



**RA3/2007-17/2007  
and RA/20-21/2007**

**LANDS TRIBUNAL ACT 1949**

***RATING – alteration of a rating list – Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 Regulations 4(4), 5 and 7 – valuation officer has served an invalidity notice and a valuation tribunal has held the proposals valid – whether open to valuation officer (having not appealed this decision) to re-argue validity at the substantive appeal – issue estoppel – whether proposals valid***

**IN THE MATTER OF AN APPEAL FROM THE HAMPSHIRE NORTH VALUATION  
TRIBUNAL**

**BETWEEN JULIAN WOMERSLEY (VO) Claimant**

**and**

**HART DISTRICT COUNCIL Respondents  
RUSHMOOR BOROUGH COUNCIL**

**Re: Various car parks in the areas of Hart District Council and Rushmoor Borough Council**

**Before: His Honour Judge Huskinson**

**Sitting at: Procession House, 110 New Bridge Street, London EC4Y 6JL  
on 23 April 2008**

***Mr Daniel Kolinsky* instructed by HM Revenue & Customs for the Appellant  
*Mr Christopher Lewsley* instructed by GVA Grimley for the Respondents**

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The following cases are referred to in this decision:

*Oswestry Corporation v Hudd (Valuation Officer)* [1996] RA 5

*Mainstream Ventures Limited v Woolway (Valuation Officer)* [2000] RA 395

*Canning (Valuation Officer) v Corby Power Limited* [1997] RA 60

*R v Inland Revenue Commissioners ex parte Coombs* [1991] 2 AC 283

*Thomas's London Day School v Jorgensen (Valuation Officer)* [2005] RA 222

*Halsbury's Laws of England* 4<sup>th</sup> Ed. Vol 16(2) (Reissue) paragraph 980

## DECISION

### Introduction

1. This is an appeal from the Hampshire North Valuation Tribunal (“HNVT”) dated 16 January 2007 whereby:

- (1) it held (in agreement with a previous decision of HNVT dated 20 April 2004) that the proposals before it for the alteration of the 1990 rating list in respect of various car parks within the areas of Hart District Council and Rushmoor Borough Council were valid; and
- (2) it made decisions on the values of each of these car parks to be introduced into the 1990 rating list.

The parties have helpfully prepared a Statement of Agreed Facts and issues and these therefore can be summarised comparatively briefly.

2. On 25 January 2000 the Appellant received proposals made by GVA Grimley, as agents for Rushmoor Borough Council (hereafter Rushmoor) and Hart District Council (hereafter Hart), to alter the rateable values in the entries shown in the 1990 rating list in respect of various car park hereditaments. The reasons for the proposed alteration were stated in the following terms:

“That the assessment is excessive, incorrect and bad in law and should be reduced to RV £1. That a decision of the London (North East) Valuation Tribunal dated 27 July 1999 is relevant as supply, demand and occupational costs influence the rateable values of car parks. The decision concerns a car park at 21-31 Hall Lane, London E4 - appeal number 593016074/057N/59”.

3. Normally a proposal to alter the 1990 rating list made as late as January 2000 would be too late, but this would not be the case if the proposal was validly made under Regulation 4(4) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993. The Appellant took the view that the proposals had not properly been brought within Regulation 4(4) and served invalidity notices under Regulation 7 in respect of the proposals stating that in his opinion the proposals were invalid.

4. On 23 February 2000 the Respondents, through their agents, appealed against the invalidity notices and these appeals became listed for hearing before HNVT on 29 March 2004. Prior to that hearing it was decided to take three “test” cases, one in Hart’s area, one in Rushmoor’s area and also one particular car park (Church Road, Fleet) where there was a separate and distinct additional argument on invalidity, which is no longer pressed and need not be further considered.

5. HNVT issued a decision on 20 April 2004 that the three proposals were valid. By a letter dated 23 April 2004 the Appellant wrote to the Respondents' agents stating:

"I have now received the decision of the Valuation Tribunal regarding the validity of your 1990 List Proposals. As you are no doubt aware the Tribunal decided in your favour and the proposals now need to be treated as validly received."

The Appellant requested information relevant to valuation.

6. On 11 August 2005 HNVT issued a decision in the fifteen other appeals (i.e. the appeals apart from the already decided test cases) that the proposals were valid.

7. No appeal was made by the Appellant against HNVT's decisions that the proposals were all valid.

8. The parties prepared documents relevant to valuation and the matter came back before HNVT for a hearing on 7 July and 4 August 2006. At that hearing Mr Alex Stevens FRICS of GVA Grimley gave evidence and presented the case on behalf of the Respondents and the Appellant presented his case and called evidence through Mrs Anne Armitage MRICS. At this hearing the Appellant renewed the argument that the Respondents' proposals, which HNVT had already decided were valid in the 2004 and 2005 decisions, were invalid. By its decision dated 18 December 2006 (and amended on 16 January 2007) HNVT concluded that it stood by the previous decision that the proposals were valid and it went on to consider the valuation matters and reached conclusions as to the rateable values for each of the hereditaments as shown in its decision and as tabulated in Appendix 1 to the Statement of Agreed Facts and Issues.

