Issue 29

July/August 2013

VALUATION TRIBUNAL SERVICE

Valuation in Practice

VALUATION TRIBUNAL SERVICE JULY/AUGUST 2013

News in Brief

National Rating Day Conference

The Valuation Tribunal for England (VTE) President, Professor Graham Zellick QC, shared his thoughts on reform of the non-domestic rating appeals process with the Conference audience. The concern has been for a number of years, to address the inefficiency of large numbers of proposals (most of which translate into appeals) being made. Professor Zellick is exploring the idea that the VOA should provide more information about how an assessment is arrived at, at the time the rating list is published.

First-tier Tribunal (Property Chamber)

The new Chamber came into being on 1 July 2013, with Siobahn McGrath appointed as its President. The Chamber brings together the Residential Property Tribunals, Leasehold Valuation Tribunals, Rent Tribunals, Rent Assessment Committees, Agricultural Land Tribunals and the jurisdiction of the Adjudicator to HM Land Registry.

The Chamber is divided into three:

- Residential Property (Principal Judge Siobahn McGrath)
- Land Registration (Principal Judge Edward Cousins)
- Agricultural Land and Drainage (lead Judge Nigel Thomas).

The Chamber has adopted a unified set of procedural rules, Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169. Further information can be found at www.justice.gov.uk/tribunals/property-chamber.

Inside this issue:

Valuation Tribunal documents

The **VTS Annual Report and Accounts** was laid in Parliament on 26 June 2013 and can be viewed at www.valuationtribunal.gov.uk/Publications/annual_reports.aspx

Tribunal Business Arrangements, Issue 5 (effective from 3 June 2013) and Commentary – amended to allow two-member panels as the norm, provided that at least one of the members is a Senior Member. A Senior Member may also hear appeals alone if directed to do so by the President or if the other member fails to attend.

Practice Statements -

PS B1 (Amended 22 May 2013) Model Procedure - revised as a consequence of the new council tax reduction appeals jurisdiction, in relation to the chairman's introductory remarks and the usual practice of First-tier Tribunal judges announcing oral decisions.

All VTE Practice Statements are available to download from our website.

Sign up to receive our email alerts for Practice Statement news.

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

PS A11 (effective 3 June 2013) Council Tax Reduction Appeals (and President's Explanatory Commentary) – describes, with reference to the relevant regulations: the procedures for seeking further information from applicants before an appeal can be registered; striking out; discretionary reductions; the standard directions issued to both parties; listing; decisions and reasons.

Guidance Note 1/2013 (effective 1 July 2013) – Adding a party where another person might incur council tax liability as a result of an appellant's successful appeal. It is for billing authorities to make application to add a party; the VTS/VTE itself should not ordinarily add parties.

News in Brief (continued)

DCLG

Business rates information letter BRIL 5/2013 – This covers the Government's proposals for and consultation on exempting all newly built commercial property completed between 1/10/13 and 30/9/16 from empty property rates for the first 18 months. The consultation, which has just ended, is described in a document which can be found at www.gov.uk/government/consultations/business-rates-new-build-empty-property-technical-consultation. The newsletter also refers to the High Court judgment, **Public Safety Charitable Trust v Milton Keynes Council** (summarised below), and discusses considerations flowing from Lord Heseltine's recommendation in *No Stone Unturned: In Pursuit of Growth,* that local authorities should publish the list of all businesses paying non-domestic rates. (https//www.gov.uk/business-rates-information-letters)

In Parliament — Replying to questions to the Minister between April and June 2013, Brandon Lewis said:

- The Government was undertaking a broad review of how annexes for family homes could be supported and would set out its plans in due course;
- 233 councils in England had chosen to set their council tax rate for long-term empty properties at above 100% for 2013-14;
- On the subject of a rating regime for wireless broadband infrastructure, the VOA would be writing to interested parties and had asked the Broadband Stakeholder Group to provide rental evidence.

Decisions from the High Court (QBD)

Public Safety Charitable Trust & anr v Milton Keynes Council & ors CO/8616/2012

These appeals made by councils arose from decisions of magistrates' courts about the test for relief of charities from non-domestic rates. Two of them had found for the council; a third had found for the Public Safety Charitable Trust (PSCT). These were identified as test cases, PSCT having leased a large number of properties throughout England, on which it then claimed entitlement to rates relief.

