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Valuation Tribunal Service

Valuation in Practice

News in brief

The levelling up agenda

Our sponsoring department, The Ministry of Housing, Communities and Local Government (MHCLG) is now known as the Department for Levelling Up, Housing and Communities (DLUHC). This is Government's key department pushing forward its central mission to level up every part of the UK. Further information can be found here.

Business rates revaluation 2023: the central rating list

A consultation document proposes that for the 2023 NDR revaluation certain assessments currently on local rating lists should be moved to the central list. Further information can be found here.

Policy paper: Business rate retention and non-domestic rates 2020 to 2021

On 21 July 2021, A policy paper on business rate retention accounts was published. Business rates retention legislation requires the production of 2 annual accounts – the main rating account and the levy accounts. These accounts serve to demonstrate the workings of business rates retention. Read more about this here.

Freeports business rates relief: local authority guidance

Guidance was published on 21 July 2021, intended to support local authorities in administering the business rates freeports relief scheme announced in the Budget on 3 March 2021. The guidance can be read here.

Autumn Budget and Spending Review 2021

The Chancellor of the Exchequer presented his Autumn Budget and Spending Review to Parliament on Wednesday 27 October 2021. One of the measures announced was a new 50% business rates discount for businesses in the retail, hospitality, and leisure sectors in England. Overall reducing the burden of business rates in England by £7 billion over the next five years, with a commitment to modernise the business rates system with revaluations every three years.

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COVID-19 (coronavirus) update

We are now occupying our Leman Street office. However, for expediency we continue to encourage all communication with us by email.

Non-domestic rating: stock of properties including business floorspace, 2021

This release contains statistics relating to stock of properties for England and Wales. The statistics provide information on the number and value of the stock of rateable properties broken down by sector and geographic location. Further information can be found here.

Progress update on Automatic Teller Machines (ATMs)

Ongoing discussions with the parties on the clearance of 2010 rating list ATM appeals continues to progress well. Since our July meeting a further 8,600 appeals have been cleared.

The numbers falling within each identified type are:

- Cases where the Supreme Court's judgment may apply (known as Type 2) – 255
- Appeals on the 'host' property (known as Type 3) – 9,516
- Potentially redundant or superfluous appeals (known as Type 4) – 1,595

Discussions continue and a further meeting with the parties is scheduled for 21 December 2021 to allow the VTE to determine a listing approach during January 2022 to March 2022.

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Our Tribunal Hearing Programme – Oct to Dec 2021

All of the meetings continue to be 'Remote Hearings', which are conducted online utilising MS Teams. The profile and volume of the hearings is set out in the table below:

Tribunal Type	Oct	Nov	Dec	TOTAL
Council Tax	61	76	45	182
2017 Rating List	8	8	5	21
2010 Rating List	1	0	1	2
Other	1	0	0	1
TOTAL	**71**	**84**	**51**	**206**

Council Tax hearings continue to dominate our hearing programme and approximate to around 88% of the hearings that we have convened in Q3. There are fewer hearings in Q3 than the previous quarter and this reflects the Christmas period.

We are able to list the 2017 Rating List appeals within approximately 4-5 months of receipt, due to the relatively low volumes that we are presently receiving. Hearings in respect of the 2010 Rating List are being convened to deal with those appeals that are able to be progressed.

Business rates information letter – 5/2021: more frequent revaluations consultation and freeport guidance

Published on 21 July 2021, this covers:

- Fundamental review of business rates – more frequent revaluations consultations
- Business rates relief - freeports

The letter can be read here.

Council tax: challenges and changes in England and Wales, March 2021

On 5 August 2021, the VOA published statistics on challenges against and changes made to the England and Wales Council Tax valuation lists between 1 April 1993 and 31 March 2021.

Further information can be found here.

Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

The first reading at the House of Lords took place on 10 September 2021. This stage is a formality that signals the start of the Bill's journey through the Lords. The second reading – the general debate on all aspects of the Bill – took place in Grand Committee on 19 October and then formally in the House of Lords chamber on 21 October. The Committee stage is scheduled for 10 November 2021 https://bills.parliament.uk/bills/2861

Stayed appeals – October 2021

This is our current list of appeals that are 'stayed' (not being progressed) by the Valuation Tribunal.

Appeals stayed at the Valuation Tribunal for England

Type of appeal	Reason for stay
Valuation of museums and art galleries	Outstanding Upper Tribunal appeal
Questions on occupation of 'empty offices & other buildings' where property guardians occupy	Cases impacted by the Court of Appeal decision in *London Borough of Southwark & Ludgate House Ltd, Ricketts (VO)* [2020] EWCA Civ 1637 Ludgate House Ltd have sought permission from the Supreme Ct to appeal the decision
Deletion of rating list entry sought on the basis that no valid completion notice has been served because an outsource company has been employed	VTE President to determine an appeal
Premises occupied by the Church of Scientology	Appeals heard by VTE President. Time is being allowed to the parties for appealing to Upper Tribunal

Table to be continued on Page 3

Appeals stayed at the Valuation Tribunal for England	
Valuation of offices where the issue in dispute relates to fitting out costs which replace an existing fit out	VTE to hear a suitable case under 'complex' arrangements
NDR - Photo booths, Coin counters, small children rides, Max Spielman machines, Coffee machines (such as Costa Express & Simply Coffee), Travel Money Bureaux, Lottery Terminals, Travel Terminals, Paypoints, Vending machines, Taxi Commission (payphones & other such devices), Lockers, Car bays, guided selling terminals & software, Post Offices hosted, Mobile Hand Car Washes, Laundrette machines, Pharmacy concessions	VTE to hear under complex case arrangements the valuation of potential hereditaments impacted by the Supreme Court's judgment in *Cardtronics* – the ATMs case
Council Tax repair appeals seeking a deletion before, or in the absence of, a scheme of works	An appeal to the High Ct of the VTE decision in 17 Mill Ridge, Edgware, HA8 7PE (Appeal number VT00003935)

Decisions from the High Court

Saintta Global Lawyers (UK) Ltd v Ricketts (VO) [2021] UKUT 0242 (LC)

The Upper Tribunal allowed the appellant's appeal against a VTE decision which had upheld the Valuation Officer's then existing entry for the appeal property of £23,000 RV with effect from 1 April 2017.

The appeal property was a first-floor office in Gerard Place, Chinatown prior to being converted into residential use and deleted from the rating list with effect from 19 January 2021. It had been assessed at a basis of £500 per m^2. The actual rent passing was £21,000 per annum with the tenant liable for a service charge and an insurance contribution.

The appellant argued that the assessment should be reduced to £14,000 RV based on a rate of £300 per m^2. He relied on three comparable properties drawn from Great Newport Street which were east of Charing Cross Road. The appellant also argued that it was unfair for his property to be valued at 66% more in comparison to other offices which were served by Leicester Square underground station.

In response, the Valuation Officer relied on rental evidence drawn from the appeal property and other similar properties within the locality. He referred to 23 transactions involving 17 properties where, apart from one which was way out of line, the analysed rents ranged from £361 to £653 per m^2 between March 2011 to December 2019. The VO did not rely on comparable assessment evidence as a tone of value had not yet been established.

Having inspected the locality, the UT member Mr McCrea was struck by the stark differential between the different sides of Charing Cross Road. There was a hint of Chinatown flavour to Great Newport Street but once he arrived in Gerard Place, he noticed it was a much busier thoroughfare.

The VO's rental evidence had shown that there was a significant step change between the rents achieved by properties in Great Newport Street and to the West of Charing Cross Road. The Great Newport Street properties were not commanding £300 per m^2 whereas the minimum rent to the west of Charing Cross Road was £361 per m^2. The appellant's comparable properties were therefore deemed unreliable because they were drawn from the eastern side of Charing Cross Road where rental levels were lower.

