



Issue No

3

Changes in legislation

The Non-Domestic Rating (Alteration of Lists and Appeals) (Amendment) (England) Regulations 2005 SI 2005/659

The new appeal regulations came into force on 1 April 2005 and relate to alterations of English local and central rating lists compiled on or after 1 April 2005. To that extent they consolidate, revoke and replace the 1993 regulations and their eight sets of amending regulations. There are 44 regulations in six parts, where previously there were 54 regulations in seven parts.

The new regulations aim to produce a faster and fairer, robust appeals system, whilst also reducing the number of appeals and improving the quality of information presented to substantiate them.

The changes include provision for ratepayers to appeal:

- at any time during the life of the list, with no backdating restrictions as there were for the 2000 list;
- only once against the entry in the list;
- only once against an alteration made to the list; and
- by electronic means.

As reported in Newsletter 2, the Valuation Tribunal Service (VTS) made a submission to the consultation exercise. (A summary of the responses can be found on the Office of the Deputy Prime Minister's (ODPM) website: www.odpm.gov.uk). The only change made as a result of the consultation exercise was to the amount of rental information that must be provided with a valid appeal. The proposer must state the amount payable each year (as at the date of the proposal) for the lease, easement or licence to occupy the subject property.

The administrative procedure for civil penalty notice appeals is included in regulation 20, but this does not include any provision for appeals to Lands Tribunal (LT).

Our thanks go to Jon Bestow (Eastern Administrative Unit) for bringing regulation 30 (11) and (12) to our attention. These regulations give Valuation Tribunals (VTs) the power to enter and inspect comparable properties 'as far as it is really practicable'.

Where a VT intends to enter any premises in accordance with paragraph 11, it has to give notice to the parties and if deemed appropriate the VT can limit representations at the inspection to one person for each party who has the same interest in the appeal.

However, this regulation would appear to be without teeth, given the lack

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of redress if someone does not want the VT to inspect their property. There is also the issue of how this would interface with article 8 of the Human Rights Act, which sets out the right to respect for private and family life?

Non-Domestic Rating (Material Day for List Alterations) (Amendment) (England) Regulations 2005 (SI 2005/658)

These alter the 1992 regulations in the following circumstances:

- For an alteration to alter a list compiled on 1 April 1995, having effect under 13 (2A) or (8BA) of the 1992 appeal regulations and is made after 1 September 2003, the material day is 31 March 2000.
- For alterations to a list compiled before 1 April 2005, the material day is the day on which the proposal was served on the Valuation Officer (VO), or where it is not made in pursuance of a proposal, the day on which the VO alters the list.
- For alterations to lists compiled on or after 1 April 2005, the material day is:
 - ◆ the day the proposal was served on the VO; or
 - ◆ where there is an alteration not in pursuance of a proposal, the day the circumstances arose or if that day is not reasonably ascertainable, the day the VO alters the list.

Non-Domestic Rating (Chargeable Amounts) England (Amendment) Regulations 2005 (SI 2005/

These amend the date given in regulations 9 (3) (b) (i) and (ii) of Non-Domestic Rating (Chargeable Amounts) England Regulations 2004 (SI 2004/3387), from 1 April 2000 to 1 April 2005. The original regulations came into force on 22 December 2004 and set out the rules for transitional relief applying to the 2005 List.

Of particular interest to VTs is Part 3, which deals with certificates for changes in rateable value and appeals against certificates. Regulation 19 states 'Part 6 of the Appeals Regulations shall apply'. However, under the new Appeals Regulations 'Appeals: General' are contained in Part 5, and unlike the 1993 regulations, make no specific mention of certification appeals (Part V, regulation 30).

Council Tax (Prescribed Classes of Dwellings) (Amendment) (England) Regulations 2005 (SI 2005/416)

These regulations amend regulations 1, 2 and 6 of SI 2003/3011. This means that a 50% discount is retained irrespective of whether it is the Council Tax payer's main home or second home which is job related and if either of their homes are in England, Wales or Scotland. A 50% discount also applies where a member of service personnel or a minister of religion has a second home in England, but lives in job related accommodation in England, Wales or Scotland.