The leases are always for a nominal/peppercorn rent and subject to short notice period (such as seven days) and the landlord pays PSCT a 'reverse premium' in respect of its occupation for the savings in terms of the rate relief that are shared between the landlord and PSCT. Small broadcasting transmitters are then placed at the premises and connected to the power supply. No one uses the premises, apart from visiting for occasional maintenance checks. The transmitters provide free wireless internet access (wifi) to anyone in range and they also broadcast Bluetooth messages on matters of crime prevention and public safety. PSCT thus claims it is a charity in occupation of a relevant hereditament and that this hereditament is "wholly or mainly used for charitable purposes", as set out in S 43(6) (a) of the Local Government Finance Act 1988.

The dispute between the parties had been identified as being about whether the phrase "wholly or mainly" related to the "amount of actual use of the hereditament" or the "purpose of the use of the hereditament". In finding for the councils, Mr Justice Sales followed three earlier decisions (*Kenya Aid Programme v Sheffield City Council [2013]; R v HM Coroner for Greater Manchester ex parte Tal [1985]; English Speaking Union Scottish Branches Educational Fund v City of Edinburgh Council [2009]*); he concluded that the correct interpretation was the extent of use of the hereditament.

A further ground of appeal was that one of the District Judges had considered that the extent of the wifi hereditament (as distinct from the main hereditament) was one transmitter, rather than the network of several transmitters in the building. It was pointed out that a challenge on the identification of the hereditament was not a matter for the magistrates' court but for an appeal to the VTE.

Vaughan v South Oxfordshire District Council

A case determined in June 2013 found that the Valuation Tribunal had not erred in upholding a council's decision that a property was not the appellant's sole or main residence, but was a long-term empty and unoccupied property. The Tribunal had not acted irrationally but had applied the correct test, which was set out in its decision. Though it had referred to an earlier Tribunal decision, the panel had recognised that it was not bound by the decision, but took the view that it was relevant to the issue in the round and could attach what weight it decided was warranted.

Decisions from the Upper Tribunal

Pishbin v Hibbins (VO) RA 25/2012

The appeal property was a lock-up shop at 28 Regent Road Great Yarmouth, which had been part of a larger property, 28/29 Regent Road, until the landlord had requested that the assessment be split. The landlord had assumed that the rateable value (RV) for 28/29 Regent Road would simply be split, making the RV for each element £13,750. In the event, the RV for the appeal property was set at £17,000, compared to the rent agreed in 2007 of £12,000. The valuation officer (VO) explained that the increase was because, when assessed as a single hereditament, a 20% reduction had been applicable because of the size. However, this had never been explained to the landlord or the appellant.

AJ Trott disregarded any rental evidence presented by either party that was from transactions more than 12 months either side of the antecedent valuation date (avd), as there had been no objective evidence about local market trends.

He agreed with the VO's contention that the rents on the appeal property and on 29 Regent Road were unreliable, because they were agreed at some distance from the avd and because of the landlord's policy of letting at sustainable rather than the highest rents, to keep tenants in place for longer.

The most comparable rents AJ Trott analysed to £205-£237.50/m². The VO's adopted tone was £235 and there was no reason to depart from that figure or to conclude that the VTE determination was wrong.

While it was unfortunate that the landlord had not been enlightened about the valuation consequences of splitting the assessment into two, that was not a matter for the Upper Tribunal.

The appeal was dismissed.

Holden Vale (Conference Centre) Ltd v Whitehead (VO)

The appellant argued that low occupancy rates and lack of profitability was due to the fact that the 35-bedroom hotel was too large for the catchment area; a hypothetical tenant

would not be prepared to pay rent for it and so the assessment should be £nil. It was contended that the rateable value should have been based on the receipts and expenditure method.

The VTE panel had accepted the valuation officer's (VO's) evidence based on an agreed scheme (Provincial Hotels (England and Wales) 2010 Agreed Valuation Scheme). The VO's view was that none of the circumstances described by the appellant was 'exceptional' as described in the VOA Rating Manual (para 5.3).

PR Francis FRICS found the VO's evidence for not departing from the scheme persuasive and agreed that the circumstances were not exceptional. He noted that the VO had adopted the lowest percentage in the range available in coming to his assessment, which was fair, and that there was nothing to suggest that the VTE determination was wrong.

The appeal was dismissed.

