Issue 41

July 2016

VALUATION TRIBUNAL SERVICE

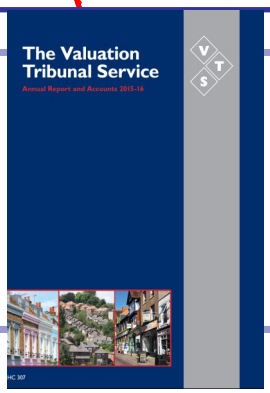
Valuation in Practice

VALUATION TRIBUNAL SERVICE JULY 2016

News in Brief

Our Annual Report and Accounts for 2015-16 was laid in Parliament on 7 July. It includes a wealth of data about our performance over the year and can be viewed on or downloaded from our website:

https://www.valuationtribunal.gov.uk/wp-content/uploads/2016/02/VTS-Annual-Report-15-16.pdf



Check, Challenge, Appeal—reforming business rates appeals

DCLG published a summary of the consultation responses on 6 July, along with the Government's response. The documents can be seen at https://www.gov.uk/government/consultations/reforming-business-rates-appeals-check-challenge-appeal.

In the press release announcing the publications, the Department said that, "businesses will benefit from a quicker and more efficient service when checking and challenging their business rates bills". The new process includes a VOA online service allowing customers to provide information and track progress of their check or challenge.

Aims of the process are to:

- weed out speculative appeals
- make sure that genuine disputes are settled more quickly
- bring added security to councils planning their budgets.

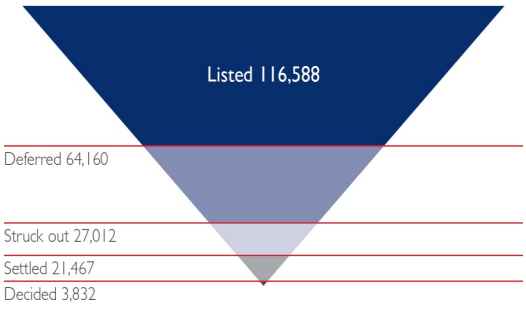
A fee will be payable to lodge an appeal and penalties may be imposed for providing false information.

Small businesses will benefit from a fast-tracking system, clear guidance and lower fees.

NDR pilot for appeals from Kent and Leicestershire

July saw the start of a six-month trial of different arrangements for disclosure and exchange of evidence before the hearing. The aim is to encourage greater engagement of the parties. Those with an appeal in one of these areas and whose appeal is listed during the pilot, will receive new Standard Directions with the Hearing Notice. These require the parties to have discussions, initiated by the appellant, and to exchange all evidence well before the hearing. Parties should be able to identify early on those cases which can be settled and those needing a determination by the Tribunal. The Tribunal will not require either party's paperwork until two weeks before the hearing. For more on this go to https://www.valuationtribunal.gov.uk/non-domestic-rating-appeals-kent-leicestershire/.

This is the latest initiative attempting to reduce the number of appeals needlessly listed for hearing, that do not require a Tribunal determination, illustrated here:



House of Commons Communities and Local Government Committee published a report on issues for the Government's consideration before bringing in 100% business rates retention for councils. The report can be seen at http://www.publications.parliament.uk/pa/cm201617/cmselect/cmcomloc/241/241.pdf

Inside this issue:

Decisions from the Upper Tribunal (Lands Chamber)

Hewitt (VO) v Telereal Trillium [2016] UKUT 0258 RA/84/2014

The appeal property was an office block with parking spaces, built in 1971, which at the antecedent valuation date (avd) was occupied or part occupied by HMRC and the DWP. However, by the avd, both had made known their intention to vacate; the property was formally handed back on 31 March 2009 and was unoccupied at the material day (1 April 2010). Rent was set at £417,000 in 2000 and remained at this figure at the 2007 review.

The property was in the 2010 list at £490,000 rateable value (RV). The VTE panel had found from the evidence that, by the avd, there was no demand for such a property; as the valuation officer was said to have placed nominal values in such circumstances, the panel allowed the appeal and ordered the assessment be reduced to £1 RV.

