Issue 30

October 2013

VALUATION TRIBUNAL SERVICE

VALUATION TRIBUNAL SERVICE OCTOBER 2013

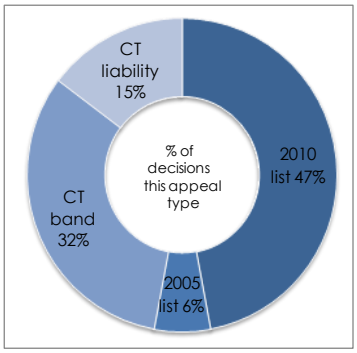
Valuation in Practice

News in Brief

Appeal statistics, 1 April to 30 September 2013

These are some headline figures for the half year period:

- 628 hearing days convened, 60 fewer hearing days than in the same period last year
- 1,713 full decisions issued - about 800 of these related to non-domestic rating 2010 list appeals, 100 were for 2005 list appeals, 550 for council tax valuation and 250 council tax liability appeals



- 23,000 appeals struck out
- 27,000 appeals postponed or adjourned
- 15,000 settled without the need for tribunal determinations
- Over 19,000 statements of case, 4,000 more than for the same period last year; almost 8,000 of these were for the London area
- Notice of hearing given for 2010 rating list appeals was over 10 weeks in 30% of cases, and between eight and 10 weeks in 69% of cases
- 67% of hearing notices for rating appeals were sent electronically
-

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Council tax reduction appeal statistics 1 April to 30 September 2013

Of 248 appeals received, 16 were struck out and 57 were pending further information. Three cases had been heard, with 16 more listed and another 48 ready for listing.

DCLG publications

The Government has exempted from empty property rates, for the first 18 months, all newly built commercial property completed between 1 October 2013 and 30 September 2016, up to state aid limits. In September, DCLG issued a summary of the consultation responses on this, and *Business Rates – New Build Empty Property Guidance*, aimed at supporting councils.

The Department issued a press release on 14 August 2013 stating that the level of small business rate relief was £900 million for 2012-13. It also published a *Statistical Release on NNDR collected by Local authorities in England 2012-13.* (http://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/national-non-domestic-rates-collected-by-councils)

In August a consultation paper, *Council Tax - National council tax discount for annexes* was issued with responses called for by 8 October 2013. This proposed a discount for annexes used by the occupier of the main building or a member of their family. It asked what the level of discount should be – 10%, 25%, 50% or 100%, and whether there would be additional costs for councils to administer such a system. Responses are currently being analysed by DCLG and further information can be found at: http://www.gov.uk/government/consultations/council-tax-national-discount-for-annexes

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

Decision from the High Court (QBD)

Naz v Redbridge London Borough Council [2013] EWHC (Admin) 1268
The appeal was against a VTE decision that the appellant, as the owner, was the liable person for a house in multiple occupation. On appeal to the High Court, the appellant contended that the VTE should have adjourned the hearing to allow one of the tenants, who was ill, to attend and that it failed to consider that witness's written evidence. He also maintained that the tribunal failed to give due weight to tenancy agreements he presented.

The High Court held that there was a clear error of law on the part of the tribunal on this latter ground, which related to the imposition of a tax. For that reason, the VTE decision had to be quashed and the matter remitted back to the tribunal. In appeals of this nature, it was necessary for the tribunal to properly investigate the terms of the tenancy agreements entered into by the parties to see whether or not each occupier was liable to pay a share of the rent for the whole property. The tribunal's decision and its reasoning was flawed because it relied on a statement from a housing benefit claimant unbeknown to the appellant, the billing authority's inspector's report, a tenant's statement and the results of the billing authority's Experian search. The High Court's earlier judgment in *Preston v Watts* outlined the standard of reasoning which is to be expected when a tribunal relies on factual circumstances to contradict the terms of tenancies entered into by the parties.

However, the High Court did not agree with the first two grounds for appeal, noting that the appellant had not drawn the tribunal's attention to the inability of the witness to give evidence because of her illness and there was nothing in the decision that showed the tribunal had failed to take her written evidence into account, although there was no specific reference to that evidence.

Decisions from the Upper Tribunal (Property Chamber)

Aviva Investors Property Developments Ltd and PPG Southern v Whitby (VO) and Mills (VO) RA 3 and 6/2011

This was a lead case for many similar disputes. Four warehouses had been entered into the 2005 rating list before any completion notices had been served. The issue was whether each was ready for occupation on the date it was entered into the list.

The appellants' expert witness said that at the material day the appeal properties were in a state of "practical completion", the point at which the building contract was almost finished; the extent of completion would depend on the level of finish required by the client. His view was that the focus should be on whether there could be occupation for the intended purposes; on this basis, the warehouses were not complete for rating purposes at the material day, lacking essential features. In three properties these features were power and lighting to the warehouse areas and office compartmentalisation. In the fourth property, again power and lighting were absent from the warehouse areas and connection to the gas supply also needed to be carried out, so that heat and hot water were available for the offices.
The valuation officers (VOs) argued that the properties were capable of beneficial occupation for their intended purposes at the material day. They produced comparables that functioned without power distribution, lighting, heating and hot water and office partitioning. Further works that were necessary for the appeal properties were minimal (and during the summer, when the properties were entered into the rating list, central heating was unlikely to have been required).

