Issue 48 April 2018

Valuation Tribunal Service

Valuation in Practice

News in Brief

Appointments to the VTS Board

On behalf of The Secretary of State, the Minister has appointed Robin Evans as the new Chairman of the Board. Robin, who has been a Board member since November 2014, is a Vice-President of the University of Reading, chairing its Property and Investment Committee, and is also a member of the New Covent Garden Disengagement Board. He was Chief Executive of the Canal & River Trust (British Waterways) 2002-2013.

Suzanne McCarthy has been appointed as the Deputy Chairman, succeeding John O'Shea who retired on 31 March 2018. She is Chair of the Joint Audit Panel of the Mayor's Office of Policing and Crime and the Metropolitan Police Service, Chair of Depaul UK, a charity concerned with youth homelessness, and Chair of the Southwark & Lambeth Integrated Partnership. She is a member of the Advertising Standards Authority, the Fundraising Regulator and the Architects Registration Board. She is also the Independent Appointed Person for the Greater London Authority.

Inside this issue:

First 2017 rating list appeal heard

The first appeal under the Check and Challenge and Appeal system was heard and determined by the President of the VTE in March. A summary of that decision can be seen on page 6.

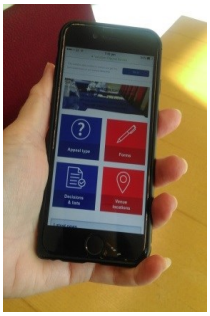
As decisions are issued they can viewed at https://www.valuationtribunal.gov.uk/about-us/vte-publications/vte-decisions/

Consolidated Practice Statement— a quick look at the changes

https://www.valuationtribunal.gov.uk/preparing-for-the-hearing/practice-statements/

Introduced from 1 April, there are new sections on Transitional Relief appeals, Discretionary Reductions in council tax liability appeals and a general section for those appeals the Tribunal receives in low numbers: invalidity notice, penalty notice and drainage rates appeals.

The disclosure process for council tax reduction appeals now mirrors that for other council tax and completion appeal types.



Applications for reviews must now be submitted using a prescribed form, so that they contain all the relevant information. That form can be found at https://www.valuationtribunal.gov.uk/forms/other-forms/

The NDR appeals section clarifies that disputes over compliance will be decided at the hearing and that failure to comply may result in the appeal being dismissed or evidence being excluded.

Case law submissions in rating appeals

The CPS also advises parties that well-known case law need not be reproduced in full in their bundles. Only the relevant extract they intend to rely on must be provided, together with an explanation of how it assists their case. (The clerk and panel will be able to access the full decision for themselves.) We have published a list of case law where this applies, which will be updated quarterly. https://www.valuationtribunal.gov.uk/preparing-for-the-hearing/case-law-list/

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/

Next revaluation

This is to be in 2021 with a valuation date of 1 April 2019. (See BRIL 2/2018 overleaf).

Stayed appeal types at the Valuation Tribunal

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	Upper Tribunal decision appealed to Court of Appeal
Stables	Stables in proportion to the dwelling; scope of proposal	Stables in Horsham appealed to the Upper Tribunal
Validity of proposals	Whether a ratepayer can make a second proposal following a VON to alter the list where agreement was reached between the parties on an earlier appeal	Appeal at Upper Tribunal in respect of Thorntons
Hereditaments split by the VO following the decision in *Woolway (VO) v Mazars* [2015] UKSC53	Contiguous properties to be treated as one hereditament	Proposed change to legislation, currently a Bill going through Parliament. (See below)

Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill

https://services.parliament.uk/bills/2017-19/ratingpropertyincommonoccupationandcounciltaxemptydwellings.html

The Bill, currently at Committee stage, introduces legislation to give effect to commitments in the Chancellor's Autumn Budget to:

- retrospectively reinstate particular features of business rates valuation practice in respect of contiguous properties which applied before the judgment of the Supreme Court in *Woolway (VO) v Mazars* [2015] UKSC 53, and
- give local authorities in England the discretion to charge a council tax premium of up to 100% on 'long-term empty dwellings' (empty and substantially unfurnished for two years or more.)

