VALUATION TRIBUNAL SERVICE

Issue 23

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Valuation In Practice

VALUATION TRIBUNAL SERVICE

News in Brief

Obituary – Charles Partridge MBE

The VTS was saddened by the sudden passing on 2 December of Charles Partridge. Charles was one of life's true gentlemen. A highly respected practitioner, his contribution to rating has been huge and his outstanding service to the surveying industry received formal recognition when he was awarded an MBE in the 2009 New Year's Honours list.
Charles will be greatly missed by us all.

Update on Practice Statements

These are available on the VTS website.
Sign up for our email alert service by visiting our website
(the url is http://www.valuationtribunal.gov.uk/email/pract-state.asp?mail=5)
This will tell you when a new or revised Practice Statement has been published.

Non- Domestic Rates (Rating List 2010): Disclosure & Exchange A7-1
Effective from 1 January 2012, this introduces a new timetable for disclosure and exchange of documents between the parties and applies to all 2010 rating list appeals where the notice of hearing has been issued after 1 January 2012. Earlier appeals continue to be governed by the original Practice Statement A7 unless they were postponed before the deadline for the submission of the appellant's statement of case, in which case the new timetable shown below will apply.

When?	What?	By Whom?	Consequence of failure to comply
At least **8** weeks before hearing	Reg. 17 evidence to be issued if basis provided by appellant	VO	Rental evidence submitted later by VO may be excluded
At least **6** weeks before hearing	Statement of Case	Appellant	Appeal struck out
At least **6** weeks before hearing	Notice to VTE if appellant does not wish to attend hearing	Appellant	If appellant does not appear and has not so informed the Tribunal, appeal struck out
No later than **4** weeks before hearing	Statement of Case (plus Reg. 17 evidence)	Respondent	Barred from taking any further part in the proceedings; Reg. 17 notice excluded.

Inside this issue:

News in Brief

Listing of Non-Domestic Rating Appeals A2 – effective from 1 January 2012

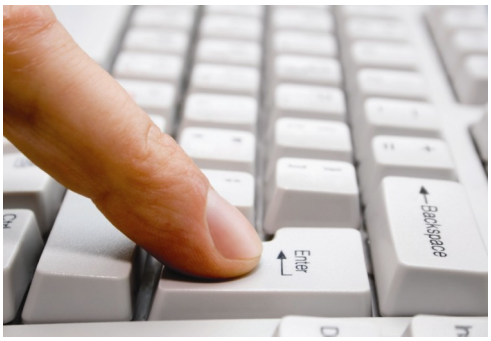
This Practice Statement explains how the VTE receives and lists programmed appeals. Wherever possible, the first hearing of an appeal will be within 12 weeks of the programmed target date. The arrangements are also described for appeals that appellants wish to be heard outside of a programme and for appeal types which are not programmed.

Temporary Reduction in Rateable Value: Consent Orders D2 – effective from 21 November 2011

Where the valuation officer no longer has the power to alter the rating list, and the parties agree that a temporary alteration should be made (reverting to the original rateable value from an agreed date), they may apply jointly to the Tribunal for a consent order.

Tribunal decisions – Notices of decision

IT developments now permit those appellants and their representatives who prefer e-communication to receive all



of our notices electronically, including the Tribunal's reasoned decision.

Tribunal User Surveys

A recent survey of professional representatives highlights their anxiety over the procedural changes introduced by the disclosure of evidence process. An interesting observation was that almost 80% of those surveyed said that their appeals had been settled after they had submitted their statement of case.

Very pleasingly, their satisfaction levels with VTS communications, overall service prior to the hearing and most aspects of the hearing itself were generally high.

If you took part in this survey, we are very grateful for your valuable feedback.

Even more pleasing was that our ongoing survey of unrepresented appellants who attended a hearing, shows a steady level of overall satisfaction with the service they receive from us.

Technical reforms of council tax – Consultation

This consultation by the Department for Communities and Local Government (DCLG) discusses options in relation to the council tax liabilities of second home owners, and of the owners of empty properties, in England, including proposals which would require primary legislation.

These include replacing exemption Classes A and C with discounts; abolishing Class L exemption; and giving billing authorities power to levy up to full council tax on second homes.