Interesting VT Decisions — Non-domestic rating

Offices: exemption under Sch 5, Local Government Finance Act 1988.

The appellant's contention was that the whole of the premises was used for the purposes of its business, providing support for disabled persons in obtaining employment, in performance of its contract with Working Links (Employment) Ltd and funding agreement with Bristol City Council. Those purposes were for the provision of welfare services within the meaning of the legislation. The proposal contended the premises should be deleted from the 2010 rating list and the issue for the VTE panel was whether the premises fell within either or both limbs of exemption provided by paragraph 16(1) of Sch 5 of the 1988 Act, being a property that was used wholly for -

> "(a) the provision of facilities for training, or keeping suitably occupied, persons who are disabled or who are or have been suffering from illness;
>
> (b) the provision of welfare services for disabled persons."

The panel analysed the definitions of "disabled", "illness" and "welfare services for disabled persons" , in the 1998 Act, s.275 of the National Health Service Act 2006 as amended, s. 29(1) of the National Assistance Act 1948 and in the Equalities Act 2010.

The appeal property provided a resource for clients' use, space for them to meet with the staff and an office area for administration of those activities. The organization's Memorandum of Association had the following objects clause: "included but not .. restricted to the following….:

(i) to provide services and facilities enabling disabled and other disadvantaged persons to obtain employment or to undertake work and to provide sheltered employment for disabled and other disadvantaged persons"

(ii) to provide and/or operate supported placement schemes enabling disabled and other disadvantaged persons to take up employment in the community".

Continued on page 4

Interesting VT Decisions — Non-domestic rating

Continued from page 3

The appellant's Finance Director referred to the contract with Working Links (Employment) Ltd ("Work Choice contract") and the funding agreement with Bristol City Council ("Bristol Futures contract"), and confirmed that the premises were wholly used for the provision of services under those contracts. The Work Choice contract expressly provided that all candidates must be disabled as defined by the Equalities Act. Customers under the contract were referred from the JobCentre Plus Disability Employment Advisor or a statutory referral organisation. The Bristol Futures contract was made to establish a network of Work Clubs across Bristol providing targeted help for clients with mental health and autism related disability.

All but two of the employees working at or from the premises were exclusively concerned with the provision of services; the other two managed those services. None of the clients was under 18, evidenced by the fact that they were referred from Job Centre Plus and examples of referral forms presented. Staff did not carry out assessments of disability as they were not medically qualified; the assessment of the referring organisation was accepted. Nor did the appellant have the legal right to request such information to be provided by its customers or insist on its production by their medical practitioners.

The valuation officer (VO) considered that some of the 155 customers' conditions were not qualifying disabilities for the purposes of the exemption. Noting that the onus was on the appellant to prove the exemption applied, the VO considered that there was no restriction preventing the offer of welfare services at the premises to persons under 18 therefore para16 (1)(b) could not be satisfied. The VO also saw as a factor that the appellant might be entitled to discretionary relief. The panel did not consider this to be a basis for deciding against exemption if the appellant was entitled to it. Finally, the VO argued that the appellant had not demonstrated that the premises were wholly used for the purposes of a qualifying activity by disabled persons.

The panel was guided by interpretations in the decisions of the Lands Tribunal in *Halliday (VO) v Priority Hospital Group of the Nottingham Clinic* [2001] RA 355, and *Chilcott (VO) v Day* [1995], for "training" and "keeping suitably occupied''. Being constrained to apply these interpretations from two former Presidents of the Lands Tribunal, the panel could not find that the appellant was entitled to the exemption under para 16(1)(a).

However, in considering the exemption under para 16(1)(b), the panel agreed that the courses, advice and support provided were capable of being welfare services for disabled people because they were arrangements which a council may, with the approval of the Secretary of State, make for promoting the welfare of persons to whom s. 29 of the 1948 Act applied. The services provided specialist advice, intended to help disabled people overcome some of the major effects of disability, namely difficulty in applying and being interviewed for and then holding down a job at an appropriate level in the market. The panel therefore decided that the services or facilities provided were also of the type referred to in the National Assistance Act and accepted the appellant's evidence that its clients were over 18.

