Issue 31

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VALUATION TRIBUNAL SERVICE

VALUATION TRIBUNAL SERVICE JANUARY 2014

Valuation in Practice

News in Brief

Rating appeals reform

In his Autumn Statement on 5 December 2013, the Chancellor announced a package of business rate measures. Two of these will have a major impact on the Valuation Tribunal Service and the Valuation Tribunal for England:

- Clearing 95% of business rate appeals outstanding as at 30 September 2013 by 30 June 2015; and
- Reforming the appeals process for business rates.

On the same day, DCLG published its consultation document: ***Checking and challenging your rateable value***. The aims of reform are to provide an "easy and prompt opportunity for ratepayers to understand their rateable value (RV), challenge it if necessary and gain reductions if it is found to be too high". This proposal introduces an 'appeals direct' process for business rate appeals bringing it into line with the way other official decisions are normally challenged, by requiring ratepayers to provide with their challenge an explanation of why they think the RV is wrong. This will enshrine in law a formal separation in the challenge process, between the administrative *proposal* stage in the VOA from the independent judicial *appeal* stage. The problem with the current system has been identified in the document as being that ratepayers "cannot see rental evidence on which RV is based and so make large numbers of speculative challenges. About 75% of challenges result in no change but these cannot be identified until late in the process". Responses are required by 3 March and the document can be seen at - http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/263015/Checking_and_Challenging_your_Rateable_Value.pdf.

Inside this issue:

Richard Bowater MBE

It is with great sadness that we report the death of Richard Bowater on 8 January. Richard was formerly Clerk to the Nottinghamshire VT and then VTS Head of Administration for the East Midlands. He had been ill for some time, but it was while in hospital recovering from a broken ankle that he suddenly collapsed.

Richard was very knowledgeable in his field and a dedicated professional. Considered controversial at times, he was always committed to ensuring that the job was done properly and fairly.

Richard joined the organisation in 1973 from a local authority and retired after 33 years service in 2006.

Practice Statements revised

C3 Publication of Decisions effective from 25 November 2013 - council tax liability decisions are normally published on the VT website 'anonymised', unless the President (having consulted the appellant) directs otherwise. Council tax reduction appeals and any penalty appeals will not normally be published on the VT website unless the President directs otherwise, when the decision addresses a point of principle or law.

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

The following revisions are all effective from 1 December 2013 -

A4 Postponements and Adjournments - specifies more fully the circumstances in which postponements will / will not be granted with the aim of reducing them. It also adds provisions on stays.

A7-1 Non-Domestic rates Disclosure and Exchange and summary of amendments - additional explanation about when reg 17(3) evidence may be introduced and the process for applying for a case to be struck out or the respondent to be barred because a Statement of Case is non-compliant.

(Continued on page 2)

Decision from the Court of Appeal, Civil Division

An Order made by the Rt Hon Sir Stanley Burton refused—as totally without merit—an application for permission for the appellant to appeal the Order of the High Court in the matter of Vaughan v South Oxfordshire District Council. Mr Vaughan had sought to show that the decision of the VTE was irrational in his council tax liability case. The Order spells out that the contention that "a person cannot have a sole or main residence in which he has no beneficial interest is unsustainable: beneficial ownership is not part of the statutory definition".

In addition, Sir Stanley also noted that permission may only be granted for a second appeal if that appeal would raise an important point of principle or practice, or if there were another compelling reason for an appeal to be heard. This test, he said, could not be satisfied.

Decision from the High Court (QBD)

Soor and Bogdal v London Borough of Redbridge CO/2965/2012

A VTE decision found the appellants, as registered owners, liable for council tax on a house in multiple occupation, under Class C (b), with reference to the Liability of Owners regulations. The appellants' case was that throughout the period in question, the premises were let to *bona fide* tenants who were responsible for the council tax. Before the Tribunal, the appellants had presented tenancy agreements between Ace Consultancy and a number of individuals over seven years, each naming one or more tenants for a period of one year. In each case the tenants' names were printed on page 1 of the document, but the signatures did not always match the printed names. The billing authority had presented statements from a number of the named tenants that cast some doubt on the agreements and the situation as described by the appellants. On the basis of this evidence and the oral arguments at the hearing, and noting the decision of the *UHU* case, the Tribunal had concluded that the premises had been a house in multiple occupation during the period in question. Mr Justice Wyn Williams found that the Tribunal had not erred in law and was entitled to conclude as it did. He dismissed the appeal.

