Issue 37

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VALUATION TRIBUNAL SERVICE

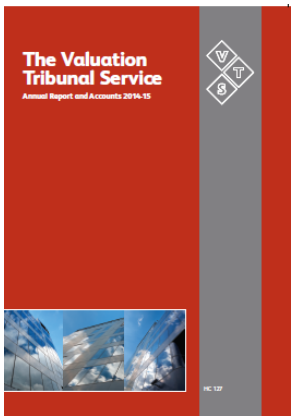
Valuation in Practice

VALUATION TRIBUNAL SERVICE JULY 2015

News in Brief

VTS Annual Report & Accounts 2014-15

This was laid in Parliament on 23 June 2015. It can be viewed or downloaded at www.valuationtribunal.gov.uk/annual_reports.aspx



Appeal statistics

During 2014-15 we received 91,640 appeals; 119,570 were cleared. We held 1,331 hearing days, 74% of which had lists which resulted in two or more fully reasoned decisions being issued; this is a 13% increase on 2013-14. In all, 4,145 full decisions were issued (10% more than the previous year), 86.4% of them within one month of the hearing, exceeding our target for the year.

95% of council tax cases were listed within five months' of receipt, so next year we aim to build on this and list 85% of these appeals within four months.

We received and administered some 48,500 statements of case for appeals against the 2010 rating list, yet fewer than 1,600 of these appeals required a VTE determination. The VTS and VTE continue to look for ways to reduce this ultimately unnecessary production and administration of paperwork.

Chancellor's target for rating appeal clearances (Autumn Statement 2013)

Significant progress has been made towards meeting the challenging target, to clear 95% of all rating appeals outstanding at 30 September 2013 (170,000) by July 2015. Around 93.3% have been cleared at the time of going to press. Our aim to have provided at least one hearing date for every appeal in this group that could be listed, so providing the possibility for the parties to resolve their disputes or receive a VTE determination, is on target to be achieved.

New work

The VOA has reported receiving 201,000 challenges against the 2010 rating lists for England and Wales in the final quarter of 2014-15. This coincided with changes to legislation limiting backdating. There are now 284,000 challenges outstanding against the 2005 and 2010 rating lists.

Publications

President's Guidance Note 3/2015 Valuation Officer's representation at the hearing: Where a VO representative at a hearing has no knowledge of the appeal property and did not make the assessment, they may only act as advocate and not as an expert witness.

President's Guidance Note 4/2015 NDR Appeals – failure of the parties to agree areas: The hearing should continue in these cases. If the appellant has raised this point earlier, for example in the statement of case, it will be for the panel to decide, on the evidence, which measurements to accept. Otherwise, unless the appellant can justify only raising of this point at the hearing, the panel should rule that the VOA's measurements will be accepted.

President's Guidance Notes can be downloaded from the website: www.valuationtribunal.gov.uk/Attending_A_Hearing/RegistrarsGuidance.aspx

VTE President

Professor Graham Zellick CBE QC, has announced his retirement with effect from 12 August 2015.

Inside this issue:

Business Rates Information Letter No 6/2015 announces the following updates:

- **Business Rates Administration Review** (action and summary of responses to the interim findings) https://www.gov.uk/government/publications/administration-of-business-rates-in-england-interim - findings
- discussion paper on the **Business Rates Avoidance** https://www.gov.uk/government/consultations/business-rates-avoidance-discussion-paper
- consultation paper giving **local newspapers** the opportunity to make the case for business rates relief https://www.gov.uk/government/consultations/the-case-for-a-business-rates-relief-for -local-newspapers

Previous BRILs can be found at https://www.gov.uk/government/collections/business-rates-information-letters

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 High Court

Branwell v VOA [2015] EWHC 824 (Admin) CO/2356/2014

In this case, on a point of law, the appellant argued that the VTE hearing had been unfair, that the panel wrongly concluded that the appeal property was a hereditament and had acted in a manner that was incompatible with her human rights.

The appellant had moved out of her flat, which suffered from damp, in 2000. At some time after that the appellant wrote to the VOA seeking to have the flat removed from the valuation list on the grounds that it was uninhabitable and in the belief that a decision in her favour would put pressure on the head-leaseholder.

