RA/37/2002

LANDS TRIBUNAL ACT 1949

RATING – valuation – 2000 rating list – sewage treatment works – whether domestic properties and therefore not rateable – whether modern substitute comprising individual septic tank in each garden to be assumed – appropriate allowance for age and obsolescence – whether allowance at stage 5 justified – appeals dismissed save to extent conceded by Valuation Officer – Local Government Finance Act 1988, s 66(1)(b)

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE HAMPSHIRE NORTH VALUATION TRIBUNAL

BETWEEN **WINCHESTER CITY COUNCIL** **Appellant**

and

PETER RICHARD HANDCOCK **Respondent**
(Valuation Officer)

Re: Sewage Treatment Works
St Andrew's Green
Meonstoke
Southampton SO3 1NG

and

Sewage Treatment Works
Southbrook Lane
Micheldever
Winchester SO21 2DJ

Before: His Honour Judge Mole QC and Mr N J Rose FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
On 5-7 June 2006

J P Scrafton, solicitor, for the appellant.
Timothy Mould, instructed by Solicitor's Office, H M Revenue and Customs, for the respondent.

The following cases are referred to in this decision:

Martin v Hewitt (VO) [2003] RA 275
Head (VO) v LB Tower Hamlets [2005] RA 177
Eastbourne Borough Council and Wealden District Council v Allen (VO) [2001] RA 273
Monsanto Plc v Farris (VO) [1998] RA 217

The following cases were also cited:

Hodgkinson (VO) v Strathclyde Regional Council Superannuation Fund [1996] RA 291
Burnell (VO) v Swaffham RDC (1959) 6 RRC 237

DECISION

1. These two consolidated appeals are by the ratepayer, Winchester City Council ("the appellant"), against the decision of the Hampshire North Valuation Tribunal, determining the assessments in the 2000 rating list of sewage treatment works at St Andrew's Green, Meonstoke, Southampton, SO3 1NG (the "St Andrew's Green works") and Southbrook Lane, Micheldever, Winchester, SO21 2DJ ("the Southbrook Lane works") at RV £650 and RV £4,225 respectively. The VT's decision included a third sewage treatment works occupied by the appellant at St Mary's Close Droxford. The appellant also appealed against that decision, but prior to the hearing the parties reached agreement that the entry in respect of that hereditament should be deleted from the list.

2. Mr J P Scrafton, solicitor, appeared for the appellant. He called four witnesses of fact: Mr B Bottriell, senior estates surveyor with the appellant; Mr C J Reddin, construction manager with South Holland District Council; Mr J Latheron, professional services manager with Sevenoaks District Council and Mr R W Roberts, property development manager with Gwynedd Council. Mr Scrafton also called one expert witness, Mr D G Cullen, FRICS IRRV. Mr Cullen is an associate partner of Messrs Wilks Head and Eve, in charge of his firm's Midlands office at Grimsby and with over forty years experience in rating matters, particularly in connection with unusual properties.

3. Mr Timothy Mould of counsel called the respondent valuation officer, Mr P R Handcock, FRICS, to give expert evidence on his own behalf. Mr Handcock has worked with the Specialist Rating Unit (South) of the Valuation Office Agency for the last nine years, specialising in sewage treatment works.

4. The factual witnesses described the financial difficulties experienced by their respective authorities as a result of their obligation to provide sewage treatment services in rural locations where no public sewerage system exists.

5. At the hearing Mr Cullen put forward three valuations for each of the appeal hereditaments, all resulting in a nominal RV of £1. Mr Handcock supported the figure determined by the VT for the St Andrew's Green works, but now considered that the correct value for the Southbrook Lane works was £4,000.

6. We were told that, in addition to the appellant, Wilks Head and Eve are advising seven other local authorities on the assessment of sewage treatment works and that there were approximately 150 outstanding appeals awaiting our decision.

Facts

7. In the light of a statement of agreed facts and the evidence, we find the following facts. The St Andrew's Green works are situated several miles to the south-east of Winchester, at Meonstoke, on a piece of land adjoining the allotments on St Andrews Green. The

hereditament was built in 1948 to serve ten houses. At the material day, 1 April 2000, it served only nine, the tenants of No.5 having exercised their statutory right to buy the freehold and then installed their own individual septic tank in the garden. Of the nine remaining properties, the freehold interests in five had been purchased by the tenants. The appellant owned the freehold interests in the remainder, subject to secure tenancies. The houses are semi-detached, standing in their own plots, with their boundaries marked by fences and hedges.

8. The property comprises a receptor chamber, which directs the sewage flow into the septic tank for initial treatment. The liquor weirs into a wet well situated beneath the pump house, where it is pumped onto the percolating bacteria filter bed. It then flows into a humus tank where it is allowed to settle further, and then flows into a sub-soil irrigation system. The sludge is removed periodically from both the septic tank and the humus tank, and taken to a sludge treatment centre occupied by Southern Water.

