Issue 58

October 2020

Valuation Tribunal Service

Valuation in Practice

News in brief

Remote Valuation Tribunal Hearings and COVID-19 Emergency Practice Statement

In response to this pandemic, and the limitations presented by current regulations, we moved forward in dealing with appeals on the papers, with none of the parties in attendance. As this process relied on parties' consent, which was not readily forthcoming, we have developed our service to provide remote Valuation Tribunal hearings; this means convening a tribunal by way of a video conference (using MS Teams) rather than at a physical venue. This was implemented from September 2020 with the introduction of a COVID-19 Emergency Practice Statement with revised directions https://www.valuationtribunal.gov.uk/wp-content/uploads/2020/07/Covid-19-Emergency-Practice-Statement-200729-2.pdf

The intention is to convene around 450 remote Valuation Tribunal hearings before 31 March 2021.

Whilst early days, the first few remote hearings have progressed exceptionally well. Naturally a few initial teething problems were identified, user and connectivity issues, but these were quickly addressed enabling the hearings to progress. Early feedback has been very positive, and as we move forward the numbers of appeals listed, and the number of remote hearings will increase.

One immediate benefit of remote hearings is that this provides greater flexibility than the usual trip to a venue and avoids parties taking time out of their day for travelling. Added benefits will be evaluated as time progresses and this new way of working becomes the new normal. Like many other organisations, we will continue to adjust to the many challenges that COVID will present us with and look at further ways of changing our processes to make us more responsive and flexible in these difficult times. More information on remote hearing protocols can be found here. https://www.valuationtribunal.gov.uk/

Virtual IRRV Conference summary

On 7 October, Gary Garland, the President of the VTE, provided his thoughts on the future of remote hearings at the Virtual IRRV Conference. He also spoke about how the Tribunal was changing and adapting as it moved through the 21st century delivering justice and decisions for all.

COVID-19 (coronavirus) update

As we continue to navigate the changing COVID environment, staff are now occupying our London and Doncaster offices on a part-time basis to ensure that there is reasonable coverage in our offices throughout the working week. We continue to encourage all communication with us by email. Further updates are available on our website.
www.valuationtribunal.gov.uk

Progress on ATMS

With the Supreme Court decision having been issued in March 2020, we have been progressing discussions with the Valuation Office Agency and key representatives regarding the circa 51,000 appeals outstanding and awaiting this judgment. Progress has been extremely positive with some 12,000 appeals already resolved. Discussions continue and we will maintain this positive momentum with the parties in aiming to resolve as many of these outstanding appeals without necessitating listings.

Winter Support Schemes

On 22 October, the Chancellor announced the Government will significantly increase the generosity and reach of its winter support schemes to ensure livelihoods and jobs across the UK continue to be protected in the difficult months to come.

The package includes increasing support through the new Jobs Support Scheme to protect millions of returning workers, extending the Self-Employment Income Support Scheme and expanding business grants to support companies in high-alert level areas.
https://www.gov.uk/government/news/plan-for-jobs-chancellor-increases-financial-support-for-businesses-and-workers

Inside this issue:

Hospital (Parking Charges and Business Rates) Bill

The date for the second reading in the House of Commons is Friday 6 November 2020.
https://services.parliament.uk/bills/2019-21/hospitalsparkingchargesandbusinessrates.html#:~:text=Summary%20of%20the%20Hospitals%20(Parking,rates%3B%20and%20for%20connected%20purposes.

Non-Domestic Rating (Lists) (No.2) Bill

The Bill was debated in the House of Commons at its second reading on Wednesday 30 September and was sent to a Committee of the Whole House to meet on Tuesday 20 October. The latest news on the Bill can be found here.
https://services.parliament.uk/Bills/2019-21/nondomesticratinglistsno2.html

Non-Domestic Rating (Public Lavatories) Bill

The date for the second reading in the House of Lords is still to be announced.
https://services.parliament.uk/Bills/2019-21/nondomesticratingpubliclavatories.html

