UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2013] UKUT 0539 (LC)
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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – alteration of rating list – proposal for alteration of the list – jurisdiction of the VTE – parties' agreement on rateable value of single hereditament – jurisdiction of the Tribunal on appeal

IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN

NICOLA JANE JOHNSON (VALUATION OFFICER) Appellant

and

H & B FOODS LIMITED Respondent

Re: 32 Stewarts Road,
London SW8 4DQ
and
44-54 (including 60-62) Stewarts Road,
London SW8 4DF

Before: Sir Keith Lindblom, President and Mr A.J. Trott F.R.I.C.S.

Sitting at: 43-45 Bedford Square, London, WC1B 3AS
on 16 May 2013

Sarabjit Singh, instructed by the Solicitor to HM Revenue and Customs, for the appellant
The respondent did not appear and was not represented

The following cases are referred to in this decision:

Leda Properties v Howells (V.O.) [2009] RA 165
Cheale Meats Limited v Ray (V.O.) [2012] RA 145
Re London & Winchester Properties Ltd.'s Appeal [1983] 2 E.G.L.R. 201
Verkan & Co. Ltd. v Byland Close (Winchmore Hill) Ltd. [1998] 2 E.G.L.R. 139
Galgate Cricket Club v Doyle (V.O.) [2001] RA21
Sole v Henning (V.O.) [1959] 3 All. E.R. 398
Sinclair Gardens Investments (Kensington) Ltd. v Franks (1998) 76 P. & C.R. 230
Wellcome Trust Ltd. v Romines and another [1999] 3 E.G.L.R. 229
Ellerby v March [1954] 2 QB 357
British Petroleum Pension Trust Ltd. v Blake [1982] 2 E.G.L.R. 224
Cunningham v Morrison-Bell [1986] 1 E.G.L.R. 211
Arbib v Earl Cadogan [2005] 3 E.G.L.R. 139

DECISION

Introduction

1. This case has come before us at an interlocutory hearing. The appellant is the valuation officer. The respondent is the ratepayer, H & B Foods Limited. The appeal is against the decision of the Valuation Tribunal for England ("the VTE"), dated 15 August 2011, that the respondent's factory at 44-54 and 60-62 Stewarts Road, London SW8 4DF and the respondent's warehouse at 32 Stewarts Road were no longer to be regarded for rating purposes as two hereditaments but as a single hereditament, with a rateable value of £290,000, effective from 1 April 2005.

2. Two questions arise at this stage. The first question is whether the Tribunal's jurisdiction in the appeal extends to hearing the matter "de novo", as opposed to a review of the VTE's decision. The second question is what the scope of a "de novo" hearing in the particular circumstances of this case would be, given that the rateable value of the single hereditament agreed by the parties before the VTE was incorporated in its decision, but that the appellant contends now for a higher rateable value than was then agreed. At the interlocutory hearing we raised a further question: whether the VTE itself had jurisdiction to determine the rateable value of the hereditament or hereditaments. On that further question we gave the parties the opportunity to make further submissions in writing, which they have now done.

3. The appellant was represented at the hearing by Mr Sarabjit Singh. The respondent did not appear and was not represented.

The respondent's proposal

4. Proposals to alter the 2005 non-domestic rating list could be made on an electronic form, Form VO 7012 (2005). Guidance notes published by the Valuation Office Agency explained how the form should be completed. The form was in four parts, Parts A, B, C and D. Part B was for "Details of the Proposed List Alteration". The guidance notes said this part of the form should be used to record "the nature of the change [proposed]". Section 13 was for proposals relating to an existing rating list entry. There were six tick boxes for this section, tick boxes A to F. Tick boxes A to E were said to "identify many of the most commonly made alterations". Tick box F was for "Other changes". Part C of the form was to include the grounds for the proposed alteration. It contained two sections, section 15 and section 16. Section 15 asked for the reasons for the proposed alteration to be identified. For this section there were 12 tick-box options, tick boxes A to L. These, said the guidance notes, originated from the 15 reasons "given in law" as grounds for proposing an alteration to the rating list. The guidance notes said that only the one statement best describing the basis for the proposed alteration should be used, but that two or more might be selected "under certain circumstances". Tick box A was to be used if it was contended that there is an inaccuracy in the rateable value or rateable values in the rating list on 1 April 2005. Tick box I was to be used if it was contended that two or more existing assessments

should be combined in a single assessment – for example, when all the property was in the same occupation. Section 16 of the form was to be used to explain the "detailed reasons" for believing that the rating list was inaccurate.

5. The respondent's proposal in this case, proposal number 347628, was made on the electronic form, on 15 April 2008, by its agent, Mr Gareth Jones B.Sc., F.R.I.C.S., M.C.I.Arb., I.R.R.V. of Jones Granville. In Part A of the form the address of the property was given as "44-54 (INCL 60-62), STEWARTS ROAD, LONDON, SW8 4DF". In Part B, section 13, "Details of the Proposed List Alteration", was completed with tick box F, in this way:

> "F. Other changes PLEASE MERGE THE ASSESSMENT WITH 32 STEWARTS ROAD with effect from: 01-APR-05".

In Part C of the form "Grounds for your proposed alteration" section 15 was completed by using two tick boxes, tick boxes A and I, thus:

> "A – The Rateable Value(s) shown in the Rating List on 1 April 2005 was/were inaccurate
>
> I – The properties should be shown as one or more different assessments".

In section 16 the reasons why the respondent believed the rating list to be inaccurate were said to be:

> "WE [BELIEVE] THAT THIS ASSESSMENT SHOULD BE MERGED WITH 32 STEWARTS ROAD LONDON SW8 4DQ".

6. The appellant did not consider that the proposal was well founded. The disagreement between the parties was therefore referred to the VTE as an appeal by the respondent against the appellant's refusal to alter the list. The appeal was heard by the VTE on 2 June 2011.

The VTE's decision

7. The parties' "Statement of Agreed Facts" for the hearing before the VTE recorded the rateable values of the two separate hereditaments, in this way:

> "Rateable Values:
> For the 2005 Rating List, the properties are currently assessed as follows:
>
> 32 [Stewarts] Road London SW8 4DQ Warehouse and Premises Rateable Value £132,000 with effect from 1 April 2005
>
> 44-54 (Incl. 60-62) Stewarts Road London SW8 4DF Factory and Premises Rateable Value £248,000 with effect from 1 April 2005

(the rateable value for this property was agreed with Mr. G. Jones on behalf of H & B Food Provisions Limited in respect of a proposal to alter the 2005 Rating List made on 20th July 2005)."

