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VALUATION TRIBUNAL SERVICE

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Valuation in Practice

News in Brief

Practice Note: Postponed and Adjourned Appeals

A Practice Note explaining the application of Standard Directions to postponed and adjourned appeals was published in September. The key point is that the Tribunal requires parties to keep to the original timetable set out in the Directions they received unless:

- bespoke directions are issued, or
- the postponement was before the first event date in the Directions; in this case a new Standard Direction will be issued with the notice of hearing and the timetable starts afresh.

For full details see:
https://www.valuationtribunal.gov.uk/wp-content/uploads/2017/09/VTE-Advisory-Note-Postponements-adjournments.pdf

Effects of the new Consolidated Practice Statement and Standard Directions

The impact of the introduction in July of the new direction has been positive. The table below shows the difference in outcomes for appeals against the 2010 rating list, pre- and post-introduction of the Consolidated Practice Statement. This clearly shows that introducing a requirement of meaningful disclosure and exchange has been effective.

We are seeing an average 65% of appeals now being settled without requiring a hearing and the postponement rate has dropped significantly, so that appeals are settled quicker and more cases are being cleared.

Hearing dates Outcomes	1/4/17-16/7/17	17/7/17-29/9/17
Agreed	9%	23%
Withdrawn	25%	42%
Deferred	35%	7%
Decided	2%	28%

'Decided' now includes those cases dismissed for 'want of prosecution'. What is interesting is that the actual percentage of cases requiring a hearing (argued cases) remains unchanged at 2%. This is a strong indication that the 'real cases' that we deal with are in effect 2% of the total of appeals lodged.

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

DCLG publications

The consultation on draft regulations for rate relief for new fibre on telecommunications hereditaments in England closes on 21 November 2017.
https://www.gov.uk/government/consultations/business-rates-relief-for-new-fibre-on-telecommunication-hereditaments

Business rates information letter 5/2017 covers backdating of Small Business Rate Relief, reminding authorities that there is no legislative requirement for ratepayers to submit an application.
https://www.gov.uk/government/collections/business-rates-information-letters

House of Commons Library Briefing Paper: Council Tax Reduction Schemes. This follows Eric Ollerenshaw's review published in 2016 and provides information on implementation of CTR since April 2013. Research shows that only 37 of the 326 councils have not changed the level of support in that time period; 277 have reduced the amount of support available and 12 others have made alternative changes such as removing the second adult rebate.
http://researchbriefings.files.parliament.uk/documents/SN06672/SN06672.pdf

Local Government & Social Care Ombudsman

The Ombudsman investigated City of Bradford MBC following a complaint by a housing benefit applicant. It found that some 500 applications were waiting to be passed to the First Tier Tribunal, dating back to 2015. The council has agreed to review these applications and also to review its processes. The council had, however, advised the applicant correctly of her appeal rights to the VTE on the issue of council tax reduction.

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
Photo booths	Whether occupation of booths is too transient and therefore not capable of rateable occupation	Now stayed as ATM decision, in part on a similar point, has been appealed to the Court of Appeal
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
ATM machines at sites in England	Whether each ATM is rateable	UT decision appealed to Court of Appeal
Wind farms	Receipts and expenditure, where at the material date the number of renewable energy providers had increased by several thousand	Lead appeals identified and Directions issued. Hearing on 19/9/17 and interim decisions issued. Waiting for parties to undertake full valuations and report on figures
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	Leave sought to appeal to Supreme Court in respect of Iceland Foods Ltd v Berry (VO)
Stables	Stables in proportion to the dwelling; scope of proposal	Stables in Horsham (appeal number 382525090009/537N10) appealed to the Upper Tribunal
VON issued	Appellant disputes validity of the Notice on effective date as no MCC at the date of the Notice and wants the VON to be quashed	Copart UK Ltd (appeal number 343026502814/538N10) appealed to Upper Tribunal

Decision from the Upper Tribunal (Administrative Appeals Chamber)

Rossendale Borough Council v RM (HB) [2017] UKUT 0362 (AAC)

This appeal was against a decision of the First Tier Tribunal (FTT) allowing a claimant's appeal against the billing authority's decision that there had been an overpayment of housing benefit and council tax benefit during periods from June 2009 to June 2014, which was recoverable. This was because it was alleged she was living with a partner. The case before the FTT had been adjourned on three occasions as neither party attended; directions had been issued. On the fourth occasion the appellant attended and presented a bundle of documents including evidence relied on to show that her alleged partner had not been living with her. She gave no oral evidence. The council, which again did not attend, had provided no evidence other than a transcript of the claimant's interview under caution. The FTT therefore determined that the council had failed to prove its case and its decision was quashed.

