VALUATION TRIBUNAL SERVICE

Issue 22
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Valuation In Practice

VALUATION TRIBUNAL SERVICE

News Update

Practice Statements

A7— Non-Domestic Rates (Rating List 2010): Disclosure & Exchange Supplement (effective from 1 October 2011)

To assist with preparing a statement of case (SOC), the VTE President has issued this supplement, clarifying that any SOC or written submission containing appreciable amounts of "*irrelevant or extraneous material*" will be deemed non compliant and referred to a senior member, for them to consider whether to strike out the appeal, bar a party or exclude a document.

The supplement also reminds parties that the deadline to submit a SOC is 5pm.

C4— Lead Appeals- Staying of Related Appeals (effective from 1 September 2011)

This explains that after the VTE issues a decision on the lead case, it will not be applied to the related appeals for one month, giving parties the opportunity to apply for a direction if they do not want the decision to apply to their particular case. The Tribunal will serve a copy of any direction on the other party who then has 14 days to make representations.

It is envisaged that the applications will normally be dealt with by the panel chairman sitting alone. However, in cases where a party is arguing that the Tribunal's decision should not apply, they are entitled to request a hearing.

Where the lead appeal is appealed to a higher court, the related appeals will be 'stayed' and the Tribunal's decision not applied until it has been determined by the High Court or Upper Tribunal.

A9—Making Council Tax Appeals (effective from 1 September 2011)

This practice statement explains that the VTE will accept appeals only if the following information is provided: name/contact details; address of property in question; grounds on which appeal is being made; period in dispute and either the date on which the billing authority (BA) gave their decision (along with a copy of it) or where no response has been received from the BA, the date on which they had sent their notice of objection to them.

If some, but not all of the information is provided, a formal direction will be issued explaining what information is required, together with the date it needs to be received by the Tribunal (normally 28 days). Failure to provide the outstanding information by the due date will result in the striking out of the proceedings.

Practice Statements are available on our website, www.valuationtribunal.gov.uk.

Council tax liability appeals published on our website

Valuation Tribunal decisions on council tax liability appeals are now published on our website, www.valuationtribunal.gov.uk. We know that this is a development that many billing authorities (BAs) have wanted for some time. The Valuation Tribunal determines about 500 of these cases each year. Decisions will not be published retrospectively, so it will be some time before there are substantial numbers of decisions there.

(Continued on page 2)

Inside this issue:

Special points of interest:

News Update Continued

To access council tax liability decisions, go to our website, www.valuationtribunal.gov.uk and click on the 'Listings & decisions' tab. Once on the Home page for that area, click on 'Council Tax England (or Council Tax Wales) Liability Decisions'. You do not need a login as this is a free service.

You will be able to carry out a 'free-text' search on all areas of the decisions, or search specifically on:

- appeal number.
- billing authority.
- grounds of appeal (split into eight categories, e.g. Disabled reduction).
- Valuation Tribunal area (the broad location) of the appeal property. (If this option is selected, you can also specify the hearing date or hearing venue where the appeal was heard).

Whilst the parties to the appeal will continue to receive a full decision, the decisions you retrieve will be depersonalised so that there are no identifying names or addresses in them.

Tribunal User Survey- Quarterly Report

Our latest report for the period July – September 2011 shows that those surveyed continue to be satisfied with the service being provided by the VTS.

Localising Support for Council Tax in England – Consultation

This consultation by Communities and Local Government (CLG) addresses proposals, as part of the Government's wider agenda for both localism and welfare reform, to change the way that vulnerable people are supported locally for council tax. The intention is for council tax to be localised from 2013-14, reducing expenditure by 10%.

Of particular interest to the VTS are the arrangements for appeals. Responses are required by 14 October 2011; the consultation paper can be found at www.communities.gov.uk/documents/localgovernment/pdf/19510253.pdf

Local Government Resource Review: Proposals for Business Rates Retention – Consultation

CLG is seeking views on proposals to enable councils to keep a share of the growth in business rates in their area so as to make councils more financially independent from central government, giving them a stronger incentive to promote local business growth.

