VALUATION TRIBUNAL SERVICE

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Valuation In Practice

Important News Update from the VTS

The introduction of new Valuation Tribunal for England (VTE) Practice Statements

Practice statement C2: Applications for reinstatement following striking out and withdrawal and lifting of a bar – Effective from 1 August 2010

This new practice note sets out the procedure to be followed to make a request for an appeal that has been struck out to be reinstated and explains how someone who has been barred from providing certain evidence at a hearing can seek removal of the bar.

An application to request a reinstatement must be made in writing, within one month of the date the VTE sent its notification of the strike out. The application has to give the reasons, together with any supporting documentation. The notice warns that it is not for the Tribunal to seek amplification or explanation and an application providing inadequate reasons or supporting evidence will be rejected.

The statement also indicates that the Tribunal may seek the comments of the respondent where it is thought necessary, in the interest of all parties, for the fair determination of the application.

If applications are made out of time, they must be accompanied by a separate application for an extension of time, which must give the reasons for the lateness, together with any supporting evidence. The application for reinstatement will only be considered if permission is granted for the out-of-time application.

Likewise an application by a party to lift a bar has to be made within one month of the date of the VTE sent its notification. The process is then the same as for reinstatements.

Where practicable, all applications will be referred to the senior member who dealt with the appeal and the senior member must provide written reasons for their decision.

However, an application to reinstate an appeal withdrawn prior to 1 October 2009 must be referred to the President to be dealt with in accordance with regulation 6(4), (5) and (6) of The Valuation Tribunal for England (Membership and Transitional Provisions) Regulations 2009 (SI 2009 No 2267).

Practice Statement B5: Listed appeals where the parties have reached agreement- Effective from 2 August 2010

In cases where the outcome of an appeal has been agreed and either:

- the appellant advises the Tribunal before or at the hearing that it has not been possible to obtain the consent of all of the other parties to the appeal; or

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Special points of interest:

- *VT decision-Murder, Arson and a temporary reduction-looking how blight & stigma affect a council tax valuation band—Page 8*
- *VT decision—case management hearing —Page 9*

- the offer has been made by the Valuation Office Agency (VOA) within two weeks of the hearing and the necessary paperwork has not been returned,

the case should be adjourned. NB: 'verbally agreed' appeals should only be struck out where the appeal has previously been adjourned to allow the necessary paperwork to be completed.

The practice statement also indicates that it is neither necessary nor appropriate in ordinary circumstances for the panel to issue consent orders.

Practice statement A7: Non Domestic Rates (Rating List 2010): Disclosure and Exchange - To be effective from 1 January 2011

This practice statement is to affect all 2010 non domestic rating (NDR) lists appeals, where notices of hearing are issued after 1 January 2011.

In summary:

- The Valuation Officer (VO) will have to supply to all parties details of any rental evidence that they will rely on, no later than six weeks before the hearing date.
- No later than four weeks before the hearing the appellant has to:

1. Serve a copy of their statement of case, summary of evidence and legal arguments on the Tribunal and the VO/any other parties. Failure to comply with this direction will result in the automatic striking out of the proceedings.
2. Indicate whether they wish the appeal to be heard in their absence. Failure to comply with this aspect of the direction will lead to the automatic striking out of the proceedings at the hearing.

- No later than two weeks before the hearing, the VO and any other parties to the appeal (not the appellant) must serve a copy of their statement of case, summary of evidence and legal arguments on the Tribunal and the appellant/ any other party. Failure to comply will result in the automatic barring of the VO or interested party from taking part in the proceedings.

The practice note also sets out the level of details required for submissions to be acceptable, although unrepresented appellants will not be expected to provide submissions at the same level as professional representatives.

In cases where a statement of case does not appear to meet the requirements of a direction, all parties will be informed and the case will be referred to a senior member. If the submission is accepted, the period of notice will run from the date of the senior member's decision. The senior member can also set a new hearing date if it is considered to be more appropriate.

New evidence will only be accepted by the permission of the senior member or panel.

Submissions can be supplied in electronically or in hard copy and a party can apply for the terms of the standard directions, including the time limits, to be varied.

