RA/62/2006

LANDS TRIBUNAL ACT 1949

RATING – hereditament – computer centre – whether entry to be deleted from list on ground that incapable of beneficial use – held that it should not be – whether open to appellant on basis of proposal for deletion to contend that RV and descriprion should be altered – held it was not – Local Government Finance Act 1988 Sch 6 para 2; Non-Domestic Rating (Material Day for List Alterations) Regulations 1993 reg 3; Rating (Valuation) Act 1999 s 1; Valuation for Rating (Plant and Machinery) (England) Regulations 2000 reg 2; Non-Domestic Rating (Alterations and Appeals) Regulations 1993, regs 4A, 5A

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE WILTSHIRE VALUATION TRIBUNAL

BETWEEN **LEDA PROPERTIES LIMITED** **Appellants**

and

DAVID KELVIN HOWELLS **Respondent**
(Valuation Officer)

Re: Computer Centre and Premises
Bureau West Centre
Horton Road,
Devizes
Wiltshire SN10 2JG

Before: The President

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 10-13 October 2008

Melanie McIntosh instructed by Messrs Wilks Head & Eve LLP by direct professional access for the appellant
Daniel Kolinsky instructed by Solicitor to HM Revenue & Customs for the respondent

The following cases are referred to in this decision:

Leda Properties Ltd v Kennet District Council [2003] RA 69
Galgate Cricket Club v Doyle (VO) [2001] RA 21

The following further cases were cited in argument:

Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee [1937] 2 KB 445
Sheil (VO) v Borg-Warner Ltd [1985] RA 36
Edmondson (VO) v Teesside Textiles Ltd [1983] RA 289
Fir Mill Ltd v Royton UDC and Jones (VO) (1960) 7 RRC 171
Courtney plc v Murphy (VO) [1998] RA 77
Davey (VO) v O'Kelly [1999] RA 245
O'Brien v Harding (VO) [2008] RA 73

DECISION

Introduction

1. This is an appeal by the ratepayer against a decision of the Wiltshire Valuation Tribunal dated 7 June 2006 dismissing appeals by the ratepayer that arose from three proposals that had been made on its behalf on 9 September 2002. The proposals related to premises owned by the appellant which were entered in the 2000 rating list as "Computer Centre and Premises" at Bureau West Centre, Devizes, Wiltshire, originally at £210,000 but in due course, following a proposal made before those of 9 September 2002, at £200,000. As pursued before me, the appeal is confined to one of the three proposals. The appellant contends that the hereditament should be deleted from the list with effect from 28 September 2000 on the ground that at that date it had become incapable of beneficial use; or alternatively that its value should be reduced to £90,000 RV as industrial premises. The valuation officer deleted the entry with effect from 19 August 2002 after works of demolition had rendered it incapable of occupation. The determination of the matters in issue will thus impact on the rates payable between 29 September 2000 and 19 August 2002, during which period the buildings were unoccupied. It is to be noted, although nothing in the present appeal turns on this, that on 2 July 2002, sitting as a Deputy Judge in the Administrative Court in *Leda Properties Ltd v Kennet District Council* [2003] RA 69, I held that hereditament was not exempt from unoccupied rates as a qualifying industrial hereditament.

Facts and matters agreed

2. There is an agreed statement of facts, and on the basis of this the following facts can be stated (using the present tense to describe things as they were physically at the date of the proposal). The appeal property, referred to as "Bureau West" is situated approximately 2 miles north-east of the centre of Devizes, which lies 18 miles to the south of Swindon and the M4 motorway. It comprises a complex of three principal buildings forming a purpose-built computer centre/data processing facility on a site of 14 acres that is enclosed by a security fence. There is car parking for about 142 cars inside the security fence and there are an additional 16 spaces outside. The property was purpose built for the Ministry of Defence in 1973/4 and was first occupied in 1975. Some works of demolition were carried out in 2002.