The Government is not proposing to change the way that properties are valued or business rates levels are set, but rates paid will have more impact on local authority budgets. The paper also highlights that the local authority will have more incentive to work closely with the Valuation Office Agency to ensure that businesses in their area are valued correctly and are paying the right amount of tax.

Responses are required by 24 October 2011; the consultation paper can be found at www.communities.gov.uk/documents/localgovernment/pdf/1947200.pdf

Cancellation of backdated liabilities for Port cases

Backdated rates bills on properties within ports and other certain types of properties will be cancelled under regulations made when the Localism Bill receives Royal Assent. In the meantime there is a moratorium on repayment of these liabilities and draft regulations and guidance, published in June, set out who will qualify for cancellation of their backdated bills and how this will be implemented.

The cost of cancelling backdated rates has been estimated by the Government to be in the region of £175 million.

Non Domestic Rating (Small Business Rate Relief) (Amendment) (England) Order 2011

This gives effect to the Government announcement that a more generous scheme will continue until 30 September 2012.

Eligible ratepayers will continue to receive relief at 100% for properties with rateable values (RVs) of not more than £6,000. Tapered relief then applies to properties with RVs up to £12,000.

Decisions from Higher Courts

RGM Properties Ltd v A Speight (LO) [2011] EWHC 2125 (Admin)

In dismissing this appeal, the High Court confirmed the listing officer had correctly applied the legislation in entering into the valuation list on 20 July 2009, four flats with effect from 20 March 2008. The flats had been created from a converted office building; none of them had ever been occupied as such and the billing authority (BA) had never issued any completion notices. The High Court considered two issues:

Issue 1: Was the VT entitled to uphold the LO's decision that the flats were dwellings under section 3 of the Local Government Finance Act 1992, that is 'hereditaments' within the meaning of the General Rating Act 1967?

The effective date was the date of a joint inspection of the flats by representatives of the listing officer (LO) and BA. However only in July 2009 did the BA request to the LO to assess the flats for council tax.

The appellant contended that the flats were not complete in March 2008 because:

- there was a temporary electricity supply to the building from a nearby workshop;
- damp problems needed to be remedied;
- work was needed to the roof; the estimated cost was £50,000;
- the fire alarm system needed replacing and ceilings needed repair and decoration.

The appellant argued that the LO and BA had not followed the correct procedure, namely the service of completion notices.

Mr Justice Langstaff concluded that the building was not yet completed. However, he said that the BA had discretion and was not obliged to serve a completion notice in cases where it had not come to its attention that the building was complete. He referred to section 22 of the 1992 Act, which provided at subsection (1):

"... the listing officer ... .shall compile, and then maintain, a list for the authority (to be called its valuation list)."

He said that it was not a necessary precondition of entry in the list to first serve a completion notice and further, with reference to case law, that a hereditament had been created when it was capable of occupation.

"There is no absolute requirement in law for there to be a completion notice in circumstances in which the listing officer concludes that property is complete and is already a hereditament under section 3 and so that the duty in section 22 may be performed."

The High Court rejected the appellant's argument that a landlord could not let the flats in their present condition; the correct test was the use to which a tenant/ occupier could put the premises.

Issue 2: Did the Valuation Tribunal allow a procedure that was fair to the appellant?

The appellant had only received a copy of the LO's evidence on the morning of the Tribunal hearing. The appellant had been offered an adjournment, but she was happy to proceed. The main evidence was several photographs provided by the LO, allegedly taken in March 2008. Immediately after the hearing (and before the decision was issued) the appellant then contacted the Tribunal disputing the date the photographs had been taken. The LO accepted that the photographs were taken in May 2009. In the interests of justice, the panel decided to reconvene the hearing to reconsider the crucial photographic evidence with the parties. The appellant's representative complained to the High Court that she had not been allowed to present additional evidence (her own photographs) at the reconvened hearing.
Mr Justice Langstaff stated:

"In my view, the VTE did not deal fairly with [the appellant's] case in taking the approach it did. It should have permitted [the appellant's representative] to put before the Panel those photographs which she wished to advance in order to make the more general submission that that council's [sic] *photographic evidence could not be relied upon as giving a faithful account of the true condition of the premises which had to be established if the VTE were to determine whether the premises were or were not truly capable of occupation as a dwelling."*

However, he went on to say that there was no 'material unfairness', which was the only ground for an appeal, because the photographs which were not put before the panel would not have caused it to reach a different decision.

