Issue 35

January 2015

VALUATION TRIBUNAL SERVICE

VALUATION TRIBUNAL SERVICE JANUARY 2015

Valuation in Practice

News in Brief

Director Appointments

The VTS is pleased to announce the appointment of two Directors, Ann Battom and Lee Anderson, and welcome them in their respective roles.

Ann Battom will take on the role of Director of Finance & Information Systems. Having qualified as an accountant in 1993 (ACCA) and then becoming CIPFA qualified in 2011, Ann has over 25 years' experience in both the private and public sector. Ann was the Chief Financial Officer with the West Northamptonshire Development Corporation, an arms-length body of DCLG, and is currently working as an interim at DCLG, advising them on financial and governance matters. Ann will take up her employment on 2 February 2015.

Lee Anderson, formerly VTS Operations Manager, will take on the role of Director of Operations & Development. He started in his new role on 1 January. In addition to leading on operational matters, Lee will lead on project management within the VTS and the development and implementation of strategies to improve operations and service delivery. Lee will become the Board's and Accounting Officer's Senior Information Risk Owner with responsibility for information risk policy and risk assessment processes. He will also take the lead on business continuity.

Public bodies reform update

In a written statement to Parliament in November, Cabinet Office Minister Francis Maude, gave a progress report on reforming public bodies. An annex to his written statement showed that the VTS and VTE were now to be 'retained'.

However, both the VTS and VTE will be subjected to a Triennial Review, starting at the end of this financial year, which will look at whether the public functions we perform are needed and if so whether either the VTS or VTE should exist at arm's length from the government. The review team will also seek the views of our stakeholders.

Valuation in Practice

The next publication is planned for April 2015. Any feedback is welcome from our readers, as always.

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/pract-state.asp?mail=5

DCLG business rates news

In December 2014 DCLG issued -

Business Rates Avoidance Discussion Paper. This consultation aims at understanding the type and scale of business rates avoidance in England and to find ways to tackle business rates avoidance so that all ratepayers pay the business rates that they should pay. The deadline for responses is 28 February 2015.
https://www.gov.uk/government/consultations/business-rates-avoidance-discussion-paper

Checking and Challenging your Rateable Value – Summary of Responses. The consultation was open for 12 weeks from 6 December 2013 and 71 responses were received.
https://www.gov.uk/government/consultations/checking-and-challenging-your-rateable-value

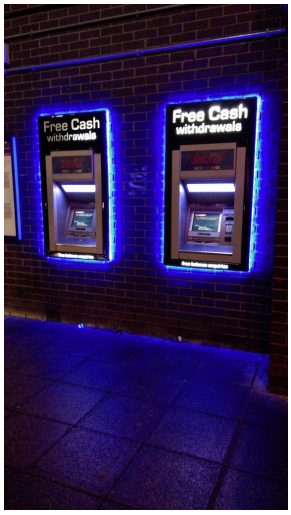
Administration of Business Rates in England – Summary of Responses.
On 10 April the government published a discussion paper to get the views of business and other stakeholders on ways to improve the administration of business rates. In all, 217 written responses were received and they are summarised under -

- How property is valued
- How often property is valued
- How rates bills are set and collected
- How information about ratepayers and business rates is provided and used

https://www.gov.uk/government/publications/administration- of-business-rates-in-england-summary-of-responses

Administration of Business Rates in England – Interim Findings (and Annex A)
This paper sets out how the government proposes to respond to businesses' calls for clearer billing, better sharing of information and a more efficient appeals system. DCLG welcomes ongoing engagement and the government will conduct a review of the future structure of business rates to report by Budget 2016. The review will be fiscally neutral and consistent with the government's agreed financing of local authorities. The terms of reference will be published in due course.
Annex A provides background on analysis carried out by the VOA to understand how more frequent revaluations might affect business rate bills.
https://www.gov.uk/government/publications/administration- of-business-rates-in-england-interim-findings

Business Rates – Extension of Transitional Relief for small and medium businesses – Guidance. This is intended to support local authorities in administering the extension of TR. It sets out the criteria which central government will use to determine funding relief for properties falling out of transition to higher bills in 2015-16.
https://www.gov.uk/government/publications/extension-of-transitional-relief-for-small-and-medium-business-rates-properties



Councils urged to boost the number of free-to-use cash machines DCLG has issued advice to councils on using their local business rate discount powers to encourage better provision of free-to-use cash machines on our high streets. Companies who install and operate cash machines generally pay business rates to the local authority for each machine. Councils opting to provide a local discount on rates could incentivise shops and cash point providers to install new machines and remove charges on pay-to-use machines.

