Issue 32

April/May 2014

VALUATION TRIBUNAL SERVICE APRIL/MAY 2014

Valuation in Practice

News in Brief

VTS – this year and last

The VTS's business plan for 2014-15 includes the following objectives for this year:

- **Implement a new process for non-domestic rating appeals**
- **Develop effective interfaces with the VOA and professional representatives**
- **Maintain operational focus at a time of change and office relocation to maintain a normal business service to all stakeholders**
- **Support the VTE President in developing a plan for member recruitment and implementing it to achieve required numbers**
- **Ensure that the VTS is supported by appropriate and effective IT systems.**

The VTS's budget for the year is £8.27 million, a reduction from the previous year. The staff complement is 92.

Our Annual Report and Accounts will be laid in Parliament on 26 June and are currently in the process of being audited.

DCLG

Replying to a Parliamentary Question on business rates from fracking (21 Jan 2014), the Under Secretary of State said the Government would consider how the 100% retention of business rates income on shale production sites would be shared among the different authorities in an area which hosted a site. The Government would be consulting on draft regulations prior to implementation in April 2015. The estimated business rates income for a typical shale gas production site could be worth up to £1.7 million a year.

The Secretary of State announced in a Press Release published on 8 April that the number of empty homes across England had fallen to 635,127, about 20% fewer than in 2009. There had been an especially dramatic drop in the number of long-term vacant properties, which had fallen by about a third since 2009.

Guidance was published on 13 February on the terms of reference for a review of business rates administration, to consider changes that could be made post 2017 (revaluation year). This can be viewed at https://www.gov.uk/government/publications/business-rates-administration-review-terms-of-reference

Publications of Interest

BRIL 2/14: compensating authorities for changes to reliefs; business rates retail relief – discount guidance; Demand Notice regulations amendment to reflect the changes announced in the Chancellor's Autumn Statement

BRIL 3/14: flooding business rate relief; confirmation of 2014-15 NNDR multipliers; the value of 'Q' (the inflation factor in calculating transitional relief); updated text to be included in Demand Notices (a glossary of rating terms).

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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

Publications of Interest

BRIL 4/14: publication of the flood support guidance note.

BRIL 5/14: 12 monthly instalments for business rates.

BRIL 6/14: amendments to the Demand Notices regulations and to the Collection and Enforcement regulations.

BRIL 7/14: links to business rates reoccupation relief guidance and press notice; interest rate for 2014-15.

BRIL 8/14: publication of a discussion paper on the administration of the business rates system. That discussion paper can be found at:

https://www.gov.uk/government/news/government-seeks-views-on-administration-of-business-rates-system. Responses are requested by 6 June 2014.

Business Rates Information Letters can be viewed at:

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

Decision from the European Court of Human Rights

Strasbourg, 4 March 2014, (Application no 7552/09)

Case of the Church of Jesus Christ of Latter-day Saints v UK

This case, first heard by the Lancashire Valuation Tribunal in 2004, has now worked its way through the Lands Tribunal (which overturned the VT decision), the Court of Appeal and the House of Lords to the EHCR.

The earlier appeals concerned the refusal of exemption from business rates for buildings used for public religious worship. The VT allowed the original appeal but the Lands Tribunal overturned the VT decision and the Court of Appeal dismissed the appeal because it was held that the Mormon temple in Preston only admitted the most devout and 'worthy' of its members and so as not a place of public worship. At the House of Lords, the applicant first raised the argument that the relevant legislation was incompatible with its rights under Article 9 of the Convention and Article 1 of Protocol No 1, taken alone and together with Article 14. The House of Lords dismissed the appeal and dismissed the arguments under the Convention. The temple, having been identified by the VOA as a building used for charitable purposes, was only liable for 20% rates; four of the five Law Lords held that this liability did not fall within Article 9 since the members of the Church were still able to practise their religion and because the statutory requirement applied to the buildings of all religions and so did not target the Mormons in particular.