In addition, Mr Justice Langstaff confirmed that the 'reasonable repair' assumption only applies to the consideration the band for the dwelling; it could not be used to determine whether the property satisfied the hereditament test which made it a dwelling.

He also stated that a property was capable of occupation, even though a potential tenant may legally object that there were no fire alarms in the building.

"*If there were a breach of planning control (for instance) or a failure to comply with building regulations, that might cause legal difficulty for the building owner, but it would not legally proscribe occupation by an occupant."*

Decisions from Higher Courts

Wilson-Smith (Trading as Crumpet Ltd) v Attrill (VO) RA/21/2010

How to treat and value the kitchen and ramp that were present in a coffee shop situated in a shopping parade was the focus of this appeal at the Lands Tribunal (LT).

In looking at the principle *rebus sic stantibus*, that something should be valued as it stood, it was noted that case law had established that minor alterations of a non-structural character and structural alterations could be taken into account.

The LT determined that a hypothetical tenant could use the premises as a shop and could remove the wall enclosing the existing kitchen. The fact that a wall was not structural did not necessarily mean that its removal would be a minor work of alteration. However, following a site inspection, the LT member decided that its removal would constitute a minor alteration and noted that A1 retail use (a shop) was in the same mode or category of occupation as the ratepayer's use of the appeal premises as a coffee shop (A3) and would not require planning permission. Therefore, it followed that the area of the kitchen should be valued by reference to the zone floor space within which it was located.

In considering whether the ramp should be included in the net internal area (NIA) of the property, reference was made to the Royal Institution of Chartered Surveyors' Code of Measuring Practice. This indicated that if an area was useable for sensible purposes, whether it was floor or not, it would be within the NIA, except where it was expressly excluded.

The LT member agreed with the valuation officer (VO) that the correct way to treat the ramp was to include it, in the appeal property's area, given:

- it was not an excluded item;
- people stood on it to order drinks and pay for their purchases;
- it provided access to the rear sitting area; and
- it was used as a buggy park.

However, he increased the allowance the VO had offered to reflect its disabilities to the appeal property as a whole from 5% to 7.5%. Accordingly, the appeal was allowed to the extent

Edwards v Howarth (VO) RA/27/2010

This appeal concerned a village inn in West Yorkshire which had 10 letting rooms. The main issues were whether the valuation officer (VO) had valued the appeal property correctly in line with the approved guide to valuing public houses (reached through discussions between representatives from Breweries and the Valuation Office Agency) and if she had made a fair estimate of its reasonable trade at 1 April 2003, the antecedent valuation date (AVD).

The LT member accepted that it was appropriate to value the appeal property in line with the approved guide for the valuation of public houses on the 2005 rating list. In *Wetherspoon (JD) Plc v Day (VO) [2008]* RA129, the LT President had determined that the established guide had to be followed 'unless there is a good reason not to do so'.

Although there was a lack of evidence from trading accounts for the appeal property, the LT member rejected the appellant's use of 2009-10 accounts, as they were five or six years after the AVD and at a time when the economic climate was very different.

The LT member considered that the estimate offered by the VO was fair and reasonable. It was noted that:

◊ She had only marginally upwardly adjusted trading information from 1999-2000, after having regard to two similar public houses nearby.

◊ She had made no adjustment to reflect the improvements that had been made to the pub between 2003 and 2005, when the bedrooms had been renovated, the bar repositioned, the floor leveled and a disabled access put in.

Accordingly, the appeal was dismissed.

