would have made gifts of land or newly captured land to worthy followers. The Norse *Egil's Saga* gives many examples of later times when such gifts of land, or even farms, were made to followers or 'refugees' – albeit for a variety of reasons. The followers would, one supposes, have held the land at the whim of the leader or by local customary mode – again by collective memory until it was recorded… thus passed the Dark Ages.

Once a location for a monastery had been chosen, building and enclosure of land for farming by the monks followed. At the same time services – education, health and administration and guidance on the likes of wills, marriage and land transfer – came about. It is no coincidence that improvements in farming and civil behaviour followed the creation of a monastery. But there was a 'tax' – the tithe on rural farm land eventually became established. One tenth of the produce of the soil went to the Church to be divided with other emoluments in four ways – *quadripartitum* as it became known in the Eastern Church of the later Roman Empire, namely:

- to support the bishop and the diocesan hierarchy;
- to support the monks;
- to create and maintain the fabric of church buildings; and
- to support charities for the poor, the sick and the young.

The essential impact of the Church was to hasten the passing of the Dark Ages. A tri-partite 'economy' in land, services, trade and gift revenues existed. 'Taxation' was eventually to become established for each area but the essence was essentially local kingdom. It comprised – the king and court, the Church and the population.

© Geoff Parsons *is a member of both the IRRV and RICS. He is the editor of the Estates Gazette's The Glossary of Property Terms.*

Geoff is currently completing a handbook for the IRRV on common land, town greens and village greens. Other of his recent publications include the EG Property Handbook and the EG Council Tax Handbook.

Alfred the Great

Consultation paper Valuation Tribunal Wales– Reorganisation

The Welsh Assembly Government (WAG) published a consultation paper which sought views on its proposals for the restructuring of valuation tribunals in Wales by 24 November 2008. The consultation included proposals to establish a single Valuation Tribunal for Wales (VTW) with a President and Vice Presidents. A summary of the responses will be published within three months of the consultation closing.

WAG proposes to make secondary legislation to establish:

1. A single Welsh Tribunal, by unifying the four current tribunals that currently deal with all of the appeals against decisions relating to council tax and national non-domestic rates arising in Wales.

2. New positions, within the single Tribunal, of President of the VTW and three Vice Presidents – appointment to these positions will be by election; a simple majority of votes cast, each valuation tribunal member having one vote.

The aim of the unified structure is to promote consistency of practice and a more effective partnership between the Tribunal itself and the VTSW.

On the establishment of the VTW, the WAG proposes that the four separate tribunals would cease to exist and the members and existing chairpersons (including presidents) of each of the four current tribunals would automatically become members and chairpersons of the VTW.

The membership of the Governing Council would consist of the President and Vice Presidents of the VTW and an independent member appointed by the Welsh Ministers.

The WAG envisages that the number of chairpersons and members appointed within the VTW will be based on projected workload of the Tribunal as a whole and what might reasonably be expected of individual Tribunal members. WAG considers that it should have the power to determine the number of Vice Presidents, chairpersons and members of the Tribunal, but in practice it is expected to be made by the Governing Council of the VTSW with the agreement of WAG.

It is envisaged that the current complement of four clerks to the valuation tribunals, and the total number of staff in the VTSW should be maintained for now. Staffing levels would be reviewed on an ongoing basis, in consultation with the Governing Council, so that they match the demands on the workload.

And Finally

Our light hearted 'fantasy tribunal' selection game provided an insight into the minds of the delegates at the IRRV's 2008 Conference in Manchester. Faced with the chance of selecting a tribunal from a very mixed bag of 28 celebrities, we were met with some interesting choices. The two winners were:

Ann Goldie, Rossendales who selected-

John Humphries for chairman because 'he would keep everyone on their toes and within time.'

David Tennant as member 1 because 'he would be good eye candy and everyone would know WHO is in charge!'

Nigella Lawson as member 2 because 'she would keep the guys quiet while they wipe saliva off their chin'

Sarah Palin for clerk so 'she would be busy writing and keeping her mouth shut.'

And **Ian Chilton-Merryweather, Manchester VOA**, who selected-

David Tennant as chairman so 'he could go back in time and see what 1991 values were!'

Nadal as member 1 because he would 'serve up a good decision'.

John McCain as member 2 so he could 'give the pensioners the band reduction.'

Madonna as clerk, because 'she reminds me of actual VT clerks!'

Ah flattery works every time!

Thanks to all our visitors at the exhibition. See you again next year!

Helen Warren presenting bottles of champagne to Ian Chilton Merryweather (above) and to a colleague of Ann Goldie, (below)– we hope he handed it over Ann!

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