Issue 33

July /August 2014

VALUATION TRIBUNAL SERVICE

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Valuation in Practice

News in Brief

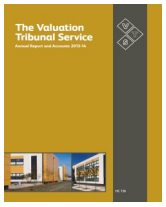
Consultation outcome—Checking and challenging your rateable value.

In an open letter to those who responded to the consultation, DCLG announced on 31 July 2014 that consideration of reform to the business rates appeals process would be included in the broader review of business rates administration, which is considering longer-term reform for after the revaluation in April 2017.
https://www.gov.uk/government/consultations/checking-and-challenging-your-rateable-value

Publications of Interest

Valuation Tribunal Service Annual Report and Accounts 2013-14

The Annual Report and Accounts were laid in Parliament on 3 July 2014. This year's Annual Report represents a significant milestone in our history as it is ten years since the VTS was created as a statutory non-departmental public body. There is much to be pleased about and take pride in; many of the ambitions we set out with ten years ago have been realised. To mark this very important milestone in our journey the report includes comparisons between 2004 and 2014 to draw out our achievements over this decade.
www.valuation-tribunal.gov.uk/annual_reports.aspx.



VTE Practice Statements

A11 Council tax reduction appeals – the revisions effective from 17 June 2014 make significant provision in cases where a billing authority (BA) fails to comply with the Standard Directions. In finding for the appellant and allowing the appeal by default, the Tribunal will determine, in light of the appellant's notice of appeal, the form of the Order (which may include remitting the matter back to the BA for the appropriate calculations to be made and implemented). A revised Barring Notice has also been implemented.

A7-1 –Non-Domestic Rates (Rating List 2010): Disclosure and Exchange - an amendment effective from 1 May 2014 inserts a new paragraph (11A) it relates to instances where a Statement of Case (SoC) has been sent to the VTE but has not been received by the other party. The other party should raise the matter as soon as possible and not leave it until the hearing. A postponement can be allowed where the SoC is received late; strike out/barring should only be used where it can be shown that failure to provide the SoC was a deliberate attempt to prejudice the other party.

A2 Listing of Non-domestic Rating Appeals—revisions effective from 1 October 2014. With the aim of assisting parties in knowing when to prepare cases and avoiding wasted journeys, the revised PS sets out:

- the requirement for ratepayers' representatives to contact the VTS at least a week before the hearing date to advise if the appeal is still active;
- if this contact is not made it will be assumed a hearing is not required;
- parties will be informed if they are included on a provisional list of appeals to be heard;
- parties will be informed 3 working days before the hearing date whether their appeal is included on the final list.

President's Guidance 01/2014 – Bundles for the Tribunal –how to prepare document bundles to allow for more efficient and convenient hearings

Presidents Guidance 02/2014 – Whether Statements of Case are Public Documents - based on s. 32 of the Freedom of Information Act 2000, the President concludes that these documents cannot be made available by the VTE/VTS to other people requesting them.

Inside this issue:

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/practstate.asp?mail=5

Decision from the Upper Tribunal (Lands)

Appeal by Pearce (VO) – re White Waltham Aerodrome [2014] UKUT 0291 (LC) RA/32/2013

Upon appeal, the Upper Tribunal (Deputy President) determined that where there has been a material change of circumstances [mcc] the VO is not restricted to adjusting [the].. determination solely to reflect the [mcc] but is required to undertake the single valuation exercise of determining the rateable value of the hereditament in those changed circumstances. See appeal number 035510474737/165N05 for details of the VTE decision appealed.
The Upper Tribunal decision is available on www.landstribunal.gov.uk

Interesting VT Decisions—Council Tax

Council tax liability

Class B Exemption

Three appeals heard together related to dwellings owned by charities providing charitable housing, following the abolition of Class A and Class C exemptions from 1 April 2013. Since then, charities claiming relief from council tax when their properties are unoccupied, have sought an alternative exemption under Class B. The criteria for Class B are set out in Council Tax (Exempt Dwellings) Order 1992 SI 1992 No 558, art. 3 as amended:
i) the dwelling must be owned by the body
ii) that body must be established for charitable purposes only
iii) the dwelling must have been unoccupied for less than six months
iv) the last occupation must have been for the furtherance of the charity's objects.
It was contended by the billing authority (BA) that the wording implies that it is for the charity to satisfy the BA of all the elements specified in Class B.