Other recent legislation

Central Rating List (England) Regulations 2005 (SI 2005/551). This regulation relates to prescribed hereditaments and requires the list to show certain information about the designated persons named in the schedule. The hereditaments to which the

central list applies are railways, light rapid transit, communication, national and regional gas transportation, local gas transportation, gas meter, electricity transmission, electricity meter, water supply, canal and long distance pipe-lines.

Non-Domestic Rating (Communications and Light Railways) (England)

Regulations 2005 (SI 2005/549). These regulations apply to property occupied (or if unoccupied owned) by Greater Manchester Metro Ltd, South Yorkshire Supertram Ltd or any of the communication operators in the schedule. They set out the grounds to allow several hereditaments to be treated as one hereditament and specify the Billing Authority (BA) area in which each hereditament shall be treated as being situated.

Council Tax and Non-Domestic Rating (Demand Notices)(England) (Amendment)

Regulations 2004 (SI 2004/3389). These amend the 2003 regulations in relation to rate demand notices, in light of the changes to the rating system from 1 April 2005.

Non-Domestic Rating Contributions (England) (Amendment) Regulations 2004

(SI 2004/3234). These regulations amend the rules for calculating non-domestic rating contributions payable by BAs into the NDR pool. They also amend the assumptions made in calculating the provisional amount of the contributions for financial years beginning on or after 1 April 2005.

Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004

(SI 2004/3315). These regulations confirm the conditions to be satisfied to obtain the relief and the application procedure, both as described in LPAC Newsletter 2, p2. Also it sets down the way the relief is to be calculated. The prescribed application form is in the schedule to the Order.

Town and Country Planning, England, SIs 2004/3340 and 2004/3341. The time limits for appeals are extended from three months to six months, under the General Development Procedure and for Listed Buildings and Conservation areas.

Valuation Tribunal Service Wales (VTSW)

The new VTSW regulations, which should have gone through the Welsh National Assembly on the 16 March 2005, to create a unified Welsh Service were withdrawn by the Minister on the 14 March 2005 in response to issues raised by the Welsh VTs. The implementation time scale is to be further delayed by 2-3 months.

A summary of the recent statutory instruments that have been circulated in Wales can be found in the VTS supplement to newsletter 3.

Tretton's Treats

Again we thank **David Tretton** at the **Valuation Office Agency (VOA)** for providing the following article which highlights rating and council tax valuation cases of interest.

The National Trust, Hidcote Manor Gardens, Gloucestershire, GL55 6LP The National Trust, Snowhill Manor, Worcestershire, WR12 7JU

Following meetings with the National Trust and their agents, progress was made in identifying and valuing those National Trust (Enterprises) Ltd hereditaments to be separately assessed following the decision of the VT concerning Hidcote Manor Gardens and Snowhill Manor. These appeals have now been withdrawn from the LT register.

Revisions have now been made to other National Trust assessments (throughout England and Wales) in both the 2000 and 2005 rating lists. These revisions were prior agreed and implemented in March.

Cardiff Rugby Football Club Ltd

The appellant and VO have written to the LT to withdraw this appeal under regulation 45 (1) of the LT Rules 1996.

It has been agreed to split the assessment by VO Notice between the rugby club (RV £77,000) and the bowling green (RV £2,500) from 1 April 2000. Both assessments have been prior agreed.

Nissan/Renault Magna Park Leicestershire

The agent has appealed to the LT following a recent VT decision on this hereditament.

This case involves a car parts distribution warehouse with a number of claimed disabilities; the principal one being the relatively small number of loading doors and the absence of dock levellers. There was a Pre Trial Review (PTR) on 14 March at which a timetable was set out, with a possible hearing date in December. A submission has now been made to the Inland Revenue (IR) Solicitor for advice and representation.

Grant Aid – Bisham Abbey

VOA are awaiting an opportunity of viewing Bisham Abbey, a potential test case, for which Wilks Head & Eve have funding to take to LT.

St James Homes Ltd v Thorneley (VO) – London Showhouse case.

The LT date for the PTR is likely during April. The agent is claiming local office evidence as the being the best basis of evidence. Houses close to the Thames in Richmond sold in excess of £1m each, and the VO is defending assessments based on a percentage of the toned- back sale prices.

Gallagher (VO) v Church of Jesus Christ of Latter Day Saints - Preston Mormon Temple

Research is ongoing to obtain a greater insight into the underlying religious beliefs and practices of the Mormon faith in order for VO to decide which buildings on the site might be eligible for exemption, under the headings 'public religious worship' or 'offices used in connection with'.