The same violations were alleged at the ECHR and in addition, the Church also claimed it was denied an effective remedy for the complaint, in breach of Article 13. The Court found there was no discrimination against the Mormon Church in this regard. The relevant UK legislation on exemption for religious buildings was "neutral" and the 20% liability was relatively low and not to the Church's "substantial financial detriment". There was therefore no violation of Article 14 taken in conjunction with Article 9 and the ECHR did not find it necessary to examine the other complaints. On the alleged breach of Article 13, the Court held that the remedy provided in the UK courts was appropriate and effective and available to the applicant; compliance with Article 13 did not depend on the certainty of a favourable outcome. This complaint was therefore declared ill-founded and inadmissible. The opinion of two other of the judges concurred but noted too that a "tax exemption was a privilege, not a right" and "the application of the privilege did not interfere with the exercise of the right to freedom of religion".

Decision from the Upper Tribunal (Lands)

S & J Monk v Newbigin (VO) RA 62/2012

An appeal which sought to delete this office and premises on the grounds that it was subject to major refurbishment, offices, was withdrawn prior to the VTE hearing. A second proposal was made six months before the first was withdrawn. This sought to alter the list with effect from 1 April 2010 at £1 rateable value (RV) on the grounds of a material change of circumstances, in that the property was undergoing a scheme of work which made it incapable of beneficial occupation. The works referred to included remodelling and refurbishing the floor plate to allow subdivision into three office units. The VTE had dismissed the appeal, but in doing so held that the material day was 6 January 2012, the date the proposal was served on the valuation officer (VO). The ratepayer's representative had argued that the material day was 1 April 2010.

Trott J confirmed that the material day was 6 January 2012. As the proposal had been completed, including the wording of the reasons, this was not a proposal on the grounds of a material change and fell to be determined under Regulation 3(7) of the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992.

The parties were in agreement about the physical condition of the hereditament on 6 January 2012 but did not agree the extent of the works completed by 1 April 2010. Nor did they agree that the first fix air conditioning installations were completed by 6 January 2012.

Trott J was satisfied that at the material day the property was not capable of beneficial occupation as an office due to its actual physical state. It had been stripped out to the extent that replacing the major elements would go beyond the meaning of repair. In essence, if something was not there, there was nothing to repair. His opinion was that a hypothetical tenant would not pay more than a nominal amount for it at the material day. Trott J also considered that the requirements of paragraph 2(1)(b) of Schedule 6 of the 1988 Act did not apply unless there was a hereditament capable of beneficial use, and here there was not. He accepted the appellant's evidence about the work that had been completed by 1 April 2010 and determined that the RV should be £1 from that date.

Decisions from the High Court (QBD)

Zeynab Adam v Listing Officer CO/10396/2013

The appellant made a proposal for a reduction in council tax band from C to B when she became the taxpayer for the appeal property in 2008. The listing officer (LO) agreed to the reduction and the alteration was made. In 2012 in the light of other proposals citing the appeal property, the LO reviewed the decision and considered that the reduction should not have been given. The band was increased back to C from July 2012 and when appealed, the VTE panel upheld that valuation on the basis of sales evidence close to the antecedent valuation date.

The question at the High Court was whether this increase was allowed or that the VTE panel had erred on a point of law. Richardson HHJ said there was nothing before him to suggest the VTE "erred or strayed from a legitimate factual analysis of the evidence before them". The real issue concerned paragraph 3(1)(b)(i) of the Council Tax (Alteration of Lists and Appeals) Regulations 2009. Richardson HHJ emphasised the words from that paragraph, "…should have been determined…". It is in the past tense. Its import is… clear; if the Listing Officer in the exercise of his or her judgement is of the view that a different Band should have been determined, then there is a duty to alter it". If there had been a mistake, then the Listing Officer was under a duty to change it, prospectively, not retrospectively. Paragraph 3 (1)(b) plainly permitted the correction of an error. The appeal was dismissed .

