Our ref: 006-NNV-2007

19th January 2007

Sir Michael Lyons
Lyons Inquiry
Room 3/12
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London
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Email: sirmichaellyons@lyonsinquiry.org

Dear Sir Michael

Re: Lyons Inquiry into Local Government - Promoting economic prosperity: considering the implications of Eddington, Barker and Leitch.

Introduction

The Royal Institution of Chartered Surveyors (RICS) is pleased to have the opportunity to comment on the extended remit for your inquiry to consider the recommendations of the Barker, Eddington and Leitch reports.

RICS is one of the most respected and high profile global 'standards and membership' organisations for professionals involved in land, valuation, real estate, construction and environmental issues. RICS is regulated by its Royal Charter with the objective of promoting the public good. This allows RICS to comment independently on matters that it perceives to be relevant to its profession. With over 110,000 members worldwide the main roles of RICS are to maintain the highest standards of education and training, to protect consumers through strict regulation of ethics and standards, to advise global organisations, governments and regional boards, and to publish market information and research.

Questions for Stakeholders

We propose to comment on the Barker and Eddington reports as the findings of the Leitch Review of Skills fall outside the scope of our expertise. Our response is structured to correspond to the questions raised in your supplementary consultation document.

INVESTOR IN PEOPLE

Eddington Transport Study

Governance

Can local authorities work effectively in partnership to deliver transport outcomes or are new/reformed institutions necessary?

The powers currently issued to local authorities mean that in theory they should be able to work together in partnership to deliver transport outcomes. However, the accompanying funding mechanisms, from central government, and local government priorities often offer little incentive to do so. For this reason RICS would support the concept of new or reformed institutions to facilitate the delivery of transport outcomes. We anticipate that this option could also go some way to overcoming the competition that is often felt between regions and is additionally hindering the delivery of transport outcomes through effective partnership working.

What are the key behaviours required of local authorities to work in such partnerships? Would new institutions or contractual arrangements be needed to support them?

No comment.

Do the issues not considered in Eddington – particularly the potential benefits of aligning transport with other policy powers – alter the best overall design for governance arrangements?

RICS agrees that the issues not covered in Eddington can alter the best overall design for governance arrangements. The impacts of an efficient transport system go far beyond the movement of goods and people from A to B; it can influence job opportunities, living standards, the accessibility and provision of health and educational services and climate change through the level of CO_2 emissions. Subsequently it is fundamental that transport is considered at the economic and strategic stage of planning and governance arrangements, not just the implementation stage.

How can local government make use of any new bus powers in line with its broader role in promoting economic development?

RICS believes that without the re-regulation of buses it would be unrealistic to expect the bus system to promote economic development.

Convening

How can local authorities make the links between transport and the other elements of economic development and quality of life most effectively at the local level?

Again RICS would stress that transport must be considered at the economic and strategic stage of planning and governance arrangements, not just the implementation stage, and that this in turn is replicated at a local level.

If more effective links are to be made between transport, economic development and the quality of life at a local level there must be greater integration of transport and planning not only in but also across regions. The needs of a predominately urban area are likely to be in stark contrast to those in a predominately rural setting but ultimately the needs of all must be considered. For this reason a strategic policy has to be adapted and implemented locally.

The previously mentioned levels of competition that are often experienced between regions are also hindering economic development to occur in some localities.

Funding

How could current funding arrangements best be reformed to support cost effective and appropriate spending and investment decisions at sub-national level?

We believe the system of hypothecation, a method mooted in relation to the introduction of the London Congestion Charge, with money being invested in the expansion or development of the transport system could support cost effective and appropriate spending and investment decisions at a sub-national level.

Government has indicated a desire to devolve power to more sub-national levels but for this to occur there must be reform within the funding streams. At present the Treasury do not appear willing to release the necessary funds.

A system of land – value – capture integrated with a planning system that considered transport issues at the economic and strategic planning stages rather than simply at the implementation stage could also be an effective way of reforming the current funding arrangements.

Ultimately any reforms to the current funding arrangements to support cost effective and appropriate spending and investment must recognise that a hierarchy of users exist at the sub national level. Funding can not be solely based on top-down decisions.

What transport funding sources are most appropriately managed by local bodies? What would be the most appropriate incentives to encourage the adoption of demand management option at a local level?

Output driven incentives that focus on issues such as safety and air condition/ pollution levels rather than major schemes would, RICS believe, be the most appropriate form of encouragement for the adoption of demand management options at a local level. Local Transport Plans Stages 1 and 2 already go some way to achieving this.

A land-value-capture based system should also be considered as it would not only address the relationship between transport and the existing developments, which the proposed Planning Gain Supplement (PGS) omits due it its focus on new developments, but it also recognises the impact that transport can have on property values and desirability. Testimony to this impact can be found in the RICS ‘Gold, Silver or Bronze? Development Prospects in East London’ report which states that the rocketing house prices in Stratford, due to the forthcoming Olympic Park, are only building upon already accelerated increased stimulated by transport development. The Jubilee Line opened in 1999, since then average house prices in Stratford (postcode E15) have risen from approximately £150,000 to just under £450,000 in the immediate run up to the Olympics being awarded and thereafter even more steeply. Harnessing this uplift through land-value-capture could provide funding for future investment.

