RA/60-69/2005
and
RA/71-72/2005

LANDS TRIBUNAL ACT 1949

RATING – alteration of rating list – Local Government Act 1988 section 66(1) – whether district heating systems (DHSs) serving local authority housing constituted domestic property – whether such DHS constituted an appurtenance belonging to or enjoyed with such housing

IN THE MATTER AN APPEAL FROM THE DECISION OF THE NOTTINGHAMSHIRE VALUATION TRIBUNAL

BETWEEN **James E Allen (Valuation Officer)** **Appellant**

and

(1) Mansfield District Council **Respondents**
(2) Bassetlaw District Council

Re: District Heating Systems at:
Coverdale, Worksop
Larwood, Worksop
Babworth Court, Mansfield
Fritchley Court, Mansfield
Jubilee Way South, Mansfield
Longstone Way, Mansfield
Newark Drive, Mansfield
Perlethorpe Avenue, Meden Vale, Mansfield
Shirland Drive, Mansfield
Benington Walk, Mansfield Woodhouse, Mansfield
Dundee Drive, Mansfield Woodhouse, Mansfield
Newcastle Street, Mansfield Woodhouse, Mansfield

Before: His Honour Judge Huskinson

Sitting at Procession House, 110 New Bridge Street, London EC4Y 6JL
on 1 July 2008

Daniel Kolinsky instructed by the solicitor to HM Revenue & Customs for the Appellant
The Respondents did not appear and were not represented

The following cases are referred to in this decision:

Head v Tower Hamlets LBC [2005] RA 177
Martin v Hewitt (Valuation Officer) [2003] RA 275
Methuen-Campbell v Walters [1979] QB 525
Winchester City Council v Handcock (Valuation Officer) [2006] RA 265

DECISION

Introduction

1. The Appellant appeals to the Lands Tribunal from the decision of the Nottinghamshire Valuation Tribunal ("NVT") dated 4 November 2005 whereby it decided that various properties, comprising district heating systems ("DHSs"), each constituted domestic property within section 66(1)(b) of the Local Government Finance Act 1988. The DHSs fall within the areas of Bassetlaw District Council ("Bassetlaw") as regards the first two DHSs mentioned above and within the area of Mansfield District Council ("Mansfield") as regards the remaining DHSs. Proposals to alter the rating list for 2000 were made by Wilks Head & Eve on behalf of Bassetlaw dated 30 March 2005 and were made by King Sturge on behalf of Mansfield dated 8 June 2005. In each case the proposal was made in reliance on Regulation 4 of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 on the basis that the authorities were of the opinion that by reason of a decision of the Lands Tribunal (in the case of *Head v Tower Hamlets LBC* [2005] RA 177) the entry in the rating list for 2000 was wrong in that none of the DHSs should have been included at all because the DHSs were each domestic property and consequently not to be included in the non-domestic rating list.

2. NVT concluded that all of the twelve DHSs with which the present appeal is concerned were indeed domestic property and should be removed from the 2000 non-domestic rating list. The NVT concluded that the case of *Head* covered each such DHS. NVT also found of significance the fact that the Appellant had agreed to treat as domestic property two other DHSs, namely a DHS, at New England Way, Pleasley and a DHS at Riverview, Warsop.

3. A Reply has been served apparently on behalf of both the Respondents by King Sturge dated 5 April 2007 arguing that the case of *Head* covers the present cases and indicates that each of the relevant DHSs was appurtenant to a housing estate and was for that reason domestic property for the purposes of the 1988 act. The Reply also stated that if, which was denied, any of the DHSs was rateable, then the Respondents did not contest the values shown in the respective entries attached as Appendix B to the Appellant's Statement of Case. That Reply having been served, a letter was written to the Lands Tribunal by Wilks Head & Eve on behalf of Bassetlaw, dated 31 July 2007 stating that Bassetlaw did not wish to proceed with the present appeal and they would not be serving any evidence or pursuing the matter before this Tribunal. So far as concerns Mansfield, who were represented by King Sturge, it is puzzling to find that Mansfield submitted no evidence to the Tribunal and were not represented before it notwithstanding that no formal communication from King Sturge on behalf of Mansfield had been received to the effect that Mansfield would not participate in the appeal. However it is clear that Mansfield, via their agents King Sturge, were properly notified of the hearing on 1 July before this Tribunal. Also I was told that King Sturge had informed the Appellant (or his solicitors) that Mansfield would not be participating in the appeal. Accordingly the appeal proceeded with only the Appellant represented. This does not of course mean that this Tribunal will automatically allow the Appellant's appeal. This Tribunal will only do so if satisfied that NVT's decision was wrong.