Amendments to VTE practice statements

Practice statement A1: Extensions of Time Limits for Making Appeals

An immediate change was made to explain the inclusion of out-of-time applications for NDR penalty appeals.

Practice statement C1: Reviewing and Setting Aside Decisions

This practice note was amended on 1 August 2010 to include the following changes:

i."Procedural irregularity" is explained (paragraph 2.2) as follows:

'The words "some other procedural irregularity" in the regulation are not designed to cover any alleged error by the panel, but refer to defects in process as opposed to substance, i.e. the way the decision was reached and not the actual content of the decision. A procedural irregularity occurs where there has been a failure to comply with the procedures set out in the relevant legislation (Acts of Parliament or statutory regulations) or the Tribunal's own Practice Statements, or where there has been a breach of the legal duty to act fairly'.

ii. In straightforward cases, the Vice-President who considers the application initially and decides that the decision should be reviewed may himself/herself proceed immediately to that review instead of referring it to a panel.

In view of the above change, paragraphs 8 and 10 of the **Tribunal Business Arrangements** were amended to reflect that Vice-Presidents can carry out the review themselves.

Copies of the VTE Practice Statements can be found on the VTS' website: www.valuationtribunal.gov.uk.

Just click on the 'publications' tab

News update continued

Northern Ireland Revaluation postponed

On 25 May 2010, Northern Ireland Finance Minister, Sammy Wilson, announced his decision not to proceed with the revaluation of non domestic properties, planned for April 2011.

The Minister said: *"I announced last year that I was postponing the revaluation of non domestic properties until 2011. I had taken this decision in light of the instability in the local commercial property market, to allow time for the market to recover. I also wanted Land and Property Services to monitor the market and, if possible, review the valuations to reflect the changed conditions."*

"The analysis my Department has undertaken over recent months supports the Commissioner of Valuation's view that there is insufficient market evidence at this time to establish a reliable new Valuation List of non domestic properties. The analysis also suggests that, if the revaluation

proceeded, it would fall well short of international valuation standards. I cannot allow this to happen because the stability of the tax base is all important, not simply for the Assembly but for local government finances as well."

"Unfortunately, while there are some signs of recovery in the wider economy, I do not believe that the commercial property market has stabilised sufficiently to allow a revaluation to proceed with any confidence."

The Minister concluded: *"I know there will be some who will be disappointed with this decision. However, I think a cancellation is in the best interests of the business community, as well as the local councils who rely on certainty in these matters to plan for the future."*

The Minister then announced that the next revaluation will take place in April 2015 to allow Northern Ireland to align with the next revaluation of non domestic properties in the rest of the UK.

Decisions from Higher Courts

Owner's liability to pay council tax - R (on the application of Hakeem) v Valuation Tribunal Service & Enfield LB Council [2010] EWHC (Admin) 152

In an appeal against a decision of a Valuation Tribunal, the High Court found that the panel made no error in law when deciding the appellant owner was:

a. not liable to pay the council tax from 1 August, 2002 until 30 August, 2003 because the dwelling was occupied by a tenant; and
b. liable to pay the tax from 31 August, 2003 to 17 January, 2008 when there was no evidence the property was occupied.

In his reasoning, Cox J found that the Tribunal's panel had not ignored or misdirected itself when considering the tenancy's clause for automatic renewal. Further, there was no error of law in the panel's treatment of the tenancy agreement or residency issues. The questions posed by the Tribunal in its approach were the essential questions for determining the case.

There was no dispute that the tenant was in occupation from August 2002 to August 2003, a period of almost 13 months, having agreed an assured shorthold tenancy with the appellant owner. The central issue was whether, because of the renewal clause, the tenancy continued beyond the time the panel had found it existed, and whether anyone else was resident at the property.

Given the facts of the case and, in particular, the Tribunal's finding that the owner had not provided sufficient evidence to prove his case, the High Court found the Tribunal's decision was one it was entitled to come to. An allegation concerning the inconsistency and contradictory nature of the evidence at first instance involved the finding of fact and was held to be beyond the High Court's enquiry.