9. It is agreed that the issues before the Lands Tribunal are these:

- (1) Whether the Appellant had the right to challenge the validity of the Respondents' proposals afresh at the substantive valuation tribunal hearing in respect of the subject proposals (and thence by appeal, to the Lands Tribunal) bearing in mind that the issue of validity had previously been determined by the 2004 and 2005 decisions of HNVT and that no appeals against those decisions were lodged by the Appellant.
- (2) If the Appellant does have the right to challenge the validity of the Respondents' proposals, are the proposals made by GVA Grimley and received by the Appellant on 25 January 2000 invalid on the grounds that there is no causal link between the decision cited, i.e. the decision of the North East London Valuation Tribunal (NELVT) dated 19 July 1999, and the present appeals.

10. The parties have helpfully agreed the consequence of these appeals succeeding or failing before the Lands Tribunal, namely that if the appeals by the Appellant succeed then the entries in the rating list for these seventeen car parks will revert to the valuations and effective dates shown in column D of Appendix 1 to the Statement of Agreed Facts and Issues whereas if the Appellant's appeals fail then the valuations shown in column E Appendix 1 will remain in force.

### **Statutory provisions**

11. The Local Government Finance Act 1988 section 136 provides that Schedule 11 to that Act, which contains provisions about the establishment of and other matters relating to valuation tribunals shall have effect. Schedule 11 makes extensive provisions in respect of valuation tribunals including providing that they shall exercise various jurisdictions conferred upon them by, inter alia, regulations made under section 55 of the 1988 Act. Section 55 makes provision regarding the alteration of valuation lists and permits the Secretary of State to make regulations which include provision that, where there is a disagreement between a valuation officer and another person making a proposal for the alteration of a list about the validity of a proposal, then an appeal can be made to a valuation tribunal established under Schedule 11.

12. The relevant regulations are the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993. So far as is presently relevant the provisions of Regulation 4(4) and Regulation 5 (1)(d)(iii) and (1A) and of Regulation 7 should be noted:

- (1) Regulation 4 deals with the circumstances and periods in which proposals may be made and provides in Regulation 4(4):

“Where a relevant authority or interested person is of the opinion that by reason of-

- (a) a material change of circumstances in respect of which neither paragraph (1) nor paragraph (3) applies, or
- (b) a decision of a valuation tribunal, the Lands Tribunal, or a court determining an appeal or application for review from either such tribunal,

the rateable value or any other information shown in the list for any hereditament is wrong, that authority or person may, within the period of six months beginning on the day on which the change took place, or, as the case may be, the decision was given, make a proposal for [an appropriate alteration]”.

- (2) Regulation 5 deals with the manner of making proposals and the information to be included. Regulation 5(1)(d)(iii) provides that a proposal is to be made by notice in writing served on the valuation officer and shall state various matters including:

“(iii) if it is believed that, by reason of a decision in relation to another hereditament of a valuation tribunal..., the rateable value or any other information shown in the list is inaccurate, the information specified in paragraph (1A)”

And paragraph (1A) provides:

“The information required by paragraph (1)(d)(iii) is-

- (a) the identity of the hereditament to which the decision relates;
- (b) the name of the tribunal or court which made the decision;
- (c) the date of the decision
- (d) the reasons for believing that the decision is relevant to the rateable value or other information to which the proposal relates; and
- (e) the reasons for believing, in the light of the decision, that the rateable value or other information to which the proposal relates is inaccurate.”

(3) Regulation 7 is central to the present appeal and is set out in full below:

**“Proposals treated as invalid**

- (1) Where the valuation officer is of the opinion that a proposal has not been validly made, he may within four weeks of its service on him serve notice (an “invalidity notice”) on the proposer that he is of that opinion, and stating-
  - (a) his reasons for that opinion, and
  - (b) the effect of paragraphs (3) to (6).
- (2) The valuation officer may at any time withdraw an invalidity notice by serving notice in writing on the proposer; and on such withdrawal any appeal against the invalidity notice shall be treated as having been withdrawn.
- (3) Unless an invalidity notice has been withdrawn in accordance with paragraph (2), the proposer may, within four weeks of its service on him,
  - (a) subject to paragraph (4), make a further proposal in relation to the same property, notwithstanding the previous expiry of any period applicable under [Regulation 4B], or
  - (b) appeal against the notice to the relevant valuation tribunal.
- (4) No proposal may be made under paragraph (3)(a) where the proposal to which the invalidity notice relates was made under paragraph (3)(a) or made after the expiry of any period applicable under [Regulation 4B].
- (5) Where a proposal is made under paragraph (3)(a), the proposal in respect of which the invalidity notice was served shall be treated as having been withdrawn.
- (6) An appeal against an invalidity notice shall be initiated by serving notice of disagreement on the valuation officer.
- (7) Unless the valuation officer withdraws the invalidity notice within four weeks of the service of the notice under paragraph (6), on the expiry of that period he shall inform the clerk of the relevant valuation tribunal of-
  - (a) the entry in the list (if any) which it is proposed to alter,

- (b) the grounds on which the proposal was made, and
  - (c) the reasons for his opinion that the proposal has not been validly made.
- (8) Where information relating to an invalidity notice has been supplied in accordance with paragraph (7) and the notice is withdrawn, the valuation officer shall, as soon as practicable, inform the clerk of the relevant valuation tribunal of the withdrawal.
- (9) Until it is finally decided that the proposal to which an invalidity notice relates was validly made, regulations 8 to 12 shall not apply in relation to the proposal; and where it is finally decided as so mentioned, those regulations shall have effect as if the proposal had been served on the valuation officer on the date of that final decision.
- (10) For the purposes of paragraph (9), a final decision is made-
- (a) where the invalidity notice is withdrawn, on the day of the withdrawal;
  - (b) in any other case, on the day on which
    - (i) the valuation tribunal having determined the appeal, the period within which an appeal may be made to the Lands Tribunal under regulation 47 expires without such an appeal being made; or
    - (ii) the Lands Tribunal gives a decision on appeal under regulation 47.
- (11) Nothing done under this regulation shall be construed as preventing any party to an appeal under regulation 12 from contending for the purposes of that appeal that the proposal to which the appeal relates was not validly made.”