News in Brief (continued)

A8 Sending and Delivering Documents - says parties should specify clearly the postal or email address or fax number they wish to be used and any methods of service which are not acceptable. But failure to use a specified email address does not render service invalid unless the intended recipient did not receive it. Consequent delay in receipt may be grounds for postponement.

A11 Council Tax Reduction Appeals and the President's Explanatory Note on this make provision for where a billing authority has failed to comply with the Standard Directions.

BRIL 9/2013: Autumn Statement; 2014-15 provisional multipliers; Business rates appeal process consultation.

BRIL 1/2014: small business rate relief; shale gas; consultation (see p1); payment of rates by 12 instalments.

https://www.gov.uk/business-rates-information-letters

NAO report on Council Tax Support
The National Audit Office concluded that DCLG and councils worked together effectively to deliver council tax support on schedule. However, not all schemes will achieve the Department's expected objectives. www.nao.org.uk/report/council-tax-support

Decisions from the Upper Tribunal (Lands)

GPS (Great Britain) Ltd and others v Bird (VO) RA 20-26/2011 Leicester Retail Park

The appellants contended that the opening of an extended, refurbished, city centre shopping centre constituted a material change of circumstances for the businesses in an out of town retail park (Fosse Park). The VTE had dismissed the appeals. The UT considered the rental evidence and the evidence of deterioration in trade for six of the seven appellant retailers in the Park. (The seventh had closed its city centre shop leaving the retail park shop as its only presence in Leicester).

NJ Rose FRICS and PD McCrea FRICS did not agree with the VO that *Berrill (trading as Cobweb Antiques) v Hill (VO)* [2000] established that turnover was irrelevant to RV and found that, in this case, the appellants had not relied on a single set of turnover figures; they had presented figures for half the retail units on the Park that had been prepared in a variety of ways but showed a consistent picture of a fall in trade. This confirmed the conclusions of retail consultants' predictive reports prepared for Leicester City Council in advance of the new shopping centre being opened.

Allowing the appeal, the UT considered that a reduction of 10% in RV as proposed by the appellants was reasonable.

Jamieson (VO) v EON UK Ltd (Enfield Energy Centre) RA 47/2011

The issue was whether the power station and pipeline formed a single hereditament or were two separate hereditaments, as they had historically been valued. The respondent occupied both, they were contiguous and the power station could not function without the pipeline, which had no other use but to supply natural gas to the power station. The VTE had reached an 'interim decision' that this was a single hereditament, (leaving the rateable value (RV) to be agreed by the parties or, failing that, to be the subject of a further hearing). In its decision, the VTE panel relied in part on *Gilbert v Hickinbottom & Sons Ltd* [1956] and the UT President confirmed that the tests applied from that case were appropriate in and satisfied by the circumstances of this power station and pipeline.

The VO's argument was that there comes a point at which the pipeline cannot be merged for rating purposes with the facility it serves, no matter what the functional connection may be. His view was that the length of the pipeline can be a determining factor, making reference to *Edwards (VO) v BP Refinery (Llandarcy)* [1974]. This was rejected by the UT; the VTE's decision was upheld and the appeal was dismissed.

Decisions from the Upper Tribunal (continued)

Johnson (VO) v H & B Foods Ltd RA 46/2011

The appeal concerned the merger of two assessments. The VTE had determined the two properties were functionally connected and should be regarded as a single hereditament at RV £290,000, a figure agreed by the parties as a compromise in the event that the VTE determined a single assessment.

At the Upper Tribunal the VO sought a decision that these were two separate hereditaments (at the RVs shown originally in the list) but, failing that outcome, that the single assessment should be £335,000 RV. The respondent in its statement of case sought a reduced RV of £265,000 for the merged assessment. The VO was of the view that this reduction could not be proposed by the respondent and asked the UT for an order that the respondent was to alter their statement of case to an RV of no less than £290,000. Instead, the UT ordered that "neither party was at liberty to depart from the agreement on RV before the VTE". But the VO applied for this order to be set aside, because of the important principle at stake – whether parties were free to depart from agreed facts in a UT hearing that was intended to be *de novo*. The application was successful and the order was set aside.

The UT stated that, in rehearing a case, it would not disregard the decision of the VTE and "generally regarded itself as confined to the issues raised in the appellant's notice of appeal". The UT's guidance literature referred to "review or rehearing" procedures and stated that parties might introduce evidence that was not before the VTE. The President, Sir Keith Lindblom, and Mr AJ Trott FRICS therefore accepted that the consideration of this case would be *de novo*.