Cox J also acknowledged the correctness of the Tribunal panel in identifying the limitation of its jurisdiction when the owner claimed the Billing Authority had incorrectly served its notices in breach of regulations 18-20 of the Council Tax (Administration and Enforcement) Regulations 1992. Applying the rules outlined in *Hardy v Sefton MBC* [2007], the court found there was no error in law and that the magistrates' court held jurisdiction in such matters.

Higher Court decisions continued

Rating- material change of circumstances- building of a shopping centre and street works- Denny Bros Supplies Ltd & Franklin (VO) RA/13/2009

This case concerned a shop in Bury St Edmunds that had three frontages onto Kings Road, St Andrews Street and a curved junction. The appeal to the Upper Tribunal had been submitted by the ratepayer against the decision of the Suffolk VT. It concerned the changes that had occurred in the surrounding area between June 2007 and March 2009, due to the building of a new shopping centre/ associated street works. The disruption experienced included the closure of St Andrews Street and Kings Road for significant periods, at various periods of time, for cables to be laid and paving/ road resurfacing to occur.

Both parties accepted that the hypothetical tenant would have known at the material day in May 2008 that the significant disruption experienced since June 2007 would continue to be suffered for nearly a year; the only issue therefore remained that of the size of the reduction that should be given to the appeal property.

In his judgment siding with the appellant (25%) rather than the VO (15%), N J Rose FRICS indicated:

- No weight was given to the VO's suggestion that there was an absence of supporting rental evidence, because there was nothing to suggest that any of the leases would have allowed a tenant to seek a reduction.
- No weight was placed on the reductions put forward by the appellant, which had been applied to a nightclub and a block of offices, as neither of these properties was valued in the same way as a shop. The VO's evidence also showed these reductions were derived from factors other than the street works.
- He considered two VT decisions on another shop in the locality, which had determined reductions at different dates of 10% and 15%, did not provide reliable evidence of value.
- None of the 15 withdrawn appeals that the VO had produced in evidence had any frontages onto St Andrews Road South or Kings Street.
- Settlement evidence had to be viewed with caution, particularly where the ratepayers were not professionally represented. Given that Unit 5 Kings Road Mews was located close to the appeal property, had been professionally represented and received an allowance of 15%, he was satisfied that the application of an allowance of 25% for the appeal property was not excessive.

Appeal allowed.

Rating of stables- Re Tuplin VO) Home Farm Stables, Hyde RA/27/2008

This appeal made by the VO, challenged the decision reached by the Manchester North VT to hold five blocks of stables, that included 17 boxes available for DIY livery on a farm, as agricultural buildings and therefore exempt under Schedule 5 of the LGFA [1988]. The ratepayer did not make any response to the appeal.

Under the DIY livery scheme it was explained that the horses owners were each provided with a loosebox but responsible for feeding, grooming, mucking out, riding and giving general care to the horse. The charge at the antecedent valuation date (AVD) was £24 per week and included £6 for the use of the manège (a fenced area used for the schooling of horses/providing exercise, which was accepted by both parties to be rateable). The farm produced hay and supported cattle and sheep. However, around 80% of its total income came from the DIY stables and without it; the farm would not be economically viable.

In reaching its decision that the appeal property was an agricultural building used for the keeping or breeding of livestock, it was noted that the VT had disregarded the House of Lords' decision of *Whitsbury Farm & Stud Ltd v Hemens (VO) [1988]* in which it was held that breeding racehorses did not met the criteria to allow an exemption to be given, on the grounds it was not on all fours with the situation before it. The VT had also gone on to determine that 'horses and ponies' satisfied the 'description of livestock'.

In overturning the VT decision, George Bartlett QC, President, drew attention to the principles that applied in *Whitsbury* and to the appeal property, pointing out:

- The use of the appeal property did not serve the purpose for which the agricultural land was used.
- Livestock was defined in paragraph 8 (5) as including any mammal or bird kept for the production of food or wool. This could not apply in the appeal property's case, as the horses kept in the stable were for recreational purposes only.

Higher Court decisions continued

Rating- 'Calderbank offer'- Selfridges Ltd v Humphries (VO) RA/49/2008

This Upper Tribunal decision was limited purely to the determination of costs.

