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VALUATION TRIBUNAL SERVICE

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Valuation in Practice

News in Brief

Business rates news

At the time of publication the **consultation on the administration of business rates** is still awaited.

However, the **Enterprise Bill** is on its journey through Parliament. It is now in its Committee stage, the second reading in the Lords having taken place on 2 October. (http://services.parliament.uk/bills). Part 6 of the Bill sets out enabling legislation relating to non-domestic rating ('Disclosure of HMRC information in connection with non-domestic rating' and 'Alteration of non-domestic rating lists').

At the Conservative Party Conference, the Chancellor announced that, by the end of the Parliament, **councils will be allowed to keep all the business rates they collect** to spend on local government services; the local government grant will be phased out and the uniform business rate abolished. Within a cap, councils will be able to charge the level of rate they need to boost local growth, help attract business and create jobs; those cities with elected mayors will be able to add a premium to pay for new infrastructure and other projects.

A six-week **consultation** document has been issued by DCLG on **improving the efficiency for collection of council tax**, with responses required by 18 November. Despite the fact that collection rates are generally high, (97% across England in the last two years), the Government wishes to explore further tools that councils can use. The proposal is that where a liability order has been obtained, the council taxpayer will have 14 days to voluntarily share employment information with the council to enable it to make an attachment to earnings. If this does not happen, the Government proposes to allow HMRC to share employment information with councils. This would help to avoid further court action and provide quicker access to reliable information. It would not impose any additional costs on the debtor.
(https://www.gov.uk/government/consultations/improving-efficiency-of-council-tax-collection)

VTE Publications

Practice Statements

A2 Listing of non-domestic rating appeals, revised with effect from 1 October 2015, sets out the timetable for contact between the Valuation Tribunal and parties.

A11 Council tax reduction appeals, revised with effect from 1 November 2015, clarifies when these are to be heard by a First-tier tribunal judge and when they will be heard under Tribunal Business Arrangements. Additionally, panels will reserve their decisions.

C5 Statements of reasons in council tax liability appeals, revised from 1 September 2015. Short form decisions are now issued for council tax liability decisions and the decision notice will state that a party may apply for a written statement of reasons within two weeks of receipt of the notice.

VTE Practice Statements can be downloaded 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

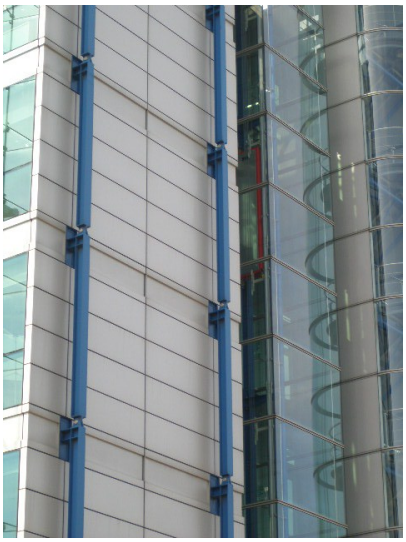
President's Guidance Note 5/2015 Skeleton arguments – sets out the purpose and requirements of these documents in relation to complex cases under PS A10 and A3.

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

Inside this issue:

From the Supreme Court

Woolway (VO) v Mazars [2015 UKSC 53



The second and sixth floors of an eight-storey office block, occupied by Mazars had been determined as being a single hereditament by, in turn, the VTE, the Upper Tribunal and the Court of Appeal. However, the Supreme Court allowed the appeal and determined that the two floors are separate hereditaments.

Their Lordships set out that the first test is geographical, concerning "unity", which they found was not simply a question of contiguity, but whether there is intercommunication between the units and whether they can be accessed by other spaces where there is not exclusive possession. The second test, where the spaces are geographically distinct, is a functional test about the interdependence of the units – is the use of one necessary to enjoy the benefits of the other; could they reasonably be let separately? This test has then to be considered based on the character of the premises rather than the business needs of the ratepayer, and this requires the application "of professional common sense to the facts of each case".