Eddington is right to highlight that there are good and bad transport policies and investments (clause 1.33). Investment needs to be carefully appraised and only well tried and tested modes specified. RICS firmly believes that social and environmental pricing policies, where the true cost of usage is captured, should be adopted. Far too often incentives for demand management focus solely on financially based systems not environmentally responsible options. This is demonstrated in cases where strong passenger demand on railways has resulted not in an expansion of the rail network but rather an out pricing of rail demand and investment in comparatively cheaper road infrastructure.

Admittedly the provision of additional rail capacity takes many years to construct and it could well be a reality that in the 5 – 7 years it would take to extend the West Coast line, for example, the new capacity would already have been reached. However it must be recognised that providing the necessary infrastructure to meet the current and future transport needs takes a significant period of lead in time. For this reason, and the cost implications, it is imperative that measures undertaken are not knee-jerk reactions.

At present there appears to be no rational approach to different funding mechanisms for different transport modes, particularly in relation to environmental considerations. Despite vast sums being spent on transport, private car and air travel continue to be comparatively cheap compared to the less environmentally detrimental modes of train and bus.

We believe that both central and local government needs a route map when considering how to best utilise transport funding sources and encourage the adoption of demand management options at a local level.

Local authorities currently retain the revenues from local road pricing schemes. How might further developments in this area affect the use of those revenues?

There has been some criticism of the effectiveness of road pricing schemes and the finger of blame has frequently pointed at the lack of technology. Yet as the Green Light Group "Road Pricing: Can the Technology Cope?" report demonstrates it is not the technology that is problematic but the system. If this scenario is to alter consideration must be given to addressing the effectiveness of the system.

Barker Review of Land Use and Planning

Governance

What specific measures are needed to ensure that local planning authorities have appropriate flexibility over issues of solely local impact? Are there particular implications from the Review's recommendations on the use of green belt land?

In general, local authorities must find ways of responding more quickly and more consistently. One specific measure that could be taken to ensure that local planning authorities have appropriate flexibility over issues of solely local impact is the scaling back of targets and the speed of decision-making. The focus on targets and speed of decision-making has affected the quality of output and increased the pressures on understaffed departments. A balance between speed and efficiency is needed.

On the issue of the green belt, the RICS believes that pressures for Greenfield development should be avoided where possible and that there are long-term drawbacks to the over relaxation of constraints on Greenfield development. However, the RICS does accept that on occasion it may be necessary to develop on the green belt and that it should not be made so difficult to develop on the green belt that the cost of a planning application becomes too great that it deters investment and forces countries to relocate either elsewhere in the country or even abroad.

What different approaches could be taken to enable strategic decisions to be taken at an appropriate spatial level? Can local authorities work effectively in partnership across wider areas to do this or are new/reformed institutions necessary?

It is important that planning in town centres links the national, regional and local levels. The best way of achieving this would be by means of "double devolution" whereby budgets and functions are pushed down to the city-region level. This may include measures such as giving tenants control of housing estates or giving communities the right to buy local facilities such as disused open spaces and community centres. To achieve this goal, new institutions are not necessarily required but it will be necessary to enhance the role that the voluntary and community sector plays.

What role should local authorities have in relation to a future independent Planning Commission, and how should they best work with local communities on their concerns and potential benefits?

We do have concerns over the lack of local accountability that will follow from the introduction of an independent planning commission. However, the RICS also acknowledges that there is a balance to be drawn between local sensitivities and the national need and that in the past the balance may have been tilted too much in favour of the former. One way in which local communities could work better with an independent planning commission is by making the development relevant to the area where it is to be sited or by central government offering some form of quid pro quo.

Convening

How can local authorities link work on planning, housing and transport issues together most effectively?

The best way of linking planning, housing and transport issues would be by ensuring that regional plans are joined up and that a sequential approach is adopted. This approach should adhere to the following levels:

- Economic (to incorporate regional economic strategies and the like);
- Spatial (to reflect the major questions arising from the economic strategy of "how much", "how big" and "where");
- Housing and transport (to ensure delivery of the plans).

Funding

What would be the most effective and practical means of creating incentives for local authorities to support appropriate growth?

The role of planning policy should be to "load the dice" in order to motivate positive land use and quality design outcomes rather than by direct intervention. In order to achieve this, local authorities should respond more quickly and more consistently and regional planning guidance and spatial strategies should provide the broad planning overview rather than prescribing micro-level measures.

Another measure that could be taken is a reduction in the number of statutory consultees. Not only would this free up valuable time for planners but it would also introduce more flexibility into the planning system which would allow it to respond quickly to market changes.

How should the empty property relief in business rates be reformed? How should a charge on vacant and derelict brownfield land be introduced into the existing local

land and property tax system? Would any local flexibility on such measures be desirable?