DCLG cites this as one of its measures to support local businesses and help rejuvenate high streets. Others include:

- 50% business rates discount for 18 months for new businesses setting up in stores vacant for more than a year; and a
- cut in business rates for small shops, a new £1,500 retail discount and doubling small business rate relief

---

Business Rates Information Letter, BRIL 10/2014

- Business rates retention and shale oil and gas: consultation on draft regulations
- Business rates on cash machines
- Information on local authority websites

Business Rates Information Letter, BRIL 11/2014)

- Autumn Statement
- 2015-16 Provisional Multipliers
- Property Owner Business Improvement Districts

Business Rates Information Letter, BRIL 12/2014

- Review of Business Rates Administration Interim Findings
- Summary of Responses to the Consultation Checking and Challenging Your Rateable Value
- Business Rates Avoidance Discussion Paper

Business Rates Information Letter, BRIL 1/2015

- Business Rates and Childcare Providers
- Extension of Transitional Relief for Small and Medium Properties - Guidance

Previous letters are available on the internet at:
https://www.gov.uk/government/collections/business-rates-information-letters

Decision from the Supreme Court

R (on the application of Moseley (in substitution of Stirling Deceased)) v London Borough of Haringey Michaelmas Term [2014] UKSC56 (on appeal from UKSC 2013/0116)

Two Haringey residents who, until 1 April 2013, had been in receipt of full council tax benefit, applied for judicial review of the lawfulness of the consultation process which Haringey had purported to conduct in relation to its draft council tax reduction scheme.

It was considered that the purpose of this particular statutory duty to consult was to ensure public participation in the local authority's decision-making process. To achieve that objective, the consultation must fulfil certain minimum requirements. Meaningful participation required that the public should be provided not only with information about the draft scheme, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of the draft scheme. It should also invite views about alternative courses of action. Consultees should be informed "what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response": *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213, para 112, per Lord Woolf MR. From *R v Devon County Council, ex parte Baker* [1995] 1 All ER 73 it was noted that "the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit".

It was deemed important that consultation documents should be clear and understandable and not unduly complex or lengthy. In this case the consultation document presented the proposed reduction in council tax support as if it were the inevitable consequence of the Government's funding cuts, implying that there were no possible alternatives to that choice. The Supreme Court concluded there had been no consultation on the fundamental basis of the scheme.

The legislation requires that a consultation exercise should be carried out when a local authority is minded to revise its scheme. If Haringey was to revise its scheme, Lord Wilson noted that "no doubt it will undertake its exercise in accordance with the terms of this court's judgments". His conclusion was that it would not be proportionate to order Haringey to undertake a fresh consultation exercise in relation to a scheme which would have been in operation for two years and which Haringey was not minded to revise.

Decision from the Upper Tribunal (Lands Chamber)

Gallagher (VO) v Dr M G Read & Partners and Dr J Poyser & Partners [2015] UKUT 00001 RA/31/2012

These appeals arose from proposals relating to purpose-built general practitioner (GP) surgeries, following a decision of the VTE in which it determined that the rateable value (RV) of each of the hereditaments should be assessed in accordance with the contractor's basis of valuation. The use of available rental information had been rejected because the rents were not derived from the open market, but based on 'current market rents' (CMRs) under the Doctors' Rent and Rates Reimbursement Scheme (DRRS).

CMRs are rents which the District Valuer considers might be reasonably expected to be paid for the premises concerned at the valuation date and, from his analysis, the VTE Vice-President had not been able to say with certainty that these met the definition of rateable value. The DRRS provides a public subsidy towards GPs' occupational costs so CMR is fully reimbursed to them and there was no incentive to negotiate a reduction.

The parties agreed that the appeals were "test cases", as there were approximately 1,600 other appeals on purpose-built GP surgeries currently awaiting the outcome.

Use of the rentals method depends on sufficient, appropriate and reliable comparable evidence being available from the market place; if it was available it would be top of the evidential hierarchy. The appellant VO representative's case was that such evidence was available and he relied on rents payable for other purpose built surgeries. He argued that similar subsidy arrangements should be assumed to exist in the rating hypothesis. Any differences between the CMR process and the statutory hypothesis could be dealt with by making adjustments.