It was recognised that this decision may be difficult to apply, however Lord Neuberger's view was that, "it is hard to believe that we will be leaving the law of England and Wales on this topic in a less satisfactory state than it was as a result of *Gilbert v S Hickinbottom and Sons Ltd* [1956]. Referring to Scottish cases including *Bank of Scotland v Assessor for Edinburgh*, *Glasgow University v Assessor for Glasgow,* and *Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board,* their Lordships found the opinion set out in them more satisfactory than in *Gilbert*. This decision they considered was "plainly unsatisfactory" and the cases that followed it only demonstrated different ways that courts and tribunals had attempted "to deduce a coherent principle from it".

Two separate self-contained buildings, even if sharing a common wall, would normally be two hereditaments; a building no part of which was self-contained would be expected to be a single hereditament. Two separate self-contained floors in the same office building, whether or not they were contiguous, could not be said to satisfy the three tests, unless there were very unusual facts or there were an internal means of access between them that did not entail passing between common parts. Lord Neuberger went further to suggest that, two consecutive floors in the same occupation would not actually necessarily be contiguous to each other and might be physically separated in much the same way as two non-consecutive floors. However, Lord Carnwath noted that this was not for decision, and preferred not to express any firm view. "The Valuation Officer's practice of treating such cases as single hereditaments, even if in part concessionary, seems to me unobjectionable if it avoids narrow factual disputes about degrees of connection".

From the Court of Appeal

Tunnel Tech Ltd v Reeves (VO) C3/2014/2441 [2015] EWCA Civ 718

The dispute concerned whether or not the hereditament was exempt from non-domestic rates under section 51 of the Local Government Finance Act 1988 ("LGFA 1988") as agricultural land or as comprising agricultural buildings within schedule 5 of that Act. The VTE President had concluded that the hereditament was a market garden within paragraph 2(d) of the schedule and therefore exempt. The Upper Tribunal (Lands Chamber) ("the UT"), allowed the appeal of the VO in a re-hearing of the case.

The rating legislation had distinguished market gardens and nursery grounds since 1875 and that the distinction had been one of substance since at least 1928, imposing a different rating consequence: market gardens' agricultural operations were all undertaken in buildings, which qualified for exemption, whereas nurseries' agricultural operations were undertaken in buildings but were not exempted by statute. There was no clear reason why this should be, but the statutory distinction was "clear and unambiguous".

The distinction between agricultural land and agricultural buildings was made clear in schedule 5. What distinguished a 'market garden' from a 'nursery ground' was that the former's produce were for sale and consumption directly or indirectly by the public; whereas the produce of a nursery was not suitable for/intended for public consumption without some further process.

The product of the appeal hereditament, a compost containing mushrooms in the early stages of growth, was not for consumption by the public but had to be processed further on a different hereditament before it could be consumed. Agreeing with the UT that, for that reason, the hereditament was a nursery ground, for the purposes of schedule 5, the Court of Appeal found that the buildings did not fall within the definition of "agricultural buildings" and the hereditament itself, being covered by buildings, was not "agricultural land". The appeal was therefore dismissed.

Decisions from the Upper Tribunal (Lands Chamber)

Westminster City Council v UKI (Kingsway) Ltd and Dunlevy (VO) RA 29/2014 & RA 31/2014 [2015 UKUT 0301 (LC)

This appeal concerns the formal validity and service of a completion notice under Schedule 4A of the Local Government Finance Act 1988. A VTE decision found the completion notice to have been defective and not validly served; the premises were removed from the list.

On 5 March 2012 a completion notice specifying a completion date was delivered by hand to the building, and given to a receptionist employed by the facilities management company for the building. The completion notice was addressed to the "Owner" at the correct address. The receptionist scanned the notice and transmitted it electronically to UKI so that it was received by them no more than a week later.

The statutory requirements for a valid completion notice, described in paragraph 2(1) of Schedule 4A were satisfied in this case; it was not necessary to the operation of the scheme that the intended recipient be identified by name rather than by status.

The notice was not "handed to a complete stranger or to a third party with no relevant connection to the intended recipient" and the receptionist had behaved in a responsible way in passing it on to a relevant recipient; the number of stages to achieve this did not prevent the eventual receipt from being equally effective. Nor was there justification for distinguishing between notices in electronic or paper form. The relevant sequence of events did not come to an end when the completion notice was handed to the receptionist; service took place when the electronic copy of the document arrived in the hands of the respondent not later than 12 March 2012.