8. The "Statement of Agreed Facts" said nothing about the rateable value of a single, merged hereditament.

9. Evidence was given before the VTE by Mr Jones for the respondent, and by Mr Ivor Prevett B.Sc., M.R.I.C.S. of the Valuation Office Agency for the appellant.

10. In section 6 of his report prepared for the hearing before the VTE Mr Jones said it had been "agreed with the Valuation Officer" that if the hereditaments were not merged the rateable value for 32-42 Stewarts Road, with effect from April 2005, should be £128,000 [sic], and for 44-54 Stewarts Road, including 62 Stewarts Road, £248,000. Mr Jones also said that it had been "agreed with the Valuation Officer" that if the two hereditaments were merged a rateable value of £290,000 should apply, again with effect from April 2005.

11. In the "Introduction" to its decision the VTE said, in paragraph 1:

> "The appeal arose from a proposal made by Jones Granville, representing H&B Foods Ltd, the occupier of the properties, and received by the valuation office (VO) on 15 April 2008. The properties were described in the 2005 rating list as a factory & premises with a rateable value of £248,000 and a warehouse & premises with a rateable value of £132,000, effective from 1 April 2005. The reason for making the proposal was that the two hereditaments presently shown in the rating list should properly be shown as a single hereditament."

12. In paragraph 3 of its decision, when summarizing the respondent's case, the VTE described the two properties in this way:

> "Mr Jones referred to a statement of agreed facts. He advised the two properties were situated on the north and south sides of Corunna Terrace, which was a public highway linking Stewarts Road with Linford Street, the buildings were approximately 10.70m apart at their closest point. 32, Stewarts Road comprised a three storey building, constructed in 1995. The building had a total net internal area of 1527 sm, with an open, concrete surfaced yard adjoining the west side of the building. The building was used for production and ancillary purposes. 44-54 Stewarts Road comprised a two-storey building constructed in 2001. The building had a total net internal area of 2576 sm, with two open, concrete surfaced yards, most of which was used as access to the building. The building comprised a production area with ancillary offices. Both properties were occupied by H & B Foods in connection with their business of storage and distribution of dairy products. He referred to his photographs of the buildings and maps of the area. Mr Jones said that it had been agreed with the VO that if the hereditaments were merged, a RV of £290,000 should apply from 1 April 2005."

13. In paragraph 10 the VTE concluded its summary of the respondent's case by referring to Mr Jones' request, on behalf of the respondent, "that the properties be merged at a RV of £290,000, effective from 1 April 2005".

14. In its summary of the appellant's case the VTE said, in paragraph 12 of its decision:

> "Mr Prevett confirmed the statement of agreed facts as referred to by Mr Jones. He stated the matter before the Panel was whether the subject properties qualified to be regarded as a single hereditament at an agreed RV of £290,000 effective from 1 April 2005. ...".

15. In the reasons it gave for its decision the VTE said this, in paragraph 21:

> "... The appeal concerned the merger of two properties from 1 April 2005, being the commencement date of the 2005 rating list. The Panel were grateful for the statement of agreed facts and noted that a RV of £290,000 was applicable, should the Panel determine the properties be merged into a single hereditament. ...".

16. The VTE said in paragraph 26 of its decision:

> "Having considered all the evidence the Panel determined the two subject properties on either side of Corunna Terrace are functionally connected and so essentially one whole, that they should be regarded as a single hereditament."

It went on in the final paragraph of its decision, paragraph 27, to say this:

> "The Panel therefore determined the subject premises be merged and shown in the 2005 rating list as a Factory and Premises, 32 & 44-54, (incl 60-62), Stewarts Road, London, SW8 4DQ, at a RV of £290,000, effective from 1 April 2005."

The appeal to the Tribunal

17. In her statement of case in this appeal the appellant said:

> "15. The ostensible purpose of the merger proposal was to create a single enlarged hereditament for which the ratepayer contended a lower overall rent should be paid under the statutory hypothesis than if the two hereditaments were brought to the market separately.
>
> ...
>
> 20. The issue for the Upper Tribunal is whether the hereditaments ought to continue to be shown in the list as separate hereditaments as the Appellant contends or whether both hereditaments should be merged as the ratepayer contends and as the VTE has held.

21. In the event that the Upper Tribunal orders that the two hereditaments should remain merged the Appellant will contend that the agreed valuation is insufficient and wrong in law and should be as shown on Appendix F to this Statement of Case.

22. In the event that the Upper Tribunal orders that the two hereditaments should be separately assessed the Appellant will contend that the valuations should be as shown on Appendix D and E to this Statement of Case."

The valuation in Appendix D, for 32 Stewarts Road, gives a rateable value of £132,000. The valuation in Appendix E, for 44-54 Stewarts Road, including 60-62 Stewarts Road, gives a rateable value of £248,000. The valuation in Appendix F, for the single, merged hereditament, gives a rateable value of £335,000.

18. In its statement of case the respondent said:

"8. ... The parties had reached a compromise to the effect that, if the property fell to be assessed as one hereditament, its rateable value should be £290,000.

...

11. Given that the valuation officer has now resiled from the agreed valuation, paragraphs 20 and 21 of the Appellant's Statement of Case are correct in identifying two issues:

(1) whether the property should be entered in the list as one hereditament or two; and
(2) the rateable value of the property should it be rated as one hereditament.

...

17. Should the Tribunal agree with the Appellant that the appeal premises should be treated as two hereditaments in the list, then the values to be inserted for each should be as appeared in the list when the proposal the subject of this appeal was made.

18. Should the Tribunal agree with the Respondent that the appeal premises should be treated as one hereditament, then the Respondent will rely on the valuation annexed hereto."

The valuation referred to in paragraph 18 gives a rateable value for the merged hereditament of £265,000.

19. In its reply to the respondent's statement of case the appellant said:

"10. The Appellant avers that it is not open to the ratepayer as the Respondent to the Appellant's appeal, to seek a rateable value for the merged assessment which is lower than that which has been determined by the VTE. The Respondent's attempt to seek a lower valuation than that which has been

determined by the VTE, without appealing the VTE's decision is an abuse of process.