As to whether the clients were disabled persons for the purposes of the exemption, the panel looked at the terms of the contracts and noted that the Job Centre Advisor would ensure the eligibility criteria for Work Choice had been met. Statutory guidance on the definition of disability under the Equality Act referred to disability arising from a wide range of impairments, including dyslexia, learning difficulties and personality disorders. The panel tended to agree with the VO that some of the clients' conditions such as "anxiety" and "anxiety and poor social skills" may not appear to fulfill the definition. However it considered that the appellant was unlikely to be deliberately breaking its contracts in this regard, and in any event, the relative number of clients with such conditions was not of legal significance.

The panel did not consider that the use of the premises for management of the staff in performance of both contracts, or operational use for the Work Choice contract and some training for the Bristol Futures contract, meant that the premises were not being wholly used for the provision of welfare services for disabled persons. The disabled persons did not have to be physically present at the premises for them to have the benefit of services planned, organised and operated from the premises.
The appeal was allowed.
Appeal No: 011618390764/537N10

'Boris bike' docking station – material reduction

The panel rejected a submission by the appellant that the installation of the rack of cycle hire docking stations outside the entrance to the office block in the centre of warranted an 8% reduction in the rateable value.
The panel was not persuaded by the appellant's argument that, as this installation prevented parking outside the building's entrance and affected the appearance and perceived status of the building, it would be likely to act as a disincentive to the type of prospective tenants who would be looking to rent office accommodation in this building. Having considered the rental evidence presented, the panel did not find that this was sufficient to show that the rental market for offices at

the appeal property was below that for offices in comparable buildings or that, if such a difference did exist, it could be attributed to the affect on values of the change in the locality - the installation of the cycle racks.
Appeal No: 599017286217/088N10

Interesting VT Decisions — Non-domestic rating

Harrods, Brompton Road, Knightsbridge

A methodology for valuing Harrods for the 2000 rating list was established at the Lands Tribunal in *Harrods Ltd v Baker (VO) [2005]*. The sole disputed issue raised by the appellant before the VTE panel for this appeal related to the effect of the hereditament's location on its value. This arose because the value in the 2000 list was arrived at by reference to the rateable values of other department stores in Oxford Street.

The Lands Tribunal explained its conclusion that there was no need to make a location adjustment, even though "*it is clear that Knightsbridge is a quite different shopping centre from the Oxford Street/Regent Street area. It is very much smaller, it has a much lower pedestrian flow, and it is dominated by and dependent on one store, Harrods. Because of the different nature of Oxford Street and Knightsbridge any direct comparability between them is clearly lacking. The judgment we have formed, however, is that Knightsbridge is as good a location for Harrods' operation as Oxford Street is for the operations of the department stores that are agreed to provide the comparables in this case.*"

For the 2005 appeal, the appellant suggested that it would not be correct to assume parity with Oxford Street values had continued. Changes and improvements in the attractiveness of Oxford Street had been reflected in an increase in the overall price per m² of the three main comparables. In the opinion of the appellant's experts, the locality of the appeal hereditament had not improved and there was no justification for any increase in the price per square metre.

The panel agreed that there should be no presumption that the Lands Tribunal's characterisation as at 2000 would remain unaltered as at 2005, or that the factors identified were an exhaustive set of criteria to be applied. The use of information not presented at the Lands Tribunal and alternative ways of assessing information was not, in the opinion of the panel, precluded, provided it conformed to the underlying principles and methodology set out in the judgment and was relevant to determining the value of department stores.

In its decision, the Lands Tribunal stated, "*We do not think that any assistance in valuing Harrods is to be derived from Zone A rates, which reflect the attractiveness of the location to the non-department store retailer*". The panel considered that using Zone A values to compare the relative attractiveness of the two locations to non-department store retailers was of limited evidential value. Firstly, they were clearly in a different market. Secondly, they plainly reflected the different and differing dynamics of supply and demand in the particular market. Thirdly, they were rejected as a legitimate tool for comparison by the Lands Tribunal.

The panel accepted that appellant's expert's evidence concerning trends in rent review data showed Zone A shops in the prime part of Brompton Road were commanding no higher rent in 2005 than in 2000, as against prime Oxford Street rents being about 11% higher. However, the panel was not satisfied that this evidence provided any assistance in assessing the value of the subject hereditament because they related to smaller shops which were not comparable to a very large department store, operating in a different market and subject to different supply and demand factors.

Questions were raised about the methodology and reliability of the footfall data presented and its interpretation. The panel agreed that no reliable conclusions could be drawn from the evidence of footfall and it was not sufficient to depart from the Lands Tribunal's consideration of this factor.