The Upper Tribunal noted that the VOs had changed their minds about the importance of electric lighting over the course of time; the VOs said this had come about following more detailed investigations and inspections, and the discovery of comparables. The Upper Tribunal rejected this reasoning and agreed with the original opinion the VOs had appeared to hold – that there was a need for warehouse lighting for them to be capable of beneficial occupation for the purposes the buildings were designed for.

In allowing the appeals, the Upper Tribunal reiterated a point from the key case in this area, *Porter (VO) v Trustees of Gladman SIPPS [2011,* that these issues would have been avoided had the billing authority served completion notices at the point of "practical completion".

Esso Petroleum Co Ltd v Walker (VO) RA 45/2011

The issue was whether there should be a separate entry in the list for the petrol filling station element of a motorway service area.

Esso owned the whole site though much of this was leased to Roadchef; Esso retained the petrol station but Roadchef staff ran it for Esso on an agency basis and according to Esso's operating standards handbook and 'integrity toolkits'. Throughput was measured remotely by Esso, who carried out regular maintenance and inspections of the station.

The VTE determination had been that Roadchef was in paramount occupation of the service area and it was one unit of assessment.

The appellant's expert witness considered Esso was in occupation of the petrol station by means of its ownership of the fuel and the control it exercised over the operations.

The VO argued there was an operational, physical, administrative, policy and legal connection between the petrol filling station and the motorway service area as a whole; it was a single hereditament, being a single business in single ownership.

The Upper Tribunal found that the petrol station was geographically distinct from the rest of the service area. It also found that Esso occupied the retained land for its primary business interest, selling fuel, but Roadchef, being responsible for day to day management of the petrol station, was also occupying the site for its purposes. It was paramountcy of the petrol station and not the whole site (as the VTE had considered) that was the issue. Case law underlined "the essential factual test of paramountcy was control". The degree of control exercised by Esso over Roadchef in operating the petrol station led to the conclusion that Esso was in paramount control of that element of the motorway service area and so it formed a separate hereditament.

Lidl (UK) GmbH v Ryder (VO) RA 1/2012

Lidl sought a reduced rateable value (RV) of £172,500 from £210,000 for its Ashford supermarket. This was on the basis that it was an older, 'second generation' store, having previously belonged to Safeway, and that Lidl's business model (simple, standardised store formats with a limited range of brands) relied to some extent on maximum operational efficiency.
The appellant's representative contended that the hereditament suffered from a below standard car park, the presence of six large pillars in the sales area and the fact that the property was on two levels. He compared the Ashford store to other 'second generation' Lidl stores in Horley and Tonbridge, and argued that there was more food retail competition in Ashford. Turnover figures for these stores for one year of trading were provided, but were considered of limited value and insufficient to change the figure ultimately determined by the Upper Tribunal.

NJ Rose FRICS agreed with the valuation officer (VO) that there was no reason to exclude potential comparables because they were purpose built by Lidl, but said that relevance was likely to be greatest where the properties had similar characteristics to the appeal property. He accepted the view of the VOA's specialist rating expert that increased competition had a depreciating effect on rental value. NJ Rose analysed details of the catchment area, competition and relative sizes of the Tonbridge and Horley stores. His conclusions were that the Tonbridge store was less valuable than the appeal property, and that the Horley store was some 5% less valuable than it. Accepting the VO's analysis of the rents (£133.44/m² for Tonbridge and £142.43/m² for Horley), he decided that the appeal property's rental value would be £135/m² - £150/m². An RV of £182,000 was determined and the appeal allowed to that extent.

Calver v Thomas (VO) RA 3/2013

The Valuation Tribunal for Wales (VTW) had determined an appeal on three self-catering cottages in Tenby. The rateable value (RV) was £7,400 but following a review of the assessment and an alternative receipts and expenditure valuation, the VO contended at the Upper Tribunal for an RV of £5,900 or dismissal of the appeal. The VO's view was that the hereditament was a single, contiguous unit; VTW had accepted this on the basis of most of the comparables produced as evidence. The Upper Tribunal concurred: this was a single hereditament.

The appellant wanted each unit assessed separately (small business rates relief would then be applicable) and believed VTW had unquestioningly accepted the VO's evidence and valuation. However the appellant had produced no analyses, calculations or evidence of their own but claimed the RV should be £4,500, on the basis that it "seemed fair". VTW had therefore relied on the VO's valuation on the basis of bed space. The Upper Tribunal found the revised RV to be

Interesting VT decisions — Non-domestic rating

Staircase

The appeal concerned a hereditament of offices on three floors. The sole issue was whether an internal staircase connecting the three floors and built by the appellants (with the landlord's consent) should be included in the net internal area (NIA) and, if not, whether there should be an end adjustment for tenants' alterations (+1.2%).

