RA/24/2004 &
RA/01/2005
(Heard together)

LANDS TRIBUNAL ACT 1949

RATING – two opencast coal sites – valuation – royalties and market evidence – tone of the list not established – rental evidence preferred to assessments - use of appellant's site appraisal rejected – use of respondents' royalty scales criticised – appeal dismissed on one site – rateable value reduced on the other site

IN THE MATTER OF NOTICES OF APPEAL

BETWEEN **H J BANKS AND COMPANY LIMITED** **Appellant**

and

MR T SPEIGHT **Respondents**
and
MR N WALSH
(Valuation Officers)

Re: Opencast coal sites at
Stonebroom, Derbyshire
and Methley, West Yorkshire

Before: His Honour Judge Mole QC and A J Trott FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 31 October and 1-3 November 2006

Timothy Straker QC instructed by Dickinson Dees, solicitors of Newcastle upon Tyne, for the appellant
Timothy Mould QC instructed by the Solicitor HM Revenue and Customs for the respondents

The following cases are referred to in this decision:

H J Banks and Company Limited v Anthony Speight and Colin Robert Snowball (Valuation Officers) [2005] RA 61
Barnard and Barnard v Walker (VO) [1975] RA 383
Lotus and Delta Limited v Culverwell (VO) and Leicester City Council [1976] RA 141
Dawkins (VO) v Ash Brothers & Heaton Ltd [1969] 2 AC 366
Hoare (VO) v National Trust [1998] RA 391
Garton v Hunter [1969] RA 11
R v Paddington Valuation Officer, ex parte Peachey Property Corporation Ltd [1965] RA 177
Tivydale Coal Company Ltd v Handstock [1966] RA 225
Bruce v Howard [1964] RA 139
Pointer v Norwich Assessment Committee [1922] 2 KB 471
Jafton v Prisk [1997] RA 137
Snook v Somerset County Council [2005] 1 EGLR 147
Hodgkinson (VO) v ARC Limited [1996] RA 1

DECISION

Introduction

1. These are appeals by the ratepayer, H J Banks and Company Limited (the appellant), against decisions of the West Yorkshire and Derbyshire Valuation Tribunals determining the assessments in the 1995 and 2000 rating lists respectively of two opencast coal sites known as Methley South Extension, Leeds, West Yorkshire (Methley) and Stonebroom, Doe Hill Lane, Alfreton, Derbyshire (Stonebroom).

2. The parties agreed to use the same method of valuation. This was based upon a royalty rent per tonne for coal and surface access plus the annual values of buildings, plant and machinery and of land used for specified and non-specified operations. The only dispute between the parties was in respect of the appropriate royalty rents to be adopted, all other matters having been agreed between them.

3. In the case of Stonebroom (2000 list) the appellant relied solely upon the business case that had been submitted to its board meeting on 29 June 2000. The appellant submitted that this showed that a total royalty of £1.32p per tonne was the maximum that a hypothetical tenant could afford to pay in order to make an adequate profit from working the site. The respondent relied primarily upon assessments that had been settled following the introduction of a set of royalty scales that had been produced by the Mineral Valuer Wales of the Valuation Office Agency (MVW) in March 2001. This gave ranges of royalties according to the classification of sites into greenfield, brownfield or reclamation categories. The respondent argued that these scales had been prepared from an analysis of the rating forms of return in respect of 97 opencast coal sites and that their use had enabled the settlement of the overwhelming majority of opencast coal assessments in the 2000 list. That being so, the respondent submitted that a tone of the list had now been established to which the Tribunal should have regard. The appropriate royalty was said by the respondent to be £2.65p per tonne.

4. In the case of the Methley hereditament (1995 list) the appellant relied as evidence upon the royalties payable in respect of the site itself (agreed in May 1998) and the adjoining opencast mining sites of Methley Park (agreed in July 1995) and Methley South (agreed in April 1997). The appellant submitted that there had been no relevant change in circumstances since the antecedent valuation date (AVD) of 1 April 1993 and that these agreements provided the best evidence of value at a total royalty rent of £2.50p per tonne. The respondent again relied upon settlements based upon the royalty scales that had been produced by the MVW. The scales used for the 2000 list were projected back for the purpose of revisiting and settling 1995 list assessments. In the opinion of the respondent their acceptance by ratepayers had established a tone of the list that supported a total royalty figure of £3.60p per tonne.

5. Timothy Straker QC appeared for the appellant and called Andrew Crawford MRICS, MIQ, IRRV, a partner in Matthews and Son (incorporating Crawford's) chartered surveyors of Gower Street, London WC1.

6. Timothy Mould QC appeared for the respondent and called Andrew Raine MRICS a Mineral Valuer within the Valuation Office Agency's Mineral Valuer Unit. Mr Raine was authorised to appear on behalf of the Valuation Officers for the Leeds and Bolsover Billing Authorities in relation to the Methley and Stonebroom appeals respectively.

7. We did not consider it necessary to inspect the sites where the appeal hereditaments previously existed since coal extraction has ceased for several years. Nor did we consider it necessary to inspect the other opencast coal sites referred to in evidence.

Facts

8. The parties prepared statements of agreed facts from which, together with the evidence, we find the following facts.

(i) Ownership of Coal in the United Kingdom

9. The State acquired the fee simple in all coal in the United Kingdom under the Coal Act 1938. The coal was vested in the Coal Commission but the minerals and surface land overlying the coal remained in private ownership. A very small proportion of the total United Kingdom coal reserves were excluded from this vesting, such coal being known as non-vested or alienated coal. Under the Coal Industry Nationalisation Act 1946 the coal assets of the Coal Commission were transferred to the National Coal Board which later became British Coal. That Act provided for the limited licensing of coal extraction by private operators in respect of coal that was incidental to other operations and from small underground mines. The Opencast Coal Act 1958 permitted licensed extraction of coal by opencast operations where the output was not likely to exceed 25,000 tonnes. The Coal Industry Act 1990 increased the maximum tonnage that could be extracted under licence from British Coal to 250,000 tonnes.

10. Until 1994 British Coal mined coal and controlled the licensing of coal extraction by private operators. The royalties charged by British Coal therefore reflected its monopoly. This monopoly was ended when the Coal Industry Act 1994 transferred the coal assets of British Coal to the Coal Authority, a new non-departmental public body that was made responsible for licensing all coal mining. Unlike British Coal, the Coal Authority is independent of the mining industry and does not carry out any coal mining operations itself. The Coal Authority has a duty to have regard to the desirability of securing that competition is promoted between the different persons carrying on, or seeking to carry on, coal mining (including opencast) operations.

11. Under the 1994 Act, however, British Coal was granted operating licences and leases of its sites at peppercorn royalties with effect from 1 October 1994 and prior to its privatisation in January 1995. Upon privatisation British Coal's mining operations in England were sold to RJB Mining Plc (later to become UK Coal). British Coal's Welsh and Scottish operations were sold to Celtic Energy Limited and Scottish Coal respectively. All these companies continued to pay a peppercorn royalty in respect of the former British Coal sites.

(ii) Appeal hereditaments: description and tenure.

12. **Stonebroom** is located approximately 6 kilometres to the north of Alfreton. It lies mainly to the west of a north-south railway line as it runs between Doe Hill Lane and Alfreton Road. A small part of the site to the north, the coal processing area, lies to the east of the railway and is connected to the main site by an underbridge. On the opposite (eastern) side of the railway line to Stonebroom is another opencast site known as Doe Hill.

13. Stonebroom was worked between 20 November 2000 and 23 March 2002. The coal recovered was 269,084 tonnes (annual equivalent 201,675 tonnes) at an actual ratio of 11.75 to 1.

14. The tenure arrangements at Stonebroom were complex. The coal was worked under two agreements. The majority of the site was subject to an agreement to work coal that had originally been agreed by British Coal. This agreement was assigned to RJB Mining upon privatisation. RJB then entered into an exchange agreement with the appellant under which the appellant acquired RJB's rights to work the coal at Stonebroom whilst RJB took an assignment of the appellant's lease of minerals other than coal at a site at Cudworth near Barnsley. RJB already owned the coal rights over this site but needed to acquire the appellant's mineral rights in order to avoid a trespass. It was a direct exchange with no balancing payments either way. The agreement to work the coal at Stonebroom had been granted at a peppercorn rent at the time of privatisation and that benefit continued to be enjoyed by the appellant upon assignment. The second agreement for the working of coal was a Coal Authority licence granted in June 2000 in respect of an area of land in the centre of the site located a short distance to the south of the railway underbridge. The royalty fixed was £0.475 per tonne and related to some 80,000 tonnes of extracted coal.

15. The appellant acquired the freehold of the majority of the site for a total consideration of £166,936 in 1989. Surface royalty payments were agreed with the owners of other land covered by the assigned RJB agreement at £2 per tonne (with Mr and Mrs Rowe in January 1999 and with Mr Moreton in July 1999). Other payments included a railhead royalty of £0.50 per tonne (indexed) to Messrs Edward and Frederick Salmon agreed in April 1994 and a royalty of £0.13 per tonne payable to Railtrack Plc for the use of the railway underbridge (date unknown).

16. **Methley** is located approximately 14.5 kilometres to the south east of Leeds and lies approximately in the centre of a triangle formed by Leeds, Castleford and Wakefield. It is

approximately 1 kilometre north east of junction 30 of the M62 and lies to the south east of the village of Oulton and south of Methley Lane (A639). The site is one of four opencast coal sites in the area (all operated by the appellant). To the north of the A639 is Methley Park whilst to the south of it, and immediately to the north of the subject site, is Methley South. Adjoining the site to the south-west is Moss Carr.

17. Methley is a site of 33.6 hectares worked from 22 June 1998 to 31 August 2000. The coal recovered was 353,682 tonnes at an actual ratio of 12.54 to 1. The agreed output of coal for the calendar year to 31 December 1999 was 179,151 tonnes. The site was held under a lease for a term of three years from 25 May 1998. The agreed surface rent was £2.00 per tonne. The Coal Authority royalty was £0.40 per tonne for the first 300,000 tonnes, £0.90 per tonne for the next 100,000 tonnes and £2.00 per tonne thereafter. Based upon the tonnage recovered the average royalty paid was £0.475 per tonne.

18. Methley Park comprised a site of 30 hectares which was held under a lease for a term of 3 years from 19 July 1995. The agreed surface rent was £2.20 per tonne and there was a fixed coal authority royalty of £83,000. Based upon the appellant's figure of 135,000 tonnes as being the total tonnage of coal extracted this royalty represents £0.61 per tonne. The actual ratio for the coal extraction was 2.63 to 1.

19. Methley South comprised a site of 28.99 hectares which was held under a lease for a term of 3 years from 25 April 1997. The agreed surface rent was £2.50 per tonne. The Coal Authority royalty was £0.45 per tonne for the first 70,000 tonnes, £0.75 per tonne for the next 30,000 tonnes and £1.90 per tonne thereafter. Based upon the appellant's figure of 95,000 tonnes as being the total tonnage of coal extracted this royalty represents £0.53 per tonne. The actual ratio for the coal extraction was 6.29 to 1.

(iii) Appeal hereditaments: rating

20. By notice of alteration dated 22 February 2000 the VO entered **Methley** in the 1995 rating list with a rateable value of £414,421 with effect from 1 April 1999. The appellant made a proposal to reduce this assessment on 17 May 2000. The appeal arising from this proposal was referred to the West Yorkshire Valuation Tribunal which gave its decision on 28 June 2004. It ordered a reduction in rateable value to £333,803 with effect from 1 April 1999. The appellant appealed to this Tribunal against this decision on 23 December 2004.

21. By notice of alteration dated 28 March 2001 the VO entered **Stonebroom** in the 2000 rating list with a rateable value of £328,085 with effect from 20 November 2000. The appellant made a proposal to reduce this assessment on 19 April 2001. By notice of alteration dated 27 February 2002 the VO gave notice that he had altered the assessment under the 2000 rating list, for the purposes of an annual revision, to a rateable value of £320,777 with effect from 1 April 2001. The appellant made a proposal to reduce this assessment on 4 March 2002. The appeals arising from these proposals were referred to the Derbyshire Valuation Tribunal which gave its decision on both appeals on 12 February 2004. It ordered a reduction in

rateable value to £300,384 with effect from 20 November 2000 and to the same figure with effect from 1 April 2001. The appellant appealed to this Tribunal against the valuation tribunal's decision on 21 September 2004. These appeals were consolidated and heard together with the Methley appeal.