The listing officer's (LO's) decision was that, though the flat was in need of repair, it was not uninhabitable and the cost of repair would not be prohibitive. The appellant had instructed a surveyor, but he had not been present at the VTE hearing; when she applied for a review of the VTE decision, the surveyor wrote in support of the application. His view was that, though the flats around it were occupied, that flat was not habitable because of the water damage, safety issues, there being no water supply to the WC and the water to the tap coming from a lead pipe being undrinkable.

The VTE panel had referred to section 3(2) of the LGFA 1992 and to section 115(2) of the General Rate Act 1967. If a domestic property was derelict or undergoing structural alteration "to the extent that it is neither ready for nor capable of beneficial occupation, it will not constitute a dwelling for the purposes of section 3 of the LGFA 1992". From photographs produced by both sides, the panel considered that the flat was not derelict, despite signs of major damp. The ceilings and walls were in reasonable repair and the panel accepted that the flat was structurally sound. It therefore remained a hereditament for council tax purposes.

The application for a review of the decision was turned down as the Vice-President found that none of the grounds was applicable.

The High Court decision noted that the appellant had refused an adjournment offered by the panel and it concluded that the panel could not be criticised for continuing with the hearing in that case. The Vice-President's findings of fact as expressed in the review decision were accepted; the appellant suffered no disadvantage from the absence of the surveyor at the hearing, since the evidence that he was able to give would not have enabled the panel to reach a different conclusion on the legal issue which it had to decide.

It was also found that the VTE panel had applied the right legal test - whether the property could be made suitable for occupation by carrying out a reasonable amount of repair. The panel had concluded that it could, and that was a decision which it was open to the panel to reach on the evidence before it.

The appellant believed that a decision finding the landlord liable for council tax, would put pressure on it to repair the flat. She considered that the legislation was wrong and irrational in requiring her to pay council tax when she was not living there, and there was no point her spending money on repairs if the landlord would not carry out the repairs for which it was liable.

The High Court judge was not in a position to make findings of fact regarding the repairing obligations within the lease.

Whilst the council tax at issue might be small in relation to the cost of the repairs, the decision about who should be liable for council tax when a dwelling, subject to a lease for a term of more than 6 months, was not occupied was set out in section 6 of the LFGA 1992. Parliament had decided that liability should depend on residence in, and rights to reside in, a dwelling. That connected liability with actual enjoyment of the dwelling, or if no-one lived in it, with the right to occupy it. Section 6 could be read, with no difficulty, so as to be compatible with the appellant's human rights.

Decisions from the Upper Tribunal (Lands Chamber)

Bainbridge (VO) v Boldfield Ltd and Greenfield Software Ltd [2015] UKUT 0295 (LC) RA 70 and 71/2014

The valuation officer (VO) submitted that the VTE had:

- erred regarding the weighting of rental evidence for comparable properties and settlements of appeals;
- ignored evidence relating to circumstances that applied at the material day; and
- attached too much weight to the ratepayers' claim that there was an oversupply of offices.

The rents on the appeal properties were considered by the VTE to be questionable, as in one case the let was through connected parties and in the other case there was a stepped rent. Though it accepted that there was oversupply, the panel had not agreed that it warranted the reduction sought by the appellants (to £103.50/m^2), determining instead £137/m^2.

Both parties contended that the VTE's adopted figure for the main office space seemed to be arbitrary. At the Upper Tribunal (UT), evidence in support of £103.50/m^2 was not presented, though the ratepayers' representative submitted it was derived from rents and vacancy levels because of oversupply, taken back to the antecedent valuation date (avd). The UT found this figure too was quite arbitrary.

The UT also decided that the VTE had been wrong to ignore the rental and settlement evidence and to allow a reduction for oversupply as the hypothetical tenant at the avd would be aware of the letting terms. The fall in rents after the avd would have been due to the recession. The lease renewal and rent review evidence presented by the VO supported a figure of £180/m^2.

The appeal was allowed and the rateable values in the list prior to the VTE decision were restored.

Wonder Investments Ltd v Jackson (VO) [2015] UKUT 0335 (LC) RA 80/2014

The VTE had dismissed an application to reinstate an appeal which had been struck out for failure to serve a statement of case on time. The ratepayer had appealed to the Upper Tribunal (UT) against this decision, but the valuation officer (VO) submitted that the UT did not have jurisdiction as there was no right of appeal and the VO therefore sought a strike out of the appeal.