In contrast the VO's rental evidence was drawn from Gerard Place and the tight geographical area around it. All of the VO's comparable properties were similar upper floor offices in period buildings above shops or restaurants. The average analysed rent over the 8 year period (2011 to 2019) was £525 per m^2. The VO's two main comparable properties 23 Gerard Street (analysed rent at AVD £528 per m^2) and 36 Gerard Street (£459.67 with effect from 29 September 2015) indicated that his proposed basis of £475 per m^2 was reasonable. The VO did not defend the basis of £500 per m^2 like he did before the VTE. The VO had also conceded a 5% allowance for lack of heating.

Ultimately, the UT allowed the appeal but only to the extent that was conceded by the VO and determined a revised entry of £21,750 RV.

Interesting VTE decisions—Non Domestic Rating 2010

Should a modern TV Studio be valued on a warehouse basis?

The appeal property was a TV studio and premises which was situated within the former Olympic Park in East London. The VO had valued the property on a warehouse basis at £675,000 RV with effect from 29 July 2013.

It was agreed that BT would not have been in the market for the appeal property at the AVD as, at that time, it had no contractual rights to televise live Premier League matches. The issues in dispute were as follows;

I. Whether hereditaments in other modes/categories of occupation provide evidence of the rent which might reasonably be expected to be agreed for the appeal hereditament at the antecedent valuation date (AVD), and if so, to what extent.

II. Whether the appeal hereditament includes space which would exceed the requirements of a hypothetical tenant at the AVD, and if so, the appropriate allowance for surplusage.

III. Whether an allowance for lack of natural light in the ground floor canteen/kitchen area and in the open plan offices on the second floor is warranted, and if so, the size of that allowance.

IV. Whether an allowance for the unfinished state of the locality as it was at the material day was warranted, and if so, the size of that allowance.

The appeal was heard by the President and one of the Vice Presidents.

The VTE initially looked at the actual rent. Although the rent required considerable adjustment to conform to the rating hypothesis, the appellant's argument that it should be disregarded was rejected. The level of rent indicated that the VO's assessment was not unreasonable.

Given the absence of directly comparable properties, the VO's approach which was to have regard to warehouse values in the locality appeared reasonable. BT would have looked at such properties and acquired the appeal property on a shell basis.

Although the non-studio space exceeded the TV production space by a ratio of 2.75 to 1, the appellant's argument for a 50% superfluidity allowance was rejected. The VO's comparable evidence had shown that, in the more modern TV studios, production space greatly exceeded studio space.

The appellant's argument for a 15% allowance for no natural light in the affected areas was also rejected. No substantive valuation evidence was provided to support the appellant's representative's expert opinion. In any event, the application of any allowance was dependent upon whether the appellant's starting figure (basis of assessment) was correct and the tribunal had already determined that it was artificially low.

The appellant's argument for a 35% end allowance to reflect the unfinished state of the locality was also rejected. Whilst it was accepted that the locality was in a state of flux, the tribunal determined that this had had no impact on BT's day to day operations.

The appeal was therefore dismissed. The full decision can be read here.

Interesting VTE decisions—Non Domestic Rating 2017

Office fit-out costs

The VTE Vice President, Alf Clark, heard two appeals together in relation to office fit-out costs. The first appeal related to Ascot House in Maidenhead which the VO had assessed at £1.1million RV. The second appeal related to Hollywood House in Woking which the VO had assessed at £330,000 RV.

Both properties had been comprehensively refurbished by the respective landlords, Ascot House between 2012 and 2015 and Hollywood House in 2011.

Both appellants had spent considerable capital sums on fit-out costs. Whilst a detailed breakdown of the expenditure was provided for Ascot House, no such detail was supplied in respect of Hollywood House. This was surprising given that Hollywood House had been put forward as a test case by the appellants' representatives.

The Vice President rejected the appellants' argument that the rents passing should not be adjusted to reflect fit-out costs. He was satisfied that some of the fit-out costs reflected tenant's improvements and without such fit-out the offices would not be capable of beneficial occupation.