11. The Appellant will therefore require the Respondent to either: –

(a) Amend its Statement by substituting the figure of £265,000 rateable value in the valuation annexed thereto for the figure of £290,000 as determined by the VTE and the Appellant will seek an Order from the Tribunal to that effect.

Or in the alternative the Respondent must: –

(b) Cross-appeal the VTE decision on the grounds that it contends that the agreed valuation of £290,000 rateable value was too high in which case the Respondent must seek an Order from the Tribunal allowing it to lodge such an appeal out of time."

The appellant added, in paragraph 12, that if the respondent did seek permission to appeal out of time it would oppose that application.

20. The appellant applied for an order that the respondent was to amend its statement of case by substituting for the valuation of £265,000 a valuation of no less than £290,000. In an order made by the Registrar on 16 May 2012 the Tribunal refused that application. On 22 October 2012 the Tribunal ordered that neither party was at liberty to depart from the agreement on rateable value before the VTE. In its letter to the Solicitor's Office of H.M. Revenue & Customs dated 23 October 2012 the Tribunal said:

"... It is not open to the appellant to argue for a higher rateable value than £290,000 in respect of a merged assessment or to the respondent to argue for a lower such figure. The valuations of the merged assessment and separate assessments were agreed before the VTE and were therefore not in dispute. It is not open for either party (regardless of who appealed) to extend the dispute in this appeal; the appellant cannot now appeal against her own agreement (albeit that it was a different valuation officer who appeared before the VTE).

The parties[']attention is drawn to the cases of *Leda Properties v Howells (VO)* [2009] RA 165 and *Cheale Meats Limited v Ray (VO)* [2012] RA 145 at [47]."

21. On 6 November 2012 the appellant applied for the Tribunal's order of 22 October 2012 to be set aside. In doing so it said:

"The valuation officer believes that there is an important issue of principle at stake as to whether the parties are bound in the Upper Tribunal by valuations which they agreed shortly before the VTE hearing and which formed part of the agreed facts [sic] or whether they are free to depart from such agreed facts on the basis that the Upper Tribunal hearing is intended to be a *de novo* hearing. ...".

22. On 19 November 2012 the Tribunal declined to set its order of 22 October 2012 aside. The Valuation Officer then sought an interlocutory hearing to resolve the scope of the Tribunal's jurisdiction. The respondent did not object to that course being taken, and on 23 January 2013 the Tribunal agreed to it.

23. In a letter to the Tribunal dated 21 December 2012 the appellant's solicitor, Mr George Little of the Solicitor's Office of H.M. Revenue & Customs, said:

> "...
>
> The valuation officer believes that the Tribunal's Order barring the parties from arguing valuation creates substantial injustice to the valuation officer case. It obliges her to rely on a valuation for the merged hereditament in these proceedings which she believes is inaccurate and to proceed in a manner which is contrary to her statutory duty to maintain an accurate list.
>
> It is desirable in hearings before the VTE that wherever possible facts, including values should be agreed in the interest of saving time and expense, and where appropriate in order to narrow the issues. Up until the Lands Chamber ruling in this matter it was always understood by valuation officers and by rating agents that such agreements were made for the purposes of the VTE hearing only and that as the hearing of the Lands Chamber was a *de novo* hearing agreed facts, including facts as to valuation, could be reconsidered on appeal.
>
> Mr Prevett who acted as valuation officer in this matter at the VTE has stated in his affidavit that this has always been his understanding and he believes that it must have been Mr Jones[']s understanding too. We would ask the Tribunal to note that Mr Jones also sought on appeal to depart from the valuations that were agreed at VTE. It was clearly in contemplation of both parties that the substantive issue in the VTE was the correct unit of assessment, but in order to avoid delay valuations in the alternative were agreed.
>
> The valuation office agency has also taken an interest in this matter because if the Tribunal's ruling is correct it would put valuation officers in an awkward position in that they should never agree values (or other facts) unless they are willing and able to be bound by these facts on appeal. This means that in order to reserve their position on valuation, valuation officers must, in every case, call evidence on valuation at the VTE. Such a change of practice can only result in delays in preparing for litigation and delays at the VTE hearing.
>
> ...".

24. Mr Prevett's witness statement, undated, was sent to the Tribunal by Mr Little with his letter of 21 December 2012. In that witness statement Mr Prevett says:

> "2. With regard to this unit of assessment appeal, I conducted negotiations with the occupiers' agent, Gareth Jones B.Sc. FRICS MCIArb IRRV before the VTE hearing and agreed valuations in the alternative. In this connection I

have been asked by the Valuation Officer to make this statement in order to explain the background to the valuations prior agreed.

...

3. At appendix 1 I enclose copy email correspondence showing the thought process behind the agreement. In essence it was done to make the task of the VTE easier – in other words they would not have to consider valuation matters in detail and therefore their efforts would be concentrated upon the unit of assessment at issue.

4. I was of the impression [and likewise I assume – Gareth Jones] that any appeal to the UT(LC) and the Lands Tribunal before it, would be *de novo*: that is to say that the decision of the VTE would not be subject to review as all matters – including valuation – would be heard afresh.

5. Support [for] this view is to be found in the UT (LC)'s own guidance as shown at appendix 2 and I conducted the negotiations with Gareth Jones and made the agreement on valuations, in this [spirit].

6. I now understand that the UT (LC) is of the view that this understanding is not correct and the parties are in effect bound by the agreement on the valuation alternatives.

7. This, in my view, leads to some unfairness in that had I known that the Valuation Officer would not be able to argue valuation issues at the UT (LC) I would not have entered into such an agreement. In turn the VTE would therefore have had to make a decision on valuation matters as well as the unit of assessment and increasing the task before them."

The parties' agreement before the VTE

25. Mr Prevett produces as an exhibit to his witness statement copies of e-mail correspondence between himself and Mr Jones, which shows how the parties came to agree the rateable value of £290,000 for the merged hereditament. In an e-mail to Mr Jones on 9 May 2011 Mr Prevett suggested to Mr Jones that they should "try to agree valuations on the alternative basis (i.e. valuation as 2 separate hereditaments and the valuation as 1 hereditament), so that the Tribunal has less to consider ...". Responding to that e-mail on 10 May 2011 Mr Jones said he was "happy to try to agree alternate [sic] valuations". Mr Prevett replied on 11 May 2011 asking Mr Jones whether, if there were two hereditaments, he was "happy to accept the existing values (bearing in mind we agreed the main assessment, but have not discussed the value of no. 32)". Mr Jones responded on the same day, saying that he and Mr Prevett needed "to discuss the values of both, separately and together." It seems to have been after this exchange that Mr Jones and Mr Prevett discussed and agreed the rateable values to which Mr Jones referred in section 6 of his report for the hearing before the VTE. As we understand it, however, the parties' agreement was never reduced into writing.