3. The three principal buildings are a large data processing hall with ancillary office and tape storage rooms; a two-storey heated office block; and a block containing extensive plant rooms that house air conditioning, refrigeration and power supply plant. The main computer hall block is mainly of block and brick construction with specialist profiled metal cladding. The total height is 8 metres. The main computer hall, tapes store, communications room and job control room have raised floors. They have a total floor area of 2576 sq m. The main computer hall has a sophisticated air-handling system to provide the temperature and humidity control necessary for process purposes. Five large air-handling plant "fan chambers" deliver conditioned air to the main computer hall and ancillary tape-storage and job control rooms via high-level distribution ductwork within the false ceiling void and through the perforated ceiling system. Return air to the plant room is through a one-metre deep floor void plenum and return

air grilles within the floor tiles, with the air being re-conditioned and re-circulated back to the computer hall. A high density smoke detection system exists throughout.

4. The adjoining plant room block is of similar construction to the computer hall block, but it is unheated. The accommodation comprises an air-handling plant room adjoining the main computer hall, refrigeration equipment room, uninterrupted power supply plant room, electricity supply switch rooms, standby generator room and boiler house. There is also an integral fuel storage room with external only access. A stand-alone back-up tape store of a more substantial concrete and block construction is located at the side of the computer hall block, with a link corridor access way to the main block. There is also a stand-alone stationery store of steel-framed construction with profiled metal cladding. The total floor area of this accommodation is 2213 sq m.

5. The office block is on two floors. It has concrete sectional panel elevations. It is partitioned internally to provide cellular offices, all of which have good natural light from the main elevations. There are two inner courtyards. There is a hot water radiator heating system, raised floors and suspended ceilings. The total floor area, including loading bay and stores, is 1522 sq m.

6. The Ministry of Defence occupied Bureau West from 1975 to 1993. It acted as a data processing centre for a multitude of operations undertaken by the MOD nationally until, in 1993, these were privatised. The property was initially leased to Hoskyn PLC under a lease for 7 years from 1 October 1993 at an initial rent of £200,000. The lease was later assigned to a firm called Capgemini.

7. Under the lease the tenant was responsible for bearing the costs of all internal and external repairs, property insurance and non-domestic and water rates. There was an upward only rent review clause, under which at the end of the fifth year of the term, 1 October 1998, the rent was to be determined at open market value on the assumption that the use of the premises was restricted to "computer centre for information technology and ancillary services". The lease also contained a break clause which gave the lessee the option of terminating the lease after 3 or 5 years, ie on 10 October 1996 and 1 October 1998. The 1998 reviewed rent, as determined by an independent expert, was £239,745 per annum.

8. Leda Properties Ltd, the appellants, purchased the property on 1 March 1999 subject to the lease and occupation of Capgemini, who remained responsible for the property until the expiration of the lease. On 20 February 1998 Capgemini commenced occupation of a more modern computer centre at Aztec West, Almondsbury, Bristol. They continued to use the appeal property as a data processing centre until 31 January 2000, when all their functions were transferred to Bristol. Their personnel remained in occupation until the expiration of the lease on 30 September 2000 for the purpose of phasing down operations and the removal of non-rateable items.

9. Capgemini gave notice that they did not wish to renew the lease after 30 September 2000, and the property was then marketed as available to let by the agents Kemp and Kemp of Oxford. At various times throughout the period 2000 to 2002 expressions of interest were received for the whole or part of the property from several potential occupiers. Detailed negotiations were undertaken between the letting agents and a company then known as Interwork Services (now Interwork Solutions Ltd) throughout the summer of 2001 for a staged letting of the whole property commencing in autumn 2001. Interwork were initially to occupy the office block to train staff, with occupation of the main data processing elements delayed for one year pending works to the refrigerant and cooling systems. Interwork specialise in the provision of project management and disaster recovery/business continuity in the field of information systems and services.