(iv) Valuations

22. The parties have agreed the following for the purposes of the valuations in these appeals:

(i) **Stonebroom**

(a) Coal output (annual equivalent): 201,675 tonnes.

(b) Rateable value of specified land: £165

(c) Rateable value of buildings, rateable plant and machinery and non-specified land: £33,000.

(ii) **Methley**

(a) Coal output (year ending 31 December 1999): 179,151 tonnes

(b) Rateable value of specified land: nil

(c) Rateable value of buildings, rateable plant and machinery: £10,831

(d) Rateable value of non-specified land: £500.

Issues

23. The parties have agreed that the issues to be determined by this Tribunal in respect of both appeals is the royalty rent to be applied to the annual output of coal produced. In addition, in respect of Stonebroom only, the parties have agreed that the Tribunal should determine the appropriate disability allowance to be applied, if any, to the assessment.

24. Our approach to these issues has been to consider whether there is adequate direct and reliable evidence of value to enable the royalty rents to be determined as at the AVDs or whether an alternative approach is required to determine those rents, either (in case of Stonebroom) Mr Crawford's use of the appellant company's business appraisal undertaken prior to the commencement of working or (in the case of both appeals) Mr Raine's use of settled assessments based upon royalty scales produced by the MVW.

Appellant's case: Evidence

25. Mr Crawford's evidence in respect of the **Stonebroom** appeal relied solely upon a business appraisal that formed the subject of a board report to the appellant company's board meeting held on 29 June 2000. The purpose of the report was to seek approval to the commencement of site operations at Stonebroom based upon an analysis of the royalty rate per tonne that the company was actually paying. The surface rate, which reflected the complex tenure arrangements outlined in paragraph 14 above, amounted to £1.20 per tonne. The Coal Authority royalty was taken as £0.12 per tonne being a weighted average between the peppercorn royalty paid in respect of the former RJB part of the site and the royalty of £0.475 per tonne paid in respect of the remainder. Total royalties were therefore taken at £1.32 per tonne and were included in Mr Crawford's valuation which gave a rateable value of £166,270 (see Appendix 1).

26. These royalty figures were included as site costs within the appellant's business appraisal and were added to development costs and mining costs to give estimated total site costs of £24.99 per tonne. This figure was deducted from the projected average ex-pit selling price for the coal of £25.65 per tonne to give an estimated profit of £0.66 per tonne.

27. Mr Crawford considered that evidence of what an operator was prepared to pay to occupy a site, reflecting the circumstances of the occupation of that site at the AVD, was the best evidence of the royalty value. In this case the sum of £1.32 per tonne represented the amount that the appellant was prepared to pay for Stonebroom in order to make a satisfactory profit at the date they chose to work it, ie 29 June 2000. Mr Crawford acknowledged that this post-dated the AVD but he considered that the circumstances of the site had not changed between those dates.

28. Mr Crawford did not believe it was appropriate to make an end allowance to reflect the unforeseen working problems that were actually encountered at Stonebroom because he had relied upon the appellant's own analysis of its potential costs of occupation. Alternatively he considered that were the Tribunal to prefer the use of the royalty scales upon which Mr Raine had based his case then an end allowance would be appropriate. This was because the scales represented average royalties which implied average profits. In fact the appellant made a loss of £1.19 per tonne rather than the anticipated profit of £0.66 per tonne. That loss should be taken into account by applying an end allowance to reflect the working conditions at the site being worse that those expected at an average site. Mr Crawford submitted an alternative valuation on this basis which gave a revised rateable value of £180,368 (see Appendix 2).

29. Mr Crawford acknowledged that he had taken the appellant's business case at face value and that there was no detailed analysis of either the surface or the coal royalties. The figure of £1.20 per tonne that he had taken for the surface royalty was not based upon an actual transaction between the appellant and a third party but had been derived from composite transactions. It represented the amount that the appellant considered it was paying as a surface royalty for the totality of the Stonebroom site. Mr Crawford rejected the suggestion that the actual deals done by the appellant for surface rights at £2.00 per tonne on part of the site could

be taken as good evidence of the appropriate surface royalty. He considered that these deals should not be viewed in isolation from the site as a whole. The appellant's decision to work the Stonebroom site was reached following an analysis of the costs of all its landholdings and its acquired rights. Had the figure of £2.00 per tonne applied to the whole site then the appellant would not have proceeded.

30. Mr Crawford made a similar point regarding the freely negotiated coal royalty of £0.475 per tonne for part of the site. He stated that this was not good evidence for what the appropriate coal royalty should be for the whole of the site because the appellant had spread this figure over the total anticipated tonnage of coal from Stonebroom when deciding whether or not to work the site.

31. Mr Crawford was referred to the decision of this tribunal (Mr P H Clarke FRICS) in the case of *H J Banks and Company Limited v Anthony Speight and Colin Robert Snowball (Valuation Officers)* [2005] RA 61 in which he had appeared as an expert witness for the appellant. He accepted the Member's conclusions at paragraphs 235 to 237 that:

(i) Assessments of comparable properties in the rating list may be considered as evidence of value, to supplement other evidence or, in the absence of such evidence, as the only way of arriving at the annual value of the property under consideration;

(ii) In preparing a rating list the valuation officer is required to value each hereditament individually and to have regard to the underlying principle of uniformity, fairness and equality. In the case of opencast coal sites the rents and royalties of different sites may vary greatly but nevertheless assessments must show a uniform pattern; and

(iii) There are three stages to the establishment of a tone of the list, the final one of which is when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. When an assessment is challenged before a tribunal the correct time for deciding whether the tone of the list has been established is immediately before the hearing.

32. He acknowledged as a matter of fact that the majority of assessments for opencast coal sites in both the 1995 and 2000 rating lists had been agreed. However he had reservations about the settlements that had been reached on the sites operated by RJB/UK Coal which he considered distorted the pattern of settlements generally. Mr Crawford estimated that these accounted for some 70 per cent of all the settlements in the 1995 and 2000 lists and said that they had been agreed before any other ratepayers had reached agreement. He referred to the notes to the accounts of UK Coal plc for the year ended 31 December 2001, this being the year in which settlements were first reached on the basis of the new royalty scales. It was stated in a footnote to those accounts that the profit for coal sales for surface mines included income of £6m in respect of business rates refunds on various surface mine sites. Mr Crawford considered this to be a material contribution to a company that showed a loss before taxation of some £26.5m and argued that UK Coal was under a commercial imperative to settle its outstanding rating appeals quickly. He did not believe that the fact that UK Coal had reached

an early agreement on the basis of the new royalty scales meant that it considered the settlement figures to be acceptable. Mr Crawford agreed that the third and final stage of the establishment of the tone of the list had been reached in respect of both the 1995 and 2000 rating lists but he considered those tones to be flawed because of the disproportionate effect of the UK Coal assessments that he believed had been settled under duress. He did not accept that the tones had been properly established and he gave greater importance to rental evidence than to settlements.

33. Mr Crawford distinguished opencast coal sites from other types of hereditaments such as shops. In the case of retail property there was normally a significant body of rental evidence that established a clear pattern of values from which to form the tone of the list. But opencast coal sites were different in kind. Every site had to be considered individually in the light of its own physical characteristics such as proximity to market, geology, coal quality, production rates and the scale of operations. They could only be used for one specific purpose, the extraction of coal. Because of such factors it was not possible to derive a tone of the list by creating patterns from the disparate and limited evidence of a small number of opencast coal sites.

34. The respondents' royalty scales were considered by Mr Crawford to be flawed in several respects. They had been prepared by reference to three categories of opencast coal sites. These were greenfield (the highest royalty), brownfield and reclamation (lowest royalty) sites. But these categories were not recognised or used by coal operators to whom they were meaningless. Nor were they recognised by the Coal Authority which is the body responsible for the licensing of coal extraction. Opencast coal sites were analysed according to the physical and economic characteristics that determined how much profit an operator would expect to make and therefore how much royalty rent he could afford to pay. The categories put forward by the MVW were not relevant to such considerations.

35. Mr Crawford identified a number of detailed anomalies with the royalty scales. They were based upon information contained in forms of return for a total of 97 sites. But only 56 of these had full market royalty information, ie details of both surface and coal royalties. Mr Crawford calculated that only 24 of those 56 sites had royalties that fell within the ranges proposed by the MVW. He also noted that, contrary to the principles upon which the scales had been produced, the two highest full market royalties used in the MVW's analysis (£6 and £5.23) were paid for a brownfield and a reclamation site respectively, while the lowest recorded full market royalty (£1.00 per tonne) was paid for a greenfield site.

36. At the hearing before the Derbyshire Valuation Tribunal Mr Crawford represented the appellant not only in respect of the appeal at Stonebroom but also in respect of an appeal on a nearby site known as Carrington opencast coal site. The surface rights at Carrington were held under two licences which Mr Crawford had analysed to show a surface royalty of £2.08 per tonne. He explained that he did not consider Carrington to be comparable to Stonebroom because the latter was harder to work. The appellant would not have proceeded to work Stonebroom if it had to pay £2.08 per tonne as a surface royalty and the fact that this sum was similar to the surface royalty agreed on parts of the Stonebroom site was said by Mr Crawford

to be coincidental and of no assistance in the present appeal. The assessment of Carrington in the 2000 rating list was determined by the VT on the basis of a total royalty of £2.65 per tonne. Mr Crawford explained that as this was close to his own figure of £2.50 per tonne (£2.08 surface royalty plus £0.42 royalty for coal extraction) and was based on an actual rent, no appeal had been made to this Tribunal.

37. Mr Crawford also distinguished a number of other settlements in the 2000 rating list that it was suggested to him during cross-examination were comparable to Stonebroom. Woodhead opencast coal site had been agreed by Mr Crawford at a total royalty of £2.75 and Moss Carr was determined by the VT, and not appealed, at a total royalty of £2.39. Both of these sites were operated by the appellant. Mr Crawford explained that these settlements had been based upon actual rents paid by the occupier which he considered to be the best evidence. Doe Hill opencast coal site, which was adjacent to Stonebroom, had an agreed coal royalty of £0.70 but Mr Crawford said that this assessment had not been settled and that the coal royalty had been agreed as part of the cost of occupation of the whole site. Doe Hill had been worked before Stonebroom and the appellant had gained practical knowledge of site conditions that was reflected in the rent paid for the latter. Other settled assessments of sites that were not operated by the appellant, at Brynteg Fields (£2.60 per tonne total royalty), Eldon Deep (£2.70 per tonne total royalty) and at Crock Hey (£2.75 per tonne total royalty) were unknown to Mr Crawford and had not been investigated by him.

38. It was accepted by Mr Crawford that this Tribunal prefers the use of comparable rents to residual valuations. He acknowledged that the appellant's business case upon which he relied was analogous to such a valuation. In the business case analysis a figure of £0.75 per tonne was included for mineral rates payable. Allowing for the non-domestic rating multiplier and for the 50% adjustment required to be made under the Non-Domestic Rating (Miscellaneous Provisions) Order 1989 Mr Crawford accepted that a figure of £0.75 per tonne rates payable implied the assumption of an unadjusted rateable value of £3.00 per tonne. However he did not accept the proposition put to him in cross-examination that if the appellant's own business case assumed such a higher rateable value it must follow that Mr Crawford's argument, that an unadjusted rateable value in excess of £1.32 per tonne would render the working of the subject site uneconomic, was not sustainable. Mr Crawford said that his argument referred to the rent, rather than the rates, payable.

39. The appeal in respect of **Methley** related to the 1995 rating list and Mr Crawford relied upon a number of lease and licence transactions in respect of the appeal site and two adjoining sites, details of which are given in paragraphs 16 to 19 above. He considered that these transactions were relevant because they related to the subject site and adjoining properties and because the impact of British Coal's monopoly on coal royalties at the AVD (1 April 1993) had lessened by the date of the agreements in respect of this comparable evidence. He considered this to be good evidence of the open market royalty value as between a willing landlord and a willing tenant on the rating hypothesis. Mr Crawford considered that evidence of coal royalties that were agreed at the AVD (all of which were at £2.00 per tonne) were of no assistance because of this monopoly effect.