Interesting VT decisions

Council Tax Liability - Class H exemption

Class H is defined as "*an unoccupied dwelling which is held for the purpose of being available for occupation by a minister of any religious denomination as a residence from which to perform his duties of office". (*The Council Tax (Exempt Dwellings) Order 1992).

Class H exemption had initially been granted, but on review the billing authority (BA) had removed the exemption as they considered the appellant was not eligible for it.

The appellant contended that the subject property was a residence from which he performed his duties of office. He referred to US case law of *Neal v US* [1953], where a Jehovah Witness had tried to avoid the draft by claiming to be a conscientious objector. The case made reference to status as a minister being determined by the facts of an individual case, not merely by what the individual professed. He was denied status as a minister of religion despite being authorised to preach sermons, perform marriages and officiate at funerals as he had no church, no congregation, he received no remuneration and held no religious services at any particular place. His ministry consisted of distributing religious magazines, preaching from house to house and delivery of infrequent Bible lectures.

The appellant had been ordained into the Church of Spiritual Humanism, but then so had the BA's representative under an assumed name; the BA representative had chosen not to obtain the Certificate which was on offer for $14.95. It was noted that in parts of the USA, this Church was recognised and its ministers could officiate at baptisms, weddings and funerals. The appellant stated that his congregation was mainly in America and that he preached via the internet, but no evidence was supplied to support this.

The appellant advised that he was a Druid and provided a BBC news article on a decision by the Charity Commissioners' to accept the Druid network as a charity. The BA provided details of where groves (sacred forests) were; there were none in the county where the appeal property was situated, but there were some in neighbouring counties.

The panel accepted that the appellant was a minister of religion. Therefore, it had to consider whether the property had been held for occupation of the appellant from which to perform his duties.

The legislation did not define the duties of office for a minister of religion but in 1994 the Department of the Environment had given guidance on what the duties of office would include:

- ◊ Conducting religious worship.
- ◊ Providing pastoral care, especially to the sick, distressed or needy.
- ◊ Conducting weddings, funerals or baptisms (or their equivalent).
- ◊ Providing leadership to local members of his denomination.
- ◊ Overseeing the ministry of others who perform these functions providing them with support and pastoral care

Although this list was based on the Christian model, the panel considered that ministers of most other faiths would be required to perform similar or equivalent duties; therefore the panel found the guidance helpful.

The appellant had not provided the panel with any details of his congregation; he had not supplied any evidence supporting what pastoral care he provided, nor to say that he was registered to conduct a wedding or had conducted any funerals or baptisms.

The panel considered that the property was therefore not being held for the purpose of being available for occupation by a minister of any religious denomination as a residence from which to perform his duties of office and dismissed the appeal.

The doctrine of promissory estoppel

The billing authority (BA) had allowed the remainder of a Class C exemption to the new owner of a flat. When the Class C exemption had ended, the BA had placed a temporary exemption on the property to halt the billing and collection process, in response to several council tax demands being returned as undeliverable.

The appellant was aggrieved because he did not know the exemption was temporary. Had he known this, he would have taken steps to let the appeal property to a tenant, thus avoiding liability.

The appellant contended that the doctrine of promissory estoppel was relevant (*Central London Property Trust v High Trees House Ltd* [1947] KB 130), the basic premise of which was that a person was prevented from reneging on a promise which another had relied on, even though the promise was not supported by consideration. Snell's Equity (31st Edition) 10-08 states the following:

(continued on page 6)

Interesting VT decisions continued

"Where by his words or conduct one party to a transaction makes to the other a clear and unequivocal promise or assurance which is intended to affect the legal relations between them (whether contractual or otherwise), or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it."

The panel decided that its jurisdiction was limited to considering the 23 statutory classes of exemption under the Council Tax (Exempt Dwellings) Order 1992. In its opinion, the BA had correctly determined Class C, because the exemption ran with the circumstances at the property and was not dependent on changes of ownership.