Corkish (VO) v Wright and Hart CO/10761/2013

The issue was whether the annex was part of a building which was constructed or adapted for use as separate living accommodation. In quashing a decision of the VTE and remitting it back for rehearing by a differently constituted panel, Popplewell J found that the VTE panel had not applied the correct test, namely looking at the physical characteristics. He determined that the decision did not set out the correct test and there was nothing to suggest implicitly that the correct test had been applied. The decision had not mentioned two of the three physical characteristics which were being relied on as telling against suitability as separate living accommodation, and it failed to identify what were the elements which would normally deem the building to be a self-contained unit, or to identify any which might point the other way. The only two factors identified as supporting the VTE panel's decision were the actual use to which the annex was being put, and the access arrangements. Popplewell J considered that the first carried no weight, and the second was "incapable of being determinative".

Interesting VT Decisions

Non– domestic rating

Service of a Completion Notice

When the new building was nearing completion, discussions began between the Billing Authority (BA) representative and the representative of Jones Lang Lasalle (JLL), instructed by the building's owner, UKI (Kingsway) Ltd. Initially the BAs representative did not formally know the identity of the owner; when he asked the question of the JLL representative, no information was forthcoming. The owners were content not to provide the information as this would delay the service of a Completion Notice (CN).

Being unsure of the owner, the BA representative addressed the CN to "The Owner" and delivered it himself to the property, handing it to the receptionist there. The CN was scanned by the receptionist and emailed to the owner. Some three weeks after, JLL appealed claiming that the notice was invalid, or had not been correctly served.

The VO then entered the property in the List (with effect from 1 June 2012). The BA did not take that opportunity to issue a new CN.

The issues were therefore whether the name and address of the owner should have been in the CN to make it valid, whether hand delivery to the receptionist was "service" and the relevance of the fact that the copy of the CN did reach the owner.

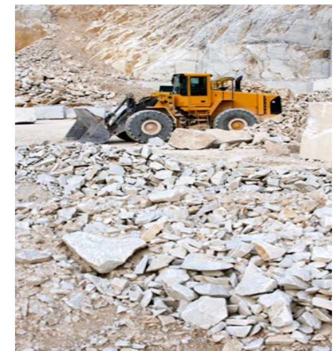
The President's view was that while it was good practice for BAs to include the owner's name and address on the CN, this was not a legal requirement and went to the question of service, not validity, so the CN was valid.

To use "The Owner" was "fatal to the claim of effective service", though there might be circumstances where a mistake in the name was excusable, provided there had been due diligence.

The President was also of the view that the owner was entitled to receive the original notice, unless they had made clear that electronic service was acceptable.

Even though a copy of the document reached the intended recipient, the President's view was that BAs should exercise these powers with regularity, clarity and certainty. In allowing the appeal, the President ordered the deletion of the entry.

Appeal no: 599022782147/053N10



Quarry, Lincolnshire

The parties were agreed that the value for the extracted mineral was derived from output sold during the previous calendar year, and the value of the surface rent, rateable plant and machinery was agreed. The rateable value (RV) was derived from this total, less 50% for the mineral sales element to reflect the cost of extraction. The annual redetermination of RV was undertaken as a material change of circumstances. The issues in dispute were the appropriate royalty rate attributable to the mineral element and whether an average royalty, or a differential royalty, should be adopted.

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The VTE Vice-President (VP) was also asked to determine the correct effective date for the RV increased from the compiled list entry by VO Notice in 2010. The appellant argued that the royalty rents agreed following the assignment of the lease should be disregarded; the royalty rent paid in an adjacent quarry should be used as the basis. The VO, referring to the principles established in Lotus & Delta, contended that the actual differential royalty payments on the appeal property provide the best evidence of value.

The VP noted that the breakdown of output for the adjacent 'comparable', with regard to the different minerals extracted, could not be ascertained. He also referred to *Hodgkinson (VO) v ARC Ltd* [1996] in which the LT held that when considering whether to adopt a single or differential royalty rate, the latter approach provided more consistency and fairness. The VP saw no reason to depart from the actual differential royalties passing on the appeal property in establishing the RV and he upheld the VO's revised valuations.

Considering whether it was appropriate and proper for the compiled list entry to be increased by VO Notice retrospectively on the basis of the legislation and case law, the VP was satisfied that the VO was so empowered if this proved necessary once actual output figures were available.