The Upper Tribunal found that there had been insufficient evidence against the claimant and that, while the FTT did err in some respects, it did not make a material error in law. The appeal was dismissed.

Decisions from the High Court (Queen's Bench Division)

Francois v London Borough of Waltham Forest [2017] EWHC 2252 (Admin) CO/2100/2017

Council tax reduction had been refused for the appellant because the council alleged she had capital of more than the £6,000 limit specified within its scheme.

The appellant had received a payment as a result of a compensation claim for personal injury and this was held in a Personal Injury Trust set up by solicitors. No details of the trust were provided by the appellant, who referred the council to her solicitors. The council did not contact the solicitors. On appeal to the VTE, the Tribunal also issued a direction for this information and bank statements to be provided by the appellant. The appellant did not comply with this direction and the Tribunal dismissed the appeal, finding that the council was entitled to conclude that the claimant had more than £6,000 of capital.

The High Court referred to case law, which set out that the claimant, as the person with the knowledge of or access to the information needed to support their claim, should provide it. The VTE had made no error in law in its decision and the appeal was dismissed.

Okon v London Borough of Lewisham [2017] EWHC 1933 (Admin) CO/133/2017

The judgment relates to three appeals against council tax liability. The appeals were made following bankruptcy proceedings and an appeal against a bankruptcy order. On condition of having the order set aside, the appellant was to prosecute appeals to the VTE speedily and provide her true residential address.

The VTE found for the billing authority (BA) in each case, noting that the appellant had not attended to present oral evidence and had failed to present sufficient documentary evidence to satisfy the burden of proof about the occupation of the three properties.

In two of the cases, the appellant claimed a single tenant resided there for the periods in dispute, on an assured shorthold tenancy agreement. However, the tenancy agreements were presented only after the BA had served statutory demands.
As the agreements were said to run from earlier dates than the date they were provided, proof of rental income had been sought but none was received by the BA, the appellant arguing that the tenancy agreements should be sufficient evidence. Evidence of rents paid as seen by the tribunal served only to raise further questions about the irregularity and timing of the receipts.

Various allegations were made in the grounds of appeal to the High Court about the conduct of one of the VTE hearings, including the refusal of an adjournment request; these complaints were considered but not upheld. Reference made in the second panel's decision to the first panel's decision did not imply that the panel had felt bound by the first decision (which it was not) but demonstrated a consistent approach, which was a necessary function of the tribunal. Regulation 17 of the tribunal's procedural regulations made clear it was not bound by the rules of the civil courts and so it could "take into account the conclusions of the first panel without being bound by them".

In the third case, there was evidence that the appellant was the resident landlord at the appeal property and the BA had reason to believe it was used as a house in multiple occupation, because of correspondence received and calls logged relating to the disputed period. Again proof of rental income was sought but none received. The appellant contended that she had vacated the property between 2011 and 2016, when various 'households' were resident tenants, and she used it only as a correspondence address. However there was no proof presented to the tribunal to show that she had moved out or had an alternative sole or main residence during that time. The High Court judged that there was "ample material" to show that the appellant had been resident at the appeal property at the material times.

The High Court noted the common aspects to the three appeals and concluded that the VTE panels' decisions individually had not been perverse; the appeals were dismissed.

Interesting VTE Decisions

Council tax reduction

Job-seeker's allowance

The appellant was aggrieved at being refused council tax reduction (CTR) when his household circumstances would suggest he was entitled.