At a hearing in November 2009, the appellant had challenged the appeal property's entry in the 2000 rating list at £15,500,000 RV and asked for a reduction to £11,060,000 RV. The VO had defended an assessment of £15,250,000 RV.

However, on 17 November 2009, after the hearing had finished, but before the parties had produced their closing submissions, the appellant had chosen to accept an offer to settle at £14,000,000 RV. This offer, known as a 'Calderbank offer', had originally been made by the VO on a 'without prejudices save as to costs' basis on 8 October 2009 and a sealed copy had been lodged with the UT, in accordance with rule 44 of the LT Rules 1996 (as amended).

In determining who should pay which costs, A J Trott FRICS indicated:

- Whilst generally a period of 21 days was considered to be a reasonable timescale to consider a Calderbank offer, in this case twelve days was appropriate, given that the hearing was originally fixed to begin on 2 November and the appellant's expert valuer had returned to his office by this time. Accordingly, 20 October 2009 was held to be the relevant date.
- It was not necessary for an offer to specify the position on costs.
- The VO should pay the appellant's costs up until 20 October 2009, the relevant day. The appellant had obtained a significant reduction and A J Trott rejected the VO's suggestion that as the appellant exaggerated his case by £3 million this should be reflected in the award of costs. He considered the appellant's arguments for an allowance of quantum had been legitimate and believed that the late acceptance of the VO's offer, rather than awaiting the LT determination, probably stemmed from a commercial judgment made by the ratepayer, based upon a review of the appeal as a whole.
- The appellant should pay the VO's costs from and including 21 October 2009: The appellant had failed to accept the Calderbank offer within a reasonable time scale and this had resulted in an unnecessary five day hearing.

Rating- valuation of a shop- Johnson v Leahy (VO) RA/20/2009

This appeal was made by the ratepayer, against the decision of the London NW VT. It concerned a hairdressing salon that had been valued at £240/m² zone A, in line with other shops on three parades arranged in a horseshoe shape.

The appeal property was occupied under a lease that included a self contained flat. The rents agreed were:

- On 25 December 2000 of £13,000 per annum, of which a figure of £2,750 had been identified for the flat.
- On 26 March 2006 of £18,000 per annum, of which a figure of £6,000 had been identified for the flat.

In allowing the appeal, N J Rose determined:

- On his site visit he had been left in no doubt that some of the other shops were in a more prominent position than the appeal property. So he had found it surprising that the VO had applied a uniform value to all three sections of the horseshoe.
- The correct starting point was to look at the rents actually paid for the appeal property, in line with *Lotus & Delta v Culverwell (VO) and Leicester City Council [1976].* Its 2000 rent devalued to £188m² and was approximately 27.5% lower than the RV. Its 2006 rent devalued to £220m² and was 9% lower than the RV.
- The VO had been wrong to ignore the actual rents on the appeal property:

◊ Whilst the rents agreed were set 2¼ and 3 years after the Antecedent Valuation Date (AVD), they were broadly in line with one of the VO's two comparables. NJ Rose noted the VO's acceptance that the passing rent on that comparable, set in June 2002, needed no adjustments and after further investigations the VO had discovered that it analysed to £214/m² not

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£250/m², as had originally been thought.

◊ Although the rents reflected the existence of a residential flat above, the figures ascribed to the retail and residential elements had been agreed following negotiations between surveyors.

- The other comparable property, on which the VO had relied, was of no assistance as it had a more prominent return frontage and an established/ permitted use as a restaurant (a use for which planning permission had been twice refused for the appeal property).
- The value of £215m² zone A suggested by the appellant was consistent with all reliable rental evidence. It was broadly in line with shops on the opposite side of the street, which had been valued at £210/m², where there was no rental evidence. NJ Rose agreed with the appellant that these shops were also more prominent than the appeal property's parade.

Rating- reasonable state of repair- Miles v Moore (VO) RA/23/2009

This appeal challenged the decision made by the West Yorkshire VT that, in line with the Rating (Valuation) Act 1999, the hereditament had to remain in the list and assumed to be in a state of reasonable repair, as a reasonable landlord would not consider it uneconomic to carry out the repairs.

