Issue 40

April 2016

VALUATION TRIBUNAL SERVICE

VALUATION TRIBUNAL SERVICE APRIL 2016

Valuation in Practice

News in Brief

HM Treasury published *Business rates review: Summary of responses*, in March 2016, which set out measures arising from the responses that would be included in the Budget.

Budget 2016

The following matters relating to business rates were announced. From 1 April 2017:

- Small Business Rate Relief (SBRR) will be permanently doubled (50% to 100%)
- businesses with a property with RV £12,000 or less will receive 100% relief.
- businesses with a property with RV £12,000-£15,000 will receive tapered relief.
- threshold for the standard business rates multiplier will be increased to RV £51,000.

From April 2020, the annual indexation of business rates will switch from RPI to be consistent with the main measure of inflation, currently CPI.

The government also announced it will

- aim to introduce more frequent business rate revaluations
- transform business rates billing and collection by 2022, by linking local authority business rate systems to HMRC digital tax accounts. Initially, the government will work with English local authorities to standardise business rate bills and ensure ratepayers can receive and pay bills online by April 2017
- once local authority and HMRC systems are linked, the government will consider the feasibility of replacing SBRR with a business rates allowance for small businesses.

Following the Budget statement, HM Government published *Business rates: delivering more frequent revaluations*, a discussion paper arising from the responses to the 2014 discussion paper on business rates administration. Any changes to the frequency of revaluations will need to be fiscally neutral.

Council tax support/reduction

The Ollerenshaw report, *Three Years On: An Independent Review of Local Council Tax Support Schemes* was published at the end of March. The conclusion is that councils have implemented schemes effectively despite difficult circumstances. Among the recommendations are -

- the government should consider allowing councils greater freedom in setting their schemes so that they are 'truly local'
- the impact of schemes and the collective impact of welfare reforms on recipients merits academic research
- council tax support should not move into Universal credit at this time.

Decapitalisation rate for 2017. Following a consultation, DCLG announced in April that, for the 2017 revaluation, the rate will be 2.6% for educational, healthcare and MOD properties and 4.4% for other specialist properties.

Business Rates Information Letters

BRIL 1/2016 covers:
• the Non-Domestic Rating Multipliers for 2016-17
• Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2016
• Amendments to the Council Tax and Non-Domestic Rating Demand Notice (England) Regulations 2003

BRIL 2/2016 explains that councils will be compensated in full for their loss of income as a result of the changes relating to business rates announced in the Budget.
These letters are available on the internet: https://www.gov.uk/government/collections/business-rates-information-letters

The Enterprise Bill completed the 'ping pong' stage on 19 April, with both Houses agreeing the wording of the Bill. It is now ready for royal assent.

The **Valuation Tribunal website** was re-launched on 17 March, with a new structure, clearer signposting and revised content to assist unrepresented appellants with their journey through the appeals process. The changes attempt to address feedback from various sources, including focus groups.

We welcome any comments and urge billing authorities to provide a link to our site from their own.
valuationtribunal.gov.uk

Inside this issue:

Decisions from the Upper Tribunal (Lands Chamber)

Sorbie v Dunlevey (VO) [2016] UKUT 0167 (LC), RA/45/2015

The rateable value (RV) on the Covent Garden hairdressing salon had been reduced from £130,000 to £108,000 by the VTE, considering factors such as location, access and layout. The appellant's representative sought £71,000 RV at the Upper Tribunal (UT). Though the valuation officer (VO) had not cross appealed, the VO sought a reinstatement of the £130,000 RV, which he believed was correct.

The premises had A3 planning consent for restaurant/wine bar use, which the appellant's representative argued meant an inflated rental was agreed at £103,000, and so this should be disregarded. The assessment in earlier lists had been agreed with the VO on the basis of office rental values. The comparable property cited by the appellant's representative was shop in a converted office building, valued on an overall basis of £275/m^2; his valuation was based on a figure of £250 /m^2, including a 15% end allowance.