Appeals stayed at the Valuation Tribunal for England

Class	Issue	Reasons
CTV - where a deletion is sought of the dwelling	The impact of Monk & Newbigin on the hereditament test for dwellings	Case with High CT set for October 2020. Position appears to be that the hereditament test (as set out in *Monk*) is relevant first consideration in repair cases and should be followed by panels. Stay removed.
NDR	Legal – Validity of proposals made under regulation 4 (1) (k) and PICO legislation (Mazars reversal)	UT decided not valid so stay to be lifted one month after decision issued unless appealed.
Council tax liability—severe mental impairment	Where retrospective relief is sought for a period when the person was not in receipt of a qualifying benefit.	Appeal to the High Court on a point of law. *Derek Brown v Hambleton District Council* (VT appeal number 00000240)
Council tax liability - Class G exemption for second homes	Where owner states prohibited by law from visiting (occupying) second home due to COVID-19 restrictions	President to hear issue. All cases to be referred to Deputy Registrar.
CTV & NDR - Completion notice appeals	Whether the VTE can set a completion date outside the statutory three months and if not whether the VTE can order a completion notice to be quashed in accordance with *London Borough of Newham & Rad Phase 1 Type B Property Company No1 Limited.*	The UT considered that the VTE should have, and the UT has, set a date in excess of three months. The UT considered that the Tribunal is unable to quash a completion notice. All such matters to be tested before the VTE. A complex case needs to be identified and others stayed.
NDR - Church of Scientology properties	VOA dealing with several appeals by the Church of Scientology relating to religious exemption on premises in England	Appeals postponed and not listed may have to be resolved on legal arguments under PS3 (Complex cases) of the Consolidated Practice Statement.
NDR	2017 list appeals where there is an issue on fitout costs which replace existing items	Appeal to UT on whether costs to replace existing items on a like for like basis add value and increase the rent of the property. VOA withdrawn appeal. Further test cases identified by the parties
NDR	The powers of the VTE under reg 38 (7) of the Procedure Regs and in particular 1.whether the VTE has power to delete an entry for a temporary period? 2. what are the VTE powers where a hereditament has temporarily been rendered incapable of beneficial occupation due to the execution of works to the hereditament but where the list is closed by the time of the appeal decision and either it returns to an inaccurate entry of (£1.83m rather than £1.8m) or an inaccurate entry of nil.	Appeal to CoA in respect of both: Great Bear Distribution Ltd & Sykes (VO) [2020] UKUT 0238 (LC) Avison Young Ltd & Jackson (VO) [2020] UKUT 0058 (LC)

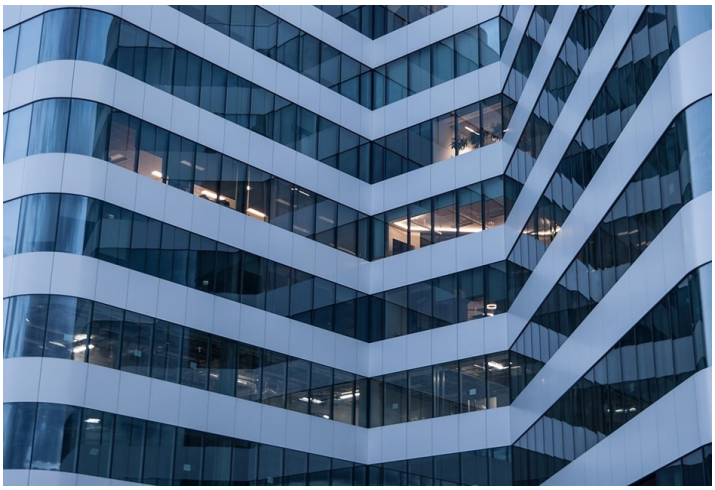
Decisions from the Upper Tribunal (Lands Chamber)

London Borough of Newham v RAD Phase I Type B Property No. I Ltd [2020] UKUT 0203 (LC)

A billing authority's appeal against a VTE panel's decision to quash a completion notice was upheld by the Upper Tribunal (UT).

A standalone type B office building, called Altitude, providing around 120,000 ft^2 of office space over eight floors. The completion notice was served on 26 June 2019 specifying a completion day of 25 September 2019.

It was agreed that the building had reached the stage of substantial completion on 11 April 2019. At the VTE hearing, the appellant company sought a revised completion date of 11 July 2020.



In following the UT judgment in *Spears Brothers Ltd v Rushmoor District Council* [2006] RA 86, the VTE panel determined that the outstanding works could not be completed within three months of the date the completion notice was served and quashed the completion notice.

Prior to the UT hearing itself, the parties had agreed a revised completion date of 11 May 2020 which the UT was invited to determine. Mr McCrea noted that the *Spears Brothers appeal had* been heard under the simplified procedure and the Tribunal had not been referred to any authorities to assist interpretation of the law.

In the UT judgment, the Tribunal Member, Mr McCrea, observed that the legislation contained provision for the parties to agree a completion date and he agreed with the parties' respective counsel that there was no constraint in law to limit such an agreement to within three months of the completion notice's service. He concluded that there was:

- no explicit power in Schedule 4A allowing the VTE to quash a completion notice; and
- nothing to prevent the VTE setting a completion date in excess of three months from the date of service.