The appellant's representative claimed that paragraph 3.14 of the RICS Code of Measuring Practice would support excluding the staircase from the NIA as fitting the category of 'stairwells, lift-wells and permanent lift lobbies'. At the material day the staircase existed.

The VOA representative cited paragraph 3.6 of the RICS Code, which said that ramps, sloping areas and steps within usable areas should be included. He also contended that a stairwell differed to a staircase made up of steps, and that under NIA5 of the Code it was not normally appropriate to exclude demised usable space which had been converted by the occupier.

The panel had regard to the fact that there had been no increase in rent for the appeal property because of the addition of stairs and that other buildings referred to, where similar changes had been made, had seen no increase in the rate per m² applied. The panel did not agree with the VOA that the staircase was a temporary structure, because its removal would require substantial structural alterations to the three floors.
Valued in accordance with the *rebus sic stantibus* rule, the panel found for the appellant and reduced the rateable value from £1,450,000 to £1,440,000.

This decision has been appealed to the Upper Tribunal.

Appeal no: 503018685043/539N10

Lake District National Park Authority car park and premises

The appeal hereditament was a surfaced car park for 156 cars in marked bays, and tourist information centre with ancillary meeting rooms, kitchen and public convenience. It was about ten minutes' walk from Glenridding Common, 1,052 hectares of open access.

The proposal sought deletion of the appeal hereditament from the list. In dispute were whether

- the hereditament was a park within the meaning of Schedule 5 (see below);
- the Lake District Park, Glenridding Common or public walks constituted a park;
- the car park & premises were ancillary to any of the above; and
- the charging regime at the car park resulted in it meeting the requirement of "free and unrestricted use".

This was a lead appeal as determined at a case management hearing in October 2011. The 22 stayed appeals (also hereditaments in the Lake District) would remain so, until a month after the final decision was issued. Representations would then be taken in the stayed appeals.

The definition of an exempt Park is found in the Local Government Finance Act 1988, Schedule 5, Section 51:

> (1)(a) has been provided by, or is under the management of, a relevant authority or two or more relevant authorities in combination, and
> (1)(b) is available for free and unrestricted use by members of the public.
>
> (2) The reference to a park includes a reference to a recreation or pleasure ground, a public walk, an open space within the meaning of the Open Spaces Act 1906, and a playing field provided under the Physical Training and Recreation Act 1937.

The VTE Vice President had determined at the case management meeting that the Lake District National Park Authority (LDNPA) was a 'relevant authority' within the meaning of Schedule 5.

The case law considered by the Vice-President and the Schedule made it clear that the definition of a park included areas used for recreation by the public whether or not they were laid out formally as parks; in some cases they were underpinned by statutory provisions, and in other cases not. The appellant's representative argued from the case law that in assessing whether an area was a park, the focus should be on actual use of the land by the public, having regard to any controls over its use imposed by statute, or trust. Here, the hereditament was held under statutory powers which were consistent with free and unrestricted use by the public, which was how the hereditament and the wider park were used. The Vice-President agreed that Glenridding Common was a park within the meaning of Schedule 5.

The valuation officer (VO), by reference to *Fenwick (VO)* v *Peak Park Planning Board*, argued that the Lake District Park was not a park within the meaning of the Schedule but a patchwork of land in multiple ownership and occupation, comprising many separate hereditaments. The appellant disputed that the Lake District Park needed to be one defined hereditament. Counsel argued that the objective behind the exemption was to accept that where land was used by the public for recreational purposes and was provided or managed by a relevant authority to promote that use, then the landowners were custodians for the public. In support of this contention were the decisions *Sheffield Corporation* v *Tranter (VO)* [1957] and *Hampshire County Council* v *Broadway (VO)* [1982] where a number of hereditaments made up the park.

The Vice-President noted that, if each hereditament in the Lake District met the full criteria of the exemption and fell within his determination for Glenridding Common then they were all exempt. It would be wrong to determine that each hereditament was exempt but not the complete park.

The appellant's witness conceded that only one public walk actually abutted the car park. The VO said a number of these followed public highways or were along rights of way. The Vice-President agreed that these were public rights of way and that the LDNPA did not provide or manage significant sections of them.

The Vice-President found extracts from *Lancashire County Council* v *Lord (VO)* helpful, being similar to the case before him. He identified questions he believed were helpful when considering this and the stayed appeals:

a) Was facility most suitably located to serve the park?
b) Was the sole reason for the occupation of the facilities to serve the park?
c) Were the facilities obtained acquired only for the park?
d) Did the facilities provided form an integral part of the park?
e) Did the facilities provide any other use other than those of the park? If they did, was that use so very minor that it did not detract in any significant way from the purpose of the facility?
f) Were the facilities under the ownership of the park, or if not, were they controlled and managed in such a way that they could only operate in connection with the park?

