

## **Valuation for Rating of Vacant Non-Domestic Properties** **Guidance Notes**

### **Beneficial Occupation**

Before a property can be considered to be a “hereditament” i.e. a property which “is or may become liable to a rate” [Article 2 (2) of the 77 Order] it must be a property that is capable of beneficial occupation – that is a property for which a tenant would pay a rent.

A property which is incapable of beneficial occupation should not therefore be entered, or remain, as the case may be, in the valuation list.

The exceptions are new or substantially altered properties which may be subject to the completion notice procedures – these cases are considered below.

### **Deletions**

Vacant hereditaments currently in the List - but which are no longer capable of beneficial occupation should be deleted.

But care needs to be exercised. In the case of *Henriques –v- Stephens* [VO] RA/45/2000 the appellant was seeking a nil assessment on unused offices mainly because of the exceptionally poor repair of the property. The Tribunal disagreed and noted that:

“Whatever their condition they were clearly capable of some independent use at the material date, at the least for some limited storage. Thus they were a hereditament and fall to be entered within the list”

### **Repair Assumptions**

When assessing the value of a property it must be valued “in its actual state” i.e. *Rebus sic Stantibus*.

The *Rebus* principle was explored by the Court of Appeal in the case of *Williams* [VO] –v- *Scottish and Newcastle Retail Ltd* [2001]. The case clarified that the *rebus* principle allows the prospect of “minor alterations” to be taken into account. It of course remains open to interpretation as to what is a “minor” alteration. In “*Williams*” the court provided the following guidance:

“Mr Holgate [council for the Inland Revenue] criticised the test of ‘minor alterations’ as being imprecise which indeed it is. But the Lands Tribunal was in my view right to prefer it to drawing a line at a suggested distinction between structural and non-structural alterations, which would be even less satisfactory. On the Lands Tribunal formulation both limbs do raise issues of fact and degree which will in the first place be matters for negotiation between

the valuation officer and the ratepayer's surveyor. If the valuation officer and the surveyor cannot agree, they will be issues of secondary fact for the appropriate tribunal".

Each case will have to be considered on its own merits, but in the light of "Williams" and the explanation that "rebus" permits minor alterations the mere boarding-up or bricking-up of external doors and windows should not lead to a conclusion that a vacant property is incapable of beneficial occupation as, all things being equal, the reversal of such an action should not amount to more than "minor alterations".

In the main, the state of repair of vacant non-domestic property should not be judged any differently from that which is occupied as both are valued on the basis of the 'rebus' principle. It should also be remembered that poor repair does not of itself lead to a reduction. If the subject is priced similarly to comparables and they are in a similarly poor condition then no alteration is necessary as the pricings applied already reflect the repair. This however does not mean that areas of much poorer condition within the hereditament cannot be addressed separately.

Both these scenarios were dealt with by the Lands Tribunal in *Albert Black - v- Commissioner of Valuation VR/4/1998*. In that case the subject property was part of an old terrace that was showing its age. It had a sloping floor and evidence of damp. Although used as part of the dry cleaning business the ground floor of the return block and lean-to extension were in an even worse condition. The appellant's expert witness – Matt McAllister, assumed a rent for a property in good repair from which he deducted, among other things, the amortised cost of putting the property into that repair. The Tribunal however preferred the VLA approach of adjusting the existing pricing for those specific areas where the repair was less good than the comparisons. The basic zone A rate was unchanged as the main part of the subject was in similar condition to the comparables adjoining.

The Tribunal cited Schedule 12 (1) of the '77 Order as the general basis of valuation and clarified this for the subject by saying

"the premises are to be valued in their actual state and **put to their most valuable use in that state** and, secondly, the hypothetical tenancy is on the assumption that the cost of repairs are to be met by a tenant who is obliged to maintain the premises in that actual state, no better nor no worse."

In the "Black" case the poorer rearmost areas were valued as stores with reduced pricings even though used as part of the 'retail' area.

This approach of valuing property in its actual state and put to its most valuable use was again alluded to in *Henriques -v- Stephens (V0) (RA/45/2000) LT [2001] RA 366* The appellant was seeking a nil assessment on unused offices due mainly to the exceptionally poor repair of the property. While the repair assumptions in GB are different the Tribunal did comment that:

“Whatever their condition they were clearly capable of some independent use at the material date, **at the least for some limited storage**. Thus they were a hereditament and fall to be entered within the list.”