It was presented to the VTE through the evidence of Mr Jones in section 6 of his report, which seems not to have been controversial at the hearing.

26. After the VTE's decision had been issued Mr Prevett sought to explain to a colleague in the Valuation Office Agency, Mr John Harding, the basis for his agreement with Mr Jones, in an e-mail sent on 8 September 2011:

> "The revised assessment of £290,000 was based on the existing floor areas but taking into account the total significant area of the single hereditament (basic price of previous individual assessments reduced by approx. 10%) and a "fragmentation" allowance of 17.5%. The latter percentage was not one I accepted willingly, but the agent was unwilling to accept a lower percentage and we were trying to agree an "either/or" basis for the Valuation Tribunal at the last minute – thus we presented evidence to the Tribunal that the appeal should be considered either on the basis of 2 separate assessments with the current RVs or a single assessment RV £290,000."

27. In his witness statement dated 15 January 2013 the Mr Jones says:

> "2. I have read the letter dated 21 December 2012 sent to the Tribunal by Mr. Little of HM Revenue & Customs Solicitor's Office and the (unsigned) witness statement of Mr. Ivor Prevett (together with its appendices). There are two factual matters which I cannot properly leave without correction.
>
> 3. The first arises in Mr. Prevett's witness statement. He is absolutely correct to say in his paragraph 3 that we both believed that the VTE's task would be easier were values to be agreed in the alternative (see, e.g., his e-mail to me timed at 12:30 on 9 May 2011 and my reply at 2:42 on 10 May 2011). However, he never gave any indication that, from his perspective, the agreement was restricted to the proceedings in the VTE. I believed that we had resolved the issue of the rateable value were there only one hereditament: £290,000.
>
> 4. The second matter arises in the penultimate paragraph on the first page of Mr. Little's letter of 21 December 2012, when he asks the Tribunal "to note that Mr. Jones also sought on appeal to depart from the valuations that were agreed at VTE". This is not entirely correct. The £290,000 that I agreed with Mr. Prevett was a compromise on both sides. Since the agreement, the Respondent has not sought to have the list altered to show a lower figure. However, if the rateable value is to be put in issue (as the valuation officer has sought to put in issue), my duty to the Tribunal is to offer my best assessment of the value. That is what I have done. The figure is £265,000. Consistently with the agreement, the Respondent did not appeal against the rateable value. It recognises, as Mr. Little himself pointed out in earlier correspondence, that the Tribunal could not reduce the rateable value below £290,000, even were it to accept that the rateable value remains in issue."

The statutory framework

28. Section 41 of the Local Government Finance Act 1988 ("the 1988 Act"), as amended, provides, under the heading "Local rating lists":

> "(1) In accordance with this Part the valuation officer for a billing authority shall compile, and then maintain, lists for the authority (to be called its local non-domestic rating lists).
> ...".

29. Section 42 of the 1988 Act, under the heading "Contents of local lists" provides:

> "...
> (4) For each day on which a hereditament is shown on the list, it must also show the rateable value of the hereditament.
> ...".

30. Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the NDR regulations") provides for the circumstances in which proposals for the alteration of a list may be made:

> "(1) The grounds for making a proposal are –
> (a) the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;
> ...
> (k) property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments;
> ...
> (3) No proposal may be made –
> (a) by reference to more than one ground unless, for each ground relied on, the material day and the effective date are the same;
> ...".

31. The statutory grounds for making a proposal in regulation 4(1) do not specifically include a ground contending what ought to be the rateable value for a single hereditament resulting from the success of a proposal under paragraph (1)(k).

32. Regulation 6 of the NDR regulations contains general provisions relating to proposals:

> "(1) A proposal shall be made by notice sent to the VO which shall –
> ...
> (d) identify the respects in which it is proposed that the list be altered; and
> (e) include –
> (i) a statement of the grounds for making the proposal;
> ...
> ...".

33. Regulation 8 contains provisions for disputes on the validity of proposals. Regulation 8(1) provides that, subject to paragraphs (2) and (3), where the valuation officer "is of the opinion that a proposal has not been validly made, [he] may, at any time after receiving the proposal, serve notice (an "invalidity notice") on the proposer that [he] is of that opinion ...".

34. Regulation 10 of the NDR regulations provides that where "the [valuation officer] is of the opinion that a proposal is well-founded, he shall as soon as reasonably practicable alter the list accordingly".

35. Regulation 13, under the heading "Disagreement as to proposed alteration", provides:

> "(1) Where –
>
> (a) the [the valuation officer] is of the opinion that a proposal is not well-founded, ...
>
> ...
>
> the [valuation officer] shall refer the disagreement to the VTE as an appeal by the proposer against the [valuation officer]'s refusal to alter the list.
>
> ...".

36. Regulation 35 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 ("the appeals procedure regulations") provides for consent orders:

> "(1) The VTE may, at the request of the parties but only if the VTE considers it appropriate, make a consent order disposing of the proceedings and making such other appropriate provision as the parties have agreed.
>
> (2) A consent order may provide for the alteration of a list and, where it does, shall specify the day from which the alteration is to have effect.
>
> ...".

37. Regulation 38 of the appeals procedure regulations, as amended by regulation 2(7)(b) of the Valuation Tribunal for England, Non-Domestic Rating and Council Tax (England) (Amendment) Regulations 2011, provides for orders other than consent orders. Regulation 38(4) provides:

> "After dealing with an appeal under regulation 13 of the NDR Regulations (disagreement as to proposed alteration), the VTE may, subject to paragraph (6), by order require a [valuation officer] to alter a list in accordance with any provision made by or under the 1988 Act."

Regulation 38(10) provides:

> "An order under this regulation may require any matter ancillary to its subject matter to be attended to."

38. Regulation 42 of the appeals procedure regulations provides for "Appeals to the Upper Tribunal":

> "(1) An appeal shall lie to the Upper Tribunal in respect of a decision or order given or made by the VTE on an appeal under the NDR Regulations ... .
> ...
> (5) The Upper Tribunal may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made.
> ...".