Inspections of the mosques, which were quoted against VO, have revealed nothing to warrant the removal of their exemptions. All were open to men and women, either at the same time, or at different times, albeit that separate facilities provided as per the Moslem faith.

At a PTR on 10 February, after the submission of the VO's draft statement of case, the President of the LT acceded to Counsel's request for a split hearing. He directed that there should be a preliminary hearing to deal with the principle of **exemption**, and a subsequent hearing to deal with **valuation matters**. He saw no good reason for objection. A LT hearing will be held in June, at a date yet to be confirmed.

J D Wetherspoon's Public Houses:

- **Yarborough Hotel, Grimsby**

NAI Fuller Peiser has appealed the VT decision in respect of the JD Wetherspoon Yarborough Hotel, Grimsby.

A material change of circumstances (MCC) proposal was made following the opening of a new development of five pubs/clubs (including a Lloyds No1 operated by JD Wetherspoon) across the town. NAI Fuller Peiser sought a reduction to RV £65,000. This figure was based upon the percentages conceded for other pubs in the vicinity of the Yarborough Hotel, which were determined having regard to actual reductions in trade following the MCC.

The compiled list assessment had been agreed at RV £105,000, with the fair maintainable receipts (FMR) determined in line with actual trade. The VT accepted the VO's revised valuation of RV £100,000 following the new development. The VT confirmed that the actual trade was the best guide to an estimate of the rent for a public house and noted that the new development had had little effect on the trade performance of the appeal property. The alleged fall in profitability due to price reductions to maintain trade was held not to be relevant. However, a provisional agreement has now been reached at RV £85,000 and an application for a Consent Order will be made with each side to bear its own costs.

- **Ash Tree, Ashton-Under-Lyne**

The VO's appeal on the Ash Tree, Ashton-Under-Lyne, has been agreed at RV £70,000 based on an estimate of the FMR for the public house. The VT had determined an assessment of RV £56,750 arrived at by a direct comparison with the adjacent public house. The Consent Order has been received and each side is to bear its own costs.

- **Victoria Station, London**

NAI Fuller Peiser has appealed the Central London VT decision on the JD Wetherspoon pub on the concourse at Victoria Station.

The VT determined an increase in the assessment for the JD Wetherspoon house from RV £220,000 to RV £240,000 as sought by the VO. (NAI Fuller Peiser were seeking RV £130,000.) The VT noted that none of the agreed assessments for various Wetherpoon's outlets in the City of Westminster had been reduced on account of "overtrading" and they had been agreed at their actual trading levels because it was accepted by NAI Fuller Peiser that other operators could achieve the same turnover. The actual trade was confirmed as the FMR and the use of the "Approved Guide" for the valuation was also confirmed. The VT also had regard to the rents passing on these hereditaments.

The VO has served a Notice of Intention to Respond (NOIR) in this appeal and the appellant's statement of case is awaited. The IR Solicitor will be instructed to represent the VO in this appeal.

- **Hamilton Hall, Liverpool Street station**

NAI Fuller Peiser has appealed the Central London VT decision in respect of the 2000 compiled list entry for JD Wetherspoon pub, Hamilton Hall at Liverpool Street. The VO has served a NOIR.

Hamilton Hall was the first Wetherspoon pub in the City of London opening in 1992. Unusually for the City, the pub opens seven days a week and its location at the station entrance attracts both commuters and business trade.

The compiled list entry was RV £420,000 and at the VT NAI Fuller Peiser put forward a valuation of RV £275,000 based on comparability. The VT determined the assessment at the VO's revised trade based valuation of RV £370,000.

District Heating Undertakings- London Borough of Tower Hamlets

The LT hearing took place on 28 February 2005 before the President. A decision was issued on 14 March 2005. The appellant VO contended that the District Heating System (DHS) did not form an appurtenance to the domestic accommodation to which it supplied heat. The VO further contended that the correct valuation approach was the contractors basis, and that the value produced was not nominal. The decision in *Hodgkinson V Strathclyde Regional Council Superannuation Fund (1996)* did not apply in this case.

The Respondent, London Borough of Tower Hamlets, submitted that the DHSs were appurtenant to domestic property, and in the alternative if they were considered rateable as non-domestic hereditaments, then their value would be nominal, *Strathclyde* applying.