4. At the hearing before me the Appellant himself gave sworn evidence. He presented two separate ring binders, one for the Bassetlaw DHSs and one for the Mansfield DHSs. These ring binders were divided into sections, one section dealing with each DHS and containing a detailed plan showing the location of the DHS and showing the housing served by that DHS and including photographs of the DHS and a plan of the layout of the DHS. This information was further supplemented by oral evidence from the Appellant, which he had helpfully also provided in writing and which was handed in in two documents headed "Summary of Physical Characteristics Bassetlaw" and "Summary of Physical Characteristics Mansfield". He also produced further photographs in relation to each DHS.

5. In agreement with the matter raised by the Respondents in their Reply, the Appellant indicated that if the Appellant were to succeed in this appeal in relation to any DHS, then in relation to such a DHS the DHS should be restored to the list with a value as shown for that DHS in Appendix B to the Appellant's Statement of Case (pages 8 and 9 of the trial bundle).

Facts

6. I am grateful to Mr Allen for the care with which he produced the two ring binders giving particulars of each DHS and for the detail contained therein and in his evidence. He made it clear that the material therein contained was based upon the material which formed agreed documentation before NVT. Thus although he was unable to lay these two ring binders before me as being formally agreed by the Respondents for the purposes of this hearing, he verified himself the truth thereof and he indicated that he had no reason to believe that the Respondents would in any way dissent from the facts therein contained. He confirmed that the relevant date for considering the facts is 1 April 2000 and that the facts as described by him were, unless he expressly stated otherwise (which he did on certain minor points not presently relevant) the same as the facts that existed on 1 April 2000. Having regard to the level of detail provided by Mr Allen in his documents and evidence I conclude I can properly decide these appeals without needing to view the sites. I was not invited to undertake a view.

7. This case concerns twelve separate DHSs. I will describe in a little detail three of them, namely (i) the DHS in respect of which Mr Kolinsky submitted his arguments were most clearly correct (although by making this point he was not to be taken as indicating any lack of confidence on any of the other DHSs); (ii) the DHS which Mr Kolinsky accepted was the DHS which might be said, of all twelve of them, to come closest to constituting domestic property (although Mr Kolinsky stressed that it did not do so); and (iii) one of the DHSs (there being two in total in this category) which served not merely residential properties but also a community centre. As regards the other nine DHSs I set out a description of these in the Appendix to this decision.

8. The clearest case, Mr Kolinsky submitted, could be found at Fritchley Court, Mansfield. Here the DHS is found located towards the centre of a very extensive estate comprising 864 dwellings (138 of them being owner-occupied). The boiler house is detached and has a yard together with a two-storey ancillary workshop and office accommodation. The heat from the boiler is distributed by the sending of hot water to the various properties by a network of above and below ground pipes. This is the largest of the DHSs under consideration. The offices and

workshops act as the main offices and workshops for the team running all of Mansfield's DHSs. There are clearly defined boundaries around the boiler house. To the north and west the boiler house is bounded by a public highway (Fritchley Court) and to the south and east by the boundary fences and walls of the boiler house and individual dwelling houses. There is a block of disused flats to the southwestern boundary. The dwellings served by this DHS reflect the whole range of Mansfield's housing stock from terraced housing and bungalows to flats and blocks of sheltered accommodation. The bungalows and terraced/semi-detached houses tend to be characterised by their own distinguishable plots surrounded by their own gardens with their own boundaries marked by walls and fences. The flats and sheltered blocks are open. Travelling to the southeast of the DHS one comes first to certain dwellings (served by the DHS) and then to a large area of open space attached to a school (not served by the DHS) and then, beyond this open space, a substantial further area of housing which is served by the DHS.

9. The DHS referred to in paragraph 7(ii) above is Perlethorpe Avenue. This DHS comprises a stand alone boiler house and yard. The boundary of the boiler house and yard is clearly defined by brick walls. The DHS is bounded to the south by a public footpath separating the DHS from garages, belonging to dwellings not served by the DHS. To the north and west the DHS is bounded by a public highway namely Perlethorpe Avenue. There is an area of sloping grassed open ground between the boiler house and Melville Court. This area is crossed by a public footpath. The DHS serves 123 dwellings situated in Melville Court, Manby Court and Marston Avenue, of which one is owner occupied. A substantial number of the units are in Melville Court which is a large building and which, of the buildings served by the DHS, is the closest to the DHS. Melville Court is a block of sheltered accommodation. The other dwellings served are a mix of terraced and semi-detached bungalows, and blocks of flats. The bungalows have enclosed rear gardens but are open at the front. Melville Court is open (rather than having some enclosed grounds) and the flats have enclosed spaces to the rear.