Sykes (VO) v Great Bear Distribution Limited [2020] UKUT 0238 (LC)

The Upper Tribunal (UT) upheld the VTE Vice President's decision not to order a temporary deletion from the rating list.

A modern industrial warehouse with an existing assessment of £825,000 Rateable Value (RV) acquired by Great Bear on 16 June 2014, who carried out a programme of works between 23 June 2014 and 3 October 2014. The works involved the demolition of the office block and alterations to the dock level doors. The proposal giving rise to the appeal was on the grounds that the entry should be deleted. The ratepayer was represented by Mr D Kolinsky, QC.

Agreed facts:

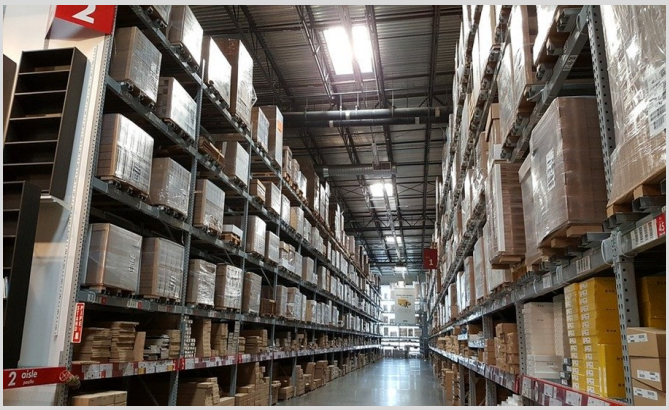
1. The material day and the effective date for the deletion of the existing entry was 23 June 2014.
2. The revised valuation for the appeal property post the works was £745,000 RV.

The dispute was what, if any, alteration the VTE was empowered to order the VO to undertake with effect from 4 October 2014.

The VO argued that the Vice President should follow his earlier decision in Avison Young v Jackson (VO) and order (a) the deletion for the period of the works and (b) the insertion of the agreed £745,000 RV with effect from 4 October 2020 as an ancillary matter as per Regulation 38 (7) and (10) of the Procedure Regulations.

Decisions from the Upper Tribunal (Lands Chamber) continued...

Mr Kolinsky, QC argued that when considering the scope of Regulation 38(7), a principled approach should be taken to the exclusion of property temporarily incapable of beneficial occupation from the rating list. The ratepayer's proposal sought a deletion and was clearly well-founded as it is agreed that the building was incapable of beneficial occupation from the start of the works. It was therefore not a hereditament. In fact, to reinsert a hereditament into the rating list required a new principal course of action by the VO which entailed entering the property in the rating list as a hereditament and attributing a Rateable Value (RV) to it. It would be wrong to extend the VTE's discretionary power under Regulation 38(7) to a new principal course of action. The UT did not concur that a distinction should be drawn between an appeal arising from a proposal seeking a deletion and a proposal made on the grounds of a material change of circumstances seeking a nominal Rateable Value (RV) for the purposes of an order under Regulation 38 (7). The UT found greater sympathy with Mr Kolinsky's argument that Regulation 38 (7) was inappropriate where the hereditament had been altered and would have a different Rateable Value (RV) unless the alteration was within the scope of the proposal.



The UT upheld the VTE decision and dismissed the VO's appeal.

This judgment is currently appealed to the Court of Appeal.

Libra Textiles Ltd t/as Boundary Mills and Centric Assets Ltd v Ritchie Roberts and David Alford (Valuation Officers) [2020] UKUT 0237 (LC)

Two decisions upheld where two separate proposals seek a merger of a number of assessments as being submitted out of time and therefore invalid.

Boundary Mills - a finding of fact was that the main store was in paramount occupation of the onsite fish and chip shop, on the basis that whilst they were in separate ownership, the fish and chip shop existed to further the business of the main store and was under their control. Therefore, both were contiguous to each other and were a single hereditament.

Centric Assets Ltd - it was agreed that Centric Assets Ltd were in rateable occupation of four units, all separate hereditaments in the rating list. As all four units were in the same rateable occupation, contiguous and could be accessed from each other without entering land occupied by another person, it was accepted that they could have been treated as a single hereditament.