Submissions for the appellant

39. At the interlocutory hearing Mr Singh made submissions on the scope of the Tribunal's jurisdiction. The jurisdiction of the Lands Tribunal encompassed hearings of appeals in rating matters "do novo" (see, for example, *Re London & Winchester Properties Ltd.'s Appeal* [1983] 2 E.G.L.R. 201 and *Verkan & Co. Ltd. v Byland Close (Winchmore Hill) Ltd.* [1998] 2 E.G.L.R. 139). There was nothing to indicate that when the Tribunal came into existence, as the Upper Tribunal (Lands Chamber), on 1 June 2009, its jurisdiction in rating appeals was narrower than the Lands Tribunal's had been. The Tribunal's guidance for its users indicates that a rating appeal before the Tribunal will proceed as a rehearing. The appeals procedure regulations provide for the Tribunal to "confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made" (regulation 42(5)). There is no reason, in law or in practice, why an appeal such as this against a decision of the VTE, for which permission to appeal is not required, may proceed only by way of a review. It ought to be dealt with as a "de novo" consideration of all issues now contentious between the parties, including the rateable value of a single, merged hereditament.

40. In his further written submissions, Mr Singh argued that the VTE's jurisdiction in dealing with the respondent's proposal extended to a determination of the rateable value of the single merged hereditament, despite there being no reference to a specific rateable value in Part B, section 13 of the respondent's proposal form. The relevant ground for making a proposal in this case was that in regulation 4(1)(k) of the NDR regulations – "property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments". The respondent was seeking a merger of the two hereditaments. Its proposal identified "the respects in which it is proposed that the list be altered", which was what was required by regulation 6(1)(d) of the NDR regulations. When the respondent made its proposal there was not a single, merged hereditament in the list. So it was not open to it to propose that the value of the merged hereditament be altered. But the rateable value of a single hereditament was a matter properly before the VTE in the appeal. In any event, under regulation 38(4) of the appeals procedure regulations the VTE's jurisdiction extended to a determination of rateable value, given the requirement in section 42(4) of the 1988 Act that "[for] each day on which a hereditament is shown in the list, it must also show the rateable value of the hereditament". The VTE would also have had jurisdiction to determine rateable value under regulation 38(10) of the appeals procedure regulations, which provides for "ancillary" matters to be "attended

to". The rateable value of the single rateable hereditament was simply an ancillary and necessary consequence of the VTE's principal decision.

Submissions for the respondent

41. The respondent did not make any submissions on the issue of the Tribunal's jurisdiction in the appeal.

42. On the question of the VTE's jurisdiction the respondent accepted the appellant's contention that the VTE had jurisdiction to determine the rateable value of a single, merged hereditament. The proposal concerned the proposed merger of the two hereditaments and the consequences of such merger. But neither party had suggested that if two hereditaments were to remain in the list their rateable values should be other than £248,000 and £132,000. The VTE was not entitled to interfere with those rateable values.

Discussion

43. In *Leda Properties* the Lands Tribunal (George Bartlett Q.C., President) decided an appeal by a ratepayer against a decision of the Wiltshire Valuation Tribunal relating to premises owned by the ratepayer that had been entered in the 2000 rating list as "Computer Centre and Premises". The Lands Tribunal noted, in paragraph 17, that the proposal that had led to the appeal before it had simply contended for the existing entry to be deleted with effect from a specified date. The proposal had not sought a reduction in rateable value, nor any other change. The reasons given in the proposal for the belief that the rating list was inaccurate were simply that the "present assessment is incorrect[,] excessive & bad in law", the hereditament having been vacant on the specified date, incapable of beneficial occupation and beyond economic repair as a computer centre.

44. The Lands Tribunal said, in paragraph 18, that the ratepayer's alternative contention – that the hereditament should be entered in the list as a store at a rateable value of £90,000 – "would require two alterations to be made to the list". It went on to say (ibid.):

> "... It is not in my view reasonably possible to construe the completed form as encompassing a proposal for a change in the description of the hereditament or the reduction in its rateable value. ... This is not one of those cases (cf *Galgate Cricket Club v Doyle (VO)* [2001] RA21) where a proposal can properly be treated as encompassing two grounds. It was quite evidently one for deletion alone. It is moreover to be noted that on the same day Wilks Head & Eve made two other alternative proposals, each seeking deletion but specifying different effective dates. I have no doubt at all that if the intention had been, as a further alternative, to seek an alteration in the hereditament's description and a reduction in rateable value a proposal to this effect would have been made." (our emphasis).

45. The Lands Tribunal then said:

> "19. The purpose of requiring that the alterations proposed should be identified and that the reasons for the alterations should be specified is so that the VO is able to deal with the proposal in a way that he is required to deal with it under the Regulations. Reading the form as submitted he could not possibly have known that he was, or even might be, being asked to alter the description of the hereditament to "store" or to reduce the rateable value to one that reflected its use for that purpose.
>
> 20. The ratepayer contended that the VT would have been able to alter the assessment pursuant to the proposal in the exercise of its power under rule 44(7) to require any matter ancillary to the subject matter of the appeal to be attended to. The VT rightly rejected this contention, in my judgment. An alteration of the assessment pursuant to a proposal to delete the hereditament from the list would not be a matter ancillary to the subject matter of the appeal. It would be a separate principal course of action that could only be based on the consideration of evidence and arguments different from those of relevance to the issue of deletion. The VT did not have power, and this Tribunal does not have power, to direct an alteration of the list pursuant to the proposal that has led to this appeal.
>
> ...
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> 23. The only issue in the appeal, therefore, is whether the hereditament on the material day had become incapable of beneficial use as a computer centre so that the entry relating to it should be deleted from the list."

46. In *Cheale Meats* the Tribunal (George Bartlett Q.C., President, and Mr A.J. Trott) noted (in paragraph 4) the concession of counsel for the appellant that the Tribunal "did not have power to reduce the assessment below that contended for in the proposal ...". The Tribunal said (in paragraph 47):

> "... [Counsel] correctly concedes ... that the ratepayer cannot before this Tribunal seek a rateable value less than that for which it argued before the Valuation Tribunal (see [*Leda Properties*])."

47. Mr Singh sought to distinguish those two cases from this. In paragraph 8 of his skeleton argument he said the reason why the Tribunal had endorsed counsel's concession in *Cheale Meats* was that "the ratepayer was seeking an outcome that went beyond the scope of its proposal".

