Issue 36

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VALUATION TRIBUNAL SERVICE

Valuation in Practice

VALUATION TRIBUNAL SERVICE APRIL 2015

News in Brief

Reform of business rates

On 16 March 2015, the Government formally announced a review to examine the structure of the current system. Hailed as "the most wide-ranging review of national business rates in a generation", the review is set to report back by the time of the Budget in 2016. It will look at how businesses use property, what the UK can learn from other countries about local business taxes, and how the system could be modernised to better reflect changes in the value of property.

The Treasury published the terms of reference and discussion paper outlining 15 questions for the review; this is found at **https://www.gov.uk/government/consultations/business-rates-review-terms-of-reference-and-discussion-paper**.

During April to June 2015 the review team at HM Treasury is engaged in evidence gathering and internal analysis. The team will also consider responses to the questions posed and evidence from respondents during those months. Submissions on other issues which stakeholders believe to be pertinent to this review are also sought. The **deadline is 12 June 2015** for contributions to the initial stage.

Other business rates news

From 1 April 2015

- the business rates discount for smaller retail premises with a rateable value of £50,000 or below is increased to £1,500 to 31 March 2016
- doubling small business rate relief is extended for a further year to 31 March 2016
- the rise in the business rates multiplier is capped at 2%
- transitional rate relief is extended for properties with a rateable value of £50,000 and below and which otherwise face significant bill increases due to the ending of the Transitional Rate Relief scheme.

The multipliers used to calculate liability for 2015-16 have been confirmed at 48.0p for small businesses and 49.3p for large businesses. The Small Business Rate Relief Supplement has increased from 1.1p to 1.3p.

VTE Practice Statements

The following have been revised:

Non-domestic rates (Rating list 2010): Disclosure and exchange A7-1, effective from 1 April 2015, clarifies the requirements to be met for a case to be heard in the absence of a party.

Model Procedure B1, effective from 2 March 2015, dealing with questions at the hearing and to reflect the new PS C5 (see below)

Appellant's Non-attendance B3, effective from 2 March 2015, technical amendment to make clear that NDR appeals heard under Practice Statement A7-1 are not covered by para.1 of B3.

There are two new Practice Statements, both effective from 2 March 2015:

Use of case law B6, which clarifies this practice.

Statements of reasons in council tax liability appeals C5, explaining that normally only summary reasons will be issued with decisions for these appeals. A party may request a full written statement of reasons within two weeks of the issue of the notice of decision. **Please note** that this means the majority of liability decisions published on our website in future will be summaries only.

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

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Recent legislative changes

Non-domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015 SI 2015 No 424 - the effective date for alterations to rateable values made by the Valuation Office Agency (VOA) before 1 April 2016 and ratepayers' appeals made before 1 April 2015.

Council Tax and Non-domestic Rating (Demand Notices) (England) (Amendment) Regulations 2015 SI 2015 No 427 – matters to be contained in non-domestic rating demand notices.

Non-domestic Rating (Shale Oil and Gas and Miscellaneous Amendments) Regulations 2015 SI 2015 No 628 – designates classes for which some non-domestic income is disregarded for some calculations.

Council Tax and Non-domestic Rating (Powers of Entry: Safeguards) (England) Order 2015 SI 2015 No 982 – a new requirement that must be fulfilled before a valuation officer can exercise their powers of entry for the purposes of council tax valuation and non-domestic rating.

Business Rates Information Letter (5/2015): contains information about the Business Rates Review; Local discounts; Interest rate of 0% for refunds of overpaid rates arising from alterations to the list 2015-16. **https://www.gov.uk/government/collections/business-rates-information-letters**

DCLG Council Tax Information Letter (13 March 2015) on Class B exemption, draws attention to a recent High Court judgment, **LB Ealing and others v Notting Hill Housing Trust and A2 Dominion Housing Group Ltd (EWHC 161 (Admin), CO/3242/2014)**.

This sets out useful guidance on the appropriate process for checking eligibility for a Class B empty homes exemption, which lasts for six months and applies to empty dwellings owned by 'bodies established for charitable purposes only' and last occupied 'in furtherance of the objects of the charity'.