Written evidence may be submitted to the Public Bill Committee, which will first meet on 1 May. It will stop receiving written evidence at the end of the Committee stage, which is expected to be not later than 5.00pm on Thursday 3 May 2018.

Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations SI 2018 No 0398

The regulations introduce financial penalties, imposed by the VOA, for giving false information in or in connection with a proposal, during the 'Challenge' stage. The penalty, known as a Part 2 Penalty, is £200 for a smaller proposer and £500 otherwise. There is a right of appeal (within 28 days) to the VTE against the imposition of a penalty. The VO cannot determine such a proposal until after 28 days or, if an appeal is made, that appeal is decided. The VTE may remit the penalty in full or determine that the person was a smaller proposer and reduce the penalty to £200.

Business Rates Information Letters

1/2018: Confirmation of the non-domestic rating multiplier at 49.3p and the small business non-domestic rating multiplier at 48.0 p; changes to NDR Demand Notices Regulation in England; consultation on the proposals now contained in the Bill (see above); guidance on Supporting Small Business Scheme; compensation methodology for Small Business Rate Relief and threshold changes methodology.

2/2018: Spring Statement 2018. The next business rates revaluation to be brought forward 1 year to 2021 and 3-yearly revaluations take effect in 2024. The Government will introduce secondary legislation to set the valuation date for the next revaluation at 1 April 2019 and intends to bring forward primary legislation to change the date of the next revaluation to 2021. Also, to prioritise the implementation of the early revaluation, the Government is delaying the linking of local authority billing systems to HMRC's digital tax accounts to the earliest opportunity after the start of the first 3-year revaluation cycle in 2024.
https://www.gov.uk/government/collections/business-rates-information-letters

Supreme Court: Iceland Foods Ltd v Berry (VO) [2018] UKSC 15

Are services providing the air handling system used in connection with refrigerated goods at Iceland "*manufacturing operations or trade processes*" as defined by the plant and machinery regulations? Following a VTE judgment that they were, the Upper Tribunal had reversed this decision and that had been upheld at the Court of Appeal. The Supreme Court unanimously allowed the appeal having regard to the regulations and the Wood Report of 1993.

In the Supreme Court the VO made a broader argument than had been presented before, that the criteria related only to productive activities and not to other, commercial activities, such as retail. The Court rejected this contention and the reasoning of the UT and Court of Appeal in seeing the proviso as a narrow exception and as a process needing to bring about a transition from one state to another. The Supreme Court's view was that, in the context of the regulations, the proviso was "an exception to an exception" and that no transition was implied. Although the plant provided services to the building, they "mainly or exclusively" provided a service to the activities of the building's trader and so could be considered tools of the trade. In Iceland's case, this covered the continuous refrigeration of goods to preserve them. The plant should therefore be ignored for rating purposes. https://www.supremecourt.uk/decided-cases/index.html

High Court: Hyett v Wakefield Council [2018] EWHC 337

The appellant contended that the appointment of receivers in 2008 by Paragon, the mortgagee of his 'buy-to-let' property, was a sham and that in reality Paragon was in possession of the property and liable for the council tax.

Paragon had first attempted to appoint Redbrick Survey and Valuation Limited (a subsidiary of Paragon) as receiver, but under the Law and Property Act 1925, a company cannot be a receiver. Two individuals were then appointed as receivers. At face value, the documentation was valid and neither the council nor the VTE could have concluded otherwise, nor could the council have acted on any theories it might have had about the situation. Only the appellant could do that. The receivers, rather than Paragon, were in possession of the property.

Mr Hyett had been made liable from the date a tenant was said to have handed in her keys and moved out. There was no evidence of any notice given or the landlord's acceptance of surrender. The Court concluded on the balance of probabilities that the date of the appellant's liability should commence 28 days after the date the tenant left. Mr Hyett had been notified by the council that he needed to install smoke alarms etc, but he argued that, since 2008, he had had no access to the property. The Court underlined that the receivers in relation to the property were to act as agents for Mr Hyett and he could insist on access.

While sympathising with the appellant and recognising that a receivership continuing for 9 years was "most unusual", the Court concluded that the VTE's decision, confirming Mr Hyett's liability for the council tax, was correct.