The President decided that the DHSs were an appurtenance to domestic property within the meaning of Section 66 Local Government Finance Act 1988. It was held that the block of flats, which the DHS served, constituted domestic property. Further, that

the determination of domestic property was not restricted in terms of whether the domestic property constituted a hereditament or a number of hereditaments.

The President also noted, that should a DHS not form an appurtenance to domestic property then the appropriate method of valuation was the contractors basis and a nominal value would not be appropriate.

Sewage Treatment Works - Winchester City Council

The LT appeals should now progress following the decision in the DHS.

Nickerson Zwann Ltd

This LT case awaiting hearing involves a seed merchant in Lincolnshire, where the solicitor representing him was previously successful in persuading the VT to delete its assessment from the 1995 list, owing to the shortcomings of previous entries.

The VO appealed. However, the case has been delayed owing to the sickness of a main witness: a new witness has now been identified. The VO is contending that shortcomings in previous entries (i.e. lack of description 'part exempt) is not fatal to a subsequent correct entry. The ratepayer's solicitor maintained that anything 'built on' an incorrectly identified hereditament must of necessity fall.

The VO is seeking a hearing date in June as no communication or agreement of facts has proved possible. At a PTR held in December, the President of the LT ordered both sides to agree a date for hearing, after agreement of facts, in week 4 - 8 April 2005.

Museum and Premises located on a water pumping station

This decision concerns an appeal against an entry in the local rating list for a museum and premises located on a water pumping station. Wessex Water occupies the site; the site contains two different uses. The two uses are, (a) a use under Part III of the Water Industry Act 1991, the provision of fresh water and (b) a second use as a Museum, satisfying the Water Authorities requirement to look after water heritage under Part I of the 1991 Act. The water pumping station occupied a greater volume of the premises than the museum use.

Premises used wholly or mainly for the purposes of a water undertaker, under Part III of the Water Industry Act 1991 or ancillary purposes, forms part of the relevant hereditament for the Wessex Water's central list assessment.

The appellant argued that the museum use was ancillary to the use of the premises as a water undertaker under Part III. The VO contended that the museum was a separate use and whilst secondary in size was not ancillary in nature. Therefore, premises within the site not used wholly or mainly for Part III should form a separate entry in the local list.

The VT held that the predominant use of the site was for a water pumping station and that the museum was "ancillary to the main use". The VO has appealed to LT.

Marine Parade Swanage Sewage Treatment Works (STW) v Barnes (VO)

This case concerned the air management plant to underground STW. Both parties accepted manufacturing operation / trade process was being undertaken. However, the STW were regarded by VO as rateable under Class 2 Table 2; the agent arguing that they were “ used in connection with services mainly or exclusively as part of manufacturing operations or trade processes.”

Decision ... the opinion of the Tribunal is that odour is part of the raw sewage that enters the treatment plant.It accepts that in the process of collecting odours the system removes foul air from the buildings at both sites and replaces it with clean air. This however, is ancillary to its main purpose, which is to collect odours from raw sewage, clean the air and release this altered air back into the atmosphere. The Tribunal is satisfied that the treatment of odour is part of the overall trade process carried out at the Weymouth and Swanage treatment works.....As such the air extraction and replacement systems at these sites are not rateable under Class 2 Table 2

In the majority of cases, STW do not have enclosed inlet works and *only* the solids and liquids in the sewage are treated. In these two works, where the inlet works was enclosed the VT decided that there were three elements within the sewage that required treatment – solids, liquids and odour. Treatment of the odour under this parameter constituted “ part of the trade process “.

Licensed Premises – Winteringham Fields

Lincolnshire VT has determined the assessment of Winteringham Fields, a 16th century licensed property. Situated in a remote, rural location it has a full licence and a “supper hours” licence and currently operates as an exclusive award-winning restaurant with seven letting bedrooms. The VT preferred an adjusted price per m² approach adopted by the ratepayers’ agent, based on the assessments of restaurants often in more urban locations. In the absence of any direct physical comparables the VO had adopted a receipts and expenditure approach, estimating the FMR likely to be achievable by the hypothetical tenant using the premises for purposes within the same mode or category of occupation.

Public House – South Parade Nottingham

Nottinghamshire VT has determined the assessment of a JD Wetherspoon public house, converted from a shop unit in 2000, at RV £151,500.