During the UT hearing, the parties agreed and lodged a Joint Position Paper. This set out the point of law to be decided. The question was what the rating hypothesis required. Was the valuer required to consider whether anyone would have been prepared to occupy the property and pay a positive price? If not the appeal should be dismissed. Alternatively, did the rating hypothesis require the existence of a hypothetical tenant to be assumed and the RV to be assessed by reference to 'general demand' as evidenced by comparable properties? In the latter case, the parties agreed that the RV should be £370,000.

The UT considered whether the occupation under a hypothetical tenancy could be said to be of value. With reference to case law including *London CC v Churchwardens & Overseers of the Poor of the Parish of Erith in the County of Kent* [1893], it considered the cases where a nil value was justified and concluded that this property was not "struck with sterility in any and everybody's hands". Its decision to allow the appeal was on the basis that, at the avd, there were several broadly comparable office premises which were beneficially occupied and for which rents were being paid. The public sector occupants of those premises could have found value in The property, which was capable of such occupation at the avd, and the rent paid would have been negotiated by reference to the general demand for such properties.

Masala Zone Ltd v Golding (VO) [2016] UKUT 0328 RA/3/2016

The appeal property is a restaurant in the Soho district of London. At the material day the front of the property was used for restaurant seating at two levels; there was an L-shaped area at ground floor level with steps leading to a lower area set further back from the ground floor window frontage. The rateable value (RV) was confirmed by a VTE panel at £187,000.

The appellant's representative showed that the rent had been reviewed on the last day of the preceding lease (on 23 June 2008), when a new 20-year lease had been taken out at a rent of £155,000. Devaluing this rent and maintaining the same relativities of 66% for the lower level and 50% for ancillary space, he applied an end allowance of 7.5% for layout (both adjustments having been used by the valuation officer (VO) in the 2000 and 2005 lists), but made no adjustment for tenant's improvements. He thus arrived at a rate of £580/m^2.

The first issue was the rate ITMS. The VO did not consider that the rent passing reflected the hypothetical lease terms and he presented evidence of local comparable assessments, which had tone values between £750-£1000/m^2, in support of his adoption of £600/m^2 for the appeal property. On the basis that this was an interim rent, agreed retrospectively, the UT agreed with the VO on this matter, preferring the comparable evidence and considering £600/m^2 ITMS to be reasonable.

The UT agreed with the appellant's representative that, as nothing about the appeal property or the market had changed between the three rating lists, 66% remained appropriate.

However, the UT disagreed with the appellant's representative that a further 7.5% end allowance should be made for layout, which was largely reflected in the ITMS rate and the 66% relativity. A nominal end allowance of 2.5% was justified for the shape and presence of steps restricting the upper seating area.

It was reported that roughly £1 million had been spent in fitting out/improvements. This could not be ignored, because at least some of this would be of value to the tenant. However, there was no detail available and the 10% adjustment by the VO appeared arbitrary. The rent passing, as analysed by each party according to their own assumptions resulted in figures of £574/m^2 and £598/m^2, which supported the £600/m^2 derived from analysis of comparables. So no further adjustment was necessary. The appeal was allowed in part on this basis at a revised RV of £170,000.

Brophy v Simmonds (VO) [2016] UKUT 0217 RA/25/2015

The VTE had confirmed that the appeal property of loose boxes should be entered in the list as a hereditament; the appellant's case was that they were not liable for non-domestic rates as they were within the curtilage of her home.

The appeal was due to be heard under the UT's simplified procedure. About 4 weeks before the hearing, the valuation officer (VO) inspected the property for the first time and informed the UT that he was prepared to agree the appeal and delete the entry in the list. The UT allowed the appeal by consent. Mrs Brophy then made an application for costs, saying that the case should not have been brought by the VO. She claimed a spot figure of £5,000, with no breakdown of costs.