Upper Tribunal: Saint Benedict's Land Trust re London House, Preston [2018] UKUT 40 (LC) RA/53/2017

The Augustine Housing Trust (AHT), a company with the object of providing relief to homeless people had engaged an agent to lease London House from 2014. However, the Trust believed the agent had acted dishonestly and executed documents which showed that the Trust had a right of occupation there under licence granted in June 2012. No lease had been taken on in 2014. The council had sent demands to London House for payment of rates from 2012 which, as the Trust did not occupy it, the Trust was unaware of. A liability order against AHT was then made, which did reach them. The Trust was unable to comply with the order and it was in the course of being wound up. The AHT was a subsidiary of Saint Benedict's Land Trust Ltd and Saint Benedict's made a proposal to alter the rating list to delete the reference to Augustine being the occupier of London House. The proposal was deemed invalid as Saint Benedict's had no standing or entitlement to make it and the proposal-maker accepted that. Nevertheless the matter was still aired before the panel which was invited to determine that the proposal was invalid, having regard to the facts as portrayed by the appellant's representative.

On receiving the panel's decision, a request was made on behalf of the AHT for the decision to be amended on the basis of clerical errors. The UT observed that the panel's decision was not as helpful to the Trust as it hoped it would be regarding its rate liability dispute. The VTE refused to amend the decision on the basis that no clerical error had been made; the appeal before the panel arose from a proposal that was accepted to be invalid. The UT upheld the VTE's decision to refuse the request.

Upper Tribunal: Codexe Ltd v Lamb (VO) [2018] UKUT 70 (LC) RA/55/2016

The appellant sought the deletion of an office entry from the list on the grounds that it had been vacant for over 3 years, was in poor repair and had become obsolete.

The issues were the physical state of the hereditament at the material day and, had it been in that state at the antecedent valuation date (avd), would there have been a demand for it so it could be said to have been capable of beneficial occupation. The appellant had put forward no valuation evidence and the VO relied on the tone of the list, which went unchallenged.

The evidence of the physical state of the appeal property was presented in two survey reports, both prepared over two years after the material date and at which time extensive alterations had been made by the appellant; neither author was available to the UT as expert witness. One of them had agreed a joint statement with the VO's expert that at the material day the building fabric was in good order and the cost of repairs necessary to remedy any minor defects was estimated at £13,870 + VAT, in 2017. After the material day, service installations had been vandalised and components such as the boiler casing and copper piping damaged or removed. These remedial works were estimated to cost £150,000 in the view of a VO expert, and over £600,000 according to the appellant's expert.

The UT accepted the more conservative estimates, noting that at the material day it would have needed no more than £180,000 to put it into a lettable condition at 2017 costs. Taking that figure back to the avd required a deduction of 20%. It was accepted that any reasonable landlord would have considered it economic to spend this amount to achieve a lettable property, at the tone rent of around £189,000 a year. The property could therefore be assumed to be in a reasonable state of repair at the avd.

There was evidence of demand from other lettings in the business park and the settlement of rating assessments on comparable hereditaments in the park. No case had therefore been made for the deletion and the appeal was dismissed.

McManus Managed Pub Co Ltd v Lewell (VO) [2018] UKUT 77 (LC) RA/44/2017

The Upper Tribunal (UT) dismissed an appeal seeking a reduction in rateable value of a pub, calculated from fair maintainable trade figures, because of the material change of circumstances of a 'gastro bar' opening. The appellant contended that trade had suffered a "sudden and sustained" drop.

However, the trade figures were not clear, having differing year ends. It was noted that the gastro bar was some distance from the appeal property, whereas there were other comparables nearby which did not appear to have any effect on trade, which had picked up since the proposal was made.

Mahmod v Annamalai (VO) [2018] UKUT 20 (LC) RA/20/2017

This vehicle repair workshop was in a poor condition at the material day: there were holes in the roof and defective guttering, leading to damp and saturation and risk to electrical installations. At the UT hearing it also became clear that there were times during wet weather when the property could not be used. An estimate for the repairs that the appellant had obtained suggested that the equivalent cost at the antecedent valuation date (avd) would be £56,000. The VO's expert estimated the cost of repairs to be £44,500. However, the UT noted that this included other elements that were not repair and for which allowances had been made: the provision of heating, an independent cold water supply and a separate waste system for the WC. Excluding these reduced the likely cost to £34,652.