There are four requirements which must be met in order for a property to be eligible for the exemption:

i. the dwelling must be owned by the body in question; and
ii. the body must be established for charitable purposes only; and
iii. the dwelling must have been unoccupied for a period of less than six months; and
iv. the last occupation must have been in furtherance of the objects of the charity

In his judgment, Mr Justice Mostyn rejected arguments that there is a presumption that conditions (ii) and (iv) are satisfied where the applicant is a charitable social housing provider, but stated that "a short written representation by the applicant …which addresses all four conditions directly and which states

(a) that based on the material held by the applicant the conditions are met and
(b) that the statement is true to the belief of the representer, should normally be enough."

Then if that representation turned out to be knowingly false that would likely amount to an offence under the Fraud Act 2006.

As a result of this judgment, DCLG considered it unnecessary to amend legislation. A suggested form of wording which those applying for this exemption might use in straightforward cases is set out in the Letter's annex. More complex cases might need more detailed treatment.

https://www.gov.uk/government/publications/council-tax-information-letter-class-B-council-tax-exemptions

Decision from the Court of Appeal

Newbiggin (VO) v SJ & J Monk [2015] EWCA Civ 78

The Court of Appeal overturned the decision of the Upper Tribunal, which found that a floor in an office building that was undergoing refurbishment was incapable of beneficial occupation. The Court of Appeal held that the VTE decision, which had been overturned by the Upper Tribunal, was correct.

The main issue was what physical state the hereditament is assumed to be in for the purposes of the valuation for rates and what constitutes "repair". Under scrutiny was para. 2(1)(b) of Schedule 6 of the Local Government Finance Act 1988, the assumption that the property being valued is in a state of reasonable repair, but "excluding from this assumption any repairs which a reasonable landlord would consider uneconomic".

The Court of Appeal agreed with the VTE that on the material date the hereditament was an "office suite in disrepair". Elements of the property, none of which were structural, had been stripped out and the Court of Appeal considered whether the replacement of these elements could fairly be described as repairs.

With reference to the judgment in *Lurcott v Wakely* [1911], it was found that the works in question did amount to repairs. Applying the tests set out in *McDougall v Easington BC* [1989]-

1) whether the alterations affected the whole, or substantially the whole of the structure, or merely a subsidiary part;

2) whether the effect of the alterations was to produce a building of a wholly different character; and

3) what the effect of the work on the value and lifespan of the building was.

The Court of Appeal held unanimously that it was not "uneconomic" simply to reinstate the building to its previous condition and therefore the property had to be valued in its "assumed" condition rather than its "actual" condition.

Decisions from the High Court

Coll (LO) v Brannan CO/5268/2014; Coll (LO) v Kozak and Tsurumaki CO/5270/2014 [2015] EWHC 920 (Admin)

The appeals were against VTE decisions on the correct banding for two flats, which were the subject of shared ownership leases. Under examination was the Tribunal's application of Regulation 6 of the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 to these cases. In particular the High Court looked 6(2)(b), the assumption that the interest sold is on a 99 year lease.

Morgan J set out a basic description of shared ownership which is a percentage only of the market value of the flat as opposed to the full value. It might be the case that a shared ownership flat may not be fitted out to the same high specification as a flat in single ownership but this would be a matter for valuation according to the physical characteristics of the property. The rental that might be obtained from a flat in shared ownership might also be less, because of the lower quality of its internal specification.

Morgan J found that the statutory assumption had to be applied regardless of whether the flat was in single or shared ownership. The listing officer's (LO's) appeal was based on the fact that the VTE had preferred to use evidence from those comparables that were in shared ownership and had disregarded the flats that were not. In allowing the appeals, setting aside the VTE decisions and remitting them to the VTE for further determination, the judgment upheld the LO's argument that the VTE erred in law in its approach.