Appeal no: 252022078325/521N10

Farm Shop

The appellant's main submission was that the property ought to be treated as being partially exempt as, depending on the season, between 5% and 50% of the stock sold in the shop was produced on the adjacent farm. The property's ancillary accommodation, such as the office and the kitchen, was used by both the farm and the shop. The VTE panel rejected this argument. There was no separate part of the building dedicated to selling just farm produced goods and clearly the time spent selling non-farm produced was substantial and, in any case, not delineated from time on farm related sales. Similarly, the time spent using the ancillary accommodation within the property for farm related activities as against matters to do with the shop was not definable, so these areas within the building, even if they could be distinguished as separate parts of the building, were not exempt.

Appeal no: 227022268591/144N10

Office with additional WCs

The appeal hereditament comprised two floors in a 2007-constructed office building. The head leaseholder had installed WCs on each floor in addition to those already provided when the property was built. The appellant had taken a sub-lease and the argument was that, measured to net internal area, the additional WCs area should be excluded. There was no evidence that any other tenant in the building had installed any additional WCs and the details of the head lease were not available. The VO argued that these WCs were an improvement and added amenity value to the hereditament which should be reflected in the value (via applying an increased factor to the base office rate rather than including the areas of the WC in the assessment). In the alternative, the removal of the WCs would be minor works that could properly be assumed to be undertaken by a hypothetical tenant looking to occupy the property.

The panel rejected both of the VO's arguments. While the WCs might have suited the head leaseholder, there was no evidence to show that they provided additional amenity value to the actual or, indeed, a hypothetical tenant as there would seem to have been adequate WC provision in the property as constructed. Secondly the panel, saw no reason why the hypothetical tenant would agree a full market rent for the whole of the property, including the WCs areas which were of no amenity value to him and would normally be ignored on a NIA measuring basis, and then go to the additional expense of removing these WCs. In the panel's view the correct approach was, as the appellant contended, to measure the property to NIA, excluding these additional WCs, and to value the resultant area on the established tone basis for this building, with no uplift for any amenity value arising from the facilities.

Appeal no: 503018212691/539N05

Golf Driving Range

The rent passing on a 38-bay driving range with associated shop and other facilities was £15,000 a year. There had been a change in the method of valuing driving ranges under the national scheme, adopted by the VOA, from price per bay on the 2005 rating list, to a percentage of takings for the 2010 list, which the VOA considered better reflected the attributes of each particular driving range. This had resulted in a disproportionate increase in the rateable value (RV) of the appeal property, in comparison to other driving ranges in the area, from an agreed assessment of £19,500 RV for the 2005 list to £26,250 for the 2010 list. The new RV was based on 15% of the fair maintainable trade of £175,000, which reflected the actual takings of £177,681 in 2007-08. In contrast the ratepayers sought a reduction to £15,000 based on the rent but it was shown that the rent was a ground rent, which did not reflect the improvements done by the previous tenant. The appellants also challenged the rate adopted of 15% as the RV for the 2005 rating list had been equivalent to 10.6% of the takings at that time.

The panel disregarded the rent as it did not accord with the statutory definition of RV and adopted the receipts method of value used in the nationally agreed scheme for the 2010 rating list. The VO explained that the percentages adopted nationally ranged from 12% to 16% and in this area 15% had been considered reasonable; settlements had been achieved at that level. One purpose-built major driving range adjacent to the Trafford Centre shopping centre, with 57 bays and a £1million turnover had been agreed outside the range at 17%.

The VTE panel found the appeal property had been assessed in line with other comparable properties in the area and in the absence of any evidence to the contrary it dismissed the appeal. The panel accepted that takings had fallen from 2008 to 2011 but this was accepted by the parties to be due to the economic downturn, which the panel could not have regard to.

Appeal no: 422519290160/134N10

Brewery

Two appeals had been made, one against the compiled list entry and a second received 1 October 2012 referring to various material changes in circumstances (MCCs) affecting the value of the property. However it was agreed that the MCCs relating to beer duty escalation and smoking ban had occurred prior to the commencement of the 2010 list and so the hearing of this appeal would only consider the effect of flooding on the value of the property and what allowance, if any, should be made. The issue in dispute in the compiled list appeal was how the property should be valued. The appellant contended that it should be valued as a brewery, whilst the respondent stated it should be valued in line with other industrial units.