The appeal property was a detached single-storey warehouse dating from the Second World War. Whilst it had originally been erected elsewhere, it had been purchased by the appellant after he had had a fire at his premises. It had been erected on the present site in 1976, with planning consent being granted for one year only and its use restricted to the appellant's business of furniture storage. It had no water supply, drainage, sewerage or power and there was a restrictive covenant that prevented a secure boundary from being erected.

In dismissing the appeal, N J Rose noted:

- He accepted the VO's opinion that the absence of planning permission or a certificate of lawful use for warehousing would not affect the rent obtainable for the appeal property on a year to year basis, given that the planning authority had taken no steps to interfere with that use since the building had been erected in 1976.
- Having regard to the comparables provided, he was satisfied that the reduction from £13,750 RV to £8,900 RV awarded by the VO by service of a notice after the VT hearing, reflected its basic construction, lack of mains services/security/ parking facilities and poor access.
- There was a striking difference between the costs of repairs that were considered necessary by the appellant's expert witness on the one hand of £54,245.06, plus VAT and the Head of National Assets and Building Surveyors at the VOA of £9,000 including VAT (which the VO believed the hypothetical tenant would be recover in just over a year).
- He preferred the costs provided by the VO's expert, as the appellant's expert witness had:

o Indicated that the whole roof had to be replaced to bring it into a habitable state, despite the fact that the appellant had actually occupied the property until December 2008.

o Provided costings for removing and renewing base tracks to the external doors when no tracks existed.

o Stated that the appeal property was unoccupied, unlettable and unsaleable, based on 'what he had been told by his client', which in turn suggested that he had not adopted the impartial approach that was required of an expert giving evidence to the Tribunal.

- He accepted the VO's opinion that it would cost £9,000 to put the appeal property into a state of reasonable repair and that a reasonable landlord would consider it economically viable to carry out the necessary works in order to obtain an annual rent of £8,900 for a term of three or more years.

Higher Court decisions continued

Rating- allowance for roadworks- Dell (VO) v Daya & Bhagat RA/61 & 62/2008

These appeals challenged the decision reached by the Central London VT to give 50% allowances to reflect the disruption to a locality caused by roadworks that were carried out between January and August 2008.

In allowing the appeals and reducing the allowances to 23% on 10 Westbourne Grove and 20% to 31 Westbourne Grove, A J Trott FRICS indicated:

- There was no rental evidence upon which to judge the effects of the road works.

Evidence from a previous VT decision regarding Queensway had to be treated with caution as *Arrowdale Ltd v Coniston Court (North) Hove Ltd [2007]* made it clear that it would be necessary to know what evidence had been presented to the VT and how they had treated it, for any VT decision to have true value.

- There was no evidence to suggest that the loss of footfall in Queensway was any less significant than that in Westbourne Grove.

- The best evidence came from the 46 other settlements that had been reached in Westbourne Road, of which 30 had been agreed at 20%, 14 at 23%, 1 at 27% and 1 at 26%. As in 35 of these cases the appellants had been professionally represented, the settlements reached reflected an objective consideration of all relevant factors by a significant number of professionals.

- The VT's decision that there should be no distinction between those properties affected by hoardings and those which were more remote from them should be rejected. As No 10 had hoardings outside this appeal property, it should have an additional 3% allowance in line with the other settlements.

Interesting VT decisions

Council Tax Liability decisions

At present council tax liability decisions do not appear on the website.

Please see the announcement on page 11 that the decision to place them on the VTS website from July 2010 is now on hold.

Person in Detention

A VTE panel in the Manchester North area upheld a council tax liability appeal by a person who had been held in HM Prison and found that he should not be held liable to pay council tax for the three-year period of his incarceration.

The respondent BA had not cancelled his direct debit throughout the period and, because they believed the dwelling had been occupied at least some of the time, had continued to receive payments towards the total liability. Although the BA was not made aware at the outset of the appellant's detention, it did correspond with him in prison later.

