



### **NDR Appeals: Failure by the Parties to Agree Areas**

1. This note offers guidance on the common problem that arises too often in NDR appeals that the parties have not agreed the measurements of the appeal property.
2. It cannot be too strongly emphasised that disputes over measurements should wherever possible be resolved by the parties at an early date.
3. However, where agreement has not been reached, the practice of panels in the past has been to adjourn so that the parties may reach agreement.
4. This is not the appropriate way to proceed. Appeals should not normally be adjourned because the parties have failed to reach agreement on the measurements. The hearing should continue.
5. It should be ascertained whether the appellant has questioned the VO's measurements. If the point has not been raised explicitly in the appellant's Statement of Case so as to put the respondent on notice, any attempt by the appellant to raise it at the hearing will have to overcome the obstacle of paras. 13 and 14 of Practice Statement A7-1, which deals with new evidence or argument.
6. Unless the appellant can justify the late raising of the issue so as to secure permission from the panel, the panel should rule that the respondent's measurements, not having been previously challenged, should be accepted.
7. If the point has been properly raised at the appropriate time, it will be necessary for the panel to decide on the evidence before them which measurements to accept for the purposes of their decision. That is a straightforward finding of fact of the kind that courts and tribunals must do day in and day out.
8. The panel will consider the evidence of both parties, taking into account such matters as follows:
  - When were the measurements taken?
  - By whom? What qualifications or experience?
  - According to what standards?
  - Is the person who measured present and can he/she be questioned?
  - Have there been efforts by either party to secure agreement on the measurements?

- Are there any other grounds for preferring one party's measurements to the other's?
9. Where areas are disputed and the panel comes down in favour of one at the expense of the other, that fact must be stated clearly in the decision together with the reasons justifying that conclusion.
10. It is obviously desirable for parties to agree such matters well in advance of the hearing and it is to be hoped that rigorous application of this policy will promote sensible co-operation between the parties so that the Tribunal can concentrate on issues that rightly divide the parties and cannot readily be resolved by co-operation.

GJZ  
20.v.15



A handwritten signature in blue ink, consisting of several large, fluid, and somewhat abstract strokes.