10. As regards Dundee Drive, Mansfield Woodhouse, here the DHS is part of a brick-built structure which comprises both the DHS itself and a community centre. The community centre includes a first floor level which extends over part of the DHS. The community centre is in the Non-Domestic Rating List as: Community Centre and Premises, Rateable Value £4,200. The DHS is bounded to the north and west by communal car parking, to the south by the community centre (this being part of the same structure but extending substantially further to the south west than the DHS) and to the east and west by a public footpath and garden fencing. The dwellings served are a mix of maisonettes and semi-detached bungalows each having their own enclosed rear gardens with their boundaries marked by walls and fences. The front gardens are in some instances definable but in some are open. Seventy-five dwellings are served of which one is owner-occupied.

11. Mr Allen also gave evidence regarding the two other DHSs which NVT found of significance. As regards that at New England Way, Pleasley, here the boiler house was all part of the same physical building as contained the living accommodation which was served by the DHS. As regards River View, Warsop, here the DHS is built effectively as part of the same building, its wall being a party wall with the residential block which it serves, and with there being a fire escape from this block across the top of the boiler house.

The Law

12. Section 42 of the Local Government Finance Act, 1988 requires that a local non-domestic rating list must show each hereditament which fulfils various conditions including being "a relevant non-domestic hereditament". Section 64(8) provides that a hereditament is non-domestic if either (a) it consists entirely of property which is not domestic, or (b) it is a composite hereditament. A hereditament is composite if part only of it consists of domestic property (section 64(9)).

13. Section 66 of the Act provides that, subject to certain subsections (not presently relevant):

> "…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,
>
> (c) …
>
> (d) …"

14. Section 66(1)(b) was considered by the President of the Lands Tribunal in *Martin v Hewitt (Valuation Officer)* [2003] RA 275. This case concerned the question of whether certain boathouses on the shores of Lake Windermere should be included in the non-domestic rating list or whether instead they constituted domestic property within section 66(1)(b). It was concluded that none of the boathouses could constitute an "outhouse" within section 66(1)(b) and accordingly the case turned upon whether the boathouses constituted some "other appurtenance belonging to or enjoyed with" living accommodation. The President reviewed various earlier authorities regarding the meaning of the word "appurtenance". He concluded that in all the statutory contexts in which this expression fell to be considered the word "appurtenance" was held to be confined to the curtilage of the building in question and that land or buildings lying outside the curtilage of the property referred to in section 66(1)(a) could not constitute an appurtenance within the section 66(1)(b). The Tribunal cited various earlier cases including from *Methuen-Campbell v Walters* [1979] QB 525 per Goff LJ at p.537:

> "So in the end, in my judgment, the crux of the problem becomes: Is this within the curtilage? The word 'curtilage' is defined in the *Shorter Oxford English Dictionary*, 3rd edn (1973) as 'A small court, yard, or piece of ground attached to a dwelling house and forming one enclosure with it.' Note 7 in *Stroud's Judicial Dictionary*, 4th edn (1971) p.663 suggests that it may be wider than that. We have looked at some of the cases cited in *Stroud*, but I do not think they afford us any assistance. What is within the curtilage is a question of fact in each case, and for myself I cannot feel that this comparatively extensive piece of pasture ought to be so regarded, particularly where, as here, it was clearly divided off physically from the house and garden right from the start and certainly at all material times."

The Tribunal also cited from the judgment in that case of Buckley LJ at p.542-3 which includes the following passage:

> "In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter."

These cases make clear that the question of whether one building or piece of land falls within the curtilage of another is a matter of fact and degree in every case.

15. In *Head (Valuation Officer) v Tower Hamlets LBC* the President of the Lands Tribunal considered the cases of eight separate DHSs which are described in paragraphs 9 to 16 of the decision. The Tribunal accepted that the expression "appurtenance" in section 66(1)(b) embraced property that would pass with the principal subject matter of a conveyance without the need for express mention and was confined to the curtilage of the building in question. The Tribunal rejected the argument that it was necessary to show that some individual tenant was able to claim to be entitled to the DHS. In paragraph 23 the Tribunal stated as follows:

> "23. I can see no difficulty in concluding that the district heating systems in the present case fall within para (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 district heating system is to provide heating and hot water to the residential accommodation. The building is owned by the council, and it is plain that the boiler house and the associated pipework within the building would pass on any conveyance of the building. The district heating system 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 council'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 district heating systems outside the definition of domestic property. Indeed counsel for the valuation officer said that distinctions should not be drawn between any of the district heating systems in the present case if the conclusion was that any one of them was within the definition."

