Issue 24

April 2012

VALUATION TRIBUNAL SERVICE

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Valuation in Practice

News in Brief

Forward Plan

The Valuation Tribunal Service has now published its Forward Plan 2012-15, including its Business Plan for 2012-13. This is available on our website at http://www.valuationtribunal.gov.uk/Libraries/Publications/Forward_Plan_2012-15.sflb.ashx.

Establishment of the Property Chamber

Whilst plans continue to create a Property Chamber jurisdiction within the First Tier Tribunal of Her Majesty's Courts and Tribunals Service, the VTE has now been de-coupled from this timetable. The Property Chamber, expected to be established in 2013 will bring into its jurisdiction the Residential Property Tribunal, Agricultural Lands Tribunals and the Adjudicator to the Lands Registry.

Discussions on the potential transfer of the Valuation Tribunal for England and the Valuation Tribunal Service into Her Majesty's Courts and Tribunals Service continue.

High Court appeal on overseas student spouses

The VTE decision reported in the last issue of ViP (23) has been appealed to the High Court and it is understood the appeal could be heard this month.

Appeal statistics for 2011-12

We received almost 280,000 appeals last year and listed 118,000 to 1370 hearings. Around 3000 council tax valuation appeals, 1200 council tax liability appeals and over 300 completion notice appeals were received.

The data shows that of 78,000 2010 rating list appeals listed after target date, around 7% were live the day before the hearing; decisions were given on 2%. Of 26,000 settled appeals, 2000 were settled after the exchange of statements of case and a further 1600 were settled without the VOA providing a statement of case. Strike outs accounted for 35,000 of listed appeals against the 2010 list.

Practice Statements

Model Procedure B1, amended 28 March 2012

The Model Procedure has been amended at paragraph 5 to make clear that it is for the appellant to satisfy the Tribunal that the appeal should be allowed. Nevertheless, all parties must satisfy the Tribunal in respect of any argument or evidence they advance or introduce.

All Practice Statements are available to download from our website.

Get ahead of the game: sign up to our email alerts for the latest Practice Statement news

http://www.valuationtribunal.gov.uk/email/pract-state.asp?mail=5

Inside this issue:

Decisions from Higher Courts

Business Rates Information Letters (BRIL) from DCLG are available at http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters/

BRIL No 1/2012 summarises effects on billing of the Non-Domestic Rating (Collection and Enforcement) (Amendment) (England) Regulations SI 2012/24 and the Non-Domestic Rating (Electronic Communications) (England) Regulations SI 2012/25.

BRIL No 2 covers the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2012, which extends to 31 March 2013 the relief, including to eligible ratepayers who occupy more than one property, and the removal of the requirement to submit an application form to claim the relief. The newsletter updates on the position regarding cancelling certain backdated rates bills (see BRIL 4 below). It also includes some useful definitions of terms used in the rating world.

BRIL No 3 gives further details on the business rates deferral scheme. It also confirms the non-domestic multiplier for 2012-13 will be 45.8p and the small business non-domestic multiplier 45.0p. The newsletter reminds billing authorities about calculating 'Q', the inflation factor.

BRIL No 4 covers the regulations allowing cancellation of certain backdated rates liabilities (SI 2012/537). The Demand Notice Regulations (SI 2012/538), referred to in BRIL 2 above, have also been laid.

BRIL No 5 confirms that the rate of interest payable on refunds of overpayment of rates to be applied for 2012-13 is 0%. The newsletter also describes the effects of the Non-Domestic Rating Contributions (Amendment) (England) Regulations SI 2012/664, in allowing discounts in Enterprise Zones.

BRIL No 6 outlines the business rates deferral scheme and gives a roundup of various other measures: local discounts, small business rate relief, cancellation of certain rates liabilities and Enterprise Zones.

Upper Tribunal (Lands Chamber)

Appeal of Mouland (VO) RA 15/2009

The appeal property was a business centre at Gatwick Airport's South Terminal, providing fully serviced meeting, conference and 'touchdown' facilities (including executive lounge), and offices on short-term contracts. This accorded with its permitted uses in the lease, which included the restriction that no more than 30% of the net internal area could be used for "high quality serviced offices for airport-related customers".