The Vice President followed his approach in his earlier judgment in *Butterworth Laboratories Ltd & Berks & Bucks FA Ltd v Smale (VO)* CHG100059487 and CHG100057542). The relevant fit-out costs were amortized over the respective terms of the leases at a rate of 7%. This was because the Vice President was looking to establish the rent not the rateable value.

In Ascot House, the appellant spent around £3.45 million on fit-out net of VAT and having studied the breakdown, the Vice President determined that a sum of £723,919 fairly reflected costs that would increase the property's rental value.

For Hollywood House, as no detailed breakdown of fit-out costs was provided, the Vice President adopted the total amount spent on fit out without adjustment.

Having looked at and adjusted the rental evidence, the Vice President then had regard to the limited comparable evidence. As Ascot House was superior to 4 Maidenhead Office Park where a tone of value was agreed at £175 per m^2, a base rate of £180 was determined resulting in a reduced assessment of £875,500 RV.

Whilst the appeal in respect of Ascot House was allowed, the appeal in respect of Hollywood House was dismissed. The Vice President found that the adjusted rent was close to the VO's adopted tone of value. Neither the other rental evidence nor the comparable evidence could persuade the Vice President that the VO's valuation of Hollywood House was unreasonable.

The full decision can be read here.

Consolidated Practice Statement (CPS)

Don't forget: the CPS can be found on the VTS website which summarises the changes relating to COVID-19.

Interesting VTE decisions—Council Tax Liability

Is Class J Exemption of The Council Tax (Exempt Dwellings) Order 1992 (as amended) (SI No 1992/558) appropriate?

Class J refers to *"an unoccupied dwelling which was previously the sole or main residence of a qualifying person who–*

> *(a) has his sole or main residence in another place for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; and*
>
> *(b) has been a relevant absentee for the whole of the period since the dwelling last ceased to be his residence."*

The appellant sought Class J exemption on the grounds that she had moved to an address in Leicester in July 2019 to provide care for her sister, who was severely disabled.

The panel noted that this class J exemption related to an unoccupied dwelling that had previously been the sole or main residence of a qualifying person, who had left the premises to provide care elsewhere. As it had been established that the appellant vacated the appeal property in 2016 to volunteer abroad and that the property had been let from this period onwards, it had not been the appellant's sole or main residence prior to moving to Leicester in July 2019. As the last tenant did not leave the appeal property until August 2019, the criteria had not been met and the application for Class J exemption was not applicable in this case. The appeal was dismissed.

Further information about the decision can be found here.

Interesting VTE decisions—Council Tax Liability

Should an owner be liable for council tax where lease for building is forfeited by appellant?

The Appeal was against the BA's decision that the Appellant was liable for council tax as owner. The BA was holding the Appellant liable retrospectively following receipt of information which indicated that a lease for the building (which included the subject dwelling and connected commercial premises) had been forfeit by the Appellant, who had regained possession, in 2009. This meant as the dwelling had no resident that the Appellant was liable as owner. The Appellant contended that the lease subsisted and that it was unfair to pursue him for the council tax retrospectively.

The Tribunal Panel found as fact that the lease had in fact been terminated by the Appellant in 2009, meaning the tenant no longer had a material interest in the subject dwelling. The fact that the tenant continued to trade from the commercial parts of the building was, in the Panel's view, not determinative that the tenant had been resident at the subject dwelling. In the absence of any evidence of such a resident, the Tribunal Panel concluded the BA was correct to hold the Appellant liable for the council tax as owner.

Further information can be found here.

Click here to sign up to receive an alert when a new Practice Statement is issued or any future change is made.

Interesting VTE decisions—Council Tax Liability

Sixty-one dwellings let out on a room-by-room basis

Section 13A(1)(c)

The appellant company sought reductions in respect of its council tax liabilities for sixty one dwellings that it had let out on a room by room basis. The parties did not dispute that the appellant was liable by prescription in accordance with Class C of the Council Tax (Liability for Owners) Regulations 1992. The total amount sought was in excess of £75,000.