The BA was reluctant to cancel his liability; although the BA did not mention class D specifically, the grounds they gave in responding to the appeal would have been identical to those a BA would have given in justifying a refusal to grant exemption under class D of article 3 of the Council Tax (Exempt Dwellings) Order 1992. This class grants exemption to council tax on a property providing it was the detained person's sole or main dwelling and it remains unoccupied. The BA referred to evidence where it could show the dwelling was not unoccupied.

The panel found the issue over whether the dwelling was occupied or not, and whether the dwelling could or should attract an exemption, was a diversion. It held that paragraph 1 of schedule 1 of the Local Government Finance Act 1992 provides 'discounts to liability' for persons in detention, providing the detention is by virtue of a court order.

In finding the appellant to be a 'discounted person' for the period of his incarceration, the panel said its decision was a narrow one and it did not express an opinion as to whether the dwelling had been occupied or not, or whether class D should be applied.

Interesting VT decisions continued

Classes E and I of the Council Tax (Exempt Dwellings) Order 1992

Exemption cannot apply when the former taxpayer has lived elsewhere between vacating her former home and entering residential care.

When the Council Tax system was introduced, Parliament provided for certain classes of dwelling to be exempt from council tax. The classes were set out in The Council Tax (Exempt Dwellings) Order 1992. Amongst those classes were classes E and I. These provide for exemption from council tax when a dwelling had been left unoccupied following the occupier's move to receive care. Class E applies to a person who has left their former home to receive care provided by nursing homes, hospitals etc; Class I applies to persons who receive care in some other institution or with a relative.

An appeal was heard in Wirral, in respect of Mrs P. Mrs P had lived at *property A*, which she owned, for a number of years. In April 2008 she moved to an apartment within a warden controlled, sheltered housing scheme (*property B*). The reason for the move was due to Mrs P's increasing frailty – her former home had become unsuitable for her needs. At property B she received care provided by outside agencies, including social services.

Due to a worsening of Mrs P's condition, in December 2009 she moved into a nursing home. However, Mrs P continued to own *property A*. She applied for an exemption under classes E or I in respect of *property A* but was refused by the BA.

The case was heard by a panel who determined that neither exemption could apply. The wording of both classes required that the person "has been a relevant absentee for the whole of the period since the dwelling last ceased to be his residence."

In this particular case Mrs P had lived in a sheltered housing scheme between leaving her former home and entering the nursing home and had not therefore been the relevant absentee for the whole of the period. Had Mrs P left *property A* and entered the nursing home

immediately, she would have received the protection afforded by either Class E or I. The sheltered accommodation which she occupied for 20 months did not qualify as a place of care as, although care was provided, it was not provided by the housing association which owned and operated the establishment.

Although the appellant's representative argued that the stay in the sheltered accommodation was an interim measure prior to Mrs P entering the nursing home, the panel rejected this as the sheltered accommodation was not a place which provided care within the meaning of Classes E or I.

Murder, Arson and a Temporary Reduction … Question – how does the visual blight and stigma affect the valuation band of the neighbouring dwelling?

A VTE panel in Lancashire heard an appeal from a taxpayer whose neighbour was murdered by her estranged husband who then razed the much of their matrimonial home by arson. In the two years since, the damaged property had been off-limits, firstly as a crime scene and then because of fear of further collapse.

The local authority twice failed to cover the remaining structure with an unsightly tarpaulin, eventually erecting a false roof comprising corrugated metal sheets atop of scaffolding; the photographic evidence showed a real eye-sore.

The deceased's next-of-kin wanted nothing to do with the property and the insurance company denied liability as the policy did not cover the eventuality. It was known that it could be a further three years before a court was in a position to decide progress.

At first, the Listing Officer (LO) deemed the appellant's proposal to be invalid. After consulting with his chief executive's office, the LO decided the proposal had been validly made but that the impact on the value of the appeal property was insufficient to merit a change in band.

Interestingly, in evidence, the LO conceded that a temporary reduction in a valuation band was possible. Challenged on the statement, he said the prevailing legislation did not foresee temporary reductions in bands, as there were no easy means to reverse the decrease. He said that a band reduction would not be contemplated unless the effect of the physical change was likely to

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Interesting VT decisions continued

last beyond 12 months. In all cases, a reduction could only be reversed if there was a 'relevant transaction'.