Reeves (VO) v VTE and Tull Properties and South Gloucestershire Council CO 0046/2014 - *Completion notice*

This appeal was allowed and part of the VTE order in respect of appeal number 0119M27310/212N05 (see ViP issue 30), that "the subject hereditament is to be deleted from the 2005 rating list" quashed.

Decisions from the Upper Tribunal (Lands Chamber)

McDonough (VO) v O'Keeffe 2015 UKUT 0074(LC) RA/8/2014 - *Racing stables*

The VTE had allowed in part two appeals by the ratepayer and reduced the rateable value with effect from 1 April 2010, with a further reduction from 1 September 2010.

The VO appealed this decision in December 2013. The Upper Tribunal fixed the hearing of the appeal for 21 October 2014 and on 24 September 2014 the VO wrote to the Tribunal advising that having considered new evidence and information they no longer wished to pursue the case. They requested permission to withdraw from further proceedings. The respondent did not consent to the withdrawal unless the appellant paid costs.

This was an appeal under the simplified procedure, under which costs are not normally awarded.

The key questions in this appeal were whether the VO should have withdrawn their appeal earlier and whether they were unreasonable not to have done so until a month before the hearing.

It was also considered understandable that the officer should seek advice, including from the "Head of the Racing Stable team in the VOA" and that there should have been an inspection of the appeal property and other comparable hereditaments. A month later on 22 September 2014 "senior personnel in the VOA considered the matter as a whole with all the information now available to the VOA" and decided to withdraw the appeal. Having checked the evidence provided and once satisfied that the VTE was correct, and the rating list was accurate, the appeal was withdrawn without delay. This was not an unreasonable course of action, and should not automatically be penalised.

The expense to which the respondent had gone to respond to the VO's appeal and instruct an expert valuer was also understandable.

It was noted from the Lands Tribunal Practice Directions that, when considering the conduct of a party, the Tribunal should have regard to whether a party has acted reasonably in pursuing or contesting an issue.

It was determined that the appellant's submissions in their written representations about the respondent's conduct, including criticism of the presentation of their case and the appointment of an expert valuer, were unjustified and unreasonable.

The appellant was ordered to pay 50% of the respondent's costs of preparing their written representations on the issue of costs in this appeal.

R3 Products Ltd v Salt (VO) [2015] UKUT 0333 (LC) RA/59/2012

The VTE had dismissed the ratepayer's appeal arising from a proposal that the appeal property should be deleted from the rating list, while works were being carried out, from 15 June 2011 to 3 January 2012 and then reintroduced to the list on a phased basis (from 4 January to 15 August 2012) after which it would be fully reinstated. An earlier VTE decision had reduced the appeal property's rateable value (RV) but that decision had not been appealed.

The issues were whether there was beneficial occupation by the appellant during the period of works and whether the property was incapable of beneficial occupation and so should be deleted from the list.

(continued on page 4)

Decisions from the Upper Tribunal (Lands Chamber) continued

(continued from page 3)
There was also the issue of whether the appellant could rely on an alternative approach, nominal valuation, and if his approach had merit.

Having regard to case law and the instant circumstances, PD McCrea found that the appellant was in beneficial occupation from 11 June for the purpose of carrying out refurbishment to their particular requirements.

Although there had been no appeal against the VTE's decision on RV, the UT was satisfied that it was open to the appellant to submit as an alternative to deletion that the RV should be reduced to a nominal amount. However, on the evidence, there was no support for this ground of appeal.

The appeal was therefore dismissed

Hardman (VO) v British Gas Trading Ltd [2015] UKUT 0053 (LC)

This appeal was against the decision of the VTE that the 2005 list entry for a gas fired power station should be at a nominal rateable value (RV) of £1.

Having heard several days of evidence and arguments regarding the nature of the market for power generation and power stations and the valuation approaches to be adopted for this hereditament, the Upper Tribunal (UT) found that the substantive issue of law in dispute was the length of the hypothetical tenancy that must be assumed for rating purposes.

The VTE had broadly accepted British Gas Trading Ltd's contention that, at the AVD, the market for power generation was such that there was little foreseeable prospect of making any positive return on its occupation of this hereditament and that therefore, in the hypothetical rental market for the property at that date, only a nominal rent would be agreed.

