STATEMENT OF REASONS

Relative to appeal

By

Immigration & Nationality Directorate

In respect of Detention Centre,

Dungavel House, Dungavel, Strathaven, ML10 6RF.

This appeal is a Revaluation appeal in respect of a Detention Centre.

There was no dispute between the parties with regard to the valuation of the Appeal Subjects. The issue between them revolved around whether the Appeal Subjects should be entered in the Valuation Roll as part residential subjects. The Appellants accepted that the valuation presently shown in respect of the Appeal Subjects is correct if the Appeal Subjects are not part residential subjects. In the event that the appeal succeeds, the parties had agreed the respective values to be attributed to the residential and non residential parts of the Appeal Subjects.

It was not in dispute that the Appeal Subjects comprised the former hunting lodge of the Duke of Hamilton which had been extended and a number of other buildings added. They are situated in wooded grounds. They operated formerly as an open prison by the Scottish Prison Service. They were acquired by the Home Office and opened as a Detention Centre/Immigration Removal Centre in September, 2001. The facilities at the Centre comprised 190 beds situated in either dormitories or twin rooms, a coffee shop, library, gym, sports pitch, children's play area, family unit crèche, association/common rooms and prayer rooms. There is also medical and dental treatment provided and some paid work is available. It is a secure facility where segregation is imposed where necessary. There is no smoking within the bedroom areas but smoking elsewhere within the centre. The centre is surrounded by a fence and entered through an intercom controlled multi gate security system. There are four daily roll calls to check upon the detainees. There are detainee custody officer on duty 24 hours per day.

The Appellants stated that there are six grounds for detention. Firstly someone detained at a port due to lack of appropriate paperwork. Secondly an illegal entrant; i.e. someone who has entered the country, for example in a lorry or who has overstayed having entered on a visitor's permit. Thirdly, someone who is the subject of a detention order issued for reasons of national security. Fourthly, someone who is the subject of a deportation Order, generally foreign national prisoners. Fifthly, someone who, having been sentenced by the courts, has also been recommended for deportation. Lastly, a person claiming asylum

who has failed to provide fingerprints. The Appellants' policy is to remove detained persons from the UK as soon as possible.

The composition of detainees detained at the Appeal Subjects since 2006 is a percentage of illegal entrants and, the majority, foreign national prisoners. 98% of the detainees are single males. Detainees are usually removed from the Appeal Subjects to another detention centre closer to the London airports from where they are then deported. There are occasions when detainees are granted temporary admission to the UK; for example when deportation to a certain countries is not permitted; pending judicial review of the asylum process; where there has been successful appeals or where the Home Office has re-considered its decision to deport. In cases of temporary admission, the detainees are housed by the local authority subject to reporting requirements.

The Appellants contended that the detainees do not have alternative housing; if they have been previously in the community prior to their detention, they have taken steps to sell their property because they are aware that they are leaving the UK. Detainees often arrive at detention centres with large amounts of personal belongings even white goods. The Home Office has required to limit the amount of personal belongings which detainees are allowed to have because of cost of deporting these along with the detainees. The average detention is 42 days and this can cover detention at more than one detention centre. It is not clear whether the statistics collated in this regard cover periods of temporary admission.

The Appellants accepted that the detainees do not wish to be in the Appeal Subjects. It is a stricter regime than an open prison. However, there is a free flow of detainees throughout the Appeal Subjects. The only restriction in their movement within the Appeal Subjects is in relation to the grounds which is limited to daylight hours. There is segregation between the single males and families.

The Appellants contended that the Appeal Subjects should be entered in the Valuation Roll as part residential subjects as defined in section 99 of the Local Government Finance Act, 1992 which defines "part residential subjects" as lands and heritages which are used as the sole or main residence of any person. The Appellants contended that the Appeal Subjects are the "sole or main residence" of those persons detained there. They further contended that a person's sole or main residence does not need to be a permanent dwelling or settled abode. It is simply where a person lives. The detainees are in the main subject to deportation orders and have no competing residences. Any detainees who previously lived in the community are likely to have lived in squalid conditions provided by unscrupulous restaurateurs. The aim when they are detained is that they should be deported so any connection with any previous residence is severed and therefore they have no residence other than the Appeal Subjects. To assist with the meaning of the phrase, "sole or main residence", the Appellants made reference to three cases; Stevenson v Rodgers 1992 SLT 558; Cameron v Henry 1992 SLT 586 and Bennett v Copeland Borough Council 2004 RA 171. The first two cases concerned the interpretation of the phrase, "solely or mainly resident" as expressed in section 8 of the Abolition of Domestic Rates Etc (Scotland) Act, 1987 and the third concerned the interpretation of the

corresponding English legislation relative to Community Charge which employed the phrase, "sole or main residence."

The Appellants stated that at the 2000 re-valuation the Appeal Subjects which at that time operated as an open prison had been entered in the Valuation Roll as part residential subjects. There was specific statutory provision to include prisons within the definition of dwellings as set out in section 72 of the Local Government Finance Act, 1992. There was a re-valuation appeal against the 2000 re-valuation, a final notice had been issued on 27th June, 2003 by which time the Appeal Subjects were operating as a detention centre and the Notice was sent to the Immigration Service; there was however no attempt by the Assessor to alter the entry of the subjects as part residential subjects in the Valuation Roll. Further, there had been alterations to the subjects after their change of use from open prison to a detention centre. These alterations had resulted in a change of valuation but no change in the entry in the Valuation Roll.