Regulation 42 of the VTE Procedure Regulations 2009 sets out when an appeal lies to the Upper Tribunal, "in respect of a decision or order" of the VTE.

The second condition for a appeal to the UT is that the appellant must be a party who appeared at or was represented at the hearing or made written representations, if the appeal was disposed of in that way.

The strike out was not as the result of a substantive valuation decision or order; it was an automatic consequence of failing to comply with the standard direction. However, the Vice President's determination not to allow a reinstatement of the appeal was nevertheless a judicial decision which could be challenged.

The UT found that the VTE decision was made on the basis of written representations. Further, it determined that an appeal which has been struck out remains an appeal until it has been finally disposed of, in this case by rejection of an application to reinstate. This confirmed the UT's jurisdiction to hear an appeal against the VTE's decision not to reinstate proceedings.

It was noted that it would be "subversive of the procedures of the VTE" if the appellant were allowed to have his valuation arguments considered in the UT as if the appeal had never been struck out, as it was not open to them to bypass the VTE in this manner. The parties were therefore given 28 days (from 15 June 2015) to ask for an oral hearing and make submissions about the approach the UT should take on an appeal against the refusal of the VTE to reinstate the appeal.

Berry (VO) v Iceland Foods Ltd [2015] UKUT 0014 (LC) RA 61/2012

This decision overturned a VTE determination that the appeal property's air handling system was not rateable, but was being used mainly as part of the trade process.

The system functioned at all times, day and night, providing ventilation, heating and cooling to the appeal property. Most of the refrigerated cabinets for storing and displaying food were of the 'integral' type, which expel heat to the environment immediately surrounding them, and that must be discarded.

The issue was whether the use of the air handling system was mainly as part of 'trade processes', in the terms of the Rating (Plant and Machinery) (England) Regulations 2000.

The Upper Tribunal (UT) found in favour of the appellant VO, rejecting the argument that the system should be assumed as part of the hereditament. It was therefore rateable. Although the system had other uses (for example, providing a comfortable temperature for staff and customers), such a large system would not be required but for the cabinets and the need to maintain the environment so they could function.

On the question of valuation, the VOA's valuation was accepted in respect of the external store and a CCTV system. Though the air handling system was too powerful for most tenants' needs, the UT considered that the landlord would be in a stronger negotiating position and that £4,325, arrived at by applying stages 1-4 of the contractor's method, was a reasonable addition.

The appeal was allowed in part.

Decisions from the Upper Tribunal (Lands Chamber) continued

Double Maxim Brewery Ltd v Smith (VO) [2015] UKUT 0078 (LC) RA 26/2014

The VTE had determined that the compiled list entry for a brewery in an industrial building should be at the increased rateable value (RV) sought by the valuation officer (VO) at £60,000; the increase was due to removal of an end allowance for layout.
A material change of circumstances appeal on the grounds of flooding had been determined at a 10% reduction with effect from 1 October 2012.

At the Upper Tribunal (UT), as there was sufficient rental evidence, this was preferred to the contractor's basis, or receipts and expenditure basis. The appellant's representative sought an RV of £27,100 based on rental value. Although the contractual rent was £61,000 there had been a rent free period and then grants paid by the council; a further agreement had reduced the rent to £36,000. The UT placed no weight on this but, as the various concessions cast some doubt on the headline rent, it had to be considered along with the other rental evidence available. Noting that the appeal property was the only one who's RV/m^2 (at £39) exceeded the rental rate/m^2, the UT determined that the basic rate for the appeal property should instead be £35/m^2, as adopted for the most similar comparable properties.

Having inspected the building, the UT also reinstated the 3% end allowance for configuration and allowed the appeal, at £52,000 from 1 April 2010. Adding in figures for the cold store and gantries before the 10% allowance for flooding, the revised RV from 1 October 2012 was to be £48,500.

Interesting VT Decisions — Council tax

Valuation

Landslide

The appeal dwelling's band had been reduced from F to E following a landslide in 2001 further up the road on which it was situated.

In February 2014 the road suffered a further landslide much nearer the appeal dwelling, causing the appellant to be evacuated from the property. Against all advice, the appellant had moved back into the property but there were no services (oil for heating, post, refuse collection, etc) as access was restricted. Other residents had not returned to live in their properties apart from one other but this was only for intermittent periods. New cracks had appeared in the appeal dwelling and the neighbouring property which indicated further movement and possible landslides. Another neighbouring property had been for sale with an accepted offer of £282,000 but the sale collapsed, with the prospective purchaser reducing his offer to £30,000.