### **The Decision of NELVT dated 19 July 1999**

13. This was an appeal to NELVT by the London Borough of Waltham Forest acting through its agent Mr Stevens of GVA Grimley (i.e. the same Mr Stevens as is the witness in the present case). The appeal properties were two local authority car parks. There were two points in issue, the first (not relevant to the present case) concerned whether any allowance should be made for disrepair when determining the rateable value of the properties. The second issue (central to the present case) was summarised by NELVT in paragraph 3 as follows:

“The second dispute concerns the value of the Hall Lane Car Park when in repair, but with a decline in receipts due to a new branch of Sainsbury’s opening at Salisbury Hall. The income reduced from approximately £300 per car space to £200 per space and the expenditure remained constant at £170 per space. The Valuation Officer considers that a reduction to 2/3rds of the value is appropriate, but the ratepayer considers that as the profit element is removed a greater allowance is appropriate.”

14. The NELVT’s decision on this point was in the following terms:

“Turning to the second appeal for Hall Lane, the Tribunal noted the reduction in usage and the reasoning behind Mr Steven’s (sic) reduced rateable value, however, they considered the allowances following the reduction in usage to be excessive and that the resultant price of £20 per space was therefore too low. They then turned to Mr Humphries valuation of around £65 per space and considered such a price to more accurately reflect the reduction in usage. The Tribunal therefore confirmed a price of £65 per space, rateable value £16,185, with effect from the 26 April 1994”.

## **Oral Evidence**

15. The Appellant did not call any oral evidence before the Lands Tribunal.

16. The Respondents called Mr Stevens who gave evidence in accordance with his written report and who then gave further evidence in chief and was cross-examined.

17. Regulation 4(4) allows the making of a proposal “where a relevant authority or interested person is of the opinion that...”. The relevant proposals were made by Mr Stevens on behalf of Hart and Rushmoor, these local authorities being interested persons within Regulation 4(4). It was confirmed by both counsel that the parties to the present appeal agreed that Mr Stevens was the instructed Rating Valuer acting on behalf of both Hart and Rushmoor and that any opinion on the points in Regulation 4(4) which Mr Stevens formed could be treated as an opinion formed on behalf of Hart and Rushmoor. In effect it was accepted that Hart and Rushmoor had delegated to Mr Stevens the function of forming such opinion as might be appropriate for the purposes of Regulation 4(4). Mr Kolinsky expressly stated that the Appellant did not take any point that, as there was no resolution produced from either Hart or Rushmoor formally recording some delegation to Mr Stevens, an opinion in Mr Stevens’ mind could not be a relevant opinion for the purposes of 4(4). I accordingly approached the case on the basis that any opinion of Mr Stevens on the relevant point can be taken to be an opinion of the interested persons, namely Hart and Rushmoor.

18. Mr Stevens confirmed that he had also given evidence to HNVT at the 2004 hearing, dealing with invalidity, and at the 2006 hearing, which is the subject of the present appeal. He confirmed his extensive experience in rating valuation in general and in relation to car parks in particular and it is not necessary to set that out here. His evidence before me included the following matters:

(1) By the date that Mr Stevens lodged the present proposals, namely 24 January 2000, he had already advised Hart in relation to their car parks and had settled the rateable values thereof for the purpose of the 1995 list, so he had become familiar with these car parks. He had settled these rateable values in 1999. He had also advised Rushmoor regarding a 1996 proposal relating to a multi-storey car park which he had also settled in 1999.



(2) The 1990 rating list was based on 1988 values, at which time local authorities would provide car parks as a service to the inhabitants of the area even though it might not be commercially viable to do so. Thus in respect of a rural car park, which would not be commercially viable at all (i.e. it would not be worth installing pay and display machines) such a car park would for rating purposes nevertheless have a value to a local authority who would be prepared to run such a car park as a free car park. Also a local authority might be expected to outbid commercial operators for certain commercially viable car park sites (such as within town centres) in order to provide such car parks as a public benefit. This aspect of the willingness of local authorities to run car parks on a non-commercially viable basis was known by rating valuers as the local authority's overbid.

(3) As a result of this recognition of local authority's overbid the valuation of local authority car parks for rating purposes did not show any close correlation to the question of supply and demand and to the net profit (if any) capable of being generated on the site. Instead broad bands were adopted as a way of valuing car parks. For instance in Hart there were two different approaches per car park space, one for the town centre Fleet car park and another for the five rural car parks. In Rushmoor the two main town centre car parks in Aldershot and Farnborough were assessed at £180 per car park space, with one peripheral car park at £150 per car park space and two fringe car parks at a lesser rate. Thus although the concept of supply and demand, and potential net profitability, was a well known proposition for the rating of commercial car parks (Mr Stevens had extensive experience acting for NCP) there existed only crude banding rather than a more sophisticated supply and demand analysis for local authority car parks.

(4) There had been a valuation tribunal decision on 25 February 1992 in respect of eight car parks occupied by Hart. In the decision the tribunal stated:

“Sufficient regard has been shown throughout to the localities and the need for car parking”.

