Council Tax Practice Notes

Practice Note 1: England only: Definition of Dwelling and Basis of Valuation for Council Tax

1. Introduction

The Local Government Finance Act 1992 requires the Commissioners of Inland Revenue to carry out valuations of dwellings in England and Wales for the purposes of compiling and maintaining valuation lists and specifies bands within which dwellings are to be placed. The Act also requires that a similar valuation exercise be carried out in Scotland by the Scottish Assessors, acting under the direction of the Commissioners.

The Council Tax (Situation and Valuation of Dwellings) Regulations 1992 as amended by The Council Tax (Situation and Valuation of Dwellings) (Amendment) Order 1994 (hereinafter referred to as "the regulations") contain, inter alia, the basis of valuation to be adopted when banding for Council Tax purposes.

2. Definition of Dwelling

Section 21 of the Local Government Finance Act 1992 requires the Commissioners of Inland Revenue to carry out valuations of dwellings in England and Wales for the purpose of facilitating the compilation and maintenance of valuation lists. Section 3 of the Act defines "dwelling" and reads as follows:

(1) This section has effect for determining what is a dwelling for the purposes of this Part.

(2) Subject to the following provisions of this section, a dwelling is any property which -

a) by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force; and
b) is not for the time being shown or required to be shown in a local or a central non-domestic rating list in force at that time; and

c) is not for the time being exempt from local non-domestic rating for the purposes of Part III of the Local Government Finance 1988 Act ("the 1988 Act");

and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.

(3) A hereditament which -

a) is a composite hereditament for the purposes of Part III of the 1988 Act; and

b) would still be such a hereditament if paragraphs (b) to (d) of section 66(1) of that Act (domestic property) were omitted,

is also, subject to subsection (6) below, a dwelling for the purposes of this Part.

(4) Subject to subsection (6) below, none of the following property, namely -

a) a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation; or

b) a private garage which either has a floor area of not more than 25 square metres or is used wholly or mainly for the accommodation of a private motor vehicle; or
(c) private storage premises used wholly or mainly for the storage of articles of domestic use,

is a dwelling except in so far as it forms part of a larger property which is itself a dwelling by virtue of subsection (2) above.

(5) The Secretary of State may by order provide that in such cases as may be prescribed by or determined under the order

a) anything which would (apart from the order) be one dwelling shall be treated as two or more dwellings; and

b) anything which would (apart from the order) be two or more dwellings shall be treated as one dwelling.

(6) The Secretary of State may by order amend any definition of "dwelling" which is for the time being effective for the purposes of this Part.

-end of extract-

2.1 Points to note re Definition of Dwelling & Hereditament:

In respect of the above definition, the following points are to be noted;

(i) Hereditament is defined in section 115(1) of the General Rate Act 1967 as being,

"property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list". It is case law, however which tells us what this means in practice.

- Hereditament in relation to CT was examined in the case RGM properties v Speight LO 2011. In paras 13-17 an analysis of the law was

undertaken in relation to beneficial occupation. The authorities were examined and the practical definition linked to that expounded in Post Office v Nottingham City Council CA 1979 in the answer to the question, “as a matter of fact and degree, is or will the building, as a building, be ready for occupation, or capable of occupation, for the purposes for which it is intended?”

- In both the RGM case and Wilson v Coll LO 2011 the need was emphasized to separate the ‘hereditament test’ as to whether an existing property is capable of reasonable repair, from the valuation assumptions to be applied (see para 3 below) once it was found that a hereditament existed.

- In R v East Sussex Valuation Tribunal Ex p. Silverstone 1996 RVR 203, it was confirmed that where two separate dwellings are converted into a single unit, a new dwelling comes into existence.

- The case of Baker (VO) v Citibank LT 2007 confirmed the principle that a change in the boundaries of a hereditament created a new hereditament. It follows from this that where a dwelling either acquires or disposes of land, to add or subtract from its boundaries (that is not merely de minimis in extent), a new dwelling will have been created in each case. In these circumstances a relevant transaction is not necessary to trigger a band review where material increases have taken place.

- A former dwelling which is removed from the list because it becomes non-domestic property will cease to be a dwelling. If subsequently it becomes domestic property again and qualifies as a dwelling it will be treated as a new dwelling when brought back into a CT list. Any improvements which may have occurred will be taken into account as part of the new dwelling.

(ii) Exemptions for the purposes of Part III of the LGFA 1988 are listed in its 5th Schedule.
(iii) Any property which satisfies the definition in section 3 LGFA 1992 but is in the occupation of the Crown is nevertheless a dwelling for Council Tax purposes.

(iv) Any property which is a composite property as defined by section 64(9) of the LGFA 1988 is a dwelling unless it forms such a hereditament by virtue of the fact that it contains only domestic property defined in paragraphs (b) to (d) of section 66(1) of the 1988 Act.

(v) Any property included in those categories mentioned in S.3(4)(a) (b) and (c) LGFA 1992 will never constitute a dwelling in isolation. It will only ever be a dwelling to the extent that it forms part of a larger dwelling. Such property will only form part of a larger dwelling if, for the purposes of the General Rate Act 1967, it would have formed part of a hereditament as defined by S.115(1) eg a house and garage occupied together and situated within a single curtilage will together form a single dwelling.

- A garage which is physically separated from the house with which it is enjoyed by a main road will not comprise a dwelling in its own right or be regarded as forming part of the house (dwelling) as it would have formed a separate hereditament for the purposes of the General Rate Act 1967. Similarly a garage situated within the curtilage of a block of flats will not comprise part of a dwelling if for the purposes of the 1967 Act it would have formed a separate hereditament. The value of any such garage should not be reflected directly in the value of the individual dwelling.

- Communal facilities such as car parking areas, gardens, communal lounges at a block of flats or sheltered housing development will not generally comprise a dwelling in their own right the value of such facilities should be reflected in the market values of the individual units.

- In those instances where a facility is used by both owners of adjoining living accommodation, as a right of occupation of their respective hereditaments and individuals living elsewhere (provided the latter use is not de minimis) it will have been treated as non-domestic property. eg
Leisure facilities at a luxury development. The right to use such facilities should be reflected in the market values of the individual dwellings. 

(vi) The power conferred on the Secretary of State in subsection (5) has been exercised in the form of The Council Tax (Chargeable Dwellings) Order 1992 (SI No. 549) as amended by The Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) Amendment Order 1997 (SI No 656) and the Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards)(Amendment) (England) Order 2003 SI 3121. Articles 3 and 3A of the Order detail the circumstances where properties which would otherwise form single dwellings are to be treated as more than one. Article 4 gives the listing officer a discretion in prescribed circumstances to treat properties which would otherwise form multiple dwellings as single ones. For instructions on the disaggregation and aggregation of dwellings see CTM:PN5 and PN6 respectively.