16. The Lands Tribunal had to consider the situation regarding certain sewage treatment works in *Winchester City Council v Handcock (Valuation Officer)* [2006] RA 265. In one case some sewage treatment works had been built to serve ten houses (nine houses still being served on the material day). The other sewage treatment works served 58 properties located in two parcels in the near vicinity. Certain of the properties had passed into private ownership. The Lands Tribunal (His Honour Judge Mole, QC and Norman Rose, FRICS) concluded that neither sewage treatment works constituted domestic property within section 66(1)(b). Their reasoning is in paragraphs 23 to 25 of the decision:

> "23. In our judgment the short but decisive answer to solicitor for the ratepayer council'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 ratepayer council. 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 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 no 1 St Andrew's Green is in the same curtilage as 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 ratepayer council'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."

Submissions

17. As already noted the Respondents, prior to deciding to play no part in the present appeal, served a Reply. In this they submitted that the present cases fell within *Head v Tower Hamlets LBC* and that the relevant DHSs were appurtenant in each case to a housing estate and accordingly were domestic property for the purposes of the 1988 Act.

18. On behalf of the Appellant Mr Kolinsky acknowledged certain difficulties arising from the decision in *Head* so far as concerns at least one of the DHSs with which that case was concerned, i.e. other than the DHS in Glenkerry House which was expressly considered by the President in paragraph 23 of the decision. In particular he accepted that the facts recorded regarding the Tredegar Road boiler house are facts which seem similar to some of the present cases and are facts which, on Mr Kolinsky's argument, should lead to a conclusion that such a DHS was not domestic property. Paragraph 16 of the *Head* decision states:

"The Tredegar Road boiler house is a free-standing industrial-type building of brick and profiled metal construction. It has a 50m chimney. It is situated on Morville Street and backs onto the main railway line between Stratford and Liverpool Street. The installation serves 1,298 dwellings in blocks on either side of the railway. It also serves three shops and a tenants' meeting hall, all of which are entered as hereditaments in the rating list."

Mr Kolinsky pointed out that the Tribunal did not give separate analysis in respect of each of the DHSs in that case because of the express concession by counsel for the valuation officer that distinctions should not be drawn as between any of the DHSs in that case if the conclusion was that any one of them was within the definition of appurtenance within section 66(1)(b). Mr Kolinsky stated that insofar as it was necessary for him to do so he argued that this concession was wrongly made. Mr Kolinsky also drew attention to the fact that it was not entirely clear as to where the property which was not used for living accommodation was situated in the various separate cases in *Head*.

19. Mr Kolinsky did not seek in any way to challenge the correctness of the decision in *Head* so far as concerns Glenkerry House or properties such as that. He argued that the proper analysis of the decision in *Head* is that a DHS constitutes an appurtenance within section 66(1)(b) if:

(1) it is possible to identify a principal building; and

(2) this principal building is used wholly for the purposes of living accommodation; and

(3) the DHS in question is within the curtilage within this principal building and belongs to or is enjoyed with that property.

In these circumstances section 66(1)(b) will be satisfied because the DHS will constitute an appurtenance belonging to or enjoyed with property which is used wholly for the purposes of living accommodation (namely the principal building). This factual situation will not be displaced by reason of the DHS also serving other property (whether living accommodation or otherwise, such as commercial property) which is situated outside the principal building.

19. Mr Kolinsky argued that, on the basis that the forgoing analysis of *Head* is correct, it is necessary to identify a principal building (being a building used wholly for the purposes of living accommodation) with a curtilage and to find that the DHS is within this curtilage. As regards the question of whether a DHS serving a single block containing a hundred flats would be within section 66(1)(b) but a DHS serving two identical blocks, close together, each of fifty flats, would not (for want of a principal building) Mr Kolinsky accepted that it was not essential to have a single principal building. Section 66(1)(b) could be satisfied provided that the two (or more) buildings could properly be said to possess a curtilage which included the DHS. However he submitted that it is a matter fact and degree and that the more separate buildings there are the less likely it is that one will be able to find a sensibly defined and coherent curtilage within which the DHS is situated.