40. Mr Crawford said that the Methley Park transaction was of particular assistance since it had been agreed closest to the AVD at a total royalty figure of £2.81 per tonne. He distinguished this site from the appeal site in terms of its ratio. Methley Park had an anticipated ratio of 3.84 to 1 compared with that of the appeal site of 14.7 to 1. This meant that it was anticipated that the appeal site would be more expensive to work which in turn, all other matters being equal, meant that the royalty would be lower. Mr Crawford's analysis of the agreement reached in May 1998 for the appeal site showed a total royalty of £2.50 per tonne which he adopted as the appropriate figure in the present appeal (see Appendix 3).

41. Mr Crawford believed that the pattern of falling coal royalties demonstrated by his evidence of rental agreements, namely Methley Park at £0.61 per tonne (1995), Methley South at £0.53 per tonne (1997) and the appeal site at £0.475p per tonne (1998) reflected the reduced impact of British Coal's previous monopoly and illustrated an emerging trend that was relevant to the 1995 rating list valuations.

42. The criticisms that Mr Crawford made of the respondents' use of royalty scales, and of their reliance upon the settled assessments that were based upon them, were reiterated by him in respect of the Methley appeal. In addition he criticised the respondent's use of scales for the 1995 list that had been prepared from data provided for the 2000 rating list and subsequently adjusted. He noted that in preparing these scales the MVW had given primary weight to agreements reached within six months either side of the 2000 list AVD and a secondary weighting to evidence more than six months but less than three years from that date. Mr Crawford argued that some of the evidence he relied upon was agreed within three years of the AVD for the 1995 list but, despite being direct rental evidence, had been ignored by the respondent although the same evidence had been used in the creation of the 2000 royalty scales that had then been adjusted back to 1995 values.

43. Mr Crawford believed that the economic changes that took place between the 1995 list AVD and the date of the actual royalty being agreed at the appeal site in May 1998 were foreseeable. He said that at the AVD it was known that privatisation of the coal industry was coming and that there was likely to be a substantial reduction in royalties. The actual royalties agreed reflected what could have been predicted at the AVD were it not for British Coal's monopoly. That being so there was no need to adjust the royalty rents agreed on the appeal site back to the AVD.

Appellant's case: Submissions

44. Mr Straker submitted that there was agreement between the parties about seven fundamental matters: that the appeals must be considered by reference to the statutory words; that there must be individual consideration of each site; that every opencast coal site is different; that each site has a number of measurable characteristics that must be taken into account in the decision to let; that no tenant would operate a site if it anticipated a loss; that actual transactions relating to individual sites provide the best evidence; and that a temporal difference between the AVD and an actual transaction is of no consequence unless circumstances had changed between those dates.

45. In the light of this agreement Mr Straker submitted that Mr Crawford's approach to the appeals was compelling. He had acknowledged the unique character of each site, obtained details of relevant actual transactions and applied these in accordance with the statutory requirements in order to reach a valuation. The respondents had adopted an approach based upon royalty scales that sacrificed individuality in favour of uniformity. They had done so by gathering information from forms of return and using it to produce royalty ranges for categories of site. This exercise was then verified by subsequent settlements and a royalty figure allocated to each site by reference to its categorisation.

46. Mr Straker contended that the information used by the respondents in preparing the royalty scales was limited and incomplete. There was information in a schedule about total market royalties for only 56 sites and no record of the measurable characteristics of each site other than brief marginal notes. The "peppercorn" sites operated by UK Coal, Celtic Energy and Scottish Coal had been omitted from the analysis. The scales produced by the MVW gave a range of values but half of the sites whose royalty data had been used in their compilation fell outside the relevant ranges. The royalty scale for the brownfield category had been produced from primary data for only seven such sites and of these three fell outside the range eventually prepared by the MVW. The scales used for the 1995 list had been calculated by reference to average coal price figures but these did not correspond with the actual prices received by the appellant.

47. The royalty scales (for both the 1995 and 2000 rating lists) were verified by reference to subsequent settlements. But the schedule of settlements that was relied upon by the respondents comprised a list of sites that was significantly different to the lists of transactions upon which the royalty scales were based. The majority of entries in the settlement schedule related to the "peppercorn" sites operated by the successors to British Coal and which the respondents had admitted were not comparable (in terms of rental information) to the sites for which transactional evidence had been analysed. Mr Straker submitted that under these circumstances the respondents had failed to verify their royalty scales. Mr Straker also noted that the majority of settlements related to sites operated by RJB/UK Coal. He submitted that such settlements had no doubt been influenced by a commercial need to obtain the £6m refund that was recorded in the accounts for UK Coal plc for the year ending 31 December 2001.

48. The final stage of the respondents' approach to obtaining the appropriate rateable value was to allocate a figure to the appeal sites based upon their classification into one of three categories, albeit that it was recognised by the respondents that those categories bore no relation to any of the sites' measurable characteristics. Mr Straker submitted that the definitions of the three categories of site were flawed and of no relevance to a coal operator. What mattered to an operator was how much it was likely to cost to extract the coal. The operator would consider the measurable characteristics of a site before deciding whether or not to work it. Arbitrary distinctions between greenfield, brownfield and reclamation sites were irrelevant to this decision.

49. It was essential that each site should be considered individually and in accordance with the statutory provisions. The legislative words required the rent for the individual appeal

hereditaments to be estimated and did not require or permit a series of estimates about other sites to be used when valuing a specific site. What mattered were the measurable characteristics of each site. Both the hypothetical tenant and the hypothetical landlord would have regard to these in deciding what rent the site could bear. If those measurable characteristics had not changed between two dates then the mere passage of time would not prevent the value of an actual transaction on one date being used as a proxy for a hypothetical transaction on the other. The respondents had considered this matter but had failed to identify any meaningful change in the measurable characteristics of the appeal sites other than, possibly, the price of coal, the downward trend of which would have been known at all relevant times given the structural changes then occurring in the coal mining industry. In the case of Methley Mr Crawford had produced evidence of three relevant actual transactions. The only reason that his evidence was rejected by the respondent was because it was post AVD. If anything his royalty figure was higher than was appropriate at the AVD given a hypothetical tenant's propensity to err on the side of caution when confronted with uncertainty about the future price of his product. The respondents' reliance upon royalty scales that had been derived from a tortuous process was unacceptable in the light of Mr Crawford's direct evidence.

50. The business appraisal undertaken by the appellant in respect of Stonebroom was a detailed consideration of all the measurable characteristics of the site. The position regarding tenure although not straightforward was not so complex as to prevent sensible analysis. Such an analysis showed the business appraisal to be logical and consistent. The respondent had accepted that the hypothetical landlord and tenant would be bound to undertake such an exercise and had agreed that a transaction would not proceed at a loss, which in this case would occur if the royalty rent was greater than £1.98. The respondent's attempts to rely upon Carrington as a direct comparable were flawed because it was agreed that its measurable characteristics and those of Stonebroom, such as distance to market, were not the same.

Respondents' case: Evidence

51. Mr Raine explained the background to the preparation of the royalty scales. The Head of Minerals of the VOA initiated a review of market evidence in relation to the 2000 list following a meeting with UK Coal on 26 September 2000. He extended the review to consider how the rental information available in respect of the 2000 list could be logically rolled back to the 1995 list.

52. The MVW was asked to undertake the review and he reported to the Head of Minerals on 14 March 2001 and by memorandum to principal and senior mineral valuers on 20 March 2001. Mr Raine said that he had acted upon this memorandum and had treated the royalty scales which it contained as a framework by which to proceed. It set out criteria by which to identify and categorise sites. He said that the agents with whom he had personally negotiated had found the royalty scales and the categories upon which they were based to be extremely useful in deciding how to value sites on a comparable basis.

53. Mr Raine explained that the royalty scales had been derived from the analysis of 97 sites for which evidence was available from early 1995 to mid 2000. Such evidence was weighted into primary, secondary, tertiary and nil classifications with the greatest weight being given to (primary) evidence that had been agreed within 6 months either side of the AVD of 1 April 1998 and where there was a single surface owner with clean title and a coal licence that was to all intents and purposes agreed concurrently by the parties. Secondary evidence fulfilled the same criteria except it was dated from 6 months to 3 years either side of the AVD. Evidence was classified as tertiary where details of the coal and/or surface payments were old and outside of the 3 year time frame or where the surface arrangements involved multiple owners but which supported the general trend of evidence found in agreements with single surface owners. Evidence that was based upon agreements that were remote from the AVD or were of such a complex nature that no sensible analysis could be based upon the available information were given a nil weighting. The analysis also ignored any coal royalties that were based upon British Coal licences since these were remote from the AVD and, reflecting British Coal's then monopoly position, were not indicative of the true market. Mr Raine placed no weight upon the evidence of peppercorn rents that were payable in respect of former British Coal sites.

54. The results of this analysis showed a broad range of total royalties for the 2000 list of £0.65 per tonne to £3.30 per tonne. Such a wide range of royalties supported the argument of agents acting on behalf of ratepayers that a "one size fits all" approach of the kind that the VOA had adopted in the preparation of the 1995 list was inappropriate in the new operating environment of the coal industry at the AVD of 1 April 1998. The MVW therefore conducted a review of the initial analysis to see whether any further pattern could be detected in the royalty payments. This further review led to the grouping of sites by levels of royalty agreed and by operational characteristics. Such characteristics were reflected in a three-tier categorisation of sites into greenfield, brownfield and reclamation types. The majority of opencast operations remained those in which coal was extracted from beneath essentially undeveloped, greenfield land. The onset of increasing environmental awareness and the need for sustainable development by the late 1990s meant that there were a growing number of sites where coal extraction, whilst a major element of occupation, was not the sole or main purpose of development (brownfield sites) and where coal extraction was ancillary to the restoration and/or reclamation of the site (reclamation sites).

55. In respect of the **Stonebroom** appeal Mr Raine referred to the royalty scales produced by the MVW for the 2000 list:

	Minimum Royalty per tonne	Maximum Royalty per tonne
Greenfield	£2.30	£3.30
Brownfield	£1.30	£2.65
Reclamation	£0.65	£2.00

Stonebroom was classified by Mr Raine as a greenfield site but he acknowledged that it had operating disabilities that indicated that it should fall towards the bottom of the appropriate royalty scale compared with other settled assessments. The details of the surface rents paid (see paragraphs 14 and 15 above) were considered by Mr Raine to be so complex as not to be capable of meaningful analysis in terms of the rating hypothesis. He rejected Mr Crawford's analysis of the on site evidence as being flawed in not making a proper adjustment for the large freehold holding of the appellant. Mr Raine preferred to rely upon the significant number of settlements that had been agreed following the introduction of royalty scales in 2001. He produced a schedule of such settlements, eight of which he said he had relied upon in reaching his valuation of £2.65 per tonne (see Appendix 4). In particular Mr Raine considered that his valuation was supported by the VT's decision in respect of the nearby Carrington site that was also operated by the appellants. The VT heard this appeal at the same time as the appeal on the Stonebroom site and determined that since both were greenfield sites in the same area and serving the same markets any hypothetical parties would accept a unified and consistent approach. They determined that the rateable value of both sites should be assessed at £2.65 per tonne.

56. Insofar as there was any assistance to be gained from the actual agreement reached at Stonebroom it was limited in terms of the coal royalty to the agreement with the Coal Authority in June 2000 under which the appellant paid £0.475 per tonne. Mr Raine compared this agreement, reached over two years post AVD, with the licence taken by the appellant from the Coal Authority in January 1998 on the adjacent Doe Hill site at a royalty of £0.70 per tonne. He felt that this indicated that the royalty of £0.475 per tonne might be too low a figure for the appeal site at the AVD in 1998. Mr Raine acknowledged, however, that a figure of £0.70 per tonne might be too high to use for Stonebroom given the greater operational problems associated with that site compared to Doe Hill. Mr Raine also noted the agreement of a surface royalty between the appellant and Mr and Mrs Rowe in 1999 at £2.00 per tonne.

57. Taken together Mr Raine said that these actual agreements supported a total royalty for part of the site of between £3.10 (£2.00 + £0.475 + £0.63 in respect of the railhead and under bridge payments) and £3.33 per tonne (£2.00 + £0.70 + £0.63). But it was not appropriate to adopt these figures because of the physical constraints of the site which included the railway, a brook running through the site, known and unrecorded faulting and the overburden in the western part of the workings. Mr Raine considered that the reduction of the total royalty from £3.33 to £2.65 was reasonable in the light of such operational difficulties. He considered that this analysis supported his primary valuation which was based upon settlements in the 2000 rating list, and in accordance with the royalty scales produced in 2001.

