Issue 44

April 2017

VALUATION TRIBUNAL SERVICE

VALUATION TRIBUNAL SERVICE APRIL 2017

Valuation in Practice

News in Brief

Business rates appeals

The 2017 rating list came into force on 1 April along with new procedural and appeal regulations*, which mean that appeals can only being made once the 'check' and 'challenge' stages with the VOA have been undertaken.

The new regulations also introduce a fee to be paid when lodging a non-domestic rating appeal and which is potentially refundable if the appeal is successful.

In addition to the regulatory changes, the Tribunal is introducing some of its own. For appeals where the notice of hearing has been issued on or after 1 April we are building on the successful pilot process we trialled over six months to reduce the high volume of cases that remain outstanding on the 2010 rating list. This process clearly encouraged and supported meaningful and early disclosure and exchange of evidence between the parties, with a view to resolving their dispute without the need for a tribunal hearing, wherever possible. You can read more about this on our website: https://www.valuationtribunal.gov.uk/non-domestic-rating-appeals-april-2017/

*Non-domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2107 SI 2017/155; Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017 SI 2017/156

Council tax appeals

We have also extended the disclosure and exchange process to council tax valuation and liability appeals, where the notice of hearing has been issued after 1 April 2017. It is expected that these changes will bring great benefits for all involved in the appeal process. More information can be found here: https://www.valuationtribunal.gov.uk/ct-disclosure/

New practice statement

Directions for the changes described above will be included with notices of hearing and are also reproduced, with guidance, in a consolidated simplified Practice Statement, effective from 1 April 2017. It replaces the earlier practice statements with some exceptions, (because the disclosure and exchange of evidence process only changes for appeals where the notice of hearing is issued after 1 April 2017). So for 2010 rating list appeals, PSs A7-1 (on disclosure and exchange) and B3 (on non-attendance) remain in force for appeals where the notice of hearing was issued before 1 April 2017. https://www.valuationtribunal.gov.uk/wp-content/uploads/2017/03/Consolidated-Practice-Statement.pdf

Please remember that you can sign up to receive an alert when any new practice statement or an amendment is published, clicking on this link: https://www.valuationtribunal.gov.uk/newsletter-signup/

Corporate Plan and Business Plan for 2017-18

The VTS's plans and objectives are now published and are available at https://www.valuationtribunal.gov.uk/wp-content/uploads/2016/04/VTS-Corporate-Plan-2017-20.pdf

Appeals statistics for 2016-17

We listed almost 40% more appeals than in 2015-16 (162,000) across 1,057 hearing days. Around 4,000 received a determination.

DCLG

- Reforming business rates appeals: summary of consultation responses and government response. https://www.gov.uk/government/consultations/reforming-business-rates-appeals-draft-regulations
- 100% business rates retention: summary of consultation responses and government response. https://www.gov.uk/government/consultations/self-sufficient-local-government-100-business-rates-retention

Business Rates Information Letters

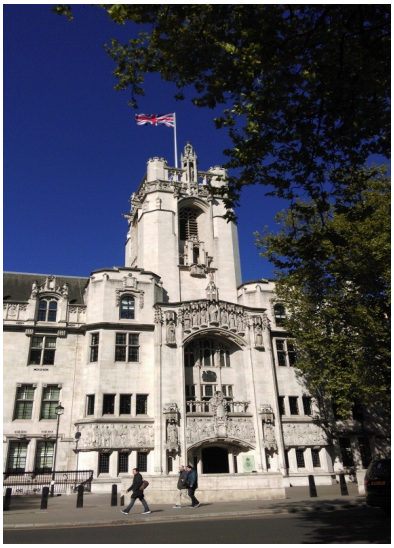
3/2017: non-domestic rating multipliers for England for 2017-18.
2/2017: following the Spring budget - Supporting small businesses; Discretionary Relief Scheme; Business Rate Relief Scheme for pubs.
https://www.gov.uk/government/collections/business-rates-information-letters

Inside this issue:

Stayed appeals -There are a number of appeal types stayed by the VTE at the moment. The main ones are:

Class	Identifier	Reasons
Completion Notices	Dispute over the jurisdiction of the Tribunal to decide anything other than the date.	
Completion Notices	Whether a completion notice is valid if i) it fails to state the name of the intended recipient ii) it is delivered to the building and addressed to the owner .	Court of Appeal decision awaited on decision of UT (LC) in *Westminster City Council v UKI Kingsway Ltd* 2015 UKUT 0301 (LC).
Photo Booths	Whether occupation of booths is too transient and therefore not capable of rateable occupation	Lead appeals identified. Directions to be issued. President to decide the point.
Religious Exemption of Church of Scientology properties	VOA is dealing with a number of appeals by the Church of Scientology relating to religious exemption on premises around the country.	Appeals postponed and not listed awaiting application. The issues are complex and information is still being sought.
Retail units in Clayton Square, Liverpool	Valuation	
ATM machines at sites in England	Whether each ATM is rateable	Lead appeals UT decision published with leave to appeal granted
Wind farms	Receipts and expenditure, where at the material date the number of renewable energy providers had increased by several thousand.	
Individual rateability of self-contained storage units within a building.	Whether a large warehouse containing 1,890 self-contained storage units should be valued as one or whether each unit is a separate hereditament.	Appeals to be heard by President
McDonalds restaurants	Valuation for Rating (Plant and Machinery) Regs 2000. When and how plant & machinery may be used/are intended to be used in connection with services mainly/exclusively as part of manufacturing operations/trade processes and what constitutes these.	

Decision from the Supreme Court



Newbigin (VO) v S J & J Monk (a firm) [2017] UKSC 14

S J & J Monk had sought an alteration to the list from 'offices and premises' rateable value (RV) £102,000, to 'building under construction' RV £1 (as the property could not be occupied due to building works). The issue was whether the appeal premises should be valued to reflect the physical condition at the material day (date of the proposal) or whether the valuation officer (VO) was required to assume the property was in a state of reasonable repair as offices and premises on that date (by virtue of para 2(1)(b) Sch 6 of the 1988 Act, as amended by the Rating (Valuation) Act 1999).

The VTE decision had upheld the VO's stance; the Upper Tribunal had allowed S J & J Monk's appeal; the Court of Appeal then allowed the VO's appeal.

The Supreme Court allowed S J & J Monk's appeal finding that the building was undergoing reconstruction at the date of the proposal and the UT had been "entitled to alter the rating list to reflect that reality". It found that the principle of valuing on the facts at the material day, 'the reality principle', was fundamental and long established. The principle had not been supplanted by the repairing assumption, which here meant that the premises would have to be assumed to be in a reasonable state of repair for use as offices and premises. The VO was required to assess whether, at the material day, the property was undergoing reconstruction and was therefore incapable of beneficial occupation, having regard to the programme of works being undertaken. This also applied to a building being redeveloped. It was not correct to argue that a property could only be listed as being under reconstruction once the works had proceeded so far that repairs to restore it to its former state would be uneconomic.

As both sides had indicated they would wish to appeal to the Court of Appeal if the decision went against them, permission to appeal was granted.

Decisions from the Upper Tribunal (Lands Chamber)

Sainsbury's Supermarkets Ltd and others v Sykes and others (VOs) [2017] UKUT 138 (LC) RA 29-39/2016

The Upper Tribunal (UT) overturned a decision of the VTE that ATM sites located within various Sainsbury, Tesco, Londis and Co-operative supermarkets were separate hereditaments, in the rateable occupation of the bank rather than the store. The VOA had amended the 2010 list in 2014 to make separate entries for these.

Particular reference was made to *Stirling (VO) v J Sainsbury plc* [1992], *Assessor for Lanarkshire Joint Valuation Board v Clydesdale Bank plc* [2005] and *Assessor for Central Scotland Joint Valuation Board v Bank of Ireland* [2011]. The UT found that, while the ATMs themselves were non-rateable items of plant and machinery, the sites which they occupied (with the exception of one free-standing machine) were capable of being separate hereditaments.

However, this issue illustrated a case where there were rival occupancies (the store's and the bank's); both derived benefit from this use of the site. The store had not parted with possession of the ATM site but had conferred rights on the bank which restricted the store's use of that small part of its premises; but if the ATM were removed, the store could use the space for something else. This arrangement was acceptable to the store because it contributed to the services it provided to its customers. It had been estimated that around 80% of in store ATM users were also customers of that store. This contrasted with use of the 'hole in the wall', external ATM, which was available to a wider public, irrespective of whether they entered or made any other use of the store, and was therefore better characterised as customers of a bank using a facility that just happened to be available outside their local store.