The rateable value (RV) in the 2005 list was £292,500 and the description was 'Offices and premises'. The valuation tribunal panel had reduced this to £170,000, deciding that the rent passing at 1 October 2004 (£177,888) was useful evidence and that a business centre differed significantly from straightforward office use. The parties had agreed that the description should be amended to 'Business Centre and premises'.

The valuation officer (VO) appealed against this decision, arguing that the terms of the lease were too onerous and were very far removed from those of the hypothetical tenancy which must be assumed for rating purposes; the restriction he believed was mainly for the landlord's benefit. The VO had dismissed the appeal property's rent as valid evidence, preferring comparable evidence from smaller offices, with no use restrictions, in the same building and another office building at the airport. He had adopted a tone of £360 plus 5% for air conditioning, giving an RV of £248,000.

The Upper Tribunal (Lands Chamber) (UT (LC)) referred in its decision to *Fir Mill Ltd v Royton UDC and Jones (VO) [1960]* and *Williams (VO) v Scottish & Newcastle Retailing and another [2001]* and those cases' respective contributions to clarifying the principles of *rebus sic stantibus* and mode or category of occupation.

In upholding the VTE decision, the UT (LC) found that the actual serviced office use at 30% meant that the use of the remaining 70%, taken overall, constituted a different mode or category of occupation to purely office use.

High Court

RGM Properties Ltd v Speight (LO) [2012] RA 21, QBD

This appeal was against a decision of the VTE in 2010 confirming that flats converted from a derelict office building had been entered correctly into the valuation list from 20 March 2008. The conclusion that the appeal dwellings were capable of occupation at that date was based on limited evidence available, including photographs of the flats' interiors taken in May 2009. There had been dispute about when the photographs were taken and the hearing was adjourned to clarify this matter. When the hearing was reconvened, the appellant's representative wanted to introduce some photographs but the panel refused to allow new evidence

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The appellant company confirmed that there had been little change to the properties between March 2008 and May 2009 apart from electrical work to connect to mains supply. Fire alarms, fire doors and emergency lighting also remained to be done in March 2008 and there were problems with damp that needed to be remedied. The LO had rebutted the latter point, asserting that ,for council tax valuation purposes, the flats had to be assumed to be in a reasonable state of repair.

The completion notice procedure had not been used by the billing authority; it had asked the LO to insert the new entries into the list. The High Court agreed with the panel's finding that this was not a necessary precondition of entry into the list.

The High Court found that the VTE was entitled to come to the decision it had based on the photographic evidence. Though it was unfair of the panel not to allow the appellants to submit more photographs of their own, it was not unfair as a result, as those photos would not have changed the decision.

The appellant company had complained that the LO had breached his duty as an expert witness; he had submitted information that was not accurate and had used photographs selectively, and the panel should not have accepted this. The High Court said that its approach was whether the VTE had erred in law and that question could not be answered by consideration of these matters; the High Court had to focus on the decision alone.

Further, the High Court commented that the LO should not have introduced the argument about state of repair in a case to establish whether a dwelling existed. Disrepair was a concept that could only be considered once a building was accepted as a hereditament.

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.

Interesting VT decisions

Non-domestic rating

Long stay car park, Manchester

This car park was close to Manchester Airport, the local railway station and the local motorway network. It was fenced, accessed via large double gates and controlled automatic barriers, with two portacabin offices on site.

The valuation officer (VO) brought the assessment into the 2005 rating list on 26 January 2010 at £94,500 rateable value (RV) with effect from 1 April 2006. At the hearing, the appellant's representative contended that there was no evidence to reasonably ascertain or confirm that the property was complete and available to be occupied any earlier than 26 January 2010 and sought alteration to show £86,000 RV from that date.

In considering the scope of a proposal that sought "the rateable value altered to £1 with effect from 1 April 2006", the panel found the Lands Tribunal case of *Leda Properties Ltd and David Kelvin Howells (VO) [2006]* both persuasive and authoritative. It would have been impossible for the VO to deduce that the proposer was seeking an alteration of the effective date and, had he well founded the appeal, he would have altered the list entry to show £1 with effect from 1 April 2006. The panel made a finding of fact that any alteration to the effective date of this entry in the list was outside the scope of the proposal.