The VO's original valuation had not been based on an overall basis, but he believed £130,000 was the correct RV, with reference to the rent passing, which he did not agree should be disregarded. He had therefore carried out a mathematical exercise to arrive at this figure, which necessitated using as a basis an overall figure of £394/m^2. He highlighted that the appellant's comparable was a former industrial building, with a basement and four floors of retailing, almost three times the size of the appeal property. He presented a different comparable, more like the appeal property, assessed on an overall basis of £500 /m^2, with a 10% allowance for access problems.

Agreeing with the VTE's conclusion that there was little in the way of empirical evidence to assist it, the UT found that a 15% end allowance should be applied, but also that the base value based on the evidence should be around £500 /m^2. This gave a valuation of £140,000 and the RV could not be increased above that from which the appeal was made. The RV of £130,000 was therefore reinstated.

The UT was able to do this, even in the absence of a cross appeal because this was a rehearing and regulations stated that the UT could make any order that the VTE could have made.

Turnbull (VO) v Goodwyn School and Others [2016] UKUT 0068 (LC) RA/88/2014

This concerned the method of valuation specifically for three private independent primary schools. The VTE in its decision had used the contractor's method, whereas the valuation officer (VO) argued that there was enough rental evidence.

Part of the appellants' argument was that by adopting the rentals basis, it lead to higher rateable values (RVs), which meant that the small primary schools would have bigger RVs than larger state schools because the VO valued them on the contractor's basis.

Case law made clear that there were no precise criteria set out for determining when a property was a good comparable. Nor was there a rule as to how many comparables there should be to support the use of the rentals basis. The filters the VO had applied in selecting comparables all appeared sensible to the UT but left only a small sample. The UT examined each of the 12 comparables, noting that the onus was on the VO to demonstrate that there was satisfactory rental evidence. In each case there was a question mark over it's reliability as a comparable; each was either "useless or of limited value" in terms of rental evidence that could be derived from it and looking back at the sample as a whole did not improve matters.

The UT dismissed the appeal and determined that the RVs of the schools were to be assessed using the contractor's method.

Decision from the High Court

Coll (LO) v Mooney [2016] EWHC (Admin) 485

The VTE panel had held that a Grade II listed house built on three floors, which had been converted into two dwellings must be shown in the list as one dwelling following works by a new owner to reinstate the property as a single dwelling.

The property's status as a listed building meant that there were restrictions on the work that could be carried out. As a result, the layout of the reconfigured property comprised -

- lower ground floor of two rooms + utility room (formerly a kitchen and bathroom) + staircase; the staircase connected to the
- ground floor, which consisted of a kitchen, sitting area, dining room, two bedroom and shower room;
- first floor of drawing room, study, bedroom, bathroom/dressing area.

The listing officer (LO) argued that the lower ground floor was a self-contained unit under the Chargeable Dwellings Order 1992.

The High Court upheld the decision of the VTE, as the panel had not misdirected itself or erred in law and had reached a decision it was entitled to take on the evidence before it.

The panel had applied an objective 'bricks and mortar test', in other words the 'physical characteristics of the building', rather than looking at the intention of the appellant. The panel had considered the house as a whole and noted that the laundry facilities for the whole house were in one location, as was the kitchen. This meant that the utility room was not available for separate, exclusive use as a kitchen, part of a self contained unit on the lower ground floor. While the utility room could be used for the preparation of food, this was only one factor which it did not consider determinative.