Using the approach in *Thomas and Davies (Merthyr Tydfil) Ltd v Denly (VO)*, the VO had made an analysis to calculate the capital value if no repairs were undertaken and comparing it with the capital value if repairs were undertaken. When discounting 50% of the rateable value for disrepair and assuming the repairs were done after five years (as it was shown they would need to be for the property to be capable of beneficial occupation), the capital value was calculated as being £53,000, which would mean it would be economic to carry out the repairs at the material day, rather than in five years' time, when it would cost £64,000.

Interesting VTE decisions—non-domestic rating

Alton Towers

Alton Towers was assessed using the receipts and expenditure method of valuation. The parties agreed that, subsequent to a serious incident involving The Smiler ride in June 2015, there was a decline in annual visitor numbers to the park. The crash resulted in serious injury to 5 passengers, including 2 who underwent leg amputations. An investigation revealed that the tragic accident was a result of human error. The ride re-opened in March 2016.

The preliminary issue was whether the attitude of the public to thrill rides in general, and at Alton Towers in particular, as a result of the crash, was a matter which was physically manifest in the hereditament's locality at the material day such that it fell within LGFA 1988, sch 6 para 2(7)(d).

The appellant cited the judgment in *Kendrick* v *VO* [2009], which dealt with Heathrow Airport lounges after 9/11. Following that judgment, the questions were: what was the matter, and was it 'physically manifest' in the locality? The appellant stated that the matter in this appeal was the attitude of the public to thrill rides. In *Kendrick* the LT said that past events could not constitute matters, but "*the consequences of such events, if they endured at the material day, could be said to do so, provided, of course, that it was physically manifest in the locality of the hereditament.*"

There was no doubt that attendances did fall after the incident and this persisted at the material day. However, the VTE President found no evidence to suggest how much of that was because of a change in people's attitudes to thrill rides, the weather, better alternatives, pricing policy, the possible lack of new rides or a lack of confidence in the site owners. No evidence was put forward that attendances for thrill rides at other sites in England had suffered such reductions.

It was difficult to see the physical manifestations of any reduction in the locality or attribute them in a major way to the incident. There was no physical change to the hereditament; the ride remained and it was tenant's chattels that were damaged. If there had been a change to the physical state of the hereditament then two proposals might have been made, one in respect of the change to the hereditament and the other due to the lack of traffic in the locality. That could not be right in law, as it undermined a fundamental rating principle of valuing 'vacant and to let'.

Finding that there had not been a change in accordance with Schedule 6 paragraph 2 (6) – (7) of the LGFA 1998, the appeal was dismissed.

Appeal no: 343526937167/541N10

> 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'.

Chemical works

The VTE President heard a preliminary point on an appeal to merge two separate chemical plants with the same occupier. The plants, concerned with the production of soda ash, were almost 5km apart and were only directly connected by three pipelines and a direct high tension electrical supply. There was no alternative use of the facilities because of the specialised nature of the buildings and the large amount of rateable plant. There was no other soda ash producer in the UK. One of the plants no longer produced soda ash but its combined heat and power plant now provided the large supply of process steam and electrical power needed for soda ash production by the other plant; this was the most economical way for the company to acquire these resources. One plant was the exclusive provider and the other took 96% of the process steam produced. Following the tests and *ratio* derived from *Woolway (VO) v Mazars LLP* [2015], the President found that the case failed the geographical test, because of the lack of human access between the sites and the small diameter of the pipeline. It also failed the functional test because it was possible that the two plants were not an essential requirement for each other and could be let separately; prior to the material day, Powergen/E.ON owned the combined heat and power plant and had signed a 15 year agreement to supply the steam and power to Tata (though this ultimately proved too costly for Powergen to continue.) Because of the distance between the plants and their independence from each other, the President dismissed the appeal.

Appeal no: 066525358322/539N10

Alteration of the list

The VO had altered the rating list on the 26 January 2016 with effect from the 1 April 2010. The appellant contended that the effective date should be the 26 January 2016, as the alteration, increasing the assessment, corrected an inaccuracy which had been in the list since it was compiled. Under reg 14(7) of SI 2009 No 2268 it could only take effect from the day of the alteration. The VO's argument was that the alteration reflected a merger of 2 hereditaments and reg 14(7) did not apply.