It was clear that both parties wished to break the compromise that had been reached for the purposes of the VTE hearing and both wished to produce valuation evidence to show that the figure ordered by the VTE was wrong (albeit through no fault of its own). The UT therefore found that the appeal should proceed as a *de novo* hearing, which would allow both parties to produce valuation evidence on the RV for the single hereditament.

Kendrick (VO) v Mayday Optical Ltd RA 24/2012

The VTE decision on the validity of a proposal, which was the subject of this appeal, was referred to in ViP Issue 25 page 4. In his decision, the VTE President had stated that the attempt by the VOA to claim invalidity in these particular circumstances was "unreasonable and irrational and therefore unlawful", and that the VO was precluded from claiming invalidity.

His Honour Judge Huskinson accepted the argument that the error of 5% in the statement of the annual rent in the proposal was significant and prejudiced the VO. There was no estoppel which would preclude the VO from taking this point and he did not accept that the VO was acting unreasonably in the Wednesbury sense by claiming the proposal to be invalid at the hearing. It was not necessary for the VTE to have considered whether the VO was acting lawfully in asserting invalidity even if this argument were not put forward by the proposer; the VTE's statutory task was to decide whether a proposal had been validly made. The appeal was allowed.
It should be noted that the VO did not appeal against the President's decision in *Imperial Tobacco Group Ltd v Alexander (VO)* [2012], which had been heard at the same time as *Mayday Optical*. Counsel invited the UT "to proceed on the basis that the analysis of the VTE [in that case] is correct".

Interesting VT Decisions — Non-domestic rating

Golf Club

Built in 1994, this comprised a clubhouse with locker rooms, Pro's shop, dining room, lounge, function rooms and ancillary offices. Following an inspection, the valuation officer's representative (VO) had revised his figure adopted for the clubhouse from £47 per m² to £44 per m², and had adjusted that for the course by 5% to reflect the footpath which ran through it. This gave a revised rateable value (RV) of £71,500 which he asked the VTE panel to determine.

As the VO had conceded that an allowance should be made for the presence of the footpath, two issues remained in dispute: the value of the golf course, and the price per m² to be adopted for the clubhouse.

In his statement of case, the appellant's representative proposed a revised RV of £48,250, based on £27,000 for the golf course, £27/m² for the clubhouse, and a 5% end allowance to reflect the footpath. In support of his valuation he referred to five comparable courses and four Valuation Tribunal decisions from hearings in January 2012, where the values of golf courses in Taunton, Bridgewater, Burnham on Sea and Braunton had been reduced.

The five golf courses presented in support of his contention were each valued at over £38,000 (the current RV of appeal property) and the panel could see no evidence to support a value of £27,000.

The VTE panel was satisfied that the valuation of the golf course was in line with others in the area, and that a 5% allowance for the footpath reflected the circumstances at the appeal property. The panel was not helped by the reference to VTE decisions on more remote golf courses, particularly as there were several comparable courses within the subject locality.

The figures in respect of the five local comparable clubhouses were £34-£42.75/m². The panel concluded that figure of £27/m² contended for was not supported by the evidence. As the appeal property clubhouse was of a modern construction and a superior quality to some of the older clubhouses, the panel considered that £44/m² was fair and reasonable. The panel determined a revised RV of £71,500 and the appeal was therefore allowed in part.
Appeal no: 431518746613/134N10

Domestic property with stables, arena and manège

The appellant had bought a 17th century manor house and its estate as a single entity, for a single price in 1987. The house, (including garden and some outbuildings) was banded at H for council tax. One outhouse used as an office was separately rated as non-domestic for its business use and there was adjacent agricultural land. The dispute was over the entry in the 2010 rating list. Since 1990, the original stables, the main stable block, the arena and the manège had been treated as non-domestic property. The issue before the President was whether these were domestic elements because each was, in terms of the Local Government Finance Act 1988 s 66(1)(b) – *A yard, garden, outhouse or other appurtenance belonging to or enjoyed with the property falling within (a) above* [a dwelling used wholly for the purposes of living accommodation].

The President considered the relevant case law cited by the parties, regarding curtilage and the relationship between the principal property and the appurtenant land(s) or building(s). He observed that there were three tests: physical layout, ownership (past and present) and use or function (past and present) [*Skerrits of Nottingham Ltd v Sec of State for the Environment]*.

The plans produced by the valuation officer purported to show the curtilage of the house, from natural and man-made boundaries, (including some external walls of the disputed buildings), and showed all the disputed areas outside the curtilage.