### **Vacant Non Domestic Rating**

Article 25A provides that the person entitled to possession of vacant non-domestic property shall be chargeable for rates if the provisions of Schedule 8A are satisfied. The current position is that rates are chargeable at 50% of the full rate.

There are various exclusions from vacant rating and a list of these can be found in SR 2007 No 119 – The Non-Domestic Rating [Unoccupied Hereditaments] Regulations [Northern Ireland] 2007. This list has since been updated to include Local Enterprise Agencies wef 1<sup>st</sup> April 2007 and companies in administration wef 1<sup>st</sup> April 2010. Within LPS decisions on whether or not the exclusions apply is a matter for the R&B team in the Operations Directorate.

Subject to the various exclusions vacant rates are charged on properties already in the valuation list. Special provision is however made for new or existing properties that have been substantially altered but which can not be included in the List because they are not capable of beneficial occupation. This is done through the service of a Completion Notice

### **Completion Notice**

The legislation governing completion notices can be found at Article 25B of and Schedule 8B to the 77 Order

If it appears to the Department that the work remaining to be done on a new building is such that the building can reasonably be expected to be completed within 3 months, the Department may serve a completion notice on the person entitled to possession

From a valuation point of view the main fact to note about the service of a completion notice is that the normal “rebus” provisions are altered and we can assume that a property is in a reasonable state of repair. The relevant legislation in this instance is part 3A of Schedule 12:

“3A.–(1) In estimating the net annual value of a relevant hereditament during a deemed completion period, the actual state of the hereditament shall be taken to be a state of reasonable repair excluding any repairs which a reasonable landlord would consider uneconomic.

(2) In this paragraph–

"building" has the same meaning as in Article 25B;

"deemed completion period" means the period–

- (a) beginning with the day on which the building is deemed to be completed by virtue of paragraph (2) of that Article; and
- (b) ending on the day on which the building becomes capable of rateable occupation;

"relevant hereditament" means a hereditament which comprises a building which is deemed to be completed by virtue of that paragraph."

R&B are responsible for the service of completion notices. When a notice is served a copy will be forwarded to the relevant district office. Note that the property **MUST NOT** be entered into the List **BEFORE** the completion day – the normal rebus rules are not disapplied until the completion day.

Liability for vacant rating only begins when:

- A completion notice is served and the completion day has passed; and
- The property is entered in the valuation list

This being the case every effort should be made to value a new property subject to a completion notice with two weeks following the completion day.

### **Vacant Property – Issues**

New or substantially altered property should only be valued and entered in the List if:

- They are truly complete; or
- A completion notice has been served and the completion day has passed.

What is truly complete? Case law has established that non-rateable items such as furniture, telephones, screens etc can be disregarded but in all other respects a property must be capable of occupation. The strong recommendation is that new or substantially altered vacant property should **NOT** be entered into the List unless the completion notice procedure has been followed.

### **When Next in Use**

Paragraphs 5 to 7 of Schedule 8A provide that in the case of a vacant hereditament the District Valuer or the Commissioner can distinguish the valuation in the List if he considers that when next in use they will be used for a qualifying purpose.

- Paragraph 5 deals with S&R;
- Para 6 deals with Article 31B cases; and
- Para 7 deals with distinguishment under the terms of Article 41

Note that the decision on whether or not these provisions apply rests with the District Valuer and or the Commissioner. This type of case should be dealt

with as a normal A3 and applicants will be expected to supply information in writing to substantiate their claim – written submissions which can be scanned into AO allow for an audit trail and a subsequent review of actual events. Note that the fact that prior to being vacated a hereditament was distinguished as EX or S&R is persuasive but **NOT** conclusive. Ownership of a hereditament by a charity is not sufficient – the test under Article 41 is occupation and use.

The “when next in use” provisions do **NOT** apply to any relief other than the ones noted above. In particular they do not apply to industrial distinguishment – qualifying industrial hereditaments are dealt with in the Unoccupied Hereditament Regulations noted above.

**Alan Hanna**  
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