NAI Fuller Peiser were seeking an assessment of RV £130,000 using a trade informed valuation with a “stand back and look” supported by the analysis of comparables on a floor area and licensed capacity basis. The VO trade based valuation was RV £170,000.

The VT adopted a trade-based valuation accepting the VO’s approach for the wet trade but made adjustments to the dry trade figures.

Bungalow at Ongar – MCC Proposal – Error in Effective Date

In November 2004, an Essex VT appear to have erred in law in deciding what should have been an MCC proposal, by taking the change in band back to 1 April 1991. Referred to Chief Executive's Office (CEO) on the last day for appeal to High Court, the VO are now asking for decision to be set aside under 'clerical error' procedure, but depending on the result, this may go to the High Court.

Interphone – Telephone Kiosks

Following Interphone going into liquidation, a number of appeals on their telephone kiosks were listed for hearing. The VT was asked to ratify the agreed scale of values. No one represented the ratepayer. The VT did not have any information on restricted effective dates and appear to have assumed they were all 1 April 2000. The CEO has recommended the effective dates be checked and a schedule provided to the VT explaining the circumstances.

Administrative Offices occupied by British Waterways Board (BWB)

On 8 March, the Cheshire VT heard an appeal by King Sturge against the inclusion of administrative offices occupied by British Waterways Board in the local list (RV agreed to be £16,000). King Sturge claimed that the property formed part of BWB's central list assessment and produced a copy of a superseded section from the VOA's Rating Manual. However, the CEO had amended this section on the grounds that Group VOs were being misled by it into removing from assessment hereditaments that ought not to be removed.

The VT accepted the VO's contention that the Central Rating List Regulations should be the sole authority in determining the issue and confirmed the assessment at the agreed RV.

Interesting VT decisions

Backdating of an appeal against VO Notice (VON) served pre 1 April 2002 and the legal issue of estoppel- North Yorkshire VT

These appeals concerned the Polestar site in Scarborough. Originally the subject property had appeared as three separate entries in the compiled 2000 rating list. However, on 5 July 2000, the VO had issued a notice to merge the three assessments into one of Factory & Premises £417,000 RV, with effect from 1 April 2000. As the notice was served on the occupier, the agent did not appeal against the merged assessment until 3 September 2001, but had served notices against two of the original assessments post 5 July 2000.

Issues in dispute:

- What status could be attached to the appeals that were made against two of the original assessments?
- Was the appeal against the merged assessment made on 3 September 2001 invalid, as it was more than 6 months after the date of alteration?

- Had the VT any powers to use any of the proposals to correct the appeal property's merged entry in the rating list to a date earlier than 1 April 2003?

In reaching its decision, the VT noted:

- There was no dispute between the parties that the correct entry for the merged appeal property was £335,000 RV, and, leaving the regulations aside, this should have applied from 1 April 2000.
- Prior to 1 April 2002 an anomaly had existed concerning the treatment of appeals against VONs, in restricting appeal rights to be within 6 months of service. Subsequently ratepayers' rights were brought into line by SI 2002/498.

The VT considered:

- The proposals that had been made against two of the three original assessments were invalid, as they were made 8 and 15 days after the VO had deleted them from the list, with effect from 1 April 2000. The VT did not accept the agent's contentions that these could be re-linked to the merged assessment and become a vehicle to allow him to challenge the merged assessment from 1 April 2000. However, it should have been clearly evident to anyone registering the appeals post 5 July 2000, that they were invalid, and if the VO had served invalidity notices, the agent would have been aware that a notice had been served to merge these assessments.
- The VO had erred by imposing a merged assessment of £417,000 RV from 1 April 2000. This assessment was £28,000 RV more than the original three combined assessments and £82,000 more than the finally agreed merged assessment of £335,000 RV.
- Although Regulation 7 (11) allowed the VO to challenge the validity at a later date, the status of the proposal against the merged assessment had remained unchallenged for two years and until after negotiations between the respective parties had been concluded.
- The VT accepted that on a literal interpretation of the passing regulations, the VO's stance on the appeal against the merged assessment was correct. But having regard to the errors made by the VO, the VT went onto consider whether the legal issue of estoppel applied. The VT noted Lord Denning's definition of estoppel, in his book 'The Discipline of Law' p223:

"It is a principle of justice and of equity. It comes to this: when a man, by his words or conduct, has led another to believe that he may safely act on the faith of them – and the other does act on them – he will not be allowed to go back on what he has said or done when it would be unjust or inequitable for him to do so."