The appellant occupied "Area 3" adjacent to their existing "Area 2" in June 1999. It was the incorporation of the value for Area 3 into the assessment for Area 2 which led to the alteration of the list. The VO submitted that Area 3, prior to its 'merger' with Area 2, was a hereditament itself, which the VO had been unware of and so had not been in the list. The panel found that, at the 1 April 2010, the list entry for the appeal property was incorrect because the VO had failed to identify the extent of the appellant's rateable occupation and therefore the hereditament. As circumstances existed at the day the list was compiled, Area 3 did not, of itself, comprise a hereditament, either in fact or in respect of which an entry in the list existed. If it had been a hereditament, this had ceased to be the case when the appellant merged their rateable occupation of this area with the area which they already occupied. The inaccuracy in the list which the VO corrected was in respect of the hereditament in which the appellant was in rateable occupation and which was subject to an entry in the list at the 1 April 2010 when the list was compiled. There was simply no other hereditament, either in fact or subject to the list entry, with which this hereditament had been merged. The appeal was allowed.

Appeal no: 143027457609/537N10

Interesting VTE decisions—non-domestic rating

First CCA appeal

The first appeal received on the 2017 rating list was dismissed by the President as the rental evidence from the appeal and surrounding properties supported the rateable value (RV). It concerned a shop and its zone A value.

The appellant challenged the assessment on the basis of the RV's of similar shops in the vicinity, which he said showed a wide variation of base rates. Units opposite the appeal property and others in better footfall areas had values of £400-500/$m^{2,}$ whereas the appeal property was valued at £575/$m^{2,}$. The appeal property was very narrow and so, he contended, less desirable.

The VO explained why agreements may produce different values. A specific response in respect of the property opposite stated that the differences were supported by rental evidence in the previous list and accepted. The VO decision notice initially confirmed the view that he was content with the differences in zone A values between the appeal property and the one opposite. However, later in the notice he expressed his view that it was conceivable that the rent on the property opposite required further consideration.

Four weeks before the hearing, the VO wrote to the appellant to advise that he had reviewed the evidence on the property opposite and the surrounding Parade and concluded that they should be valued at the same zone A price as the appeal property. The list would, therefore, be altered within two weeks.

The President considered some preliminary issues. First, could a decision notice be issued when the VO had failed to address the appellant's challenge? The VO explained that it had been decided that the evidence the appellant relied on wasn't fatal to the case, and that it was thought there was sufficient evidence to uphold the assessment. When a new case worker took over the appeal he reviewed the evidence and decided to increase the zone A values of properties opposite, prior to the hearing. In the President's view this missed the point of the Check, Challenge, Appeal process, which was to address the appellant's challenge. However, being satisfied that the VOA were developing their procedures in the new appeal process and that their practice would develop to ensure that the intention of Parliament was put into effect, the President accepted that the VO had issued a decision notice which was adequate for the instant appeal.

The second issue was that no application was made to the Tribunal to include the new evidence at the hearing in accordance with the legislation or the Tribunal's Directions. The President encouraged all parties to follow the Directions as, in this case, if he had allowed the evidence at the hearing then he would have had to offer the appellant an adjournment to consider whether he wished to provide further rebuttal evidence. This would be not only costly in time and effort but also would undermine a further intention of Parliament which was to speed up the appeal process generally by providing a clear framework for considering a case together with sanctions for non-compliance. For the new system to work all parties had to engage with the process and comply with not only the letter, but also the spirit the law relating to openness and candour in the decision process of Challenge.

Adjusting for the rent free period and, it being eight months after the valuation date, the rent supported the RV. It devalued to £639 m^2 for zone A which was higher than the figure used in the assessment; 3 of the 4 comparable rents also devalued to figures in excess of that.

The President considered the shops opposite to be lower than that for the appeal property, agreeing with the appellant that the footfall and the pattern of values in the area all supported his case. The appellant did not accept that the shops opposite should have had their assessments increased; he said the solution was to reduce his property's value to fall in line with the others. However, greater weight was given to the evidence of the rent on the appeal property rent and those close by, than those on the opposite side of the road or the footfall and therefore the RV in the list was not unreasonable. The appeal was dismissed.