The panel interpreted the proper test to be applied according to that judgment was not whether Oxford Street had become more attractive than Knightsbridge to department store retailers, but whether in 2005, taking into account the changes at both Oxford Street and Knightsbridge, the locations were still equally good for the Oxford Street operators and Harrods respectively, given the nature of the department store operations being carried on. The respondent contended that all of the key components of the Lands Tribunal's decision on location remain unaltered. Harrods remained dominant in Knightsbridge and remained highly suitable for the uniqueness of Harrods.

The panel agreed with the VOA that to value Harrods based on a perception of "no change" from the 2000 List would be to value it on a radically different basis to all of its comparators. Rental evidence and an agreed assessment on the 2005 list for Harvey Nichols department store indicated the suitability of Knightsbridge to Harvey Nichols and that its value from 2000-2005 had matched Oxford Street. This evidence lent support to the view that, in 2005, Harrods had an outstanding location for its particular business, in the same way as it did in 2000. The relative suitability of Knightsbridge to Harrods and the relative suitability of Oxford Street to the department stores situated there remained, subject to the adjustment proposed by the respondent. The appeal was therefore dismissed and the rateable value of £19,300,000 confirmed.
Appeal No: 560010118144/088N05

Interesting VT Decisions — Non-domestic rating

Pigeon loft

The appellant contended that two timber constructed pigeon lofts should be deleted from the list because DEFRA classified pigeons as poultry and pigeon lofts sited on allotments were exempt.

The first issue for the VTE panel was whether or not the breeding of pigeons met the qualifying criteria for agricultural exemption (Schedule 5 of the Local Government Finance Act 1988). The appellant argued that, according to DEFRA, 'poultry' included chickens, turkeys and pigeons. His pigeons he said were livestock since their surplus eggs were eaten and their manure was used for fertilising the surrounding ground. The panel rejected this argument since the pigeons were not being bred for their meat or their eggs, for the primary purpose of selling them on to supply the national food chain but because the appellant was a pigeon fancier who kept the birds as a hobby. Whilst it was accepted that the appellant ate some of the eggs produced by his pigeons, this was merely incidental to the main purpose of keeping them. Similarly, the panel found that the production of manure was a factor ancillary to his keeping pigeons in the lofts.

Sch 5, 2(1)(d) confirmed that an allotment was exempt. The appellant argued that his field, on which the pigeon lofts were sited, was actually an allotment. The council had confirmed to him that no registration or licence was required to establish a valid allotment. He contended that since the next use of that land was to be as an allotment then it should be treated as a potential allotment. The panel rejected the appellant's argument as it made a finding of fact that the land on which the pigeon lofts were sited was merely a field on the material day of 3 April 2010. Photographs provided by the valuation officer showed a field, alongside other fields of grazing land. None of the land on which the pigeon lofts had been constructed had been cultivated or sectioned into plots and the appellant had himself confirmed that there were no crops there at the material date; vegetables had been planted from around April 2011. Schedule 5, 2(2)(d) excluded from exemption land used mainly or exclusively for purposes of sport or recreation. Despite the appellant's assertion at the hearing that the time spent racing his pigeons was minimal, his proposal to the VOA showed that his intention in buying the land was in anticipation of his retirement, for "growing food on the allotment and racing my pigeons on Saturday afternoon".

In dismissing the appeal, the panel held that:

- production and consumption of surplus pigeon eggs did not make the appellant a poultry farmer;
- at the material date the land did not constitute an allotment.

Appeal No: 233519571972/134N10

West London Aero Club – estoppel *per rem judicatam*

The issue before the VTE President was whether the valuation officer (VO) may, when informed of a material change of circumstances (MCC), exercise a power to correct what he takes to be an error in the valuation where that valuation has been previously determined by a valuation tribunal.

The error in a tribunal decision from 2008 (apparently attributable to the VO himself) concerned inaccurate areas for two of the hangars that formed part of the hereditament, so that they were shown as smaller than they actually were. This had not been spotted at the time of the decision. The VO therefore felt able to increase the RV, even once the reduction attributable to the MCC had been applied.

The President did not agree with the VO representative's contention that his revaluation had nothing to do with the VT decision and was a separate decision-making process that could not be constrained by an earlier tribunal decision. Nor did he agree that the judgment in *Goulbourn v Cowell (VO) [2011]* supported this argument.