The Assessor stated that the detainees at the Appeal Subjects do not have the freedom of movement within the centre as suggested by the Appellants. He contended that within the centre there are secured areas (secured by means of locked doors) within which there may be freedom of movement but that movement throughout the centre generally was restricted. He stated that detainees are issued with colour coded identification cards which determined to which areas within the centre a particular detainee would be permitted access. They were not permitted unfettered movement within the grounds. He stated that there was a stringent security regime; during the four daily roll calls, a detainee custody officer would check photographs contained on a roster against each detainee. The inference was that each detainee stay within the centre was of such short duration that the staff was not familiar with them and required to use photographs to check identity. Most detainees had few personal possessions and no detainee had applied for inclusion in the electoral register. Again the inference drawn was that the detainees did not consider themselves resident within the centre.

The Assessor produced extracts from two reports from HM Chief Inspector of Prisons in relation to the Appeal Subjects; one in relation to an unannounced visit which had taken place on 14 to 16 December, 2004 and the other in relation to an announced visit which had taken place on 4 to 8 December, 2006. The first of these reports provided statistics in relation to, inter alia, the length of detainees' time in detention; over 50% of the detainees had been less than two weeks in the Appeal Subjects, over 67% had been less than four weeks in the Appeal Subjects. The report also contained statistics in relation to where the detainees had come from prior to their detention; 54% had been in the community. The second report did not contain similar statistics but did comment on the length of the stay of children within the Appeal Subjects; this was said to have risen from 3 days to 3 ½ days. The general picture, the Assessor contended, was of stays of fairly short duration.

The Assessor contended that the detainees were not resident within the Appeal Subjects because they were not living there permanently; they were effectively in custody subject to restrictions on their liberty. Their stays were generally transient. The Appeal Subjects were not their home; they were a removal centre the purpose of which was to remove the

detainees from the UK. The detainees would have homes elsewhere be it in the community or the countries from which they had come.

The Assessor stated that the references by the Appellants to the previous entry in the Valuation Roll and the practice in England & Wales were red herrings. The subjects were an open prison when the 2000 re-valuation was made. There is specific statutory provision which extended the meaning of "dwelling" within section 72 of the Local Government Finance Act, 1992 to include prisons. There had been no requirement at that time to consider whether areas within the Appeal Subjects were "the sole or main residence" of persons in prison. By the time of the 2005 re-valuation, the Appeal Subjects were no longer an open prison and therefore no longer covered by the specific statutory provision in that regard. Accordingly, they can only be "part residential subjects" if they fall within the definition as set out in section 99 of the 1992 Act and are indeed the, "sole or main residence" of the detainees who are there.
With regard to the position in England & Wales, this is a different statutory regime and different test.

He contended that the critical question was what does, "residence" or "reside" mean. In his submission, it was not enough to be in occupation, regard had to be had to the nature and period of the occupation. There had to be a degree of permanence for there to be residence. The Assessor referred to two cases; Levene v The Commissioners of the Inland Revenue 1927 2KB 217 which concerned an interpretation of the phrase, "ordinarily resident" and the case of Fox v Stirk 1970 3 All ER 7 which considered whether students were "resident" for the purposes of registration for parliamentary elections in their University towns.

The Committee were of the view that firstly the reference by the Appellants to the 2000 re-valuation was irrelevant. The Appeal Subjects at that time operated as an open prison. There exists specific provision; the Council Tax (Dwellings) (Scotland) Regulations 1997 which extended the definition of "dwelling" to include prisons. The inclusion of the Appeal Subjects as part residential subjects in the Valuation Roll in 2000 was not due to a determination that the prisoners there had the Appeal Subjects as their "sole or main residence" but simply by operation of the said Regulations.

Secondly, they were of the view that in determining the meaning of the phrase, "sole or main residence", it was necessary to have regard to the ordinary meaning of the words. This had been the approach by the Lord Chancellor in the Levene case who noted the meaning of the word, "reside" in the Oxford English Dictionary was as follows; "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place." This approach had also been adopted by Lord Justice Clerk Ross in the cases of Stevenson v Rodgers and Cameron v Henry, supra. The Committee was persuaded by the Assessor's argument that this definition was not a disjunctive definition and there required to be a degree of permanence before a person could be said to be resident in a particular place.

The detainees' stay in the Appeal Subjects was in the main transient and did not therefore have the required degree of permanence. This view was supported by the evidence of the Appellants' witness, Mr Hollett who attested that the average stay in detention across the estate was 42 days and that this could include stays at more than one detention centre. It was further supported by the statistics set out in the report from HM Chief Inspector of Prisons relative to a visit carried out in December, 2004 in relation to the length of detainees' stay in the Appeal Subjects. Accordingly, in the Committee's view detainees at the Appeal Subjects could not be said to have their sole or main residence there.

The Committee have accordingly dismissed the Appeal.