Rumours that the road might be rebuilt were quashed. Residents had tried to rebuild a road but were stopped by the council.

The listing officer accepted that the landslide had reduced the value of the appeal dwelling and had offered to reduce the entry to band D.

The VTE panel found that the landslide had considerably reduced the value of the appeal dwelling. The appellant's occupation of it was against the advice of the authorities as there might be further movement and emergency services could not gain access. The panel considered that the evidence of the offers on the neighbouring property was compelling and it agreed with the appellant that there was minimal value to the appeal dwelling. The panel determined band A from the date the appellant was evacuated.

Appeal no: 2100697410/176CAD

Liability

Pursuit of old council tax debts

A VTE panel heard two appeals involving debts that accrued between 1997 and 1999. In today's austere times, the billing authority (BA) took a decision to revisit historic debts.

Two identical matters arose in each case. Firstly, the appellant claimed s.9 of the Limitations Act 1980 prevented the BA from pursuing the debts. Secondly, while admitting he had resided at the dwellings albeit for a limited period – but that he had paid council tax for the period he occupied – neither he nor the BA was able to provide evidence to substantiate their respective case.

The panel sought to distinguish liability issues from collection and enforcement matters, into which it had no jurisdiction. Having found that the initial demands were issued contemporaneously, the panel rejected the argument that s.9 of the 1980 Act had any effect. In reality, the accounts had been semi-dormant until 2010 when the BA decided to pursue outstanding tax debts once again.

The panel further held that the appellant could only be liable for the period he said he occupied because the BA had no evidence to establish liability either side of the period of occupation identified by the appellant.

The BA had installed a new document imaging system in the meantime and had disposed of its paper records from the 1990s without making copies, notwithstanding that the accounts remained live. The BA held records of council tax payments on the accounts but it was unable to say who paid them. Nor had the appellant kept records from that era; given the ten or more years in between, that was hardly surprising.

Accordingly, the panel allowed the appeals, in part.

Appeal no: 4310M151618/254C and 4310M151619/254C

Interesting VT Decisions — Council tax liability (continued)

Class G exemption

The appellant purchased the appeal property in October 2009, when it was in a state of total disrepair. The appellant's intentions were to extensively redevelop the existing property or to seek consent for demolition and permission for a new dwelling. In 2011 the appellant came to the conclusion that it was not financially viable to redevelop the property and decided to renovate it, and the work was completed by the end of October 2013.

The appellant contended that he was prohibited from occupying the appeal property due to its condition and referred to the Housing Act 2004 and correspondence with the Environmental Health Department in support. The appellant confirmed that no enforcement notice had been issued as he had not tried to occupy the property.

However the VTE panel disagreed with the appellant's view that a notice would only be served if he had attempted to occupy the property, considering that, if occupation of a property was prohibited, then a notice would be served in all cases as a legislative requirement, irrespective of the owner's actions or intentions.

The appeal was dismissed as the appellant had not demonstrated that he fulfilled the conditions to qualify for Class G exemption.

Appeal no: 2270M133755/084C

Class Q Exemption

The appellant had purchased the property in 2009. In June 2012 he moved out and let the property to a tenant under the age of 18; Class S exemption therefore applied. The tenant did not pay the rent due from July onwards and he was removed from the property on 17 January 2013. The billing authority (BA) granted a Class C exemption from that date to 31 March 2013, when the exemption was abolished.

A bankruptcy order was made against the appellant on 14 December 2012. On 18 January 2013 the appellant contacted the Official Receiver's office to advise that the property's keys were available for collection. The appellant, regarding the Official Receiver as being in control of the house from that date, did not let it or occupy it himself. However, by July 2014 the appellant was attempting to purchase the Official Receiver's interest in the house and this he achieved on 8 September 2014.

Following correspondence with the Insolvency Service, the BA granted a Class Q exemption from 31 March 2013 ("…an unoccupied dwelling in relation to which a person is a qualifying person in his capacity as a trustee in bankruptcy under … the Insolvency Act 1986").