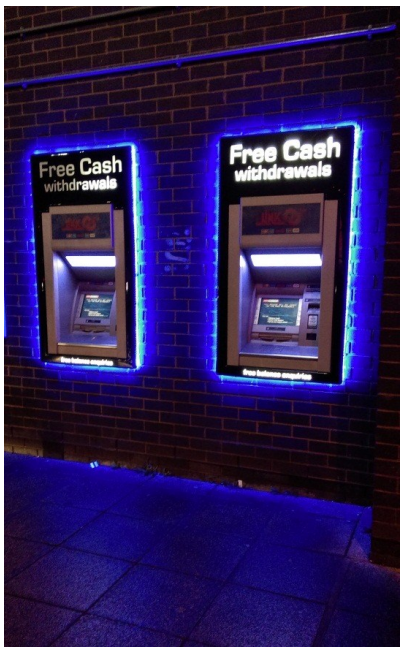
The LO's submission that the property had to be considered stripped back to the 'bricks and mortar', disregarding layout, internal fittings and services. The High Court found this to be "too literal an approach" which "did not give effect to the legislative intention of ascertaining how the property had actually been constructed or adapted for use".

Interesting VT Decisions

Non-domestic rating

Automated Teller Machine (ATM) sites

In an interim decision, on lead appeals, a VTE Vice-President determined that the sites of ATMs should be separately entered in the rating list as hereditaments being in separate rateable occupation to the host store or premises.



The preliminary issue was whether the sites of these ATMs (the ATMs themselves being non-rateable plant and machinery) should be separately assessed for rating purposes because they were:

- capable of being separately identified as a hereditament;
- self-contained units; and
- not in the occupation of the host retailer but a third party, the ATM operator.

Rejecting the arguments by appellants' representatives focussing on the host premises, and Scottish case law in *Assessor for Lanarkshire Joint Board & Clydesdale bank plc,* which also took as its starting point the host store, the Vice-President's approach was to identify the hereditament in dispute and then determine who was in rateable occupation.

He found, with reference to *Vtesse Networks v Bradford (VO),* that each ATM site was a self-contained piece of land, a clearly defined physical area, used by the ATM operator and not the host store.

On the tests of occupation, as set out in *John Laing & Sons v Assessment Committee for Kingswood Assessment Area & others* and *Westminster Council v Southern Railway Co and WH Smith & Son Ltd,* he considered that it was "the position and rights of the parties in respect of the ATM sites" that had to be considered in determining who was in paramount occupation. Though none of the agreements in place granted a lease to the operator, this did not interfere with the operator's enjoyment of the premises in their possession, nor did any restrictions on access.

The Vice-President considered that *Woolway (VO) v Mazars LLP* would only suggest consideration of a merger where two or more hereditaments were in the same occupation.

Appeals seeking deletion of the sites or a merger with the host store or premises were all dismissed. Lead appeals with the same issue and circumstances would also be dismissed unless it was a case where it could be argued that occupation of the site was too transient.

Appeal no: 463025089473/541N10 *We understand this decision is being appealed to the Upper Tribunal*

Offices, allowance for nuisance

The appeal properties were basement offices with a wine bar opposite at ground floor level. The wine bar made use of the outside paving area for seating and as a smoking area.

The original VOA caseworker had conceded that a 20% allowance was appropriate however no agreement form was issued to this effect. At the hearing the VO representative stated that she thought an allowance between 10% and 20% to be appropriate.

The panel concluded that 20% was justified given the degree to which the patrons of the wine bar looked into the appeal properties along with the level of noise and the problem of the smoke. The appeal property was a listed building and therefore had no double glazing. However the panel stressed that this was an exceptional case.

Appeal no: 599023593088/537N10

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 'Decisions & lists' tab, select the correct appeal type and use the appeal number to search 'Decisions'.

Interesting VT Decisions

Non-domestic rating

Public House and Premises

The Goathland Hotel is a three storey detached building, also known as the *Aidensfield Arms* from the TV show *Heartbeat*. It was in the 2010 list at £35,600 rateable value (RV).

The appellant's representative explained the connection between the public house and the TV show and the effect on turnover as the show's popularity was waning at the material date of 1 April 2010 and it was eventually cancelled. He contended that the RV should be reduced to £24,000 with effect from 1 April 2010.

The VOA's representative contended that only physical circumstances that had changed since 1 April 2008 could be taken into account and the show was still being shown on TV.