It also covers other aspects of the council tax system including arrangements for payment of council tax by installments, for publishing online the information to be supplied with demand notices, simplifying the tax arrangements involving suppliers of solar panels placed on dwelling roofs, and seeks views on the treatment of annexes to dwellings.
The document and the impact assessment can be found on DCLG's website, www.communities.gov.uk.

Local Government Finance Bill

The Bill was introduced in the House of Commons on 19 December 2011 for Parliamentary approval. It covers the proposals made in -

◊ **Technical Reforms of Council Tax Consultation** (see above);

◊ **Proposals for Business Rates Retention Consultation** (to enable councils to keep a share of the growth in business rates in their area); and

◊ **Localising Support for Council Tax in England Consultation** (localising support for council tax from 2013-14 and reducing expenditure by 10%).

DCLG has published the consultation responses, the Government's responses and the impact statements on their website, www.communities.gov.uk.

The Bill is available at: http://services.parliament.uk/bills/2010-11/localgovernmentfinance.html.

The Public Bodies Act 2011

The Public Bodies Bill received Royal Assent on 14 December 2011. The Act confers powers on Ministers of the Crown in relation to certain public bodies and offices. As expected, the VTS is included in Schedule 1 of this Act as a body that may be abolished by order. The Act is available at: www.legislation.gov.uk/ukpga/2011/24/section/2/enacted.

Business Rates Information Letters (BRIL) from DCLG are available at http://www.communities.gov.uk/localgovernment/publications/circulars-and-letters/

BRIL No 6 - covers the four business rates measures of the Localism Act 2011 which received Royal Assent on 15 November: ballots for any future business rate supplement imposition and variations of a business rate supplement; local discounts of business rates; small business rate relief; cancellation of liability to backdated non-domestic rates.

BRIL No 7 - reports the business rates measures contained in the Chancellor's Autumn Statement; the further extension of the temporary Small Business Rate Relief scheme for 2012-13; and the scheme whereby ratepayers can defer 60% of the RPI increase in their rates bills.

BRIL No 8 - gives the provisional multipliers for 2012-13: the non-domestic multiplier will be at 45.8p and the small business non-domestic multiplier 45.0p. It also confirms the extension of small business rate relief to 31 March 2013.

BRIL No 9 - gives more information about the changes to small business rate relief and a forthcoming statutory instrument to effect these, planned for January 2012.

Valuation in Practice issue dates.

Our newsletter is published quarterly in January, April, July and October. You can sign up for an email alert telling you when a new issue has been published, by going to www.valuationtribunal.gov.uk/vip_newsletter.aspx.

High Court

Wilson v Coll (Listing Officer) [2011] All ER (D) 114 (Oct)

The appeal to the High Court (which can be on a point of law only) was against a VTE decision, concerning whether the appeal property should be deleted from the valuation list. The property had been vacant since June 2007 and was in a state of disrepair. No work had been carried out to it since then and exemption under class A of the Exempt Dwellings Order had been applied.

Singh J found that the Tribunal decision was "clearly *tainted by errors of law*", and he remitted the case back to the Tribunal. These errors he identified as having arisen because the Tribunal "*confused the two concepts …. namely the concept of the existence, or continued existence, of a hereditament on the one hand, and the distinct question of the proper valuation of a hereditament on the other hand*".

In his deliberations, Singh J referred to the statutory definition of a hereditament, the valuation assumptions in the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 and case law of *Post Office v Nottingham Council* [1976] 1 WLR 624; *R v East Sussex Valuation Tribunal, ex parte Silverstone* HC [1996]; and *Burke v Broomhead* [2009] EWHC 1855 (Admin).

It was also noted that the concept of the reasonable landlord, considering whether a repair would be uneconomic, did not exist in the council tax legislation, only in that for non-domestic rating. In any case, this also was relevant only to the valuation of a hereditament and not the existence of a hereditament.

Although Singh J received a submission that he should dismiss the appeal, he chose not to exercise this discretion and remitted the case for redetermination, adding that, in his judgment the outcome was not necessarily inevitable:

"Justice requires, in my view, that the parties should again have the opportunity to present their cases in accordance with a correct understanding of the law, rather than an erroneous one. It also requires, in my view, that the tribunal should have the opportunity to focus upon the correct questions in law, rather than be distracted, as it appears to have been so far, in my view, by focusing on the wrong legal questions."