The appellant argued that it was unreasonable for the BA to require the applicant charity to demonstrate that a particular letting to a specific person was of a charitable nature by reference to his or her personal circumstances. This would place an unreasonable burden on applicants and would mean that officers of a BA, lacking appropriate expertise, would have to review every application to determine whether it amounted to a charitable purpose. It was also pointed out that a resident's personal circumstances may change in the period between taking up residence and leaving the accommodation of which the landlord would have no control or knowledge.

The President concluded that BAs have a limited role in relation to criteria (ii) and (iv) and that the applicant's charitable status was conclusive. The appellants housed individuals, which suggested that they were operating within their objects. The appellants fulfilled the requirements for Class B exemption and the appeals were allowed.
The full decision can be seen on our website using appeal number: 5390M121673/084C

Residence

No automatic assumption that a husband and wife are to be held as resident in the same dwelling for council tax purposes.
Two appeals were heard in May 2014 dealing with a single issue: whether council tax case law requires a husband and wife to have the same sole or main residence as defined in section 6 of the Local Government Finance Act.
The President decided it did not: there was a presumption that where a wife and child live so does the partner (Cox v. Wilshire VCCT [1994]), but this could be rebutted or displaced depending on the facts of the case.

The full decision can be seen on our website using appeal number: 5270M86974/084C

Liability of spouses

The appellant came to live in the UK after her marriage to a UK citizen. Since her husband had been declared bankrupt and imprisoned, the billing authority (BA) decided she was liable to pay the outstanding council tax debt under the terms of joint and several liability. The BA representative contended that they had not been aware of her presence until October 2012 and that all bills issued before that date had been addressed to the appellant's husband. The appellant argued that she had visited the council offices with her husband shortly after August 2002 to notify them of her presence at the dwelling. A letter, signed by the appellant's husband, confirmed the date she moved into the appeal property as the first time she came to the UK; 10 August 2002. With the letter he had provided copies of identifying documents and confirmed that she was not in receipt of any benefit. There was no date on the letter and it had not been date stamped on receipt by the BA.

The appellant had an ongoing complaint to the Local Government Ombudsman about the calculation of the outstanding debt.

The panel had sympathy for her circumstances, but had no discretion to vary the terms of Section 9 of the Local Government Finance Act 1992.

The facts of the matter were not disputed; the appellant was married and had become resident at the appeal dwelling with effect from 2 August 2002. Consequently she was jointly and severally liable to pay council tax in respect of that dwelling from that day. In view of this, the appeal was unsuccessful.

The full decision can be seen on our website using appeal number: 5150M124934/084C

Class G Exemption

It was the appellant's contention that because he was the subject of a Court Order which excluded him from returning to the subject dwelling for 12 months, a Class G exemption should be granted.
The property was owned by the appellant and remained furnished though unoccupied.
The billing authority (BA) contended that a Class G exemption would not be appropriate because whilst the appellant was prohibited from occupying the dwelling, other people were not. The appellant had been told that if the dwelling was let or sold, then liability would be the responsibility of any tenant or new owner.
None of the criteria for Class G exemption for the dwelling were met: occupancy was not restricted by a condition imposed by any planning permission granted under Part 3 of the Town and Country Planning Act 1990, nor did the VTE panel accept that the subject dwelling was kept unoccupied by reason of other action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it.
There was no doubt that the appellant was prevented from occupying the dwelling but there was no evidence to suggest that any other person was prevented from occupying the dwelling.
It was determined that it was the appellant and he alone, who was prohibited from occupying the dwelling, and the appeal was dismissed on the grounds that occupation of the dwelling was not prohibited by law.
The full decision can be seen on our website using appeal number: 3515M123813/037C