The panel had to consider whether there had been a material change of circumstances prior to 1 April 2010 and if so, if it was sufficient to warrant a reduction in the assessment. The panel had to consider the physical circumstances at the property and locality at the material date. The appellant's representative had provided extracts from websites detailing the filming of the series and the showing of Heartbeat on the TV. Filming of series 18 finished in May 2009 and the last episodes were shown between 18 July 2010 and 12 September 2010. In June 2010 it was confirmed that the show would be cancelled after series 18. No information was provided regarding the Heartbeat programme being televised by TV channels other than ITV. The panel did not consider the reduction in the popularity and televising of Heartbeat to have been a physical change either in respect of the appeal premises or the locality by 1 April 2010.

The panel found that the use of the public house for the filming of Heartbeat would have been a double-edged sword in that the filming would have put some restrictions on the use of the premises but would also have attracted visitors.
The VOA's representative had explained that the appeal property had been valued in accordance with the VOA's Rating Lists 2010 Valuation of Public Houses Approved Guide, which reflected the terms of

an agreement reached with the British Beer & Pub Association. The fair maintainable trade (FMT) adopted was based on the actual trade provided by the occupier. As regards the FMT to be adopted, the appellant's representative had provided a schedule 'Licensee Trading Summary (v4)' signed by the occupier in March 2015. This schedule detailed the liquor, food and accommodation sales for the years ending 31 March 2007 to 31 March 2014. The respondent's representative on the other hand provided the FOR also signed by the occupier in July 2008, which detailed these same sales for the years ending 5 March 2006 to 5 March 2008.

The panel attached more weight to the FOR which was a legal document carrying the chance of prosecution if a false statement was given. There were evident fluctuations in sales and the actual sale figures provided on the FOR. The panel determined that the FMT used by the VOA was on the conservative side and not excessive.

The appeal premises had been valued on the basis of band 2 for wet trade and band A for food. The appellant's representative had contended that band A was incorrect. The description provided by the appellant's representative and the extract from the Goathland Hotel's website assisted the panel in this respect. The appeal property was quoted as providing 'Traditional good pub food'. In the panel's view this met the description of band A in the Guide and the panel was not persuaded that band B was applicable.
The appeal was dismissed.

Appeal no: 273025486961/537N10

Council tax valuation

Well-founded proposal

The appellant had served a proposal on the Listing Officer (LO) on 18 March 2015; this sought a reduction in the appeal property's assessment from band D to band C. Having considered the matter, the LO well founded the proposal and issued a decision notice on 18 May 2015 reducing the assessment to band C. However, the appellant then decided that band C was excessive and sought a lower entry than she had proposed, so she appealed against the decision notice.

At the hearing, the LO defended band C and the appellant requested a reduction to B. In open tribunal, the clerk advised the parties that the panel had no jurisdiction to hear an appeal against a LO decision which had determined that a proposal was well-founded.

In arriving at a decision, the panel had regard to the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 SI No 2009/2270. In particular, regulations 9 and 10. In the appeal before it, under regulation 9(1)(a)(i), the Listing Officer had decided that the whole of the proposal was well-founded and altered the list accordingly.

Having regard to regulation 10, the panel held that a proposal maker/ competent person was only entitled to appeal to the VTE within 3 months from the date of the decision notice if the LO had issued a decision notice in accordance with regulation 9(1)(b)(iv), ie where the LO was not prepared to alter the list in accordance with the proposal or has not been able to reach any agreement with the proposer and any interested parties over how the list should be altered. This was not the case here, consequently, there could be no appeal when the whole of the proposal had been well founded. As the appellant did not have the right to appeal to the VTE, the panel did not have the jurisdiction to consider the accuracy of the band. The appeal was therefore struck out.

Appeal no: 3015714274/037CAD

Interesting VT Decisions

Incorrect survey details

A Listing Officer's (LO) report was raised to review the band of the appeal property when it next sold, because whilst undertaking research on another property, it was reported that a conservatory had been added. The appellant's purchase in 2014 triggered a review. Examination of current sales particulars for the purposes of the review showed there to be no conservatory, but that the property was, in fact, a three-storey house, with a substantial basement.