The council's appeal was allowed, but the judgment was at pains to point out that sloppy procedure in addressing or delivering completion notices or any other important document was not condoned.

Lamb (VO) v Go Outdoors Ltd RA 66/2013 [2015] UKUT 0366 (LC)

In this judgment the UT set out that the propositions in *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council* [1976] RA 141 "provide guidance on the usefulness of different types of evidence but they should not be regarded as rules to be followed slavishly. It will be necessary to have regard to relevant evidence of all types, if available, but always with a clear focus on the statutory valuation hypothesis".

The case revolved around whether the agreed rent on the appeal property, with only a limited amount of other evidence, formed the best guide to rateable value (RV), or whether evidence of other assessments and the tone of the list were preferable.

Neither party to this appeal considered the VTE determination to be correct. However, before the VTE hearing the VO had failed to properly disclose evidence in accordance with the tribunal's standard direction and therefore a lot of the evidence that the VO relied on at the UT hearing was excluded from the VTE proceedings. The VO submitted that the RV should be £345k based on £90/m^2. The ratepayer's representative submitted that it should be £226k, on a figure of £59.36/m^2.

The appeal property's lease was heavily incentivised and the rent required considerable adjustment to arrive at a notional rent. The ratepayer's representative provided rental analyses and the VO accepted the method of devaluation and adjustment of the headline rent under the lease to arrive at the above net effective rents. The UT considered this was a significant piece of evidence closely aligned to the statutory hypothesis, and which devalued to an equivalent rent of about £226k pa.

The UT placed weight on the open market lettings of two warehouses, both within a mile of the appeal property. Their adjusted rents devalued to £56.23/m^2 and £50.27/m^2. The rent on Matalan, two miles from the appeal property, devalued to £92.47/m^2 with effect from December 2006, though the exact terms of the rent review were unknown. Adjustment was required to reflect its better location and the date of the rent review, when the market was better.

As the rental evidence did not show a complete or consistent picture, assessment evidence was also considered. The UT was not satisfied that the rating list for retail warehouses in the area, as at the date of the hearing, had progressed beyond stage 2 in *O'Brien*, and therefore considered that a tone of the list had not yet been established.

Nor was the UT persuaded that any weight should be attached to a comparison between assessments in the 2005 and 2010 rating lists.

Having inspected the relevant locations, the UT agreed with the ratepayer's representative that the key letting evidence was derived from the actual rent of the appeal property and the indirect rental evidence from nearby warehouses, and determined that the appropriate ground floor rate for the appeal property should be £70/m^2. The RV for the appeal property should therefore be £275k and the appeal was allowed to that extent.

Wassiljew-Jones (VO) v Done Bros (Cash Betting) Ltd t/a Betfred RA 85/2014 [2015] UKUT 0499 (LC)

What constitutes 'appearing' at a hearing?

Done Bros took a preliminary point in this appeal. They argued that the valuation officer (VO) was not entitled to appeal to the UT having been barred from participating in the VTE proceedings (for failure to submit a statement of case on time). An application to the VTE to lift the bar was unsuccessful and the VO was barred from the VTE hearing.

While the VO was a party to the appeal, the right to appeal to the UT under regulation 42 of the VTE Regulations is limited to a party who "appeared" at a hearing. While it was argued that a member of the VOA staff had been present at the hearing, it was concluded that, as that could not be evidenced and the person had not made themselves known to the panel on the day, they could not be said to have appeared as a formal representative of the VO; therefore the VO was not entitled to appeal against the VTE decision.

Decisions from the Upper Tribunal (Lands Chamber) *(continued)*

Williams v Murdoch (VO) RA 1/2015 [2015] UKUT 0477 (LC)

A retail unit on The Wharf, facing the harbour in St Ives, is accessed by seven steps to a front balcony area, behind which the front window is set. The dispute concerned whether the property could therefore be described as a ground floor retail unit. The shop is in a parade of five, and though three have fewer steps, none of them has a shop floor level with the pavement.

The VTE determined that the rental evidence for the appeal property and another unit with seven-step access, supported the valuation officer's valuation. The UT also found the rental of the appeal property a key piece of evidence, albeit not on the statutory hypothetical terms.