The respondents' case was that the transactions relied on by the VO did not provide evidence of open market or other rents actively negotiated by a tenant, and provided no reliable guide to the value of occupation to the occupier. The development of these bespoke surgeries was fully funded by Primary Care Trusts; they were never vacant and to let in the open market. As a matter of valuation judgement, the respondent argued, no significant weight could therefore be given to the rentals method of valuation, and it was necessary to look for a more reliable method and, as such, the contractor's basis was the appropriate method.

P R Francis FRICS was not persuaded by the VO's arguments about lease rents and CMRs and determined that the VTE decision had been correct. As there are were so many imponderables it was decided that that District Valuer' s CMR exercise could not possibly provide a reliable basis for valuation on the rating hypothesis. .
The appeal was dismissed.

(VTE decision - Appeal number: 442019102715/257N05)

Interesting VTE Decisions—Non-domestic Rating

Car parking spaces on highway land – Wareham Quay

The appeal land forms part of a public highway within the meaning of the Highways Act 1980 and is maintainable at public expense which, by section 263 of the Highways Act 1980, is vested in the appellant council as Highway Authority.

The VTE Vice-President was directed to the principles constituting a modern definition of a highway as set out in the Encyclopaedia of Highway Law and Practice. In summary it must be open to the public at large; the public must have the right to use the highway as distinct from permissive user; the nature of the public right to use the highway is primarily one of passage; there must be a known and identifiable route over which the right of passage is exercised.

The appeal land had been in the rating list for some years until 2011 when it was noticed that non-domestic rates had been paid in respect of it; further enquiries had revealed that no other on-street parking subject to charging was rateable in the area or in that of neighbouring authorities.

The council contended that it is not in rateable occupation of the appeal land as it forms part of the public highway and the public is not a rateable occupier, citing the authority of *Lambeth Overseers v LCC* [1897] AC 625, which stated that the user rights of the public "exhausted the possibility of value to the authority".

The valuation officer (VO) contended that a single area of land may have several layers of different uses, each of which may be liable to a rate. Evidence of the basis for valuation came from a comparison with Cobb Gate Car Park at Lyme Regis, but the Vice-President noted that this provided off-street parking and was not part of the highway. The VO also argued that the council's use of the land amounted to rateable occupation because it added value to the highway.

The four tests of rateable occupation as set out in *John Laing and Son Ltd v Kingswood Assessment Committee and Others* [1949] KC 344 were addressed. The Vice-President found that three of the tests were not satisfied; the appellant was not occupying the land as a car park and had no power to exclude the public from it. Even if it was in actual and exclusive occupation that was not of benefit for the purposes of being liable to rating, because of the constraints placed on the Authority by the charging regime of the Road Traffic Regulation Act 1984. For these reasons it was determined that the entry of the appeal land in the rating list must be deleted.

Appeal number: 122522348090/541N10

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, select the appeal type and use the appeal number to search Decisions.

Merger

The appellant contended for five assessments to be merged as, although the hereditaments were physically separate from each other, the strong functional link was such that it overcame the physical separation and they functioned as one unit.

The hereditaments were part of a production facility building motor homes and comprised a factory, a CNC shop, a press shop, an R&D unit and a service centre. The buildings were separated by the estate road.

Relevant considerations included the distance between the five properties concerned and the nature, amount and frequency of traffic between them, including movements of personnel and materials.

From the evidence and case law including *Gilbert v Hickinbottom & Sons Ltd* [1956] 2 QB 40, the VTE panel found that these five units did not have an essential functional connection, were not within the same curtilage and were not contiguous, but situated throughout the estate, intermingled with other businesses' units. It could therefore see no justification for assessing them as one and the appeal was dismissed.

Appeal number: 161019297776/212N10

Warehouse Distribution Centre

The issue in dispute related to value and the appropriate valuation method.

The appellants put forward three alternative approaches to arrive at value: direct comparison with other distribution warehouses (adjusted to reflect location); contractor's basis; analysis of a single piece of market evidence. The valuation officer (VO) dismissed all three and relied entirely upon evidence of comparable rating assessments and rental value so as to prepare a valuation based on an unadjusted rate of £38/m^2 that gave a rateable value (RV) of £2,040,000. Starting by considering the rents and rateable values of other distribution centres in the north of England and their comparability, the VTE Vice-President found no evidence to support the £38 / m^2 figure. The hereditament was not purpose built, had limited uses and a very small market of potential tenants.