9. The property is constructed as follows:

Septic tank, concrete construction.	6.70 m^3
Pump house, concrete floor, brick walls, wood/felt roof, fluorescent lighting, heated, wash hand basin. Enlarged since 1948.	3.68 m^2
Wet well, concrete construction, beneath pump house.	4.20 m^3
Percolating bacteria filter bed. Rectangular, brick construction.	17.00 m^3
Humus tank, concrete construction.	0.90 m^3
<u>Site Works</u>	
Security fencing, concrete posts, 1.54 m high, wooden panels 1.54 m high, 2.80 m centres.	39.00 m
Gravel around works within fence.	61.40 m^2
Security gate, wooden panel steel bolt/hinges.	1.00 m
Site area within fence line.	76.02 m^2

10. The Southbrook Lane works are situated several miles to the north of Winchester, at Micheldever, on a piece of land at the end of Rook Lane. They were built in 1961 to serve 58 properties, located in two parcels in the near vicinity. Of these, the majority were owned freehold by the appellant, subject to secure tenancies. The remainder were in private ownership, some on a freehold basis and the others on very long leases. All are detached, semi-detached or terraced houses which, with the possible exception of some of the terraced houses, appear to stand in their own plots.

11. The property comprises an inlet chamber with submersible pumps, which raise the sewage to the primary sedimentation tanks for initial treatment. The liquor flows into the percolating bacteria filter bed and then into a humus tank. The effluent is discharged to a local

brook, and the sludge is removed periodically from the primary sedimentation tanks and humus tank, and taken to a sludge treatment centre operated by Southern Water.

12. The property is constructed as follows:

Pump house, brick/ concrete, tiled floor, fluorescent lighting, heated, 2.25 m eaves.	19.70 m^2
Primary sedimentation tanks (2), concrete construction.	81.62 m^3
Backcage ladder, 4.00m high.	4.00 m
Fixed walkway, 0.75m wide, 5.40m length.	4.20 m
Fixed walkway, 0.75m wide, 5.40m length.	5.40 m
Fixed walkway, 0.75m wide, 5.40m length.	5.40 m
Percolating bacteria filter bed, precast concrete construction, 1.80m deep.	124.93 m^3
Conduit around percolating bacteria filter bed, concrete construction.	2.66 m^3
Humus tank, concrete construction with glass reinforced plastic cover.	15.11 m^3
<u>Site Works</u>	
Security fencing, concrete post, 1.80m high. Wire mesh, 3.00m centres.	194.00 m
Security gates, single, tubular steel/wire mesh 2.15m wide, 1.80m high.	2.15 m
Road, concrete, unkerbed and undrained.	222.64 m^2
Footpaths, concrete.	101.25 m^2
Site area within fence line.	0.21 hectares

Issues

13. There are three principal issues between the parties. Firstly, whether the two sewage treatment works comprise domestic property within the meaning of section 66(1)(b) of the Local Government Finance Act 1988, and are thus not rateable. Secondly, if the works are rateable, whether the contractor's basis – which it is agreed is the appropriate method of valuation – should be applied assuming a modern substitute comprising a series of individual septic tanks in the gardens of the houses currently served by the appeal hereditaments. Finally, if the direct replacement of the existing structures is to be assumed, what are the appropriate deductions to be made at stage 2 (obsolescence) and stage 5 (overviewing the value resulting from stage 4).

Whether the sewage treatment works are 'domestic property'.

14. Mr Scrafton's first submission on behalf of the appellant was that the sewage treatment works hereditaments which it occupied were domestic property within the meaning of section 66 (1) of the Local Government Finance Act 1988 and that they therefore escaped rateability. Only hereditaments shown in the non-domestic rating list are liable to be rated. Only a non-domestic hereditament is to be included in the list under section 42 (1). Section 64(8) (a) provides that a hereditament is non-domestic if "it consists entirely of property which is non-domestic". Section 66 provides, so far as is material:

> " (1) Property is domestic if –
>
> (a) it is used wholly for the purposes of living accommodation,
>
> (b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above"

15. The phrase "other appurtenance" has been the subject of considerable high authority over many years. Those authorities were reviewed by the President of this Tribunal in the case of *Martin v Hewitt* [2003] RA 275. His conclusion (at paragraph 20), which neither side in this case seeks to challenge and we adopt, was that –

> "In all the statutory contexts that fell to be considered in these cases, therefore, 'appurtenance' was held to be confined to the curtilage of the building in question. I can see no reason for treating it as not so confined in section 66 (1) (b) of the 1988 Act."