The tenants in 2010 took on a lease for six years at an annual rent of £13,000 plus a service charge, and additionally paid a premium of £10,000 at the start of the lease. They subsequently agreed a reduction in rateable value (RV) from £12,250 to £11,250. The appellant took an assignment of the lease in 2012, paying a premium of £5,000.

Though a 5% end allowance for the access was minimal, the RV of £11,250 had to be considered reasonable in light of the rent passing, which had been agreed in full knowledge of the layout. The appeal was dismissed.

Barber (VO) v Cerep III TW SARL RA 73/2014 [2015] UKUT 0521 (LC)

The appeal property, a retail unit had become vacant in 2008 and was later internally vandalised, exposing brown asbestos as reported in October 2012. By the material day, 1 April 2010, all the properties on this redevelopment site were vacant. A proposal was made on the grounds that the RV should be reduced to £0 from 1 April 2010, however, the VO would only agree to reduce to £0 from the date demolition works commenced (1 July 2013). A VTE decision found for the ratepayer, on the basis of the UT decision in *S J & J Monk v Newbigin (VO)*, having been persuaded that the property was incapable of beneficial occupation because of the asbestos, and the repairs necessary would fall outside the repairing assumption in the statutory rating hypothesis.

As the decision in *Monk* had subsequently been overturned by the Court of Appeal, counsel for the VO argued that the VTE decision could not stand. Applying the three tests set out in *Newbigin (VO) v S J & J Monk*, the UT found that

- because of the disrepair, the property was incapable of beneficial occupation;
- the works required to restore the property to being fit for occupation were repair works;
- those repair works could not be carried out economically: the rental value was assessed as £57,500 and the estimated cost of repairs £112,000. It was considered highly unlikely that a landlord would spend that sum on repairs in these circumstances.

The RV was confirmed as £0 from 1 April 2010 to 30 June 2013 and the appeal dismissed.

Interesting VT Decisions

Non-domestic rating

VO's power to alter the rating list

This was an interim decision on the question of whether the respondent, if he has agreed to an assessment of rateable value (RV) of the appeal hereditament in full possession of all the relevant facts and evidence and altered the list accordingly, is estopped from making any further increase to that assessment as shown in the list unless there has been a material change of circumstances affecting the appeal hereditament or there was some error in the original agreement.

The VTE Vice-President concluded that the VO was not estopped from making such an alteration and drew support for that view from the High Court's finding in the council tax case of *Adam* v *Listing Officer* [2014] EWHC 1110 (Admin). There is no absolute bar on the VO impugning his list but this will depend on whether the VO discharges the "heavy burden" of explaining why the later interpretation or opinion of the evidence in the case over-rides the agreement previously made.

[as an interim decision, this does not appear on the website]

S J & J Monk

Non-domestic rating appeals arising from proposals seeking deletions or nominal entries in relation to repair issues are being stayed by the VTE as the Supreme Court has granted the ratepayer leave to appeal the Court of Appeal decision in *Newbigin (VO) v SJ & J Monk*.

Interesting VT Decisions

Non-domestic rating

Dentists' surgeries

With reference to the UT decision in *Gallagher (VO) v Drs Read & Poyser* 2015, the appellants contended that the appeal properties should be valued using the contractors' basis as the rental evidence was tainted.

The VTE Vice-President rejected this argument since, unlike the case with doctors' surgeries, there was sufficient rental evidence to use the rental method of valuation. This evidence was not "tainted" because it derived from NHS or private practice subsidy. What distinguished it from *Gallagher* was that there the rental evidence was tainted because it did not derive from open market transactions. Using the rental evidence to reduce the rateable values, the Vice-President allowed the appeals in part.

Appeal no: 033517106835/537N10

Council tax valuation

Banding – previous reduction

The issue examined by the VTE President was, he said, "one that generates a sense of unfairness and injustice on the part of council taxpayers who are affected by it", namely whether an agreement between the listing officer (LO) and council taxpayer to reduce the band constrains the LO for all time or whether the LO's duty to maintain a fair and accurate list overrides this.