Decisions from Higher Courts

Upper Tribunal (Lands Chamber)

Aylett v O'Hara (VO) RA 28/2010

The President determined that an area of open land bordering the Thames at Goring, with river frontage and a slipway, did not fall within the definitions of domestic property in section 66(1) of the Local Government Finance Act 1988.

The Valuation Tribunal had refused to delete the original entry in the List of 'Mooring and premises', but changed the description to 'River Garden and premises'.

The UT LC President agreed that the reality was that the property consisted of a riverside garden used for recreational purposes, and that use of a summerhouse was ancillary to that recreational use. The appeal was dismissed.

Coll (VO) Re UTLC case RA/19/2010

Three uni-sex public lavatories, all designed for use by the disabled but only one being restricted as such, had been provided by Horsham District Council (HDC). These replace a toilet and bus shelter at a cost of £75,000; annual maintenance costs were estimated at £10,000. HDC let the building for a peppercorn rent (£1) to the parish council, who made the facilities available for public use.

The Valuation Tribunal had rejected the argument that the premises should be exempt on the basis that the toilets were for disabled people, because this use was not exclusive. However, taking account of the high overheads, they had allowed the appeal to RV £1, considering that a hypothetical landlord would not pay such maintenance costs for little or no return.

His Honour Judge David Mole concluded from his deliberations that the Tribunal had erred in law because a hypothetical tenancy would have some value. He ordered that a revised RV of £600 be entered into the List. This figure was put forward by the VO's QC, based on replacement cost for a substitute building, with deductions for age and obsolescence and an addition for land value. He had decapitalised the resulting figure at 5% and allowed 30% to take account of a disabled cubicle with inferior access. The appeal was therefore allowed.

Interesting VT decisions

Amusement arcades

Reductions in rateable value (RV) from 1 July 2007 were sought to reflect the effects of the introduction of the smoking ban on three appeal properties in parades of shops on a busy seafront retail parade that were valued using the zoning method.

The appellant contended at the hearing that the effects of the Gambling Act 2005 should also be considered, as this too had altered the behaviour of customers and the time spent in the amusement arcades (the Act required adults-only machines to be sectioned off from family areas and limited high jackpot machines to four per establishment). Comparable hereditaments such as bingo halls, snooker halls, amusement centres, night clubs, public houses and working men's clubs were referred to, where 7.5% to 15% allowances had been given for the smoking ban; the effects of the Gambling Act had increased these allowances by a further 2.5%.

It was also argued that the appeal properties, due to their size and layout, were different to other premises in the road and as there were no other potential occupiers for the three properties, allowances of 10% were warranted.

The Valuation Officer (VO) argued that potential bidders for a retail unit in this location would include not only operators of amusement arcades, but also those planning a wide range of retail uses, whose bids would not affected by the smoking ban. Nor would a hypothetical landlord accept a lower rent due to the smoking ban. It was argued that the properties should not be valued specifically as amusement arcades, but by reference to the established tone for retail. Rents and assessments summaries were presented demonstrating this tone for the locality in the 2005 list.

The VO further contended that bingo halls, public houses and working men's clubs - as cited by the appellants' representative - were different modes and categories of occupation to shops and had different markets to retail properties.

(Continued overleaf)

Interesting VT decisions continued

Amusement arcades
(continued)

For them the smoking ban would have affected the potential rental bid whereas the appeal properties could have other uses.

The adverse effects of the Gambling Act were not stated as grounds for reductions and so were outside the scope of the proposals, by which the Tribunal considered itself constrained. The Tribunal determined that the tone for the parade had been established and that the properties must be valued vacant and to let. Therefore an individual occupier's use could not be taken into account when valuing the properties.

In arriving at a determination, the panel found the following cases to be of assistance:

◊ *Fir Mill Ltd v Royton UDC and Jones (VO)* [1960], where the principle was confirmed that a shop should be valued as a shop, but not as any particular kind of shop;

◊ *Vesta Launderettes v Smith (VO)* [1979], where it was determined that a launderette was in the same mode and category of occupation as a shop and would be so regarded by a hypothetical tenant bidding for the tenancy.

The Tribunal found that, although described in the List as amusement arcades, the appeal properties had been valued correctly as shops. Valued vacant and to let, the appeal properties were shops and their rental bids would not have been effected by the introduction of the smoking ban in 2007. The appeals were therefore dismissed.