16. The President noted that the 1967 Act contained an extended definition of "appurtenance" in section 19 (6). When the 1988 Act came to be enacted it did not adopt the wording of section 19(2) and did not incorporate the particular extension of the word "appurtenance" in relation to a dwelling contained in section 19 (6). As the President said:

> "It used instead the form of words that had appeared in section 188(1) of the Housing Act 1936 and had been the subject of consideration in *Trim v Sturminster RDC*. That, in my view, is a clear indication that 'appurtenance' in section 66 (1) (b) was not intended to encompass land or buildings lying outside the curtilage of the property referred to in section 66(1)(a)."

That conclusion was fatal to the appellants in that case as each of the boathouses under appeal was held to fall outside the curtilage of the house to which they were said to be appurtenant.

17. The same principles fell to be applied again in *Head (VO) v LB Tower Hamlets* [2005] RA 177. At issue was whether eight district heating systems ("DHSs") owned and operated by the respondent council in order to supply heating and hot water to council housing estates, were rateable or not.

18. The President found, (at paragraph 7), that

"The DHSs were all constructed by the London Borough of Tower Hamlets between 1973 and 1976 as part of the council developments or estates that they serve. The dwellings connected to the DHSs are flats or houses which are held either on secure tenancies under section 79 of the Housing Act 1985 or on long leases purchased by secure tenants under the right to buy provisions of that Act. Each tenant pays the charge for the heating and hot water. This charge is shown as a separate item on the rental statement and the tenant is unable to opt out of the charge, which is payable with the rent. In the case of long leasehold premises the charge is included in the services charge that the lessee is obliged to pay."

The President continued

"22. It is unnecessary for me in this decision to review again the cases that deal with the meaning of 'appurtenance'. I accept Mr Mould's submission that in this statutory context it embraces property that will pass with the principal subject matter of a conveyance without the need for express mention and is confined to the curtilage of the building in question. However, I reject his submission that, because no individual tenant can claim to be entitled to a particular DHS, none of the DHSs can be an appurtenance for the purposes of section 66(1)(b). There might, it seems to me, be force in that submission if the definition were so worded that, to be an appurtenance, property must appertain to a particular hereditament. If that had been what the provision had said one might have been constrained to look at each unit of occupation, each individual hereditament, and to ask whether the property was appurtenant to any such unit. But the definition of domestic property is not confined in that way. There is no reference to 'hereditament' in subsection (1). Moreover paragraph (b) refers to an appurtenance 'belonging to or enjoyed with' property falling within paragraph (a). While 'enjoyed with' would imply considerations related to occupation, 'belonging to' is apt to embrace considerations of ownership.

23. I can see no difficulty in concluding that the DHSs in the present case fall within paragraph (b). To take the case of Glenkerry House, perhaps the clearest example, the boiler house is an integral part of the 13-storey building, being situated on the top of the lift/stair block. The accommodation in the building is wholly residential. The purpose of the DHS is to provide heating and hot water to the residential accommodation. The building is owned by the respondent, and it is plain that the boiler house and the associated pipework within the building would pass on any conveyance of the building. The DHS can properly be said, therefore, to be appurtenant to the residential accommodation and to belong to it. I see no reason to think that different considerations would apply where the pipework extends so as to serve other adjacent buildings in the respondent's ownership, nor do I think that the very small extent to which, in some cases, non-domestic premises are also supplied would take any of the DHSs outside the definition of domestic property. Indeed Mr Mould said that distinctions should not be drawn between any of the DHSs in the present case if the conclusion was that any one of them was within the definition.

24. It would in any event in my judgment be contrary to the scheme of the legislation to hold that these systems, which are there to serve the residential accommodation, are rateable. Together the 1988 Act and the Local Government

> Finance Act 1992 … provide for rates to be levied on non-domestic premises and council tax to be levied on domestic premises. If the VO's contention was right in relation to systems by which a landlord supplies heating and hot water to his tenants, the same considerations would, it seems to me, inevitably apply to all those parts of the premises that the landlord provides to serve the tenants' residential occupation. Staircases, lifts, access ways, parking areas and gardens would, on the VO's approach, be non-domestic property because they would not be appurtenant to any one property used for the purposes of living accommodation. All would need to be entered in the rating list."

19. There is no express finding that each DHS lay within the curtilage of the housing estate which it served but Mr Mould accepts that it is implicit in the decision. Beyond that it is neither possible nor appropriate for this Tribunal to go in seeking to draw factual comparisons between the physical circumstances of each DHS and its relationship to the flats it serves.