The BA's cancellation of his claim arose from the insertion of provisions in its CTR scheme in 2015, which required claimants who had been in receipt of Jobseekers Allowance for 26 weeks to undertake a Personal Work Support Package (PWSP) for the entitlement to continue, unless there was good cause for non-attendance.

PWSPs were tailor-made to individuals and aimed at honing their jobseeker's skills and awareness thereby enabling them to (re)enter the employment market. The BA regarded it as beneficial both to the individual claimant and to other council tax payers who fund CTR payments. The PWSP had not been challenged at the High Court as being unfairly restrictive or discriminatory. If the appellant in this case were willing to undertake and complete the course, the BA would review his CTR claim.

In upholding the BA's decision to cancel the appellant's claim, the VTE panel found the conditions for entitlement to be clearly set out within the BA's scheme, and, although a full explanation was given to the appellant both when he claimed and when his benefit was cancelled, he had failed to provide good cause for his non-take up of the PWSP he was offered.

Appeal no: 4720M192633/CTR

Notional capital

The billing authority (BA) contended that the appellant had given insufficient detail of how he had disposed of a compensation payment of over £300,000 received in 2007 and that he had notional capital in excess of £16,000, meaning he was not entitled to CTR.

The appellant explained that he had paid off his mortgage, renovated his home, bought cars and holidays and provided financial assistance to his family. He had also had his bank account hacked. The relevant amounts spent and bank statements were presented to the panel, but some £90,000 remained unaccounted for.

The panel was unable to establish that the appellant had less than the £16,000 capital limit, the appellant having provided insufficient evidence to prove his case. It concluded that the BA had correctly applied its scheme and the appellant was not entitled to CTR.

Appeal no: 4525M204475/CTR

Please note that CTR decisions are not published on our website

Interesting VTE Decisions

Council tax liability

Class N exemption

The appeal concerned a claim for Class N exemption on a property in Liverpool for approximately 4 months (December 2016 to March 2017). Class N covers property occupied by residents that are all students or occupied by a student as term time accommodation.

The BA accepted that the appellant was a student but claimed that he had never been in occupation of the property.

The appellant purchased the property in October 2015 and was in receipt of a discount from this date due to the property being unoccupied and uninhabitable. It was assumed that the property was unoccupied as the appellant had accepted this discount. In June 2016 when the works were finished and the discount ceased he let the property out to tenants who left in December 2016.

The appellant claimed that he moved back into the property in December 2016 but there was no substantive evidence to show that this was or had ever been his sole or main residence. It was also established by December 2016 he was no longer studying in Liverpool and had transferred to Portsmouth. The property was re-let by the appellant from March 2017.

The panel concluded that there was no substantive evidence to show that the appellant had ever occupied the appeal property, therefore the appeal was rejected.

Appeal no: 4320M208359/254C

Council tax valuation

The band on a dwelling was reduced on agreement from E to D in 1995 on the basis that it was unmodernised, an identical unmodernised property having sold for £66k in 1994. The tenant of the Kent County Council property, built around 1966, made a further proposal in 1996, but listing officer's (LO's) decision was not to reduce further, as another property in the street had sold in 1992 for £83k. The appeal was heard by a valuation tribunal, where band D was confirmed.

The tenant subsequently bought the property under the Right to Buy scheme and it was sold in 2015 to the current owner. With this sale, the LO increased the band back to E, stating there had been a 'material increase in value', namely modernisation.

The LO presented data on a number of identical properties which had been modernised and not reduced to band D in 1995. The sales evidence from the 1990s suggested that unmodernised properties sold for prices at the lower end of band D, while modernised properties sold for prices at lower end of band E.

The issue was whether or not the modernisation prior to the recent sale had materially increased the value of the appeal dwelling to warrant an increased band entry. The panel considered the limited evidence of the state of the property at the relevant date compared to its state in 1993: photographs from the sales literature for the property in 2015 compared to typical local authority provision of kitchen and bathroom in the 1960s. From this the panel concluded that there had been partial modernisation which was insufficient to warrant an increase in the band.

The appeal was allowed, with the order being that the band revert to D from 3 November 2015.