The appeal property was a detached industrial unit built in 1998 in the 2010 list at rateable value (RV) £57,500.

The appellant's evidence included a Valuation Tribunal decision in respect of David Wood Baking Ltd and Mr D Grace (VO) (appeal number 090519572156/134N10), and Lands Tribunal decisions in respect of *Robinson Brothers Brewers Ltd* v *Houghton and Chester Le Street Assessment Committee* [1938], *Garton* v *Hunter (VO)* LT [1977]; *Scottish and Newcastle Retail Ltd* v *Williams (VO)* [1993] and *Allied Domecq Retailing Ltd* v *Williams (VO)* [1993]. He contended that the lease was in respect of a brewery and it could only be used as such; it should therefore be valued as a brewery. Based on his evidence, he asked the panel to confirm an RV of £27,100 with effect from 1 April 2010 and to apply a 40% allowance in respect of the flooding with effect from the date of the first flood on 26 September 2012.

The respondent's presentation included extracts from the Environment Agency website showing the risk of flooding from surface water in the locality of the appeal premises. She stated that the rent paid in April 2007 of £61,000 should be considered as the starting point in assessing the RV and referred to the lease on the premises. She contended that it had to be valued vacant and to let without the brewery equipment installed and it should be valued in line with the other industrial units in the locality. Additional case law referred to included *Fir Mill Ltd* v *Royton Urban District Council and Jones (VO)* and *Lotus and Delta Ltd* v *Culverwell (VO) and Leicester CC* [1976].

She stated that the revised RV of £60,000 reflected the property as it stood at 1 April 2010, with no end allowance to reflect the layout which she did not consider was warranted and requested a confirmation of that figure from the date of the hearing. She contended that a 10% allowance reflected the risk of flooding and therefore requested a decision of a RV of £54,000 with effect from 1 October 2012.

The VTE panel found that the lease agreed in April 2007 was between a willing landlord and tenant for a specific use as a brewery and concluded that the annual rent had been established, following extensive negotiations, only one year prior to the antecedent valuation date (AVD) and, as such, provided strong evidence of value.

As the appellant had referred to various alterations carried out to the property so that it could be occupied as a brewery, the panel undertook a site visit and the clerk introduced the Upper Tribunal decision in respect of *VRCC Ltd* v *French (VO)* [2013] as this related to an industrial unit which had been adapted to a veterinary centre. The panel found that the alterations to the property were of a minor non-structural nature, not affecting the character and did not disturb *rebus sic stantibus* nor were they to the extent of that in the case of *VRCC Ltd* v *French (VO)*.

The panel noted that at the end of the lease and under the terms of the lease all the equipment installed would be removed and alterations carried out to the premises would be reinstated and therefore the next occupier could be any business, not specifically a brewery. The panel had to value the property vacant and to let and held that the property was an industrial unit currently being used as a brewery. While it could be described in the list as a brewery, it had to be valued in relation to the rent being paid at the AVD. The panel found that the other breweries quoted were not directly comparable; the appeal property with the brewery equipment removed was no different to the other industrial units in the area so they were the best comparable properties. The respondent had valued the appeal property in line with those units.

As regards the flooding of the premises on 26 September 2012 and 27 November 2012, the panel noted that the proposal was dated 1 October 2012, when only the first flood had occurred; the second flood was more substantial, however this only affected the use of the premises for two days. The panel therefore held that the allowance should only take effect from 1 October 2010.

At the site visit the panel was able to see where the river had broken its banks and caused the flooding, and where the water had entered the building; it was able to appreciate from photographs taken at the time the extent of the flooding. The panel noted that the property was in a reasonable state of repair and although water was seen to have penetrated through the floor into the men's toilets, this issue had to be taken up with the landlord.

The appellant had provided details of another brewery, which was out of service for a few months and had received a temporary 50% allowance. The respondent had provided details of properties with allowances ranging from 5% to 25% and had proposed an allowance of 10%. The properties with 25% allowances had been flooded a number of times and were unable to get insurance in respect of flooding.
The appeal property had only been affected for a few days when flooding had occurred in September and November 2012, no rent reduction specifically to reflect the risk of flooding had been agreed and the premises was still insured.