20. Mr Scrafton submitted that the "right to use the sewage treatment works" fell within the curtilage of each freehold dwelling and was appurtenant to it and was therefore property which would pass on a conveyance of the freehold. He said that it was not necessary for the freehold of the residential units and the sewage treatment works to be capable of being enclosed within one single red line on a map although, he said, this was the case at St Andrew's Green. In the case of Southbrook Lane, the curtilage was extended by pipes connecting dwellings in the ownership of the appellant to the sewage treatment works.

21. Mr Scrafton challenged the submission made by Mr Mould that it was fatal to the claim under section 66 that a number of the houses served by each sewage treatment works had been disposed of into private freehold ownership.

22. Mr Mould's primary submission was that, simply as a matter of fact, neither of these sewage treatment works was within the curtilage of any one of the dwellings that it served, let alone of all of them. For that reason alone they could not be appurtenant and *Head* should be distinguished. Mr Mould made the further submission that a sewage treatment works serving an estate of houses all in single ownership might satisfy section 66, as it did in *Head*, but once the freehold of one of the dwellings was disposed of and the sewage treatment works continued to serve it, it could not be 'appurtenant' to any of them. In *Head* the flats that had been disposed of were disposed of by way of a leasehold interest. The sewage treatment works would thus satisfy the test of passing under a conveyance of the head landlord's interest in the blocks of flats.

23. In our judgment the short but decisive answer to Mr Scrafton's submission is that, as a matter of fact and degree, we do not find that either sewage treatment works falls within the curtilage of any of the dwellings that it serves. It may well be true that the "right to use" the sewage treatment works would pass on a conveyance. However, even if it were useful to talk of such an incorporeal right as being "within the curtilage" of the dwelling it serves, which we doubt, that is nothing to the point. It is the physical hereditament comprising the sewage treatment works that must be within the curtilage of the dwelling (or dwellings), if it is to be appurtenant to it (or them).

24. We find that the dwellings in St Andrew's Green are, as the maps and photographs show, modest semi-detached houses, on their own plots, surrounded by their own gardens with their boundaries marked with hedges and fences. Each one stands in its own curtilage. The freehold of six of these dwellings has been sold by the appellant. However, it does not seem to us that it matters whether the houses are held by virtue of individual freeholds or are occupied under a tenancy from one landlord, in the circumstances of these dwellings. A house on its own plot with its own boundaries will be very likely to have its own curtilage although it is held on a tenancy from the same landlord as the houses on either side of it. Even though the sewage treatment works at St Andrew's Green appears to adjoin the curtilage of number 1 St Andrew's Green, and thus a continuous red line could be drawn around both of them, they are not in the same curtilage, any more than number 1 St Andrew's Green is in the same curtilage as number 2 St Andrew's Green, which it also adjoins.

25. The factual situation at Southbrook Lane, Micheldever, is even more hopeless, so far as the appellant's case is concerned. The sewage treatment works there serves 58 dwellings in two distinct areas of housing, both of which are well away from the sewage treatment works itself. The 58 individual dwellings are detached, semi-detached and terraced and (with the possible exception of some of the terraced houses) all appear to have their own curtilages. The works does not lie within the curtilage of any dwelling or group of dwellings it serves.

26. That is sufficient to dispose of the appellant's first point. It is not, therefore, necessary to consider whether Mr Mould is right in his further submission. However our provisional *obiter* view is that his submission is too broad. It seems to us to be possible to envisage situations where a part of a curtilage is disposed of by freehold sale, and continues to be served by the sewage treatment works, yet the circumstances are such that the sewage treatment works is still capable of satisfying the words of section 66 (1).

The 'modern simple substitute'

27. Mr Cullen's primary approach to the valuation of the two sewage treatment works was to adopt what he described as a modern simple substitute. He drew attention to the contractor's test, which he considered was appropriate for valuing works such as these. At stage 2 of that test it would sometimes be appropriate to contemplate the construction of a modern substitute, instead of the actual hereditament. In the present case, the "modern substitute" he contemplated was that, instead of the appellant constructing a single sewage treatment works of any description, each housing unit connected to the sewage treatment works at present would have an individual sewage disposal tank in its garden. Such a tank, being within the curtilage of the house, would necessarily be "appurtenant" and thus not rateable. In aggregate, therefore, Mr Cullen's modern substitute produced a nil value.

28. Mr Handcock accepted that the use of the contractor's test was appropriate, but he rejected the submission that what Mr Cullen put forward was a proper substitute for the sewage treatment works that had to be valued. The modern substitute approach was legitimate where it was necessary to make changes in a notional substitute building to allow for property to be used in a way that was fully satisfactory according to modern standards. Both sides referred to the exercise undertaken using the contractor's test to value various facilities which were at

issue in *Eastbourne Borough Council and Wealden District Council v. Alan (VO)* [2001] RA 273. Both valuers in that case considered simple substitute buildings. This was because the application of the contractor's basis to the existing rather elderly facilities presented a number of problems. The facilities were obsolescent in many ways and failed to meet modern needs or regulations. Valuing a modern simple substitute was agreed in that case to be the best way to take account of such problems.