58. Mr Raine did not think that it was appropriate to make an allowance for unforeseen problems that had been encountered at the Stonebroom site. The appellant was an experienced opencast coal site operator and had researched the site carefully. He felt that the reduced coal royalty agreed at Stonebroom compared with Doe Hill reflected the respective characteristics of the two sites. The appellant would have built in some tolerances in its negotiations with the Coal Authority and would have allowed for unforeseen problems by adopting a robust valuation. The range of values contained in the MVW's royalty scales reflected the differing

conditions that might occur. Stonebroom was not different and could be properly fitted within the established range.

59. Mr Raine did not accept that the appellant's board report upon which Mr Crawford relied was good evidence for the purpose of assessing the appropriate level of royalty for rating purposes in accordance with the statutory criteria and he placed little weight upon it. The information contained in the board report had been included in part in the form of return sent to the VO. But the report itself was an accountancy exercise and the information it contained was extremely difficult to interpret even in relation to the date it was produced (June 2000) let alone the AVD.

60. In respect of the **Methley** appeal Mr Raine explained the basis upon which the royalty scales that were produced for the 2000 rating list had been adjusted for the 1995 rating list. The need for a royalty scale for the earlier list had arisen from what Mr Raine described as a sustained attack from rating agents against the adopted royalty range for opencast coal sites under the 1995 list, ie £4.00 to £5.00 per tonne, being £2.00 per tonne coal royalty and £2.00 to £3.00 surface royalty depending upon the operating constraints and advantages of each site. It was hoped that a royalty scale would unlock the impasse that had been reached with ratepayers regarding what they considered to be the VOA's intransigent adoption of the prevailing British Coal coal royalty of £2.00 per tonne at the AVD of 1 April 1993 and which in their view reflected British Coal's monopoly position. It was argued by ratepayers that insufficient regard had been paid to the structural changes about to take place in the coal mining industry and that a fall in royalties was foreseeable in the market at the AVD.

61. Mr Raine stated that there had been some 600 proposals against the assessments of opencast coal sites in the 1995 rating list but that only 46 settlements had been agreed in respect of that list by March 2001. Only a few of these settlements had been agreed in the upper quartile of the range adopted for the compiled list (the highest being £4.50) and some had been reached below this range, eg at Bowman's Harbour (the lowest figure at £0.75) and Reedswood (£1.50). These low settlements had been dismissed as rogues and were said not to be supported by any evidence. With the benefit of hindsight, however, the MVW concluded that there had indeed been a substantial reduction in coal royalty payments for opencast coal sites between the AVD and early 1995, and what had previously been dismissed as rogue settlements were now viewed as the possible forerunners of an emerging trend.

62. Retaining the categorisation of sites into greenfield, brownfield and reclamation types the MVW produced the following royalty scales for the 1995 list (the minimum and maximum figures were based upon the lowest and highest 1995 list assessments that had been agreed before March 2001):

	Minimum Royalty per tonne	Maximum Royalty per tonne
Greenfield	£3.50	£4.50
Brownfield	£2.00	£3.65
Reclamation	£0.75	£2.75

The MVW checked the difference between the 2000 and 1995 royalty scales against what Mr Raine described as accepted market indicators, ie the selling price of coal into electricity power markets (England), declared ex-pit selling prices for coal and declared average prices per giga-joule for coal. Mr Raine said that the fall in the prices measured by these indices was broadly in line with the fall in the royalty scales between 1995 and 2000 and that this analysis supported the exercise undertaken in arriving at a revised range of royalties for the 1995 rating list.

63. Mr Raine explained that the principle upon which the 1995 royalty scales had been produced was the reverse of the presumption established in the case of *Barnard and Barnard v Walker (VO)* [1975] RA 383. In that case this Tribunal (Mr J H Emlyn Jones) held that there was a presumption that differentials between assessments in the old list were correct and continued to apply in the absence of any rebuttal evidence. The MVW applied this decision in reverse and prepared the 1995 royalty scales by reference to 2000 list settlements that were based on direct rental evidence. As the majority of opencast coal sites under consideration had entries in both lists the differentials established between sites in the 2000 list were presumed to apply also to the 1995 list.

64. The MVW said that each minerals office should consider all its 1995 assessed sites against this relaxed royalty structure. Sites with outstanding proposals could be dealt with on appeal. Those hereditaments where proposals had been withdrawn or agreement reached would only be the subject of an amendment to the list if the royalty values adopted, had the royalty scales been available at the time of assessment, would have been significantly less than the agreed or accepted figure. Mr Raine proceeded to use these royalty scales in negotiations on outstanding 1995 list appeals and again had found agents receptive to their use. He reached agreement with such agents on numerous sites, including sites in all three of the categories contained in the MVW's guidance memorandum. In total Mr Raine had personally settled 37 assessments in the 1995 list and 7 in the 2000 list. He said that the appellant was the sole remaining significant operator not have reached general agreement on the 1995 rating list within this framework.

65. Mr Raine considered that the outcome of the review undertaken by the MVW and the settled assessments that had been agreed with opencast coal operators in respect of 1995 list together provided reliable evidence of the value of coal royalties for the purposes of the Methley appeal. He said that the tone of the 1995 rating list had now been established as a result of these settlements and he believed that considerable weight should be attached to them.

66. Mr Raine went on to consider the evidence that Mr Crawford had relied upon in respect of Methley. He discounted the evidence in respect of Methley Park as having been agreed two years post AVD and therefore not relevant. The letting at Methley South, in April 1997, was even more remote from the AVD and Mr Raine gave no weight to it. Instead Mr Raine preferred to rely upon the determination of the West Yorkshire Valuation Tribunal of the rateable value in the 2000 list of the opencast coal site at Moss Carr (adjoining the Methley South site and also operated by H J Banks). The VT determined a figure of £2.45 per tonne (£2.00 as to surface and £0.45 as to coal) as being the appropriate value as at the 1998 AVD. That figure was based upon the undisputed rental agreement for the same amount concluded in respect of Methley (the appeal hereditament) in May (surface) and July (coal) 1998. Using £2.45 as the appropriate value for the 2000 list Mr Raine then sought to adjust this back to the 1995 list value in accordance with the principle that he had identified in the *Barnard* case. He did so by reference to a table of opencast coal site settlements for both the 1995 and 2000 lists. He identified three sites that appeared in both lists (Brynteg Fields, Eldon Deep and Crock Hey) and said that in those cases there was a difference in royalties between the rating lists of between £1.00 to £1.25 per tonne. He adopted the figure of £1.15 per tonne which, when added to the undisputed figure for the 2000 list of £2.45 gave a total royalty of £3.60 per tonne as being the rateable value of the Methley site as at the 1993 AVD. This figure fell within the range identified by the MVW as being appropriate in the 1995 list for greenfield sites, ie £3.50 to £4.50 per tonne, and was supported by numerous settlements (25 of which Mr Raine cited in evidence) in the 1995 list. Mr Raine's valuation is shown in Appendix 5.

Respondents' case: Submissions

67. Mr Mould submitted that, in respect of **Methley**, Mr Crawford had relied upon post AVD evidence of three neighbouring opencast coal sites. The rents and royalties upon which Mr Crawford relied, fixed in July 1995, April 1997 and May 1998, had not been adjusted back to the 1993 AVD. Mr Mould referred to the decision in *H J Banks & Co Limited* at paragraph 200:

> "The Tribunal does not usually exclude post-AVD evidence as a matter of course but the circumstances at the later date must be similar to those at the date of valuation if the latter evidence is to carry any weight."

Mr Mould submitted that significant structural changes to the opencast coal mining industry had occurred over the life of the 1995 list. Planning controls over opencast mining in greenfield sites had also tightened during the mid 1990s and operators had become more interested in working sites as part of reclamation or land restoration processes. These changes had impacted upon the economics of the industry and therefore upon levels of rents and royalties. Circumstances at the 1993 AVD were not the same as those pertaining in 1995 and later years.

68. The parties had agreed that there was no reliable market evidence of coal royalty rents that had actually been agreed at or around the 1993 AVD. The standard coal royalty at that time was £2.00 per tonne and both valuers accepted that this was tainted evidence due to British Coal's continued monopoly. The royalties that had been agreed in 1995, 1997 and

1998, and upon which Mr Crawford relied, were the product of the changed economic climate within the coal industry at those later dates. There was no reliable evidence upon which to base any quantification of the scale or extent of such economic change. There was conflicting evidence about the movement of coal prices over the period in question. Mr Raine had given evidence based upon industry sources and economic indicators. Mr Crawford had challenged these by reference to an extract from an agreement between the appellant and National Power in 1993 and a schedule showing how much the appellant had received per tonne at various of its sites in April 1993 and March 1998. Mr Mould dismissed this evidence as being incomplete, random and completely lacking any useful context. He considered that such differences between the parties reflected the lack of any fixed point in the evidence upon which the Tribunal could safely and reliably judge the movement in coal royalties between the 1993 AVD and later years in the 1995 list.

69. For the actual coal royalties that were agreed in 1995, 1997 and 1998 to be relied upon they must be adjusted reliably to the 1993 AVD. This was not possible. Mr Crawford had not tried to do so. Mr Mould left aside the question of whether there had been any material physical or operational changes at the Methley site during the life of the 1995 list and submitted that the prevailing economic climate of the coal industry would plainly affect the commercial operation of a site and the rents and royalties that would be agreed. The logic of Mr Crawford's position was that economic circumstances were materially unchanged between the 1993 AVD and 1995, 1997 and 1998. Mr Mould submitted that this assertion was unsustainable on the evidence. Applying the approach set out in *H J Banks & Co Limited* described above Mr Mould argued that the post AVD evidence relied upon by Mr Crawford was unreliable and should not be accorded any substantial weight.

70. Mr Crawford had argued that some at least of the economic changes were foreseeable at the 1993 AVD. Mr Mould submitted that this was not to the point. The statutory rating hypothesis required the assumption of a letting at the 1993 AVD and not at a future date and there was a conspicuous absence of any evidence to show what the market would pay at the AVD even if bidding parties anticipated the future economic changes in the industry. Mr Mould illustrated his argument by what he described as a typical example of bidders for an opencast coal site operating for two years from the 1993 AVD. The agreements relied upon by Mr Crawford would all have post dated the completion of quarrying on that basis. They can tell us nothing about any assumption the hypothetical tenant would have made in respect of his bid in April 1993 for a quarry that it expected to have exhausted before any of Mr Crawford's agreements were negotiated.

71. Mr Raine had identified a number of settled assessments that were comparable to Methley in terms of size, ratio and other characteristics and his valuation of £3.60 per tonne, which was at the lower end of the pattern of values for greenfield sites, was defensible by a reference to such comparables.

72. Turning to **Stonebroom**, Mr Mould submitted that Mr Crawford's royalty figure was based upon an accountant's book valuation that was akin to a residual valuation. It was neither a rent nor a royalty valuation whether at June 2000, the date it was prepared, or at the 1998

AVD. The actual royalty figures available in respect of part of the Stonebroom site were considerably higher than Mr Crawford's total royalty figure of £1.32 per tonne which was based upon the appellant's board report. Mr Raine had accepted that only limited weight could be given to the actual agreements but nevertheless these were market transactions and they cast doubt upon the reliability of Mr Crawford's figure.

73. There was no objective evidence to support the figure of £1.32 per tonne. It was not only at odds with the actual rents and royalties agreed on part of the subject site but also with the total royalties agreed at nearby sites operated by the appellants, eg Carrington and Doe Hill. Mr Crawford had tried to distinguish Carrington on the grounds of the associated haulage costs being much less than at Stonebroom but he had failed to produce evidence to support his assertion. The VT saw Stonebroom and Carrington as being comparable sites and so valued them both at £2.65 per tonne. The appellant had accepted this determination in respect of Carrington.