Appeal number 273016867633/538N05

Where we show an appeal number, this can be used to view the full decision on our website. Click on the Listings & Decisions tab and use the appeal number to search Decisions.

Factory with internal composite sandwich cladding

The appeal property was a disused factory built in 1979, converted and extended for the purposes of food production. One of the alterations was the installation of internal composite sandwich cladding with a polystyrene core which was regarded by fire fighters as a fire safety hazard. Unless there was a life safety issue, fire fighters were reluctant to enter buildings with sandwich panels. Consequently, vacant buildings that caught fire could result in major or total loss. As a result, insurance premiums for properties with sandwich panels had increased several folds and in some cases, insurance companies were not prepared to insure them at all.

The two main issues in dispute were:

- the underlying basis of assessment to be adopted for the production area;
- the allowance, if any, warranted for the presence of the composite cladding.

The panel allowed the appeal in part and determined an assessment of £61,750 RV for the following reasons:

- the tone of value that was applicable to industrial properties in the appeal property's locality would have been tested over the lifetime of the List, and £22 per m² had been established which appeared reasonable;
- the rise in insurance premiums was an economic factor that fell to be disregarded, because economic factors were fixed as at the antecedent valuation date;
- rental levels were accepted to be on the increase up until 1 April 2003 and allowing for an uplift in value to reflect the value of the tenant's improvements, the panel was of the opinion that the RV of the appeal property should be in excess of the rent;
- an allowance was due because, vacant and to let, a property with hazardous insulation would be expected to command a lower rent compared to an identical property with safe insulation.

The panel determined that a 12.5 % end allowance was warranted to reflect the inherent fire safety risks of the sandwich cladding/foam insulation.

Appeal number 073818649975/092N05

Appropriate method of valuation: zoning or overall

The appeal property was a former post office which had been converted into a restaurant. Constructed around 1819, the property was a grade II listed building with stone faced walls. The appellants had purchased the freehold and there was a connected party rent of £13,500 per annum. The rateable value (RV) was £17,750.

The appellant's representative had zoned the restaurant area and had included the kitchen as auxiliary space, adopting a Zone A price of standard shop units.

The appellants' representative referred the panel to the decision in *R v Paddington Valuation Officer ex p Peachey Property Corporation Ltd [1964] AER 200*, which confirmed the actual rent payable was not conclusive proof of the gross value and *Lotus & Delta v Culverwell VO and Leicester City Council (1976),*

(continued overleaf)

Interesting VT decisions continued

Appropriate method of valuation: *(continued)*

where the Lands Tribunal held that, although the rent passing was the starting point, assessments of other comparable properties were relevant. The panel was also referred to *Halifax Building Society v Payne (VO) (1961)*, where, although an office in a retail location had been valued on an overall basis, it had produced an assessment that was similar to the surrounding retail units valued by the zoning method.

The appellant's representative also referred to an agreement reached in respect of a property constructed as offices but he had successfully argued that it should be zoned in line with the adjoining properties; this, he contended, illustrated that properties used for retail purposes could be valued as retail even without a shop frontage

The Valuation Officer (VO) had valued the property on an overall basis at £100 per m² in line with other stand alone restaurants. The zoning method was based on the premise that the most valuable part of a shop property was the sales area near to the front entrance and the display window was the 'hook' to draw customers in to the property. This method was appropriate for most standard retail units with glazed display windows.

In contrast, the 'overall' approach was based on the premise that once a customer had entered the property all of the ground floor retail space was of equal value. The VO felt this method was appropriate for non standard retail units, which due to their size or physical characteristics, such as the lack of a display window, meant zoning was not appropriate.

The panel agreed that because of the non standard nature of the property it should be valued on an overall basis rather than by a zoning method. The appeal was dismissed.

Appeal number 471517643501/538N10/51

Council Tax Liability Student's overseas spouse or dependant

The point at issue in a number of consolidated appeals, heard before the President of the VTE, was described as having "*vexed local authorities, tribunals and taxpayers for years*". The essence turned on the meaning given to the word "*or*" in the words "*prevented … from taking paid employment or from claiming benefits*" in the Council Tax (Exempt Dwellings) Order. The panel noted the injustice and unfairness in people being treated differently and taxed or not taxed depending on which local authority they were dealing with or what tribunal panel they came before.