The UT determined that the stores were in paramount occupation of the internal (and not freestanding) ATMs and the appeals were allowed. The appeals on ATMs which were either on external walls or in a lobby were dismissed and the decision of the VTE affirmed.

Evergreen Shipping Agency (UK) Ltd v Dunlevey (VO) [2017] UKUT: 0072 (LC) RA 77/2016

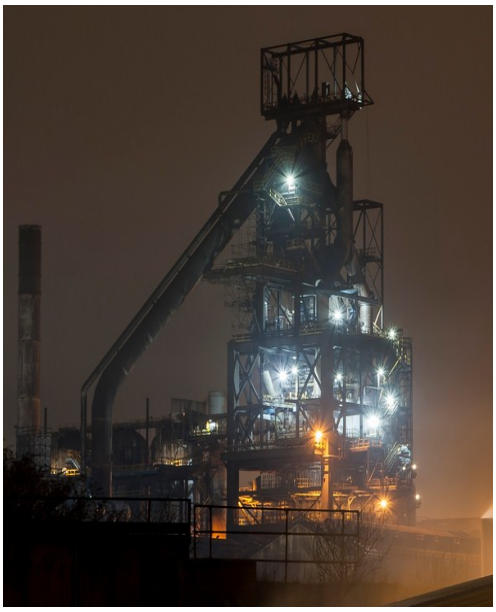
When 14 appeals, which had been listed and postponed many times before (to allow more time for discussions), were the subject of a postponement request the afternoon before the hearing, the request was rejected and the appellant's representative invited to make an adjournment application at the hearing. No-one attended the hearing and the application was considered on a written submission. It was rejected and the appeals were struck out.

The appellant received the decision on 12 September and appealed to the Upper Tribunal (UT) on 11 October, enclosing no grounds of appeal and seeking a time extension. The valuation officer argued that there was no right of appeal and that in any event the application was made out of time.

Although it received no argument on this point from the appellant, the UT determined that there was a right of appeal under Reg. 43, as the appellant had made written representations. It also found that there was only a minimal delay beyond the four weeks in which an appeal must be made and that it was appropriate in this case to extend the time. Directions were then issued to both parties to serve statements of case and provide dates suitable for a hearing of the substantive case, which would be confined to whether the VTE was wrong to refuse to adjourn the hearing.

Celsa Steel (UK) Ltd v Webb (VO) [2017] UKUT 0133 (LC) RA 10/2016

A steelworks in Cardiff was valued on the contractor's basis; the only issue related to stage 5, 'stand back and look', the other four stages having been agreed. End allowances were determined by the Valuation Tribunal for Wales for site/layout and the state of the market at the antecedent valuation dates. But VTW had rejected an argument that a further 15% reduction was due because of the close proximity of the Castle Steelworks (about 1 mile away by rail). This property was also owned and occupied by Celsa Steel but their argument was that it could be operated as a viable



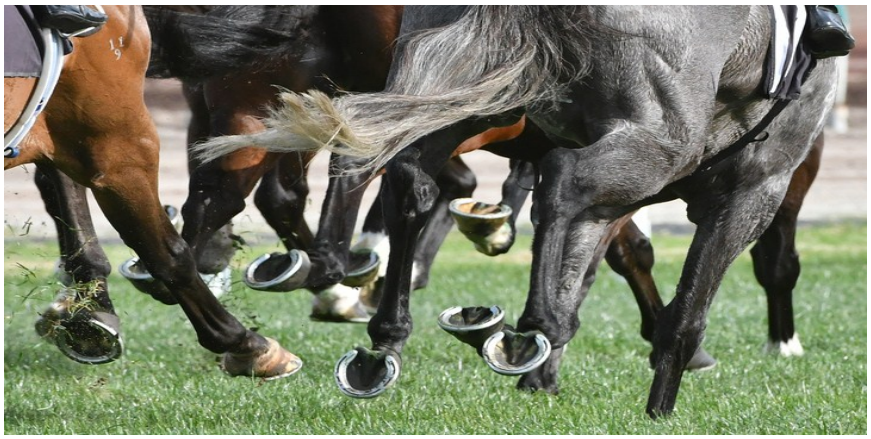
stand-alone facility (manufacturing steel rods) and it could buy its supply of billet from anywhere). The same could not be said of the appeal property, which relied on Castle works taking its product. It was unlikely that a hypothetical tenant would take on the appeal property if he could not also occupy the Castle works.