The appellant submitted that it had been adversely impacted by the COVID-19 pandemic because the residents of the rooms had not paid their rent which, in turn, meant that the appellant had been unable to pay the council tax. The appellant explained that its difficulties had been exacerbated by the Government's lack of support for his type of business and the introduction of legislation which prevented the eviction of the non-paying residents.

The appellant pointed to the billing authority's policy in respect of section 13A awards and asserted that, as it met the criteria, it should be awarded the reductions it had sought. The appellant further submitted that it would be in the interests of the poorest residents in the billing authority's area, some of whom were housed by the appellant.

The billing authority accepted that the COVID-19 pandemic had adversely impacted upon the appellant's business. However, it took the view that granting the discounts that had been sought would result in a significant increase in its expenditure which would have to be met by service cuts and/or a rise in its future years council tax charges. Such cuts and increases would adversely impact upon the poorest residents of the billing authority as a whole.

The Panel noted the billing authority's assertion within its submission that the VTE did not have jurisdiction to consider an appeal against a billing authority's discretionary power which had been made under section 13A(1)(c) of the LGFA 1992. In response, the Panel made it clear that section 16(1)(b) of the same Act allowed a person to appeal to the VTE if he was aggrieved by any calculation of an amount of council tax he was required to pay. Furthermore, two appeals which had been heard on 27 May 2014 by the (then) President of the VTE provided jurisdiction. These were *SC and CW v East Riding of Yorkshire Council* [2014] VTE (appeal numbers 2001M113393 and 2001M117503).

The Panel, when determining the appeal, accepted that the appellant had experienced financial difficulties. However, it concluded that it was not appropriate for the taxpayers generally to underwrite the risks taken by the business model that had been adopted by the appellant and it dismissed the appeals.

The full decision can be read here.

Interesting VTE decisions—Council Tax Reduction

Increase in the charge following a recalculation of council tax reduction

The appellant appealed against the BA's determination that the increase in the charge following a recalculation of council tax reduction was recoverable. The BA had granted 100% CTR to the appellant's brother and had not applied a non-dependant deduction in respect of the appellant due to her brother being in receipt of the care element of Personal Independent Payment.

To be continued on Page 8

Interesting VTE decisions—Council Tax Reduction continued...

It later transpired that the appellant was in fact a joint tenant of the property and therefore only 50% of the council tax liability could be subject to council tax reduction. The appellant argued that the billing authority was well aware of this and that she had contacted them on a number of occasions to say that she thought the charge of nil was not correct as she was in full time employment. The BA stated that as there was no such thing as an overpayment the council tax was due and payable.

The BA completely failed to adhere to the tribunal's standard directions. No evidence was received and the relevant part of the BA scheme was not provided to the appellant or the tribunal. The BA also failed to send a representative to the hearing. The panel therefore determined the appeal on the basis of the appeal form provided by the appellant and the decision letter of the BA in response to the aggrieved persons notice under s.16 of the Local Government Finance Act 1992. In this letter it was stated that the amount was recoverable as there had not been an official error. Whilst the panel was aware that the concept of official error was normally only relevant in respect of housing benefit, unless there was a specific provision within the BA's local CTR scheme to allow for amounts to be written off as a result of official error.

The panel concluded that there had been an official error as all council tax demand notices had been issued to the appellant and her brother in joint names. The BA was therefore well aware that a joint tenancy was in place. The BA's letter stated the amount was recoverable, as there had not been an official error. This suggested the debt would not be recoverable if an official error was proved. Consequently, as there has been an official error, the panel determined the amount was not recoverable and allowed the appeal.

Billing Authorities are reminded of the importance of not only supplying details of their scheme when responding to a s.16 grievance, but also of adhering to the directions of the tribunal and providing comprehensive evidence for a panel to consider.

VALUATION TRIBUNAL SERVICE

We welcome any feedback.

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