Under Class N, a dwelling occupied only by students on a full-time higher education course is exempted from council tax. A dwelling is also exempt if the only other occupier is the student's spouse or dependent who is not a British citizen and who is prevented, by the terms of their leave to enter or remain in the UK, from taking paid employment or from claiming benefits.

The respondent billing authorities (BAs) argued that this must be interpreted to mean that the spouse must be subject to *both* prohibitions, that is with all means of securing income closed off to the spouse. The rules of English grammar meant that there was no ambiguity; the words could only be read as requiring both conditions for the exemption to arise. If the draftsman had wanted the prohibitions to be read as alternatives, the word "either" would have been used.

The appellants argued that it sufficed if only one of the prohibitions had been applied, with the spouse free either to seek paid employment or claim benefits. This interpretation was in line with the ordinary, everyday use of "or" as disjunctive, maintaining that there was no basis for doing otherwise and reading it as "and".

The panel disagreed with the BA, in that ambiguity was evidenced by the number of BAs, valuation tribunals and panels who had reached different conclusions.

The Office of the Deputy Prime Minister (now DCLG) in its Council Tax Information Letter 5/2005 said:

"*In our opinion it is sufficient for the purposes of the discount for the person either to be prevented from claiming benefit or be prevented from taking paid employment. However, as with any other provision the interpretation of legislation is a matter for local authorities and ultimately the courts.*"

The respondents' view was that no weight should be placed on the Department's opinion. The panel disagreed, noting that while this was not determinative and the Order stood open to interpretation, secondary legislation was drafted by departmental lawyers in line with instructions given by departmental officials and possibly ministers.

The panel's opinion was that a genuine ambiguity should be resolved in the taxpayer's favour, especially where that interpretation accorded with the Government's own published view.

The BAs argued that a literal interpretation led to a perverse result: as the prohibition was premised on a denial of access to public funds, it would be wrong to exempt the taxpayer from payment of council tax in these circumstances, that would be tantamount to a benefit funded by other taxpayers.

The panel rejected this, considering that exemption of a dwelling from council tax was not equivalent to claiming benefits. As the exemption under the Order arose in circumstances conditional on not claiming benefits, it could not be argued that the prohibition on claiming benefits could preclude grant of the exemption.

(*continued overleaf*)

Interesting VT decisions continued

Student's overseas spouse or dependant

(continued)

The Tribunal therefore found in favour of the appellants. In the appeals before it, where the spouses were free to seek work but denied access to benefits, the dwellings they lived in with their student spouses were exempted from council tax.

The President added that, ideally, there would be an authoritative judgment by the High Court or legislative amendment. In the meantime, although precedent did not apply to Tribunal decisions, the expectation should be that any appeal raising this point of law (subject to new arguments being advanced) would be decided by the VTE in accordance with this decision.

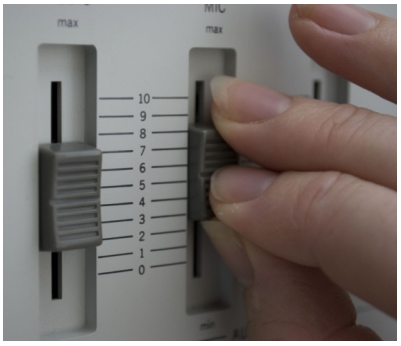
It is understood that this decision is now being appealed to the High Court.

Appeal number 5450M66690/053C

Student exemption

The appeal was made against the decision of the billing authority (BA) not to award the appellant student exemption under Schedule 1 of the Local Government Finance Act 1992. Definitions of a "student" and a "full time course" are contained in the Council Tax (Discount Disregards) Order 1992 SI 548.

The appellant's representative stated that her son was a full time student when he was summonsed to pay council tax. She referred to the student certificate provided by the College; this took the form of a letter from the Director of the College, dated 10 May 2011. The BA refused the exemption from 1 September 2010, as they believed the appellant to be undertaking two part time courses, not a full time course.



The panel noted that the appellant was required to re-take some of the modules that he had failed in his first year of his degree course in Music Production; the College had invited him to complete their Diploma in Audio Engineering course at the same time.

It was clear to the panel that, while he was re-taking the modules, the appellant continued to be enrolled on the degree course, undertaking what was, in essence, a full time course of education. The panel took the view that the criteria for a student exemption was fulfilled and allowed the appeal.

Appeal number 4215M72231/113C

VALUATION TRIBUNAL SERVICE

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