The UT noted that the two works had always been run as an integrated operation and the outputs of the appeal property exactly matched the requirements of the Castle works. Alternatively, if there were different occupiers, an agreement would almost certainly be reached to both occupiers' benefit. Even the fact that there might be an absence of likely tenants was not a reason to justify a reduction at stage 5; Sellafield was cited as an example of a sole possible hypothetical tenant. The appeals were therefore dismissed.

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, at:

https://www.valuationtribunal.gov.uk/newsletter-signup/

Decision from the Upper Tribunal (Lands Chamber)



Hobbs v Gidman (VO) [2017] UKUT 0063 (LC) RA 56/2015

This was a test case related to gallops associated with racing stables as valued in the 2010 list. In the subject appeal, two different types of track were in use, both valued at £600 per furlong.

Valuations of racing stables in the 2010 list were based on the number of loose boxes at a hereditament. This 'box price' varied with location, with those in Newmarket stables being £650, while in the south-west they were set at £350.

The appellant's representative also maintained that there were regional differences in the value attached to equine pools and canterways, with those in Newmarket again valued higher than other locations. He therefore contended that gallops should also reflect a regional variation.

The valuation officer's (VO) comparables all showed gallops in assessments at £600 per furlong, no matter where in the country or what type of construction. It was also noted that, in agreed assessments, there was no evidence that a breakdown of the hereditament into its component parts, clearly showing the figure attached to gallops, had been evident at the time.

The UT agreed that the difference between the value placed on pools and canterways was likely to be, at least in part, because of location rather than solely quality of build, as the VO argued. In any event the VO had not made any differentiation for quality when it came to the type of gallops. The UT therefore allowed the appeal and determined values of £375 per furlong for the polytrack gallop and £350 per furlong for the woodchip gallop.

Decision from the Upper Tribunal (Administrative Appeals Chamber)

Metropolitan Borough of Gateshead v GD (CTB) [2017] UKUT 0041 (AAC)

Overturning the First-tier Tribunal's (FTT) decision, the Upper Tribunal found that a claim for council tax benefit (CTB) could only be awarded from the date it was received. The FTT had determined that a claim made in 2015 should be awarded and backdated to 2009 (when his CTB had been removed) as the claimant had severe mental impairment, had been given wrong information by the council and had shown 'continuous good cause'.

The UT pointed out that the maximum backdating allowable had only ever been 52 weeks and was, at the time of the decision, only three months. In addition, no effective claim for CTB could be made after 1 July for a period before that, since CTB was abolished from 1 April 2013. It therefore went on to determine that, as no claim had been made until 2015, the claimant was not entitled to any award between 2009 and 31 March 2013.

Interesting VTE Decisions

Non-domestic rating

Scope of proposal

The appeal arose from a proposal which was served on the valuation officer (VO) on 30 March 2015. At that date, the existing assessments were for the Eastern warehouse at £130,000 rateable value (RV) and the Western warehouse £137,000 RV both with effect from 1 April 2010.

Prior to the hearing, the parties had agreed a revised entry for the merger of the warehouse units at £245,000 RV with effect from 14 January 2014, a date earlier than that which was proposed. However, the parties were unable to settle the appeal by agreement because the appellant did not occupy all of the area covered by the units) of assessment. The parties had identified a separate hereditament, occupied by a separate ratepayer, who was not party to this appeal. This area was described as a car park and premises and the parties had agreed an entry of £6,900 RV for this hereditament. It was understood that the rateable occupier of the car park had vacated the site and another occupier had since taken up occupation of this area.

The parties appeared before the panel to seek ratification of their two- party agreement to enable the list to be altered to reflect their proposed agreed entries.

This case highlights the importance of the proposal maker properly checking the unit of assessment(s) before making a proposal to alter the list. During discussions at the hearing, the appellant's representative admitted that until he had inspected the appeal property, he had no way of knowing that there was another hereditament there.

Unfortunately, because of the effective date restrictions on proposals or alterations made on or after 1 April 2015, the appellant was unable to re-submit a revised proposal seeking a reconstitution to give effect to the entries sought from the date on which it occurred. The VO was also unable to alter the list retrospectively before 1 April 2015.