The President explained that "Once a decision has been litigated and a decision rendered, that decision, right or wrong – subject only to any provisions as to review or appeal – is binding on the parties. It settles the matter for all time". The President went on to consider the common law doctrine of *res judicata* and estoppel *per rem judicata,* the relevant case law and the statutory framework, none of which supported the VO's case. Professor Zellick also considered whether abuse of process had occurred and concluded that it had, although it was unnecessary to decide the appeal on those grounds.

In conclusion the President stated that the VO could not re-assess or revalue a hereditament during the life of a rating list where a Valuation Tribunal has determined the RV except on the basis of and only to reflect a material change of circumstances or one of the other grounds specified in regulation 4(1). "Any change within the life of the list must start with the Tribunal's determination of value (however wrong the VO may believe, rightly or wrongly, it to be)".
Appeal No: 035510474737/165N05

Where we show an appeal number, this can be used to see the full decision on our web-site, valuationtribunal.gov.uk.
Click on the Listings & Decisions tab and use the appeal number to search Decisions.

Interesting VT Decisions— council tax

'Eco-houses', Milton Keynes

The appeals were in respect of two recently built "Eco-houses". According to developers these were "mass factory produced houses, erected in three days, incorporating top technology, top energy performance, varied house designs, a choice of cladding materials and a wide variety of estate layouts." In designing these houses "the challenge was to build homes with a construction cost of £60,000, at 2005 prices, and a minimum space requirement of 76.5m² gross internal floor area alongside a demanding set of design and quality standards".

Nothing directly comparable to the appeal properties existed in 1991 so the respondent provided evidence of sales and banding on traditionally built dwellings of equivalent size and accommodation to support the entries in the list. In deciding these appeals the panel concluded that, while location is key in property valuation, the unusual nature of the construction method for these properties and the cost of building them would be reflected in their open market value and was therefore relevant to their council tax banding.

The panel decided that, taking account of the nature of the build of these properties and the submission from the appellants that they would have had to pay more for more traditionally built properties of similar size and accommodation, the banding should be reduced.

Appeal No: 0435623813/037CAD

Occupancy restriction

The appeal property was a three bedroom detached house measuring 162m², without a garage or mains drainage. It was in the grounds of a commercial plant nursery and could not be sold separately from the business. It had been built in 1996 with a severe occupancy restriction which meant that only a person engaged in full time employment in the nursery business could legally reside there.

The listing officer had served a notice to insert a band C composite entry in respect of the detached dwelling with effect from 7 December 1996.

In support of their respective cases, both parties referred to comparable properties in the locality and to the fact that an occupancy restriction would reduce the value of a property by a minimum of 30%. When considering this evidence, the panel was mindful that unlike the comparable properties submitted, the appeal dwelling, did not have a driveway, garage, or garden and was not connected to the mains drainage. The panel was of the view that these points along with the access through the nursery and the occupancy restriction would have a severe affect on the value of the property. Having considered the sales evidence, the panel determined that the value of the appeal property as it stood in December 1996 would have been within the range of band B (£40,001-£52,000) and the appeal was allowed.

Appeal No: 1355637295/254CAD

Narrow boat

The VTE panel confirmed a listing officer's decision that a canal mooring was a dwelling for council tax purposes as it was used by the

appellant to moor his narrow boat, which he confirmed was his main residence.

Although the appellant moved his boat away from the mooring on occasion and the terms of the lease he had for the mooring specifically excluded it from being used as a residential mooring for a full twelve months in the year, the panel was satisfied that, on the facts of the case, the appellant's only use of the mooring was for his residential narrow boat. It seemed to the panel that, even when the mooring was not in use by the appellant for his boat, when next in use it would once again be for residential purposes and so remained a dwelling, even during periods when it was not in use.

Appeal No: 0405615609/037CAD

Class E exemption

The issue was whether the circumstances fulfilled the criteria for Class E of the Council Tax (Exempt Dwellings) Order:
"an unoccupied dwelling which was previously the sole or main residence of a person who is an owner or tenant of the dwelling and who—

(a) has his sole or main residence elsewhere in the circumstances specified in paragraphs 6 or 7 of Schedule 1 to the Act" [meaning in a hospital as a patient or in a care home where the person receives treatment or care].

(b) The person must have been a "relevant absentee", that is resident in a hospital or care home, for the whole period since the dwelling last ceased to be his sole or main residence.