House in multiple occupation

A billing authority (BA) contended that the presence of locks on four internal doors in the appeal property meant that it met the criterion set out in the regulations of being "originally constructed or subsequently adapted for occupation by persons who did not constitute a single household", and referred to the decision in Hayes v Kingston upon Hull City Council [1997] to support its position. The panel noted however that these doors were the original doors which had been installed when the property was built around 100 years ago and the locks formed part of the doors and had keyholes rather than separate 'Yale'-type locks. From this the panel concluded that there had been no subsequent adaptation and it was satisfied that as this type of door was not uncommon in family homes built at that time. In view of these findings, it was clear that the criterion had not been met.

Regarding the alternative criterion relating to occupancy, the panel noted that there had been five distinct periods relevant to the disputed liability. The panel was satisfied that the appeal property could not be classed as a HMO for two of the periods as it had been unoccupied. During two other periods the tenants in occupation had full and exclusive use of the appeal property and were liable to pay the rent for the whole of the property, not part only. This was supported by the tenancy agreements. In the remaining period, the appellant's

witness had been the sole occupant of the property and had paid the council tax to the BA for that period. When questioned, he confirmed that he had been the sole occupant of the property for the whole of the period and had full access to all of the property, though he had made an error when completing the tenancy agreement and ticked the wrong box (indicating that it was for a single room only). The appellant had received a higher monthly rent before this and, taken with the incorrectly ticked box it could be seen how the BA might consider this suggested part occupation and rental liability.

However, the panel considered it important in determining this appeal to consider all of the facts and circumstances regarding this period and not solely rely on the tenancy agreement and comparisons with previous ones.

The panel was satisfied with the appellant's explanation that he had been willing to assist the tenant, an old friend, by reducing the rent for the whole property while he looked for somewhere more affordable to live.
In view of this, the panel concluded that the appeal property was not a HMO under the occupancy criterion either and the appeal was allowed.

The full decision can be seen on our website using appeal number: 3455M129959/176C

Class C Exemption

In two cases heard by the VTE President, the appellants challenged the billing authorities (BAs) decisions to withdraw Class C exemptions from 31 March 2013. This was the date on which the exemption ceased to exist, but the appellants argued that the six month period for Class C, awarded before that date, should continue until the six months expired, irrespective of the abolition of the exemption.
Legislation governing the Class C exemption states that the exemption must be calculated on a daily basis for as long as it is applicable, up to a maximum of six months. After 31 March 2013, there was no statutory exemption for which to qualify.
It was concluded that the BAs had treated the appellants correctly and the appeals were dismissed.
The full decisions can be seen on our website using appeal numbers: 5180M113254/084C and 3245M126393/176C.

Council tax valuation

Invalidity notice appeal

A VTE panel allowed an appeal against an invalidity notice issued by the listing officer (LO). The taxpayer had sent a proposal seeking a reduction in council tax band because of 'material reduction' in the value of the appeal property because of three changes in the locality.

However, the LO issued an 'invalidity notice' because he believed no 'material reduction' in value had been caused by the changes. The panel allowed the appeal.

The full decision can be seen on our website using appeal number: 4250667214/254CAD

Council tax reduction

Discretionary reduction

The Local Government Finance Act of 2012 substituted a new section 13A into the 1992 Act covering both the new council tax reduction (CTR) schemes and the former discretionary power to grant relief. The President heard two cases challenging discretionary reduction and, on the basis of arguments presented by the appellants' counsel on the day. Council tax reduction decisions do not appear on our website.