The UT found that while it is a hypothetical tenancy from year to year that is being considered, regard must be had to all the facts and circumstances regarding the hereditament in deciding what length of time the hypothetical parties would attribute to the prospect of continuance of that tenancy. The UT did not accept the submission of British Gas Trading Ltd that, in valuing the property, a period of two years should be assumed to the continuance of the tenancy before it might be subject to review. Having regard to all of the facts of the case, including the capital cost of the hereditament shortly before the AVD and the reasoning given for making this purchase in documents produced for the ratepayer, the expectation of continuance of the hypothetical letting of the property for rating purposes must be over a substantial period of time.

The UT also rejected elements of the valuation produced for the ratepayer that resulted in a negative divisible balance as it ignored several sources of value and did not fully reflect the way the power station was operated as part of a vertically integrated operation.

As a consequence this appeal was allowed and the assessment for the subject property was determined at RV £1,012,500.

Appeal against a decision of the VTE by Pavlou (VO) (2015) UKUT 0102 (LC) RA/73/2013

The VTE had allowed an appeal by the ratepayer, in respect of a proposal on the grounds of a material change of circumstances (MCC) said to be "the closure and restrictions applied to Paternoster Square resulting from the Occupy London protest outside St Paul's which has dramatically cut the footfall and trade of the hereditament [a restaurant]." The closure and restrictions began on 17 October. The VTE had determined a temporary reduction of 22.5% from 17 October 2011 to 28 February 2012, as the rental bid made by a hypothetical tenant would have been lower because of the occupation, in the run up to the busy Christmas trading period, and to reflect the rent reduction offered by the landlord.

The VO's grounds of appeal to the Upper Tribunal (UT) were that the VTE had erred in a) finding a valuation effect from a MCC and b) in its reduction of the rateable value (RV).

The UT rejected the VO's arguments that the occupation could be anticipated to be and was in reality too transient to affect the rent and also that the concession offered by the landlord was in effect an ex gratia payment rather than a rent reduction. The Tribunal's view was that a hypothetical tenant would be in a stronger position than the actual tenant, constrained by the lease, and could negotiate an equivalent concession to that offered to the appellant.

However, the reduction should not have been analysed over the duration of the protest, as the VTE had done, nor over 12 months as the VO contended. The £12,500 concession had been offered as one-twelfth of the annual rent deductible from the quarter's rent due on Christmas Day 2011, with the balance of the rent to be deferred until the next quarter day in March. This suggested to AJ Trott that the landlord expected the protest to be over by 25 March 2012. The period for analysing it should be from 17 October 2011 and 25 March 2012, amounting to a 19% reduction. This would include an element for goodwill and this was determined to be 50%, giving a reduction in RV of 9.5%.

The appeal was allowed in part and it was determined that the RV of the appeal hereditament in the 2010 list be reduced to £148,000 with effect from 17 October 2011, reverting to £164,000 when the Occupy London protest ended, which was found to be 28 February 2012.

Interesting VT Decisions — Non-domestic Rating

Completion notice

The billing authority (BA) issued a completion notice in January 2010. It was correctly addressed and served. The recipient – the owners of the building – made no response or appeal and the property was entered into the list. Almost two years later, the appellants in this case acquired the building and sought to challenge the validity of the notice.

The appellants' representative argued that the completion notice was invalid, being either "ambiguous or unambiguously unlawful". He claimed the wording was contradictory, because the notice stated that the building was complete but then said that it "is to be treated as complete" only six days later. The VTE President did not agree that this would give rise to any doubts as to its meaning.

The representative also argued that there was no proper or reasonable basis for the BA's view that the building was completed at the time it issued the notice and so it was not lawfully issued. The President underlined that the statute imposed no particular duties or procedures on the authority before it issues a notice, but that he was nevertheless satisfied that the authority exercised adequate diligence and propriety and reached an honest conclusion as to the condition of the property on the information available to it. In addition, the owners at the time had not challenged the notice.

