

GERALD EVE'S SCOTTISH RATING NEWS

SEPTEMBER 2012

HIGHEST SCOTTISH COURT RULES THAT 2010 ASSESSMENTS MUST IGNORE RENTAL DECLINE

After a longer than anticipated delay following hearings in May, the Lands Valuation Appeal Court (LVAC) has now issued decisions on leading 2010 revaluation test case appeals in Scotland, relating to shops at the Mercat Shopping Centre in Kirkcaldy and the Overgate Centre in Fife.

The LVAC has unfortunately upheld the Assessors' appeals and overturned the Valuation Appeal Committee (VAC) decisions that had found in the ratepayers' favour. The legislation in Scotland differs from England in that a decline in rental values caused by economic circumstances can be treated as a 'Material Change of Circumstance (MCC)'. At both centres, MCC appeals had been successful in challenging the 2005 Valuation Roll level of rateable values based on evidence of falling rental levels in 2009.

When it then came to considering the 2010 rateable values, the ratepayers argued, and the VAC agreed that the reduced values adopted in 2009 should be applied to the new Valuation Roll effective from 1 April 2010. Whilst the appeals at both centres sought to reflect the downturn in rental values since the April 2008 valuation date for the 2010 assessments, they were approached differently with those at Overgate seeking reduced assessments through a revaluation appeal and at Mercat as an MCC appeal.

In the Overgate LVAC judgement, their Lordships stated that it was inevitable that increases and decreases in rental levels would occur between the April 2008 tone date and the Valuation Roll coming into force two years later. For there to be consistency in the Valuation Roll it was essential that all properties must be valued at one fixed date, the tone date, as specified by rating legislation.

Their Lordships criticised the decision of the VAC in the Mercat case which had come to the view that the legislation would have been written differently had a decline in rents been envisaged of the magnitude experienced

since 2008. That approach was inconsistent with the whole structure of the legislation. The law in their view was clear in that all lands and heritages should not be valued at a date later than tone date, simply because rents had fallen subsequently.

The LVAC confirmed that an appeal for a Material Change of Circumstance due to falling rental levels can only be valid if the evidence of decline occurs after the date on which the Valuation Roll comes into force. Where a 2009 MCC has been successful, the value does not as a consequence have to be adopted in the 2010 Valuation Roll. The 2010 rateable value will continue to be based on the tone date of 1 April 2008.

This aspect of the ruling seems to align the position in Scotland with that prevailing in England and Wales. Some significant differences do remain including, notably, that where rents have fallen below their April 2010 levels this can still be considered as an MCC in Scotland. Another distinction is that new properties and altered assessments in Scotland are valued at the lower of the tone (April 2008) rents and 'prevailing rental levels'. The LVAC ruling could therefore give rise to an outcome where adjacent premises have substantially different rates liabilities, as a new property would be assessed based on current rental values, whereas its neighbour constructed a few years earlier would pay rates based upon 2008 values.

We are seeking Counsel's opinion on both disappointing decisions and will advise clients further in due course.



EMPTY PROPERTY RATES LEGISLATION

As if this wasn't enough bad news for Scottish businesses, the Local Government Finance (Unoccupied Properties etc) (Scotland) Bill has also passed its first major parliamentary stage on the way to becoming law from 1 April 2013.

At present, commercial premises that are empty receive an initial three month rate free period followed by 50% rates relief, but under the new legislation this relief will reduce to 10%. However, unlike the position in England and Wales, full rates relief will continue on vacant storage and manufacturing premises and unoccupied listed buildings.

Given current economic circumstances, landlords with vacant property are already suffering from the lack of tenant demand and cannot find occupiers even at low rents, yet the SNP continues to trot out its mantra that this measure will encourage landlords to bring vacant property to the market at lower rental levels. We believe that charging empty rates can bring only further hardship and this is a high risk strategy given that the Executive expects it to raise just an additional £18m revenue, which represents less than 0.1% of Scotland's annual rates take.

Prudent ratepayers with vacant properties will be considering their strategies for empty property rates mitigation from next April. We have successfully implemented a wide range of lawful schemes for our clients in England and Wales and are ready to do the same in Scotland, although it is critical to recognise the differences in law and practice north of the border.

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EDINBURGH TRAMWORKS

Amongst all this, the one piece of apparently good news for Scottish ratepayers relates to recent press reports in Edinburgh regarding a 'rates relief' scheme to take account of the disruption caused by parts of the tramworks. All is not quite as it seems however.

We have continued to provide information to both the local authority and the Assessor of the negative effect of the works on our clients' trading performance and have protected their position fully through the appeals process. A recent Council instigated arrangement between the tram operator and the local rates Assessor which purports to grant 20% rates relief for areas of Edinburgh's West End affected by significant works, is not as beneficial as might appear at first sight. The Assessor has explained the 'offer' as having been based on substantial evidence of falling rents in this area of Edinburgh but the tram operator is not privy to such information in order to judge whether the reduction is adequate. The tram operator also has no legal standing in the appeals submitted. The Assessor's offer is conditional on the withdrawal of any outstanding rates appeal and acceptance would therefore deny the right to seek a greater reduction.

We remain fully engaged seeking the maximum reduction in rates for our clients to reflect the serious effects of the disruption caused by the tramworks. The Assessor's 'offer' relates only to Shandwick Place whereas we have provided trading indices which identify that the effects are being felt elsewhere in central Edinburgh too.

We have arranged a meeting with the Council shortly and will advise clients further with our view of the fairness of the Shandwick Place offer and a possible timetable to consider the rest of central Edinburgh.

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We are very keen to tell you more about our approach and how we can assist you, so please contact **Jerry Schurder** on **020 7333 6324**, jschurder@geraldeve.com or your usual Gerald Eve contact to find out more.

London (West End)
72 Welbeck Street
London W1G 0AY
Tel. 020 7493 3338

London (City)
46 Bow Lane
London EC4M 9DL
Tel. 020 7489 8900

Birmingham
Bank House
8 Cherry Street
Birmingham B2 5AL
Tel. 0121 616 4800

Cardiff
32 Windsor Place
Cardiff CF10 3BZ
Tel. 029 2038 8044

Glasgow
140 West George Street
Glasgow G2 2HG
Tel. 0141 221 6397

Leeds
1 York Place
Leeds LS1 2DR
Tel. 0113 244 0708

Manchester
No 1 Marsden Street
Manchester M2 1HW
Tel. 0161 830 7070

Milton Keynes
Avebury House
201-249 Avebury Boulevard
Milton Keynes MK9 1AU
Tel. 01908 685950