Costs can be recovered only in exceptional circumstances for appeals assigned to the simplified procedure. The UT noted that it was for Mrs Brophy to show that there were exceptional circumstances to justify an award of costs in her favour, or that the VO had acted unreasonably. Considering *Ridehalgh v Horsefield [1994]*, the UT did not consider the VO had acted unreasonably; each officer was required to apply their own judgement to a case and in marginal cases there might well be differences of opinion.

Part of the appellant's claim referred to the inconvenience and expense of attending three VTE hearings; the UT had no power to award costs for expenses incurred before the VTE. No award for costs was made.

Interesting VT Decisions

Non-domestic rating

Imperial War Museum Film Archive

The appeal property comprises 11 storage pods and ancillary building and is used to store, preserve and protect the National War Film Archive. The footage is on cellulose nitrate film, potentially a hazardous material, liable to self-combust.

This was a partial re-hearing of an appeal heard in November 2015, at which the decision was to dismiss the appeal. The appellant's representative sought a review of decision and that resulted in part of the decision being set aside and a re-hearing. This was on the grounds that there had been a procedural irregularity: the appeal raised a number of novel, difficult and contentious points of valuation, and should therefore have been adjourned to be heard by a Vice-President of the VTE under Practice Statement A10.

The hereditament had originally appeared in the 2010 list at £27,000 rateable value (RV), based on local storage values. Following a review of the assessment, the RV was increased to £325,000, based on the contractors' basis of valuation, arrived at on a unit cost basis.

The original panel had found that the contractor's basis was the appropriate method of valuation in this case and that aspect of the decision was not set aside.

At the later hearing, the valuation officer (VO) sought to defend a £300,000 RV arrived at by reference to actual costs of providing the building in 2001, indexed forwards to the antecedent valuation date, 1 April 2008.

The appellant's representative produced very different valuations on unit cost (£113,250) and actual costs (£115,000). The differences between the two parties' calculations reflected the way adjustments were made to estimate replacement costs, and to the value placed on the land.

The Vice-President hearing the case could not agree with the appellant's representative in respect of any of the matters in dispute; there were defects in the valuation and arguments for adjustments were not supported by the evidence. He found

both the location and separation of the storage space into pods to be sensible for the Imperial War Museum's purposes. There was therefore no justification to make an end allowance.

The assessment was reduced in line with the VO's amended figure, and rounded down by the Vice-President to £297,500 RV.

Appeal no: 053026729572/036N10

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'.

Contractor's basis

The appeal property is a purpose built residential theological college, originally founded in Oxford in 1614 by the Jesuits. Since 1970 it has been a College of the University of London for under-graduate and post-graduate studies, and provides research resources for many faiths and religions.

The appellant's representative argued that in the absence of any compelling rental evidence the property should be valued on the contractor's test basis. It had been built as a college and as such it should be valued in line with the Universities UK Revaluation 2005 Memorandum of Agreement for Higher Educational Institutions (HEI's), "the MoA" on the contractor's test basis.

The valuation officer (VO) sought confirmation of the existing assessments as the appeal property was a mix of Grade B office buildings used for educational purposes. He argued that the VOA's Rating Manual was not an authoritative statement of the law and contended that the property should be valued on a rental comparison basis rather than the contractor's basis; while the rental evidence on the appeal property was inconclusive there was sufficient rental and assessment evidence provided by the comparable properties he had referred to support that approach. He also referred the panel to the decision of the Lands Tribunal in *Reeves (VO) Re: the appeal of RA/74/2005 [2007] LT RA 168,* ("the Truro College case"), where although a college should be valued in its existing mode and category of occupation as an educational establishment, if it could be shown its value as an educational establishment was the same as that for office use, then office rents were admissible as evidence of value for educational use.

(continued on page 4)

Interesting VT Decisions

Non-domestic rating

(continued from page 3)

The panel was satisfied there was no reliable rental evidence; there was no evidence of any open lettings and any agreements that may have taken place would probably have been between connected parties. The VO had referred to the assessments of 11 comparable properties to support the existing main space price. However, the panel found that only three of those properties were similar in size to the appeal property and those together with six further properties were all schools and only two properties were described as colleges. As none of the comparable properties were purpose built residential colleges attached to a University, the panel found they were not comparable to Heythrop College and attached little weight to them.