Both parties had already agreed, following their discussions before the hearing, that the assessment should be reduced to £86,000 RV.

The appeal was allowed but only to the extent to give effect to the revised assessment that had been agreed by the parties.

Full decision: 421517163097/538N05

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.

Museums, Yorkshire

The Tribunal considered both the correct method of valuation and rateable value (RV) of four very different museums in the Bradford area. All of the appeals had been made against Valuation Office notices.

- Moorside Mills - an industrial museum in a former textile mill, three workers' terraced houses, rebuilt on the site to show 19th century living conditions, and the original manager's house (RV £90,000);
- Bolling Hall - a Grade I Listed manor house with 13th - 17th century parts, on the site of a former Norman timber manor house (RV £19,500);
- Cliffe Castle Museum - a Grade II Listed gentlemen's residence from the 1820s and extended in 1848 and 1878 (RV £55,000);
- Manor House Museum - a Grade I Listed 14th century medieval manor house with 17th century additions and two 18th century cottages, located on the edge of a Roman Fort, which is a scheduled ancient monument (RV £13,250).

The appellant's representative had valued all of the properties on the same basis, adopting a percentage of estimated gross receipts. While admission to the four sites was free and there was no clearly identifiable cost base to apply, there was a meticulous count of visitors at each site. This, together with the wealth of evidence regarding entrance fees to National Trust, English Heritage and other attractions, could be used to arrive at an estimated gross receipts figure for each property. He had then applied 3% as agreed in the *Waltham Abbey Royal Gunpowder Mills Museum* case to arrive at his rental bid in each case. The RVs sought were respectively £15,000, £1,400, £10,000 and £2,700.

In contrast, the VO had adopted a range of methods and, in some cases, more than one method of valuation for different parts of the same museum.
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Interesting VT Decisions

(Continued from page 3)

- Moorside Mills - the VO believed that a variation of the contractor's basis was appropriate. Instead of constructing a substitute building, he believed the City of Bradford would rent an alternative mill and, as it had already rebuilt the terrace houses, the contractor's basis method of valuation was valid for valuing the cottages. For the manager's house, he had applied a spot figure (RV £68,000).

- Bolling Hall - he argued that the physical characteristics of the property did not support the use of the contractor's basis; the council would not consider building a modern substitute as the building itself was the exhibit. He believed there was a minimum value equal to the cost of storage. But as a stated purpose of the council was to display the house and its contents, he believed a hypothetical landlord would not accept this minimum level of rent and would agree a figure of double that (£3,350).

- Cliffe Castle - given the hybrid nature of the property he believed the appropriate way to value it would be to add the value of the purpose-built museum to the value attributable to the original part of the property. For this he had adopted the same approach as Bolling Hall, taking double the notional storage value. However, as there were more contents, more storage was required, and for the extension he had used a full contractor's basis valuation (RV £35,250).

- Manor House Museum - he had valued using the contractor's basis (RV £6,400).

In arriving at its decision the panel inspected all of the appeal properties and had regard to the case law and the VOA Rating Manual.

While the hearing panel liked the simplicity and uniformity of the appellant's valuation approach (based on actual visitor numbers but notional receipts), the panel decided it could not endorse use of the receipts and expenditure method because there were no actual receipts submitted.

The panel noted eight classes of museums were covered in the VOA Rating Manual which provided an approach to arrive at an appropriate valuation method for each type. Informed by their inspections, the panel felt that the diverse nature of the museums put them into different classes, with no one valuation method fitting all. The panel therefore decided each museum appeal on its own merits:

- Moorside Mills - the panel accepted that the mill should be valued in line with other mills but rejected the use of the contractor's test method for the cottages and valued them in line with the manager's house (RV £50,000).

- Manor House Museum – the panel believed it could be valued as a traditional municipal museum or a country house museum and adopted the VO's contractor's test method of valuation (RV £3,350).