He found that the car park and premises met the requirements of questions a - d; the only purpose they existed in that location was to serve the Common. His view on whether the facilities served any other purpose was that the car park was available for use by those visiting the Health Centre, the shops and cafes etc surrounding the car park and that a significant number of car park users were not visiting the Common. On this basis the car park could not be said to be ancillary to the park.

Interesting VT Decisions — Non-domestic rating

The VO had argued that the charging regime for the car park meant that it could not meet the requirement of paragraph 15 (1) (b) of Schedule 5. In *Hampshire County Council* v *Broadway (VO)* it was found that charges for using the car park did not conflict with free and unrestricted use of the park and the car park was held to be exempt. This point was noted for relevance to any stayed appeals.

The Vice-President invited and received submissions of further argument from the parties on the tourist information centre and public convenience. In answering his posed question e above (and if that answer were positive, f), he considered the extensive list of facilities provided by the tourist information centre and concluded that it was an integral part of a visit to Glenridding Common or Helvellyn. But he also found, from the range of other services and items on offer, that it served purposes unconnected with Glenridding Common. It therefore failed the test at question e.

The toilet facilities were free of charge, used by the public and staff of the information centre and open 24 hours a day. Given the use of the car park and information centre by people not visiting Glenridding Common, the Vice-President concluded that a proportion of them would also use the public convenience, so it too failed the test at e.

The appeal was dismissed.

Appeal no: 092516784462/214N05

Validity of completion notice

Beluga House was deleted from the 2000 rating list after being vandalised. It was included in the 2005 list from 2007 but, following the changes to empty property rates, was deleted as being incapable of beneficial occupation. The valuation officer (VO) then entered the property into the list with effect from 20 August 2008, the billing authority (BA) having served a completion notice on it six days earlier.

The VTE President noted that a completion notice may be served on a new building or one where structural alterations carried out to the hereditament have in effect led to the existence of a different hereditament(s). Finding none of the case law cited particularly helpful, the President focussed on the statute and the schedule of works carried out.

He found that the building in August 2008 fell into neither category for which completion notices could be served. He agreed that the works made it possible for the building to be let as two different hereditaments, however it remained a single hereditament. The completion notice served by the BA was therefore invalid and the property was to be deleted from the 2005 list.

Appeal no: 0119M27310/212N05

Workshop on Butler Carnival Park, near Glastonbury

The purpose-built site provided workshop facilities for carnival clubs in the area to construct and maintain carnival floats. The landlord was Glastonbury Carnival Committee.

The units lacked heating and insulation, were of basic construction and subject to a number of planning conditions, including that they

> *"shall be used solely in conjunction with the storage, construction and maintenance of carnival floats and for no other purpose whatsoever.*

The appeal property was a double unit, built by the occupier, who paid a ground rent only to the site owner of £600 pa. The other workshops were single units with a rent (£600 per unit) for both building and land. The rateable value (RV) was £12,750.

The appellant's representative said that the rents of the units were the result of arm's length transactions between unconnected parties. They were the only known rents of buildings let to carnival clubs and he said that they fully reflected the ability of the tenants to pay. Starting with the rent of £600 for the land only, he added 5% of the estimated cost of constructing the buildings, excluding voluntary labour, giving a total of £1,216. A second approach was based on the rents for land and buildings passing on the single units on the site and produced an RV rounded down to £1,250. He said, however, that if the VO's approach was preferred, an allowance to reflect the planning restriction and the only possible tenants' ability to pay should be made, and should be in the region of 65%; in cases such as this where there was only one possible tenant or a limited number of possible tenants, then ability to pay should be taken into account.

Continued on page 6

Where we show an appeal number, this can be used to see the full decision on our website, valuationtribunal.gov.uk.

Click on the Listings & Decisions tab and use the appeal use the appeal number to search Decisions.

Continued from page 5
Because of the very restrictive planning condition, which he believed would not be lifted, the only possible hypothetical tenant of the appeal property would be a local carnival club and the actual landlord was the only likely landlord. He added that case law had established that it was inappropriate to depart further from reality than was necessary under the rating hypothesis.

The Vice Chairman of Mendip Carnival Club, as a witness, said that there were now only 40 to 50 carnival clubs in the county; financial pressures had caused numbers to fall. Each club built a float and for two weeks or so in November, when the carnivals took place, the floats went all over Somerset. The money to build and maintain the floats came through fund raising by the clubs. Club members were unpaid volunteers who built and maintained the floats in their spare time. No profits were made and it was a good year if the club was able to cover its costs.

Premises used by carnival clubs had not previously been rated. The Vice Chairman said that his club had not been able to meet the unexpected rate liability and owed a substantial amount in arrears; other clubs in the county were in a similar position. It was unrealistic to suppose that anyone other than a local club would consider occupying the property.

The VO contended it was necessary to value the appeal hereditament as an industrial/workshop unit. The building was basic, as were the services provided to it and he had made allowances for lack of heating and insulation. An end allowance of 25% had been applied to reflect the planning restriction, and the VO submitted that the resultant RV of £12,750 was a reasonable reflection of the rent that a unit of this type might reasonably be expected to achieve if let on the open market.