Appeal no: CHG000000022

Check, Challenge and Appeal decisions can be found at: https://www.valuationtribunal.gov.uk/about-us/vte-publications/vte-decisions/

Completion notice –non-domestic

The President found that a challenge to an entry in the list through no valid completion notice being served could be by way of a proposal rather than by judicial review. The onus was on the billing authority to undertake the process of issuing completion notices properly and for the VO to satisfy themselves that the notices comply with the law and that they are correctly making an entry in the list. "It would be wrong to require the recipient to undertake judicial review as a check for both the billing authority and the VO".

The only issue for the Tribunal to decide where an appeal is made against a completion notice is the date. Following *Reeves (VO) v VTE (and others)* [2015] and *Spears Bros v Rushmoor DC* [2006], the Tribunal can only amend or quash the notice; that might still leave an inaccuracy in the list.

https://www.valuationtribunal.gov.uk/wp-content/uploads/2018/02/Delph-Property-Group-v-Alexander-VO-and-Leicester-City-Council.pdf

Completion notice—domestic

An appeal originally heard and determined by a lay panel in 2017 and part allowed was revoked and set aside by the President as the appeal dealt with an important point of law, namely whether an annexe met the definition of a new building or a building produced by structural alterations of an existing building to enable a completion notice to be served, in accordance with the legislation.

The council's policy was to issue a notice if they learned of a new property being wind and watertight. They were of the opinion that the appellant was covertly carrying out work on the appeal property so that he could either occupy it or let it out separately to someone. As the parties disagreed on the facts and as the photographic evidence presented was of very poor quality, the President carried out a full exterior and interior inspection. He made these findings of fact:

- The annexe was a separate building in a state of considerable disrepair, sitting within the curtilage of the main house;
- apart from new UPVC windows and a front door, the property appeared to have been untouched since it was last in use in 2006 (including an office where all of the files were at least 12 years old);
- a ceiling had collapsed, there was a hole in roof and the place was crammed full of tools and miscellaneous items;
- it was not a complete or nearing complete new building but an outhouse from the existing dwelling.
- It could not be occupied as a dwelling and the remedial and repair works necessary could not be completed within three months.

The completion notice was therefore quashed.

Appeal no: 2510M203213/037C

Interesting VTE decisions—non-domestic rating

Dental surgery

The dental surgery was within a new medical centre development. There were five other rating assessments in the development: two health centres (one of which was assessed on the contractor's basis and one on the rentals basis) and three surgeries (two assessed on the contractor's basis, one on a rentals basis). The sole issue was the basis of assessment for the appeal property (as the value derived was not being disputed).

The panel considered the decision in *Gallagher (VO) v Dr M Read & Dr J Poyser & Partners* (RA/31/2012) and concluded that the rent agreed by the occupier of a dental surgery could be considered in arriving at the rating assessment. This was because their NHS funding was not based on the same scheme as for GPs. It was found in *Gallagher* that the rents agreed by the GPs were unreliable, as their funding for this cost was dependent upon an assessment of the current market value of the property by the district valuer which was, in essence, an appraisal rent.

The panel found support for the view that a different valuation approach could apply to properties with broadly the same description (dental surgeries and the GP surgeries) in the Lands Tribunal's decision in *Reeves (VO) Ex Parte* [2005]. In that case the member referred to the decision *John Townend (Trading as John's Radio) v Goodall (VO)* where it was stated, *"I can see no reason why [the property's description] should be determinative of the way the hereditament is to be valued rebus sic stantibus in terms of its use."*

The panel was therefore satisfied there was no inconsistency in valuing this dental surgery by reference to rents where, in the same development, GP surgeries were assessed on the contractor's basis.