74. Mr Crawford had sought to rely upon the appellant's board report by an argument that was based upon profitability and ability to pay. Similar arguments made by Mr Crawford had been rejected by this Tribunal in *H J Banks & Co Limited*. In any event his argument was not well founded upon evidence. His reliance upon the board report, and in particular the summary schedule, was lacking in analysis and based upon only a partial knowledge of the facts. For instance he did not know what constituted "Banks Group Recoveries" an item that constituted a substantial element of mining costs. The costs and prices used were those current in June 2000 and not as at the 1998 AVD. It was therefore impossible to form any view from the board report about the ability of the Stonebroom site to yield a profit from the economic circumstances that prevailed in April 1998. The use of the board report as evidence was useless as a basis for determining the royalty rent for Stonebroom as at the 1998 AVD and Mr Crawford's royalty rent of £1.32 per tonne was unsustainable and should be rejected.

75. Mr Raine's evidence on the other hand supported the VTs' decisions and was based upon admissible comparable assessments according to the guidelines laid down by the Tribunal (Mr J H Emlyn Jones FRICS) in *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council* [1976] RA 141, at 153 and as followed in *H J Banks & Co Limited*. Mr Mould referred to the three stages leading to the establishment of a tone of the list that had been set out in *H J Banks & Co Limited* and said that the settlements referred to by Mr Raine had established a pattern of values for opencast coal sites. The third stage had been reached, the tone had settled and as a matter of approach assessments should now form the primary evidence in respect of both Methley and Stonebroom. Where, such as here, the hereditament was in a special class and where rental evidence was absent, then agreed assessments from a wider geographical area might be considered. Mr Crawford had accepted that this was the case in respect of opencast coal sites. In *H J Banks & Co Limited* the Tribunal decided that considerable weight should be given to settlement evidence. In that case there was evidence that some of the settlements had been reached for financial reasons. Mr Crawford asserted that the UK Coal settlements had also been driven by a financial imperative. But he had produced no evidence to support that assertion and his comments were speculative and lacking evidence as to motive. Mr Raine had relied upon other comparable assessments in cases where the coal

operators had been professionally advised. His evidence of comparable assessments was as good as that accepted by the Tribunal in *H J Banks & Co Limited*.

76. A similar analysis of comparable assessments was also undertaken in respect of Stonebroom but in addition there were also the settlements of the appellant's own sites at Carrington, Woodhead and Moss Carr. Mr Raine's figure of £2.65 was at the lower end of the pattern of values for the 2000 list and embraced the disabilities associated with Stonebroom. There was no need for a further end allowance. Mr Raine's approach was correct in principle and well founded in evidence.

77. Mr Mould submitted that the schedule of rents obtained from forms of return and used by Mr Raine in his evidence was part of a process to achieve a successful resolution of outstanding appeals. It was used to get beyond the second stage and led to the establishment of a tone of the list. The schedule had no statutory authority or formal status but summarised the actual rent and royalty evidence that was available to the MVW when conducting his review. That review had been conspicuously successful as a resolution of the second stage and it was no criticism of the schedule of rents that it did not tally with the subsequent schedule of settlements. It was the third stage in the creation of the tone of the list, now reached, that was the significant stage for valuation purposes.

78. The majority of assessments in both the 1995 and 2000 lists had been settled in accordance with the ranges of value produced by the MVW and used as a framework by Mr Raine. That was good evidence that the tones of both those lists had been settled. The hereditament fell to be valued in accordance with the settled tones unless there was compelling evidence of value to support a different approach. No such evidence existed in the case of these appeals.

Conclusions: Law and principles

79. The Local Government Finance Act 1988 requires the VO to compile and maintain local non-domestic rating lists on 1 April 1990 and on 1 April in every fifth year afterwards. Such a list must show the rateable value for every non-domestic hereditament. The appeal in respect of Methley relates to the list compiled on 1 April 1995 for which the AVD specified by the Secretary of State is 1 April 1993. The appeal in relation to Stonebroom relates to the list compiled on 1 April 2000 for which the AVD was 1 April 1998. The elements that comprise the hypothetical rent must therefore be judged in the light of the facts and matters as they would have appeared at those valuation dates.

80. The principles that guide the determination of that rateable value are set out in Schedule 6 of the Act. Paragraph 2 (1) provides, as far as relevant, that "the rateable value of a non-domestic hereditament shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year." This is the fundamental rating hypothesis.

81. Certain matters referred to in paragraph 2 (7) of the Schedule are to be taken to be as they were on the valuation date. Highly relevant to the valuation of an opencast coal mine are "(a) matters affecting the physical state or physical enjoyment of the hereditament," and "(c) the quantity of minerals or other substances in or extracted from the hereditament". The hypothetical tenant of an opencast coal mine in determining what rent to bid for the hypothetical tenancy will plainly pay attention to the amount of coal he is likely to be able to win and the effort and expense that the physical conditions are likely to put him to in order to get it. However, it is recognised that no account should be taken of sums that are payable in respect of the extraction of minerals in so far as they are attributable to capital value. Thus regulation 5 of the Non-Domestic Rating (Miscellaneous Provisions) Regulations 1989 provides that no account should be taken of sums attributable to the capital value of minerals and applies a statutory assumption that the proportion attributed to capital value is 50%.

82. The rating hypothesis assumes that the hypothetical landlord lets the whole of the hereditament, both coal and surface, to the tenant. (See *Dawkins (VO) v Ash Brothers & Heaton Ltd* [1969] 2 AC 366 per Lord Pearson at 391E.) This poses difficulties in the real world so far as opencast coal mines are concerned. These difficulties were addressed by this Tribunal in *HJ Banks & Co Limited*. The first problem is that the coal was not owned by the landlord but by British Coal until 1 November 1994 and thereafter by the Coal Authority. (See Coal Industry Act 1994, s. 7 (3).) From that date it was the Coal Authority that granted licences to extract coal, for which it charged a royalty per tonne. The second is that pre-production costs involved in surveying, obtaining planning permission, providing access and buildings and preparing the site for extraction are borne by the operator/tenant in the real world and not by the landlord. In *HJ Banks & Co Limited* the Tribunal referred to the words of Schiemann LJ in the case of *Hoare (VO) v National Trust* [1998] RA 391 at 408:

"The statutory hypothesis is only a mechanism for enabling one to arrive at a value for a particular hereditament for rating purposes. It does not entitle the valuer to depart from the real world further than the hypothesis compels."

The Tribunal held in *HJ Banks & Co Limited* that the statutory hypothesis required the assumption to be made that the entire hereditament, both coal and surface, was let by the hypothetical landlord to the hypothetical tenant but that it was not necessary to assume that the same was true at all other hereditaments; there reality prevails (see paragraphs 156 to 161). As for the pre-production costs, the Tribunal decided at paragraph 165 that:

"There must be a necessary departure from reality to give effect to the hypothesis that the tenant takes an opencast site physically ready for the extraction of coal. He does not take the site at an earlier stage when it was available for preparatory works to make it ready for the extraction of coal."

In the present case the parties do not challenge those conclusions.

83. The agreed effect of the statutory provisions is that the rent the hypothetical parties are to be taken as agreeing upon at the valuation date will be composed of (1) the rent for the use of land, buildings, plant and machinery for non specified operations; (2) half the rent of land for specified operations and (3) half the royalty element.

84. Consideration of the relevant principles which govern the exercise of valuing those elements must start by noting that although the tenancy is hypothetical, the hereditament is real, with all its particular advantages and disadvantages. It follows that if there is an actual rent or element of rent that has passed in respect of the hereditament in question, it may be a useful starting point in the evaluation process. How useful it is will depend upon how closely it can be said to equate to the circumstances of the hypothetical tenancy at the valuation date and to be a true market rent. The consequence of the assumption that the tenant takes a site physically ready for the extraction of coal may be that the hypothetical rent will be less sensitive to the particular physical circumstances of each site than the real rent. The actual rent is not to be taken as conclusive evidence of value even where the premises are let at what is "plainly a rack rent". This was emphasised by this Tribunal in *Lotus & Delta Ltd* at 149, referring to Lord Denning MR in *Garton v Hunter* [1969] RA 11 at 14 and in *R v Paddington Valuation Officer, ex parte Peachey Property Corporation Ltd* [1965] RA 177 at 198.

85. In *H J Banks & Co Limited* Mr Clarke quoted the Tribunal in the case of *Tivydale Coal Company Ltd v Handstock* [1966] RA 225. The member there said:

> "While the rent actually paid for a hereditament is prima facie the best evidence, it is not conclusive unless it can be shown to be a rack rent. The rents for licensed mines are the only recently negotiated rents of their kind in evidence and, despite the fact that they are found to require adjustments, the payment made for the appeal underground property and rights undoubtedly presents the most reliable basis for the assessment of open market value in terms of the rating hypothesis."

The Tribunal reviewed the case of *Bruce v Howard* [1964] RA 139 at 141 and expressed agreement with the principle underlying those decisions:

> "..namely that (the Tribunal) will be slow to reject rents or royalties actually paid, even though substantial adjustments may be necessary to relate them to the rating hypothesis."

In the appeals the appellant relies strongly on evidence of what it says are, or are equivalent to, actual rents. In the case of Methley, the appellant relies on payments actually agreed on Methley Park (close to the appeal hereditament to the north) in July 1995, on Methley South (adjoining the appeal hereditament to the north) in April 1997, and on the appeal hereditament itself in May 1998. It says that the circumstances that govern these agreements were foreseeable by 1 April 1993, little changed in the period up until those agreements, and they can be taken as useful direct evidence.

86. In the case of Stonebroom, the appellant relies on what was effectively the appellant company's assessment of the likely profitability of the appeal hereditament. This assessment is contained in the board report, put in evidence by Mr Crawford. This assessment drew together

various actual transactions of different sorts in respect of the different parcels of land that made up the hereditament. It also took into account in the calculation some matters relevant to the rating hypothesis, such as "coal authority royalty" and "landowner royalty" as well as other matters such as "Banks Group Recoveries", in respect of which it was not possible to judge their relevance, since they were not explained.

87. Focusing upon rent paid makes it clear that questions of the profit the hypothetical tenant might expect to make or his ability to pay are unlikely to be of anything other than indirect relevance. Of course, in the case of a wasting asset, such as an opencast mine, where by the requirement of the statute attention is to be paid to the quantity of coal extracted, the hypothetical rent is likely to reflect the amount of coal that the tenant anticipates could be won from the hereditament and sold, balanced against the costs on that particular site of doing so. But that is not the same thing as saying that actual rents and royalties based upon the ratepayer's assessment of his likely profit, will necessarily be a reliable guide to the hypothetical rent; the actual rents and royalties may be too far from the hypothetical rent in circumstances or time to be reliable, even with extensive adjustment. As the Tribunal said in *H J Banks & Co Limited* at paragraph 154:

> "Except for a few exceptional cases where there is restricted demand (which is not the position in these appeals), the ability of the hypothetical tenants or the actual ratepayer to pay rent or rates can only (at most) be of indirect relevance to the assessment of rateable value. It cannot be conclusive or even a predominant consideration."

88. The Tribunal went on to say at paragraph 197:

> "This category of evidence includes royalties paid by Banks for the appeal hereditaments (albeit after the AVD) and four other sites worked by them (some close to the AVD). It is well established that this type of evidence, although not now looked at to the exclusion of all other evidence, is in a superior category (see *Garton v Hunter* at 16 and *Lotus and Delta* at 153). It would, in my judgment, be wrong to wholly exclude it from consideration. It needs adjustment and must be carefully considered as to weight but it should not be wholly rejected. I find this evidence to be relevant to the assessment of the appeal hereditaments."

The requirement of the statute that the quantity of mineral that is in or extracted from the hereditament is to be taken as it was at the valuation date is tacit recognition of the practice of taking the amount of mineral extracted as an important element in valuation. There may be more justification in the case of such a mine for having regard to the ability to make a profit from such extraction than there would be in the case of, for example, a shop.

89. In the present case it is submitted on behalf of the respondent that assessments are the only reliable guide to value. The respondent rejects the rents for Methley and its near neighbours as being too far removed in time and, to a lesser extent, circumstances, to be a useful guide. The respondent points out that no adjustment is offered to take those rents back to the AVD, indeed none is said to be necessary. As for Stonebroom, the respondent says that there are too many complications and imponderables in the board report calculation for any assistance to be drawn from it.