The panel agreed with the VO that the rent on the appeal property was of no assistance, nor were the rents of the other units at the site. Even though the landlord had no legal relationship with the clubs, it was intrinsically linked to the clubs; it existed solely to ensure that the clubs had a permanent home and workshop space, so they could produce floats every year.

The rents were determined by the costs of maintaining the site and the VO submitted they were effectively service charges to cover costs and provided no indication of open market rental value. It was therefore not unreasonable to suggest that the hypothetical landlord would look beyond local clubs to the 40-50 others in Somerset and consider bids from these to achieve a rent that was above maintenance costs.

The planning restriction severely limited the use of the property and in the VTE panel's opinion an allowance of at least 15%-20% was warranted, as given for some of the comparables cited by the parties. The panel found that, because of the restriction, the only realistic potential tenants of the property were the appellant club and other reasonably local carnival clubs. It did not agree that carnival clubs in more distant parts of the county would consider it suitable, as club volunteers worked on their floats in their spare time and it seemed to the panel that they would be reluctant to travel significant distances to do so. The panel agreed that, where the number of possible tenants was limited, it was appropriate to take into account their ability to pay and they clearly had limited funds. These two factors warranted a significant end allowance, of 50%, to reflect fully their effects on value.

The panel adopted the VO's basic price of £30.25 per m², less 7.5% to reflect lack of heating/insulation. Applying an end allowance of 50% resulted in a revised RV of £8,500, which the panel considered to be fair and reasonable and the appeal was allowed to that extent.

Appeal no: 330519702537/537N10

Fitness studio

The appeal property was located in a converted pig shed. The building was initially converted to offices, to let as a single unit. It was subsequently split to form two hereditaments. The occupier of the appeal hereditament, which had never been let as an office, obtained planning permission for use as a fitness studio and made minor alterations to provide shower facilities.

At the hearing the appellant argued that her rent of £8,400 pa (agreed in June 2011), was split 50:50 between rent and service charge and provided a detailed list of works done by the landlord under this service charge (maintenance of grounds, car park etc). She referred to other leisure hereditaments in the general area to support her contention that a RV of £4,200 was reasonable.

The VO contended that the rent was too remote from the AVD to be of assistance and relied on rents from offices in similar type locations to support his proposed RV of £9,400 (reduced from the existing assessment of £10,750).

The panel found that the appeal property was not an office; vacant and to let it was a fitness studio. The VO's comparables were given little weight and the panel preferred the appellant's evidence from properties in the same mode or category of use. The assessment was determined at RV £6,300.

Appeal no: 191519887851/053N10

Interesting VT Decisions— council tax valuation

State of repair

A 17th century house was bought for £550,000 in September 2010 on the basis of a surveyor's report. The appellants then found that the timber frame needed repairs costing £200k-£340k and they contended that the Grade II listed house was unsellable, with a 'value' of around half the purchase price. The surveyor admitted liability but the loss had to be proved before compensation was agreed. Until then the appellants could not move out or do anything to make the home more comfortable.

The listing officer contended that band F was correct as the relevant legislation, supported by case law, assumed the property was in a state of reasonable repair.

Although the appellant's original proposal sought deletion from the list, the appeal was made seeking a reduction in banding from F to D. However, the alternative argument for a reduction in the banding because of the state of disrepair could not be allowed, as once it was accepted that the appeal property met the requirements of being a dwelling it was assumed to be in a reasonable state of repair, in accordance with the valuation assumptions within regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992. The High Court's judgment in *R v East Sussex Valuation Tribunal ex parte Silverstone (1996)* was authoritative regarding the statutory assumption.

No reliable sales evidence was tendered by the appellant to show that the appeal dwelling, in a state of reasonable repair, would have sold for less than £120,000 on 1 April 1991 and the panel dismissed the appeal.

Appeal no: 3245610165/234CAD

Band increase following deletion

Following advice received from the billing authority (BA) the appellants applied to the listing officer (LO) to have their home removed from the list because it was uninhabitable whilst renovation and works were being carried out. The LO agreed that the property no longer constituted a chargeable dwelling and it was deleted. After being notified by the appellants that the works were almost complete, the modernised extended bungalow was entered in the list as a new entry at band E.

Seeking reduction to band D, the appellants felt they were badly advised by the BA and with hind-sight should not have asked to have the property removed from the list. They had understood from the VOA/ Government website that, under current legislation, a band could not be increased for extensions or renovations made by the current owner/occupier until the property was sold. The panel found that this regulation only applied where the property had not been deleted from the list during the material increase.

From evidence of the works, including the appellants' own contention that the property had been stripped back and was uninhabitable during that time, the panel found that the LO had correctly deleted the original entry from the list, as it was no longer capable of actual and beneficial occupation.