48. We should say straight away that in our view *Leda Properties* was correctly decided on its own facts, and also that the observations made by the Tribunal about counsel's concession in *Cheale Meats* were apt in the circumstances of that case.

49. But the circumstances here are somewhat different.

50. On the material now before us, and in the light of the submissions we have heard, we accept that the respondent's proposal identified "the respects in which" it was proposed that the list be altered, which was what was required by regulation 6(1)(d) of the NDR regulations. And those "respects", in our view, included the rateable value of a single, merged hereditament including both of the respondent's properties.

51. Nothing was said on the question of rateable value of a single hereditament in section 13 in Part B of the respondent's proposal form. Section 13 simply referred to the two hereditaments being merged, with effect from 1 April 2005. However, the proposal also contended that the rateable value shown in the rating list was wrong. This was deliberately done in Part C of the proposal form, in addition to the contention that the two properties should be merged as a single hereditament. The respondent was seeking a merger of the two hereditaments. But it was also, unlike the ratepayer in *Leda Properties*, patently seeking another outcome too. It was seeking a consequential change in the rateable value of the premises subject to its proposal, albeit without asserting in the proposal what that rateable value should be. It is, we believe, not only possible but right to construe the completed form, when read as a whole, as encompassing a proposal for the rateable value of the single, merged hereditament to be determined.

52. This was also, it seems, how the appellant understood and dealt with the proposal, and how it understood the nature and scope of the appeal before the VTE. The appellant had not taken the view that the proposal had not been validly made. It had treated it as validly made, but had formed the opinion that it was not well founded. The consequence of this was that the matter came before the VTE on appeal. Paragraph 12 of the VTE's decision records the fact that, on behalf of the appellant, it was confirmed at the hearing that "the matter" before it was not merely the two properties ought to be regarded as a single hereditament, but rather "whether the subject properties qualified as a single hereditament at an agreed RV of £290,000 effective from 1 April 2005" (our emphasis). The appellant was not saying to the VTE that if it decided that there was one hereditament not two, the respondent would have to make a further proposal relating to rateable value. On the contrary, it evidently regarded the proposal as comprehending two questions: first, whether the appellant's two properties should be shown in the list as one hereditament and secondly, if so, what rateable value should be shown in the list for that hereditament.

53. If the appellant had not expected that a decision on rateable value was going to be made by the VTE in the appeal, and accepted that it should be, there would have been no point in its engaging with the respondent before the hearing, to discuss and agree, if they could, the rateable value of a single, merged hereditament. From the e-mail correspondence to which we have referred it seems clear that the discussion of rateable value was initiated by the appellant. The appellant did this, as Mr Prevett said in the e-mail he sent to Mr Jones on 9 May 2011, "so that the [VTE] has less to consider". Otherwise, the parties were each going to have to produce evidence on valuation at the hearing and the VTE, in determining the rateable value of a single, merged hereditament, would have to consider and reach a conclusion on that evidence. The parties were able to agree. Once they had the appellant was obviously content for the agreed rateable value for the single hereditament to be presented to the VTE, and for it to determine the rateable value of a single hereditament comprising the two properties on that basis.

54. It is no less clear that the VTE, for its part, did not doubt that its own jurisdiction extended to a determination of the appropriate rateable value if it should decide, as it did that the two hereditaments ought to be shown in the list as one. The terms of the decision it made, as stated in paragraph 25, were, again, not simply that "the subject properties be merged ...", but that they be merged "...at a RV of £290,000, effective from 1 April 2005" (our emphasis).

55. At the hearing both sides were saying to the VTE, though without producing evidence in the form of an agreed valuation or valuations to demonstrate it, that if the two hereditaments were merged a rateable value of £290,000 should be effective from 1 April 2005. This was what Mr Jones contended in his evidence, and he was not contradicted. Had the VTE thought its task did not include a determination of rateable value if it decided the respondent's premises should be regarded as one hereditament it could and surely would have told the parties so. And if it had not been content to rely on the parties' agreement on rateable value and had wanted them to present to it valuation evidence to support that agreement, it could and surely would have told them that. But it did not. It was prepared to accept the parties' agreement on rateable value, and to act upon it. As well as deciding that the respondent's two properties should be regarded as a single hereditament, it also decided that the rateable value would be £290,000, with effect from 1 April 2005. Whilst this was not a contentious issue before the VTE, it was, we accept, a matter that it decided in the appeal.

56. In the circumstances we are satisfied that the VTE had jurisdiction to determine the rateable value of the single hereditament. This matter was properly within the bounds of its decision on the respondent's proposal.

57. Under section 41(1) of the 1988 Act the appellant had a duty to compile and maintain local non-domestic rating lists. And under section 42(4) the list had to show, for each day on which a hereditament was shown in it, the rateable value of that hereditament. Thus, once the VTE had made its decision on the appeal, it was incumbent on the appellant to make an appropriate alteration to the list, including the rateable value for the single hereditament.

58. It follows that we do not need to deal with Mr Singh's written submissions on paragraphs (4) and (10) of regulation 38 of the appeals procedure regulations. However, we should say that in view of the very limited submissions made to us on regulation 38(10), we would not be prepared to decide here that the determination of rateable value could be seen as a matter "ancillary" to the parties' dispute on the question of one hereditament or two.

59. We see force in the general submissions made by Mr Singh on the jurisdiction of the Tribunal in appeals from the VTE.

60. We accept that the Tribunal has jurisdiction to deal with appeals such as the appellant's in this case by way of a fresh hearing, rather than simply by way of a review of the decision of the VTE.

61. Regulation 42(5) of the appeals procedure regulations describes a very wide jurisdiction for the Tribunal in determining an appeal from a decision of the VTE. It is

hard to conceive of a jurisdiction very much wider than to "confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made." To confine the hearing of an appeal from the VTE to a review of its decision, rather than by a fresh consideration of the matter on its merits, would seem to us to be incompatible with a jurisdiction whose ambit is as broad as that.

62. Appeals in rating cases, formerly to the Lands Tribunal and now to the Tribunal, have traditionally proceeded as re-hearings.