The LO's representative contended that the original band E reflected a two-storey house of 208 m^2, and as the dwelling had been substantially altered since the compilation of the valuation list, the LO had a duty to review the banding to reflect the changes. He argued that the appropriate banding for a house extending to 359m^2 should be band F.

The appellant disputed the increase for the following reasons: the property was purchased in the knowledge that it was in band E; it was one of 10 identical houses, and all other similar properties remained in band E; there was no additional accommodation, the layout of the property was unchanged; and the property had not been inspected by the VOA.

Despite the LO's insistence that changes had taken place, it was evident to the panel that there had been no physical changes made to provide two extra floors of accommodation. The property was a three-storey semi-detached house, with a basement, and it had clearly not changed since the time of the compilation of the list. The sale of the appeal property for £92,500 on 20 April 1990 reflected the appeal property as such. Whether or not the accommodation was in use at the time was immaterial. The panel found that the evidence of sales at or about the relevant valuation date fully supported band E, and there were similar properties in the same road which had remained in band E since the introduction of council tax on 1 April 1993.

Council tax valuation

The panel decided that the appeal property should be banded at E.

Appeal no: 4320726602/254CAD

Separate hereditaments
Restrictive covenant

The appeal was in respect of The Peacock Flat, Blithfield Hall (a privately owned Grade 1 Listed country house) and challenged the decision of the LO that a separate entry should remain in the valuation list.

The flat comprises two bedrooms, a lounge, kitchen and a bathroom. There is one external access to the gardens off the hallway and another access off the hallway from the main front door to Blithfield Hall. There is a third access from the flat which enters into a hall for the main house.

There was no dispute that the flat constitutes a self-contained unit. Equally, it was not disputed that there is a restrictive covenant in place that prevents the occupation of that flat. Despite this restriction, however, the flat had been occupied by a family member. This had been accepted for as long as the family member had been in occupation but the flat was now vacant and a neighbour was seeking to enforce the covenant and ensure that it could not be occupied.

The appeal was based on the decision of *Rodd v Ritchings* and the words '…it is possible to envisage cases where the terms of a planning consent may afford legitimate assistance…..', and it was contended that, as the restrictive covenant was being enforced, as evidenced by a solicitor's letter, this was such a case. It was argued that the fact that the flat could not be used as such should result in it being removed from the valuation list and merged within the overall band for Blithfield Hall.

The listing officer (LO) highlighted Section 3 of the Local Government Finance Act 1992 and Articles 2 and 3 of Council Tax (Chargeable Dwellings) Order 1992, contended that Peacock Flat was a self-contained unit within this definition and so must be separately banded.

The panel found that the flat was a separate self-contained unit that had been occupied as such. As a dwelling, it must be banded in accordance with the legislation and the necessary assumptions that must be made.

The appellant had highlighted a phrase of Ognall J in *Rodd v Ritchings*: '…it is possible to envisage cases where the terms of a planning consent may afford legitimate assistance..'. But the judgment continued, "for example, in throwing light upon other relevant considerations. It would be wrong for me, in this case, to express any conclusions on the question of the relevance, in principle, of the terms of planning consent to the liability of premises to be assessed separately for the tax….".

Appeal no: 3410715895/176CAD

Interesting VT Decisions

Council tax liability

Dwellings occupied by overseas students held not exempt

Nine dwellings had been treated as exempt by the billing authority (BA) either as a Hall of Residence (Class M) or as a dwelling which was occupied only by students (Class N). The exemptions had then been withdrawn following a review in April 2015.

The appellant organisation administered a study abroad programme for American students from Georgia College. Georgia College sent suitably qualified students to attend 12 "one to one" tutorials at Oxford University per academic term. The vast majority of students that were sent over from Georgia attended University for one academic term but some stayed for two (amounting to 24 tutorials). None of the students attended Oxford University for the whole academic year.