Neither party could assist the panel with evidence from a comparable situation. Additionally, there was a paucity of 1991 sales evidence for the types of property involved to help determine a base value before any reduction. Using the local tone as a guide, the panel decided the pre-event value of the appeal property would have been £100,000 at 1991 levels; this would have reduced by 20% given the combined blight and stigma.

In allowing a reduction in the band, the panel held that the legislation's inability to reverse a reduction until a 'relevant transaction' took place could not be a relevant factor in its decision. The LO had conceded the concept of a temporary reduction and the appellant proved his case.

A full copy of this decision can be found on the VTS' website- see appeal no 2365554974/125CAD

Council tax invalidity appeals – Reduction for some, but not others.

A VTE panel heard five invalidity notice appeals concerning identical neighbouring bungalows in Southport. Two others had received a band reduction in 1997 and 1998 respectively, arising from an environmental nuisance caused by seagulls. At the time, the LO had taken no further action on reviewing the other dwellings.

The LO had served invalidity notices on the subject proposals, as he considered that they had been made out of time.

The appellant taxpayers said they were unaware of the earlier reductions until 2009. They asked how they could make a proposal 'within six months of a relevant VT decision' that they knew nothing about!

Asked whether he had a responsibility to review the bands of the neighbouring dwellings at the time, the LO stated that, as the original appeals were made on the basis of a physical change, no further action was taken – if the reductions had been due to the original level of banding, the LO would have taken action to reduce the bands on the other properties.

The LO said he did not agree with the earlier VT decisions and that if the subject appeals were found to be valid, he would defend the higher band and seek the reinstatement of the two that were reduced.

The panel upheld the invalidity notices but identified a discrepancy in the valuation list; it held it was unable to do determine the issue of valuation because of the restrictions placed on invalid proposals by the regulations.

A full copy of this decision can be found on the VTS' website- see appeal no 4320561101/134CAD

Non-Domestic Rating decisions

Case Management Hearing- Rayner Mills, Liversedge, West Yorkshire

The matter brought before a senior member concerned whether to bring forward two appeals to a VT hearing that were presently in a holding programme, with a target date 1 April 2014.

In March 2009 the West Yorkshire VT had issued a decision to reduce the assessment placed on the appeal property from £123,000 RV to £118,000 RV, which had been appealed to the Upper Tribunal by the appellant and was awaiting a hearing. Following the VT decision, the VO served notices to split off an office block that had formed part of the original assessment. It was the appellant's appeals against these notices that became subject to the case management hearing.

In asking for the hearing of the appeals to be brought forward, the

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appellant's representative contended that natural justice was not being served by a delay and also made reference to Article 6 of the Human Rights Act 1998.

However, the VO opposed the application for the appeals to be brought forward to a hearing on the grounds that:

- The matters to be considered of the correct level of value to be applied to the factory and whether the pre-1918 offices should be assessed, were largely the same as those still to be determined by the Upper Tribunal.
- In all probability, a VTE hearing ahead of the Upper Tribunal determination would lead to a further appeal (by either party), thereby further costs would be incurred.
- It would be inappropriate to prejudice the outcome of the higher court

Accordingly, the VO contended that it would be better if the cases where adjourned until the outcome of the Upper Tribunal hearing was known 'to achieve efficiency and economy in the conduct of litigation'. The VO added that the only possible grounds for earlier listing were if the ratepayer was suffering financial hardship, of which no evidence had been put forward to suggest this was the case.

In reaching the decision that it would not be appropriate to list the appeals in advance of the decision of the Upper Tribunal, the senior member noted the duplication of issues to be considered and the possibility that the outcome of the Upper Tribunal decision could negate the need for another VT hearing.

The senior member did not however agree with the VO that the hearing of the two cases would prejudice the case currently at the Upper Tribunal, as any hearings by the Upper Tribunal were *de novo* hearings.