20. Where a DHS serves what is in effect a housing estate, namely a large number of separate units (whether each such unit be a bungalow or a house or block of flats or block of sheltered accommodation), then Mr Kolinsky argued:

(1) that such a housing estate cannot have a curtilage for the purposes of section 66(1)(b) and the DHS therefore cannot be domestic property; alternatively

(2) while it remains theoretically possible as a matter of fact and degree for a housing estate to have a relevant curtilage for the purposes of section 66(1)(b), one is unlikely in such circumstances to be able to find either any one principal building or any congregation of buildings which together can sensibly be said to possess a coherent curtilage within which the DHS can be found to be situated for the purposes of section 66(1)(b).

21. Mr Kolinsky accepted that certain substantial buildings, e.g. country estates such as Woburn Abbey, could have very extensive curtilages embracing many buildings. However that was very different from the case of a local authority housing estate. In the former case the major residence was an identifiable principal building to which much else was in a sense subservient, whereas a housing estate constituted a large number of separate units of habitation each of co-equal status.

22. Mr Kolinsky further argued that insofar as there had been a fragmentation of ownership, in the sense that the estate was no longer wholly owned by a local authority but had as regards certain plots been purchased through enfranchisement or other sales off, then this diversification of ownership further compounded the difficulty of finding a congregation of buildings which together can sensibly be said to possess a coherent curtilage within which the DHS can be found to be situated.

23. Mr Kolinsky relied upon the *Winchester* case. There all the dwellings individually had their own curtilage and it could not be said on the facts that either of the sewage treatment works was within the curtilage of any individual dwelling or within the curtilage of the dwellings (i.e. taking them all together). Similar reasoning applied in the present case.

24. Addressing the facts of the Perlethorpe Avenue case (see paragraph 9 above) which was taken by way of example as being the case where any difficulties for Mr Kolinsky's arguments (which he did not accept) would be the strongest, he contended that the DHS could not be said to be within the grounds of Melville Court. The DHS was separated from Melville Court by public highways and by footpaths – the DHS was in effect on some form of island site. Also the nearest buildings to the DHS were garages to dwellings (being dwellings not served by the DHS) and the nearest dwellings were also dwellings which were not served by the DHS. Accordingly the DHS was not within the curtilage of Melville Court, nor was it within the curtilage of a housing estate of which Melville Court formed part.

25. Mr Kolinsky further argued, in case his main argument was wrong such that some of the present DHSs were capable of constituting domestic property within section 66(1)(b), that:

(1) As regards the two DHSs which serve not only residential property but also a community centre, namely Dundee Drive, Mansfield Woodhouse and also Larwood, Worksop, these DHSs could not fall within section 66(1)(b) because if, contrary to his argument, they were within a curtilage of other property, then they were within the curtilage of property which included not merely dwellings but also a community centre and accordingly the property within whose curtilage they were to be found did not fall within section 66(1)(a).

(2) As regards Fritchley Court, Mr Kolinsky drew attention to the fact that here the DHS comprises not only the boiler system but also a significant element of workshop and office use. In these circumstances if, contrary to his argument, the boiler could be said to be within the curtilage of property falling within section 66(1)(a) it would nonetheless be necessary for the DHS property to be entered in the non-domestic rating list as a composite property, because part of this property was in any event used for non-domestic purposes, namely for the workshop and offices.

Conclusions

26. It is necessary if a DHS is to constitute domestic property that the DHS constitutes an appurtenance belonging to or enjoyed with property falling within section 66(1)(a) – i.e. an appurtenance belonging to or enjoyed with property which is used wholly for the purposes of living accommodation. I accept that for a DHS to be an appurtenance of such property the DHS must be contained within the curtilage of such property, see paragraph 14 above. The question of whether a DHS falls within such a curtilage will be a matter of fact and degree in every case.

27. So far as concerns the decision in *Head v Tower Hamlets LBC* I have no difficulty in respectfully accepting and agreeing with the learned President's analysis in paragraph 23 in relation to Glenkerry House which the Tribunal took as the clearest example. I accept Mr Kolinsky's argument that the proper analysis of the *Head* case is that a DHS will be domestic property where it is possible to identify a building (or I would add buildings) which possesses (or possess) an identifiable curtilage within which the DHS is situated and which is (or are) used wholly for the purposes of living accommodation and to which the DHS belongs or with which it is enjoyed. If these conditions are satisfied then section 66(1)(b) will be satisfied – and this provision will not cease to be satisfied merely because the DHS also serves other dwellings or other property (being something other than living accommodation) situated outside the property within whose curtilage the DHS lies.