It was suggested to Mr Stevens that this showed an existing recognition of the relevance of supply and demand as at 1992 even when dealing with local authority car parks. Mr Stevens did not accept this. He stated that the approach then applied to local authority car parks did not take into consideration the finer detail of supply and demand but was instead a very crude and unsophisticated banding approach which had very limited regard to supply and demand.

(5) Mr Stevens stated that when the 1995 valuation list was published the same values for the relevant car parks were shown as were shown in the 1990 list. Mr Stevens' firm put in blanket appeals in relation to the 1995 list. Mr Stevens negotiated and agreed rateable values for the 1995 list in 1999. Mr Stevens was unsure as to exactly what date in 1999 this occurred. He thinks, but was not sure, that he reached these agreements after the decision on 19 July 1999 of NELVT.

(6) Mr Stevens stated that he was suspicious that the 1990 rateable values shown for the Hart and Rushmoor car parks might be wrong, in particular because the same values were shown for them in the 1990 list as were shown in the 1995 list, and his firm was seeking to negotiate downwards (as eventually was successfully done) the 1995 values. He would have expected the 1990 values to be lower rather than higher than the 1995 values. However as already stated Mr Stevens thinks that the success on negotiating downwards the 1995 values did not occur until after the NELVT decision (and in my judgment it does not affect the outcome of this case even if such negotiations were shortly before rather than shortly after the NELVT decision). Also Mr Stevens stated that the fact that appeals had been put in against the 1995 values did not indicate a detailed and considered view that these figures were demonstrably too high – instead his firm put in blanket appeals in order to preserve the situation because there was only a limited possible time for appealing the 1995 list.

(7) Mr Stevens explained that there was however a difficulty in forming a definite opinion to the effect that the 1990 values for the Hart and Rushmoor car parks were wrong. This was because by 1999 the 1990 list had been in place for about nine years and any proposal to alter the list would have to overcome an argument based on the tone of the list. He explained that at the outset of a valuation list close attention would be paid so far as concerns rateable values to rental values at the relevant date (two years before the beginning of the rating list), but that once the list had been in place for some time and matters had settled down (including the making of variations on appeal to the list) then there would have arisen a “tone” of the list as to values. Thereafter compelling reasons would be needed to justify an alteration to a rateable value which took that rateable value outside the apparent tone of the list. The neighbouring local authorities to Hart and Rushmoor had settled the 1990 car park rateable values on the pre-existing basis of broad bands of value per car parking space, rather than by paying any detailed attention to supply and demand for that particular car park. Accordingly there was a well established tone of the list regarding local authority car parks before the NELVT decision in July 1999.

(8) Mr Stevens personally acted for the proposer (the local authority) in the NELVT case. He accepted that he held the belief that the points he was making in that case (to the effect that supply and demand and income levels were relevant to the rating of local authority car parks for the purposes of the 1990 list) was a valid point but he considered it an untested point. Mr Stevens accepted that it was common ground between himself and the valuation officer in that case that there should be some reduction to the rateable value of the relevant Waltham Forest car park to reflect the loss of income by reason of the opening of the Sainsbury’s car park. He accepted that there was no issue in principle between him and the valuation officer on that case and that it was a question of the quantum of the reduction – thus the valuation officer there did not seek to argue that as this was a local authority car park there should be no reduction. However he considered it was new for the rateable value of a local authority car park to be assessed by reference to close correlation with income from that car park. He accepted that the NELVT did not put any commentary in its decision to suggest that it was in some way making a novel or groundbreaking decision.

(9) However Mr Stevens stated that his partial success in the NELVT case made him realise that a greater correlation could be justified between income and revenues on the one hand and rateable values on the other hand in respect of the 1990 rating list. More regard had been paid to supply and demand and income when rating local authority car parks in the 1995 rating list, but that list was by reference to later values, by which time the general philosophy of local authorities regarding the provision of car parks had begun to change. As regards the finding by HNVT in the decision under appeal that Mr Stevens had a “Eureka” moment, he stated that this is not the sort of expression which he would use. However, as recorded above, he stated that the NELVT decision did make him realise that for the 1990 rating list for local authority car parks a greater correlation was justifiable between income and revenue on the one hand and rateable values on the other than had previously been established.

### **Appellant’s submissions: Issue 1**

19. The first question was whether it was open to the Appellant to take the point, on the appeal under Regulation 12 to the HNVT dealing with values, that the proposals were invalid even though the Appellant had argued that point before HNVT in 2004 and had lost and had not appealed. On this point Mr Kolinsky advanced the following arguments:

(1) He accepted that the arguments on invalidity which the Appellant had advanced before HNVT in 2006 and the arguments the Appellant sought to raise on invalidity before the Lands Tribunal in the present appeal were exactly the same arguments based on exactly the same facts as had been before HNVT in 2004 which had led to the unappealed decision by HNVT that the proposals were valid.

(2) Mr Kolinsky agreed the history of the matter which led to the making of the provision now found in Regulation 7 being the history as described by Mr Lewsley in his skeleton argument at paragraph 4.2 and following. Thus he accepted that it had been made clear in the Court of Appeal decision in *Oswestry Corporation v Hudd (Valuation Officer)* [1996] RA 5 that there was no right to make an appeal at an interim stage to a local valuation court such that it was not open to such a court to make a decision on proposal validity at an interim stage (which, if the proposal was held invalid, could avoid the necessity for lengthy valuation evidence to be presented).