Having regard to the facts, both appellant companies could have made a proposal under Regulation 4 (1) (k) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2009 (ALA regulations) at any time before 31 March 2017 for the list to be altered to give effect to a merger of the hereditaments. The problem in both cases was that the appellant companies had 'missed the boat'. Therefore, they were reliant upon the *Mazars* reversal legislation that was introduced by Parliament which allowed ratepayers who were affected by *Mazars* to make a "relevant proposal". The relevant primary legislation was the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (PICO).

The appeals turned on the wording of Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.)

(England) Regulations 2018 which amended the ALA regulations and Explanatory Memorandum which came into force on 17 December 2018 and allowed for retrospective proposals in certain circumstances where they were made 'as a result of the coming into force of section 64(3ZA)(2) or (3ZB) of the Local Government Finance Act 1988'.

Following the 2018 amendment regulations a ratepayer was only entitled to make a proposal under Regulation 4 (1) (k), between the regulations coming into force and 1 January 2020, as a result of the coming into force of section 64(3ZA)(2) or (3ZB) of the Local Government Finance Act 1988 (to reflect the additional definition of a hereditament) inserted by PICO to reverse *Mazars*.

Decisions from the Upper Tribunal (Lands Chamber) continued...

In *Mazars* the Supreme Court determined that two or more hereditaments, even if they were in the same rateable occupation were to be shown as separate rating hereditaments, unless there was intercommunication between them. It is important to note here that neither Boundary Mills nor Centric Assets Ltd had been affected by *Mazars.* Both prior to and after the Supreme Court's judgment in *Mazars* the two entries on the Boundary Mills site could have been treated as one hereditament and the four entries occupied by Centric could similarly have been assessed as one.

On behalf of the appellants, it was argued that they were entitled to make the proposals because otherwise the list was closed. Whilst it was accepted that the amended regulations provided a gateway for relevant proposals to be made, there was no additional requirement that any proposal that could have been made before 31 March 2017 would have been unsuccessful.

The VO's pleaded arguments focussed on the construction of the 2018 amendment regulations and the Explanatory Memorandum. In rejecting the appellants' argument that the Explanatory memorandum was inadmissible, the UT determined that the Explanatory notes, although not part of the regulations were helpful because they set out the clear intention of Parliament.

Having regard to the wording of the regulations, the UT held that the proposals were made out of time, because only those ratepayers whose legal position had changed following *Mazars* were entitled to make a relevant proposal. The 2018 regulations did not allow ratepayers who were unaffected by *Mazars* to have a second bite of the cherry.

Decisions from the High Court

Broderick v Coventry City Council [2020] EWHC 2083 (Admin)

Mr Broderick challenged the VTE panel decision that determined he was liable for the council tax as the resident freeholder with effect from 15 October 1992. His solicitor invited the Judge to review the evidence that was before the VTE and form a different conclusion. However, HHJ Cooke informed the appellant's solicitor that it was not open to him to do this unless the VTE had erred in law. The VTE was entitled to draw its own conclusions and make its own findings of fact on the evidence before it.

The appellant's alternative argument which the Judge considered but ultimately rejected was that no reasonable tribunal could have come to the same conclusion as the VTE did.

The appellant's solicitor also raised a point of law at the outset arguing that the billing authority had to show that the appeal property was Mr Broderick's sole AND main residence. Although it was accepted that he was the freeholder, it was argued that he would only be liable as a last resort, if there was no other person resident. The Judge rejected this argument as the appellant would be liable if it was his sole OR main residence. The conjunctive expression (sole or main) would in any event be a nonsense; a person can only have a "main" residence if he resides at more than one place and so does not have a "sole" residence.

The appellant argued that he did not reside at the appeal dwelling, contending instead that he was sofa surfing staying with friends, family or his ex-wife. During the period in dispute, it was argued that the dwelling was let to a tenant on an Assured Shorthold Tenancy basis. The level of rent matched the mortgage payments that the appellant was liable for.

Although the appellant's solicitor challenged the VTE's evaluation of the evidence and the weight it attached to the competing evidence, the Judge rejected the arguments. Moreover, the Judge concluded that far from showing that the tribunal erred in law and reached a conclusion that no reasonable tribunal could have done, there was ample evidence before it to support its finding. In particular;

Decisions from the High Court (continued.)

1. Although the purported tenancy agreement showed that the tenant was contractually obliged to pay the council tax, the VTE correctly had regard to whether Mr Broderick was liable under section 6 (2) (a).

2. With regards to the argument that the VTE was wrong to find that the rent set was below the open market rate for the appeal dwelling, as no argument was presented before it to suggest same, the Judge commented that the VTE was an expert tribunal and was entitled to take account its own view of the market rents for three bedroom houses in the area. It was plainly right to take into account that the level of rent would normally exceed mortgage payments, since otherwise the landlord would be letting the property at a loss.