In finding the notice valid, there was no need to rule on whether the new owner was able to challenge the validity of the notice. Nevertheless, he offered his view that it was irrelevant that the appellant was not the owner on whom the notice was served. He could see no reason why the change in ownerships would diminish the right to challenge, but there could be no question of "the clock starting to run again from the time this appellant acquired the building".

His view was that it was "essential that completion notices and entries in the rating list consequent on such notices should be accorded finality subject only to the normal procedures".

Appeal no: 341019474725/538N10

Office—fire escape routes

The appeal property was an office which had come into existence from the conversion of an Art Deco motor garage and car park. The panel heard two days of evidence which included submissions from experts on fire escape health and safety requirements, interior natural light levels and Chilled Beam air cooling systems. The panel inspected the subject property and visited some of the properties referred to it as comparable.

On the basis of value, the panel decided to reduce this but not to the extent sought by the appellant and with no end allowance because of the layout of the property, which it concluded was not particularly disadvantageous or likely to affect demand or rental value.

The panel found no support for the assertion that a nominal area for the provision of a fire escape route within the open plan space at each office level should be disregarded in assessing the property's net internal area. The areas concerned were not physically delineated from the remainder of the office space, although there were plans and some indication in some floor coverings showing where these nominal fire escape routes lay so that they could, at least in theory, be kept clear. The panel did not believe a landlord and tenant agreeing a rent on the property would make any identifiable adjustment in the rent agreed for these nominal fire escape routes. It also found support for its conclusion in the RICS Code of Measuring Practice for NIA where it states "notional lifts lobbies and notional fire corridors" are to be included in the area of the property. The Code also showed that ramps and steps within property which the appellant sought to exclude should also form part of its NIA.

The panel did not accept that in this large open plan office there was significantly worse natural light provision here than in comparable offices of a similar layout and no end allowance was made.

Whilst the panel concluded that the Chilled Beam system there might not actually be advantageous, it could see no reason why a landlord would accept a reduced rent because of it; it had presumably been installed to enhance the occupation of the property. The panel therefore made no addition for this feature.

The appeal was allowed in part.

Appeal no: 521016794196/258N05

Merger

The six subject units were used in connection with the appellant company's (Cotteswold Dairy Ltd (CDL)) business as a dairy, involving the processing and bottling of milk and its distribution to customers. The appeal properties were not physically attached to one another, with the exception of Units 11 and 12. Unit 14 was the main processing area, centrally located in relation to the other units, which were separated from Unit 14 by the site access road. Although the whole site was owned by CDL, a number of units were let to tenants on standard commercial leases. The tenants had the right to access their units at all times and to park in designated parking spaces. The internal road and yard areas were in the control of CDL.

There were three different permutations of merger appeals before the panel, including one for a merger of all of the subject properties.

The panel was satisfied that all of the units concerned were in the same occupation, that of CDL. It had to determine whether the units identified within each appeal were within the same curtilage or were contiguous to one another, which depended upon whether CDL was in exclusive or paramount occupation of the access roads that lay around Unit 14 and in front of each of the other units.

Contiguity and paramount occupation

The appellant's representative contended that case law had established that exclusive occupation of property did not necessarily mean that all others were excluded: occupation was exclusive if the occupier had the right of occupation for his own purposes without anyone else on the premises being able to occupy in the same way. If there was a competing occupier for the same purpose then the occupier who retained control was in paramount occupation. He submitted that CDL was clearly in paramount occupation of the yard and access ways.

(Continued on page 6)

Where we show an appeal number, this can be used to see the full decision on our website, valuationtribunal.gov.uk. Click on the Listings & Decisions tab, select the appeal type and use the appeal number to search Decisions.

Interesting VT Decisions — Non-domestic Rating (continued)

(Continued from page 5)

If the panel found that that CDL was not in paramount occupation of the access ways and yards then, he submitted, Units 11, 12 and 14 were still contiguous to one another as there was no right of way or access allowed to any tenant beyond Unit 10. The land between Units 11, 12 and 14 was therefore in the sole occupation and control of CDL.