We welcome the acceptance by the report in section 2.20 that “Various analyses have shown that NNDR is highly - if not completely - capitalised, and therefore that the economic incidence of the tax falls primarily and perhaps exclusively on property owners". . We agree that rental value will ultimately reflect all occupational costs including rates, but would point out that this process is normally delayed by both market forces and the contractual relationship (the lease) between landlords and tenants. We are concerned that the author of the report appears to have been both inadequately and incorrectly briefed in the sections on “**Fiscal incentives for using urban space efficiently**” sections 2.20 – 2.23 about the operation of Empty Property relief.

Section 2.21 suggests that “Reliefs currently available when property falls empty differ according to the 'bulk class', or type, of property” This is a simplistic explanation. There is no legal or statutory definition of “bulk classes”. This is professional “jargon” used by the Valuation Office Agency to describe properties which the Agency initially values using a computer assisted direct rental approach. Neither the method of valuation nor the VOA’s bulk class groupings have anything to do with the entitlement of the property to Empty Property Rate Relief. This is determined by reference to the “Non-Domestic Rating (Unoccupied Property) Regulations 1989 SI2261. A brief study of these Regulations (which form appendix “A”) demonstrates that the rules for assessing liability to Empty Property Rate have nothing to do with the VOA “bulk classes” or the method of valuation used to asses them. It will be seen from the Regulations that properties within the “bulk class” categories may or may not be subject to exemption from Empty Property Rate whilst this is also true of those valued by other methods.

We are concerned that the author of the report appears to be under a basic misunderstanding as to the fundamental principle behind the levying of rates as a tax. Rates have always been a tax on the use and occupation of property based upon its annual rental value. Empty property had no liability for rates until 1966. Empty Industrial property, which includes many premises which are not valued on the "bulk class" basis, were exempted from empty property rate because of the concern expressed that owners of vacant industrial buildings would take steps to render them valueless (particularly in times of recession) by demolition or otherwise taking steps to substantially destroy the property in order to render it valueless for rating purposes. Had this exemption not been granted there would have been the danger that, when the recession came to an end, the supply of available industrial premises would be inadequate. Our Institution has never before heard it seriously suggested that “the variation in relief payments by bulk class might be that office and retail space is of lower market risk than industrial property”. We have already explained that “bulk classes” have nothing to do with the determination of entitlement to Empty Property Rate and would be interested to learn more about the justification for this novel speculation.

This report would appear to be based upon the assumption that the owner of an empty property is a freeholder who is free to dispose or redevelop his property. Sadly this is

frequently far from the real market position. Often the owner (the person entitled to possession) is a leaseholder whose legal interest can be for a short, medium or long period. The person entitled to possession may find he has an empty property on his hand for any number of reasons including, recession, business reorganisation, and changes in technology or the market place in which he operates. Quite frequently property becomes vacant on rationalisation of a business, or following company mergers or takeovers.

Whilst most owners of property seek to achieve the highest possible return on their asset, the actions of a freeholder and a leaseholder are often very different because of the contractual position in which they find themselves. Whist the popular media like to publicise examples of owners keeping property empty to increase its capital value, in our experience this is the exception rather than the rule. Most owners maximise the capital value of their empty property assets by selling, re-letting, refurbishing or redeveloping.

If the property is retained in its existing state, then a landlord will attempt to find a tenant who will be responsible for the payment of rates, repairs and insurance. These are all costs which the landlord would otherwise have to bear himself. If it is economic to refurbish the property in order to obtain a higher rent, then a well advised landlord will normally adopt this tactic. If the building has no viable economic use, or an alternative use is more valuable, the owner will normally demolish the property. It is our experience that owners normally only keep property empty because of some other factor, such as the necessity to assemble a site for redevelopment or because of difficulties in obtaining planning permission. Keeping property vacant is expensive and most owners will wish to see a return on their investment. Tenants owning empty property do not normally have the same freedom of action as a freeholder and may be forced to maintain an empty property whilst seeking an accommodation with their landlord or some other party.

The Barker Report suggests that “there are parts of the country where significant amounts of land and property are not in use”. One table shows the highest ranked local authorities by rate of vacancy. The 6th highest-ranked local authority in 2004-05 in terms of the percentage of property vacant is shown as the City of London. We find the suggestion that this is a locality where property owners are normally viewed as standing in the way of the beneficial use of their property very difficulty to accept. The number of tower cranes currently massed on the City Skyline tells a different story.

This highlights the problem we identified above: that owners are often frustrated in their attempts to either redevelop or to bring back buildings into use by factors outside their control such as planning or the need to assemble economically viable sites.

No distinction is drawn in the tables provided by the report between land (or buildings) which are empty and are in the private sector and those in the public sector. The economic and other incentives for the public sector to redevelop property is often very different from that in the private sector.

The supplementary consultation document asks two questions.

1. How should empty property be reformed?

Whilst we disagree with the basic premise on which the proposals in the Barker report are founded, we support not only consideration of empty property relief, but would welcome a full review of all exemptions and reliefs from Non-Domestic Rates. The present exemptions and reliefs have grown up over an extended period and contain a number of apparent anomalies - for example, sewers are exempt but sewage treatment works are not.