Appeal no 1540288412671541N10

Computer centre: disrepair/obsolescence

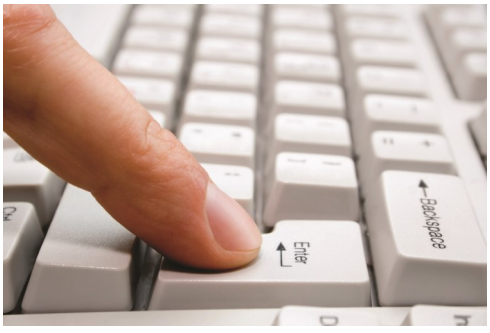
The property had been decommissioned/mothballed by the previous owner, but on acquisition the new owner carried out further substantial stripping back. According to the appellant's representative, this left it either only partially capable of use as a computer centre or beyond economic repair, and they presented two valuations based on these descriptions.

The purpose-built computer centre was one of the first-generation, built in 1985. When the occupiers, Nationwide, moved out, 2 standby generators and 2 UPS systems, which supported modules, were removed. This meant the 3 rear modules were unusable, but the computer systems in the building could function. The building was on the market for 3 years before it was again purchased. Prior to the sale and over a number of months, items of plant and machinery and copper cabling were removed. Since the sale 1 of the modules had been brought back into use.

The VO considered that the replacement cost of the plant and machinery was £1,517,119. The appellant had calculated the replacement cost, like for like, to make the data centre operational was £3,030,000, including the replacement of the plant and machinery.

The Vice-President followed the three-question approach outlined in *Newbigin (VO) v SJ & J Monk*[2017]. Firstly he found that the elements of rateable occupation of the appeal property were met at the material day. Next, he determined that the mode or category of occupation would be computer centre (part) rather than as a whole. Then, as to whether the property was in a state of reasonable repair with reference to its mode or category of occupation, the Vice-President concluded it was not: the likely rent achieved over the limited life of the elderly computer centre would not cover the cost of the repairs. It was likely that a landlord would charge a much reduced rent to reflect those more modern areas where a smaller scale IT operation could function. The remainder, in its state of disrepair, would have no value and so should be excluded from the valuation. The appeal was part allowed, as the end allowances included in the appellant's representative's valuation amounted to double counting.

Appeal no: 283526378710/541N10



Interesting VTE decisions—council tax liability

Class F exemption

The appeal dwelling was the home of Mr D T, the appellant's father, who died in 2008. In 2005 Mr D T had exercised his 'Right to Buy' his council house; his son, Mr Z T, provided the money. Mr D T died intestate. The Land Registry entry only showed Mr D T as owner and there was no suggestion that Mr Z T had ever registered an interest in the dwelling with the Lands Registry. Letters of Administration had not been sought and there was no suggestion of an 'assent' of the property to the appellant. The property was therefore in limbo in Mr D T's estate and, as the estate had not been wound up, the legal and beneficial interests had not passed.

The billing authority (BA) exclusively relied on their opinion that, as the appellant was an only child, Mr Z T would be likely to inherit the estate including the house once his father passed away.

Although Mr Z T was most likely to have a material interest at some point, he did not for the period in dispute. The fact that Mr Z T provided the funding for his father to buy the dwelling was irrelevant; Mr Z T was not a joint owner and Mr D T could have left the property to someone else.

The BA had found it difficult to accept how the dwelling could remain exempt for such a long period of time, due to the inactivity of Mr Z T, but it was clear that Class F exemption had no statutory time limit. As long as the property remained empty and unused then it could benefit from the exemption until probate was granted. Unsatisfactory as that might be, the law had to be applied as it was.

The parties agreed that for the period in dispute the

property was unoccupied and Mr D T had the freehold interest. So, following his death, no person was a qualifying person in respect of the dwelling. On that basis the exemption had to be reinstated.

Appeal no: 5690M202173/084C

Class C discount

A landlord disputed the period of time a 100% discount could be allowed. She had lodged the appeal because the billing authority (BA) had allowed part of the 1 month 100% discount period to her former tenants; she disputed the date they vacated.

Class C, under the 2003 Order, applies to dwellings which are unoccupied and substantially unfurnished. Unlike in the revoked Class C of the 1992 Order, the discount's % or time period are not specified; BAs determine their own.

The panel found that the tenants had moved out on the date claimed by the appellant landlord and the appeal was allowed.

However, the panel also found that the BA could not provide satisfactory evidence to demonstrate it had a local policy limiting 100% Class C discount to 1 month. A copy of a report for a Council meeting in February 2013 was provided, but it was ambiguous since it referred to a 'buffer' for the first month to avoid creating council tax liabilities for short periods.