(3) Mr Kolinsky submitted that Regulation 7(11) is crucial to the present appeal and expressly covers the point and is determinative of the appeal. He contended that the appropriate starting point is from the provisions of the statutory instrument, this being a statutory jurisdiction under a detailed statutory scheme. The decision should depend upon the wording of the relevant statutory instrument and not upon principles of issue estoppel. The Regulations should be read and given effect to and should be given their wide construction and should not be cut down by any concepts of issue estoppel.

(4) Mr Kolinsky drew attention to the opening words of paragraph (11) namely “Nothing done under this regulation...”. He submitted that a decision by the valuation

tribunal on an invalidity appeal under Regulation 7 was something done under Regulation 7. The words “done under this regulation” should not be limited to a reference merely to procedural steps taken under Regulation 7 – they were wide enough to include judicial decisions both of the valuation tribunal and the Lands Tribunal.

(5) Mr Kolinsky accepted that his argument meant that a Valuation Officer could indeed argue exactly the same point on the same facts, which (if the question of validity turned on the need for evidence) could involve the same witnesses having to give evidence on the same points twice, once before a valuation tribunal at the Regulation 7 appeal stage and once at the substantive Regulation 12 stage.

(6) When asked whether a witness might in fact have to give evidence four times on the same point, namely at a valuation tribunal and then at the appeal before the Lands Tribunal (on an appeal by way of re-hearing) at the Regulation 7 invalidity notice stage and then separately (supposing the valuation officer had lost and renewed the invalidity challenge) at the valuation tribunal at the Regulation 12 hearing on the substantive appeal and at the Lands Tribunal appeal (by way of re-hearing) from this later valuation tribunal decision, Mr Kolinsky answered that the doctrine of precedent would apply so as to prevent this. Thus although there would be no issue with estoppel, the earlier decision of the Lands Tribunal at the invalidity challenge stage would bind the valuation tribunal and the Lands Tribunal at the Regulation 12 appeal stage.

(7) Mr Kolinsky argued that Regulation 7 acts as a preliminary filter. The valuation officer can serve and persist in an invalidity notice and if he wins on invalidity (and there is no appeal) then that is the end of the matter. If he loses on invalidity then he can choose whether to take the matter further by way of appeal at that stage or can defer matters to the full Regulation 12 appeal, when it may turn out that the matter can be disposed of satisfactorily on the valuation evidence such that, even though the invalidity point was re-taken at the Regulation 12 appeal, it was not necessary to pursue it further.

(8) Mr Kolinsky pointed out that under Regulation 7(10) a final decision could be made, inter alia, by a withdrawal of the invalidity notice by the valuation officer. He pointed out that the service and withdrawal of an invalidity notice by a valuation officer was plainly something “done under this regulation” which was not to prevent the subsequent taking of an invalidity point. He therefore submitted that the expression “finally decided” in Regulation 7(9) and “final decision” in Regulation 7(10) did not assist the Respondents. These were merely expressions used for the purpose of the timetabling provisions in Regulation 7(9).

(9) As regards the observations of the President, Mr George Bartlett QC, in *Mainstream Ventures Limited v Woolway (Valuation Officer)* [2000] RA 395 Mr Kolinsky pointed out that the matters stated in paragraph 11 were merely given as an example. There the learned President stated:

“Paragraph (11) would, for instance, enable a valuation officer who had withdrawn an invalidity notice and who later acquired new information to suggest that the notice was invalid to argue the invalidity point in the valuation tribunal. I can see no reason why a valuation officer who had not served an invalidity notice because he had no reason to suppose that the proposal was invalid should not later argue invalidity on the reg 12 appeal if, by the time of the hearing, he had acquired information suggesting that the proposal was invalid”.

Mr Kolinsky argued that this was not part of the decision and should not be read as some authoritative recognition of the limitations on Regulation 7(11). He argued that there were no words in Regulation 7(11) qualifying the wide freedom given by that provision to raise invalidity – thus there was no wording restricting the valuation officer to raising invalidity on the basis of new facts.

(10) Mr Kolinsky drew attention to the good sense and correctness of his interpretation as demonstrated by how the matter had actually proceeded in the present case. Thus the Appellant had raised the validity point and had lost in 2004. He had raised it again before the same tribunal in 2006, but that tribunal had simply followed the earlier decision. This was a perfectly workable and sensible approach and it left it now for the Lands Tribunal to re-examine the question of validity at the present appeal by way of re-hearing.

### **Respondent’s submissions on Issue 1**

20. On the first issue Mr Lewsley stressed that the Appellant was seeking to raise exactly the same arguments on exactly the same facts as he had lost on (and not appealed) before HNVT in 2004. He advanced the following arguments:

(1) Regulation 7 should be read consistently with issue estoppel principles. He submitted that the clearest words would be needed to oust issue estoppel. It would be contrary to the public interest and the interests of the parties to allow for exactly the same point to be re-litigated on the same facts, especially if that involved the same evidence having to be called twice. There would be the risk of conflicting decisions.

(2) As regards the wording of paragraph (11) and in particular the words “Nothing done under this regulation...” Mr Lewsley submitted that this wording did not include the making of a judicial decision by a valuation tribunal (or the Lands Tribunal) after a fully argued hearing. He submitted that the expression “Nothing done” referred to things done by the parties by way of procedural steps rather than the taking of a judicial decision.