90. It has long been established that the valuer may get help from the assessments of comparable properties. In *Pointer v Norwich Assessment Committee* [1922] 2 KB 471 at 477, Atkin LJ said:

> "When the assessment committee are considering the rent which the hypothetical tenant would give for the appellant's premises, any evidence which is relevant to that question is in law admissible, and it must depend on the circumstances of the case whether evidence of the rateable value of premises which are said to be in approximately the same position as the appellant's premises is worth admitting or not. It is a question of degree. I confess I do not quite appreciate the view taken by Salter J, that while you may give evidence of the actual rent paid for the other premises you may not give evidence of their rateable value. In my opinion evidence of the rateable value must be admissible, and for two reasons. In the first place, in cases in which both premises are in the same union, it is evidence against the assessment committee in the nature of an admission. And secondly, it may be the only way in which you can get at the rent at which the appellant's premises are worth to let by the year."

91. In *Lotus and Delta* Mr Emlyn Jones reviewed *Pointer* and other authorities and expressed the view (at page 153) that the following propositions were established:

> "where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point.
>
> The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in (the act) the more weight should be attached to it.
>
> Where rents of similar properties are available they too are properly to be looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject hereditament.
>
> Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the valuation officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.
>
> In the light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the different types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.
>
> In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent."

92. In the case of *Jafton v Prisk* [1997] RA 137 the Tribunal (Mr P H Clarke FRICS) emphasized the advantages to the Tribunal of looking at assessments at the date of the hearing:

> "Why should a Tribunal determining a rateable value shut its eyes to evidence of agreed assessments available at the time of the hearing but arising after the material

> days in the appeal? Why should it grope in the dark, looking only at the state of the rating list at the material days and guessing what might happen in the future, when the light is before it in the form of agreed assessments?"

Mr Mould's submissions went further. He argued that the stage had been reached where both the 1995 and 2000 lists could be said to have settled so far as assessments of opencast coal quarries were concerned. The 'tone' of the list had become established and assessments carried far more weight than rents. He relied on what was said by the Lands Tribunal in *H J Banks & Co Limited* at paragraph 237:

> "There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, the assessments will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and contested by negotiation. Over time assessments will be challenged and agreed or determined by an LVT or this Tribunal or accepted by lack of challenge. Finally, a stage is reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled. Where a list has settled rents will be largely subsumed into assessments. At that stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding the tone of the list is a question of fact. When an assessment is challenged before a tribunal the correct time for deciding whether the tone of the list has been established is immediately before the hearing."(References omitted)

93. The analogy with shops was referred to several times in the current hearing in the context of tone. Mr Straker submitted, in effect, that while it might be relatively easy to see a settled tone for a number of shops along a shopping street, it was a different matter for opencast coal sites across the country, particularly when, as he suggested (on the basis of no evidence but probably credibly enough), there were less opencast coal sites in the whole country than there were shops on one side of Oxford Street. In *Jafton v Prisk* the Tribunal was concerned with the valuation of offices. Mr Clarke set out his reasons for caution in finding that a tone had been established:

> "With shops it is often possible to find that the tone for (say) the peak position in a shopping street has become established at £x per square metre zone A. The value of a shop is defined mainly by its position and less by physical characteristics which can be reflected in zoning and allowances for size, disabilities etc. It is more difficult to find a tone for other categories of property, even though they may be in the same locality, due to physical differences and their greater effect on value."

94. In that case Mr Clarke was unable to find a specific tone but he was able to make the wider finding that there were bands of values for main office space. We adopt such a cautious approach to the proposition that a tone has been established in respect of opencast coal sites in the 1995 and 2000 lists. While we observe that Mr Clarke found that a tone had been established for opencast coal sites in the 1990 list, that was a decision on its facts. In the particular circumstances of the 1995 and 2000 lists, to which we refer below, the Tribunal is not persuaded that a tone can be said to have been established.

95. We draw the following conclusions from this examination of the principles:

(a) We should start with an examination of what are advanced as rents on the hereditaments, doing our best to adjust them to the rating hypothesis and AVD as necessary.

(b) Next we should consider the assessments of comparable hereditaments.

Conclusions: Stonebroom - the appellant's board report

96. The appellant does not rely upon any direct rental evidence in respect of Stonebroom but instead relies solely upon its board report dated 29 June 2000. Mr Crawford derived from this a total royalty figure of £1.32 per tonne, being £1.20 as to the surface royalty and £0.12 as to the coal royalty.

97. The appellant's argument is that the hypothetical tenant, as represented by the actual tenant in this case, would consider all of the factors contained in the board report before deciding whether or not to work the site. Unless the hypothetical tenant could make a satisfactory profit it would not proceed. A total royalty of rent above £1.32 per tonne would jeopardise such a profit and would eliminate it altogether were it to reach £1.98 per tonne (assuming all the other variables contained in the board report remain constant). But the actual tenant is not the only hypothetical tenant of Stonebroom and the appellant's asserted ability to pay no more than a maximum royalty in order to remain profitable is not the determining factor of rateable value.

98. Ryde on Rating states at paragraph E [615] that:

> "It is submitted that the true rule is as follows: as a matter of law, profits must be regarded as affecting annual value, just so far as those profits would, as a matter of fact, affect the rent which may reasonably be expected."

Whilst we have acknowledged that there may be more justification for having regard to the ability to make a profit in the case of an open cast coal site than for other types of hereditament we are not satisfied that the board report relied upon by the appellant establishes the necessary factual connection between the projected profit and the rent that might reasonably have been expected for the Stonebroom hereditament.

99. The board report is a subjective analysis of the profitability to the appellant of the proposed working of the Stonebroom site. It is not an objective valuation to determine the rental value of the hereditament for the statutory purposes with which we are concerned in these appeals. That rental value is taken by the appellant to be fixed at the average total royalty of £1.32 per tonne and the appellant begs the question by relying upon the board report to establish and justify a rent that has already been assumed.

100. We accept Mr Mould's description of the board report as being based upon an accountant's book valuation that is akin to a residual valuation. As such it is subject to the criticisms of the residual method of valuation that this Tribunal has consistently raised, most recently in the case of *Snook v Somerset County Council* [2005] 1 EGLR 147. The Tribunal stated at 151 that:

> "The potentially wide range of plausible assumptions that could be made as to the inputs in such a valuation, and the wide variations in the final result that quite small differences in these assumptions might make, means that it is in general an unreliable valuation method."

It is therefore particularly important that these variables be identified with as much clarity and certainty as possible. In our opinion, however, Mr Crawford's evidence was vague in parts as to the detail, provenance and verification of some of the variables that constituted the appraisal upon which he relied. For instance he was unable to clarify the item shown in the appraisal as "Banks Group Recoveries" which at £4.50 per tonne is the second largest item of cost after mining production.

101. The adopted surface royalty of £1.20 per tonne is derived from a mixture of capital and rental payments many of which are historic. At least one of the transactions relied upon dates back to 1989. Details of the various land assembly transactions remain sketchy even after further information was provided by the appellant following the hearing. For instance a significant land acquisition from Kathleen Gadsby and Jean Mulqueen is referred to for which no date of acquisition is provided either in the board report or subsequently. We do not consider that such information provides an appropriate or reliable basis to determine the rent at which the hereditament might reasonably have been expected to let at the 1998 AVD upon the relevant statutory assumptions.

102. The total royalty rent of £1.32 per tonne adopted by the appellant is an average figure for the whole of its land ownership. It is not an actual rent that was paid in respect of any identifiable part of the hereditament. Such actual rents as there were, for instance in respect of the surface royalty paid for the Rowe land and fixed in January 1999 at £2.00 per tonne, were considerably higher than the figure used by Mr Crawford.

103. For the above reasons we are not satisfied that the board report provides an appropriate basis upon which to determine the rateable value of the Stonebroom hereditament and we therefore reject the appellant's reliance upon it.

Conclusions: Stonebroom - rental evidence

104. Mr Raine, whose primary valuation was based upon settled assessments, considered that the details of the surface royalties actually paid for part of the Stonebroom hereditament were too complex to be analysed meaningfully in terms of the rating hypothesis.

105. We share Mr Raine's reservations about being able to make a meaningful analysis of the actual agreements as the following example illustrates. The appellant acquired the freehold interest in the majority of the Stonebroom site and reached agreement with two parties for the payment of a surface royalty. The first such agreement was made with Mr and Mrs Rowe on the 8 January 1999 at £2.00 per tonne. The area of land subject to the agreement is not specified in the appellant's board report although the estimated tonnage is given as 19,651, or 6% of the total. The second agreement was made with Mr R Morton on 14 July 1999 and was also at £2.00 per tonne. From the board report and information provided at our request by the appellant following the hearing, it appears that a small area of land was purchased from Mr Morton in relation to a footpath and in connection with planning gain. The board report includes the former as a fixed payment of £3,000 as part of the calculation of the overall surface royalty of £1.20 per tonne. It is not clear whether the remainder of the Morton land, which is said in the requested information to form part of the surface area occupied by the appellant, was in fact worked. There is no reference to the payment of any surface royalty in respect of it contained in the board report and from the plans produced in evidence it appears that the Morton land fell outside of the operational site. In answer to a question from the Tribunal Mr Crawford said that the Morton agreement formed part of the same deal as the Rowe agreement but there is nothing to corroborate this elsewhere in the evidence and the two agreements, although relating to neighbouring sites, appear to be independent and separately agreed.

106. Despite the difficulties posed by the piecemeal and historic acquisition of the Stonebroom site, and the lack of consistent information regarding the same, the agreement with Mr and Mrs Rowe does provide direct rental evidence based upon an arms length transaction some nine months after the 1998 AVD and relating to an identifiable (albeit small) part of the overall site. We acknowledge the reluctance of both parties to treat this evidence as determinative but we consider it to be a relevant transaction and have attached weight to it accordingly.

107. All of the coal produced at Stonebroom was transported via an under-bridge controlled by Railtrack and a railhead site owned by Mr Salmon. This gave rise to two additional surface royalty payments. The agreement to pay Railtrack at £0.13 per tonne is not dated and in the board report on 29 June 2000 it was stated that the issue of a formal licence with Railtrack was still outstanding. The payment to Mr Salmon was agreed on 15 April 1994 at £0.50 per tonne, a figure that was said to be indexed, although no details of the indexation were given in evidence. The board report assumed that the surface royalty would by then (2000) be £0.54 per tonne. The two payments totalled £0.67 per tonne as at June 2000 and applied to all of the coal produced.

108. There is also direct evidence of coal royalties at the Stonebroom site. The appellant entered into an agreement with the Coal Authority on 14 June 2000 in respect of part of the land it acquired from Mr M Salmon and Shorewise Limited in 1989. The agreed coal royalty was £0.475 per tonne with an estimated production capacity of 80,000 tonnes or 24% of the total estimated tonnage of the Stonebroom site. This agreement relates to a significant proportion of the coal produced at the site and, although it is dated more than 2 years after the

1998 AVD, we consider it to be relevant, subject to adjustment, to the determination of rateable value.

109. The total actual royalty from the evidence available in respect of Stonebroom is therefore £3.145 per tonne (£2.00 + £0.67 + £0.475) as at June 2000. However the majority of this (£2.475) did not relate to the total estimated tonnage from the site and none of it was agreed at the 1998 AVD.

110. The parties referred to two nearby sites for which direct rental evidence was available and which were worked by the appellant. At Carrington the actual surface rent had been agreed in May 1999 under two licences at £2.08 per tonne. The coal royalty was agreed at £0.42 per tonne. The VT determined that this site should be valued the same as Stonebroom, ie using a total royalty of £2.65 per tonne. The appellant did not appeal this decision because, as Mr Crawford explained, there was actual rental evidence which was close to the VT's figure. Mr Crawford sought to distinguish Carrington from Stonebroom on two grounds. Firstly, he said that the latter was harder to work and, secondly, he stated that, contrary to the VT's conclusion, the two sites served different markets; Carrington served Ratcliffe on Soar Power Station some 19 miles away whilst Stonebroom served Drax Power Station some 55 miles distant. These differences were not explored or explained in depth at the hearing. With regard to the first point we note that although Stonebroom proved more difficult to work than had been anticipated (the actual ratio was 11.75 to 1 compared with the estimated figure of 10.96 to 1) Carrington, according to Mr Raine, had a higher ratio of 14 to 1. Furthermore at the VT hearing Mr Crawford had argued for a lower assessment for Carrington due to unforeseen difficulties in working the site (said by the VT to relate to "hard dig and restoration"). Mr Raine answered the point regarding the proximity of the two sites to their respective markets by pointing out that Carrington was served by road and Stonebroom by rail making it difficult to compare the transport economics of the two. We consider that the rental evidence at Carrington is relevant and of weight in the valuation of Stonebroom.