29. We have been helpfully reminded of *"The Contractor's Basis of Valuation for Rating Purposes, a Guidance Note"* produced by the Joint Professional Institutions' Rating Valuation Forum, November 1995. In the introduction to this document at paragraph 1.5 it is said –

> "1.5 It should be assumed that the property is owned by a hypothetical landlord who wishes to let it and that there is a hypothetical tenant who is willing to pay a rent in order to occupy it. However, although the parties to this transaction are hypothetical, the property is real and the valuer's concern is therefore with the rental value of the actual property."

This is a useful and legally accurate reminder. The guidance continues –

> "1.6 Whilst interest on cost as a guide to rental value is the basis of the method, it is not envisaged that the hypothetical tenant should be considered as constructing an actual property, but that the rental value of the property concerned is being 'tested' by having regard to the annualised equivalent of the estimated cost of construction. It is considered inappropriate to make an assumption that either the hypothetical tenant, or someone else, could or would build an alternative property, or that such a person has already built an alternative property suitable for occupation by the hypothetical tenant...
>
> 3.1.3 Initially, the valuer must decide whether to cost the actual property or a substitute. In most cases costs will relate to the actual property, but there may be exceptional cases where it would be appropriate to cost a modern substitute...
>
> 3.1.16 Where a property is such that perhaps because of age, design or type of construction it would not be realistic to envisage rebuilding it in its present form, an alternative to estimating the cost of the actual property can be adopted with the valuer estimating the cost of a modern substitute property in order to arrive at any adjustments appropriate to Stage 2.
>
> 3.1.17 Where a substitute property approach is adopted costs should be estimated on the basis of the substitute being of a design and specification to enable the use of the actual property to be carried out in a fully satisfactory manner.
>
> 3.1.18 Where the substitute approach is adopted, then it would be usual practice to cost on the basis of the actual building's floor area. Where, however, the reason for adopting the substitute approach is because the actual building is larger than required, due, for example, to changes in technology (and not for reasons that are personal to the actual occupier) then the substitute should be costed on the basis of a size to reflect modern trade and business practices."

30. These passages emphasise the simple but basic truth that the contractor's test, including the use of a modern simple substitute, is a tool for the valuation of the particular hereditament in question. That hereditament must be valued "*rebus sic stantibus*." Of course, that does not mean that the notional modern simple substitute cannot depart from the actual physical circumstances of the hereditament – it would not be a modern simple substitute if it did not do so. So there is no offence to the doctrine of *rebus sic stantibus* in contemplating for valuation purposes a "modern substitute" building that is different, possibly very different, from the hereditament to be valued. But the substitute must bear a sufficient relationship to the hereditament in question to be a useful method of valuing that particular hereditament and not some other quite different hereditament. The purpose of the contractor's test is frustrated if the valuer postulates as a modern substitute some method of achieving broadly the same purpose as the hereditament in question, but which completely does away with the need for any such hereditament. That is not the valuation of the hereditament in question at all. Indeed, Mr Mould is right to say that such an approach also offends the basic assumption that there is a hypothetical landlord who wishes to let the hereditament and a hypothetical tenant who is willing to pay a rent in order to occupy it.

31. On this point we accept the respondent's broad submissions. We reject Mr Cullen's valuations based on a modern simple substitute.

Contractor's valuation – Stages 2 and 5

32. By the commencement of the hearing, the experts had reached a large measure of agreement on the components of the contractor's valuations of the two appeal hereditaments. There were differences at stage 2 and stage 5. For the St Andrew's Green works, Mr Cullen deducted 37% for age and obsolescence and Mr Handcock 12.5%. In the case of the Southbrook Lane works, the deductions were 10% (Mr Cullen) and 5.6% (Mr Handcock). At Stage 5 Mr Cullen made further substantial deductions when valuing both properties; Mr Handcock considered that these were not justified.

33. We deal firstly with the deductions for age and obsolescence. Mr Cullen's valuation of the St Andrew's Green works was arrived at by directly applying the appropriate percentages adopted by this Tribunal (Dr T.F. Hoyes, FRICS) in *Monsanto Plc v Farris (VO)* [1998] RA 217. He made individual deductions of 15%, 37% or 50%, depending on the nature of the particular component, and this produced an adjustment of 37% of the overall replacement cost. In the case of the Southbrook Lane works, *Monsanto* suggested an overall deduction of 24%. Mr Cullen deducted 10%, to reflect the fact that the plant had been substantially improved around the year 2000.