The BA subsequently reversed the exemption as the Official Receiver was not in possession of the property. The BA then learned of the appellant's intention to purchase the Official Receiver's interest and billed him for the council tax from 17 January 2013 to 31 March 2015, subject to the Class C exemption.

The VTE Vice-President noted that Class Q makes no reference to a requirement for a trustee in bankruptcy to be in possession. He determined that while the tenant aged under 18 was in occupation they would have been liable for council tax as owner with a material interest; they surrendered their tenancy when they left on 17 January 2013. Thereafter the owner of the freehold interest was the Official Receiver as trustee in bankruptcy, in which that interest was vested, until it was transferred to the appellant on 8 September 2014.

The appeal was allowed and the BA was ordered to amend its records to show that the appeal dwelling qualified for exemption under Class S from 14 December 2012 to 16 January 2013 and then under Class Q from 17 January 2013 to 8 September 2014.

Appeal no: 3515M140454/037C

Where we show an appeal number, this can be used to see the full decision on our website, www.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

Non-standard shop unit used as dry cleaners

The appellant's representative contended that the shop had a single frontage, with a storage area adjacent to the Zone A, behind a load bearing wall. In contrast the valuation officer (VO) argued that the property was in fact double fronted, with display windows to the part of the frontage designated as Zone A and the area to the side of that being behind transom windows. Referring to the plan and photographs he pointed out that half of the dividing wall within the property had been removed and the area in dispute was used for sewing and laundry.

The VTE panel accepted that the appeal property was not a standard retail unit which fitted with conventional zoning patterns. The appellant's representative had contended it should be treated as storage with a relativity of 0.10; the VO had adopted a relativity of 0.5 and designated it as Zone B.

The appellant's representative had argued that less weight should be attached to the rent passing on the property and it should be valued in line with the basket of rents, but had included no details of rents or comparable assessments to support his argument.

In contrast, the VO contended that the appeal property was a 'one off' and so the best evidence was the actual rent agreed from 1 April 2007, which indicated that the current assessment was not excessive.

In the absence of any other rental or comparable evidence, the panel accepted the rent passing on the appeal property provided the best evidence in this case. Having regard to the photographs and plans, the panel did not consider the disputed area to be storage but whether it should be termed as 'Zone B' or 'Zone A masked', the panel found, in the light of the rent passing, that the relativity adopted by the VO for that area and the current rateable value were not excessive and it dismissed the appeal.

Appeal no: 463518160262/226N10

G-Mex Centre (Manchester Central Convention Centre Complex)

This hereditament is an exhibition and conference centre converted from the former Manchester Central Railway Station, and initially in the 2010 list with a rateable value (RV) of £550,000. The property was extended, with the final phase being completed in September 2010 when the RV was increased by valuation officer's notice to £1,830,000 effective from 1 September 2010 to reflect the extension.

At issue was the correct method of valuation. The appellant's representative contended that the appropriate method of valuation was the Receipts and Expenditure method (R & E), whilst the valuation officer (VO) contended that the property was correctly assessed using the Contractors Test method (CT).

The panel accepted that the comparative basis was not suitable due to the vast differences of size, build, style and location in comparable properties around the country.

The parties referred to the *Receipts and Expenditure Method of Valuation for Non-Domestic Rating Guidance Note* produced by the 'Joint Rating Forum'; the VOA's own guidance contained in Volume 5, Section 290, of the *Rating Manual*, Conference and Exhibition Centres; and case law.

In the panel's view, the case hinged on whether or not the appellant's occupation was commercially driven to maximise profit or whether it was occupied with socio economic factors in mind. The panel was persuaded that the correct method was that of the CT based on the following:

- The 2005 Rating List assessment had been based on CT method.
- The original 1 April 2010 assessment had been based on CT method.
- The alteration to the compiled list entry was in respect of the extension which, in the panel's view, would increase the value not decrease it.
- The centre is of benefit to the community and the panel recognised the importance of the socio economic functions of the centre and the value of the centre to the community.
- Manchester City Council is the only shareholder to which the board of directors is responsible. Although not in control of day to day running there would be control in respect of the policies of the centre.
- Manchester City Council provided the capital for the centre; therefore, having a multi-million pound investment in it, there would be very close monitoring / controlling of the operations. As such the panel did not accept that the centre was run at arms-length from the City Council.
- Manchester Central is 100% owned by an intermediary parent company, which is in turn owned 100% by Manchester City Council.