The panel did not find that the access roads were in the rateable occupation of CDL. It agreed with the valuation officer (VO) that there was in effect unrestricted access to the units that had been let to tenants, both by the tenants and their customers. Neither was in paramount occupation, as the public did not appear to be prevented from using the access roads to visit any unit occupied by a tenant; there was no signage or other discernible indication that access was prohibited beyond Unit 10. The panel therefore found that none of the appeal units were contiguous to another, or within the same curtilage, except Units 11 and 12.

Functional connection question

The panel considered whether the groups of properties in each appeal, though not all contiguous with one another, should nevertheless be merged because there was an essential functional connection between them. Having considered the evidence in the light of case law, it did not find that there was a functional connection that overcame their geographical separation or their physical identity as separate units. It found it significant that all processing of milk took place at Unit 14 and it upheld the VO's contention that the activities carried out in the other units were ancillary functions. The proximity of the other units to Unit 14 was clearly convenient to the dairy's business, but the operation was not entirely dependent on the buildings being very close together.

On the balance of probabilities, the panel did not find that it had been shown that the properties in any of the appeals should be merged and all three merger appeals were dismissed.

The VO had accepted that the Units 11 and 12 should be merged, as they were contiguous to one another and in the same occupation, but as none of these appeals provided a vehicle to give effect to that merger, the VO would make an appropriate separate amendment to the rating list.

Appeal no: 163022031279/212N10

Animal field shelter

The matter before the Tribunal was to determine whether the value of the field shelter located on the appeal hereditament should be included within the assessment of £1,350 rateable value or whether its value (£100) should be removed.

Two previous appeals had been made against this assessment on the 2005 and 2010 rating lists seeking to delete the hereditament on the grounds that the paddock and stables were used entirely for domestic purposes; in both cases the appeals had been dismissed.

The valuation officer (VO) referred to other assessments where field shelters had been included in those for stables and premises at the same level of value and contended that it should therefore be included in the assessment.

The appellant made reference to the hay barn, which the VO had decided was agricultural and therefore should not be in the assessment; the appellant argued that the field shelter was also an agricultural item which should similarly be removed from assessment.

The shelter was described as not being a proper building as it had no doors, windows or floor. It is simply four supports and a roof standing on the open ground in the paddock and as such must be held to be agricultural.

For a building to be granted an exemption on the grounds that it is used for agriculture, it must comply with the criteria in Schedule 5 Local Government Finance Act 1988.

The panel found that the shelter was not used solely in connection with agricultural operations, but is used mainly or exclusively for purposes of sport or recreation of the appellant.

Moreover, from the evidence of comparable properties submitted by the VO ,the level of value of £100 was not excessive.

The appeal was dismissed.

Appeal no: 352024541589/036N10

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.

Interesting VTE decisions—council tax

Council tax reduction

The appellant applied to the billing authority (BA) to have her outstanding council tax liability reduced under its discretionary powers (section 13A(1(c) of the Local Government Finance Act 1992). The question before the VTE President was whether the BA's discretion was limited to liabilities that arose on or after 1 April 2013.

Section 13A was inserted in the 1992 Act by the Local Government Act 200, but was little used, "presumably because those in need of help would normally qualify for council tax benefit" (CTB). CTB was abolished under the Welfare Reform Act 2012, to be replaced by council tax reduction (CTR) from 1 April 2013 under the Local Government Finance Act 2012. This Act repealed the former s.13A and replaced it with a new s.13A. The difference between the two is that it now makes reference to a discretionary reduction being a further reduction beyond that granted under the BA's CTR scheme.

The BA argued that the new s.13A could not have a retrospective effect and should not apply to liabilities before that date.

Interesting VT Decisions — Council tax

Banding

The appeal arose from a proposal on the grounds of blight following the granting of planning permission for a nearby wind farm, and sought a reduced entry of band D (from band F).

The proposal was not made until 16 May 2014 by which time the wind farm had been built. The listing officer (LO) had treated the proposal as valid because at the date of the proposal the wind farm was in existence.