34. When calculating his allowances for age and obsolescence, Mr Handcock used a scale prepared by the Valuation Office Agency, following *Monsanto*, as part of a guide to the valuation of sewage treatment works. His deductions were equivalent to 12.5% overall for St Andrew's Green and 5.6% for Southbrook Lane.

35. Both experts agreed that *Monsanto* was a helpful starting point for assessing the extent of the allowances for age and obsolescence. But *Monsanto* related to a very substantial chemical works and Mr Cullen did not attempt to adjust that decision to reflect the characteristics of the appeal hereditaments. Mr Handcock, on the other hand, relied on a Valuation Office Agency guidance note containing a range of suggested allowances for sewage treatment works, based on advice obtained from building surveyors with experience in the construction of such hereditaments. He said that the valuations of all such properties in the 2000 rating list had incorporated allowances in line with the guidance note, and those allowances had been accepted by several other large firms of surveyors with whom negotiations had taken place, resulting in agreement on the assessments of the great majority of such premises.

36. Mr Bottriell is senior estates surveyor to the appellant. His duties include estate management on behalf of its directorate of housing which is responsible for maintaining the appeal hereditaments. He did not produce any evidence to show that substantial works of repair were carried out to either of those hereditaments at or around the material date. In view of that, and in view of the fact that the Valuation Office Agency scale of allowances has been widely accepted in negotiations on the 2000 list assessments of sewage treatment works throughout the country, we prefer Mr Handcock's allowances to the significantly higher deductions which result from the unadjusted application of the *Monsanto* scales advocated by Mr Cullen in the case of St Andrew's Green and his arbitrary use of 10% for Southbrook Lane.

37. Mr Cullen justified his substantial reduction at stage 5 in the following manner. The hypothetical tenant is in the business of providing social housing. Its ability to recoup its revenue costs in full is limited. It is unable to charge for a sinking fund to replace the structures at the end of their life. Moreover, it owes a higher duty of care in respect of its financial actions than does a private company. It has to account to the whole community as opposed to a commercially driven operation which may choose to cross fund deficits. Thus the hypothetical tenant is under severe pressure to minimise if not eliminate financial shortfalls. The only variable which would enable it to reduce its operating loss is the amount of rent it would bid for the plant.

38. Mr Cullen considered that all hypothetical bidders would seek to minimise their losses and would make the lowest bid necessary to secure the works. This view was supported, he said, by the widespread inability of local authorities to persuade water companies, the only realistic commercial operator of such facilities, to adopt them and the refusal of other social housing operators to accept such works, even when they formed an intrinsic part of a social housing transfer.

39. In addition to these general considerations, Mr Cullen considered that there were a number of specific reasons why allowances should be made at stage 5. Firstly, the St Andrew's Green works was built for ten connections and there were now only nine. This would suggest a 10% allowance for overcapacity or superfluity. Secondly, an allowance of 10% should be made in the case of Southbrook Lane, to reflect the difficulties of access for maintenance and discharge purposes. Thirdly, the rental bid should reflect the fact that the cost of replacing the plant at the end of its life was rarely recoverable. Fourthly, since the introduction of council tax with its broad bands of value, the occupiers of domestic

hereditaments had been unable to secure a reduction in the local tax payable on their homes to reflect the lack of mains drainage.

40. Mr Cullen felt that, although these factors were relevant to the valuation, the tenant's overriding concern would be to adjust its bid to mitigate the untenable commercial position. The local authority, being the only realistic bidder in the market, would offer the minimum possible level simply to secure the use of the facilities. To reflect this, the hypothetical tenant's bid should be reduced by 100% at stage 5.

41. Mr Handcock did not consider that any deduction at stage 5 was justified. In his opinion the appeal hereditaments had a significant value to the rateable occupier, who had a statutory and contractual duty to provide them.

42. Mr Roberts said that his council, Gwynedd, considered itself to be under an obligation to provide sewage services to those parts of its housing stock in rural location which were served by ancillary sewage treatment plants. It was therefore prepared to bear the short-fall between income and expenditure on those plants; it had no choice in the matter. Mr Bottriell accepted that the appellant had a similar motivation in operating the appeal hereditaments and he did not seek to suggest that the appellant would have had any difficulty in paying rent at the levels established by the VT.

43. Both parties placed reliance on the decision of this Tribunal (the President and Mr N J Rose FRICS) in *Eastbourne Borough Council and Wealden District Council v Allen (VO)* [2001] RA 273. In the course of cross-examination, Mr Cullen's attention was drawn to the following extract (paragraph 140) from that decision:

> "Miss Henham said that if Wealden Council members had been faced by the levels of rents assessed by the valuation officer they would have found them unacceptable and would have sent their officers back to negotiate. But since both parties would be aware of the annualised value of the tenant's alternative, a mere reluctance, however strong, on the part of the council to pay this level of rent would have been insufficient. Unless the level was unacceptable in the sense that the council would chose to close the facility rather than to pay the rent, the council's unwillingness to pay the rent demanded would count for nothing. We can see no reason for thinking that the hypothetical landlord would reduce the rent below the annualised value of the tenant's alternative, so as to deprive himself of income and to subsidise the council."