A base price of £30 per sq m for the appeal hereditament was used which reflected its size, location and the fact that it was not purpose built. To this 5% was deducted for quantum and the valuation on that basis was £1,600,000 when rounded down.

Appeal number: 431023356053/538N10

Interesting VT Decisions—Non-domestic Rating

NDR Invalidity

The appellant's representative had submitted a proposal seeking to reduce the entry in the 2010 rating list for the subject property at the date the list was compiled. A proposal had already been made previously by another representative for the same ratepayer seeking the same alteration to the list and had been withdrawn.

The VO argued that the proposal was invalid as one had already been made by the same ratepayer on the same grounds, albeit with a different representative. The appellant's current representative appealed against the invalidity notice on the grounds that the ratepayer had been 'misled' into instructing the previous representative who had subsequently not properly represented the appellant's interests.

The Panel, being satisfied that there was no question that the same appellant had instructed both representatives concluded that whether or not the first had acted in the appellant's best interest was not relevant in determining if the subject proposal was valid: The question turned, quite clearly, on whether as a matter of fact the appellant had, through an appointed representative, already made a proposal on the same grounds as the one under consideration in this appeal. Equally clear was the fact that such a proposal had been made by the appellant so the right of that appellant to make another proposal on the same ground had been exhausted. The subject proposal was therefore invalid and the appeal was dismissed.

Appeal number: 311023574203/541N10

Stables

The issue before the VTE panel was whether 18 former racing stables were now domestic property in accordance with section 66 of the Local Government Finance Act 1988. The appeal property comprised a separate block of 14 stables with stores and tack room, which was adjacent to a four-bedroom flat with stables and a kitchen on the ground floor. The appeal property had originally been included in the rating list as Racing Stables at £10,750 RV but the assessment was amended to Stables and Premises at £5,100 RV with effect from 1 April 2010.

The appellant contended that, as the stables attached to his property had not been used for many years, they should no longer attract any business rates. He pointed out that access to them was poor and dangerous and, as they were around 200 years old, they were in a poor condition. If they had been separate he would have got rid of them but because they were within the curtilage of his property, he was unable to do so other than by demolishing them.

Planning permission had been obtained to convert the four stables under the flat and the flat into a single domestic property; the remaining 14 stables were no longer fit for commercial purposes and the Jockey Club would no longer licence the property as a training establishment. He referred to the decision of the President of the VTE in *Seabrook* v *Alexander* (VO) 153517450882/538N10 [2014] VTE, and observed that 'Takeleys Farm' was much larger than his property and had succeeded in having stables, an indoor arena and ménage all taken out of the rating list. He contended therefore that the block of stables at his property should also be removed from the list.

The valuation officer (VO) referred to decisions in respect of *Follyfoot Farm* 19503788778/017/N00 [2003] VT and *Seabrook* v *Alexander* (VO), together with a VOA commentary on the latter case. He accepted that the stables under the flat were now domestic property but contended that the other 14 stables did not satisfy the criteria set out in S. 66 for domestic property. Mr Ware detailed the terms, "yard", "garden", "outhouse" and "other appurtenance" and also "curtilage" and considered that 14 of the stables were not an "appurtenance" to the flat under S. 66(1) as they would have to be mentioned in any conveyance.

The panel had regard to the decision in *Seabrook* v *Alexander* (VO) and noted from the judgment that,

> "there was actual recreational use of the stable block, the larger stable block, the indoor arena and the ménage and no question of commercial or business use".

In contrast, in the subject appeal, there was no evidence to suggest that there had ever been any recreational or domestic use of the 14 stables and their last use had been as part of the appellant's former business of racing stables. They were still clearly identifiable in the VO's photograph as stables.

The panel noted that S. 66(5) provides that "property not in use is domestic if it appears that when next in use it will be domestic" and, while the panel was satisfied that this section applied to the four stables below the flat, which were to be converted into a single dwelling, no evidence was provided to indicate that the 14 other stables would be used as domestic property when next in use.

Accordingly, while the panel confirmed that the 14 separate stables could not be deleted from the rating list, the four stables below the flat should be removed from the assessment and it allowed the appeal to that extent and confirmed the revised RV of £4,050 proffered by the VO.

Appeal number: 143516907729/148N10

Interesting VT Decisions — Council Tax

Completion

The developer contended that when three completion notices were served on him dated 12 December 2013, the houses were incomplete and were awaiting NHBC Buildmark Cover notes; two of the houses were not complete until 24 February 2014 and the third was complete on 10 March 2014.