(3) He pointed out that the purpose of Regulation 7 was to enable a short point regarding validity to be taken, if thought appropriate, so as to avoid (if the point was

successful) days of valuation evidence. It was not compulsory for a valuation officer who considered a proposal to be invalid to raise and persist in an invalidity notice, but if the valuation officer does so then he is bound by the judicial decision on the invalidity point (unless he successfully appeals it).

(4) Mr Lewsley accepted that the purpose of Regulation 7(11) is to enable a valuation officer to raise invalidity again if new facts or principles emerge after the Regulation 7 appeal is determined, and paragraph (11) also helps to ensure that any parties to the Regulation 12 appeal who have not had the opportunity of dealing with invalidity issues under Regulation 7 (because they were not parties to that appeal) may raise the question of invalidity at the Regulation 12 appeal stage.

(5) Mr Lewsley also drew attention to the wording of Regulation 7(9) and (10) and submitted that this showed that a decision of the valuation tribunal or the Lands Tribunal was to be taken as a final decision.

### **Decision on Issue 1**

21. While I accept the point made by Mr Kolinsky, as recorded in paragraph 19(8) above to the effect that the expressions “finally decided” and “final decision” do not lend any extra weight to Mr Lewsley’s submissions, I am unable to accept Mr Kolinsky’s submissions as to the effect of Regulation 7(11). For the reasons set out below, which are substantially those advanced in argument by Mr Lewsley, I conclude that it is not open to the Appellant to re-argue before HNVT (and now on appeal before the Lands Tribunal) a point which is precisely the same as that on which the Appellant lost before HNVT in 2004, this decision being unappealed by the Appellant.

22. I accept that clear words would be needed to displace the well recognised principle of law that, where one litigant has litigated a point once against another litigant and has lost and has not appealed, that litigant should not be entitled to re-litigate the self same point on the same facts again against that other litigant. *Halsbury’s Laws of England* 4<sup>th</sup> Ed. Vol 16(2) (Reissue) at paragraph 980 states:

**“980. Issue estoppel; in general.** Issue estoppel means that a party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second claims or actions are different, the finding on a matter which came directly in issue in the first claim or action, provided it is embodied in a judicial decision that is final, is conclusive in a second claim or action between the same parties and their privies. Issue estoppel will only arise where it is the same issue which a party is seeking to relitigate. This principle applies whether the point involved in the earlier decision, and as to which the parties are estopped, is one of fact or one of law, or one of mixed fact and law.

There may, however, be an exception to issue estoppel in the special circumstances where there becomes available to a party further material relevant to the

correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, and such further material could not by reasonable diligence have been adduced in those proceedings and relates to facts or a change in the law.”

23. In my judgment Issue 1 turns on whether the judicial decision of NHVT in 2004, to the effect that the proposals made by the Respondents were valid, constituted something “done under this regulation” within the meaning of Regulation 7(11). I conclude that HNVT’s decision did not fall within these words. I consider the language inept to cover a judicial decision. HNVT’s decision of 2004 (finding the proposals valid) is more properly described as a judicial decision reached under the powers conferred by Section 136 and Schedule 11 of the 1988 Act and the relevant statutory instruments made under that Act, rather than as something “done under” Regulation 7. The expression “done under this regulation” is in my view a reference to the taking of one or other of the procedural steps mentioned in that regulation, including for instance the service of an invalidity notice or the service of a notice of disagreement or the withdrawal of an invalidity notice. A valuation officer has the option of whether to press the invalidity argument to appeal at this stage or to withdraw an invalidity notice and reserve the point for the Regulation 12 appeal – the valuation officer can do the latter even though he was originally minded to do the former and took steps to that end under Regulation 7. However if the valuation officer presses the invalidity point to an appeal to the valuation tribunal and receives a judicial decision then I consider the valuation officer is bound by that decision (subject to normal rights of appeal). There has been no appeal to the Lands Tribunal against the 2004 decision of HNVT. I notice that, far from seeking to appeal that decision, the Appellant wrote to Mr Stevens on 23 April 2004 as recorded in paragraph 5 above.

24. I emphasise that in the present case it is accepted that the Appellant is seeking to raise precisely the same argument on precisely the same facts as he raised (and lost on) before HNVT in 2004. It is not necessary to consider the extent to which, having lost on an appeal to the valuation tribunal or Lands Tribunal on invalidity, a valuation officer can rely on changed circumstances or new facts and can re-argue the point under Regulation 12, see the discussion regarding the possible exception to issue estoppel in special circumstances in the closing paragraph of *Halsbury* paragraph 980 referred to above.

25. Mr Kolinsky accepted that if his argument was correct then a valuation officer could argue the same point on the same facts twice before a valuation tribunal, even where that involved the recalling of the same witnesses to give evidence. While Mr Kolinsky did not also accept the following point, in my judgment the consequence would equally apply in circumstances where the first valuation tribunal decision had proceeded by appeal to a Lands Tribunal decision and where a valuation officer then, at the Regulation 12 substantive appeal, sought to raise again the invalidity point before the valuation tribunal and also before the Lands Tribunal. I can see no logical distinction between a decision on invalidity by a valuation tribunal and a decision on validity by the Lands Tribunal on appeal from the valuation tribunal so far as concerns the question of whether such decisions constitute something “done under” Regulation 7(11). If Mr Kolinsky is correct that a decision by a valuation tribunal on invalidity on a Regulation 7 appeal constitutes something “done under” Regulation 7, then so does a Lands Tribunal decision. If this is so, then a point having been litigated twice (each time