The panel dismissed the compiled list appeal as it was satisfied that the correct RV at 1 April 2010 should have been £60,000 but was precluded under regulation 38 (5) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, from increasing the RV. As regards the material change in circumstance appeal the panel accepted that an allowance of 10% should be applied and so determined a revised RV of £54,000 as proposed by the VO.

Appeal No: 452518159326/539N10

HMO

The appeal was in respect of a 3-storey terraced property which had been adapted to form a HMO with 10 letting rooms. Each of the four units on the ground floor comprised a bedroom with kitchenette facilities; none had their own bathroom. On the first floor, three rooms had kitchenettes and the fourth room had a wash hand basin; there was also a shared bathroom, shared WC and a shared kitchen. The two rooms on the second floor had no facilities in the rooms. There was a bathroom on the second floor and a shared kitchen on the half landing between the first and second floors.

Each room had been separately let to tenants, for six months at a time, under assured short-hold tenancies. The listing officer (LO) decided that all ten rooms met the definition of hereditament and were therefore dwellings. The LO considered that Article 4 of the CT (Chargeable Dwellings) Order 1992 did not apply to the property to change this, except in the case of the second floor rooms which had been aggregated to form the second floor flat.

The appellant argued that the house was a HMO and did not provide separate units of occupation. Facilities were shared and the bedsits were fractions of a dwelling.

However the panel looked at the definition of a dwelling under s3 of the LGFA 1992 – any property which would have been a hereditament – and the four ingredients of occupation. It concluded that, in this case, each tenant enjoyed actual, exclusive and beneficial occupation of their room. The rooms were let on assured short hold tenancies and thus the occupation was not transient. The appeal was dismissed.

Appeal No. 5270637431/084CAD

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.

Council tax liability

Class C exemption

The appellant was originally granted Class C exemption for six months from 1 April 2011.

However without the appellant's knowledge her managing agents moved tenants into the property on 9 September 2011. The appellant asked the tenants to move out which they did on 26 September. The billing authority (BA) withdrew the exemption for 9 to 26 September 2011, the period the property was occupied, but reinstated it from 27 to 30 September 2011, out of goodwill.

The appellant then requested another Class C exemption as the property was empty and she had to make cosmetic repairs when the unauthorised tenants moved out.

However, even though the appeal property had been occupied without the appellant's authorisation the panel could not ignore the fact that it had actually been occupied for a period. The panel found that the occupation of the appeal property lasted less than six weeks. Consequently the panel held that a reapplication of Class C was not permitted under the regulatory terms in force at the time, unless the property had been occupied for a minimum period of six weeks as outlined in the Order.

Appeal number: 2280M113253/084C

Single person discount.

The billing authority (BA) withdrew the appellant's single person discount from May 2012, as it believed, from the evidence of the electoral register, that her son also had his main residence there. The BA representative cited the High Court case of *City of Bradford MBC* v *Anderton*, in which it was held that a ship plying the high seas cannot constitute a person's residence.

The appellant's son was a deck hand on a motor yacht, which cruised worldwide; she provided evidence of her son's travels in the form of copies from his passport. He had been permanently employed as such since April 2012, on a full-time contract with six weeks' leave a year, and prior to that had been employed on a different yacht from March to November 2011. In between jobs, she understood he had stayed in hostels, sometimes abroad, while looking for work. He kept no possessions at the appellant's house and it was his intention to live with his father when he returned to the UK permanently. The son's name had now been removed from the electoral register; he had visited for short periods at infrequent times but had used her address for mail purposes.

The VTE panel found that the circumstances as presented by the appellant did not necessarily mean he was resident there, nor was the entry on the electoral register definitive proof of his residence. The panel also distinguished between this case and *Bradford* v *Anderton* as, in that case, Mr Anderton's wife and family lived in the property in Bradford that he also occupied when he was not working on board the ship.

The panel allowed the appeal, finding that the reasonable onlooker would conclude on the balance of probabilities that the appellant's son did not reside at her home from May 2012.