44. The following exchange ensued between Mr Mould and Mr Cullen:

> "Q: What can the local authority bring to the negotiation to persuade the landlord that he should not accept the annualised cost by way of rent?
>
> A: The tenant would have a hard negotiating position.
>
> Q: You do not point to any argument that the tenant can bring to the negotiation.
>
> A: Correct."

45. In our judgment those concessions by Mr Cullen – which we think were probably inevitable in the light of the factual evidence – are fatal to the appellant's case for a deduction at stage 5. We would add that there was no cogent evidence to support Mr Cullen's suggestion that the access to the Southbrook Lane works was less than adequate for its purpose, nor to suggest that the St Andrew's Green works would have been designed any differently if it had been originally intended to serve nine houses rather than ten. The two further matters referred to by Mr Cullen – namely the appellant's inability to charge a sinking fund for the eventual replacement of the works, and the alleged unfairness of the council tax system on householders without mains drainage, are not factors which would influence the bid of a hypothetical tenant from year to year of a sewage treatment works.

46. The appeal on the Southbrook Lane works is therefore allowed to the extent conceded by Mr Handcock and the appeal on the St Andrew's Green works is dismissed. We direct that the assessment of the Southbrook Lane works in the 2000 local rating list for the City of Winchester be altered to rateable value £4,000. We confirm the assessment in that list of the St Andrew's Green works at rateable value £650.

47. The parties are now invited to make representations on costs, and a letter relating to that accompanies this decision, which will take effect when but not until the question of costs has been determined.

Dated 17 July 2006

His Honour Judge Mole QC

N J Rose FRICS

Addendum on costs

48. We have received written submissions on costs from the parties.

49. The respondent valuation officer seeks his costs of defending the appeal on the grounds that his valuations and interpretation of rating law have been upheld by the Tribunal.

50. The appellant submits that there should be no order for costs. It points out that there were three appeals in this series. The respondent conceded one of them before trial and made further concessions as to the valuation approach very shortly before the hearing, which led to one of the two remaining appeals being allowed in part. So far as the overall series of appeals is concerned, therefore, the ratepayer has been completely successful in one case on a point of law and it has secured agreement from the Valuation Office Agency in matters relating to valuation which will fall to be applied elsewhere.

51. In reply the respondent states that the concession he made on valuation arose after he had received correct information about the exact age of the herediment. This information was not provided until after the respondent's expert witness report had been submitted. Had the correct facts been provided to the respondent from the outset his valuation would have been consistent throughout the appeal.

52. In this addendum we are concerned only with the costs of the appeals relating to the St. Andrew's Green works and the Southbrook Lane works; the costs of the St Mary's Close, Droxford appeal formed the subject of an earlier consent order. The respondent has been largely successful and our costs award should reflect that. The appellant did secure a small reduction in the rateable value of the Southbrook Lane works, but this reduction was conceded before the hearing commenced, and is likely to have been available even sooner if the correct age of the Southbrook Lane works had been provided by the appellant at an early stage in the proceedings.

53. We consider that the justice of the case would be served if the appellant were to pay ninety per cent of the respondent's costs and we so order. In default of agreement such costs are to be assessed by the Registrar of the Lands Tribunal on the standard basis.

54. The delay in finalising this decision is regretted, but it is due to delays in receiving the costs submissions from the parties.

Dated 31 October 2006

His Honour Judge Mole QC

N J Rose FRICS

Appendix 1

SEWAGE TREATMENT WORKS
ST ANDREW'S GREEN, MEONSTOKE, SOUTHAMPTON, SO3 1NG

VALUATION ON CONTRACTOR'S BASIS

BY D G CULLEN, FRICS IRRV

		£	£
Stage 1			
Septic tank	6.65 m^2	360	2,394
Pump house	3.68 m^2	650	2,392
Wet well	4.2 m^3	360	1,512
Percolating bacteria filter bed	16.83 m^3	200	3,366
Humus tank settings	0.87 m^3	360	313
Gravel surround	61.4 m^2	4	246
Fence	38.69 m	32	1,238
Gate	1	125	125
			11,586
Stage 2			
Add for contract size @ 10%		1,159	12,745
Add fees @ 13%		1,657	14,402
Deduct for age & obsolescence @ 37%		5,329	9,073
Stage 3			
Add land value		500	9,573
Stage 4			
Decapitalise at statutory rate		5.50%	526

Stage 5

At this stage, and having regard to the explanations set out in my submissions, I apply an end allowance which reduces the tenant's bid to Rateable Value £1.