10. The appeal property was a "first generation" computer/data processing centre. Nationally there were several examples of purpose-built and converted-building computer centres of similar age to, or older than, the appeal property that were still in operation at the material day (29 September 2000). Fifteen such properties were identified in a schedule, of which three appeared to be conversions of pre-1950 properties. There was continued demand for and use of these properties on the material day and thereafter. They were not obsolete due to their age and design.

11. It is agreed that certain elements of the demised property, in particular items of plant not made rateable under the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, do not form part of the rateable hereditament. Mainframe computers are not listed in the Regulations and are to be disregarded for assessment purposes. It is also agreed that the air handling and cooling plant and machinery provided an automatic and space temperature and humidity controlled environment for the benefit of the mainframe computers are not rateable. The physical presence of these items of plant is to be disregarded, as also is the cost of any remedial works to them.

The issues

12. The case for the ratepayer is that at the relevant date the hereditament was obsolete as a computer centre, was incapable of reasonably beneficial use for that purpose, and should be deleted from the list. Because of its obsoleteness there was no demand for it, and in any event the cost of fitting it for occupation was prohibitive. Alternatively, it is said, the hereditament should be assessed as a store at a rateable value of £90,000. The valuation officer denies that the hereditament was obsolete or incapable of beneficial occupation. He says that there was a demand. In relation to its physical state, he says that the presence or absence of rateable plant or machinery is to be left out of account and that any repairs that were necessary would not have been uneconomic to undertake in the context of the value of the hereditament. He contends that it is not open to the ratepayer, on the basis of the proposal that has resulted in this appeal, to contend for a lower rateable value.

Scope of the proposal

13. The first issue that arises is on the scope of the proposal that has led to this appeal. As I have said, the appellant seeks the deletion of the hereditament from the list or alternatively a reduction in its rateable value. The VO says that it is not open to the appellant to contend for a lower rateable value and that the valuation tribunal did not have power (nor does this Tribunal have power) to direct that a lower value be inserted. The VT accepted this contention.

14. Proposals relating to the 2000 rating lists are the subject of provisions contained in the Non-Domestic Rating (Alterations and Appeals) Regulations 1993 as amended. Regulation 4A, so far as material, provides:

> "(1) The grounds for making a proposal to alter a list are as follows –
>
> ...
>
> (b) the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was completed;...
>
> (g) a hereditament shown in the list ought not to be shown in the list;...
>
> (m) the description shown in the list for a hereditament is wrong;…
>
> (2) ...an interested person may make a proposal where he has reason to believe that any of the grounds set out in paragraph (1) exists."

15. Under regulation 5A(1) a proposal to alter a list must be made by notice in writing served on the valuation officer, and it must –

> "(c) identify the respects in which it is proposed that the list be altered; and
>
> (d) include –
>
> (i) a statement of the grounds for making the proposal and, in the case of a proposal made on any of the grounds set out in paragraphs (1)(a) or (f) to (k) of regulation 4A, a statement of the reasons for believing that those grounds exist;
>
> (ii) in the case of a proposal made on the grounds set out in regulation 4A(1)(b), a statement of the nature of the change in question and of the date on which the proposer believes the change occurred."

16. The duty of the VO is to give effect to the proposal if he considers it to be well-founded or otherwise to refer the matter to the valuation tribunal as an appeal: regulations 9 and 12. The power of the VT is to decide the appeal and, after doing so, to require the VO, in consequence of the decision, to alter the list in accordance with any provision made by or under the Act: regulation 44(1). An order under regulation 44 may require any matter ancillary

to its subject matter to be attended to: regulation 44(7). On appeal the Lands Tribunal has the power to make any order that the VT could have made: regulation 47(5).

17. The proposal that has led to the present appeal was made by Wilks Head & Eve, Chartered Surveyors. The form used for proposals listed in Part B "Details of the Proposed List Alteration" possible alterations that might be sought. Of these only "C The existing entry deleted" was identified by the completed entry, "with effect from" being specified as "29/09/90". Possible alteration "B The rateable value reduced to…" was not identified, nor was "G Other changes". In Part C paragraph 13 "Grounds for your Proposed Alteration" only "G The entry shown should be deleted for reasons other than those at E and F above" was identified. (E relates to demolition and F to domestic or exempt hereditaments.) The "detailed reasons for believing the rating list is inaccurate" at paragraph 14 were stated to be:

> "The present assessment is incorrect excessive & bad in law. The hereditament was vacant @ 29.9.00, incapable of beneficial occupation and beyond economic repair as a computer centre."