There are now so many reliefs from rates that ratepayers find it very difficult to know which they are and whether they are entitled to them. In addition to empty rates, there are reliefs for small businesses, rural village shops, pubs, petrol filling stations, community amateur sports clubs, charities, non-profit making bodies, part occupied premises, hardship cases and other discretionary reliefs. Perhaps the most complex is transitional relief designed to phase in changes between the 5 yearly rating revaluations. All these reliefs render rate demand notices issued by billing authorities incomprehensible to many ratepayers which therefore renders the tax less acceptable to those who are required to pay it.

Further confusion arises out of the different criteria that exist in order to qualify for reliefs and the plethora of different Rateable Value thresholds that apply in order for a ratepayer to qualify. At present the thresholds that exist for different reliefs are Rateable Value £2,200, £3,500, £5,000, £7,000, £10,500, £12,000, £14,000, £15,000 and £21,500.

Reliefs and exemptions have been added over time in order to seek to address specific policy objectives. We believe that a comprehensive review would establish which exemptions and reliefs continue to be relevant today; whether any should be removed or altered; and whether any additional exemptions or reliefs are required. In particular we question whether a system of taxation based on use and occupation of property is an appropriate means of seeking to tax unoccupied property. It is important to note that we are not explicitly calling for removal or alteration of any exemptions or reliefs, merely for a review of existing arrangements. A review might well conclude that extensions to reliefs or exemptions are appropriate. For example, exemption was relatively recently extended to agricultural buildings operated by cooperative enterprises. However, this change was considered in isolation. It may well be that a full review could have concluded that other changes in respect of agricultural exemption were appropriate. Likewise, reliefs in respect of rural shops were introduced in isolation and may, as a result, not be effective in achieving desired aims. In the same way, we think it unlikely that changes to emtpy property rating, taken in isolation, are likely to achieve the aims expressed.

Currently Section 51 and the 5th Schedule to the Local Government Finance Act 1988 set out those classes of property which are exempt from valuation for Rating purposes. We set out Schedule 5 in full as Appendix “B”.

We are concerned that, unless those classes of property which currently exempt, are valued, Ministers have no way of assessing the cost of the exemption they are granting to any class of property. It is for Ministers to decide which classes of property should be exempt from rate liability as this is a political decision. It is most important, however, that

when making this decision Ministers are fully informed as to the cost (or the hidden subsidy) of any exemption. Currently Ministers have no idea of the cost (or subsidy) they are granting to these classes of property as no rating assessment has been attributed to them.

2. Should a charge on vacant and derelict land should be introduced in the existing local land and property tax system?

We consider that the concept behind the proposals set out in sections 2.27 and 2.38 of the Barker Report to be fundamentally flawed. Rates as we have explained are a “tax on the use and occupation of property based on its rental value which is broadly valued in its existing use”. Redundant brown field sites, particularly those with heavy contamination are either valueless or of very little value and the cost to the owner (person entitled to possession) of empty property rate is unlikely to provide a significant incentive for redevelopment. Similar an old factory (previously possibly used in say the rag trade) which is now empty because this element of the trade has moved overseas, is also almost valueless.

Empty property rate was first introduced in 1966 at which time the Billing Authority had freedom to charge a rate at up to 100% of its occupied rate. Ministers found it necessary to introduce a ceiling of 50% in 1981 and in 1984 to exempt industrial buildings entirely. This exemption was extended to warehouse property in the following year.

The Local Government Act 1974 introduced the concept of penal rating surcharge. This tax (since repealed) provided that where a property was empty and the person entitled to possession could not show that he had tried his best to let the building, assign his lease , sell his interest, or that he was prohibited by law or any authority action from occupying, or the building was unfit, became subject to the rating surcharge. The charge which was in addition to any normal empty rate liability became payable after the first six months of vacancy. It trebled during the second 12 months of vacancy, quadruple for the third and so on progressively Very few major property owners (the person entitled to occupation) paid this charge as they took steps to legally avoid the tax and if they were unable to benefit from any other exemption took steps to render their properties valueless within the rating context. Effectively they vandalised it. Those who paid the surcharge were most often the small unadvised landlord or tenant. The ownership of Non-domestic Property has changed since 1974. Owner occupation has declined and has been replaced by ownership by pension funds, investment companies and others, who must, in order to attract and retain investors, earn a return on their investments. These funds are actively managed and their property is not left vacant, unless it is for a good reason, for example having reached the end of its economic life. A tax of this nature did not work in 1974 and it will not work today.

It is not possible to introduce a charge on empty property which acts as an incentive to redevelop or reoccupy the property through the rating system without wholesale redrafting of the current rating legislation. This is because the basic principle of the current tax is that it is a “tax on the use and occupation of property in its existing use based upon the rental value” It follows that if land is derelict, then the rental value on an existing use basis almost certainly negligible. A change in the basis of assessment so that it is deemed to assume

reinstatement of the land and buildings to its former use, might appear to be reasonably straightforward. Many old properties have been used for a variety of purposes over their lives. It is quite possible that the original use no longer has any value in today's market. Changing the basic assumptions under which property is valued for rating purposes will affect all Non-Domestic property, the vast majority of which are occupied. It is quite possible that the effect of a change of this nature would be to substantially reduce the Rateable Value base for the country thus reducing the income provided by business to local authorities.