The panel decided not to ratify the two-party agreement, having regard to the clerk's advice that a reconstitution of the existing two entries into two different entries, only one which is occupied by the appellant fell outside the scope of the proposal. Therefore the appeal was dismissed because it was now accepted that the two assessments under appeal could not be merged into one.

Appeal number: 533025515122/144N10

Interesting VTE Decisions

Non-domestic rating

Car parks in Scarborough

This was a tarmac open surface car park on the edge of town with 75 spaces. The appeal was identified as a lead appeal, with 18 appeals on car parks in the Scarborough, Filey and Whitby areas being stayed pending the outcome.

The appellant's representative argued that the primary valuation approach for car parks should be on a price per space basis, but using a percentage of gross receipts where, as in the present case, there was an absence of direct rental evidence. He proposed adopting 25% of the gross receipts for the appeal property, which had been adopted at the last four revaluations and agreed on that basis. This equated to £150 per space. Referring to the decisions of the Lands Tribunal in *Barnard & Barnard v Walker (VO) LT [1975] RA 383* and *Lamb v Minards (VO) LT [1974] RA 153*, he argued that there was a presumption that the differentials in previous rating lists were correct unless the valuation officer (VO) was able to refer to rental evidence to show why the differentials from the previous list should not be carried forward.

The VO contended that rental evidence was now available for a car park in Scarborough so this could be used to rebut the presumption that the previous differential was correct. He went on to argue that the rate adopted for the appeal property of £133 per space in 2005 was not in line with settlements agreed in respect of nearby car parks at £245 and £275 per space. The VO adopted a revised basis for the appeal property of 40% of the gross receipts, which equated to £240 per space.

The panel accepted that the primary valuation approach for car parks should be on a price per space basis based on a comparison of locally derived rental evidence, where it was available, or in the absence of any direct rental evidence by adopting a percentage of the fair maintainable receipts.

The panel firstly therefore had regard to the rent passing on the car park and the nature of the property.

The panel held that it was of little assistance and it did not therefore rebut the presumption from *Barnard v Walker (VO)* because:

- it was let on a 35 year lease agreed in 1985,
- It had last been increased in 1993
- it was in respect of a partly covered/partly open car park
- it had shared access
- it was near to the railway station in the town centre.

Nor was the panel persuaded by the three settlements cited by the VO as comparable. The panel then looked at the receipts and relativities adopted from the previous rating lists and found no compelling evidence had been produced to rebut the differentials adopted for the appeal property. Appeals in respect of the 1995, 2000 and 2005 lists had all been resolved on the basis of adopting 25% of the fair maintainable receipts. Although the VO had proposed an alternative assessment based on 40% of the fair maintainable receipts he had produced insufficient evidence to support such an alteration.

Accordingly, the panel upheld the appellant's revised valuation at £150 per space, which he derived from adopting 25% of the average gross receipts.

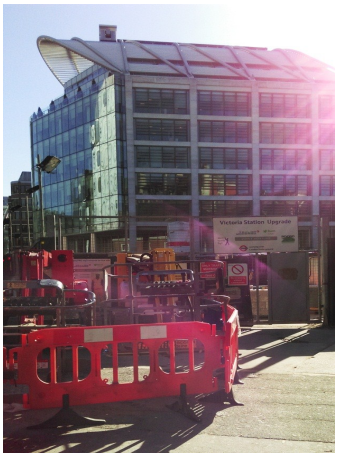
Appeal number: 273025278406/538N10

Material change appeal

The appeal property was a retail premises in the vicinity of the Victoria Station and the issue in dispute was the level of the temporary allowance to be applied to its assessment while the station was being refurbished

The appellant explained that the road had been closed since works started in November 2011: bus stops had been removed, and there were hoardings and portacabins which gave the appearance of a building site, and made it impossible for anyone to see the appeal property.
The landlord, TFL, had originally agreed a rent reduction of 50%, but later increased the rent reduction to 75% in recognition of the fact that small businesses were suffering as a result of the activity six businesses had closed down. A 30% end allowance had been agreed on an earlier appeal, from 1 November 2011, as at the material day the works were underway. This allowance had originally been due to last until March 2015, at which point the VO reviewed the works and decided to extend the allowance until 2018, when the project was set to be completed. Having looked at the situation on the material day of the subject appeal, 29 March 2016, the VO considered that the majority of the groundwork had been completed and the North Ticket Hall was nearing completion. He argued that the further rent reduction from 50% to 75% was more a gesture of goodwill for continued patience through the duration of the works, as opposed to the works becoming more severe. So the continued allowance of 30% for the disturbance was sufficient to reflect the works of the development.