The VT also had regard to the issues raised in the LT case *Mainstream Ventures Ltd v Woolway (VO) 2000 RA 395*. Although the VT accepted that in the case before them the issue of invalidity had been raised at the VT hearing, for the reasons it had already given, it considered that estoppel should also apply in this case.

The VT held that appeals against the two original assessments were invalid. However, the appeal against the merged assessment should be treated as being valid and after having regard to Regulation 13 A (3) corrected the list to £335,000 RV from 1 April 2000, this being the date the list had become inaccurate.

The VT has been advised that the VOA do not attend to appeal against this decision.

(A full copy of this decision can be found on the VTS intranet/internet, under appeal no 27304762203/244N00)

Definition of hereditament and its boundaries- London Central VT

These appeals concerned the adjoining Offices & Premises situated at 25 and 33 Canada Square, London. The buildings were constructed in two phases:

- Phase 1, No 33 had 17 storeys and had been completed prior to 1 April 2000.
- Phase 2, No 25 had 43 storeys and was completed piecemeal during the course of 2002.

The two phases were fully interconnected up until Floor 14 and together provided 164,300m² of office space.

Issue in dispute:

- Should the addition of each floor/part of 25 Canada Square to the existing assessment at No 33 be considered as:
 - The coming into existence of a new hereditament, as argued by the VO and take effect from the various effective dates ranging from April 2002- January 2003, that were contained on his 14 VONs, all of which had been served in March 2003; or
 - A material change of circumstance, as argued by the agent, which meant that the regulation 2 (7) of the material day regulations applied, the material day being the day on which the VO alters the list. Therefore, 13 of the 14 VONs, which gave effective dates prior to their material days, were 'bad in law'.

NB: The RVs were agreed subject to the effect of the VONs.

In reaching the decision that each amendment should be regarded as a material change of circumstances, the VT considered:

- The boundary of the hereditament was established when the legally binding leases had been entered onto. As early as December 1999, there was an understanding that the two contiguous buildings had been leased to the present occupier and the development must have been planned and built to become inter-communicating.
- The definition of hereditament contained in S115 (1) of the 1967 Rates Act. This stated, "*hereditament means property which is or may become liable to a rate, being a unit of property which is, or would fall to be, shown as a separate item in the valuation list*".
- The guidance contained in the LT decision *Institute of Orthopaedics v Harrow Corporation*, which stated 'the *physical character, the appearance and the user of a corporeal hereditament may change enormously although its boundaries remain the same. Buildings may be erected where there was none before; buildings may be pulled down and not replaced; what was agricultural land may become a factory or a house; and what was a factory or a house may become agricultural land. The changes may result in an increase or a decrease in the rateable value of the hereditament or a change in its description; but I can see no reason why, so long as the same piece of land remains in the list as a unit of*

assessment, it should not remain the same 'hereditament' notwithstanding any such changes ... In the result, therefore, as in my view there has never been any change in the boundaries of the hereditament...'

- Although the VO considered each floor/part immediately before it was handed over to the present occupier constituted a new hereditament, which was separate from the parts of No 33 and No 25, which were occupied; none had been separately assessed. Therefore, there was no merger of assessments to create a new hereditament. Instead each additional floor was treated as an addition to the existing assessment and this further supported the view that they should be regarded as a material change within the existing hereditament.

Accordingly, the VT accepted that 13 of the VONs were bad in law and ordered the VO to reinstate the appeal property's previous entry in the rating list of £12,100,000 RV from 1 April 2002. In relation to the final VON it confirmed an assessment of £23,476,000 RV from 1 March 2003.

(A full copy of this decision can be found on the VTS intranet/internet, under appeal no 6153802/244N00)

Feedback and news update

On-line information on homes

2005 has seen a plethora of websites springing up covering different aspects of the housing market. This should mean that house-buyers, sellers and council taxpayers will have more information at their fingertips, particularly if the VOA go ahead with the proposals made in their consultation document about the council tax revaluation. (The VOA's proposals included publishing the sales evidence used to determine a property's band and the number and types of rooms in a property, however the outcome of their consultation paper is still awaited).