We do not believe that a charge on empty property is the appropriate way of encouraging the redevelopment of vacant sites or empty property. If Ministers are determined to bring in such a tax it should not be associated with or collected through the rating system.

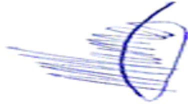
We are concerned that these suggestions for modifications to NNDR appear to be based on a fundamental misunderstanding of the way in which this tax works. NNDR is the administrative responsibility of the Communities and Local Government (CLG). We are concerned at both the level of staffing within the Local Government Financial Directorate of CLG and the frequency at which these staff change. Officials at CLG have recently admitted that they do not have adequate resources to consider the case for any significant changes to the Non-Domestic rating system. Rating, Council Tax and Local Government finance are highly complex subjects which take time to understand. Staff are posted into and out of the team responsible for NNDR so frequently that their average tenure is under three years.

It takes by comparison, five years for a professional Chartered Surveyor working in the rating field to qualify and a further five years of rating practice to reach the level of competence enabling him or her to apply for membership of the Rating Surveyors Association. Professional membership of the Institute of Revenues, Rating and Valuation takes broadly the same time.

Membership of both organisations requires the study of rating law and practice. We believe it is unrealistic to believe that Civil Servants arriving fresh in the Local Government Directorate at the CLG should be expected to become rating or local government finance experts within three years. The head of the Armed Forces is a career service person, whilst both the Government’s Chief Medical Officer and Chief Vet are professionally qualified in their disciplines. It is time for Ministers to accept that as Local Government Finance becomes more complex they should appoint professional qualified staff within their Local Government Finance Directorate.

Finally, I hope that you find these comments useful, if you have any further queries please do not hesitate to contact me.

Yours sincerely



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Appendix “A”

SI 1989/2261 Non-Domestic Rating (Unoccupied Property) Regulations 1989

Made *30* November *1989*
Coming into *force* *28 December 1989*

1 Citation, commencement and interpretation

(1) These Regulations may be cited as the Non-Domestic Rating (Unoccupied Property) Regulations 1989 and shall come into force on 28th December 1989.

(2) In these Regulations, the Act' means the Local Government Finance Act 1988.

2 Property liable for unoccupied property rates

(1) The class of non-domestic hereditaments prescribed for the purposes of section 45(1) of the Act consists of all relevant non-domestic hereditaments to which none of the conditions in paragraph (2) applies.

(2) The conditions are that-

(a) the whole hereditament has, subject to paragraph (3), been unoccupied for a continuous period not exceeding three months;
(b) its owner is prohibited by law from occupying it or allowing it to be occupied;
(c) it is kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the hereditament or to acquiring it;
(d) it is the subject of a building preservation notice as defined by section 58 of the Town and Country Planning Act 1971 or is included in a list compiled under section 54 of that Act;
(e) it is included in the Schedule of monuments compiled under section 1 of the Ancient Monuments and Archeological Areas Act 1979;
(f) it is a qualifying industrial hereditament;
(g) its rateable value is less than *[£1,500] [£1,900] [£2,200]*:
(h) the owner is entitled to possession only in his capacity as the personal representative of a deceased person;
(i) there subsists in respect of the owner’s estate a bankruptcy order within the meaning of Parts VIII to XI of the Insolvency Act 1986;
(j) the owner is entitled to a possession of the hereditament in his capacity as trustee under a deed of arrangement to which the Deeds of Arrangement Act 1914 applies;
(k) the owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act;

(l) the owner is entitled to possession of the hereditament in his capacity as liquidator by virtue of an order made under section 112 or section 145 of the Insolvency Act 1986.

(3) Where a hereditament which has been unoccupied becomes occupied on any day and becomes unoccupied again on the expiration of a period of less than six weeks beginning with that day, then for the purposes of ascertaining whether the hereditament has been continuously unoccupied for the period mentioned in paragraph (2) *(a)* it shall be treated as having been unoccupied on that day and throughout the period.

(4) For the purpose of paragraph (2) *(a)*, a hereditament which has not previously been occupied shall be treated as becoming unoccupied-

(a) on the day determined under paragraph 8 of Schedule 1 to the General Rate Act 1967, or
(b) on the day determined under Schedule 4A to the Act, or
(c) where neither *(a)* nor *(b)* applies, on the day for which the hereditament is first shown in a local rating list,

whichever day first occurs.

(5)

(a) *i*n paragraph (1), 'relevant non-domestic hereditament' means any non-domestic hereditament consisting of, or part of, any building, together with any land ordinarily used or intended for use for the purposes of the building or part, and
(b) in paragraph (2) *(f)*-
'qualifying industrial hereditament' means any hereditament other than a retail hereditament in relation to which all buildings comprised in the hereditament are-
(i) constructed or adapted for use in the course of a trade or business; and
(ii) constructed or adapted for use for one or more of the following purposes, or one or more such purposes and one or more purposes ancillary thereto:
(a) the manufacture, repair or adaptation of goods or materials, or the subjection of goods or materials to any process;
(b) storage (including the storage of handling of goods in the course of their distribution);
(c) the working or processing of minerals;
(d) the generation of electricity; and
'retail hereditament' means any hereditament where any building or part of a building comprised in the hereditament is constructed or adapted for the purpose of the retail provision of-
(i) good*s, or*

(ii) services, other than storage for distribution services, on or from the hereditament.