The original stable block was believed to have been constructed at the same time as the house and was at a very short distance from it, at the edge of the garden area. It was also included in the same Land Registry title as the dwelling. The President found that this area was within the curtilage of the dwelling and appurtenant to it.

The main stable block was built in 1880 and was about 25 metres from the house. At some time in the past the stables housed horses that were used to work the land, later it had been used as a dairy, and in 1979 for car repairs. However, the President decided that more recent uses should have greater weight and, from the proximity to the house and the overall configuration of the property, he was of the opinion that it was domestic property.

The indoor arena was built in the 1950s. The President observed that the natural boundary went behind the building and so it fell within the curtilage. It was close to the house and the original stable block. While both the stable block and the arena were large for a domestic property, the President did not find size a determining factor and, in the case of the stable block, it was explained by the history of the property, and did not look out of keeping. Their proximity to the house, the common access and their inclusion in the curtilage, their recreational use and the coherent layout of the site led him to conclude that they must be treated as appurtenant and non-domestic.

The manège straddled the natural boundary; it was partly in the garden area and partly in the paddock. The curtilage had to be altered when the manège was constructed and the President noted there was no explanation as to why the boundary could not have been drawn to include it rather than exclude it. Observing that a purchaser would expect the sale to include all or part of this piece of land, and finding that no other characteristics conflicted with the requirements set down in case law, the President concluded that the manège fell within the curtilage and must be treated as domestic.

The appeal was allowed and the order stated that the entry in the 2010 rating list for Stables and premises be deleted.

Appeal no: 153517450882/538N10

Racing Stables and premises

The appeal property was near Middleham, in North Yorkshire, a mile from the main road and accessed by private agreement through a park. The rateable value (RV) in the list from 1 April 2010 was £17,000. Following alterations to the number of stables used by the occupiers, the RV had been altered to £12,000 from 1 September 2010. Proposals on both these figures were on the grounds that the RVs were too high in comparison to other racing stables in the area.

Statements of case had been exchanged between the parties and initially RVs of £9,300 and £6,050 had been sought by the appellant, however, they were altered to £7,900 and £5,020 at the first, adjourned, hearing. The valuation (VO) was initially defending RVs of £16,250 and £12,000 but, following the presentation by the appellant at the adjourned hearing, offered a reduction of £500 (in respect of the paddock land). Following visits to the stables, further revised RVs of £11,500 and £8,000 were submitted at the start of the second hearing.

The panel was mindful that this was the first of a number of appeals due to be heard on racing stables in the immediate locality and therefore visited the appeal premises and others in the area. The panel saw a considerable variation in the qualities of the stables in the Middleham area. However the diversity did not appear to have been reflected in the basis of the valuations.

Following the site visit, the VO accepted that the valuations should be based on 26 and 18 stables as proposed by the appellant, that being the number they had a licence to operate. The issue remaining was the appropriate value for the boxes, taking into account the circumstances of the appeal hereditament.

In line with *Lotus and Delta, the panel determined that* the rent on the subject property should be the starting point. In this case the rent on the appeal premises was £28,000 in 2006; £19,632 in 2010; £12,000 in 2011 and £17,760 in 2012. The panel was of the opinion that available rental evidence was extremely variable and

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Interesting VT Decisions — Non-domestic rating

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inconclusive. The actual rent paid had to be adjusted to reflect the living accommodation, any land, services and sewerage, prior to the normal adjustments to reflect repairs and insurance. The panel found that the adjustments that had been made over the course of the appeal process were based on opinions of value and were not definitive; therefore little weight was attached to this evidence.

The only other evidence that the panel could use as a starting point was the figure of £600 per box, the basic price used by the VOA in their valuations of stables in Middleham. This figure then needed adjustment for any issues/disabilities which were apparent at the appeal premises. These included the construction and quality of the buildings and stables, the location, the access to and within the site and the lack of ancillary areas.

Various construction types in the area had been noted by the panel on its visit. A VT decision regarding Newmarket stables, presented by the appellant, had a table showing the levels of value attributed to the various constructions of the boxes. In this, timber construction was shown to be valued 20% lower per box than brick. The panel found this an appropriate reduction to apply. The stables were not purpose built but within a former cattle shed, so there were ventilation and asbestos problems, sloping floors and the poor natural light. Allowances of between 2.5% and 7% were determined as appropriate for each disadvantage, as the panel was of the opinion that the current stables could not easily be brought up to the standard of others in the area.

The tack room and feed store, included in the valuation, were of a relatively poor quality, whilst the office was in the dwelling, not in the commercial side of the property. The panel considered these to be additional disadvantages and determined that a further 2.5% reduction was applicable.