Most students housed for the period in dispute stayed for a single term, either the Michaelmas term (October to December) 2015 or arrived for the Hilary term starting in January 2016. These students were housed in accommodation provided by the appellant which had been rented from various landlords. One of the students would act as a resident warden.

The students were not members of an Oxford College or matriculated at Oxford University. Consequently, none of the American students was given a student certificate by the University.

Even if holiday periods were included in the calculation, the students would only be studying for a maximum of 22 weeks. Whilst they were in Oxford, the time spent by the students in study was in excess of 21 hours per week.

The VTE panel found that none of the appeal dwellings qualified for exemption under Class M of The Council Tax (Exempt Dwellings) Order 1992, as none was owned or managed by a prescribed educational establishment. Nor were any of the residents students who had been nominated by the University or a College to occupy the dwelling(s). None of the residents met the qualifying statutory criteria of being a student for the purposes of Class N. Therefore each property remained a chargeable dwelling.

Although the appellant's clients were full time students, their affiliation was with Georgia College in the USA, which is not a prescribed educational establishment that is situated in a European member state. Although the time spent in tutorials and studying exceeded in excess of the required 21 hours per week, none of the students was undertaking a full time qualifying course of education at a prescribed

educational establishment or at Oxford University of at least 24 weeks per academic or calendar year as required by paragraph 4 of Schedule 1 to the Council Tax (Discounts Disregards) Order 1992.

The appeals were therefore dismissed. Appeal no: 3110M171054/037C

Student not exempt as not taking a full time course of education

The BA representative argued that the appellant was not a student for the purposes of Class N because she was not studying a full time course of education. The Course Administrator had informed the BA that the appellant would be studying 9.09 hours per week for 33 weeks (48 hours in class and 252 additional hours of study).

The appellant argued that she was a full time student because she was enrolled on a full time course and had been allowed by the University to retake a module. However, she accepted that, at that time, she was not actually undertaking the full course, she was just taking a module to complete a course. Because she found the module so difficult, the hours of module difficult, the hours of attendance and study exceeded the required statutory amount of 21 hours/week. She argued that the Course Administrator's analysis of the required studying time was unreliable as he was not an academic. The appellant stated that each course year comprised 120 units of academic study and the module that she was taking amounted to 60 units.

The panel accepted that the appellant may have put in more than 21 hours of study/week because she found the module difficult and complex but the legislative wording referred to the timelines as would normally be required, as opposed to the actual time spent which may differ from student to student depending upon how difficult they found the course.

Having regard to the High Court's judgment in Earl the panel found that the appellant's module did not meet the criterion because she was not required to sit the full course, she was just re-taking a module.

The appellant argued that she was deemed full-time by the student loans company and had received certificates of council tax exemption from the University, and that these factors substantiated her student status for the purposes of council tax exemption. Unfortunately for the appellant, this evidence was not determinative as it was clear from looking at all the facts that she was only a part time student during the period in dispute.

Appeal no: 4625M168793/176C

Guidance Note 1/2013 from the VTE President & Registrar — Adding a party where a person might incur council tax liability as a result of another's successful appeal

Billing authorities are reminded that they are responsible under the 1992 Act for initially deciding who is liable for council tax. If the BA believes that other person(s) may be found liable as a result of a VTE decision, or might be a relevant witness in proceedings, the BA should identify them and make a request to the VTE (reg. 8) that they be added as parties (under reg. 11(2)). If they do not, conflicting decisions may be made, resulting in no one being liable; the fault is then the BA's and not the Tribunal's.

Interesting VT Decisions

Shorthold tenancies

A VTE Vice-President heard and determined five appeals, involving the same parties, where the billing authority (BA) sought to persuade him that the VTE's judgment in *Trustees of the Berwick Settlement v Shropshire Council* (VTE 3245M131738/176C) was flawed.