Interesting VT Decisions—Non-Domestic Rating

Office oversupply in Canary Wharf, London

Four 2005 Rating List appeals were heard each seeking a 10% reduction in rateable value (RV) to reflect a material change of circumstances (mcc) from 2 March 2009, namely an increase in office space resulting in a large surplus which had had an adverse effect on rental values. All the main space rates that had been adopted were in accordance with the Canary Wharf Agreement of 3 June 2004.

It was found that between the antecedent valuation date (AVD) 1 April 2003 and 1 April 2005, office space in Canary Wharf had increased by 46.78% and by 2 March 2009 the stock had increased by a further 6.2%. Availability at April 2005 was running at 9% and by the effective date had increased to 14.8%. It was noted that availability figures were accepted as a measure of vacancy levels and that tenants and landlords tended to view availability as a market indicator.

The appellants conceded that the first buildings in Canary Wharf in the early 1990's were demand driven but, as the market grew with new building stock and a developing second hand office market, the market profile matured and was now subject to the same supply and demand profile of other office centres.

The Canary Wharf Agreement in 2004 set values well below the average market rent at 2003. This may have been due to the increase in supply of office space between the AVD and 1 April 2005, which would not normally result in a reduction in rents unless there was oversupply.

It appeared the valuation officer (VO) had already recognised that oversupply existed at Canary Wharf by the date that the list came into force.

Between the market's peak in 2007 and trough in 2009-10, rents in Canary Wharf fell by around 40%. The main reason for the increase in availability and the fall in rents at the material days was found to be the economic situation (the recession), which had to be disregarded.

Evidence showed that by 2003 the market profile at Canary Wharf was very similar to the City of London; headline rents for both followed a similar pattern between 1990 and 2010. A 5% oversupply allowance had been given in the City where overall stock had increased by 4.9%; less than the 6.2% increase in Canary Wharf.

The appeal was allowed in part as there was evidence of an oversupply of office space in Canary Wharf and a reduction of 5% was given in line with that awarded in respect of offices in the City.

The full decision can be seen on the website using the appeal number: 590016555047/058N05

Royal Society of Medicine - mode and category of occupation

The appeal property was a Grade 1 Listed townhouse over five storeys, built between 1769 and 1791, with six function rooms and 17 en-suite bedrooms. It was extensively refurbished in 2004 and was then let to the Royal Society of Medicine.

The appellant's representative contended that the appeal property should be valued as a hotel and premises having regard to rebus sic stantibus and the Scottish and Newcastle decision, as the property had the principal characteristics of a hotel. He had valued it on that basis by reference to a fair maintainable trade and the VOA Practice Note 1: 2005: Hotels.

The valuation officer (VO) contended that the property was not a hotel as it had no bar or restaurant and though the rooms on the ground and first floor were used for conferences and functions, the food was prepared at the Royal Society's main building at 1 Wimpole Street and then brought over.

As such the VO considered the appeal property to be almost an annexe of 1 Wimpole Street, providing function rooms and overflow accommodation. He confirmed that the VOA's previous valuation on an office basis was incorrect. His revised assessment valued the bedrooms at the rates adopted for gentlemen's clubs and then, deducting this from the figure in the rating list, attributing the remainder to the meeting and conference rooms.

The panel found the property was neither offices nor a hotel but was a hybrid property, best described as conference and meeting rooms with bed and breakfast accommodation. The VO's approach of deducting the value of the bedrooms from the existing RV and then apportioning the remainder to the conference and meeting room accommodation, was also given little weight as the existing RV had not been demonstrated to be correct.

Instead the panel had regard to Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council [1976] and accepted that the starting point should be the rent on the appeal property, which, in the absence of any other compelling evidence provided the best guide to the value of the actual property. Viewed against that figure, the panel found the current RV was not excessive and it dismissed the appeal.