The panel distinguished the current appeals from the Truro case because there the appeal property had been let at a rent in line with the local office market, which was not the case here as there was no reliable rental evidence for the appeal property.

The panel was satisfied that the appeal property best fitted into Category A of the MoA and should be valued on the contractor's basis and it therefore allowed the appeals.

Appeal no: 560018394711/539N05

Street market

The appeal concerned whether a market held every Wednesday on a public highway was rateable. As a preliminary issue the appellant also argued that the material day for the appeal was a Thursday and on that day there was no market.

The VTE Vice-President found that the market was rateable as, although the material day was a Thursday, it had been in existence for many years prior to the material day so would have been known about (although never rated). Each Wednesday the public highway was closed for the market and it was found that the four elements of rateable occupation were met.

A further argument was made on the basis of the market being incorporeal (without body or presence) as the stallholders occupied individual stalls which were chattels and everything was removed from the site after trading had finished. Therefore, on any day other than a Wednesday, there would be no physical trace of any street trading or market activity.

As he had already identified the market area as a hereditament, the Vice-President noted that this issue was not relevant.

Appeal no: 174024498704/537N10

Council tax penalties

Tribunal panels have recently dismissed two appeals from council taxpayers against penalties of £70. The penalties were imposed by the billing authorities (BAs) using their powers given by Sch 3 to the Local Government Finance Act 1992.

In the first case, the BA had issued a penalty under regulation 13 of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013, because the appellant had, without reasonable excuse, failed to give a prompt notification of a relevant change of circumstances, namely the termination of job seeker's allowance (JSA).

The panel noted that the local council tax reduction (CTR) scheme required claimants to notify the BA of a change of circumstances within 21 days beginning with the day on which the change occurs. Similar advice was repeated on the council tax bills and a warning was given of a £70 penalty for a failure to notify the authority. The appellant believed that the ending of JSA would have automatically resulted in a review of his CTR. However, the panel found that the appellant had been given further opportunities to report the ending of JSA and had not completed two review forms sent to him by the BA.

In the second case, the appellant had failed to notify the BA within 21 days that she was no longer eligible for 25% single person discount. The panel noted the requirement in regulation 16(1) of the Council Tax (Administration and Enforcement) Regulations 1992 and found warnings of penalties included on the BA's council tax bills. Although the panel found several errors contained within the penalty notice, it dismissed the appeal because the appellant was not able to offer any reasonable excuse for her failure to notify the authority within 21 days of her change of circumstances.

Interesting VT Decisions

Council tax valuation

Deletion of a dwelling within a composite hereditament –

The appeal hereditament had been a public house with living accommodation (a composite hereditament). It was in very poor repair and the VO had agreed to reduce the RV to £0. The appellant sought a "0" entry for the council tax element, which was in the list at Band A. This was treated by the panel as seeking a deletion of the entry.

While the VO had been able to recognise the reality of the situation with a £0 value in the rating list, the panel noted that there remained an entry in the list, which showed the property remained a hereditament. While the panel was satisfied from the evidence that the property was in a very poor state which would probably be uneconomic to repair, it had not become 'truly derelict'. This confirmed that it remained a hereditament and, for council tax purposes, had to be valued assuming it to be in a state of reasonable repair (at band A).

The panel did not consider there was conclusive evidence, such as planning permission granted or clear evidence of development work being undertaken on the property, to show that, at least theoretically, when next occupied its use would be different, or that this would not include some domestic element. The appeal was therefore dismissed.

Appeal no: 4630738051/176CAD

Chalets

The issue was whether 10 chalets were dwellings and should be banded for council tax. The test was whether each was domestic property and 'used wholly for the purpose of living accommodation' (s 66(1) LGFA 1988).