The senior member indicated that principles of natural justice were paramount in her decision-making. She did not consider that there had been any breach of Human Rights, especially as the original appeal had been the subject of a lengthy hearing and a site inspection, followed by a detailed decision giving the reasons for the panel's findings. There had been no suggestion that the hearing had not been conducted in a fair manner and due process had been followed by the appellant in exercising his right to appeal to the Upper Tribunal.

Accordingly, the senior member determined that the hearing of these appeals was effectively stayed until the decision of the Upper Tribunal was known.

Case management hearing decisions do not appear on the VTS' website.

Honey-house not exempt

A panel in Halifax held that an ex-bakery intended for use as a "honey house" was not exempt from rating because, on the facts, it was not an agricultural property under schedule 5 1988 Act capable of being exempt on the material day. The property was not occupied on the material day; nor did it meet the test that it must be "surrounded or contiguous to not less than 2 hectares of agricultural land."

The appellant was critical of incorrect information given to him by both the local authority and DEFRA that it would be exempt from rating. He also criticised the lack of information given by the VOA throughout the appeal process and said he was aware of exemptions granted by VOs elsewhere. At the material date in May 2008, the premises were not occupied and, despite spending two years converting the premises to meet strict DEFRA standards, it remained unoccupied.

Citing advice from his MP, the appellant said the VO *"could ignore any interruption to the continuity of land surrounding a property by virtue of a road/railway etc"* implying the need for 2 hectares need not be unbroken.

The VO's case was that the following exemption provisions of Schedule 5 were not met:

"1) The property must be used solely in connection with the keeping of bees

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Interesting VT decisions continued

And

2) The property must be surrounded or contiguous to not less than 2 hectares of agricultural land."

The appellant had admitted the Honey-house was not occupied as such on the material day so it did not satisfy the first test.

Accordingly, it followed that it was not necessary to consider the second criteria.

The VO said that, had the property passed the first test, it would have failed on the second as the surrounding land was 'commercial' not agricultural; it did not amount to two hectares, nor was it "contiguous", i.e. touching, the appeal property.

Asked about exemptions elsewhere, the VO referred to dictum in? the LT decision of *James Gallagher (VO) v Church of Jesus Christ of Latter Day Saints" [2004]*, where the LT President said "*it is of no assistance … to know what VOs have done elsewhere since relief may or may not have been correctly given. The statutory exemptions are there to be applied in the terms in which they have been enacted, neither restrictively or generously. If on a proper construction of the provisions the facts do not support exemption, that is an end of the matter. It is for Parliament and not for valuation officers or tribunals to prescribe circumstances in which relief from rates should be given …".*

The panel dismissed the appeal finding the exemption criteria had not been satisfied.

A full copy of this decision can be found on the VTS' website- see appeal no 471515249671/244N05

VTE determines end allowances caused by Liverpool One development

The 'Liverpool One' development was completed in May 2008 when shops opened for business. This

major development created a new city centre trading location taking custom from long-established areas.

In a dispute over end-allowances for loss of trade caused by the material change, the panel consolidated hearing eight appeals on shops of varying sizes and locations; the VO's SRU team and local Group office combined as respondent. The larger shops were valued on an 'overall' basis; the smaller shops by zoning. All were situated on the edge of the city centre.

The appellant's representative argued 'reduced trade' during and post development and contended for a 20% allowance. He provided receipts and turnover evidence, citing a change in footfall.

The VO resisted end allowances on some properties (referring to some withdrawals) while offering a 5% reduction for properties around Bold Street, in line with the new tone and other reductions offered.

The panel found the trade evidence was complex, as elements would also reflect the economic recession, the downturn in the housing market (DIY store), and also that the principal appellant had moved out of the appeal properties to be closer to the new centre.

The panel determined a reduction of 5% was appropriate which reflected existing agreed allowances of between 5% and 15%. Liverpool One was such a large development that it had changed the centre of Liverpool and there was a major pull towards it. The panel could see no reason why the appeal properties should not receive an allowance in line with those agreed on nearby properties.

A full copy of this decision can be found on the VTS' website- see appeal no 431015981458/134N05

News update

The decision announced in the last VIP that council tax liability decisions would appear on the VTS' website from July 2010 is on hold. This is to allow further deliberation of the issues.

A decision is now expected later in the year.

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