Appeal number 0116M105933/176C

Disabled reduction

The VTE panel had to decide whether or not the appellant was entitled to a reduction under the Council Tax (Reduction for Disabilities) Regulations 1992 because the front sitting room contained a commode and could no longer be used as a sitting room.

The only bathroom and toilet was situated on the first floor of the semi-detached house. There was a stair lift in the property to assist the appellant who lived alone. However, the side effects of medication necessitated use of a commode on the ground floor.

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The billing authority (BA) contended the sitting room which contained the commode was now a lavatory. As regulation 3(1)(a)(i) referred to "a room which is not a bathroom, a kitchen or a lavatory...etc" the appeal in its view had to fail. The BA believed that a commode was essentially a portable lavatory and that the sitting room was now a lavatory.

The panel found that the room in question remained a sitting room as it was furnished in that way; the only change to the room was the inclusion of a commode, which was a portable item; the room could not reasonably be described as a lavatory. The panel then considered whether the sitting room was required for meeting the needs of the qualifying individual and whether it was essential or of major importance to her well-being by reason of the nature and extent of her disability.

Having regard to the Court of Appeal judgment in Howell Williams v Wirral Borough Council [1981], the panel held that it was the commode which was required by the appellant to meet her needs as a disabled person, rather than the sitting room within which it was situated. The appellant needed a sitting room as part of everyday living just like everyone else and the room remained furnished as one. The commode being a portable chattel, despite its importance to meeting the appellant's needs as a disabled person, did not meet any of the qualifying criteria for obtaining a reduction under the regulations.

Appeal no: 4230M119917/254C

Class F exemption

The appellants were the executors of the estate for the previous occupier of the appeal property. Following the occupier's death the property had been exempt under Class F until six months after the grant of probate/ letter of administration had been made. However, the occupier had purchased an 80 year (50%) shared ownership lease in the property from a Housing Association which included provision that the lease in the property could only be assigned to a person 'nominated' by the landlord. In other words, while the leasehold interest in the property remained with the deceased person's estate, this could only be sold by the landlords.

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The lease was not sold until about five months after the expiry of the period of exemption under Class F and the estate of the deceased occupier was held liable for that period. The VTE panel was satisfied that, as the deceased person's estate retained the material interest in the dwelling (ie a leasehold interest of more than six months) until the lease was sold, it was therefore liable for council tax during the period in dispute.

Even if the lease might be argued to be in respect of 'part' (the 50% share) of the dwelling, it was the relevant inferior material interest in 'part' of dwelling rendering the leaseholder, rather than the freehold owner, liable.

Appeal no: 5570646092/084CAD

Long-term empty dwellings

The VTE President heard three appeals from appellants from three different billing authorities (BAs), each of which had chosen to adopt the full 50% premium on all qualifying long-term unoccupied and substantially unfurnished properties. This meant that the appellants were paying council tax at 150% of the normal rate.

The BAs were able to adopt this premium under section 12(2) of the Local Government Finance Act (LGFA) 2012, which introduced section 11B into the 1992 LGFA Act. Each of them had made this a blanket policy with no exemptions or discretion. Section 66(1) of the 1992 Act as amended provides that a determination under section 11B shall only be challenged by an application for judicial review. The Government's intention had been that the reform would deter people from deliberately keeping their properties empty. In its consultation document (Technical Reforms to Council Tax, DCLG, 2011) it was suggested that among properties that would be exempt from this premium would be those that were "genuinely on the market for sale or letting". In the light of responses to the consultation showing that the BAs had strong concerns about this proposal and would find it difficult to administer, this exemption was not included in legislation.

The appellants variously argued that the councils, in making their determinations, should nonetheless have had regard to the Government's intention and that the premium should not apply to them just because they could not find a buyer for their house, or/and that the premium caused them financial difficulties .

Observing that the cases revealed a "disturbing failure of public administration", the President dismissed the appeals, finding that the BAs had correctly applied their determinations. The VTE could therefore make no ruling on them. The options open to the appellants were to apply for judicial review in the High Court, or to apply to the BAs for discretionary relief under section 13A of the Act, or to complain to the Local Government Ombudsman.

Appeal no: 4635M121095/176C

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