18. 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. The description would require to be changed from "Computer Centre and Premises" to "Store and Premises" and the rateable value would have to be reduced. 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. The option to specify these (alterations B and G in Part B) was not exercised, and the ground specified in Part C was deletion. In these circumstances the inclusion of the standard formulaic words "The present assessment is incorrect excessive & bad in law" was in my judgment patently insufficient to permit the proposal. This is not one of those cases (cf *Galgate Cricket Club v Doyle (VO)* [2001] RA 21) 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.

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 the 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.

21. In a case like the present, where a ratepayer is simply seeking the deletion of an entry in the list on the ground that the hereditament has become incapable of occupation, it would be open to the VO, if he accepted the correctness of the proposal (or if the VT on appeal concluded that it was well-founded) to insert in the list a fresh entry relating to the hereditament in the event that he took the view that it was capable of beneficial occupation for some other purpose. Such a new entry could then be the subject of a proposal by the ratepayer, if he disagreed with the VO's action, and would form the subject-matter of a fresh appeal.

22. There was some discussion at the hearing as to the course that is in practice taken where a hereditament has become incapable of beneficial occupation, and after the hearing I was provided with examples of alterations to valuations lists that had been made in these circumstances. It is clearly necessary to draw a distinction between the deletion of a hereditament from the list and the deletion of an entry in the list. Where a hereditament is incapable of occupation for any purpose because of its physical state, I can see that a VO might well decide to delete the entry relating to it and not to insert any other entry until it had been rendered capable of occupation. In these circumstances it is not simply the entry that is deleted from the list. It can be said that the hereditament itself has been deleted. Where, however, a hereditament has become incapable of beneficial use for the purpose identified by the description of it in the list but is capable of use for another purpose, it may be that the correct course is to delete the existing entry and to insert another entry relating to the purpose for which the hereditament is capable of being used. In such circumstances it cannot be said that the hereditament has ceased to exist or that it has been deleted from the list. It continues in existence and remains entered in the list (and no doubt its reference number in the list will remain the same).

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.

The ratepayer's evidence

24. Evidence for the ratepayer was given by Roger Messenger BSc FRICS IRRV MCIArb, a partner in Wilks Head & Eve. Mr Messenger said that he had first-hand knowledge of computer centres and the requirements of occupiers. In particular he was involved with a project for the development of a latest generation storage centre of 70,000 sq m near High Wycombe, the building cost of which was five or six times that of the subject hereditament. It was a fast moving environment, and from his own experience he would suggest that any facility more than 10 to 15 years old was considered by the industry to be obsolete.

25. Mr Messenger said that data storage premises broadly divided into two areas. Firstly there were those occupiers who provided in-house services to their own corporate groups. They designed and built bespoke facilities in locations that suited them with a modern technology specification. For the most part the use of such technology required very little human input, so that there were few employees in the premises. The second category was the commercial warehouse operator, who operated a data storage facility for a large number of users on the lines of what in the past might have been called a bureau. More recently such premises had tended to be divided into discrete areas for each client with walled enclosures similar to self-storage warehouses which ensured separation from other users and provided private compartments. Electronic and physical security were the fundamental selling points of this second category.

26. It was apparent, said Mr Messenger, that without very substantial alteration the Bureau West centre could not provide the specification that was sought by the operators and users of the new type of facility. The design was wholly inappropriate since it was a large open space and was in any event arguably in the wrong location. Those inadequacies were, he said, clearly in the mind of Capgemini when they announced that they were transferring their operations to their own purpose-built facility. Leda Properties then embarked on a marketing campaign to attempt to sell or let the premises for computer storage purposes.