Appendix "B"

Local Government Finance Act 1988 Section 51- SCHEDULE 5

Non-Domestic Rating: Exemption

Agricultural premises

1. A hereditament is exempt to the extent that it consists of any of the following—
(a) agricultural land;
(b) agricultural buildings

2.—(1) Agricultural land is—
(a) land used as arable, meadow or pasture ground only,
(b) land used for a plantation or a wood or for the growth of saleable underwood,
(c) land exceeding 0.10 hectare and used for the purposes of poultry farming,
(d) anything which consists of a market garden, nursery ground, orchard or allotment (which here includes an allotment garden within the meaning of the Allotments Act 1922), or
(e) land occupied with, and used solely in connection with the use of, a building which (or buildings each of which) is an agricultural building by virtue of paragraph 4, 5, 6 or 7 below.
(2) But agricultural land does not include—
(a) land occupied together with a house as a park,
(b) gardens (other than market gardens),
(c) pleasure grounds,
(d) land used mainly or exclusively for purposes of sport or recreation, or
(e)land used as a racecourse.

3. A building is an agricultural building if it is not a dwelling and—
(a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on the land, or
(b) it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden.

4.—(1) A building is an agricultural building if it is used solely in connection with agricultural operations carried on on agricultural land and sub-paragraph (2) or (3) below applies.

(2) This sub-paragraph applies if the building is occupied by the occupiers of all the land concerned.

(3) This sub-paragraph applies if the building is occupied by individuals each of whom is

appointed by the occupiers of the land concerned to manage the use of the building and is—

(a) an occupier of some of the land concerned, or

(b) a member of the board of directors or other governing body of a person who is both a body corporate and an occupier of the land concerned.

(4) This paragraph does not apply unless the number of occupiers of the land concerned is less than 25.

5.—(1) A building is an agricultural building if—

(a) it is used for the keeping or breeding of livestock, or

(b) it is not a dwelling, it is occupied together with a building or buildings falling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings.

(2) Sub-paragraph (1)(a) above does not apply unless—

(a) the building is solely used as there mentioned, or

(b) the building is occupied together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(a) is its sole use.

(3) Sub-paragraph (1)(b) above does not apply unless—

(a) the building is solely used as there mentioned, or

(b) the building is occupied also together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(b) is its sole use.

(4) A building (the building in question) is not an agricultural building by virtue of this paragraph unless it is surrounded by or contiguous to an area of agricultural land which amounts to not less than 2 hectares.

(5) In deciding for the purposes of sub-paragraph (4) above whether an area is agricultural land and what is its size, the following shall be disregarded—

(a) any road, watercourse or railway (which here includes the former site of a railway from which railway lines have been removed);

(b) any agricultural building other than the building in question;

(c) any building occupied together with the building in question.

6.—(1) A building is an agricultural building if it is not a dwelling, is occupied by a person keeping bees, and is used solely in connection with the keeping of those bees.

(2) Sub-paragraphs (4) and (5) of paragraph 5 above apply for the purposes of this paragraph as for those of that.

7.—(1) A building is an agricultural building if it is not a dwelling and—

(a) it is used in connection with agricultural operations carried on on agricultural land, and

(b) it is occupied by a body corporate any of whose members are (or are together with the body) the occupiers of the land [, and

(c) the members who are the occupiers of the land together have control of the body].

(2) A building is also an agricultural building if it is not a dwelling and—

(a) it is used in connection with the operations carried on in a building which, or buildings each of which, is used for the keeping or breeding of livestock and is an agricultural building by virtue of paragraph 5 above, and

(b) sub-paragraph (3), (4) or (5) below applies as regards the building first mentioned in this sub-paragraph (the building in question).

(3) This sub-paragraph applies if-

(a) the building in question is occupied by a body corporate any of whose members are, or are together with the body, the occupiers of the building or buildings mentioned in sub-paragraph (2)(a) above.

and

(4) This sub-paragraph applies if the building in question, and the building or buildings mentioned in sub-paragraph (2)(a) above, are occupied by the same persons.

(5) This sub-paragraph applies if the building in question is occupied by individuals each of whom is appointed by the occupiers of the building or buildings mentioned in sub-paragraph (2)(a) above to manage the use of the building in question and is—

(a) an occupier of part of the building, or of part of one of the buildings, mentioned in sub-paragraph (2)(a) above, or

(b) a member of the board of directors or other governing body of a person who is both a body corporate and an occupier of the building or buildings mentioned in sub-paragraph (2)(a) above.

(6) Sub-paragraph (1) above does not apply unless the use there mentioned, or that use together with the use mentioned in sub-paragraph (2) above, is its sole use.

(7) Sub-paragraph (2) above does not apply unless the use there mentioned, or that use together with the use mentioned in sub-paragraph (1) above, is its sole use.

(8) Sub-paragraph (4) or (5) above does not apply unless the number of occupiers of the building or buildings mentioned in sub-paragraph (2)(a) above is less than 25.