111. The other site referred to by the parties was called Doe Hill Remainder, part of the Doe Hill site that adjoins Stonebroom. A coal royalty of £0.70 had been agreed in January 1998. Mr Raine considered that this supported a higher figure for the coal royalty at Stonebroom than the actual figure of £0.475 that had been agreed in respect of part of the site in June 2000. Mr Raine accepted, however, that Stonebroom had greater operational problems than Doe Hill. Mr Crawford stated that the experience of operating Doe Hill for two years before operations started at Stonebroom meant that the appellant had gained practical knowledge of working conditions that justified a lower coal royalty for the latter.

112. The direct rental evidence that we have tentatively supports a total royalty of £3.145 per tonne. Mr Raine, rightly in our opinion, does not argue that this should be the adopted figure but allows for the physical constraints that affected the site, ie the presence of the railway, a brook running through the site, unrecorded faulting and a greater overburden in the western part of the workings. He allows some £0.50 (16%) in arriving at his adopted figure of £2.65 per tonne. He considered this to be a fair and reasonable allowance. We agree. We do not consider that a further end allowance should be applied to this figure to reflect the fact that

working conditions at the site were actually worse than had been anticipated in the appellant's board report. We prefer Mr Raine's argument on this point (see paragraph 58 above) that the appellant is an experienced opencast coal site operator who had researched the site carefully and would have allowed some tolerance for unforeseen problems in any event. The experience gained from working the adjoining Doe Hill site was already reflected in a significantly lower coal royalty at Stonebroom.

Conclusions: Stonebroom - royalty scales

113. The rental evidence from the forms of return for the 2000 rating list was analysed by the MVW to produce the royalty scales that were introduced in March 2001. We have reservations about the way in which the scales were produced and about how they have been used in these appeals.

114. The royalty scales were produced quickly and under pressure to unlock an apparent impasse that had been reached with appellants in respect of the 1995 list. The MVW stated in his memorandum dated 20 March 2001 that:

> "Nevertheless, time being of the essence all that data has now been captured and clarified as far as it is possible to do so within the very short time-scale available."

That memorandum goes on to say that:

> "The overview is still not in a finished format and more information continues to arrive each day but, as time becomes of the essence it is felt that a move to resolve the issues on opencast royalties must be made .... I [the MVW] still have a considerable amount of work myself to finish the Overview Bible...."

From the memorandum it appears to us that the royalty scales were prepared hurriedly and were not intended to be the final version. However, in response to our questioning Mr Raine confirmed that no further or revised guidance about the royalty scales has been issued subsequently. He also said that neither he nor his colleagues to whom the memorandum was addressed had been consulted about the preparation of the royalty scales. There had been no peer review of the results. The memorandum from the MVW said that:

> "Having completed the classification, analysis and weighting exercise, the result was a robust body of evidence for consideration through from early 1995 to mid 2000."

But no details were given about this analysis nor about how the evidence (classified into primary, secondary and tertiary) was numerically weighted in practice. In response to our questioning Mr Raine confirmed that the analysis referred to in the MVW's memorandum was not an objective statistical analysis but a subjective adjustment.

115. The appellant identified a number of significant anomalies with the royalty scales which we have referred to above (paragraphs 34 to 35 and 46 to 47). We consider these criticisms to be well founded and the respondent neither addressed nor explained them in evidence or

submissions. It may be that the lack of detailed evidence about the provenance of the royalty scales reflects the appellant's primary reliance upon the settlements that were reached following their introduction and its submission that these have now produced a settled tone for the 2000 list. But, as we have found above, we are not persuaded that a tone can be said to have been established and therefore the respondent's preferred reliance upon assessments rather than rents is, in our opinion, unwarranted.

116. Nor are we persuaded that the classification of opencast coal sites into greenfield, brownfield and reclamation sites should be determinative for the purposes of assessing rateable value. The respondent failed to show that these classifications are used in the market or by the Coal Authority. The significant number of settlements that fall within one of these categories but outside of the associated royalty scales suggests to us that the system of classification fails to reflect the subtleties of the market and the range of factors that go to determine the rental value of individual sites.

117. Mr Crawford argued in support of his alternative valuation that the royalty scales represented average rents which in turn implied average profits from the operation of the sites upon which they were based. Since the appellant made a loss at Stonebroom rather than an average profit, that should be reflected by the application of an end allowance to take account of the operational difficulties that were actually encountered. We do not accept Mr Crawford's suggestion that the royalty scales represent average sites. The scales reflect considerable differences in the physical and operational characteristics of the sites from which they are comprised and this is not a criticism of the scales that we consider to be well-founded.

118. We conclude that the construction and derivation of the royalty scales for the 2000 rating list from the available rental evidence has not been satisfactorily explained by the respondent and that these royalty scales should be treated with caution.

Conclusions: Stonebroom - assessments

119. The respondent relied primarily upon the evidence of settled assessments in the 2000 list and, in particular, upon the assessments of eight other opencast coal sites at Southfield, Brynteg Fields, Eldon Deep, Crock Hey, Barugh Bridge, Woodhead, Ravensworth Grange and Moss Carr. With the exception of Barugh Bridge which had a working ratio of 4 to 1, the other sites had working ratios of between 14 and 21, ie higher than at Stonebroom. The tonnage for four of the sites was greater than that of Stonebroom, for three other sites it was less and for one it was approximately the same. Only two of the sites, Brynteg Fields and Crock Hey, appeared in the schedule of rental evidence upon which the respondent's royalty scales were based. At six of the sites the appellant appears to have been professionally represented by a third party. Of these six, two of the sites, Woodhead and Moss Carr, were operated by the appellant who was represented by Mr Crawford. Mr Raine was personally involved in the settlements at Eldon Deep and Moss Carr. Three of the sites are identified as greenfield sites (Brynteg Fields, Crock Hey and Woodhead) but there is no information about the classification of the remaining five sites. From the limited information contained in the evidence it appears that six of the sites were subject to operating difficulties, including Barugh Bridge which,

although it had a low working ratio of 4 to 1, was subject to flooding and required constant pumping.

120. The range of settlements of these eight sites was £2.39 per tonne (Moss Carr) to £3.10 per tonne (Barugh Bridge). Five of the remaining six sites had settlements between £2.60 and £2.75 per tonne, with Southfields being settled at £2.90 per tonne. The agreed royalties were not analysed as between coal and surface royalties. All of them appeared to have been settled after the introduction of the respondent's royalty scales in March 2001.

121. We do not accept the appellant's argument that the settlement of assessments was unduly influenced by the early settlement of the outstanding appeals by UK Coal Plc nor that that company were necessarily under financial compulsion to reach agreement leading to the acceptance of rateable values that were too high. The only evidence adduced in support of this submission was an extract from the accounts of UK Coal Plc for the financial year ending 31 December 2001 and we agree with Mr Mould that the appellant's interpretation of the accounts was speculative and lacking evidence as to motive.

122. Notwithstanding the fact that we do not consider a tone of the 2000 list to have been established we find that the evidence of settled assessments produced by the respondent lends persuasive support to its case that the VT was correct in its determination of the rateable value of Stonebroom at £2.65 per tonne. We acknowledge that, more so than with many types of property, opencast coal sites are individual in character and do not lend themselves easily to comparative valuation. Nevertheless, we consider that the respondent has identified, as far as possible, a number of sites that may generally be considered comparable in size, ratio and characteristics to the Stonebroom site.

Conclusion: Stonebroom - valuation

123. From the evidence before us in terms of both rents and assessments we consider that the VT's decision was properly and fairly reached in determining the total royalty at £2.65 per tonne. The appellant has failed to show that the VT was wrong as to matters of fact in its findings. The appellant's use of its board report to support a lower figure of £1.32 per tonne is, in our opinion, unsustainable and unreliable. We therefore confirm the VT's decision that the total royalty at the Stonebroom site is £2.65 per tonne and that the rateable value in the 2000 list should be £300,384 with effect both from 20 November 2000 and 1 April 2001.

Conclusion: Methley - rental evidence

124. The only rental evidence of coal royalties as at the 1993 AVD was in the sum of £2.00 per tonne which both parties agreed was evidence tainted by the monopoly then enjoyed by British Coal. The appellant relied upon actual rental evidence for the Methley Park, Methley South and Methley sites as summarised in paragraphs 17 to 19 above. All three transactions were completed after the 1993 AVD, in July 1995, April 1997 and May 1998 respectively.

125. These three rental transactions show a trend of falling coal royalties, from £0.61 per tonne (1995), £0.53 per tonne (1997) and £0.47 per tonne (1998) which is consistent with the removal of the British Coal monopoly. The appellant submitted that this trend was foreseeable and that consequently the actual transaction in respect of the subject hereditament at Methley, which it analysed at £2.50 per tonne, should be adopted as the appropriate figure for the total royalty.

126. This evidence has the benefit of relating to open market transactions involving the subject hereditament and two adjoining sites all of which were operated by the appellant. The difficulty with the evidence is its remoteness from the 1993 AVD. The appellant sought to show, in accordance with the comments of this Tribunal in *H J Banks & Co Limited* referred to in paragraph 67 above, that nothing had changed whether economically, physically or operationally between the AVD and the date of the transactions and that the evidence should be adopted without adjustment. The respondent challenged the constancy of the economic and planning context of the coal mining industry from the AVD onwards.

127. We accept the respondent's argument that there was considerable structural change in the coal mining industry following the 1993 AVD and that the economic circumstances were not the same at that date as they were at the date of the three transactions relied upon by the appellant. However, we accept the appellant's argument that at least some of these economic changes were foreseeable at the AVD and, unlike Mr Mould, we consider this to be a relevant factor. In *Dawkins (Valuation Officer) v Ash Brothers and Heaton Limited* [1969] 2 AC 366 Lord Wilberforce said at 386A:

> "But it would surely be unreasonable to suppose that the hypothetical tenant is so inescapably imprisoned in the present that no anticipation is permitted of what is to come. Whether the test is what would influence his judgment, or what intrinsic qualities the hereditament possesses, any occupier in real life has to ascertain and to consider whatever may make his tenancy more or less advantageous over the period for which he takes it. I appreciate that the statutory hypothesis as to the length of the tenancy may have a bearing on what the tenant may take into account, and I shall shortly consider this critical point but, apart from this, it would seem clear that any occupier would take into account, not only any immediately actual defects or disadvantages (such as planning restrictions) but disadvantages, or advantages, that he can see coming."

Lord Pearson said at 393F:

> "It was also said on behalf of the appellant that equality of rating requires that each hereditament should be valued as it now is – rebus sic stantibus – and the prospect of a future partial destruction of it must be disregarded. But it seems to me that this point can be turned against the appellant. In the expression rebus sic stantibus which are the res? In other words, which are the factors to be taken into account in order to produce equality of rating. There is, in this case, a present probability of a future happening and the present probability affects the present value of the hereditament."

In short "An anticipated future event which can be shown to affect the value of the hereditament at the valuation date [the 1993 AVD] should be taken into account" (Ryde on Rating paragraph E [274]).

128. The statutory assumption of a tenancy from year to year means that it is of indefinite duration, albeit with the reasonable prospect of continuance. Consequently, as per Lord Pearson in *Dawkins* at 394C:

> ".... the value of such a tenancy is not materially affected by the prospect of an event which is not likely to take place within a relatively short period of time."

129. The 1993 AVD was before the Coal Industry Act 1994 received Royal Assent in July 1994 and it was not until 1 November 1994 that the Coal Authority assumed responsibility for coal licensing. From the evidence before us we conclude that it was known at the AVD that structural changes to the industry were probable and that it was anticipated that British Coal's monopoly would be removed in the near future. In our opinion the prospect of such change would have materially affected the value of the hypothetical tenancy as at the AVD. We do not accept the appellant's argument, however, that the exact affect on royalties would have been foreseen at the AVD and that the actual royalties paid for Methley in 1998 are good evidence of the value five years earlier.

Conclusion: Methley - royalty scales

130. The respondent approached the problem of adjusting rental values back to the 1993 AVD by preparing a second set of royalty scales, derived from those produced for the 2000 list. The MVW said in his memorandum dated 20 March 2001:

> "In considering how these [2000] ranges could possibly be rolled back into the 1995 list in the hope of achieving some degree of consensus and agreement, several approaches were given consideration. Eventually it was felt that having regard to the trend displayed across the body of evidence considered, if one was to project that trend back a relaxation in the initial tone royalties of £4 to £5/tonne adopted for the 1995 list would appear to be appropriate."