Each appeal dwelling had been let to a tenant or tenants on the basis of an Assured Shorthold Tenancy with an initial fixed term of 6 (or 12 in one case) months on the following terms:

"For a term of six months, and thereafter continuing on a monthly basis unless terminated by either party under the provisions of Clause 3".

Clause 3 provided:

"This agreement may be terminated by either party giving to the other one full calendar month's written notice provided that no such notice may be served during the first six months of the term".

It was not disputed that the tenants were liable whilst they resided in the property. The issue was whether they remained liable after the expiry of the fixed term, when the property was unoccupied.

In each case, the Vice-President made a finding of fact when the tenancy ceased having regard to when notice to terminate the tenancy took effect; the tenant remained liable until the date the tenancy ceased as (s)he held a material interest which was inferior to the landlord's interest.

The Vice-President upheld the appellant's argument that these tenancies all had an initial period during which the tenancy could not be ended by notice, which then continued on a month to month basis. The respondent's submissions failed to take account of the words of the grant and invited the VTE to conclude that there was a fixed term, within the meaning of section 45(1) of the Housing Act 1988, giving rise on its expiry to a new, statutory periodic tenancy under section 5(2) if there was no possession order or surrender "or other action on the part of the tenant". That construction, in the Vice-President's view, ignored what the parties had agreed. The tenancies were for a term of 6 months or more and, until they ended, the tenants retained the material interest inferior to the landlord's interest.

The Vice-President distinguished the facts relating to these appeals with the situation in *Macattram v LB Camden* [2012] RA 369 where there was no provision in the lease for the tenancy to continue beyond the fixed term.

The respondent argued that the decision in *Superstrike Ltd v Mario Rodrigues [*2013] EWCA Civ. 669 showed the VTE decision in *Trustees of the Berwick Settlement* was wrong in law. The Vice-President disagreed: the two cases were about different matters. In the former it was that the statutory periodic tenancy under S.5 of the Housing Act 1988 was a new tenancy. The Court of Appeal was not concerned with the contractual term of a tenancy, which was in issue here.

The respondent's submission that the parties to these tenancy agreements were somehow attempting to contract out of the Housing Act 1988 in a way which fell foul of the principle set out in *Street v Mountford* [1985] AC 809 was rejected: these were all periodic tenancies after the six months which, as a matter of contract, did not create a fixed term because the tenancy continued from month to month thereafter. The tenants would not have lost their statutory protection under the Housing Act which it was argued would be the consequences of the Tribunal continuing to follow its view of the law in Trustees of the Berwick Settlement.

The position is contemplated by section 21(1)(a) of the Housing Act:

"(1) Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy ……., on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied -

(a) that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than an assured shorthold periodic tenancy (whether statutory or not)…".

Appeal no: 4720M155433/254C

Council tax reduction

Under/over payment
DG v Liverpool City Council

The appellant's council tax bill for 2014-15 included a brought forward balance from 2013-14 due to a downward adjustment of the appellant's CTR recalculated and applied retrospectively following a change in her financial circumstances. The appellant submitted that she had notified the billing authority (BA) of the change in income when it occurred but that the BA had not recalculated until the end of the year because of an official error; she argued that she should not have to pay back the "over payment" of CTR for that period.

The VTE Vice-President noting that the entitlement to CTR for the two years was now in line with the BA's CTR scheme, had to determine as a preliminary issue whether the appeal should be struck out as having no reasonable prospect of success. The Vice-President further noted that there can be no overpayment of CTR; a downward adjustment in CTR awarded means an underpayment of the council tax for which the person is liable.

Under the council tax benefit regulations, benefit "overpaid" as a result of a "official error" was recoverable. That terminology disappeared when CTR replaced council tax benefit in 2013.

A notice of intention to strike out was issued by the VTE in August 2015, giving the view that the appeal had no reasonable prospect of success but inviting the appellant's views. This was the case for some 40 similar appeals. Meanwhile, around 400 other "overpayment" appeals were stayed pending a decision on the preliminary issue in this appeal.