The BA contended that its inspector was informed by the developer's salesperson in the sales office that the three houses were complete. The BA classed a house as complete if it was fully secure with a roof, glazed windows and external doors, and plastering had commenced. It was also usual to have internal walls and a staircase in place. On this basis the BA argued that all three houses were substantially complete on 12 December 2013.

The BA contended that there was no statutory definition of what constituted complete.

Interesting VT Decisions — Council tax

(continued from p5)

The clerk referred the panel to three authorities and invited the parties to comment. The BA disregarded the case law and maintained that its approach was correct.

The VTE panel allowed the appeals, noting that a property can only be considered to be complete, if it is ready for occupation and it was established that none of the houses was ready for occupation on 12 December 2013. A property that is substantially complete is not ready for occupation, as there is still work remaining to be done. The BA had confused what was meant by complete with what constituted substantially complete. The completion dates sought by the appellant were upheld.

Appeal number: 2530M124713/037C

Liability
Class C discount

With effect from 1 April 2013, properties which previously would have qualified for exemption under Class C of the Council Tax (Exempt Dwellings) Order 1992 as amended would attract whatever discount, if any, the relevant billing authority (BA) had chosen to adopt under its discretionary powers under Section 11A of the Local Government Finance Act 1992.

Information on the BA's website stated:

"providing a dwelling remains unoccupied and substantially unfurnished it will receive a 100% discount for one month. This will be from the date the furniture was removed".

The appeal property comprised studio flats within a newly constructed building. Each flat contained a hob, a fridge, a wardrobe, a wc/shower and a sofa bed. Additional items were added when the flat was occupied such as a desk and chair, bed linen, a microwave, kettle, cutlery and a lamp. These latter items were removed in between lettings. In addition, there was a lift to all floors, a coin operated launderette on site, secure bike storage, 24/7 reception and an on-site accommodation manager, CCTV and a digital key entry system.
The VTE panel was advised that each flat was delivered to the site as a completed module with all the fittings and then the pods were fixed together on site. In between lettings the furniture was stored at another site. The contention was that when certain items had been removed from the flats, they were substantially unfurnished and unoccupied, and therefore a Class C discount should be awarded.

Evidence provided confirmed that within the students' tenancy agreements the furniture, fittings and chattels that were provided included a bed mattress with cover, desk and desk chair, wardrobe, leisure chair, microwave and fridge. However, it was ascertained that there had also been occasions when persons other than students were occupying the flats during the summer term, for a nightly charge.

The panel made a finding of fact that each studio flat was a furnished let. It was found that a minimum amount of furniture remained in each studio flat in terms of a cooking hob, a fridge, a wardrobe, a wc/shower and a bed that doubled up as a sofa, even when it was untenanted; this was sufficient for each to be considered furnished. It was decided that no discount or exemption was applicable.

Appeal number: 5210M138094/084C

Valuation
Deletion

The appellant's studio flat was attached to the main property. He contended the flat was not separate and should therefore not have been separately assessed; as there were many examples of this arrangement of self-contained units in the area which had not been separately banded by the listing officer (LO). The appellant referred to *Domblides v LO* [2008] EWHC 3271 (Admin) in support of his argument that a 'tone' had been set by the LO not to separately band these properties.

The VTE panel considered the legislation and the internal plan of the appeal property and the 'main property'. Noting that the appellant himself described the property as a studio flat, the panel found it to contain all the attributes of separate living. There was no internal interconnecting door between the properties and there was external and separate access to the flat.

Having studied the relevant case law, the panel concluded that on the objective 'bricks and mortar test' and disregarding the intention and use, this was a separate area capable of use for separate living.

On the applicability of *Domblides*, the panel noted that the VOA might have been unaware, up until that point, of the existence of other self-contained units in the locality. Also, while the appellant had photographs of extensions to neighbouring properties and contended that they were self-contained units, he had not been inside them to ascertain the arrangements, and did not convince the panel with this evidence that they were self-contained. The appeal was dismissed.

Appeal number: 5150687698/084CAD

VALUATION TRIBUNAL SERVICE

Chief Executive's Office
Valuation Tribunal Service
2nd Floor
120 Leman Street
London
E1 8EU
ceo.office@vts.gsi.gov.uk

Production team:

Diane Russell
Lesley Feris
Tony Masella
David Slater
Nicola Hunt