In this case, the LO agreed with a proposal to reduce the band from F to E in 1994 and the appeal was automatically withdrawn as a result of the agreement. No consent order is issued in these circumstances which might prevent a later alteration. Twenty years later, it was decided that the agreement had been in error and by notice, the band was restored to F and the appellants appealed against the notice. Such an increase cannot be backdated, but the council tax payer has to go through the appeal process again, when the evidence used the first time round may no longer be to hand.

The President's conclusion was that the statutory provisions do not prevent the LO from correcting what he considers to be a mistake in the list, following an earlier agreement. He suggested that the possibility that this may arise should be communicated to council tax payers on the agreement form, and also that the evidence for an earlier mistake should be scrutinised by the Tribunal before endorsing and alteration.

Appeal no: 5180706009/084CAD

New dwelling in-fill development

The appellant purchased a building plot at the end of a street of terraced houses, located amongst other terraced houses, in similar streets. He began a 10-year project to self-build a property. Planning restrictions did not permit the property to be keyed into the adjacent terrace, so it was a detached house occupying the entire plot, with minimum space between, accessed directly from the street with no garden or yard and no drive. The accommodation was designed specific to his family's needs; a three storey house with six bedrooms and two bathrooms; it measured 263m^2.

The appellant had not appealed the completion notice and although the dwelling was not completed at the date of the hearing, the listing officer (LO) had been required to value the dwelling for banding purposes as if it were complete. It was entered in the list at band F with effect from 3 July 2013. The appellant's request for late acceptance of an appeal against the completion notice was considered and rejected by a Vice President.

Prior to the hearing, the LO reviewed his valuation of the property and proposed a reduction from band F to band C with effect from 3 July 2013, but the appellant pursued his appeal, contending for band B in line with other similar properties in the immediate vicinity. He relied on comparison with four bedroom terraced houses in the same street in band B, and with the sales of two of those properties where the HPI adjusted sales prices had represented £50,000 and £52,000 as at the antecedent valuation date. The appellant argued that there was a ceiling sales price for property in the locality and that someone looking for a six bedroom detached house would not expect it to occupy an entire plot or to be located amongst terraced houses in streets of only terraced houses.

The panel gave most weight to sales evidence relating to 4-storey, stone built, terraced houses in a nearby street, that measured 250m^2 – 262m^2 and had been placed in bands A and B. It found as fact that the quality and build of the newly constructed house would reasonably attract a higher sale price relevant to the valuation date of 1 April 1991.

The panel determined that despite the lack of some amenities, compelling evidence had been produced to show that band C reasonably reflected the value of the subject dwelling at that time. The panel allowed the appeal to that extent, with effect from 3 July 2013.

Appeal no: 2355673412/254CAD

Council tax liability

Class D exemption

The appellant was the owner of the appeal dwelling and a Class D exemption had been awarded whilst he was incarcerated. The appellant had been released from prison on parole on condition that he stayed at the bail hostel, so he was not allowed to reside in the appeal property.
(continued on page 6)

Council tax liability

Class D exemption *(continued)*

The issue for the panel to determine was whether the Class D exemption should continue following the appellant's release from prison.

He contended that he was not able to reside at the appeal dwelling he should therefore be exempt from paying council tax for the date of his release up to the date he sold the dwelling or up to the date he moved to his parents, or up to the date he started work. In either of the last two scenarios, the single person discount should be applied.

The billing authority's (BA's) representative argued that the appellant was not entitled to single person discount nor council tax reduction as he was not resident at the appeal dwelling. The BA had considered all exemption, discounts and discretionary relief within their scheme but did not believe the appellant was entitled to any help with the council tax charge.

The panel considered the relevant legislation, the terms of the appellant's parole and the circumstances of the appellant's residencies. It found that the appellant was restrained by the Parole Board from residing at the appeal property; he had to reside at the bail hostel until the parole conditions were altered to allow him to reside at his parent's home. The panel made a finding of fact that the Parole Board was a court of the UK having been established in 1968 under the Criminal Justice Act 1967 and becoming an executive non-departmental public body on 1 July 1996 under the Criminal Justice and Public Order Act 1994.

The panel determined that the appellant was 'a person in detention for the purposes of Class D, and in the terms of Schedule 1 to the Local Government Finance Act 1992, "…detained in … any other place by virtue of an order …of a court': the 'any other place' being the bail hostel and the 'order of a court' being the Parole Board.