In the meantime, a number of commercial services have been set up, which make a charge for access to the information they hold. These include:

- www.landregistry.gov.uk/online

This allows users to download full title deeds and plans to properties sold since April 2000. In-depth information includes the owner, price paid, description, mortgage lender, boundaries, rights and restrictions. The cost is £2 per search.

The Land Registry disseminates its data to other, specialist, commercial services. However, there can be a three-month delay between a sale and its appearance on their website due to the recording process.

- www.nethouseprices.com (£3.95 for 48 hours unlimited access);
- www.myhouseprice.com (£1 per price requested (£2 minimum charge));and
- www.mouseprice.com (95p per price requested (£1.90 minimum charge)),

Each of these offer similar information for homes sold in the last five years. They show when a sale took place, agreed price, type of property (terraced, semi-detached, etc), title (freehold, leasehold), but contain no details of size of properties or number of bedrooms. Searches can be carried out using address or postcode.

Myhouseprice.com also features a mapping facility so that the user can chose the area they wish to look at.

It has been reported that two of these services also plan to produce price trends and perhaps monthly indices.

Advertising itself as a free online valuation service www.mypropertyvalue.co.uk invites users to complete a questionnaire about their property. This is sent to an estate agent who has bought the rights to quote for that geographical area. The agent has 24-48 hours to respond and can of course also approach the enquirer about marketing the property. At present they only cover a small proportion of the country but are aiming for 100% by the end of 2006.

Other websites include: www.assetz.co.uk; www.privatehousemove.co.uk; www.pickupaproperty.com; www.weremoving.co.uk; www.realpropertyinfo.co.uk; www.homesforshow.co.uk; www.linkprop.co.uk; www.geta2ndopinion.co.uk; www.halifax.co.uk/estateagency; www.langleys.com.

Feed back on Sole or Main residence, after the Court of Appeal decision *R (on the application of Williams) v Horsham District Council (2004)*

David Slater reports that with effect from 1 April 2004, BAs were given the discretionary power to reduce the discounts on second homes. As a corollary, some VTs have experienced an increase in their appeals workload in relation to disputes on sole or main residence.

Since the community charge came into being on 1 April 1990, there have been a number of cases concerning sole or main residence issues that have been heard and determined by the High Court (HC). An analysis of the case law, prior to the Williams case, show that the following precedents are well established:

1. Where there are competing residences, in order to determine a person's principal place of abode, the HC beginning with the case of *Bradford Metropolitan City Council v. Anderton (1991)* has laid down that the following are some of the main factors have to be taken into account:
 - (a) The amount of time spent at each competing residence.
 - (b) Where the spouse and any dependant children live.
 - (c) Security of tenure.
 - (d) The reason(s) for absence.
 - (e) Is there an intention to return to reside?
 - (f) Where are the majority of possessions kept?
 - (g) Is either property job related?
 - (h) Links with the area for example, registered with doctor, dentist, on electoral roll, location of other friends and relatives?

2. In the case of married couples, where the nature of the husband's employment requires him to live away from the marital home for the majority of the time, leaving his wife residing in the matrimonial home, a succession of High Court cases have established that the husband's main residence is the same as his wife's. There are many examples of case law on this subject for instance *Ward v Kingston Upon Hull (1993)*, *Doncaster Borough Council v Stark and Stark (1998)* and *Cox v London (South West) VCCT and Poole CCRO (1994)*.

So what effect, if any, has the Court of Appeal's (COAs) judgment in the case of *R (on the application of Williams) v Horsham District Council 2004* had on earlier case law? In my opinion, it is a wake up call for VTs to take all relevant factors into account.

In the Williams case, the West Sussex VT's decision was flawed because it had placed too much importance on the fact the Williams's owned Pump Cottage and not the employer provided accommodation. There were a number of factors in the Williams case that were materially different from other cases that have been before the HC, for instance:

- 1) Both Mr and Mrs Williams resided in the same place at all times. In the other cases referred to the husband lived away for the purposes of his job and returned to his wife when he had time off.
- 2) When Mr Williams's job ceased, he was allowed to remain at the employer accommodation. This would not have been possible in the Ward and Stark cases.
- 3) During the period in dispute, they never slept one night at the property they owned. In effect, the property was mothballed until such time that they were in a position to return.