- Bolling Hall - from its inspection the panel was satisfied that this could be best classified as a country house museum. Although the parties thought that the contractor's test method was not appropriate for the Hall, the panel could find little difference between this and Manor House and believed that a contractor's test method of valuation was also appropriate here. The panel was not convinced by the VO's approach of adopting twice the value of an estimated notional storage space because this produced an arbitrary figure which did not relate in any way to the actual hereditament.

- Cliffe Castle - this gave the panel the most difficulty. It appeared to be a traditional museum but was in part in the nature of a country house museum. The panel believed that, with the extensions, it went beyond this description because of the range of non-related collections it housed. Having viewed both Cliffe Castle and the Manor House, the panel could see little difference between the two and it believed that the appropriate method of valuation was a full contractor's test method. As in respect of Bolling Hall, the panel believed the VO's dual approach produced an arbitrary figure which did not relate to the actual hereditament.

However, for both Bolling Hall and Cliffe Castle, in the absence of another valuation method and with regard to the assessments they had determined on the other properties, the panel was satisfied that the resulting figures were not excessive and fitted in with the overall pattern of values. The panel allowed the appeals to the extent conceded by the VO (RVs £35250 and £5,900 respectively).

Full decision: 470514161196/244N05

When is an informal agreement binding?

The Tribunal determined an appeal on the 1995 rating list concerning a shop and premises with a rateable value (RV) of £345,000. The panel heard that an informal agreement had been reached between the parties at £305,000 RV. However, this agreement was not ratified, and at the hearing the VO defended a RV of £345,000. The Tribunal determined that it found nothing to justify the original valuation agreed to be incorrect. Accordingly, the panel determined a rateable value of £305,000.

Full decision: 599015707697/088N05

Council tax liability

Student exemption – meaning of full-time

The decision turned on the definition of a full-time course of education, in paragraph 4 (1) of Part II of Sch 1 of the Council Tax Disregards Order 1992, which was amended with effect from 13 May 2011 to read:

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Interesting VT decisions continued

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'(a) *which subsists for at least one academic year of the educational establishment concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;*

(b) which persons undertaking it are normally required by the educational establishment concerned to undertake periods of study, tuition or work experience (whether at premises of the establishment or otherwise) -

i) of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and

Ii) which taken together amount in each such academic or calendar year to an average of at least 21 hours a week.'

The appellant was undertaking a MBA degree programme over 18 months, by distance learning. He had chosen to study two modules per term, which he reckoned entailed 12.5 hours study per module per week and which matched the recommendation of the university running the programme.

The panel referred to the decision in the High Court case of *Feller v Cambridge City Council [2011]* (see ViP issue 21), in which Dr Feller was not required to attend for study at any particular place but was found to be a student for the purposes of a discount.

The billing authority (BA) view was that the appellant did not meet the criteria before 13 May 2011 as there was no requirement to attend (deemed necessary based on their reading of *R (on the application of Fayad) v the London south East Valuation Tribunal [2008]*), and did not meet the criteria after the amendment as he did not undertake an average of 21 hours' study. This latter argument was based on the fact that the appellant had only submitted one module for assessment.

The panel did not agree with the BA's assertion about the need for attendance, but agreed that the student was not studying an average of 21 hours or more a week. The basis of the course was its flexibility and a student might take up to four years to complete it. As the appellant had only completed one module it appeared that he was not studying for the university's recommended period.

Full decision 5300M70870/053C
An appeal for judicial review has been lodged with the High Court.

Stowe school boarding houses

The President of the VTE presided with two members from his panel of chairmen to decide whether the nine boarding houses of the independent school should be exempt under Class M of the Council Tax (Exempt Dwellings) Order 1992 (SI 1992 No. 558) (as amended), as 'halls of residence'.

> *"a dwelling comprising a hall of residence provided predominantly for the accommodation of students"*

Each house accommodated around 50 boarders aged 13 to 18, together with two to seven members of staff and their families. In addition to sleeping quarters, the houses had rooms for study, relaxation and music and kitchens.

The billing authority contended that only those pupils aged over 18 could be termed 'students', but the panel decided that none of the pupils was a 'student' within the meaning of the legislation.