Having established that the BA had applied the appropriate level of exemption, the panel had no alternative but to dismiss the appeal. In the case under consideration, the panel's jurisdiction was restricted to a matter of fact: did the appeal dwelling qualify as an exempt dwelling post 19 September 2008? Since it was not in dispute that it did not qualify for exemption, the appeal failed. The panel had no discretionary power to remit all or part of the disputed council tax liability, on the basis that the appellant had a legitimate expectation that the exemption would continue. The doctrine of promissory estoppel was therefore not relevant in these proceedings.

4310M62270/134C

Council Tax Valuation – Self–contained unit

The garage of a house had been structurally altered by the previous owner to form a separate living area, whose entrance was via the front door of the main house or a door at the rear of the property. However, the appellant had purchased the property with the intention of using all the rooms in the house as normal accommodation; his wife was registered disabled and the layout would eventually allow her to live downstairs. He argued that as the room had become part of the main house it should not be assessed separately. The appellant confirmed that the gas boiler served the entire house and there were no separate meters for gas or electricity. Although there was a utility room in the annex area there were no cooking facilities. He provided the drawings for the conversion and confirmed that nothing had been changed since the alterations had taken place by the previous owner.

The listing officer confirmed that the studio flat, which was originally a garage, had been converted into one through room and had been entered into the list following a request from the local authority. She confirmed that a non-related tenant had been in occupation at the same time as the previous owner and nothing had changed except that the annex was no longer let to a tenant. She outlined the legal framework and explained the concept of hereditament. She considered that structural alterations would be required to merge the annex back into the main house.

The panel accepted that, following alterations to the garage area, as shown on a detailed plan, this clearly constituted separate living accommodation in accordance with the regulations. Further, there was no evidence to suggest that the alterations had been reversed. Although it appeared unfair that the annex should attract a separate assessment, it was suggested that, should the appellant consider undertaking structural alterations to merge the accommodation back into the main house, it may be helpful to seek advice from the VOA beforehand.
0340550849/165CAD

Composite farm hereditament

This was placed in band G (composite). At the hearing, the VO conceded a reduction to F (composite); the appellant's professional representative sought a reduction to E (composite).

The five-bedroom farmhouse had been extended to 200m² and modernised by the appellant after he purchased it with 307 acres of agricultural land, in 1990. The farm had barns, stores, livestock buildings and other agricultural buildings, extending to some 3,500 m² of agricultural accommodation.

Both parties analysed the price paid for the farm to arrive at a value of the domestic element for council tax purposes. Their analyses produced very different results, due to differences in approach and adjustments, particularly in respect of the value to be stripped out in respect of agricultural land.

The appellant's representative said that there was a tone of the list for composite farm properties in this locality. He referred to 13 dwellings that were farm hereditaments whose bands had been reduced on appeal or review from band G to E and, in one case, to D. The domestic accommodation at these properties ranged in size from 164 m² to 415 m².
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Interesting VT decisions continued

He also referred to three farm properties in Somerset and Bristol that had been the subjects of Valuation Tribunal decisions, reducing their bands of F (composite) and G (composite) to E (composite). The floor area of the domestic accommodation of each of these was considerably larger than that of the appeal property. Other composite farm properties in the Frome area were in band F, though all had more living accommodation than the appeal property.

In the light of this, the appellant's representative submitted that the appeal property should be assessed at E (composite), having regard to its age, type, locality, composite nature and mode of occupation.

The listing officer (LO) outlined the valuation approach adopted in the South West for composite farm hereditaments. The value of the domestic property was considered by having regard to local levels of value of non-composite comparables. The value of the dwelling "in isolation" was then adjusted, by reference to an established scale, to reflect the fact that the domestic property formed part of a larger hereditament, the farm. The adjustments took account of the acreage of the farm, any physical factors that might affect the value of the farmhouse, such as noise, smells, visual amenity and shared access and any agricultural occupancy or planning restrictions which might affect a particular property. The resultant value was then taken to be the portion of the relevant amount attributable to domestic use.