The panel was persuaded by the VO's argument that the appellant company's occupation of the appeal property was not totally commercially driven. Significant socio economic factors were at play which meant that although a profit was generated, there was no commercial incentive to maximise the property's

Having determined that the CT method was to be employed, the panel heard that the parties had agreed a valuation on the CT basis of £1,430,000 RV. This represented a reduction in the compiled list entry and the appeal was allowed to that extent.

Appeal no. 421522125033/538N10

Car parks in Middlesbrough

The Valuation Tribunal issued an interim decision on two appeals in respect of Middlesbrough town centre car parks. The valuation officer believed the 'material change of circumstances' proposals were invalid because there had been no change to the physical state of the locality. In the terms of Schedule 6 to the Local Government Finance Act 1988, the dispute centred on whether the changes were "nonetheless physically manifest there".

The panel found that there had been a change in public policy in Middlesbrough to boost town centre trade. The council owned 60% of the town's car parks and had implemented a major change, allowing free car parking for up to two hours and reduced prices beyond two hours.

The council had chosen to lose more than £500,000/year car parking revenue to achieve the aims of its policy. The appellant's representative stated that this was completely outside what a private car park operator would do; if a private operator gave away free car parking he would commit financial suicide.

The panel decided that the proposals were valid. In reaching that conclusion it was satisfied that:

- the change in public policy in Middlesbrough, which was more than a minor pricing change and which had lost the council substantial parking revenue, had resulted in changes which were physically manifest in the locality;
- the effects were obvious to the man on the street, who could now see increased traffic in council car parks; one could point a finger at something that was happening in the locality. Vehicles entering the appeal car parks had fallen as numbers had increased at the council car parks;

(Continued on page 7)

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- the council's own report stated that it had observed a fall in usage at the appeal car parks, without the need for any statistical data to substantiate that statement;
- the effects were not masked by other issues as was the case in an appeal against the decision of the *London (NW) VT by Karen Kendrick (VO) Re Lounges at Heathrow Airport* [2009] RA/59/2007.

As a result of the panel's decision, the parties were directed to consider the valuation issues arising from these appeals.

Equestrian property

While equestrian facilities are often treated as domestic, the two appeals heard by the VTE President were on facilities where racehorses were kept and trained, on a non-commercial amateur basis.

Training racehorses in an amateur way requires a permit from the British Horse Racing Authority and is subject to certain conditions. The appellants funded the activity from their own income; both had received some winnings from their horses' success, though neither made a profit.

The valuation officer's (VO's) contention was that, in both instances, these facilities fell outside the curtilage of the dwelling, but in any case they were non-domestic, as s. 66(1)(b) of the LGFA 1988 implied that the activity being carried on there must be of the kind normally associated with domestic life.

The VO's arguments against this use being domestic were that the activity was intense, it required a permit, there were rules and legislation around it, and the racing took place elsewhere.

In one case, the President found that the facilities were within the curtilage of the dwelling; 3860173/539N10; 113523404906/537N10 in the other case, though the stables were nearer the house, they predated it and were out of scale with it, so were found to be outside the curtilage.

The President determined that whether the activity was domestic or non-domestic turned on the facts in a particular case.

One appeal was allowed, where the appellant's training of seven to ten horses was considered borderline but he held it fell within the range of domestic activity.

The other appeal in respect of the property where the stables predated and were out of scale with the house was dismissed.

Appeal no: 243023860173/539N10

Stables

Three appeals considered here also turned on whether stables and equestrian facilities were domestic or non-domestic.

In one case, a row of conifers separated the house from the facilities; the trees were planted as a windbreak by a previous owner. The President did not accept that the conifers delineated the curtilage and he allowed the appeal.

In the second case the dwelling was 60 m away from the stables and tack room, the land was bought a year after the house was built and the stable block built the following year. The field was separated from the garden by a hedge. The President concluded that these did not lie within the curtilage and the appeal was dismissed.

The third appeal related to a house separated from the stables and outdoor arena by a single track country lane. Although the stables were supplied with electricity and water from the house, which was 25m away, and it was a single land holding with a single title, the President accepted that the road denoted the boundary and defined the curtilage and dismissed the appeal.