Appendix 2

SEWAGE TREATMENT WORKS
SOUTHBROOK LANE, MICHELDEVER, WINCHESTER SO21 2DJ

VALUATION ON CONTRACTOR'S BASIS

BY D G CULLEN, FRICS IRRV

		£	£
Stage 1			
Pump house	19.7 m^2	550	10,835
Sedimentation tank settings	81.62 m^3	200	16,324
Ladder	4 m	260	1,040
Walkway	4.2 m	570	2,394
Walkway	5.4 m	570	3,078
Walkway	5.4 m	570	3,078
Filter bed	124.93 m^3	84	10,492
Conduit	2.66 m^3	300	798
Humus tank settings	15.11 m^3	200	3,022
Fence	194 m	15	2,910
Gate	1	361	361
Road	222.64 m^2	21.50	4,787
Footpath	101.25 m^2	17	1,721
			60,842
Stage 2			
Add for contract size @ 10%		6,084	66,926
Add fees @ 13%		8,700	75,626
Deduct for age & obsolescence @ 10%*		7,562	68,063
Stage 3			
Add land value		2,595	70,658
Stage 4			
Decapitalise at statutory rate		5.50%	3,886

Stage 5

At this stage, and having regard to the explanations set out in my submissions, I apply an end allowance which reduces the tenant's bid to Rateable Value £1.

* This plant was built in 1961 but had an extensive refurbishment and capital investment shortly after the commencement of the rating list in 2000. I believe that a 10% allowance is appropriate as a consequence.

Appendix 3

SEWAGE TREATMENT WORKS
ST ANDREW'S GREEN, MEONSTOKE, SOUTHAMPTON, SO3 1NG

VALUATION ON CONTRACTOR'S BASIS

BY P R HANDCOCK, FRICS

Stage 1 Estimated Replacement Cost – to construct the property, including all the buildings, site works and all rateable plant & machinery within the property, on an undeveloped site.

	Area/Volume	Rate £	Amount £	£
Septic tank	6.65 m^2	360	2,394	
Pump house	3.68 m^2	650	2,392	
Wet well	4.20 m^3	360	1,512	
Percolating bacteria filter bed	16.83 m^3	200	3,366	
Humus tank	0.87 m^3	360	313	
Gravel surround	61.40 m^2	4	246	
Site Works				
Security fence	38.69 m	32	1,238	
Security gate	1.00	125	125	
				11,586
Stage 2 Adjusted Replacement Cost – to existing physical state				
Contract size		10%	1,159	12,745
Fees		13%	1,657	14,402
Adjustment for physical & functional obsolescence		12.5%	1,800	12,602
Stage 3 Value of Land			500	13,102
Stage 4 Decapitalisation rate		5.5%		721
Stage 5 Review				
The rateable value at the end of stage 4 is similar to other small works agreed for the 2000 Rating List, no adjustment other than rounding is required.				
Valuation determined at VT adopted.			Say	£650

Appendix 4

SEWAGE TREATMENT WORKS
SOUTHBROOK LANE, MICHELDEVER, WINCHESTER SO21 2DJ

VALUATION ON CONTRACTOR'S BASIS

BY P R HANDCOCK, FRICS

Stage 1 Estimated Replacement Cost – to construct the property, including all the buildings, site works and all rateable plant & machinery within the property, on an undeveloped site.

	Area/Vol	Rate £	Amount £	£
Pump House	19.70 m^2	550	10,835	
Primary sedimentation tanks	81.62 m^3	200	16,324	
Backcage ladder	4.00 m	260	1,040	
Walkway	4.20 m	570	2,394	
Walkway	5.40 m	570	3,078	
Walkway	5.40 m	570	3,078	
Percolating bacteria filter bed	124.93 m^3	84	10,494	
Conduit around percolating bacteria filter bed	2.66 m^3	300	798	
Humus tank	15.11 m^3	200	3,022	
Site Works				
Security fencing	194.00 m	15	2,910	
Security gate	1.00	361	361	
Road	222.64 m^2	21.50	4,787	
Footpaths	101.25 m^2	17.00	1,721	60,842
Stage 2 Adjusted Replacement Cost – to existing physical state				
Contract size adjustment		10%	6,084	66,926
Fees		13%	8,700	75,626
Adjustment for physical & functional obsolescence following agreement on age		5.6%	4,245	71,381
Stage 3 Value of land	0.21 hec	12,355	2,595	73,976
Stage 4 Decapitalisation rate		5.50%		4,069
Stage 5 Review				
The rateable value at the end of stage 4 is similar to other small works agreed for The 2000 Rating List, no adjustment other than rounding is required			Say	£4,000