Non-domestic rating

Dorchester Hotel

A grade II listed, five star hotel in London's Park Lane, the appeal property includes 250 guest bedrooms/suites, bars, a spa with dining area (the Spatisserie) and three restaurants, one of which has three Michelin stars and another, the China Tang, held on a separate lease from 2005. For the compiled list entry at 1 April 2010, China Tang was included within the hotel assessment. However, this was split into two separate hereditaments from the 1 April 2015, the earliest date that it could be split by the valuation officer (VO) under the legislation.

The main issues before the panel were:

- the unit of assessment
- the appropriate fair maintainable trade to adopt to arrive at the rateable value whether any allowance should be applied for overtrading.

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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'.

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The appellant's representative had inflated the 2007 turnover to reflect the addition of the three star Michelin restaurant, which opened in late 2007, close to the antecedent valuation date (AVD). He argued that it would have been difficult to predict the trade post AVD and that a different hypothetical tenant might not be able to replicate the Michelin status. He contended that the Spatisserie was just an extension to the existing spa facility. As China Tang was a separate hereditament and had formed no part of the hotel at 1 April 2010 he stripped out the China Tang rental and other income.

He argued that comparing the revenue per occupied room at the hotel with the average of its competitors indicated that the Dorchester was over trading by around 5%, for which he sought an end allowance. To support this he referred to two public houses, where such an allowance had been applied. Making these adjustments he arrived at a revised RV of £6,970,000.

The valuation officer's (VO's) revised assessment was £7,780,000 and he sought dismissal of the appeal. He argued that China Tang should be valued, with deductions made for its rent replaced with an estimate of what the hotel might achieve trading from the same space.

The VO accepted that the Michelin-starred restaurant had not traded meaningfully prior to the AVD. But comparing the actual trade 2007-11 with the trade of other high end restaurants, he argued that the figure he adopted for it was conservative.

He contended that no allowance should be given for overtrading; if the Dorchester had been overtrading it would have come well ahead of its competitors, whereas in 2007 it had been second in a list which included the properties referred to by the appellant's representative.

The panel found that China Tang was a separate hereditament at 1 April 2010. As the proposal was not seeking a split in the assessment, the panel was unable to give effect to one, but was limited to considering whether the RV in the list was excessive at the material date, 1 April 2010. As there were two separate hereditaments then and an error of omission had been made by the VO, albeit unwittingly, the panel held it had no powers to correct it.

The panel held the correct approach for the Michelin-starred restaurant was to look at the use of this part at both the AVD and the material date; having regard to the actual trade 2007-12, the VO's estimate was not excessive.

The panel found that the Spatisserie was present at the material date but not at the AVD. This was an extra facility to the existing spa and an additional income stream which must have some value and the figure proposed by the VO was reasonable.

The panel noted that the Dorchester had the highest occupancy levels over the relevant period but they were only 0.4% higher than one competitor hotel and so did not show a significant difference in trade. The panel was not persuaded that taking an average of the occupancy percentages of five competitor luxury hotels provided a reliable measure of overtrading. Also, given the differences between public houses and the Dorchester Hotel, the panel attached little weight to that evidence for an overtrading allowance.

Making the relevant adjustments the panel calculated a revised RV of £7,610,000 and, as this was in excess of the existing RV of £7,500,000, the panel dismissed the appeal.

Appeal no: 599022593329/537N10

Proposals held invalid

Two different tribunal panels have determined that proposals giving rise to the appeals were invalid, despite the fact that the issue of invalidity was not raised by the parties.

In the first case, the proposal was made on the basis of a relevant VTE decision. The appeal property was office accommodation in Leeds. It had been the subject of an earlier appeal against the compiled list entry and that panel decided that the main space price for the offices should be £155 per m². This VTE decision was never appealed to the Upper Tribunal. A later appeal in respect of a neighbouring office was determined at a basis of £135 per m². It was this decision that was cited by the appellant when a further challenge was made against the accuracy of the compiled list entry, on the basis of a relevant VTE decision.