The panel had seen that five of the 26 stables were of a much poorer quality than the rest and determined that an additional 10% allowance on the basic price should be attributed to them.

In considering the location, the site visit confirmed the remoteness of the subject premises and the disadvantages regarding access, lack of street lighting and poor telecommunications networks. These, in the panel's opinion, warranted a 10% end allowance.

The panel therefore determined that the subject premises should be valued at RV £8,800, with effect from 1 April 2010 and at £6,300 from 1 September 2010

Appeal no: 272023037221/257N10

We understand that the respondent has made appeals against the VT's decision to the UT.

Comparables

The appeal property was a 1970s-built industrial property, occupied as a factory. The appellant's representative contended that a main space price of £35/m² was appropriate. She referred to a number of comparables which she had personally inspected and she compared and contrasted each with the subject property.

The valuation officer (VO) argued that the assessment of £226,000 rateable value (RV), based on a figure of £40/m², was fair and reasonable. He referred to a schedule of comparables which he had not seen and, following a series of questions, he accepted that the appellant's comparables provided a better basis for valuing the subject property.

The case demonstrated the need to inspect or at least to have an awareness of the properties being cited and the value / lack of value of expert witness evidence. The assessment was determined at RV £189,000, in line with the appellant's representative's valuation.

Appeal no: 548019471021/537N10

Flooding

The appellant disputed the rateable value of the appeal property, an owner-occupied 'building centre' in Cumbria. The appeal property had flooded frequently in recent years but the appellant contended that the valuation officer had not taken it into account based on comparison with other properties in the town which did not have the same problem.

A letter from the Environment Agency provided details of flooding there since its records began in 1984, with floods in 1990, 1995, 2005, 2007, 2009, 2011 and 2012.

The appellant also received a number of flood warnings, which though they had proved to be false alarms, nevertheless meant she was required to take preventative action. This included setting up flood defences (barriers, sandbags and water pumps), moving vulnerable items (stock, important documents and office equipment) to a place of safety, moving machinery and vehicles to higher ground and ensuring the safety of staff. Afterwards, all of these precautions had to be reversed and the premises hosed down, which often took several days.

The situation was exacerbated by the presence of several manholes in the warehouse running from neighbouring homes and the police station. In a flood situation, the main drain backed up and the appeal property was flooded from inside the building.

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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.

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The panel held that the flooding at the appeal property was an issue which would be considered by the hypothetical landlord and tenant.

Under the statutory definition of rateable value, the tenant was responsible for all repairs and insurance. In flood risk areas, insurance was often unavailable or at an increased premium. The hypothetical tenant would have to factor in the additional cost and inconvenience that arose from flooding and potential flooding. The panel held that it was not unreasonable to consider that a tenant would negotiate a rent reduction to take account of this. The hypothetical landlord would have regard to the fact there would be fewer potential tenants willing to take on the property.

Considering the comparable properties presented by the parties, the panel held that the rateable value should be reduced and the appeal allowed.

Appeal no: 092522513169/134N10

Completion Notices

Three notices dated 27 November 2007 gave completion dates two days later but the buildings were not completed until 4 September 2012, 7 June 2011 and 5 January 2012. The company named as the owner in the notices was Metier Property Holdings Ltd, but it was agreed that the owner was in fact Metis Apartments Ltd.

There was no evidence of the address to which the notices were sent, and the council no longer had records relating to recorded mail sent at that time or to correspondence returned as undelivered. The appellants denied the notices were received.

The VTE President concluded that it was impossible, in the absence of documentary evidence, to establish beyond doubt whether the notices were in fact posted, to which address they were sent, and whether they were received, but, on the balance of probabilities, he found that they were not received by the appellants.

Though the council sought to show that it had taken reasonable steps to identify the owner, the President found that its failure to ascertain the correct information from the Land Registry undermined that claim; however there was no point in the President going on to consider whether failure to name the correct owner rendered the notices invalid.

It was not until November 2010, by which time the appellants could no longer propose alterations to the 2005 list, that the appellants became aware of the notices and informed the council and the valuation officer (VO) that the correct owner had not been named. The VO, who at that date still had the power to amend the list, declined to act on this and delete the entries. The appellants made proposals on 7 November 2010 to delete the entries, which formed the basis of the appeals.

The council nevertheless defended the entries in the 2010 list despite the invalidity of the completion notices, because they said the appellants' conduct effectively showed that they accepted the properties were completed, by:

- paying the rates
- negotiating reduced rateable values (RV)
- 'occupying' the premises as had been argued at a liability hearing
- referring to 'completed' properties at the liability hearing.