The LO noted that by 1 April 1993, the appeal property had become an arable farm and so there were fewer nuisance factors affecting the domestic element than other types of farm. In addition, the farmhouse was some distance from the main farm buildings and was at least partially shielded from them by shrubs and trees to the south of its garden. In his opinion this suggested that the farm might not even qualify for the maximum nuisance adjustment for arable farms.

The LO referred to a number of farms in the locality that were superficially similar to the appeal dwelling in terms of type and size that were all placed in band G composite. The banding of these properties had not been challenged and had persisted for 16 years. The LO submitted that it was not consistent to compare properties that had different acreages, proximities to farm buildings, states of modernisation and planning restrictions on occupation, without knowing what those factors were. He therefore submitted that "tone" could only be correctly applied to the valuation of farm composites where the type and size of adjustment made to the value "in isolation" had been identified. The panel was not assisted by the parties' analyses of the price paid for the appeal property, as there was limited evidence in respect of the value of agricultural land in the area at the AVD. The necessary adjustment in respect of the land was a major factor in arriving at the value of the dwelling for council tax purposes based on the price paid and in view of that uncertainty the panel was unable to place significant weight on the evidence of that transaction.

The information provided by the appellant's representative for his comparables was limited and, while there appeared to be some anomalies, in the absence of further, detailed information about all relevant circumstances of each comparable, the panel was unable to conclude with confidence that the weight of that evidence indicated that the band of the appeal property should be reduced. The LO's evidence of a number of comparables in the area that were of similar size to the appeal property in terms of domestic accommodation, yet were placed in band G, suggested that it was incorrect to assert that a "tone of the list" had been established for such dwellings.

The panel noted that the non-composite houses the LO relied upon as a starting point in determining value were not wholly comparable with the appeal property, but it was satisfied that these gave a general indication of the value of the property if it were not part of a farm. There was of course scope for error in applying the adjustments in respect of the acreage of the farm and the nuisance factors, however, the adjustments made by the LO seemed to be reasonable in respect of the appeal property.

They also noted that the VOA had adopted a consistent approach throughout the South West and did not find that the appellant's representative had proved this to be inappropriate.

The panel was satisfied that the value of the farmhouse for council tax purposes lay close to the threshold of band G and it concluded that a reduction to band F composite was appropriate. The appeal was accordingly allowed to that extent.

3305553664/186CAD

Interesting VT decisions continued

Non-domestic Rating - Workshop and premises

The issue was whether the workshop measuring 223.50 m² and adjoining a house should be either deleted as domestic or exempt as an agricultural building.

For seven years the appellant had been storing trailers and items including bird feed. His son was a gamekeeper and used the property for part of the year to rear birds for the shoot, typically 300 partridges and 500 ducks each year.

The appellant contended that the property was used for storing domestic items and was domestic, so it should be deleted from the rating list. Alternatively, as it was on the Great Britain Poultry Register, it should be exempt as an agricultural building.

As regards the claim that the property was domestic, the panel was referred to the four conditions laid down in section 66 of the Local Government Finance Act (LGFA)1988:

(1) [Subject to subsections (2), (2B)[, (2BB)] and (2E) below,] property is domestic if—

(a) it is used wholly for the purposes of living accommodation,

(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,

(c) it is a private garage [which either has a floor area of 25 square metres or less or is] used wholly or mainly for the accommodation of a private motor vehicle, or

(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.

The panel decided that:

◊ As the property was not used for living accommodation and was not a yard, garden, outhouse or other appurtenance belonging to or enjoyed with the house it did not meet conditions (a) or (b).

◊ Although vehicles were parked in the building on cold days in winter, it could not be described as a private garage and therefore did not meet condition (c).

◊ The property could not be described as "private storage premises used wholly or mainly for the storage of articles of domestic use" and so it did not meet condition (d).

As to whether it was an agricultural building, the panel considered schedule 6 of the LGFA 1988:

3. A building is an agricultural building if it is not a dwelling and—

[(a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land, or]

(b) it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden.

4. (1) A building is an agricultural building if it is used solely in connection with agricultural operations carried out on agricultural land ….