While the panel acknowledged that the severity of the works had not necessarily increased, the duration of the works went beyond the period which was originally expected. The panel considered that the previous agreement had been made early in the project, perhaps too soon to establish the full impact of the development on the appeal property. Since then, businesses had closed, and the appellant had received a further rent reduction. The panel determined that those factors supported an increase in the end allowance and considered that the landlord had increased the rent reduction in recognition of the longevity of the works, and the difficulties faced by the appellant.



The panel allowed the appeal and determined a 50% end allowance, with effect from 1 April 2015, the earliest date possible following the amendment to the regulations.

Appeal number: 599027986873/053N10

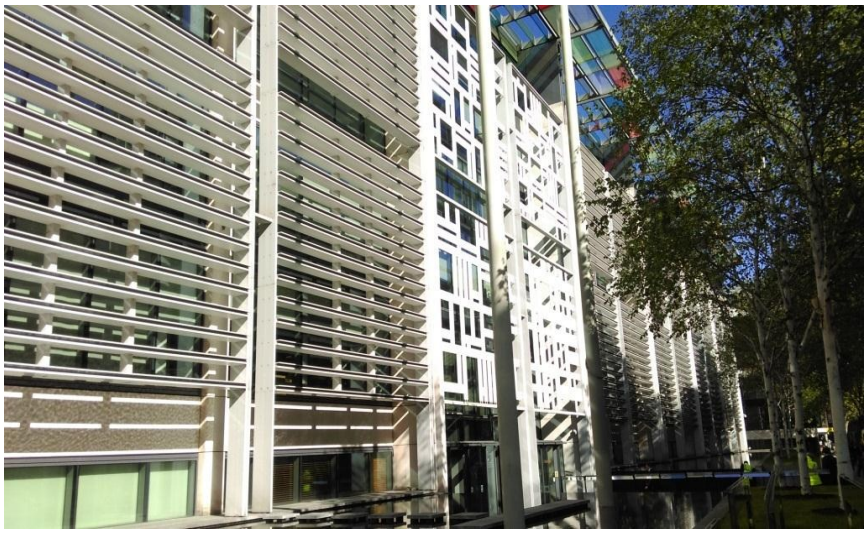
Interesting VT Decisions

Non-domestic rating

Home Office offices

This building in Marsham Street, Victoria, measures 52,000 m^2 with a rateable value of £25 million. The appellant sought reductions totalling £6 million, on the following grounds:

- The main space rate of £600/m^2 was too high. The appellant sought a reduction to £525/m^2 based on the location of the premises away from Victoria Station and the main hub of Victoria. Comparable properties were considered to indicate the difference in value between the two locations. However the panel felt that the subject property's location, and the age and quality of the accommodation supported the current rate.
- The allowance for quantum should be higher. As the largest single occupied office building in London, the appellant argued that the current allowance of 17.5% for quantum was insufficient, and sought a quantum allowance of 25%. The appellant supported this with comparable properties in Westminster and the City. The panel agreed with the VO that the quantum had been applied in accordance with the agreed scheme for Westminster, and properties in the City; older properties in Westminster cited by the appellant did not persuade them that the allowance should be higher.



- An end allowance of 2.5% should be allowed for fragmentation. The property consists of three separate blocks, connected by bridges between four of the seven floors, which the appellant argued warranted an allowance of 2.5% for fragmentation. Both parties put forward the advantages and disadvantages of such a configuration. The panel was persuaded that the disadvantages did not outweigh the advantages, particularly as the property was designed and built with such a configuration for the occupiers.

Therefore the appeal was dismissed on all grounds.

Appeal number: 59902499817 8/538N10

Where we show an appeal number, you can use it 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'.

Place of worship exemption

This appeal arose following a proposal lodged against a notice of alteration, which deleted the appeal property's entry in the rating list from 28 August 2015 as the property was considered to be a place of public religious worship and therefore exempt. The proposal sought to change the effective date of the alteration to the date of purchase (28 November 2014). At the hearing the VO was of the opinion that the premises should be deleted from the date of certification (2 June 2015).

The appeal property was a former day nursery that was now used as a place of public religious worship and teaching. It was ancillary to a mosque and predominantly used by females to allow for segregated worship.