perhaps on evidence), once before the valuation tribunal and once (on appeal) before the Lands Tribunal on invalidity, this invalidity point could then again be raised twice (once before the valuation tribunal and once before the Lands Tribunal) at the substantive Regulation 12 appeal, with the consequence that the same points would be argued and the same witnesses might have to give evidence four times. I do not accept that Mr Kolinsky can escape this problem by arguing that a valuation officer, while not bound by the principles of issue estoppel at the Regulation 12 stage, would be bound by precedent, such that the earlier decision of the Lands Tribunal would be binding on the invalidity point. This is because if Regulation 7(11) applies at all in respect of judicial decisions, then at the Regulation 12 stage the earlier valuation tribunal decision and Lands Tribunal decision would each (on his argument) be something “done under” Regulation 7, with the result that Regulation 7(11) would operate and would require that these earlier decisions did not prevent the valuation officer from taking the point again under Regulation 12. In other words the earlier decisions must not be construed as preventing (on the basis of the principles of precedent) the re-taking of the point by the valuation officer in just the same way as the earlier decisions must not be construed as preventing (on the basis of issue estoppel) the re-taking of the point. I do not understand how, if Regulation 7(11) disables the principles of issue estoppel from precluding the re-taking of the point, the principles of precedent can step in and do what issue estoppel would have done if it had not been excluded.

26. I therefore find in favour of the Respondents on Issue 1. This finding is of itself sufficient to decide the case. However bearing in mind that Issue 2 was fully argued, and evidence was called upon it, it is necessary I also give my findings on that matter.

### **Appellant’s submissions on Issue 2**

27. My Kolinsky drew attention to the requirement that the interested person (here Hart and Rushmoor acting through Mr Stevens) must be of the opinion that “by reason of” a decision of a valuation tribunal the rateable value for the relevant hereditament is wrong. In relation to this he advanced the following four propositions:

- (1) There must an opinion as to a causal link between the decision of the other valuation tribunal and the incorrectness of the current entry in the rating list.
- (2) This opinion must be a genuinely held opinion.
- (3) This opinion must be a rational opinion – it must not be an unreasonable opinion.
- (4) It is not open to a proposer simply to find a convenient recent decision of a valuation tribunal and to use this as a peg to hang a late proposal to alter the valuation list under Regulation 4(4).



28. In support of the foregoing Mr Kolinsky referred to the decision of His Honour Judge Marder QC, President, in *Canning (Valuation Officer) v Corby Power Limited* [1997] RA 60 and to the citation therein from the judgment of Lord Lowry in *R v Inland Revenue Commissioners ex parte Coombs* [1991] 2 AC 283 (Lord Lowry in turn citing and approving a passage from the judgment of Schiemann J in the court of first instance. Mr Kowlinsky also referred to *Thomas's London Day School v Jorgensen (Valuation Officer)* [2005] RA 222.

29. Mr Kolinsky accepts that the decision referred to in Regulation 4(4)(b) (i.e. the decision which gives rise to the relevant opinion) does not need to be a decision establishing any new principle of law or valuation approach. He accepted the example given by Mr Lewsley that a new decision could be relevant (and capable of triggering the necessary opinion) if it was by way of a new comparable, e.g. a new entry in the valuation list for a similar neighbouring property. However Mr Kolinsky drew attention to the fact that in the present case the 1999 decision of NELVT was in respect of a multi-storey car park in a different area, there being no question that this could be used as a comparable on the facts. He submitted the decision could therefore not be said to have any bearing on the specific market conditions in the locality of the present appeal sites.

30. Mr Kolinsky further submitted that the 1999 NELVT decision did not proceed on the basis that some new point of principle or of valuation approach was being established, but that instead the valuation tribunal was there merely choosing between the amount of the reduction in rateable value to be applied (it being agreed as a matter of principle between the valuers that there should be a reduction to reflect the effect of the opening of the nearby Sainsbury's car park).

31. Mr Kolinsky referred to the language used on the proposal forms by Mr Stevens (see paragraph 2 above). He did not seek to argue that the wording was in some way defective as failing to satisfy the provisions of Regulation 5(1A). However he submitted that the rationality of the alleged opinion must be judged by reference to the text of the proposal, and he pointed out that this text implies that prior to NELVT's decision the question of supply and demand was not thought to be relevant (Mr Stevens accepted that nothing of relevance was added by the words "occupational costs" in the relevant passage on the proposal form).

32. However Mr Kolinsky submitted that the question of supply and demand were recognised as being relevant in relation to the rateable values of local authorities' car parks as evidenced by the 1992 decision of the valuation tribunal (see paragraph 18(4) above).

33. Mr Kolinsky asked me to infer that Mr Stevens had already formed the relevant opinion before the NELVT decision. He submitted that this NELVT decision could not realistically or reasonably have led to the formation of a belief in an experienced rating practitioner that the entries in the 1990 list at issue in these proceedings were incorrect. He submitted that the confirmation in this 1999 decision that questions of supply and demand were relevant to the valuation of car parks could not reasonably have been a revelation which rendered incorrect the 1990 list entries at issue. He submitted that an assessment of supply and demand is an obvious part of the process of arriving at a value for a car park and he also repeated his submissions in

relation to the 1992 decision which he said expressly indicated that considerations of supply and demand informed that valuation tribunal's decision as to the appropriate value of car parks.