(9)**.** In this paragraph ‘control’ shall be construed in accordance with section 416 (2) to (6) of the Income and Corporation Taxes Act 1988

8 (1) In paragraphs 1 and 3 to 7 above "agricultural land" shall be construed in accordance with paragraph 2 above.

(2) In paragraphs 1 and 5(5)(b) above "agricultural building" shall be construed in accordance with paragraphs 3 to 7 above.

(3) In determining for the purposes of paragraphs 3 to 7 above whether a building used in any way is solely so used, no account shall be taken of any time during which it is used in any other way, if that time does not amount to a substantial part of the time during which the building is used.

(4) In paragraphs 2 to 7 above and sub-paragraph (2) above "building" includes a separate part of a building.

(5) In paragraphs 5 and 7 above "livestock" includes any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land.

Fish farms

9.—(1) A hereditament is exempt to the extent that it consists of any of the following—
(a) land used solely for or in connection with fish farming;
(b) buildings (other than dwellings) so used.

(2) In determining whether land or a building used for or in connection with fish farming is solely so used, no account shall be taken of any time during which it is used in any other way, if that time does not amount to a substantial part of the time during which the land or building is used.

(3) "Building" includes a separate part of a building.

(4) "Fish farming" means the breeding or rearing of fish, or the cultivation of shellfish, for the purpose of (or for purposes which include) transferring them to other waters or producing food for human consumption.

(4A) But an activity does not constitute fish farming if the fish or shellfish are or include fish or shellfish which-
(a) are purely ornamental, or
(b) are bred, reared or cultivated for exhibition.]

(5) "Shellfish" includes crustaceans and molluscs of any description.

10 Repealed by the LGRA 1997, s 2(4), as from 1 April 1997.

Places of religious worship etc

11.—(1) A hereditament is exempt to the extent that it consists of any of the following—
(a) a place of public religious worship which belongs to the Church of England or the Church in Wales (within the meaning of the Welsh Church Act 1914) or is for the time being certified as required by law as a place of religious worship;
(b) a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public religious worship in that place.

(2) A hereditament is exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious worship in a place falling within sub-paragraph (1)(a) above, and-
(a is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place or
(b) is used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes.

(3) In this paragraph ‘office purposes’ include administration, clerical work and handling money; and ‘clerical work’ includes writing, bookkeeping, sorting papers or information, filing, typing, duplicating, calculating (by whatever means), drawing and the editorial preparation of matter for publication.]

Certain property of Trinity House

12.—(1) A hereditament is exempt to the extent that it belongs to or is occupied by the Trinity House and consists of any of the following—

(a) a lighthouse;

(b) a buoy;

(c) a beacon;

(d) property within the same curtilage as, and occupied for the purposes of, a lighthouse.

(2) No other hereditament (or part of a hereditament) belonging to or occupied by the Trinity House is exempt, notwithstanding anything in section [221 (1) of the Merchant Shipping Act 1995].

Sewers

13.—(1) A hereditament is exempt to the extent that it consists of any of the following—

(a) a sewer;

(b) an accessory belonging to a sewer.

(2) "Sewer" has the meaning given by section 343 of the Public Health Act 1936.

(3) "Accessory" means a manhole, ventilating shaft, pumping station, pump or other accessory.

(4) The Secretary of State may by order repeal sub-paragraphs (1) to (3) above.

Property of drainage authorities

14.—(1) A hereditament is exempt to the extent that it consists of any of the following—

(a) land which is occupied by a drainage authority and which forms part of a main river or of a watercourse maintained by the authority;

(b) a structure maintained by a drainage authority for the purpose of controlling or regulating the flow of water in, into or out of a watercourse which forms part of a main river or is maintained by the authority;

(c) an appliance so maintained for that purpose.

(2) ‘Drainage authority’ means the [Environment Agency], or any interna drainage board and ‘main river’ and ‘watercourse’ have the same meanings, respectively, as they have in the Water Resources Actg 1991 and the Land Drainage Act 1991.]

(3) …

Parks

15.—(1) A hereditament is exempt to the extent that it consists of a park which—
(a) has been provided by, or is under the management of, a relevant authority or two or more relevant authorities acting in combination, and
(b) is available for free and unrestricted use by members of the public.

(2) The reference to a park includes a reference to a recreation or pleasure ground, a public walk, an open space within the meaning of the Open Spaces Act 1906, and a playing field provided under the Physical Training and Recreation Act 1937.

(3) Each of the following is a relevant authority—
[(aa) a Minister of the Crown or Government department of any officer or body exercising functions on behalf of the Crown,]
(a) a county council,
[(aa) a county borough council,]
(b) a district council,
(c) a London borough council,
(d) the Common Council,
(e) the Council of the Isles of Scilly,
(f) a parish or community council, and
(g) the chairman of a parish meeting.

(4) In construing sub-paragraph (1)(b) above any temporary closure (at night or otherwise) shall be ignored.