The panel referred to Sch 5 para 11 of the Local Government Finance Act 1988 (as amended) which set out the circumstances in which a property may be exempt as a place of public worship and the date from which exemption should apply:
'11 (1) A hereditament is exempt to the extent that it consists of any of the following:

- a place of public religious worship which belongs to the Church of England or the Church in Wales ….. or is for the time being certified as required by law as a place of religious worship.
- A church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public worship in that place.

Whilst the Local Government Finance Act 2003 made provision for the removal of the requirement of a certificate, the panel found that this had not been brought into effect. The legislation in force provides exemption from rating in respect of a place of religious worship not belonging to the Church of England or the Church of Wales, but which is certified as required by law as a place of religious worship.

Accordingly, the panel allowed the appeal in part and amended the date that the appeal property was regarded as a place of public religious worship to the date of certification as it was exempt from this date.

Appeal number: 441526494322/539N10

Interesting VTE Decisions—Council tax

Council tax valuation

State of repair

The appellant was seeking deletion of the entry in the list for a 1st floor flat in a building he owned. There was an occupied flat above and a shop below it. The problem was that the property next door to and adjoining the appeal building had burnt out to a roofless shell about 20 years ago. The appellant's building therefore suffered damp and moisture ingress through what had been the party wall. Due to issues with the ownership of the neighbouring derelict property it had not been possible to enforce any duty on them to repair and/or seal this party wall. The appellant had arranged for plastic sheeting to be affixed to the top part of the wall, which allowed the 2nd floor flat to be occupied, but it was too dangerous for similar ad hoc repairs to be made to the area of the party wall adjoining the 1st floor flat.

A builder's report on the work needed to the 1st floor flat to make it habitable contained the caveat that such work should only be done once the party wall issue was addressed. The appellant had approached the local authority about this but so far they had not taken any action to remedy the problem.

The panel had to decide this case on the basis of the finding in *Wilson* v *Coll (LO)* [2011] EWHC 2824 (Admin) and on the basis of a subjective examination of the appeal flat itself, it was clearly capable of being made habitable by undertaking a reasonable amount of repair. While the panel accepted that the appellant had a real world problem with actually being unable to carry out such repairs, that was not material to this case where the test rested solely, in the panel's view, on the state of the dwelling itself and its capability or otherwise of being repaired to render is habitable.

The appeal was therefore dismissed.

Appeal No 5900781255/084CAD

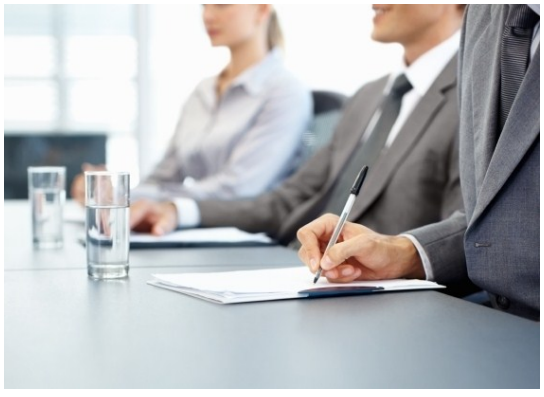
Council tax reduction

Date of claim

The appellant had initially made a claim for CTR on the 11 December 2014. This claim was rejected by the council but the council failed to inform the appellant of the decision. The appellant's circumstances were fluid and she also had a Housing Benefit claim ongoing so there continued to be communication between the council and the appellant. On the 23 May 2016 the appellant completed another on line application for CTR. The council declined to back date this claim, as would be permitted under their scheme for a maximum period of six months where there had been continuous good cause for the delay. In correspondence with the appellant about backdating this claim the council confirmed in a letter of the 27 June 2016 that her December 2014 claim had been rejected but accepted that a formal notification of that decision had not been sent. The council accepted that from April 2015, when the appellant's child care cost altered, she would have been entitled to CTR.

The panel found that the appellant's 11 December 2014 claim remained live until the appellant was formally notified about it on the 27 June 2016. The claim she completed on line on the 23 May 2016 should therefore be treated as being a notification of a change of circumstances on a claim still live and in existence at that time. Consequently, as it was acknowledged by the council that the appellant's circumstance in April 2015 would have entitled her to CTR, her claim could take effect from that date.

Appeal number: 4620M187918/CTR
(We do not publish CTR decisions on our website)



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