63. Three general points should be made at this stage.

64. First, when it entertains an appeal by way of a rehearing, the Tribunal will not disregard the decision of the tribunal below. The traditional approach of the Tribunal has been to expect the party appealing against a decision of the lower tribunal to satisfy it that the decision appealed against was wrong (see the judgment of Lord Evershed M.R. in *Sole v Henning (V.O.)* [1959] 3 All. E.R. 398, in particular at p.399H; and the decisions of the Lands Tribunal in *Sinclair Gardens Investments (Kensington) Ltd. v Franks* (1998) 76 P. & C.R. 230, at pp.234 and 235, and in *Wellcome Trust Ltd. v Romines and another* [1999] 3 E.G.L.R. 229, at p.230 to p.233).

65. Secondly, in dealing with appeals by way of a re-hearing, the Lands Tribunal generally regarded itself as confined to the issues raised by the appellant in its notice of appeal, following the approach indicated by the Court of Appeal in *Ellerby v March* [1954] 2 Q.B. 357, in particular in the judgment of Somervell L.J. at p.363 and that of Romer L.J. at p.366 (see, for example the decisions of the Lands Tribunal (Mr W.H. Rees F.R.I.C.S.) in *British Petroleum Pension Trust Ltd. v Blake* [1982] 2 E.G.L.R. 224 (at p.227J-L), and *Cunningham v Morrison-Bell* [1986] 1 E.G.L.R. 211, at p.212G).

66. Thirdly, both the Tribunal, and before it the Lands Tribunal, have striven for consistency in their own decision-making, both in their jurisdiction in rating cases and in their other jurisdictions as well. But, generally, previous decisions on questions of fact and opinion will not be regarded as evidence of value in later cases (see, for example the decision of the Lands Tribunal in *Arbib v Earl Cadogan* [2005] 3 E.G.L.R. 139, at paragraph 180).

67. Two decisions of the Lands Tribunal are instructive here.

68. In *Re London & Winchester Properties Ltd.'s Appeal*, an appeal against a leasehold valuation tribunal's determination of a freehold price under section 9 of the Leasehold Reform Act 1967, the Lands Tribunal (V.G. Wellings Q.C.) said this (at p.201H-J):

> "Appeals from leasehold valuation tribunals are not limited to appeals on points of law and where the questions in issue are questions of fact or valuation the only practicable course seem to be for there to be a rehearing with evidence. ..."

and (at p.202D-E):

"It is axiomatic that an appeal to the Lands Tribunal, which takes the form of a rehearing, must be determined on the evidence presented to the Lands Tribunal, without regard to the evidence given before the leasehold valuation tribunal. I am reluctant to apply the standing-house approach."

69. Similar observations were made by the Lands Tribunal (H.H.J. Marder Q.C., President) in *Verkan*, an appeal against the decision of a leasehold valuation tribunal under the provisions for collective enfranchisement in the Leasehold Reform, Housing and Urban Development Act 1993. In that case the Lands Tribunal said this about its jurisdiction (at p.144E-H):

"In practical terms, this case is a rerun of the cases presented before the leasehold valuation tribunal, with the same witnesses giving virtually the same evidence. Historically, the Lands Tribunal has not acted as a court of review, but has treated every appeal as a hearing *de novo*, with the parties entitled to call fresh evidence if so advised. This tribunal in determining an appeal has not hitherto been concerned to consider whether the decision appealed against was right or wrong, save perhaps in relation to the costs of the appeal proceedings. However, I am not aware of any statutory provision which binds the tribunal to conduct the appeal in this way, or indeed in any particular way.

... In my judgment, where, as in this case, a competent leasehold valuation tribunal (which is assumed to have local market knowledge) has decided matters of fact and value on the opinion evidence of valuers and an inspection of the subject premises, then on a subsequent appeal to the Lands Tribunal, at least where there is no suggestion of any dispute as to matters of law or a valuation principle, the Lands Tribunal should be slow to disturb the decision of the leasehold valuation tribunal unless satisfied that the decision is clearly wrong. This is consistent with the views expressed by Judge Rich Q.C. (sitting as a member of the Lands Tribunal) in the case of *Sinclair Gardens Investments (Kensington) Ltd. v Franks* ...".

70. Mr Singh submitted that the jurisdiction of the Tribunal when dealing with appeals in rating matters is no less broad than was the jurisdiction of the Lands Tribunal. That is plainly right.

71. Part 4 of the Tribunals Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 provides for the procedure in "Appeals". Under the heading "Notice of appeal" rule 24(4) states:

"If another tribunal has given permission to appeal, or if permission is not required, the appellant must provide with the notice of appeal –

(a) a copy of –

(i) any written record of the decision being challenged;

...

(iv) if the appeal is against the decision of [the VTE] ..., a copy of the proposal or determination that was the subject of the appeal to that tribunal ...

...".

72. The explanatory leaflet issued by the Tribunal in November 2011 provides guidance on rating appeals in section 3. Under the heading "Valuation Tribunal appeals" paragraph 3.1 says this:

> "The Lands Chamber hears appeals against decisions of Valuation Tribunals (VTs) concerning the rateable values or rateability of commercial, industrial and other non-domestic properties. A proposal by an occupier to change an entry in the valuation list (if it is not agreed), or an appeal by an occupier against a change in the list made by a valuation officer, is first considered by the local VT for the area. The VT gives a decision in writing specifying how the entry in the list is to be dealt with. Parties who appeared or were represented at the hearing (but no-one else) are entitled to appeal to the Lands Chamber, which re-hears the whole matter afresh. That is, the Tribunal does not review the VT decision to see if errors were made. Instead it holds its own hearing at which the parties present all the evidence for their case. If the case is simple or straight forward the simplified or written representation procedure may be followed."

73. In the Tribunal's "Explanatory leaflet for appeals against decisions of the Valuation Tribunal for England and the Valuation [Tribunal] for Wales", issued in July 2013 as guidance for users of the Tribunal in those appeals, section 4 explains the relevant procedure. Paragraph 4.5 says, under the heading "Review or rehearing?":

> "Appeals from decisions of the VTE or the VTW are by way of a rehearing. The parties call the witnesses and evidence they rely on to support their case. They may rely on new evidence which was not before the [VTE or the VTW]."

74. Thus, as one would expect, the guidance the Tribunal has given is consistent with the relevant jurisprudence and decision-making of the Tribunal, and before it the Lands Tribunal, in cases where appeals come before it from decisions of the VTE in rating cases.

75. We therefore accept Mr Singh's submission that the Tribunal may, and indeed must, deal with this appeal as a "de novo" consideration of the matters decided by the VTE.