5 (1) A building is an agricultural building if—

(a) it is used for the keeping or breeding of livestock, or

(b) it is not a dwelling, it is occupied together with a building or buildings falling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings.

8. (5) In paragraph 5 ... above "livestock" includes any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land.

The panel decided that, under the Act:

◊ As the building was not occupied together with agricultural land and was not used solely in connection with agricultural operations on agricultural land, it was not an agricultural building.

◊ Although the property was in the Poultry Register and game birds were bred in the building they did not qualify as 'livestock'.

The panel was satisfied that, although it was an empty commercial property, it was still correctly described and should continue to be assessed as a workshop and premises for rating purposes. The appeal was dismissed.

091516407403/124N05

Invalidity notice appeal

The property had been brought into the 2005 rating list on 1 August 2008. A notice served by the valuation officer (VO) on 3 February 2009 had deleted the old entry, with effect from 1 August 2008, and ascribed a new address and a new assessment number. A proposal was lodged by Evans & Payne on behalf of behalf of the ratepayers against the notice. The VO held that the proposal was invalid under

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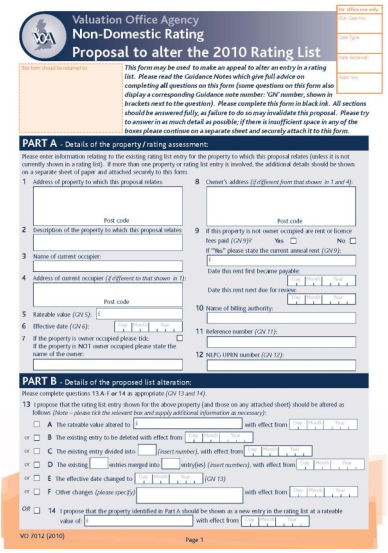
Interesting VT decisions continued

Regulation 8 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2268, because the notice had not changed the rateable value (RV) of the property. The VO issued a notice of invalidity and Evans & Payne appealed against the notice. Referring to Regulation 4(1)(d) of SI No. 2268, the ratepayer's


Valuation Office Agency
Non-Domestic Rating
Proposal to alter the 2010 Rating List

representative said that the wording of the legislation was *"the rateable value shown in the list for a hereditament by reason of an alteration made by a VO is or has been inaccurate"*. The legislation did not say "by reason of an alteration *to the rateable value* made by the VO".

The representative argued that irrespective of what had been the intention of the VO, the RV of the subject property was incorrect and had been incorrect prior to the service of that notice. Therefore, the proposal had been validly made.

He contended that at the date the proposal was made, the original entry in the rating list had already been deleted. There would have been no point in appealing against an entry that had already been deleted and, because it had been deleted from the day it came into the list, had effectively ceased to exist.

He also expressed the view that, on the VOA's website no record was shown of the deleted assessment, so that normally a ratepayer would have no idea that a previous, different, record actually existed. It was only because this agent subscribed to a commercial database that they knew about the earlier entry. If they had appealed against that entry and agreed a reduction, it would have been superseded by the new notice and the RV would have reverted back to the original figure.

The representative said that whilst the VO might contend that Reg (17) (3) inferred that no appeal could be made against a notice that changed only the address, no such inference should be drawn; Regs 4 and 17 were separate regulations with no link between them.

In support of his contention, the representative stated that the VO had served two notices, one to delete one assessment and another to bring in a new entry with a different address and a new assessment number: If the RV had been incorrect in the first entry, even if not appealed, it was still incorrect in the second.

The VO provided a full history of the assessment and explained that the appeal concerned the single issue of whether a valid proposal could be made when the VO had altered the address of a property in the list, but left the RV unaltered.

On 3 February 2009, at the request of the billing authority, the VO had altered the 2005 List to amend the address of the subject property. The description and RV were unaltered. Although not required by the Regulations, the VO had issued a notice on 4 February 2009 informing the occupier of this alteration.