The President dealt with these legal submissions in case it should emerge that service of a completion notice, albeit invalid, was not necessarily a pre-condition. His view was that payment of rates, which was obligatory and reinforced by sanctions, could never constitute waiver, estoppel, acceptance or anything else, Nor could he see any basis for arguing that negotiation of a reduction in RV could preclude or prevent the appellants from contending that the properties were unlawfully entered in the lists. There could be no 'agreement' with the council within the terms of Sch. 4A (3) (1) as there had not been service of a valid completion notice.

The liability hearing in September 2010 had arisen when the appellants were seeking to claim exemption from rates for unoccupied properties. They had moved some boxes of files into the buildings, seeking to establish rateable occupation, then removed them in order to qualify for the exemption. The council argued in the magistrates' court that this occupation was *de minimis* and did not constitute occupation for rating purposes. The judge agreed and accordingly made the liability order. The President noted that it was perhaps ironic that there the council argued that the storage of the boxes failed to establish occupation, (a view accepted by the district judge), but now asked him to conclude that the appellants' unsuccessful attempt at occupation should be construed as if it were occupation, and so implied that the buildings were complete or that they had waived their right to claim non-completion. In the President's judgment, neither the ineffectual occupation of the buildings nor any statements asserting "completion" could give rise to waiver, estoppel or acceptance that the buildings were complete in the rating sense or otherwise legitimately entered in the rating list.

The President was invited to consider whether he was empowered to make an order about deletion from the 2005 list as an 'ancilliary matter' under reg 38 (10) of the Procedure Regulations, as the appellants relied on the Lands Tribunal judgment in *Ebury (VO)* [2003]. He concluded that to extend the power to encompass action in relation to an earlier list (in respect of which none of the parties had any power and the VTE no obvious jurisdiction) would be to go beyond what the regulation envisaged.

The appeals were allowed and the entries in the 2010 list were ordered to be deleted from 1 April 2010 to the respective dates of completion.

Appeal no: 442022943274/257N10

Interesting VT Decisions— council tax

Valuation

Rooms treated as separate dwellings

Seventeen rooms within a building had been treated by the listing officer (LO) as separate dwellings for council tax purposes, in an alteration to the list showing each at band A. The building was formerly a monastery and subsequently a vicarage, before its current use, let on a room-by-room basis to tenants. All occupiers shared at least some communal facilities in the building. Most of the rooms on the ground floor had a kitchen area and shower/WC. First floor rooms did not have their own kitchens or bathrooms and occupiers therefore shared communal washing, cooking and laundry facilities. Rooms on the second floor shared similar communal facilities. At the date of the appeals, some rooms were unoccupied.

The rooms were let under tenancy agreements for six-month terms, but in practice it appeared that some tenants stayed for shorter periods.

The appellants' representative sought to have the whole property treated again as a single dwelling. He contended that, having regard to the minimal degree of adaptation of the rooms, the shared facilities, and the transience of occupation of some tenants, it was appropriate for the LO to exercise his discretion to treat the property as a single dwelling under the provisions of article 4 of the Council Tax (Chargeable Dwellings) Order 1992 (SI 1992/549).

In considering whether a hereditament existed, regard was had to the four tests of rateable occupation (actual occupation, which is beneficial to the occupier, is exclusive for his purposes and is not too transient). The panel found that each of these rooms was either occupied, or capable of occupation, in a way that satisfied the four tests. Some periods of actual occupation might be transient, but that did not lessen the capability of the rooms concerned to be occupied for lengthy periods.

A number of the rooms did not contain every facility and had not been adapted to any great extent. As the LO's representative submitted, however, there was no requirement in law for a hereditament to be self contained, or adapted to any particular extent. The decision in *Rawsthorne (LO) v Parr* [2009] confirmed that the test of a hereditament was not whether a property or part of a property was a self contained unit. The panel found that each room was capable of exclusive occupation, even if the accommodation for the exclusive use the occupier did not contain a bathroom, toilet or kitchen.

For these reasons the panel found that each of the rooms was a hereditament. Each room was clearly used as living accommodation or, if unoccupied, was intended for such use. Each room therefore consisted of domestic property and met the definition of a dwelling in the Local Government Finance Act 1992.

The LO's representative submitted that exercise of his discretion did not arise here, as the rooms that shared facilities and those with their own facilities did not naturally form a self contained unit. The panel found that the discretion was a matter for the LO and not within the Tribunal's jurisdiction.