## **Respondent's submissions on Issue 2**

34. Mr Lewsley accepts that there needs to be a causal connection between Mr Stevens' opinion that the rateable values as shown in the 1990 list for the relevant car parks was wrong and the NELVT decision of July 1999. However as regards the two cases establishing that point, namely the *Canning* case and the *Thomas's* case he argued that it was wholly clear on the facts of those cases that the opinion could not have arisen by reason of the valuation tribunal decision relied on. Thus in the former case it was suggested that a valuation tribunal decision dealing with a shop in Newport could give rise to a relevant opinion under Regulation 4(4) in respect of an electricity generating station, the circumstances being that the person claiming to have this opinion had not even read the valuation tribunal's decision regarding the shop. In the latter case there were various reasons why the valuation tribunal decision could not have given rise to the claimed opinion including the fact that the solicitor for the ratepayer had frankly described the valuation tribunal decision as a peg on which to hang the ratepayer's proposal.

35. Mr Lewsley accepted that it would not be sufficient if the decision of the valuation tribunal relied on under Regulation 4(4)(b) was merely yet another example of a well established point in circumstances where Mr Stevens was already well aware of the well established point and had already formed an opinion, prior to the valuation tribunal's decision, that the relevant rateable values were wrong. There must be, as he accepted, a causal connection.

36. Mr Lewsley submitted that in order to have the relevant opinion under Regulation 4(4) a rating surveyor needs evidence. It is one thing to have a suspicion that a value is wrong, it is another to form an opinion that, despite the tone of the list, a rateable value is wrong. Mr Lewsley pointed out that this was not merely a theoretical point, but that in fact when the matter came before HNVT on the Regulation 12 appeal (i.e. for the hearing which is presently appealed before the Lands Tribunal) and when the valuation evidence was deployed the Appellant did indeed put at the forefront of his submissions an argument based upon the tone of the list.

37. Mr Lewsley drew attention to the evidence given before the Lands Tribunal by Mr Stevens, especially as summarised in paragraph 18(9) above. He submitted the evidence was honest and demonstrated the forming of a rational opinion as a result of the NELVT decision. Mr Lewsley drew attention to the fact that the Appellant had chosen to call no evidence before the Lands Tribunal and there was thus nothing to contradict Mr Stevens' evidence.

## **Decision on Issue 2**

38. I accept Mr Lewsley's arguments on Issue 2.

39. Mr Stevens gave evidence. He was obviously an honest and careful witness. I accept his evidence.

40. There was no evidence from the Appellant to demonstrate that the point which Mr Stevens said he extracted from the NELVT decision was already a well-known and well-established point, such that the decision could not have affected the mind of an experienced rating surveyor and could not have caused such a surveyor to conclude that the rateable values as shown in the 1990 list for the Hart and Rushmoor car parks were wrong.

41. I accept Mr Stevens' evidence that the basis on which car parks were provided in 1988 (the relevant valuation date for the 1990 list) by local authorities and the existence of the concept of a local authority overbid resulted in an unsophisticated recognition of supply and demand when the rateable values of local authority car parks were being decided. Thus car parks were placed in crude bands of value, e.g. a town centre band, a periphery band and a rural band, without any detailed correlation to supply and demand (and hence potential income). This basis of valuation, by the use of crude bands, had become established into the tone of the 1990 list. Mr Stevens could only responsibly form the opinion that the values shown in the 1990 list for the Hart and Rushmoor car parks were wrong if he had a valid basis for contending (rather than merely grounds for suspecting) that these values should be set at figures which did not follow the tone of the list.

42. I reject the argument that I should infer that Mr Stevens must have already (i.e. prior to the NELVT decision of July 1999) had the opinion which he claims to have reached in the light of that decision. I believe Mr Stevens when he tells me that he reached his opinion that the relevant values were wrong by reason of this decision. I see a distinction between (a) his considering that the argument he sought to advance in the NELVT case was correct and his finding that the valuation officer did not reject as a matter of principle his argument that supply and demand should affect rateable values for the 1990 list for local authority car parks and (b) his actually obtaining a decision from a valuation tribunal recording and approving this point.

43. While I reach my foregoing conclusions on the basis of the evidence and arguments before me and without reliance on the point next mentioned, I note that HNVT has twice heard evidence from Mr Stevens and has concluded that Mr Stevens could successfully bring his case within Regulation 4(4) and I note that in the later decision HNVT, far from expressing a view that the NELVT decision decided nothing new and would have been of no significance to an experienced rating valuer, instead stated:

“Furthermore the Tribunal concluded that Mr Stevens would undoubtedly have had a Eureka Moment when he received the decision from London (North East) Valuation Tribunal and realised that this could be relevant to all his other car park owning clients”.

## **Disposal**

44. For the reasons set out above I reject the Appellant's argument on both Issue 1 and Issue 2. The Appellant's appeal is dismissed. The consequence is as set out in the statement of agreed facts and issues (see paragraph 10 above).

45. The foregoing concludes my determination of the substantive issues in this case. It will take effect as a decision when the question of costs is decided and at that point, but not before, the provisions relating to the Rights of Appeal in Section 3(4) of the Lands Tribunal Act 1949 and in the Civil Procedure Rules will come into operation. At the hearing the parties indicated they wished to make submissions on costs once my decision on the principal issues had been given. Any such submissions on costs should be made in writing no later than Friday 16 May 2008.

Dated 30 April 2008

His Honour Judge Huskinson