The panel agreed with the BA that no single person discount was applicable as the appellant was not resident at the appeal dwelling. Therefore the request for a single person discount following the cancellation of the exemption was refused.
The appeal therefore was allowed in part to the extent that the Class D exemption should be allowed for the period from the appellant's release to the date he moved in with his parents.

Appeal no: 2935M155193/254C

Termination of fixed term tenancy

The appellants, who were ex tenants of the appeal property, disputed the decision of the billing authority (BA) to hold them liable for the unoccupied council tax charge for the period from 3 April -11 September 2014.

The appellants contended that the tenancy agreement had been terminated, following an initial request in a telephone call from Mr S (one of the owners) in November 2013, and subsequently confirmed in writing in a letter dated 10 December 2013. The keys had been returned and accepted by the landlords' agent, and the appellants had won their appeal to have their deposit returned.

The BA contended that the appellants remained liable for the council tax after they had left the property, as they held a 12 month tenancy agreement covering the period from September 2013 to September 2014. Although it was initially accepted that there was an agreement to terminate the tenancy early, following further information from the owners and with reference to their legal department, the BA decided that the tenancy had not been terminated. The owners claimed that the offer to surrender the lease was withdrawn during the telephone conversation between the appellant and Mrs S in December 2013. However, the appellants' version of the conversation was that they were still required to vacate, but that there was no rush to do so. There was no dispute that the appellants' tenancy agreement satisfied the definition of a material interest, as it was granted for a term of six months or more. The issue in dispute was whether the tenancy agreement had been terminated.

In the absence of any written confirmation from the owners that there was no longer a requirement for the appellants to vacate, the panel held that the verbal withdrawal of the offer was not supported. As such, it was reasonable for the appellants to proceed on the basis that they were required to find alternative accommodation, and that the tenancy agreement would be terminated.

It was significant to the panel that the extract from the appeal to the Deposit Protection Scheme was included in the BA's submission, however, it was confirmed that their legal department had not had sight of it. The decision to return the deposit to the appellants was a clear indication to the panel that the tenancy agreement had been terminated.

The panel concluded that the terms of the tenancy agreement had been varied by mutual agreement. Upon the return and acceptance of the keys on 11 April 2014, the appellants were no longer the owners with a material interest, and therefore not liable to incur council tax from that date.

Appeal no: 4315M151133/254C

Annexe

The appeal dwelling had been converted from a former outbuilding, within the grounds of Church House. In addition to two bedrooms, the accommodation consisted of an open plan living area, which was now used as a games room and a shower room. The appellant sought deletion of the entry on the grounds that the kitchen had been removed.

Planning restrictions stipulated that the appellant was unable to let out the annexe as a separate self-contained unit of residential accommodation; *(continued on page 7)*

Interesting VT Decisions (continued)

(continued from page 6)

the annexe could therefore only be occupied for purposes that were ancillary to the occupation of Church House.

As he could not let the annexe out, the appellant removed the kitchen from the property and now used the living area as a games room and the bedrooms for guests.
The relevant law is s.3 Local Government Finance Act 1992, which defines a dwelling as any property which by virtue of s.115(1) of the General Rate Act 1967 would have been a hereditament for the purposes of that Act if that Act remained in force. Under s.115(1), a hereditament is defined as a property which is or may become liable to a rate, being a unit of such property which is, or would fall to be shown as a separate item in the valuation list.

The panel found that the planning restriction was not decisive in this case. Although the appellant could not let the property out, he or his family or guests could and did use the property for domestic purposes. The appellant retained paramount control of the property as he controlled the use to which the annexe was put and who used it and for what purpose; therefore it was a separate rateable hereditament. As the property was domestic, it must have an entry in the valuation list and be banded accordingly.

It did not have to be fully self-contained before it attracted a separate band entry. The panel found that the annexe did not form part of Church House, as evidenced by the fact that the appellant leased Church House out to tenants, who had no right to occupy the annexe, and retained the annexe for the use of his family and invited guests. Therefore, it was not necessary for the panel to determine if the removal of the kitchen meant that the property was not self-contained, because once the hereditament test in s3 of the 1992 Act was met, there was no need to have regard to the 1992 Order. The appeal was dismissed.