The School's representative argued that the term 'halls of residence' was not prescriptive but descriptive in the regulations and was not limited to tertiary educational establishments.

He believed that the distinction made in S110 of the Finance Act 2002 between 'residential accommodation for school pupils' and 'halls of residence for students in further or higher education' supported his contention, since adding 'for students in further or higher education' showed the term would otherwise have a wider meaning. This Act has nothing to do with council tax, however, the panel saw these words as undermining the appellant's argument. Whilst acknowledging that school boarding houses and university halls of residence had much in common, and it might be unreasonable that they should be treated differently, the panel concluded that Class M did not cover school boarding houses. The appeal was therefore dismissed.

Interesting VT decisions continued

Class L and Class Q Exemption

Should an exemption be granted where a property had been controlled by a receiver under the Law and Property Act (LPA)? This was the decision that the members had to make at a hearing in the West Country.

A landlord had not paid council tax on three properties and a liability order had been applied for. The landlord advised the billing authority (BA) that the properties were in the hands of an LPA receiver and that he had been made bankrupt during the period.

The panel considered, firstly, that LPA receivers are appointed by mortgage companies to act as agents for the mortgagors and do not actually have possession of the property themselves. Further, they are used by mortgage companies as an alternative to repossessing the property. Therefore, neither they nor the mortgage company could be said to be in possession and as such, a Class L exemption could not apply. After the appointment of an LPA receiver, the owner or occupier continued to be liable for council tax, even when the LPA receiver was in possession of the property. This meant that, despite having very little to do with the property any longer, the owner remained liable for council tax without any exemption.

Secondly, Class Q exemption applies to unoccupied properties that have been taken into the possession of a person who is acting within their capacity as a trustee in bankruptcy under the Bankruptcy Act 1914 or the Insolvency Act 1986. The panel noted that the BA had confirmed with the LPA receiver that if a receiver had been appointed prior to bankruptcy then the properties did not become the possession of the trustee; they remained in the hands of the LPA receiver. As this established that the appeal properties had not been taken into the possession of the trustee, the panel agreed with the BA that the criterion for Class Q exemption was not met.

Therefore, the panel reasoned, the landlord remained liable for council tax until the date each property was sold. Neither a Class L nor a Class Q exemption was applicable as the main conditions for these exemptions were not met: the landlord was neither a mortgagee in possession nor a trustee in possession of the properties. The panel was satisfied that the BA had correctly and lawfully calculated the liability for council tax.

Full decision: 3935M74550/212C

Landlord held liable as insufficient evidence of a tenant

The appellant landlord contended that the property was tenanted from 13 October 2008 to 13 December 2010. Early in 2011 he became aware that the property was vacant; the tenant had left without informing him and owing rent.

The appellant had not asked for a deposit from the tenant as he was a friend of a previous tenant; there was no rent book, but there was a tenancy agreement.

He was unable to provide forwarding or guarantor details for the tenant, but had bank statements confirming regular cash receipts. When he contacted utility companies, the appellant was informed that there was no record of the tenant but it appeared that he had rigged the electricity supply so that he did not have to pay.

The billing authority (BA) said the documentation provided was not sufficient for the account to be amended. The appellant had only been able to provide a six month tenancy agreement from 13 October 2008, after the expiry of the agreement, on 9 August 2011. This was after the tenant vacated and so the council was unable to make checks on the veracity of this information by reference to investigations at the material time.

In the absence of a rental schedule, rent book or deposit, or any other documents in the tenant's name, the panel was not convinced that the tenancy agreement alone supported the appellant's claim.

The panel noted that the BA had attempted to trace the tenant by way of internal records and an external credit agency, but no records were found.

The panel dismissed the appeal, as it was not persuaded that the appellant had provided sufficient evidence to prove that there was a tenant in the property for the relevant period. The

bank statements illustrated that there had been payments made into his bank account, however, there was nothing to prove who had made these payments or in what connection.

Full decision: 4310M80454/134C

Council tax valuation

Material reduction in the value of the dwelling, Northumberland

The appeal property, a three bedroom end terrace house, had been in band E since 1993, at which time it had an extensive area of land to the rear, with outbuildings.