The appellant confirmed that he was seeking a reduced entry with effect from 31 May 2006. In open tribunal, the clerk advised that the proposal was prima facie invalid because the granting of planning permission was not a "material reduction" event. He drew an analogy with the proposals for HS2. Proposals made in respect of dwellings on the proposed route on the grounds that the dwellings had fallen in value because of "blight" were likely to be held invalid, as work on the HS2 rail link had not yet started.

The appellant accepted the clerk's advice as he did not realise that a material reduction event had to be something physical in nature. The LO representative, however, disagreed with the clerk's advice. She drew a distinction between the wind farm and the HS2, as the latter had not been built but the wind farm had.

The clerk also advised that if the panel was to value the appeal dwelling after the wind farm had been built, the tribunal would in effect be giving two decisions on the back of one proposal. It would be valuing the dwelling at two different relevant dates, which would be incorrect in law.

As the invalidity of the proposal was not an issue in dispute between the parties, the VTE panel simply dismissed the appeal, as the wind farm was not built until November 2013.

Appeal number: 0235685172/037CAD

(continued from page 6)

In rejecting this argument, the President found that the issue did not turn on retroactivity. All that s.13A(1)(c) required was that there was a liability when the application was made, and that the application was made under the discretionary relief provision. Although this meant that applicants had acquired a right of appeal to the VTE that they would not have had under the former s.13A, it was more reasonable to suppose that Parliament intended to expand discretionary relief than to deny this right in respect of liabilities incurred before 1 April 2013.

Having determined this preliminary matter, it was now for the appellant to make a full written application to the BA for its consideration.

Liability

Disability reduction (1)

The appellant contended that he should be entitled to a disability reduction on his council tax because his living room contained a dialysis machine and related equipment. The appellant lived in a one bedroom flat and his wife had to use the dialysis machine every other day for several hours. As their flat was small they had no alternative but to put the machine in their living room as they had no other rooms and the bedroom was too small.

However, the room was also used as a living room and there were chairs, a settee and television in the room and it was used every day and night as a living room as well. The VTE panel considered that even though the living room had the appellant's dialysis machine, equipment and supplies in it, the room itself was not specifically required for meeting the needs of a disabled person. Consequently it did not fulfil the conditions for disabled reduction set out in the Regulations.

Appeal number: 3810M143554/084C

Disability reduction (2)

The appellant contended that there was a causative link between his disability and the use of a downstairs bedroom. As a result of injuries suffered during military service, the appellant's mobility had deteriorated and the local authority commissioned and paid for an extension to provide him with a downstairs bedroom.

The billing authority representative referred to the 1992 Regulations, and to the decision in the Sandwell case, which held that there had to be a causative link between the disability and the room's use. He argued that as everybody needs a bedroom the causative link had not been established.

The panel allowed the appeal, as the council paid for the extension for the ground floor bedroom to meet the appellant's needs as a disabled person.

The panel had to distinguish *Sandwell* because in the subject appeal the appellant already had an upstairs bedroom. The additional bedroom was created specifically because the nature and extent of the appellant's disability necessitated a duplicate provision on the ground floor.

Appeal number: 5480M138614/084C

Class G exemption

The appeals related to 8 properties owned by Bridlington Holiday Cottages Ltd who had been held liable for council tax. The units were vacant and located on a development of 28 bungalows and three flats. The planning conditions for the site stated that the units were for holiday use only and could not be used for permanent residence or as main residences.

The billing authority had refused a Class G exemption on the grounds that the properties did not meet any of the criteria; whilst the planning conditions prevent residential use, they did not prevent occupancy.

(continued on page 8)

Interesting VT Decisions — Council tax (continued)

(continued from page 7)

The appellant submitted that, under the provisions of Class G of the Order, an exemption from council tax "is applicable if the property is either not a dwelling and / or is prevented from such use by virtue of a Planning restriction." However, the panel found this to be an inaccurate, paraphrasing of the legislation.