Appeal no: 3060712768/037CAD

Liability and Class A

The appellant contended that she was not liable for council tax in respect of a property that she had purchased as an investment on the advice of an adviser'. She had never seen the property and due to ill health was reliant on her adviser to check on the property and ensure it was maintained. A council tax bill was initially issued to this person.

The adviser informed the council that he had never moved into the property. The panel was provided with no tenancy agreement or other evidence to indicate that the adviser held a material interest enabling him to occupy the property. Accordingly, the panel found that the liable person, in accordance with the hierarchy of liability (s6 (2) of the LGF Act 1992), was the owner – the appellant.

The property had suffered a water leak but, the panel found the necessary works (replacement of damaged plaster board ceilings, making good damage to plaster walls and the drying out of cupboards, kitchen units and furniture) to be cosmetic; they did not meet the requirements for Class A exemption for 'major repair work'.

Whilst the panel understood the difficulties faced by the appellant and empathised with her situation, it was bound by the legislation in reaching its decision. The panel determined that the billing authority had correctly found that the appellant was liable for council tax in respect of the subject property for the period in dispute and, accordingly, the appeal was dismissed.

Appeal no: 1850M124775/176C

Backdating overpaid council tax

The listing officer re-banded three properties to lower bands in the summer of 2014 and revised bills were issued by the billing authority (BA). The re-banding had not come about because of any action by the council taxpayers, who had been liable for the council tax on these properties since 1993, 1994 and 1996 respectively. The BA had refunded the overpaid council tax for 6 years only.

The VTE President concluded that this decision had come about as a result of a mistaken reading of his decision in *Arca v Carlisle City Council 2013*, and a failure to appreciate the purpose and effect of the Limitation Act 1980. He noted that the relevant question was whether the appellants had brought the proceedings within six years of the date on which the cause of action accrued, which in this case was when the revised bills were issued by the council in 2014.

The appeals were allowed; the BA was ordered to refund overpaid council tax back to when the appellants became liable for it.

Appeal no: 4705M141113/254C

Backdating carer's disregard

The billing authority (BA) accepted that the appellant was eligible for the disregard from 1996 but was only prepared to backdate it six years from the date of his application in December 2012. Their stance was taken based on previous VTE decisions. As in the case reported above, the President's view was that the proceedings had to be brought within six years of the date on which the cause of action accrued. Here the cause of action was the appellant becoming aware of his right to the disregard, following which he had immediately made application, but could have made it anytime in the next six years.

The BA had been aware that the appellant was a carer since the 1990s but had not advised him of the disregard or ensured it was applied. The BA could therefore not claim it had taken reasonable steps to ascertain whether the disregard applied, as required by the regulations. It also absolved the appellant from responsibility for failing to alert the BA to his situation as a carer.

The BA was ordered to recalculate the appellant's council tax back to 1996.

Appeal no: 2465M142876/037C

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'.

Council tax completion notice

The development of a terrace of five houses had commenced in August 2007 and by May 2009 the houses were built and largely finished internally. However, for the following reasons completion and selling had been delayed after that time:

- agreement was only reached with the county council in May 2011 about completion of new roads to service the development, and connection of the drainage system and conduits beneath the road;
- the council's own planning department notified outstanding planning considerations in December 2011, one of which the appellant considered could only be discharged after completion of the development;
- the economic climate from 2010 had meant the appellant needed to refinance the development and this had taken priority over completion of the works.

The completion notices for the properties showed a completion date of 24 July 2009. From the council's notes and correspondence on the matter, it was clear that in both 2010 and 2012 there were five 'complete' properties which had no drains or services connected; in some instances this was given as a reason for reviewing the situation at a later date. The council's view that lack of Building Regulations approval did not mean that a dwelling was not complete for council tax purposes was supported by case law.

The VTE Vice-President found that it was not reasonable to expect the drainage, sewerage, electricity and water to be connected and the road made up by 24 July 2009. "As a matter of common sense a house cannot be occupied as a dwelling if it is not served by drains and sewers or supplied by water and electricity if it is intended, as is the case here, to have those essential services for ordinary living."

Appeal no: 3325M99253/176C

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