Mr and Mrs X had jointly owned and lived together at the appeal property. Mr X was admitted to hospital in May 2010 and in October 2010 he moved permanently into a nursing home. The billing authority (BA) had treated him as jointly resident with his wife at the appeal property until the date he moved into the nursing home, which was then treated as his sole or main residence. Mrs X remained as the sole occupier of the appeal property until she died in August 2011. Mr X was held liable from that date for council tax as the owner of the unoccupied but furnished property, with a 10% discount in the amount of council tax payable. The appeal property became unfurnished on 31 December 2011 and six months' exemption under Class C was granted. *Continued on page 8*

Interesting VT Decisions — council tax

Mr X died in April 2012. The appeal against the BA's refusal to grant exemption under Class E for the relevant period was made by Mr Y, in his capacity as executor.

It was not disputed that Mr X's sole or main residence continued to be the nursing home until he died and so had been a relevant absentee for the whole of the period since he ceased to be resident at the appeal property. The sole issue between the parties was whether the appeal property was previously the sole or main residence of Mr X. If it was, then exemption under Class E was applicable for the period concerned.

The VTE panel noted that, in his submission, the BA's representative had imprecisely described Class E as relating to an unoccupied dwelling where the former resident had become a long term patient in a hospital or care home. The legislation does not use the term "the former resident" and its use by the BA was an indication of the way in which it had interpreted the statutory wording of Class E. This was confirmed by the BA representative's subsequent contention that Class E did not apply because Mr X was not the person who last occupied the appeal property as his or her sole or main residence.

The panel found that the BA's interpretation was not the only possible interpretation. The question was whether the wording of Class E required the appeal property to have been last occupied as the sole or main residence of Mr X, or whether it was sufficient that he was formerly resident at the appeal property, albeit not the last occupier.

The panel found the latter interpretation to be correct. It considered that Class E was introduced with the intention of providing relief from council tax to persons permanently in hospitals or care homes who were unable to return to the homes that they own or continue to have an interest in that would otherwise render them liable to the tax. The interpretation by the BA that the appeal property would only be exempt if Mr X was the person who was last resident in it served to frustrate that intention.

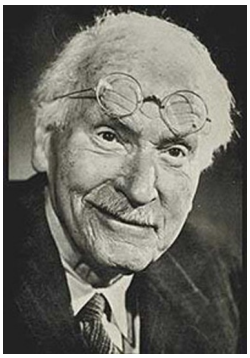
One meaning of 'previously' is 'at an earlier time', and if this meaning is adopted for the purposes of Class E then it is clear that the criteria for exemption were met in this case. The panel also had regard to the different wording of another exemption class, namely Class K, which relates to "*an unoccupied dwelling which was last occupied as the sole or main residence of a qualifying person*". If the BA's interpretation was correct then the panel saw no reason why Class E should not have been worded similarly to Class K.

The panel therefore concluded that the appeal property had fallen within Class E for the period in dispute and allowed the appeal.

Appeal No: 3315M96513/176C

Student discount disregard

The appellant was training to become a Jungian analyst with the Society of Analytical Psychology (SAP). The billing authority (BA) had rejected an application for student discount on the grounds that the course and educational establishment did not fulfil the criteria.



The BA contended that it was not a structured course as someone completing the course over six years compared with someone completing it over four years was not doing the same number of hours per week; the course was tailored to the individual student. The BA also contended that SAP did not fulfil the criteria for being a prescribed educational establishment.

The appellant agreed her course was unusual. It included a clinical component (working with patients) which was fundamental to the course and qualification and was rarely completed within four years.

The VTE panel concluded that SAP was a prescribed educational establishment as it appeared in the UK Register of Learning providers and had been established to provide training and education in analytical psychology and fulfilled the conditions in Schedule 2 part 1 of the Council Tax (Discount Disregards) Order 1992.

The panel also considered that the clinical component of the course was fundamental to the qualification and therefore should be included within the overall hours, along with study, coursework, workshops and meetings. The panel was satisfied that the appellant achieved the minimum study hours to satisfy the condition in the legislation.

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Editorial team:
Diane Russell
Tony Masella
David Slater

Chief Executive's Office
VTS
2nd Floor
Black Lion House
45 Whitechapel Road
London
E1 1DU
Ceo.office@vts.gsi.gov.uk

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