This decision provides a reminder to BAs to include their approved local discount policies in their evidence bundles.

Appeal no: 0665M222375/254C

Managing agents

The Tribunal allowed an appeal, overturning a decision of a council that sought to hold the managing agent of one of its own residential complexes liable to pay council tax (for rooms it provided for security Guardians). The agent had been deemed to be either the owner of an HMO or an actual resident of the rooms.

In its arguments, the council relied on the management agreement reached with the agent in that it contained a "liability to pay the council tax" clause. It also suggested the management agreement was sham.

The appellant company denied it had exposure to council tax liability because no liability could lawfully arise. Firstly, it was not and could not be a resident. Nor did it occupy any dwelling on site. Further, it was not an owner for council tax purposes and none of the provisions involving liability for an HMO had been satisfied. The appellant argued that the management agreement could not give rise to a liability when no such liability arose in law and that the respondent had been deficient in not seeking out the names of occupiers under licence agreements, some of whom had stayed for only short periods.

Since the management agreement had been agreed between the agent and the respondent council, the appellant argued it could hardly be a sham.

The panel delayed making its decision for 7 days, giving time for the council to respond on the case law referred to it by the appellant, but served only the day before. No such response was made but, on the seventh day, the council instructed a lawyer to reopen the case insofar as wanting to refer to its own case law in respect of Guardians in occupation. The application was refused as the hearing had effectively closed.

Appeal number 5540M220173/084C

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Long-term empty property

The appeal was made against a decision of the billing authority (BA) to apply a 150% property premium to the appellant's council tax liability in respect of the appeal property, with effect from 15 January 2017. The decision was based on the fact that the appeal property had been unoccupied and substantially unfurnished for two years since 15 January 2015 (section 11B of the Local Government Finance Act 1992).

The appeal property had been declared dangerous and uninhabitable under Section 78 of The Building Act 1984 due to a landslip, and the BA had granted an exemption under Class G for the period from 15 January 2015 to 15 July 2016. The appellant submitted that it was unfair and unreasonable of the BA to include this 19-month period in the period applicable to the premium. She contended that the two year period should not begin until 15 July 2016, when the exemption under Class G ended.

While it was acknowledged by the BA that the appellant was prohibited from renting the property during some of the time it was empty, it was submitted that there was no discretionary element to the premium.

The panel held that it was anomalous that the BA had taken into account a period when occupation was prohibited and the property was subject to exemption. The BA's decision appeared to conflict with advice in the BA's report which had been presented by the appellant:
"An empty property premium of 150% of the council tax charge will be levied against owners of properties which remain empty for more than 2 years. The 2 year period will only begin once any other exemptions have ended."

The panel concluded that the appellant had demonstrated that the two year period ran from when the Class G exemption ended. The appeal was allowed.

Appeal no: 4210M217753/254C

Single person discount

The appellant had lived alone in the appeal property since the start of council tax and had been in receipt of a single person discount. The billing authority (BA) contended that it had received no response to letters in 2009 and so the single person discount had been removed. However, the appellant maintained that he had not received the letters. That year, a company acting on behalf of the BA carried out an external check on properties where a single person discount was being paid. Based on information available at that time the single person discount was removed from the appeal dwelling with effect from 1 April 2009.

The appellant, who paid his council tax by direct debit, did not notice that the discount had been removed in 2009. In January 2016 he contacted the BA to say that a part-time lodger had moved in and that he was possibly no longer entitled to the single person discount. The BA replied that if the lodger had their sole or main residence elsewhere this would not affect the appellant's single person discount. In March 2017 the appellant again contacted the BA to notify it that the lodger had moved in permanently from 2 January 2017. In response, this time, the BA told the appellant that the single person discount had in fact been removed in 2009.

The panel considered that the appellant had been open and honest in his approaches to the BA in 2016 and 2017 regarding his lodger and found that he and his daughter, who was present, were credible witnesses, stating the facts of the case. There was a paucity of evidence from the BA regarding the 2009 check and correspondence. The panel found that the single person discount should not have been removed and the appellant was entitled to its reinstatement from 1 April 2009 to 1 January 2017.

Appeal no: 5510M219093/084C