In the absence of a sale of the subject dwelling at or around 1 April 1991 (the antecedent valuation date, AVD), the panel looked at sales evidence for other bungalows in the neighbourhood . On balance, this evidence led to a determination that, had the appeal dwelling sold in the open market at the AVD, subject to the statutory assumptions and in its current physical state, it would have achieved a figure within the range of values for band E.

Appeal No: 2250626815/084CAD

Validity of proposal

The previous owner of the subject property had raised the level of its backyard to allow on-site parking. When the appellant bought the house in 1993 a survey showed damp problems in the kitchen caused by the raised level of the yard breeching the damp proof course, so she had the backyard lowered, losing the parking space.

The appellant had recently decided that the banding of her property was excessive compared to her neighbours' and had made enquiries with the listing officer (LO) about having it reduced. The LO did not agree to this but, in the course of her enquiries, the appellant became aware of the right to make a proposal on the ground that there had been a material reduction. She therefore made a proposal on this ground referring to the work that had been done to the back yard as the basis of the material reduction. The LO rejected this proposal as invalid arguing that there had not been any material reduction and, in any case, the LO had not been aware of the on-site parking and so no value had been attributed to this.

The panel decided to allow the appeal. It was satisfied that the yard formed part of the subject dwelling (Section 3(4) of the LGFA 1992). The work that the appellant did was in the nature of demolition as it meant breaking up and removing the laid surface. The panel accepted that this work had, in effect been "demolition of part of the dwelling". So there had been an arguable "material reduction" in its value.

The entry in the list was effective from the date the list was compiled and so, as the appellant bought the property in 1993, the panel was satisfied that the material reduction must have occurred after the band was first shown in the list. The panel also concluded that the work was not part of any other operation on the property and while it remedied the damp problem, it was not just a matter of repair but instead involved demolition of part of the dwelling.

The panel thought it was irrelevant to the issue of the right to make a proposal that the part that was demolished had not actually been known about when the LO originally banded the property. As the appeal related only to the LO's notice of invalidity, the panel did not have any jurisdiction to investigate the valuation issues arising from the proposal.

Appeal no: 5570646092/084CAD

Toll bridge and toll house

The appellant claimed exemption from council tax in respect of her dwelling on the basis of two 18th century Acts of Parliament. She acquired a toll bridge and cottage in 2012. The sales details advertised the property as, "A rare capital and income tax free investment"; "… one of the very few remaining toll bridges in England which benefits under statute from a tax free environment in terms of income tax, sale tax (VAT), local taxes (rates/ council tax) and capital taxes . . ."

The toll house had been treated as exempt under Class G (precluded by law from being occupied), which was not relevant, as the BA realised in 2011. The appellant was then billed for council tax and she told the BA that the house was exempt from council tax under the 18th century Acts. The BA rejected this.

The appellant maintained that her home was not a "chargeable dwelling" because of the Acts and it was common ground that there had been no express repeal of the Whitney-on-Wye Bridge Acts of 1780 and 1797. They authorised the construction of a toll bridge over the River Wye to replace a ferry service. The "undertakers" were required to build and maintain a bridge and the Acts gave them various rights and powers, including the toll income and exemption from taxes.

The BA argued that the exemption clearly applied only to the bridge. The appellant pointed out that the Act permitted the building of a toll house, and it was inconceivable that there would be one without the other; the toll house had been built at about the same time. Structurally and architecturally the bridge and the toll house were inseparable and indivisible. But the undertakers were required to build and maintain only a bridge; they were empowered but not required to build a toll house. The Acts referred specifically in different parts to "the bridge", "the toll house" and "the bridge and the toll house". This point satisfied the VTE President that the exemption was confined to the bridge alone, however integral or contiguous or essential the toll house may have been. He noted that there was no suggestion that the exemption of the bridge from national non-domestic rates might be withdrawn, and nothing in his decision bore on that issue.

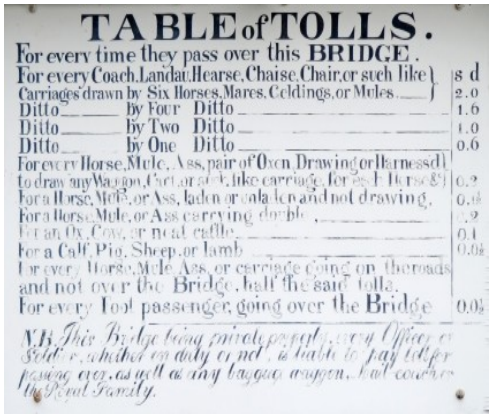

TABLE of TOLLS.