28. I am unable to accept that necessarily, as a matter of law, it is not possible for a congregation of buildings in the nature of a housing estate to have a curtilage for the purposes of section 66(1)(b) within which a DHS can lie. This is because the question of whether a building or piece of land falls within the curtilage of another building (or other buildings) is always a matter of fact and degree. It might be possible to construct hypothetical facts in which something which could properly be described as a housing estate did possess its own coherent and sensibly identified curtilage and for there to be a DHS within that curtilage.

29. However on the facts of the present case I reach the clear conclusion that none of the twelve DHSs with which I am concerned falls within the curtilage of any dwelling or of any dwellings. The case is very different from that in Glenkerry House in the *Head* case where the heating system was on the fourteenth floor of a principal building comprising residential accommodation. The closest any of the present cases come to having any principal building (being used wholly for the purposes of living accommodation) within whose curtilage the DHS might be argued to be situated is the case of Perlethorpe Avenue, Mansfield, see paragraph 9 above. However I accept Mr Kolinsky's argument that even here the DHS is not within the

grounds of Melville Court, is separated from Melville Court by public highways or footpaths, and is closer to dwellings and other property which are not served by the DHS. It cannot be said, within the words of Buckley LJ in *Methuen-Campbell v Walters* (see paragraph 14 above) that the DHS is so intimately associated with Melville Court (or with Melville Court and the other residential units) as to lead to the conclusion that the DHS in truth forms part and parcel of Melville Court (or of Melville Court coupled with the other residential units). The other cases are clearer still. They involve substantial housing estates including units with their own enclosed gardens, being housing estates which do not have a principal building within whose curtilage the DHS is situated and being housing estates which comprise a large number of individual units which cannot sensibly be said together to possess a curtilage which embraces the DHS.

30. The cases found significant by the NVT at New England Way, Pleasley and Riverview, Warsop are in my judgment plainly distinguishable. There the DHS was in each case physically part of (and clearly within the curtilage of) the building comprising the living accommodation, see paragraph 11 above.

31. I have reached the foregoing conclusion without taking into account the fact that on some of the estates there has been fragmentation of ownership through sales off, through enfranchisement or otherwise. I was asked by Mr Kolinsky to give a judgment on the extent to which this aspect of the matter could affect the question of whether section 66(1)(b) would be satisfied – i.e. whether fragmentation of ownership of the property served by the DHS would be relevant. Bearing in mind it is not necessary for me to reach a conclusion on this point and bearing also in mind the fact that I have heard argument from only one side in the present case, I conclude that it is not appropriate for me to say anything more on this point save that I provisionally respectfully agree with the obiter remarks of the Tribunal in paragraph 26 of *Winchester v Handcock*.

32. Also, bearing in mind the conclusion I have reached on Mr Kolinsky's principal point, it is not necessary for me to consider the two alternative points raised by Mr Kolinsky and recorded in paragraph 25 above. I can simply state that I can see substantial force in the point recorded in paragraph 25(1) above, but I do not think it appropriate to make any comment in relation to the point in paragraph 25(2).

33. In the result I allow the Appellant's appeal in the case of each of the twelve separate DHSs. I order that the relevant non-domestic rating lists be amended as shown on pages 8 and 9 of the bundle before me under the heading "Decision requested by the Valuation Officer". This involves either the reinstatement of the previously existing rateable value, alternatively the entry of a rateable value as proposed by the Appellant (the Appellant only makes such a proposal where his valuation is lower than the previous figure – where his valuation is higher he merely seeks the reinstatement of the previous figure).

34. 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. Any submissions on costs should be made in writing no later than 21 days after the date of this decision.

Dated 11 July 2008

His Honour Judge Huskinson

Addendum on Costs

35. In paragraph 34 of my decision dated 11 July 2008 I invited any submissions on costs which the parties wished to make. The Appellant has pointed out that he has succeeded in the appeal to the Lands Tribunal and that under Lands Tribunal Practice Directions of May 2006 at paragraph 22.3 the general rule is that the successful party ought to receive his costs. The Appellant has recognised that Bassetlaw District Council ("Bassetlaw") formally told the Tribunal and the Appellant by the letter to the Tribunal of 31 July 2007 from Wilks Head & Eve that Bassetlaw did not wish to proceed with the appeals and would not be serving any expert reports or witness statements. Having regard to this the Appellant does not seek any order for costs against Bassetlaw. Accordingly I make no order for costs against Bassetlaw.