An advice agency acted on behalf of the appellant; the respondent BA made no submissions. The appellant's representative accepted that the scheme did not include provision under s.13(1)(a) to a discretionary reduction where there has been an official error and that this fact could only be challenged by judicial review. The appellant's case was that the VTE has jurisidiction under s.16(1)(b) where a person is aggrieved at the BA's calculation of her council

(continued from page 7)

tax liability, and that the appellant is so aggrieved because of an unnoticeable official error, and because her liability was not reduced by discretion under 13(1)(c).

However, the appellant had not applied (in writing) for consideration of a discretionary award as required under s.16 and consequently it had not been refused. The legislation implied that a grievance in an appeal must be about the same matter as the appellant was aggrieved over in writing to the BA. The Vice-President therefore could not construe this appeal as being in respect of discretionary relief and struck it out. This left it open to the appellant to apply to the BA for discretionary relief, make a grievance and thereafter, if necessary, a new appeal to the VTE.

Determination orders

Please may we ask BA representatives presenting at tribunal hearings, where they are relying on a determination order of their council, to provide the panel with the full text of the order. It is not sufficient to paraphrase the council's policy, for example that no discount should apply.

Discretionary relief
M.M v Medway Council

The appeal concerned liability for council tax for the years 2013-14 and 2014-15. The BA had reduced the appellant's liability by 75%, the maximum under its CTR scheme and had refused to award a further reduction under its discretion (s.13A(1)(c) of the 1992 Act as amended).

The appellant was also aggrieved that the BA had not responded to his application within its own time limits, set out in the council's *Eligibility Guidelines* for dealing with applications for discretionary relief.

The appellant had also referred his complaint to the Local Government Ombudsman. The Ombudsman's decision found that the BA was at fault in a number of ways which had been remedied, including the delay in sending out an application form. This was to be remedied by a credit of £410.40, equivalent to the council tax shortfall. There was also an award of £75 for incorrect information given to the appellant about 'disabled band reduction'.

The appellant submitted, amongst other things, that he did not have relevant savings: balances in an account were payments of benefits required for living expenses and premium bonds held were to meet the deposit needed for a car under the Motability scheme. The BA contended there had been no discrimination on their part, and the disabled band relief had been awarded and backdated to April 2013, but that the appellant chose not to make savings that he could make in order to make his council tax bill a priority. It believed that savings could be made on household shopping. It had calculated a shortfall in income compared to expenditure of £5.93 each week in 2013-14 and of £103.86 each week in 2014-15. Income had fallen in 2014-15 as the son had left the family home.

The Vice-President found no support in legislation or case law for the argument about the BA's failure to meet its own time limits. The delays, while frustrating, appeared to have come about as the BA got to grips with the new legislation. In any event the Ombudsman had investigated these aspects and ordered appropriate remedies. The Vice-President found no evidence of extravagance in the appellant's life style, as borne out by the data provided on average household expenditure on food and drink.

He decided that, once the disabled band reduction had been applied for 2013-14, savings could have been found to make up the shortfall and pay the council tax. In 2014-15, there was a significant reduction in income, with the son moving out, but this would have been mitigated to some extent by a smaller household expenditure bill. By the time of the application, a small balance of £214 savings existed and they should be taken into account. The compensation paid as approved by the Ombudsman should not be taken into account.

The BA was ordered to recalculate the liability for:

- 2013-14 to 25% of Band D rate, giving credit of £410.04 with any balance over to be credited for subsequent years;
- 2014-15 under s.13A(1)© to £214.

The appeal was thus allowed in part.

We do not publish CTR decisions on our website

VALUATION TRIBUNAL SERVICE

Production team:

Diane Russell
Tony Masella
David Slater
Nicola Hunt

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

We welcome any feedback on our newsletter and website. You can send this by email or using the Contact us option on the website.

You can sign up to receive email alerts when a new issue of Valuation in Practice is published, and/or when a VTE Practice Statement is revised or a new one issued. Please go to https://www.valuationtribunal.gov.uk/newsletter-signup/

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.