Property used for the disabled

16.—(1) A hereditament is exempt to the extent that it consists of property used wholly for any of the following purposes—
(a) the provision of facilities for training, or keeping suitably occupied, persons who are disabled or who are or have been suffering from illness;
(b) the provision of welfare services for disabled persons;
(c) the provision of facilities under section 15 of the Disabled Persons (Employment) Act 1944;
(d) the provision of a workshop or of other facilities under section 3(1) of the Disabled Persons (Employment) Act 1958.

(2) A person is disabled if he is blind, deaf or dumb or suffers from mental disorder of any description or is substantially and permanently handicapped by illness, injury, congenital deformity or any other disability for the time being prescribed for the purposes of section 29(1) of the National Assistance Act 1948.

(3) "Illness" has the meaning given by section 128(1) of the National Health Service Act 1977.

(4) "Welfare services for disabled persons" means services or facilities (by whomsoever provided) of a kind which a local authority has power to provide under section 29 of the National Assistance Act 1948.

Air-raid protection works

17. A hereditament is exempt to the extent that it consists of property which—

(a) is intended to be occupied or used solely for the purpose of affording protection in the event of hostile attack from the air, and

(b) is not occupied or used for any other purpose

Swinging moorings

18. A hereditament is exempt to the extent that it consists of a mooring which is used or intended to be used by a boat or ship and which is equipped only with a buoy attached to an anchor, weight or other device—

(a) which rests on or in the bed of the sea or any river or other waters when in use, and

(b) which is designed to be raised from that bed from time to time.

Road crossing over watercourses etc

18A (1) A hereditament which is occupied (as mentioned in section 65 of this Act) is exempt to the extent that it consists of, or of any of the appurtenances of, a fixed road crossing over an estuary, river or other watercourse.

(2) For the purposes of this paragraph, a fixed road crossing means a bridge, viaduct, tunnel or other construction providing a means for road vehicles, or pedestrians or both to cross the estuary, river or other watercourse concerned.

(3) For the purposes of sub-paragraph (2) above-

(a) A bridge may be a fixed road crossing notwithstanding that it is designed so that part of it can be swung, raised or otherwise moved in order to facilitate passage across, above or below it; but

(b) the expression ‘bridge does not include a floating bridge, that is to say, a ferry operating between fixed chains.

(5) The reference in sub-para (1) above to the appurtenances of a fixed road crossing is a reference to-

(a) the carriageway and any footway thereof;

(b) any building, other than office buildings, used in connection with the crossing; and

(c) any machinery, apparatus or works used in connection with the crossing or with any of the items mentioned in paragraphs *(a)* and *(b)* above.]

Property used for road user charging schemes

18B (1) A hereditament which is occupied (as mentioned in section 65 of this Act) is exempt to the extent that-

(a) it consists of a road in respect of which charges are imposed by a charging scheme under Schedule 23 to the Greater London Authority Act 1999 or Part III of the Transport Act 2000, or

(b) it is used solely for or in connection with the operation of such a scheme.

(2) But office buildings are not exempt under sub-paragraph (1) *(b)* above.]

Property in enterprise zones

19.—(1) A hereditament is exempt to the extent that it is situated in an enterprise zone.

(2) An enterprise zone is an area for the time being designated as an enterprise zone under Schedule 32 to the [1980 c. 65.] Local Government, Planning and Land Act 1980.

Visiting forces etc

19A (1) A hereditament is exempt to the extent that it consists of property which is occupied for the purposes of a visiting force, or a headquarters, in pursuance of arrangements made in that behalf with any Government department.

(2) In this paragraph-

‘headquarters’ mean an international headquarters or defence organisation designated by an Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964; and ‘visiting force’ means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any provision of the Visiting Forces Act 1952.]

Inserted by the LGRA 1997, s 4.

Power to confer exemption

20.—(1) The Secretary of State may make regulations providing that prescribed hereditaments or hereditaments falling within any prescribed description are exempt to such extent (whether as to the whole or some lesser extent) as may be prescribed.

(2) But the power under sub-paragraph (1) above may not be exercised so as to confer exemption which in his opinion goes beyond such exemption or privilege (if any) as fulfils the first and second conditions.

(3) The first condition is that the exemption or privilege operated or was enjoyed in practice, immediately before the passing of this Act, in respect of a general rate in its application to the hereditaments prescribed or falling within the prescribed description.

(4) The second condition is that the exemption or privilege—
(a) was conferred by a local Act or order passed or made on or after 22 December 1925, or
(b) was conferred by a local Act or order passed or made before 22 December 1925 and was saved by section 117(5)(b) of the 1967 Act.

(5) Regulations under sub-paragraph (1) above in their application to a particular financial year (including regulations amending or revoking others) shall not be effective unless they come into force before 1 January in the preceding financial year.

Interpretation

21.—(1) This paragraph applies for the purposes of this Schedule.

(2) "Exempt" means exempt from local non-domestic rating.

(3) Any land, building or property not in use shall be treated as used in a particular way if it appears that when next in use it will be used in that way.

(4) Any land or building which is not occupied shall be treated as occupied in a particular way if it appears that when next occupied it will be occupied in that way.

(5) A person shall be treated as an occupier of any land or building which is not occupied if it appears that when it is next occupied he will be an occupier of it.