In its judgment, the COA stated the following:

"We think that it is probably impossible to produce a definition of main residence that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time. That test may not always be an easy one to apply, but we have no doubt as to the conclusion to which it leads in the present case."

The expression "Reasonable Onlooker" has caused considerable debate amongst practitioners. In my opinion, the Williams case merely reinforces the fact that VTs have to take all material facts into account and weigh up the evidence accordingly before coming to a reasonable decision. What the Williams case has not done is to override earlier case law on this subject. Moreover, in its judgment, the COA considered the earlier HC judgments in the Anderton, Ward and Stark cases and stated that the reasonable onlooker would have concluded that the taxpayer's main residence was the matrimonial home.

In view of the foregoing, the Williams case has not overturned earlier case law. When dealing with sole or main residence cases, colleagues should refer their tribunals to all case law that applies and not just focus on Williams.

Another important point to stress is that where there are competing residences say in Worcester and Manchester, both BAs should be made parties to the appeal. In some of

the tribunal decisions that were reported in Newsletter 2, it appears that only the BA within the VT's area of jurisdiction has been made a party to the appeal. Whatever decision a VT may arrive at may have implications for the other BA. If the second BA is not a party to the proceedings, a VT may not be in possession of all of the facts. For instance, what if the appellant has claimed a similar discount in another area?

In addition, any BA not being a party:

- may seek a review of a decision at a later date, on the grounds that it could show reasonable cause why it did not appear, as it would not have received a notice of hearing; and
- is not bound by the VT's decision!

Finally, in these cases, the question is often asked upon whom is the burden of proof? For instance, is it on the appellant who says he lives in Property A rather than Property B and claims the latter is now his second home, or is it on the BA who thinks the council taxpayer is playing the system?

For guidance on this issue, I refer to rating case law and advice from the LT in *Irving Brown and Daughter v Smith (VO) (1996)*.

*“There are two aspects to the burden of proof: the persuasive or legal burden, which is general and is summarised in the maxim **he who asserts must prove**: and the evidential burden, which is specific and requires a party wishing to put a fact before the Tribunal to prove it, usually by evidence.*

The persuasive burden in this appeal is placed on the ratepayers as appellant(s), not on the Valuation Officer by virtue of his statutory duty to prepare and alter the Rating List.”

In my opinion, the position is the same with Council Tax Liability; the persuasive burden in these appeals is on the council taxpayers as appellant(s) not on the BA that has to maintain a register to collect the council tax.

Other Council Tax issues

Age related payment for 2005/06

On the 16 March 2005, The Chancellor of the Exchequer announced that council tax households with someone 65 or over would receive a £200 payment. However, it will not be paid to anyone who is in receipt of the pension credit guarantee element, as these people are already eligible for full CT benefit. Adjustments will also be made to those 70 or over who qualified for the £50 help with additional living expenses, which was announced in the pre budget report last year.

Council Tax Revaluation

On 8 March 2005, the ODPM announced that the first revaluation since the introduction of Council Tax in 1993 was under way. The VOA will be banding 22.1 million dwellings and will be inviting Local Authorities to share information from their building and

planning control records to identify properties that have undergone alterations in the intervening years.

This initiative follows similar lines to projects such as 'Valuebill'. 'Valuebill' has been set up to enable BAs, the VOA, and the National Land and Property Gazetteer to exchange data electronically. The aim is to create one accurate database for property data, with each property being given a unique property reference number (UPRN). The original pilot members are currently sharing their experiences in a series of workshops and 40 more English BAs are planning to join the roll out programme before July 2005.

Council Tax Manual revamp

The Society of Clerks trustees have kindly given their permission for the VTS to update the Council Tax Manual. The new VTS Council Tax Manual is now available on the intranet and will be regularly updated. A revised version will also be posted to the Internet in due course.

Our thanks go to everyone who has contributed to this newsletter by providing ideas, articles or interesting VT decisions. The newsletter team includes:

- **Lee Anderson IRRV – North West Administrative Unit**
- **Lester Bertie - West Midlands Administrative Unit**
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Copies of our newsletters and cumulative index can be found on our website: www.valuation-tribunals.gov.uk.

The views that are given in this newsletter are the personal views of the newsletter team. Therefore, they should not be taken as legal opinion.