That the council might consider the whole property to be a house in multiple occupation (as defined in the Housing Act 2004) had no bearing on the decision that the panel had to make under council tax legislation.

The panel found that proper interpretation of the relevant legislation, in the light of guidance from higher courts, led inescapably to the conclusion that each of the 17 rooms was a separate dwelling for council tax purposes and was therefore correctly shown in the valuation list. The appeals were dismissed.

Appeal no: 5840617363/084CAD

Reduction

The appellant and a friend were joint tenants of a property; the appellant was a carer for his friend and was liable for 50% of the council tax. Under the council's scheme, the appellant was awarded 91.5% reduction on his liability. There were discretionary provisions in the scheme to protect vulnerable classes of people and one of these classes had been identified as persons caring for family members. The appellant argued that this meant he was not being treated equally with other carers who received 100% reduction.

The panel dismissed the appeal because the council had awarded the appellant the maximum allowed under its scheme, which had been adopted at a full council meeting. The panel had no jurisdiction to alter the scheme or discretionary elements.

CTR decisions are not published on the website.

Liability

Class C exemption

The appellant had left her home while work was being done to make it suitable for members of her family to live there. The period concerned was before the 1 April 2013, when the changes to exemptions/discounts were introduced. The appellant had claimed a Class C exemption for six months, as the property was unoccupied and unfurnished. The billing authority (BA) did not dispute this but argued that the appeal property remained her main residence and therefore no exemption could apply. Notwithstanding the fact that the BA had misunderstood the difference between a dwelling being unoccupied, which is relevant to Class C, and the issue of where a person has their sole or main residence, which is not mentioned in this exemption, it only accepted that its position was untenable when photographs of the property provided at the hearing showed that the work being done included taking the roof off. The appeal was allowed.

Appeal no: 0345M108475/037C

Interesting VT Decisions— council tax liability

Student definition

The council taxpayer had been undertaking two part time courses of education with different educational establishments concurrently that, taking account of the amount of time in study, might in total have qualified him to be treated as a student for council tax purposes. The panel did not need to examine any issue regarding whether the time in study, or the number of weeks of the course during the academic year qualified the appellant to be a student, as the wording of Paragraph 3 of Schedule 1 to SI 1992/548 requires that the person be "enrolled for the purpose of attending [a course of full time education] with a prescribed educational establishment". The wording is unambiguous in referring to ***a*** course of full time education and ***a*** prescribed educational establishment. Even if all the hours of study and the overall duration of the courses being undertaken by the appellant in this case did add up to be sufficient for him to be a student, the fact was he was on more than one course (each recognised in their title as being part-time) at two different educational establishments. As he was not enrolled on one full time course of education at a single educational establishment, his appeal had to fail.

Appeal no: 5540M106813/084C

Hierarchy of liability

The billing authority (BA) had determined that the appellant owners were the liable persons with effect from 3 September 2004, when they purchased the property, but they disagreed, saying that it should be their son. The appellants were still the owners but it was agreed that they had never occupied the property as their sole or main residence was elsewhere.

The appellants had purchased the property to help their son and stated that he became resident there on 3 September 2004, where he lived rent free. The appellants were responsible for a mortgage on the property and to the best of their knowledge their son had resided there continuously and remained there to this day, any doubts arising from the fact that they had become estranged from him. It was also stated that the appeal property had not been unoccupied at any time since the appellants' purchase.

There was no documentary evidence to support these claims but the panel noted the oral evidence given by the appellants, their representative and their relatives regarding visits made to the son at the property between 2004 and Christmas 2011 and that a relative had helped him to move in to the property. The appellant's representatives had met the son at the property in November 2012, when he still appeared to be resident there.

The BA explained that the appellants had been made liable due to a lack of evidence that anyone was mainly resident at the appeal property. The BA accepted that the appellant's son may have resided there for certain periods of time and there may have been other residents too, however, as it had been unable to ascertain the names or dates of occupation of any resident since September 2004, it had held the appellants liable.

The panel found this approach to be incorrect as the hierarchy of liability in section 6 of The LGFA 1992 stated that the owner of a property was not liable if there was a resident. While it had been difficult to ascertain the names and dates of occupation of any resident, accepting that there had been one or more residents inevitably meant that the BA should not have made the owners liable for all of the period in dispute. The panel noted that: someone stating to be the occupier was twice met at the appeal property by a company representing the BA in November 2005; the same company met the appellants' daughter in law there in October 2006; the BA met a resident there in 2009 and believed there was a resident in January 2012; a 2009 credit check on the appellants' son had reported that he was connected to the appeal property in February 2006.