3. Although on the tenancy agreement the appellant's address was given as care of the appeal property, the VTE determined that this did not mean that he did not reside there. The use of "care of" may have been used to disguise the fact he was still living there. Throughout the period in dispute the appellant used the appeal property as a correspondence address and other organisations must have been given that as his address. His name was on the electoral roll. His name had not shown up against any other address, following credit searches by the billing authority.

4. The appellant had also refused to provide details of the other addresses he was residing at, to prove his assertion that he was not living at the appeal property. The tenant had also advised the billing authority that he had moved in to reside with a friend, which the VTE believed was the appellant. The appellant had also written to the Benefits service in 2017 confirming that he was still living at the appeal property.

5. Despite the tenancy agreement, the panel found that the tenant was a lodger as there was no evidence to show that Mr Broderick was not living there as well or that the tenant could prevent his landlord from living there, if he wanted to.

This judgment is considered by the VTE to be helpful because it confirms;

1. The weight to be attached to the competing evidence is a matter for the VTE.

2. The High Court will not interfere with a VTE's finding(s) of fact unless there has been an error of law or the reasons for arriving at its finding(s) of fact are not properly explained, having regard to the evidence before it.

3. Witness statements purportedly written by persons who do not appear before the VTE, for cross-examination, are admissible as evidence but may be given little weight. The appellant's representative unsuccessfully argued that the VTE was wrong to attach little weight to the witness statements from a neighbour and the appellant's ex-wife.

4. A contractual arrangement between a landlord and his tenant is a private matter between them and does not alter who is liable for the council tax under section 6 of the 1992 Act.

5. The Judge confirmed that as the issue before the VTE was whether the appeal dwelling was the appellant's main residence, it was not necessary for the tribunal to find that he resided there all of the time. It would be sufficient for it to find that he resided there some of the time, as long as there was no other property that had become his main residence during the period in dispute.

Consolidated Practice Statement (CPS)

Don't forget: recent changes to the CPS came into effect on 29 July 2020. In particular the changes relate to COVID-19 amendments.

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

Decisions from the High Court (continued.)

Atos IT Services Ltd v Fylde Borough Council [2010] EWHC 647 QB

Atos IT Services Ltd became the owners of the head lease of Serco House, Ballam Road in Lytham St Annes, an office building with a number of tenants with a number of list entries, with effect from 7 October 2016 to 31 March 2017. Atos paid the rates for the assessment shown in the Rating List for Serco House of £685,000 RV.

Atos IT was not in exclusive rateable occupation of the hereditament it had been billed for. It notified the billing authority of this but no action was taken by the latter and Atos did not serve a proposal to alter the rating list on the VO.

Atos appealed to the County Court and obtained a County Court judgment in its favour confirming it was not liable for the disputed sum and was entitled to its repayment. The billing authority appealed to the High Court for the County Court judgment to be reversed.

The summary valuation for Serco House included £68,000 RV worth of office space and car park space which Atos was not in rateable occupation of.

The billing authority contended that as Atos was in part occupation of the property it was entitled to bill it for the whole. The High Court had regard to a number of authorities including *John Laing & Son v Kingswood AAC* [1949] KB, *LCC v Wilkins (VO)* [1957] AC, *Verrall v Hackney LBC* [1983] QB 445 and *Ford v Burnley* [1995] RA 205 before rejecting the council's argument.

The council's case rested on whether the terms of section 43 (1) of the Local Government Finance Act 1988 had been met;

(a) on the day the ratepayer is in occupation of all or part of the hereditament; and

(b) (b) the hereditament is shown for the day in a local non-domestic rating list in force for the year

With regard to (a) above Atos had a physical presence within the main hereditament (Serco House) during the period of disputed liability. However, that was not sufficient to establish liability for the purpose of section 43 (1) (a) when read together with section 65 (2) of LGFA 1988.

In respect of (b) above, the main hereditament included areas let to other persons/companies other than Atos.

The High Court judge therefore ruled that Atos was not in rateable occupation of Serco House and dismissed the council's appeal.

Observation – This is an interesting case which would appear to indicate that billing authorities may face collection difficulties in situations where the ratepayer isn't the rateable occupier of the whole of the hereditament in question. It may be that the billing authority needs to report any potential changes to the hereditament to the VOA direct and not rely on the ratepayer to serve a proposal.

VALUATION TRIBUNAL SERVICE

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