The appellants in the second and third appeal were also aggrieved that they were subjected to 'business rates' for purely personal, non-commercial property. However, the properties were not being taxed as 'businesses', but as non-domestic properties which did not meet the criteria of s.66(1) of the LGFA 1988.

Appeal no: 112523353614/537N10

Kidderminster Town Centre – material change of circumstances

The appeals against the assessments of retail units were on the grounds that their values had been reduced because of the high number of vacant units there. Six appeals had been identified as lead appeals in a Direction giving guidance on the required content and timescale for the exchange of statements of cases; the appellants had been ultimately responsible for co-ordinating and providing these, with their skeleton arguments.

The appellants' representative argued that the traditional retail shopping centre had migrated to the retail developments that had taken over the former carpet factory sites in the town, in particular the Rowland Hill Shopping Centre. He contended that the high number of vacant units in the former town centre shopping area had resulted in lower rental values.

Both parties had compared vacancy levels at the material day for the compiled list, 1 April 2010, with those at the material date for these proposals, 30 November 2012.

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The appellants' representative relied on the differences in vacancy levels in terms of m^2, supported by evidence purchased from the Local Data Company; the valuation officer (VO) focussed on vacancy levels in terms of the number of retail units.

Rental evidence was of limited value to the panel; the appellant's expert witness had been a member of the RSA committee and was primarily concerned with rents at the antecedent valuation date (avd); most rents had been fixed before the opening of Weaver's Wharf shopping development in March 2004 with upward only reviews. The VO's substantial schedule of rental evidence related to pre-avd and soon afterwards. The panel found little guidance to indicate that rental levels for properties in the former main retail area of the town centre had fallen by the material day; the most recent rental evidence (March 2009) analysed at £708.46/m^2 and the adopted price was £575/m^2.

The appellant's representative relied to a great extent on the Upper Tribunal decision in the case of Fosse Park Leicester (UKUT 0527 (LC) RA/20-26/2011). There, careful scrutiny of falling trade figures had been quantified by reference to national trade figures into two identifiable elements: the economic downturn and the financial impact of the opening of a large, competing, shopping centre that supported adopted allowances. However, no such detailed evidence had been submitted or explained at this hearing. Instead, evidence was provided of agreed allowances of 15% to 50% for loss of trade from other towns and cities.

While the panel accepted that the principle of reduction had been established, in this specific matter the appellants' representatives had failed to justify why their contended allowances of 10% to 20% should apply in respect of the subject properties in Kidderminster. The appeals were dismissed.

Appeal no: 184522129599/541N10

Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 by SI 2015/424

Following this, the effective dates covering late alterations to the list, as a result of the delay in the revaluation to 2017, are illustrated below.

Effective dates for 2010 rating list, for alterations made on or after 1 April 2015

If the proposal is served on the valuation officer (VO) on or after 1 April 2015, the earliest effective date when the list can be altered will be 1 April 2015, unless:

(a) the proposal is against a valuation officers' notice (VON)
and
(b) it was served on the VO within 6 months of the VON
or
(c) the proposal is on the back of a relevant Court or tribunal decision
and
(d) it was served on the VO within 6 months of the decision.

If the VO alters the list by notice before 1 April 2016, the effective date will be either 1 April 2010 or the date giving rise to the event, in the case of a material change of circumstances (mcc).

If the VO alters the list by notice on or after 1 April 2016, the earliest effective date for the alteration will be 1 April 2015.

All of the above is subject to Regulation 14 (7) so if the rateable value (RV) is increased, assuming the ratepayer is not at fault, the increased entry shall have effect from the date of alteration.

Examples:

1. An mcc event occurred on 29 October 2014 but did not come to the VO's attention until after 1 April 2016. The VO alters the list by notice but the list entry can only be altered retrospectively with effect from 1 April 2015.

2. If, however, the VO alters the list before 1 April 2016 the effective date of the alteration can be 1 April 2010 or the date when the circumstances giving rise to the alteration first occurred.

3. An mcc event, say road works, began on 15 November 2014 but the ratepayer did not make a proposal until 15 July 2015. The effective date for any reduced entry will be 1 April 2015.

4. The VO alters the compiled list entry on 15 July 2015 either by VON or to give effect to an outstanding proposal that was served before 1 April 2015 to reflect a reduced tone of value, the list can be altered with effect from 1 April 2010.

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