76. We also accept that, in principle, at the hearing of an appeal "de novo" in a rating case the parties are not obliged to rely on the evidence they submitted to the VTE. They may submit further or different evidence. If this were not so the hearing of the appeal would not be properly "de novo". And, for the same reason, we could not accept that the parties to an appeal from the VTE are necessarily bound by any agreement they reached before the VTE on matters of fact or valuation, or other relevant issues of expert opinion or judgment. In our view, it would be wrong in principle to delimit the Tribunal's jurisdiction generally in that way, for to do so would undermine the principle of a truly "de novo" hearing.

77. The contrary view, we accept, would be this. Before the VTE, the parties were free to agree facts and valuation and to argue about only those issues on which they could not agree; that at the hearing before the VTE both parties would be bound by what had been agreed; that such a restriction on the matters the VTE had to decide would not be inconsistent with its jurisdiction; and that, if the case then came on appeal to the Tribunal, the parties would still be bound by their agreement below, unless this was not what they had intended when they reached that agreement. It could be said that there is nothing inimical to the concept of a "de novo" hearing in the Tribunal holding parties to their agreement if it was the intention and effect of the agreement that they should be held to it. If this were right then the parties would continue to be bound by their agreement if they had agreed to be. Artificial as this principle might seem, it would respect the autonomy of the parties in defining their dispute.

78. What then is the proper scope of a "de novo" hearing of the appeal before the Tribunal in this case?

79. The answer to that question, we believe, depends on the true scope of the matters the VTE itself had to decide in determining the respondent's proposal, and whether the parties' agreement on rateable value before the VTE extended to the appeal before the Tribunal.

80. The matters the VTE had to determine, as we have said, included the rateable value of the single hereditament. The VTE decided that matter by adopting the parties' agreement upon it, which was an expedient compromise at that stage.

81. The fact of an agreement reached before the VTE may itself be relevant evidence before the Tribunal in the appeal. It may form an important part of the evidential matrix. And the Tribunal may, in its discretion, give weight to it, perhaps significant weight. A party to an appeal before the Tribunal will therefore be wise to think carefully before resiling from an agreement it had entered into with the other side in the appeal below. There will, however, be cases in which circumstances are not the same as they were at the time of the hearing before the VTE, or in which an expert has changed his mind, or new expert evidence on one side or the other causes the parties to think again.

82. This seems to be such a case. We acknowledge Mr Jones' evidence in paragraph 3 of his witness statement of 15 January 2013 that he believed he and Mr Prevett had "resolved the issue of the rateable value were there only one hereditament". But this does not correspond to what Mr Prevett says in paragraph 7 of his witness statement. As the e-mail correspondence shows, the parties' aim in seeking to agree the rateable value of a single hereditament was to make the VTE's task easier than it would otherwise have been. That was a laudable aim. There is, however, no contemporaneous evidence, or at least none that we have seen, to show that both parties intended their agreement to bind them if the case went on appeal from the VTE to the Tribunal. Equally, of course, there is no evidence that they intended not to be bound by their agreement if that should happen. It seems neither of them contemplated a further appeal. We think it would be sensible, in future, for a party agreeing matters with the other side before the VTE to make clear at that stage whether or not it was consenting to be bound by its agreement in any appeal from the

VTE to the Tribunal. That could easily have been done in this case. Unfortunately, it was not.

83. However, the question of what the parties agreed, if that is in dispute, is one to which an objective answer ought to be given. It should not matter what the parties thought they had agreed, or what they intended to agree. The question is to be answered by considering the facts and circumstances of their agreement. It is necessary to look at the contemporaneous material to see whether the agreement was for the purposes of the VTE hearing alone, or an agreement for all purposes.

84. In this case, clearly, both sides must have been content to be bound by the figure they had agreed if the VTE should decide the issue on which they had not agreed, namely whether the respondent's premises comprised one hereditament or two. Without some clear evidence to the contrary, it is not possible to conclude that either party intended to reserve its right to appeal on rateable value even if it succeeded on that issue. It ought to be assumed that the agreement was for all purposes, unless the parties made it clear at the time that the agreement was not to be binding in the event of a further appeal.

85. There are therefore three questions to consider at this stage: first, whether there was a binding compromise from which neither party was free unilaterally to resile; secondly, if there was a binding compromise, whether the parties have agreed that that compromise should now be dissolved; and thirdly, in any event, whether the Tribunal should take the course that would have been open to the VTE and decide that it would not be appropriate to determine the question of the rateable value of a single hereditament on the basis of the parties' compromise.

86. In our view there plainly was a binding compromise. However, in the light of the parties' statements of case, it seems clear that the respondent does not resist the appellant's withdrawal from that compromise. This being so, the parties' compromise before the VTE, though binding at that stage, has now effectively been dissolved.

87. Both parties clearly now wish to be free to produce valuation evidence before the Tribunal to the effect that the decision of the VTE on rateable value was wrong. This matter was expressly put in issue in the appellant's statement of case, in paragraph 21, where it asserted that "the agreed valuation is insufficient and wrong in law". This was tantamount to saying that the VTE's decision itself was wrong in that respect. It was, in effect, inviting the Tribunal to regard the parties' agreement as nugatory and, if it should uphold the VTE's decision on the matter that was in dispute below, to go on and determine what the rateable value of the single hereditament should be. And the respondent, whilst it has not appealed against the decision of the VTE, has indicated in paragraph 11 of its statement of case that there are two issues before the Tribunal, the second of which is the rateable value of its premises should they be rated as one hereditament. It has therefore produced a valuation on which it intends to rely at the hearing of the appeal. Thus both parties are now saying that the rateable value they agreed for the single hereditament is indefensible, that the VTE's decision on rateable value was flawed, albeit through no fault of its own, and that the rateable value of a single hereditament is a live issue in the appeal to the Tribunal.

Conclusion

88. We are in no doubt that the appeal should proceed as a "de novo" hearing. The Tribunal's jurisdiction in the appeal is no narrower than was the VTE's. It can and will deal with the case in the light of the proposal, which, as we have said, identified the respects in which the respondent was seeking the alteration of the list. We shall permit both parties to call expert valuation evidence on the rateable value of the respondent's premises as a single hereditament.

Dated: 30 October 2013

Sir Keith Lindblom, President

Mr A.J. Trott F.R.I.C.S.