For every time they pass over this BRIDGE.

	s	d
For every Coach, Landau, Hearse, Chaise, Chair, or such like } Carriages drawn by Six Horses, Mares, Geldings, or Mules }	2	0
Ditto ____ by Four Ditto	1	6
Ditto ____ by Two Ditto	1	0
Ditto ____ by One Ditto	0	6
For every Horse, Mule, Ass, pair of Oxen Drawing or Harnessed to draw any Waggon, Cart or such like carriage, for each Horse &c	0	2
For a Horse, Mule, or Ass, laden or unladen and not drawing,	0	1
For a Horse, Mule, or Ass carrying double	0	2
For an Ox, Cow, or neat cattle	0	1
For a Calf, Pig, Sheep, or lamb	0	0½
For every Horse, Mule Ass, or carriage going on the roads and not over the Bridge, half the said tolls.		
For every Foot passenger, going over the Bridge	0	0½

N.B. This Bridge being privately erected, every Officer or Soldier exhibiting no duty or not, is liable to pay toll for passing over, as well as any baggage waggon, Post coaches the Royal Family.

Backdating a discount

The Council Tax (Administration and Enforcement) Regulations 1992 state that "Before making any calculation of the chargeable amount… a billing authority [BA] shall take reasonable steps to ascertain whether that amount is subject to a discount and, if so, the amount of that discount". The regulations make no reference to an application having to be made for the discount.

Hearing a case about an elderly widower's claim to single person discount, the VTE President found that entitlement to the discount as publicised by the BA did not amount to it having taken "reasonable steps" to ascertain the situation before making the calculation. The appellant had claimed the discount for the first time in 2011-12, after moving to another BA where the information about the discount was clearly shown on the bill. He had been living alone since 2000. The discount had been given for 2011-12 but the BA had refused to backdate it for earlier years.

The President ordered the discount to be backdated for six years prior to 31 March 2011, the date of the initial application, following his reasoning in the recent *Arca v Carlisle City Council* case (see Valuation in Practice, Issue 28, pp4-5).

Class J exemption

The appellants lived in the UK but when Mrs A's mother, who lived abroad, became ill, they visited to help in looking after her. While there they stayed with members of Mrs A's family and bought open ended tickets. They returned to their house in the UK when not helping in looking after the mother. They were out of the UK from December 2010 to May 2011 and between December 2011 and March 2012. Further visits had since been made to assist in caring for her.

The BA originally granted exemption from council tax under Class J for the two periods referred to above. However, after further applications for periods of exemption were received the council reviewed its decision and decided that the exemption did not apply and should never have been granted for the earlier periods.

Class J applies to: "*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 in another place for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; and

(b) has been a relevant absentee for the whole of the period since the dwelling last ceased to be his residence;"

Although much of the argument centred on the question of what was meant by the term "whole of the period" in paragraph (b), the panel found that the appeal must fail on the basis that, while the appellants no doubt did live abroad for periods up to five months to provide personal care for someone in need of such care, the sole or main residence remained at the appeal property, which they owned, and to which they

returned when not assisting in providing this care. Their residence while providing the care was with family in a property in which they had no legal interest. Class J could not therefore apply.

Appeal No 5150M97973/084C

Joint and several liability

The appellant was aggrieved by the determination that he was jointly and severally liable with his wife for the council tax due on the appeal property. The VTE President carried out a review of a previous decision in this appeal under VTE Practice Statement A10 and set it aside on the ground that the appeal raised a difficult point of law which had not been properly addressed in the written decision of the Tribunal. The President, therefore, ordered a re-hearing of the appeal before a Vice President.

The appellant was the sole owner of the freehold interest in the appeal property, having purchased the appeal dwelling from his late father's estate. He lived there with his wife and mother. His mother had lived in the appeal dwelling for a number of years. The appellant was a full time student throughout the period in dispute and fell to be disregarded for the purposes of discount in accordance with schedule 1 of the 1992 Act. During the period of dispute the appellant met the definition of a student within the Council Tax (Discount Disregards) Order 1992. The two other residents were not disregarded for the purposes of discount and therefore full council tax was payable on the appeal property. The appellant's wife was self employed. The appellant's mother was of pensionable age.

Initially, the billing authority (BA) issued council tax invoices solely in the appellant's name. Later the BA amended its records and billed the appellant and his wife jointly.

The appellant argued that as a student he was not liable for council tax on the property. In his view the liability rested jointly with his wife and mother. He relied on the Explanatory Notes to Part 6 of the Local Government Act 2003, relating to S 74. Paragraph 140 of the Notes stated that -

> "Section 74 amends 6(4) and 9(2) of the LGFA 1992 to remove students from joint and several liability where they are a spouse or living with someone as husband and wife, or where they have an equal legal interest in the dwelling, for financial years beginning on or after 1 April 2004".

The appellant contended that the wording was clear in that a student could not be held responsible for council tax where another person who was not a student was held to be jointly and severally liable for council tax on the property. In his view, the effect of section 74 was to transfer the liability for council tax for the property from him to his wife. Further, as his mother was resident at the property she was jointly and severally liable with his wife for the council tax.

The BA disagreed, pointing out that as the appellant was the sole resident freeholder of the property he was liable for council tax under the hierarchy of liability as set out in section 6 of the 1992 Act. The exemption for students residing with non-students under section 6(4) did not apply to him because his wife and mother did not have an equal legal interest in the property.