The representative's argument was that the ratepayer's earlier appeal arose following a proposal made under Reg 4(1)(a), but the second proposal was made in accordance with Reg 4(1)(e). As the second proposal was made on a different ground, he contended that this gave the ratepayer the opportunity to make another challenge to the compiled list entry.

The panel rejected this argument because in effect the representative had cited another tribunal decision merely to facilitate being in a position to make another challenge to the accuracy of the compiled list entry. In the panel's opinion what the representative had done in this instance amounted to an abuse of process. If the representative's view of the law was correct, a ratepayer could effectively have umpteen bites of the cherry and keep making proposals on the grounds of VTE decisions on nearby properties until such time as he achieved an outcome that he was happy with. This could not have been the intention of Reg 4(1)(e) which had to be read in conjunction with 4(3)(b).

From Reg 4(3)(b)(i), it was clear that the appellant was not entitled to make another proposal challenging the accuracy of the compiled list entry when an appeal arising from an earlier proposal on the same ground had already been made, and in this case had already been decided. Further, from paragraph (b)(ii), where a tribunal decision had determined a compiled list entry, another ratepayer was not entitled to make an appeal on the same ground as the matter had already been decided. In this case, there was no new ratepayer so (b)(ii) did not apply.

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Proposals held invalid *continued*

However, the significance was clear: where an appeal against the compiled list entry had already been heard and determined, the draftsman's intention was that the person who made the earlier proposal would not be able to make another appeal and any new ratepayer would also be bound by the tribunal decision.

Appeal no: 472025654325/539N10

In another case, an earlier appeal against the accuracy of the compiled list entry was settled by a formal agreement under Reg.12. The list was subsequently altered by a valuation officer's notice (VON) to give effect to that agreement in January 2013. In March 2015, a further appeal was made arising from a proposal against the VON whose sole purposes was to give effect to the agreement.

The panel decided that the proposal was invalid as there was no right to make a proposal under Reg. 4(1)(d) when the VON was merely to give effect to an agreement under Reg. 12.

Under Reg. 7(2)(b), when alterations are made to give effect to agreements, the VO is not required to notify the ratepayer or proposer of the effect of Part 2, which includes amongst other matters the circumstances in which proposals may be made. The inference is that there is no right to make a proposal under Reg. 4(1)(d) in such circumstances.

Appeal no: 100525329981/538N10

Material change of circumstances (MCC) - Mersey Gateway Project Works

The appeal property is a large complex formed from several multi-storey buildings, constructed in the 1960's for ICI then acquired by SOG Ltd, who occupy the premises as a provider of serviced office and laboratory accommodation. It is located off Heath Road South, and sits in the centre of the Runcorn road loop.

The Mersey Gateway Project was a major scheme to build a six-lane toll bridge over the River Mersey between the towns of Runcorn and Widnes. (It opened on 14 October 2017). Enabling works commenced on 7 May 2014, cited by the appellant's representative in the proposal. The valuation officer (VO) had agreed temporary allowances for properties within two specific areas affected by the construction works, effective from 1 October 2014, when the first road closures and disruption began. The disruption included roadworks, road diversions and closures, and a re-routing of the road infrastructure.

The appellant's representative sought a temporary end allowance of 5% to reflect the impact of the MCC. This he supported with reference to the appellant's fall in income of 14%. Evidence had also been provided from clients and potential clients that the works had been a direct factor in people vacating, not extending licences or choosing not to come.

The panel decided that the evidence presented in support of a fall in income was not relevant as it related to the business of the actual occupier. The appeal property is valued as one hereditament in a single occupation. The question was, given the severity and proximity of the works, would a hypothetical landlord and tenant agree a reduction in rent? The appeal property is around two miles from the main construction site on the Runcorn side, where allowances have been conceded, and therefore the panel determined that any impact was minimal. This was supported by a large number of settlements, where professional representatives, including the appellant's representative, had accepted that the scheme's impact was limited to the areas agreed during negotiations and withdrawn the appeals.

The panel concluded that the weight of the evidence demonstrated that a temporary allowance was not applicable, and the appeal was dismissed.

Appeal no. 065025491110/134N10

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