36. The position regarding Mansfield District Council ("Mansfield") is different. Mansfield was represented by Messrs King Sturge, who served a formal Notice of Intention to Respond to the appeal (under cover of a letter dated 1 February 2006) and who made various applications for extensions of time for service of a Statement of Case and who in due course served a formal Statement of Case dated 5 April 2007 arguing that the Appellant's appeal should be dismissed. Mansfield did not, either through King Sturge or at all, formally notify the Lands Tribunal or the Appellant in writing that it was no longer resisting the Appellant's appeal. Further it may be noted that the present litigation was made necessary by reason of the making of proposals by Mansfield (and also Bassetlaw) to alter the rating list for 2000. It is these proposals which have ultimately been held to be ill-founded. It seems that King Sturge informally told the Appellant that Mansfield would not be participating in the appeal. This informal notification would seem to have been given comparatively shortly before the hearing of 1 July 2008 – thus I note a letter from the Appellant's solicitors' department to the Tribunal of 6 May 2008 asking

the Tribunal if it has any information as to what if any role Mansfield and King Sturge will be playing in the forthcoming hearing. Accordingly I consider the position of Mansfield to be significantly different from the position of Bassetlaw.

37. The Appellant, while not seeking any costs against Bassetlaw, does seek an order that Mansfield should pay 25% of the Appellant's costs of the appeals. In my judgment this is a reasonable and moderate request for costs which is justified and should be granted. There is no reason for the Appellant to be debarred from having any costs from Mansfield merely because he has decided not to seek any costs from Bassetlaw. Also I reject King Sturge's submission that no order should be made for costs on the basis that, even if Mansfield and King Sturge had indicated much earlier that they would not participate in the hearing, the hearing would have had to proceed on an ex-parte basis anyway. In summary Mansfield have lost the appeal; the appeal was necessary because of (inter alia) Mansfield's proposals to alter the valuation list which have been held to be ill-founded proposals; the Appellant has distinguished (justifiably in my view) between the position of Bassetlaw and that of Mansfield and has chosen to seek costs against Mansfield while not seeking costs against Bassetlaw; and the application for 25% of the Appellant's costs is moderate and reasonable.

38. Accordingly I order:

(1) that there be no order for costs against Bassetlaw, and

(2) Mansfield is to pay to the Appellant 25% of the Appellant's costs of the appeals to the Lands Tribunal such costs to be the subject of a detailed assessment by the Registrar of the Lands Tribunal on the standard basis if not agreed between the parties. For the avoidance of doubt these costs (of which Mansfield is to pay 25%) are to be the Appellant's costs of these appeals (ie of the cases RA/60-69/2005 and RA/71-72/2005) rather than merely such costs as can be attributed to the Mansfield cases rather than the Bassetlaw cases. This is justified by reason of the fact that Mansfield was concerned with 10 out of the 12 separate appeals and is only being required to pay 25% of the costs of the 12 appeals.

Dated 23 September 2008

His Honour Judge Huskinson

Appendix to the decision in RA/60-69/2005 and RA/71-72/2005

Description of the other 9 DHSs, being those DHSs not described in paragraphs 8,9 and 10 of the decision.

(1) **Babworth Court, Mansfield.** Stand alone boiler house and fenced yard. It serves 340 dwellings of which 33 are owner occupied. A public footpath to the west of the boiler house divides it from the flats at 42-52 Babworth Court, otherwise it is an open tarmac area between this block and the boiler house. The distance between the boiler house and 42-52 Babworth Court is 5.4 metres. The boiler house occupies a site whose footprint is of a similar (or greater)size than the footprint of the site of this block. The dwellings served can be categorised into two distinct areas. The properties off Kinston Road, Gladstone Street and Bilborough Road are a mixture of blocks of flats and terraced and semi detached bungalows, the bungalows have enclosed rear gardens but are open at the front. The flats are open. The properties off Recreation Road, Goodacre Street, and Wallis Road, are detached bungalows each having their own plots, surrounded by their own gardens with their boundaries marked by walls and fences.

(2) **Jubilee Way South, Mansfield.** Stand alone boiler house and fenced yard. It serves 121 dwellings of which 20 are owner occupied. The boundary of the boiler house is clearly defined. The adjacent semi detached houses to the boiler houses each have their own plots, surrounded by their own gardens with their boundaries marked by walls and fences. The dwellings served are a mixture of terraced and semi detached houses, detached and semi detached bungalows and a block of sheltered units at Willingham Court. The houses are characterised by their own distinguishable plots surrounded by their own gardens with their boundaries marked by walls and fences. The bungalows have enclosed rear gardens but are open at the front and Willingham Court is open.