The totality of the evidence was found to support the appellants' contentions and the panel was satisfied that the appeal property was continually occupied by the appellants' son from 3 September 2004 to at least Christmas 2011. Regarding the period from Christmas 2011 until the current day, the panel found no evidence to demonstrate or suggest that the appellants' son had vacated the property and that on the balance of probabilities it was reasonable to conclude that he was still resident there. However, if that was not the case, the panel was satisfied that the property had not been unoccupied at any time during that period and so, under the hierarchy of liability, it was the resident(s), not the owners, who were liable for council tax purposes. The appeal was allowed.

Appeal no: 2805M112173/037C

Should an illegal immigrant be disregarded for council tax purposes?

An appeal was made against the decision of the billing authority (BA) not to award a single person discount for the period from 1 October 2003 to 2 February 2009. According to the BA's representative, during this period the appellant's wife had been an illegal immigrant with no leave to be in the country. He referred the panel to sections 6, 9 and 11 of the Local Government Finance Act 1992, and the Council Tax (Additional Provisions for Discount Disregards) Regulations 1992 SI 552 and pointed out that as illegal immigrants were not specifically disregarded under the regulations then no discount could be awarded and he asked the panel to dismiss the appeal.

The appellant confirmed that his wife had lived with him at the property but had not moved in until after their marriage on 13 August 2004. He had had to go with his wife to her country of origin on 12 June 2008 to resolve the immigration issues. His wife had returned to this country in February 2009 and moved back in to the property.

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The appellant stated that he had met his wife in 2002 and acknowledged that prior to her leaving the country in June 2008 she had been an "overstayer". As she was not in the country legally, she would be unable to pay council tax as, if she had tried to pay, she would have been deported. She was not entitled to public funds and it would have been an illegal act for the BA to accept council tax from her; he believed she "did not exist" for council tax purposes and he should therefore be entitled to a single person discount.

The panel determined that the appellant's wife should not be disregarded and dismissed the appeal. In doing so the panel had first had regard to the legislation and was satisfied that

- the appellant's wife was over 18 and for at least part of the time she had been residing at the property;
- as the appellant and his wife were married or had lived together as man and wife and the appellant's wife was not to be disregarded, then they were jointly and severally liable for the council tax;
- as the appellant's wife had not been detained under the Immigration Act she could not be disregarded under Schedule 1 of the Act;
- as it was accepted that the appellant's wife had been an "overstayer" and had been in the country illegally and as she had no *"leave to enter or remain in the United Kingdom"* she could not be disregarded.

Taken together, the panel found that, for any periods that the appellant's wife had her sole or main residence at the property, no single person discount could be awarded. There were three separate time periods which were in dispute; 1 October 2003 to 13 August 2004 (prior to the marriage), 14 August 2004 to 11 June 2008 (after the marriage) and 12 June 2008 to 2 February 2009 (when his wife was out of the country).

For the first period the panel found in the absence of any compelling evidence to the contrary, the panel determined the appellant's future wife had resided at the appeal property. During the second period it was not disputed that the appellant's wife had been residing at the property. Thirdly, the panel considered the time spent out of the country resolving her immigration status was a temporary absence and her sole or main residence remained at the appeal property.

The panel noted that council tax and immigration legislation covered separate areas of law but for council tax purposes the panel found that the appellant's wife met the criteria to be liable for council tax; the property had been her sole or main residence throughout the period and she was not specifically disregarded for discount purposes. The panel therefore dismissed the appeal.

Appeal no: 4705M115413/254C

Disabled person's relief

The appeal was against a decision not to grant the appellant disabled person's relief. The appellant had a number of disability issues and it was not in dispute that she was a qualifying person.

The property was a three storey house with bedrooms and a bathroom on each of the first and second floors. The appellant could no longer use the top floor and had therefore to sleep and use the bathroom on the first floor.

The panel found that the bathroom on the first floor, which appeared to have been adapted in minor ways to make it suitable for the appellant's use, (for example grab bars in the bath and raised toilet), did qualify under sub paragraph 1(a) (ii) of Regulation 3 in SI 1992/554 as a bathroom. It was not the only bathroom in the property and was required for meeting the needs of the qualifying individual. The panel found comments in paragraph 23 of Justice Bean's decision in *South Gloucestershire Council v Titley* [2006] EWHC 3117 (Admin) to be relevant in arriving at this conclusion.

Appeal no: 0240M111193/037C

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