27. Mr Messenger said that marketing had commenced in November 1999 through Kemp and Kemp, with little interest being shown. In October 2000 interest was expressed by Interwork Services, and discussions continued until October 2001 when Interwork Services said that they wished to progress the matter. By July 2002, however, their interest was dead. They had no funding and there was no identified user demand. Any other interest shown centred mainly on redevelopment, subject to planning permission being obtained.

28. Thus at the relevant date, 29 September 2000, Mr Messenger said, this first generation centre could be described as old-fashioned, too large, probably too remote and of limited utility to the private sector. In his view the premises were functionally and technologically obsolete, and they had ceased to have a valuable use as a computer centre by the date of Capgemini's notice of discontinuance.

29. When Capgemini vacated the premises they were served with a notice of dilapidations. Much of the work required would fall within the normal repairing obligation of the tenant for the purpose of the Rating (Valuation) Act 1999. The assumption would thus be that the premises were in repair. It was, however, not the state of repair but the obsoleteness of the premises that prevented their use within the mode or category of use in respect of which they were entered in the list. They were incapable of beneficial occupation for this purpose. Much of the specialised cooling and air-conditioning was either removed or non-functional, although since most of this equipment was non-rateable plant, it fell to be ignored under the rating hypothesis. The reality, however, was that the cost of fitting out the premises for new occupation was prohibitive. In June 2001 a report commissioned by Interwork Services showed this to be £1,726,312.

30. Mr Messenger accepted that on the material day, 1 April 1998, the premises were in use as a computer centre, with Capgemini paying a market rent for them, and that, despite having other premises available to them, Capgemini did not activate the break clause. He accepted that Leda Properties were an experienced property company who bought the premises in March 1999 in the knowledge that Capgemini would walk away but in the expectation that they would be able to re-let. Mr Messenger also agreed that, as at 1 April 1998 when economic factors, including the state of the market, had to be considered, there was a buoyant demand for computer centres.

31. If the premises were rateable, Mr Messenger thought that they were only capable of use as basic covered storage. For this purpose he would adopt a basic price of £15 per sq m on most of the accommodation and £18 on the offices and reception. This would give a valuation of £90,000 RV.

The valuation officer's evidence

32. The valuation officer, David Kelvin Howells MRICS, said that he had had over 37 years rating and valuation experience with the Valuation Office Agency. Since 1996 he had specialised and taken a lead role in the valuation of specialist classes of property, including computer centres. He had dealt personally with the assessment of all computer centre / data processing properties throughout Wales and south-west England for the 1995, 2000 and 2005 rating lists.

33. Mr Howells said that he considered that the property was capable of use on 29 September 2000 for the purpose for which it was designed. The agreed 2000 list entry of £200,000 RV, effective from 1 April 2000, took into account and reflected the original lease rent and the 1998 rent review. The rental agreement and arbitration determination reflected the physical condition of the property and the economic circumstances at 1 October 1993 and 1 October 1998 respectively. The property was occupied and operated as a computer / data processing centre until 31 January 2000. The occupiers, Capgemini, could have exercised the lease break clause with effect from 30 September 1998 and vacated the property, but they did not. They continued in beneficial occupation. And despite the fact that on 20 February 1998 they commenced occupation of a larger and more modern computer centre at Aztec West, Bristol, they did not transfer to it their Devizes operation but continued in occupation at Devizes until 31 January 2000. Mr Howells said that it was difficult to comprehend how the property, the assessment of which in accordance with the statutory criteria had been agreed at £200,000 as at April 2000, could have become obsolete in use and demand between that date and 29 September 2000. It was moreover actively marketed during 2000 and 2001 for the designed use and expressions of interest for this purpose were received in 2001.