The appellant was seeking a reduction to C on the grounds that the property no longer had a large rear garden and out buildings. There was now only a thin strip of gravelled area at the rear of the property and three houses including a detached property and two terraced houses constructed from the former outbuildings. The changes had taken place since 1996 and, in comparison to other dwellings in the locality, band E was too high. No evidence was submitted to detail the timeline of events or the date(s) when the physical changes to the appeal site and its immediate locality began to impact on the value of the dwelling.

A previous Tribunal decision on an adjacent property had confirmed that at band D. This property was 112m^2 and had three bedrooms. The LO contended that, based on the sales evidence and this decision, band E was correct; in his opinion the loss of the rear garden and outbuildings would not have affected the value of the dwelling. (Continued on page 7)

Interesting VT decisions continued

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The panel gave consideration to the plans and the removal of an extremely large area of land and the subsequent conversion of the outbuildings to form two dwellings and was of the opinion that this would have reduced the value of the dwelling below the band E threshold. This view was supported by the sales evidence submitted for terraced properties of a comparable size and the decision of a previous valuation tribunal.

As the appellant had failed to include in his proposal the date on which he believed the event occurred, the panel had to have regard to Regulation 11(5a) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 to establish the effective date. The panel determined that the band should be reduced to band D from the date the appellant's proposal was received by the LO.

Full decision: 2935600760/092CAD

Effective date of entry into the valuation list, Cumbria

The decision highlights what can occur when a billing authority (BA) does not issue a council tax completion notice.

On 2 February 2010, the listing officer (LO) had backdated the entry of an unoccupied, newly built, four bedroom detached house, into the valuation list from 23 April 2009. The appeal sought deletion from the list from this date on the grounds that no completion notice had been issued by either the BA's revenues or building control departments, and the property was not capable of beneficial occupation.

A letter from the BA's Building Control Manager, dated 28 May 2008, outlined the remaining items to be attended to before a completion certificate could be issued. They included Standard Assessment Procedure (SAP) calculations, an energy performance certificate, an air test, the provision of electrical, heating and hot water certificates, details/calculations for the roof trusses and a raised step under the window to the bedroom above the garage to allow a means of escape.

In finding for the LO and dismissing the appeal, it was held by the panel that::

- An entry could be backdated in the list in accordance with Regulation 11 (1) (a) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009. This required an alteration of the list to include a dwelling which had come into existence, to take effect from the day it came into existence.

- *"There is in consequence no scope for including in the list a building which is nearly, even very nearly, ready for occupation unless the completion notice procedure has been followed."* (Extract from Paragraph 66 of *Porter (VO) v Trustees of Gladman Sipps* [2011]).

- The property was ready or capable of occupation despite the lack of safety certificates for the electrical, water and heating systems, the lack of building control certification, and an outstanding minor physical alteration to the property which had to be made to comply with fire regulations. In reaching this conclusion, the panel had regard to paragraphs 62 and 63 of the *RGM Properties Ltd v Speight (LO)* [2011] EWHC 2125 (Admin) decision, in which Mr Justice Langstaff stated that the lack of planning or building control approval was not a legal bar to occupation:

> *"If there were a breach of planning control (for instance) or a failure to comply with building regulations, that might cause legal difficulty for the building owner, but it would not legally proscribe occupation by an occupant."*

- The case law presented showed that the relevant test was whether or not the property was ready and capable for occupation as a dwelling. The panel considered what physical features the appeal property lacked which prevented occupation; as the property had electricity, water and heating, the panel concluded there were none.

- From a bricks and mortar analysis of the building, the property was a completed dwelling, albeit one which was not compliant with current building regulations.

Full decision: 0920594535/127CAD

VALUATION TRIBUNAL SERVICE

Editorial team:
Tony Masella
Diane Russell
Nicola Hunt.
Grahame Hunt

Chief Executive's Office
VTS
2nd Floor
Black Lion House
45 Whitechapel Road
London
E1 1DU
Tel no. 0300 123 2035

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