On the basis of Section 3 of the Local Government Finance Act 1992, the appeal hereditament, which was included in the valuation list for the authority, was a dwelling. The panel found that the Order relates only to 'a dwelling' and not, as contended by the appellant, 'a property'. Similarly Class G applies to 'an unoccupied dwelling' and, in considering whether this exemption should apply, the panel had regard to the criteria insofar as they apply to the subject dwelling.

The planning conditions for the site did not prevent the unit from being occupied; they restricted residential use did not prevent occupation, as is required under Class G. The appeal was dismissed.

Appeal no: 2001M138661/254C

Class F exemption

The appellant bought the appeal property in 1998 and was the landlord. A tenant, 'Mr B', had occupied the appeal property and been held liable for the council tax . In accordance with the tenancy agreement, Mr B had been the sole life tenant of the appeal property. Mr B's wife was also named on the tenancy agreement; however she had passed away in August 2008. The lease was for a period of 35 years less one day determinable by notice after the death of the survivor of the lessees. Mr B died in January 2014 leaving no survivor or successor.

The billing authority had made the appellant liable from 20 February 2014, but the appellant contended that Class F should be applicable from the date his tenant passed away until 14 June 2014, when he had physically taken back possession of the property. Whilst the appellant had been advised of Mr B's death, terminating the lease, the appellant contended that Class F was applicable as he had been unable to clarify who the Executor was.

As there was no resident in the appeal property after Mr B's death, the panel held that liability had to fall on the owner of the dwelling.

The panel found that paragraph 2(a) of the Order was not applicable in the subject appeal; the appellant had purchased the appeal property with Mr B as a sitting life tenant. When he passed away leaving no survivor or successor, the appeal property passed directly back to the landlord, as the owner, from the date of the late tenants death. Furthermore, paragraph 2(b) was not applicable as there was no rent due after the date of Mr B's death.

Appeal no: 2510M145013/037C

Job-related discount—armed forces

The appellants left the UK in September 2013 on a three year posting abroad and lived in MOD married quarters' accommodation. Mr X was a serving member of the armed forces and the appellants believed that they were entitled to the 50% reduction in council tax due to the nature and location of Mr X's work. The appellants also believed that because they paid a 'charge in lieu of council tax' for the property they lived in, they should be entitled to the 50% job related discount for the appeal property.

The billing authority (BA) contended that the job related discount could not be granted as the legislation stated that the discount applied only to those whose job related dwelling was in England, Scotland or Wales. From 1 April 2013, the BA had changed certain discounts and no longer awarded any discount for second homes.

The panel dismissed this appeal, finding that the BA had acted in accordance with the regulations; the job related restriction would only apply in the appellants' case if they were in MOD accommodation in England, Scotland or Wales. Payment of a charge in lieu of council tax for their accommodation abroad appeared to be for reasons of equity within the services rather than to reflect liability for council tax which must, or would if a dwelling were not exempt under Class O, arise in order for a person to be considered eligible for a discount. That did not apply in the appellants' case as they were living in another country.

Appeal number: 3940M134033/176C

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Student exemption

The appellant was studying full-time for a postgraduate qualification in the University of Cambridge, but the course and the qualification to which it lead were of the European College of Veterinary Pathologists (ECVP). Her course would extend over several years. She was not registered with the University's Board of Graduate Studies and was not a member of a University College.

The billing authority attached critical importance to the fact to this and decided that she was not a student of the University but of the ECVP, which was not a prescribed institution. Accordingly, they declined to grant her student status for council tax purposes.

In allowing the appeal, the VTE panel concluded that –

- the full-time course met the statutory criteria as to duration;
- the appellant was undertaking the course at the University of Cambridge, which is a prescribed educational establishment;
- it was irrelevant that the course and the qualification to which it leads were not the University's and therefore that the appellant was not registered with the Board of Graduate Studies of the University;
- correspondence from the relevant University Department satisfied the requirement for a certificate under the legislation;
- it was therefore irrelevant that the ECVP was not a prescribed institution and that the qualification was not a degree or a qualification recognised by any entity of the British government.

Appeal number: 0505M133113/037C