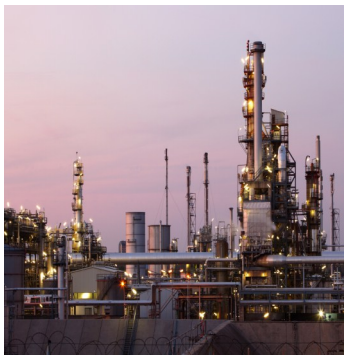
The full decision can be seen on our website using the appeal number: 599016869085/088N05

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 number to search Decisions.

Interesting VT Decisions– Non Domestic Rating

Contractor's basis

A VTE Vice-President recently issued decisions relating to two different applications of this method of valuation, which typically has five stages:
(1) Estimate the cost of construction of equivalent premises (the buildings, civils and plant and machinery, but not the land on which they sit)
(2) Make adjustments to reflect deficiencies in the hereditament
(3) Add the value of the land
(4) Decapitalise, - using the statutory decapitalisation rate (SDR)
(5) Stand back and look



Mainline pipelines

Two appeals were heard concerning a cross-country pipeline constructed in 1972 with various associated rail, river and road crossings and valve compounds and pump stations. The total length of pipeline at all material times was 391.800km (143.243km in Wales; 248.557km in England). The appeals challenged the entries in the central rating lists for England and Wales from 1 April 2010.

The issues between the parties were:

- whether it was appropriate at the end of the first three stages to consider capital transactions and valuations carried out in the real world; and
- adjustments at Stage 2.

The appeals were allowed in part; the full decision is on our website, appeal no: 0002M89595/001N10

Oil refinery, Immingham, Lincolnshire

The appellant was seeking reduction in the rateable value (RV) of an oil refinery capable of producing petrol, diesel, aviation fuel, kerosene, heavy fuel oil and liquid petroleum gases. The parties agreed that the appropriate method of valuation was the contractor's basis.

A determination was required in respect of the allowances of 30% sought at stages 2 and 3 by the appellant. The parties set out four issues which assisted with addressing the allowances:

- the relevance/usefulness of comparing the 2005 and 2010 rating lists
- whether to reflect economic issues at stage 2 or stage 5
- the relevance of sales evidence of other refineries in assessing Effective Capital Value and in particular whether an additional 30% allowance should be included at stage 2 to reflect the issues facing the refining industry at the valuation date and the evidence of sales of other refineries in the UK and Europe
- application of the SDR.

Each issue was addressed and where possible the figures reached at each stage and the final figure were tested against the evidence available and the statutory definition of rateable value.

The appeal failed as there was insufficient evidence to prove that the contractor's basis valuation was wrong or that a further allowance in respect of economic issues should be awarded.

The full decision is on our website, appeal number: 200318260830/541N10

Agricultural exemption

The appellants bred 20–30,000 rats and mice a month as food for reptiles and birds of prey, supplying zoos, wildlife parks and private individuals and operating from a former cattle barn on a working farm. They claimed exemption from rates on the basis that the barn was an agricultural building and sought deletion of the entry in the 2010 list. The valuation officer considered the building was rateable as the activity was not covered by the statutory exemption set out in the Local Government Finance Act 1988, Para. 1(b) of Sch 5. This exempts from non-domestic rates a hereditament that consists of "agricultural buildings" as defined in para. 5(1), which provides that, "A building is an agricultural building if – (a) it is used for the keeping or breeding of livestock". Para. 8(5) states: "In paragraph 5 'livestock' includes any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land."

The VTE President considered whether the word "includes" widened or narrowed the definition of "livestock" and whether "food" was limited to food for human consumption or covered any food.
He concluded that the hereditament was liable to rates, as the breeding of mammals as food for other animals did not come within the meaning of "livestock" for the purpose of the rating exemption. The appeal was dismissed.

The full decision is on our website, appeal number: 353021926754/036N10

VALUATION TRIBUNAL SERVICE

The summaries and any views given in this newsletter are personal and should not be taken as legal opinion

The photographs used here are for illustration purposes only and may not be of the actual properties or people referred to in the articles.

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