The site is accessed through a farmer's field, by a river and not accessible by vehicle. The site is on a flood plain and some of the chalets are on stilts to prevent flooding.

The chalets are inaccessible between October and April.

In October owners move all the carpets and furniture off the floors to avoid water damage. Each timber-framed chalet has mooring and fishing rights. The pitch is used by residents for leisure activities and contains a boat, fishing equipment and outdoor games. The owners all live within half an hour of the chalets.

The chalets date variously from the 1920s, 1930s, 1950s or 1970s. They have no running water, no mains sewage, no mains gas, no access to waste water disposal and no refuse disposal. Typically, leisure items were stored in the chalets, which were used for short term shelter rather than living accommodation, with most visits being spent outside the chalet.

The listing officer (LO) cited Lewis v Christchurch BC, Lewis v Vivian [1996] in support of his contention and the appellants relied on Aylett v O'Hara [2011]. The LO believed that case law supported a view that sleeping arrangements were not required, but the VTE considered that there needed to be more available than what was present. The LO argued that the lack of facilities only affected value. But the VTE considered they must also be a component part of whether the chalets could be used wholly for living accommodation; from the reasoning behind the acquisition of the site, the limited facilities available and the way in which the chalets were used for recreational activities, including the storage of items to be used on the river they could not in any sense be said to be used wholly for the purpose of living accommodation because of the

- lack of services
- close proximity of the appellants' homes, where they disposed of their waste and obtained clean water
- loss of use for 6 months a year
- use the pitches were put to.

Appeal no: 3040729871/037CAD

Council tax invalidity

The appellant rented a shop. At the time of his occupation he was unaware that part of the property was in the list as being domestic and therefore subject to a council tax entry. It seems, prior to his occupation, some of the property had been in domestic use but this, he contended, had ceased by the time he rented the property. After he left the property the council billed him for the council tax entry (although he had never used any part of it for domestic purposes). The appellant made a proposal to have the council tax entry deleted but the listing officer considered it was invalid.

Regulation 7 (1)(a) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 permits a proposal to be made where an interested person is of the opinion that "a list is inaccurate because…it shows as a dwelling property which ought not to be shown…". An interested person, under Regulation 2 (1) includes the owner of the dwelling and "any other person who is a taxpayer in respect of the dwelling". At the date the appellant made the proposal he was not the owner of the dwelling and by then he had ceased to be a taxpayer in respect of it. He was not therefore an interested person in the dwelling by the time he made his proposal; his proposal was therefore invalid and the appeal had to be dismissed.

Appeal no: 4620743553/176CAD

Interesting VT Decisions

Council tax liability

Reductions for annexes

The appellant was aggrieved at the billing authority's (BA) determination that a 50% discount was not applied to the appeal property under the Council Tax (Reductions for Annexes) (England) Regulations 2013.

The BA argued that in order for this discount to apply the dwelling had to be entered into the valuation list under the Council Tax (Chargeable Dwellings) Order 1992.

The panel referred to emails from the listing officer (LO) which confirmed that the appeal dwelling had been entered into the valuation list under Section 3 of the LGFA 1992 as a separate hereditament.

Significant weight was attached to the planning permission which referred to the property as one of two dwellings and to the fact that the appeal property was separated from the main house by a driveway some 10 feet wide.

Weight was also attached to a letter from the Highways Development Officer which stated that "the agent has confirmed the converted units are sought for independent use, likely to be rented as separate residential units." The fact that the appeal property was only used occasionally for family members did not detract from it having been entered into the valuation list as a separate hereditament.

In conclusion, whilst the panel understood the frustration of the appellant regarding the application of the discount, it determined that the appeal property was a hereditament under s.3 of the LGFA 1992 and therefore a single property. It was therefore not part of a larger property which comprised two self-contained units which had been separately banded in accordance with the Article 3 of the Chargeable Dwellings Order. Consequently, the discount could not apply.

The appeal was dismissed.

Appeal no: 2605M177856/037C

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.