Section 9 of the 1992 Act dealt with the liability of spouses. According to the BA, under this a liable person's spouse who was resident at the property would be jointly liable for council tax. The student exemption under section 9(2) only applied to the liable person's spouse, and not to the liable person. Thus section 9(2) had no application to these circumstances as the wife was not a student. In this appeal, the appellant was the sole resident freeholder of the property. His wife and mother were simply residents holding no legal ownership in the property; the appellant alone met the requirement of S 6(2)(a), which was the highest category in the hierarchy.

Section 6(3), dealing with joint and several liability to pay council tax, had no application to the appellant's circumstances. Joint and several liability only arose if there were two or more people with the same legal interest in the property and were liable to council tax because of their position in the hierarchy.

Section 9(1) of the 1992 Act, however, modified the hierarchy of liability for married couples or civil partners. Under this section, resident spouses or civil partners were made jointly and severally liable with their partners for council tax, even though they held lesser legal interests than their partners in their properties. The appellant and his wife resided at the property. By virtue of section 9(1) they were jointly and severally liable for council tax despite the fact that his wife did not have a freehold interest.

Section 74 of the 2003 Act amended sections 6(4) and 9(2) of the 1992 Act by excepting students under certain circumstances from joint and several liability to pay council tax. The amended section 6(4) applied to the situation of two or more people with the same legal interests in the property where one or more of them were students. In that situation the student was not liable to pay council tax; the liability fell wholly on the non-student adult(s). This did not apply here because he and his wife held different legal interests in the property. Their joint and several liability to pay council tax arose from their status as husband and wife.

Section 9(2) was concerned with the liability of the other person in the marriage or civil partnership; under section 9(2) if the other person was a student, the joint and several liability provisions did not apply and liability to pay council tax fell exclusively on the liable person. *Continued on page 10*

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Continued from page 9

Section 9(2), however, did not extend the student exemption to the liable person. In this appeal, the appellant was the person who was liable to pay council tax within the meaning of section 9(1)(a) of the 1992 Act. His wife was the other person within the meaning of section 9(1)(b). The appellant was the student. His wife was self employed. It, therefore, followed that section 9(2) had no application here.

The Vice President's view was that there was no need to refer to the Explanatory Notes when construing sections 9(1) and 9(2) of the 1992 Act: the meaning of the words used in those sections was clear and unambiguous. The appellant and his wife were jointly and severally liable for the payment of council tax in respect of the property and the appeal was dismissed.

Appeal no: 4620M103793/176C

Single Person Discount

A VTE panel upheld a decision of a billing authority (BA) to rescind the single person occupancy discount (SPD) because the sole occupying appellant was unable or unwilling to disclose the whereabouts of his adult son. The withdrawal of the discount was backdated to 2011 because the BA had decided the appeal property was son's main residence.

The son had formally left the appeal property in 2007 to reside in rented accommodation some 80 miles away, close to his place of work; at no time had he held any legal interest or security of tenure in the appeal property. The son's employment pattern meant he worked "four days on and four days off". His first address was known and accepted by the parties (including the second BA) and the grant of SPD for that period was not in dispute.

In 2008, the son moved again into a new-build dwelling on land owned by a colleague, also close to his place of work. The appellant said his son did not disclose the new address at his colleague's behest. In 2011, the working pattern changed and the son worked two days (and used a room at a local travel lodge for the night in between) and two long nights (during which a rest room was provided by the employer). When off shift, the son often returned to the locality to be with his girlfriend at her home. The appellant said he did not know that address either.

Using references from credit rating companies, the BA found that the son continued to use the appeal property as the contact point for all of his financial matters, his car insurance and the place to which his post was forwarded. His spare furniture was stored in the dwelling's second bedroom ,which was his room before 2007.

The appellant said he could not stop his son using the appeal property as a contact point and that he should not be penalised because the BA was unable to locate his son.

The panel was referred to Section11 of the LFGA 1992 which provides for the SPD. The BA also referred to regulations 14 and 15 of the Council Tax Administration and Enforcement Regulations 1992 as amended, which required the BA to take reasonable steps to ascertain whether the council tax it levies on a taxpayer should be subject to a discount. The BA said it had discharged that duty by instructing credit rating agencies to undertake a review of SPD recipients in its area and then making enquiries where conflicting information had been found. The BA said it could withhold a discount where it was not satisfied it should be granted. As the appellant could not satisfactorily counter the evidence linking the appellant's son with the appeal property, the BA said it was bound to withdraw the grant of SPD. It was open to the appellant to provide details of his son's whereabouts at any time.

The panel agreed with the BA's approach and interpretation of the Regulations. The fact that the appellant almost certainly lived on his own was not a relevant consideration when determining the question of his son's main residence. The son's visits to his girlfriend's home did not make him resident there. The panel held that, whilst there was no obligation for a person to have a main residence and be registered for council tax purposes, the evidence in this case linked the appellant's son to the appeal property to a degree that, on balance, meant the appeal property was the son's main residence and, with or without security of tenure, a place to which he could expect to return.

Appeal 2340M104173/254C

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