It is not clear from the memorandum what trend the MVW is referring to. It is presumably a trend in actual rents. Although the MVW refers to several approaches having been considered as to how the 2000 royalties scales could be rolled back to the 1995 list, Mr Raine was unable to tell us what those alternatives were.

131. Mr Raine referred in his evidence to the case of *Hodgkinson (VO) v ARC Limited* [1996] RA 1 as a case where this Tribunal had accepted evidence of royalty payments agreed post AVD as being admissible in support of a trend. The Tribunal in that case (the President, His Honour Judge Marder QC, and Mr T Hoyes FRICS) expressed reservations about the use of such evidence at 44:

> "Adjustment of all evidence to AVD, using indexation if necessary, although not perfect and precise is the only realistic tool available if a high degree of subjectivity is to be avoided. We have already found in this respect (....) but emphasise the need to exercise a degree caution in a climate of rising royalties when indexing backwards in time, because the result may well not accurately reflect all material market factors at the AVD."

The Tribunal concluded at 46 that:

> "If any useful conclusion can be drawn from this evidence it can only be that it was indicative of, rather than contrary to, the rising trend of royalties in train at AVD."

In our opinion such reservations would apply equally to the situation in the subject appeal where there is a falling rather than a rising trend of royalties. Furthermore, in *Hodgkinson* there was evidence of royalties both pre and post AVD. In the subject appeal we are trying to determine whether a downward trend had begun at the AVD in anticipation of a foreseeable structural change in the mining industry. There is no reliable pre AVD evidence of coal royalties that is of assistance in establishing a trend of rental values given the monopoly of British Coal at that time.

132. In his evidence Mr Raine described the process involved in producing the 1995 royalty scales as follows:

> "7.49. As the majority of opencast coal sites under consideration had entries in both the 1995 and 2000 rating lists, it was decided to move towards agreeing the settlements in the 2000 rating list based on direct rental evidence. The differentials established between the sites were then rolled back to the 1995 Rating List based on the royalty range established by existing settlements (£4.50 to 75p per tonne) in a reverse of the presumption established in the aforementioned case [*Barnard and Barnard v Walker*].
>
> 7.50 The 2000 ranges were projected back to arrive at the range established by reference to the existing 1995 settlements which mirrored the 2000 ranges ...."

133. The MVW produced the 1995 royalty scales by using settlements in the 1995 list (rather than rents) to calibrate the maximum (£4.50) and minimum (£0.75) figures. This was despite the fact, as Mr Raine stated in evidence, that at that time, March 2001, there had been a limited number of agreed royalties in respect of that list and few had been agreed in the upper quartile of the royalty range of £4.00 to £5.00 per tonne that had been used when compiling it. Indeed the settlement which appears to have been used to set the minimum limit of the 1995 royalty scales, namely Bowmans' Harbour (£0.75 per tonne), was originally considered by the MVW to be a rogue and not supported by any evidence.

134. No evidence was given about how the individual 1995 royalty scales for greenfield, brownfield and reclamation sites were produced from the two outlying minimum and maximum figures and the 2000 royalty scales. It seems to us that this was a subjective exercise undertaken by the MVW. It is possible to deduce some constant relationships between the

corresponding entries in the two scales but no satisfactory explanation of these was given in evidence. In any event the two scales are constructed differently. The 2000 scale is based upon rents, the 1995 scale is based upon assessments that were settled before the royalty scales were introduced in 2001.

135. The analysis of differential values between sites in the 2000 list is unlikely to be of assistance in deriving the appropriate value of the majority of sites in the 1995 list. As Mr Mould said in his submissions a typical opencast coal site is worked for two years and so one would expect there to be considerable differences in the constituency of the two lists. Indeed in the schedules of settlements for the 1995 and 2000 lists submitted by Mr Mould we note that of the 97 sites shown in the 1995 schedule only 19 are also to be found in the 2000 schedule.

136. Mr Raine argued that the fall in royalties between the 1995 and 2000 lists (approximately 30%) was mirrored by the movement in coal prices revealed by reference to three industry indicators. There was no agreement between the parties about the movement in coal prices. Mr Crawford rejected the three indicators used by Mr Raine as being indices of the prices of all coal rather than coal from opencast sites. Mr Crawford's own evidence of price changes between 1993 and 1998, based upon the average actual prices paid to the appellant in those years across 12 opencast coal sites, suggested a much lower reduction in price of 8%. In the light of these objections we do not consider that the evidence produced by Mr Raine provides a reliable verification of the 1995 royalty scales.

137. We consider that the presumption about differentials between assessments being maintained between lists, as per *Barnard and Barnard* should not apply in reverse as suggested by the respondent. Projecting a differential from the old list to the new may be justified given that at the AVD all relevant historical facts are known to the hypothetical tenant. Projecting such a differential from the new list back to the old is not justified because at the relevant (earlier) AVD the hypothetical tenant has no such knowledge and negotiations in respect of post AVD rents may have been influenced by factors that were not contemplated or fully appreciated at the AVD.

138. The respondent rejected the appellant's reliance upon the actual rental evidence from the three Methley sites because it was post 1993 AVD. However the MVW considered actual rental evidence that was between six months to three years pre or post 1998 AVD to be of secondary weight and admissible in the preparation of its 2000 royalty scale. The rental agreed at Methley Park in July 1995 would therefore have been given a secondary weighting by the MVW when preparing the 2000 royalty scale since it was within three years of the 1998 AVD. However, despite being some 6 months closer to the 1993 AVD than the 1998 AVD this same evidence was rejected as inadmissible by the respondent in connection with determining the appropriate rental value at that earlier date. We consider that the respondent has been inconsistent in its treatment of the same evidence.

139. We conclude that the 1995 royalty scales are not reliable or robust and that they should not be used to determine the rental value of opencast coal sites in the 1995 list.

Conclusions: Methley - assessments

140. Despite our reservations about the 1995 royalty scales it appears that they have been successfully used by the respondent and the VOA generally to settle 1995 assessments. Mr Raine identified 25 such settlements in support of his valuation, ranging from total royalties of £3.50 to £4.50. However, only 7 of the 25 assessments were settled before the introduction of the royalty scales in 2001. Three of the 25 assessments also had settled assessments in the 2000 list, ie Brynteg Fields, Eldon Deep and Crock Hey. All three were settled after the introduction of the royalty scales. These three show differentials between the two lists of £1.20, £1.05 and £1.00 respectively. The respondent considered that the majority of differentials between the two scales showed a difference of £1.15 per tonne between the lists. Consequently, the respondent took the actual rent agreed at Methley in July 1998, £2.48, rounded it to £2.45 and added £1.15 to give a valuation of £3.60 per tonne. The respondent considered that this figure was supported by the settled assessments referred to above. The figure of £2.45 per tonne had also been adopted by the VT in respect of the adjoining site at Moss Carr when determining an appeal against the 2000 list.

Conclusions: Methley - valuation

141. There is no evidence of a fall in surface rents following the 1993 AVD as a result of structural changes in the coal mining industry. In respect of surface royalties we accept the appellant's argument that there have been no material changes of circumstances between that AVD and the dates of the actual rental agreement in respect of the subject hereditament and the two adjoining sites. Nor do we consider that any such change was foreseeable as at the valuation date. The parties are not in disagreement on this point. The appellant, in adopting a total royalty of £2.50, has taken the surface royalty at £2.00 per tonne. The respondent does likewise taking the evidence agreed before the VT for Moss Carr for the 1998 AVD (£2.00 per tonne surface royalty and £0.45 per tonne coal royalty before adjustments) as the starting point before adding the average differential between the lists of £1.15. We find from the evidence that the surface royalty at Methley as at the 1993 AVD should be £2.00 per tonne.

142. We have already rejected the appellant's submission that there was no material change of circumstances following the 1993 AVD that would have prevented the adoption of the actual coal royalty for Methley that was agreed in May 1998. We accept the respondent's argument that the economic changes within the coal mining industry mean that this actual coal royalty cannot be used as evidence at the 1993 AVD.

143. We do not believe, however, that the respondent's 1995 royalty scales are a reliable basis for our determination and we have explained at length why we do not consider a tone of the 1995 list to have been established. Consequently we give primary weight to rental evidence whilst accepting that there is a substantial amount of assessment evidence which is admissible and which may assist us in our determination. Our difficulty is that there is little or no rental evidence of coal royalties in the years following the 1993 AVD whilst operators let the structural changes associated with privatisation of the industry become established. We note that the coal royalties charged by British Coal had been declining sharply in the years leading

up to the 1993 AVD. In April 1990 they had been £6.00 per tonne (for output in excess of 50,000 tonnes). By 1 April 1993 the figure was £2.00 per tonne. There was an established downward trend which would have been expected to continue given the imminent removal of British Coal's licensing monopoly.

144. In our opinion the Methley hereditament might reasonably have been expected to let at a coal royalty reflecting a discount of 25% from that current at the 1993 AVD due to the prospect of structural change in the industry. Since the prevailing British Coal royalty at that time was £2.00 per tonne we find that the coal royalty for the Methley hereditament as at the 1993 AVD should be £1.50 per tonne. Adding this to the surface royalty of £2.00 per tonne gives a total royalty figure of £3.50 per tonne. This gives a rateable value of £324,845 (see Appendix 6) and we direct that the 1995 rating list be amended accordingly with effect from 1 April 1999 in respect of the Methley hereditament.

145. This decision determines the substantive issues in these appeals. A letter on costs accompanies this decision which will take effect when, but not until, the question of costs is decided.

Dated: 11 April 2007

His Honour Judge Mole QC

A J Trott FRICS

APPENDIX 1

STONEBROOM

Valuation of Andrew Crawford MRICS MIQ IRRV on behalf of the appellant

	URV £	RV £
Coal output: 201,675 tonnes at £1.32 per tonne	266,211	133,105
Land for specified operations	330	165
Buildings, plant, machinery and non-specified land	33,000	33,000
	299,541	166,270

Rateable value with effect from 20 November 2000 and 1 April 2001: £166,270

APPENDIX 2

STONEBROOM

Alternative valuation of Andrew Crawford MRICS MIQ IRRV on behalf of the appellant

	URV £	RV £
Coal output: 201,675 tonnes at £2.65 per tonne	534,438	267,199
Less allowance: 201,675 tonnes at £1.19 per tonne	239,993	119,996
	294,445	147,203
Land for Specified Operations	330	165
Buildings, plant, machinery and non-specified land	33,000	33,000
	327,775	180,368

Rateable value with effect from 20 November 2000 and 1 April 2001: £180,368

Lands Tribunal note: The correct figure for the rateable value is £180,388. There is an error in Mr Crawford's calculation in the first line under the RV column. This entry should be £267,219

APPENDIX 3

METHLEY

Valuation of Andrew Crawford MRICS MIQ IRRV on behalf of the appellant

	URV £	RV £
Coal output: 179,151 tonnes at £2.50 per tonne	447,878	223,939
Buildings, plant, machinery and non-specified land	11,331	11,331
	459,209	235,270

Rateable value with effect from 1 April 1999: £235,270

APPENDIX 4

STONEBROOM

Valuation of Andrew Raine MRICS on behalf of the respondent

	Tonnage	Royalty per Tonne £	URV £	RV £
Coal	201,675	2.65	534,438	267,219
Specified land			330	165
Building, rateable plant and machinery				33,000
Non-specified land				Nil
		Total		£300,384

Rateable value with effect from 20 November 2000 and 1 April 2001: £300,384

APPENDIX 5

METHLEY

Valuation of Andrew Raine MRICS on behalf of the respondent

	Tonnage	Royalty per Tonne £	URV £	RV £
Coal	179,151	3.60	644,944	322,472
Specified land			Nil	Nil
Building, rateable plant and machinery				10,831
Non-specified land				500
		Total		£333,803

Rateable value with effect from 1 April 1999: £333,803

APPENDIX 6

METHLEY

Valuation of the Lands Tribunal

	Tonnage	Royalty per Tonne £	URV £	RV £
Coal	179,151	3.50	627,028	313,514
Specified land			Nil	Nil
Building, rateable plant and machinery				10,831
Non-specified land				500
				£324,845

Rateable value with effect from 1 April 1999: £324,845