34. Mr Howells said that he had inspected the property on 26 November 2001, and he was able to compare its condition with that shown in photographs that had been taken in 1999. Although it had not been maintained, the fabric of the building was sound. Many of the site services had been shut down, but he had no doubt that the property was capable of use for its designed purpose. Mainframe computers were costly items of plant, but since they were not

named items under the Plant and Machinery Regulations they were to be left out of account in valuing the hereditament. Similarly the air handling and cooling plant was not rateable, and although the cost of replacing this would have been considerable this was not a matter that could affect the assessment.

Conclusions

35. The issue to be determined is whether the entry in the list of the hereditament as a computer centre should be deleted on the basis that at the date of the proposal it had become incapable of beneficial occupation for that purpose. The case for the ratepayer is that because of its outmoded design and its physical condition there was no demand for it as a computer centre at that date, and therefore it was incapable of beneficial occupation for that purpose. This contention has to be considered bearing in mind that, while the physical state of the hereditament is to be taken as it was on the date of the proposal (see the Local Government Finance Act 1988, Schedule 6 paragraph 2(6A) and (7)(a); the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, regulation 3(7)(a)), market demand, not being a matter listed in paragraph 2(7) of Schedule 6 to the 1988 Act, is to be taken as at the antecedent valuation date, 1 April 1998 (see paragraph 2(4) of Schedule 6; the Rating Lists (Valuation Date) Order 1998, article 2). The ratepayer's case is that at the date of the proposal the hereditament was functionally obsolete as a computer centre, and the effect of this was that there was no demand for it for this purpose. But demand (unless the level of it is such as to manifest itself physically in the locality in which the hereditament is situated: see paragraph 2(7)(d) of Schedule 6) is a matter to be addressed not at the date of the proposal but at the AVD. What is beyond argument is that as at the AVD there was a demand for the hereditament, in the condition in which it then was, as a computer centre. It was occupied at that time for that purpose (and it continued to be occupied for that purpose up to 31 January 2000); the break clause in the lease was not operated on 1 October 1998; the 1998 reviewed rent was £239,745 per annum; and the ratepayer agreed the entry in the list at £200,000 RV as at 1 April 2000.

36. In the light of this the only question, in my judgment, is whether, by 28 September 2000 the condition of the property had deteriorated to such an extent that, if it had been in that physical state at the AVD, all demand for it would have disappeared. The question has to be answered, on the basis of the evidence, bearing in mind the assumption in section 1(2)(b) of the Rating (Valuation) Act 1999 and the provisions of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000. The assumption under section 1(2)(b) is that the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic. Mr Messenger accepted that much of the work that required to be done to the premises at the date of the proposal would fall within the normal repairing obligation of the tenant for the purpose of this provision. Indeed he was at pains to point out that it was not the state of repair but the obsoleteness of the premises as a computer centre that rendered them incapable of beneficial use.

37. Regulation 2 of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, made under this power, provides that:

"(a) in relation to a hereditament in or on which there is plant or machinery which belongs to any of the classes set out in the Schedule to these Regulations, the prescribed assumptions are that:

(i) any such plant or machinery is part of the hereditament; and

(ii) the value of any other plant and machinery has no effect on the rent to be estimated as required by paragraph 2(1) [of Schedule 6 to the Act]".

Although at the date of the proposal much of the specialised cooling and air-conditioning was either removed or non-functional, Mr Messenger accepted that, since most it was non-rateable, it fell to be ignored under the rating hypothesis. Similarly the cost of providing the computer plant itself would fall to be disregarded. Although a new tenant could expect to have to pay a substantial amount for these and other works before going into occupation, the evidence before me is wholly insufficient to establish what the cost of such works as were not referable to non-rateable plant would have been. I accept Mr Howells's expressed opinion, based on his inspection in November 2001, that the property was physically capable of use for its designed purpose as at the date of the proposal.

38. It follows from this that the appellant has failed to establish that the hereditament was incapable of beneficial use as a computer centre so that the entry in the list relating to it should be deleted. The appeal is dismissed. Submissions are now invited on the question of costs, and a letter relating to this accompanies this decision, which will become final when the question of costs has been determined.

Dated 27 March 2009

George Bartlett QC, President