The VO added that, the first time that it could be said the RV 'is or was' inaccurate was when the first entry at £23,500 had been made in the list on 16 December 2008. The RV did not become inaccurate as a result of the address change on 3 February 2009.

The VO submitted that for a proposal to be valid it had to be made on one of the grounds contained within Reg 4. He contended that Parliament did not mean for a ratepayer to have the right to make a proposal following an address change and where the RV remained unaltered.

His argument for this rested on the fact there was no requirement to notify a ratepayer of an address change; it was inconceivable that Parliament would not require a ratepayer to be notified if they had the right to make a proposal.

The panel found the case presented by the ratepayer's representative to be the more persuasive and to carry the greater weight of evidence. It noted that whilst the VO could have amended the list in respect of the address change he did not do so, choosing instead to delete and reconstitute the assessment and issue a notice to that effect.

The panel was of the opinion that, as the list had been altered by the deletion of one assessment and the entry into the List of a new assessment, the ratepayer had the right to make a valid proposal. The appeal was allowed

051516862283/012N05

Café - Whether covered by exemption for churches- Cheshire

This appeal concerned a proposal made by the Romiley Lifecentre to remove the premises which operated as a bookshop and café under paragraph 11 (1) (b) of Schedule 5 to the Local Government Finance Act 1988. This exemption applied to church halls, chapel halls or similar buildings, with a place used for the conduct of public religious worship.

The appellant explained that he had been encouraged in his claim by the decision of the Upper Tribunal in *Ebury v The Church Council of the Central Methodist Church [2009].* However, Professor Zellick considered the case before him contrasted with the facts in *Ebury*

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and far from lending support, it assisted the VO in resisting the claim. This was because:

◊ The Romiley Lifecentre was a private company limited by guarantee and legally distinct from St Chad's church, which was 100 m away.

◊ It had a prominent location and public face. Its kitchen and café facilities were of a commercial character and its turnover of £81k in 2010 was substantial and there was no evidence that any surplus was returned to the church.

◊ In the *Ebury* case the space was in the church building itself, the kitchen wasn't of a commercial standard, the owner was the church who made extensive use of it and its turnover was modest being under £9k in 2005/6.

Professor Zellick concluded that the appeal property failed to meet the requirements of paragraph 11 (1) (b), being neither a church hall nor similar building. Even if the first hurdle had been overcome, there were a variety of factors that would cause the case to fail, such as the distance from the church, the ownership of the premises, the commercial nature and limited interaction with the church. Accordingly, the appeal was dismissed.

423517273728/113N05

Non Domestic Rating- Validity of a completion notice/agreement- Weybridge

This decision examined whether the Tribunal had the jurisdiction to deal with an argument made by the appellant that the properties should not have been entered into the rating list as the completion notice procedure had been defective. The VO considered this to be beyond the Tribunal's remit, as she did not believe that the validity of a completion notice could be challenged at this time; the statutory and correct route would have been to have challenged the service of a completion notice via the Billing Authority (BA).

The President, sitting together with one of his Vice Presidents, was satisfied that the Tribunal had the jurisdiction to consider the matter and proceeded to consider the arguments.

It was accepted by all parties that an error had been made by the BA in 2004, in serving the completion notice on the developer rather than the owner. In 2005, after receiving professional advice, the appellant had reached an agreement with the BA to deem the properties complete. However, since then, the appellant had changed its agent and now argued that the whole issue was defective as the parties had lacked the jurisdiction or capacity to reach an agreement.

The panel considered that the 'agreement' contained all of the necessary information for a completion notice and in its opinion it qualified as a completion notice. The panel noted that the agreement the appellant had reached with the BA had been one in which it had been entered freely and did not consider that it fair for them to be able to repudiate two and half years later.

The panel concluded that the arguments put forward were wholly technical, procedural and without merit. Accordingly, the VO was entitled, indeed bound to enter the properties in the rating list whether this be as a consequence of the 2005 agreement being regarded as a completion notice or an agreement under para 3 of the Schedule 4A of the LGFA 1988.

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