(3) **Longstone Way, Mansfield.** Stand alone boiler house on the corner of Longstone Way and Ladybrook Lane. Bounded on the east, south and west by public roads and to the North by a concrete post and wood panel fence marking the boundary between 296/298 Ladybrook Lane and the boiler house. It serves 53 dwellings of which 3 are owner occupied. The dwellings served are a mix of terraced houses, maisonettes and flats. The dwellings to the east, south and west are terraced housing, maisonettes and flats, each block has definable fenced area adjacent to it but otherwise are open plan. The dwellings to the north have definable boundaries marked by fences.

(4) **Newark Drive, Mansfield.** Stand alone boiler house and yard; the boundary of the boiler house is clearly defined by a fence and the walls of the boiler house. It serves 110 dwellings of which 4 are owner occupied. A public footpath separates the boiler house from the flats to the north, and car park and road from the dwellings to the south and east. To the west the boiler house backs onto open space and estate footpaths. The dwellings served are a mixture of blocks of flats and terraced and

semi detached bungalows, the bungalows have enclosed rear gardens but are open at the front, the flats are open.

(5) **Shirland Drive, Mansfield.** Stand alone boiler house and yard situated at the end of a communal parking area of Shirland Drive. It serves 81 dwellings of which none are owner occupied. The boundary of the boiler house is clearly defined by brick walls. Bounded to the west by public highway and parking, to the north by a public footpath and fence and the east and south by the boundary fences of the dwellings served. The dwellings served are a mix of terrace and semi detached bungalows, and blocks of flats. The bungalows each have their own plots, surrounded by their own gardens with their boundaries marked by walls and fences. The flats are open.

(6) **Benington Walk, Mansfield Woodhouse**. Stand alone boiler house and yard situated at the end of a communal parking area off Benington Walk. It serves 77 dwellings of which 9 are owner occupied. The boundary of the boiler hosue is clearly defined by brick walls. Bounded to the east by public open space, and to the west by the communal parking. To the north and south of the boiler house are the rear gardens of the dwellings served each enclosed by fences and/or walls. The dwellings served are a mix of terrace and semi detached houses, and bungalows each having their own enclosed rear gardens with their boundaries marked by walls and fences. The front gardens are in some instances definable but in some are open.

(7) **Newcastle Street, Mansfield Woodhouse**. Stand alone boiler house. It serves 142 dwellings of which 18 are owner occupied. The boundary of the boiler house is clearly defined. Bounded to the east by a fence and fallow land, to the north by public highway, and on all other sides by dwellings which each have their own plots, surrounded by their own gardens with their boundaries marked by walls and fences. The dwellings served are a mix of terraced housing, maisonettes semi detached bungalows and a sheltered block/flats at Sherwood Court. Generally the terraced houses have clearly defined front and rear gardens with their boundaries marked by walls and fences, with the exception of 2-10 Newcastle Street, which are open at the front. The maisonettes and Sherwood Court are open and the semi detached bungalows open at the front and enclosed at the rear.

(8) **Coverdale, Worksop**. Stand alone boiler house and enclosed yard. It serves 57 dwellings of which none are owner occupied. Bounded to the east by a brick wall then agricultural land and on all other sides by public highway. The dwellings served are predominantly a mixture of detached, semi detached and terraced bungalows, each property having their own plots, surrounded by their own gardens with their boundaries marked by walls and fences.

(9) **Larwood, Worksop**. Semi detached boiler house and enclosed yard situated in one small corner of the Kilton Forest Community Centre. It serves 132 dwellings of which none are owner occupied. Kilton Forest Community Centre is in the Non-Domestic rating list as a Community Centre and Premises, Rateable Value £8,700. To the south the adjacent dwellings to the boiler house each have their own plots,

surrounded by their own gardens with their boundaries marked by walls and fences. To the north and east the property is semi detached to the community centre, and to the west is a communal car park for the community centre and health centre. The dwellings served are a mix of terraced and semi detached houses and bungalows. The DHS also serves Larwood House a sheltered accommodation complex. Generally speaking the front gardens are open with the rear gardens enclosed by fences and walls. Larwood House is open.

Dated 11 July 2008

His Honour Judge Huskinson