Issue 52 April 2019

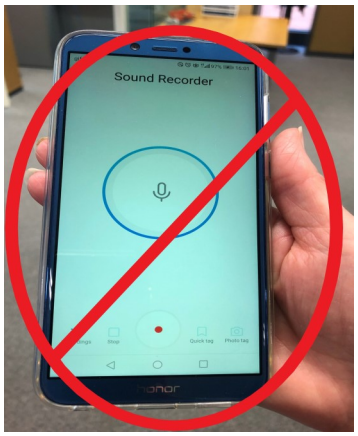
Valuation Tribunal Service

Valuation in Practice

News in Brief

Recording proceedings is not allowed

The VTE's revised Model Procedure (PS8 of the Consolidated Practice Statement) sets out that the use of any electronic or digital recording devices in the Tribunal hearing room while proceedings are in session is not permitted. The Tribunal is not a court of record and so its proceedings are not recorded electronically or digitally. The record of proceedings is the formal decision which is issued to the parties.



Remember that you can sign up to receive an alert when any new practice statement or an amendment is published. Click here

VTS email addresses

Please be aware that, in line with government policy and along with other government bodies, we have moved away from the Public Services Network. In terms of security, we are still part of the gov.uk environment but the gsi element of our email addresses has gone. Our email addresses now end **@valuationtribunal.gov.uk.**

VTS Doncaster office address

Please ensure that when posting anything to our Doncaster office or, as a billing authority, referring to it in your literature that you use the new address, which is:

Valuation Tribunal Service
3rd Floor
Crossgate House
Wood Street
Doncaster
DN1 3LL.

Website survey

Thank you to those few who took part in our recent online survey. Your responses have been added to feedback collected on our exhibition stand at the IRRV conference and from independent tribunal user research commissioned over the year. All of this will form the basis of a review of the guidance we currently provide and communications we have with parties to appeals.

Decisions and Lists

We appreciate that this area of the website looks and feels outdated. However, because this is taken from a platform that we will soon be exiting, no further investment can be justified. We will be designing a better way of providing this information from our new appeals database in due course.

VTS Business Plan/Corporate Plan 2019-22

This is now available on our website. The Plan sets out the strategic objectives and looks ahead to factors that may impact on the VTS's service delivery.

Inside this issue:

The summaries and any views given in this newsletter are personal and should not be taken as legal opinion

Business Rates Information Letters: BRIL 1/2019
This letter confirms the Non-Domestic Rating Multipliers for 2019-20 at 50.4p, with the small business non-domestic rating multiplier at 49.1p. It covers 'new burdens' help for local authorities implementing the Retail Discount Scheme and also encourages them to support ratepayers in avoiding unnecessary fees with rating agents by doing all that they can to ensure that businesses are aware of any reliefs for which they may be eligible, and understand how to access that support in the easiest way possible. Attached to the letter in an annex is the revised text to the explanatory notes for the (Demand Notices) (England) (Amendment) Regulations 2019 No 101, reflecting relevant policy changes.
These letters can be found by clicking here.

Consultation
MHCLG has embarked on engagement with charities, debt advice organisations and local authorities on changes to improve the council tax collection system with a view to considering reforms later in the year. The aim is to treat people more fairly while ensuring the money required to fund public services is collected. This forms part of cross-government efforts to improve the treatment of vulnerable debtors. https://www.gov.uk/government/news/government-pledges-to-improve-the-way-council-tax-debt-is-recovered

Stayed appeal types at the Valuation Tribunal

Class	Identifier	Reasons
ATMs	Whether each ATM machine at a site in England is rateable	Decision now awaited from Supreme Court
Photo booths	Whether occupation of booths is too transient and therefore not capable of rateable occupation	ATM decision in part on similar point. Decision on ATMs awaited from Supreme Court
Religious exemption of Church of Scientology properties	VOA is dealing with several appeals by the Church of Scientology relating to religious exemption on premises around the country	Appeals postponed and not listed . May have to be resolved on legal arguments under PS3 (Complex cases) of the Consolidated Practice Statement
Stables	Stables in proportion to the dwelling; scope of proposal	Stables in Horsham appealed to the Upper Tribunal
Council tax	Where the LO serves notice to increase the band on the original hereditament as well as entering a new band for an annexe created by physical alterations, reflecting a split to two self-contained units (but no relevant transaction)	Appeal to High Court on a point in *Corkish (VO) v Berg* (CO/4999/2018)
NDR—exemption under para 16, Sch 5 to the LGFA 1988	Amount of evidence to be provided for the 'disabled persons test' when seeking the exemption	Test case identified by parties. Draft Directions with the President
NDR—proposals seeking deletion	Following *Monk v Newbigin* where, at the material day, the property exists	Appeal made to Upper Tribunal as the VTE dismissed these but allowed appeals where reduction to £1 sought.
NDR—proposals seeking deletion/ reduction	Following *Monk v Newbigin* where there is no specifically referred to ongoing scheme of redevelopment, only a strip out, with no firm redevelopment or refurbishment plans in place at the material day	Appeal allowed by VTE but appealed where it is alleged by the respondent that there were no redevelopment plans in place and so it is outside the ratio of *Monk*.
NDR—Museums	Disputes over valuation approach	Appeal made to Upper Tribunal regarding 'contractors test' or receipts and expenditure method to be adopted

Decision from the Upper Tribunal (Lands Chamber)

Cemex UK Operations Ltd v O'Dwyer (VO) [2019] UKUT 0106 (LC) RA/85/2017

The appeal property comprised a cement works and a quarry, which were about a mile apart, and an elevated conveyor which linked them. The parties agreed that the appeal property should be valued by aggregating the value of each of the elements (if indeed the conveyor were to be valued at all). The sum arrived at would then represent an annual letting value for the whole, based on the statutory assumptions. The value of the quarry was to be determined by applying a royalty to the assumed mineral output plus a sum to represent the value of the land, buildings, plant and machinery. The value of the works was to be arrived at using the contractor's method of valuation.

There were various issues to be addressed, namely whether:

- output of the works should be taken as at the material day rather than the antecedent valuation date (AVD)
- there was over-capacity
- the lengthy conveyor should be valued at zero because of increased maintenance costs and the risk of malfunction.

The Upper Tribunal rejected all of the arguments made in support of these points. The economic circumstances in which a hypothetical letting was deemed to have taken place were those that existed at the AVD. Over-capacity was not in evidence and the conveyor must have a value to a hypothetical tenant because, without it, alternative transport costs between the site would be high, as would the cost of creating a conveyor if one did not exist.

The Upper Tribunal confirmed both the approach and the figure that had been arrived at by the VTE.

Court of Appeal decision

Jagoo v Bristol City Council [2019] EWCA Civ 19

This case concerned a disabled student's entitlement to student exemption from liability to council tax. The appellant was registered as a student on a 4-year part time course. It was contended that for students without disabilities, the course required 20 hours of study a week. Because of her dyslexia, the appellant took longer to complete the work required on the course and she was provided with additional individual support at the university's expense. This support amounted to about 30 hours a year, which if added to the normal 20 hour requirement would qualify her for the exemption. This argument had been rejected by the VTE panel and by the High Court.

The Court of Appeal noted that there was a need to find an interpretation which made sense of the way tertiary education could now be delivered and yet which did not place an undue administrative burden on billing authorities. It would not be reasonable for an educational establishment to specify precisely the number of hours of study required, as each student's ability and mode of study would need to be examined. The requirement was therefore more likely to be implicit, and equivalent to the amount of time that that student took to complete the set assignments and other study.

In effect the course that Ms Jagoo was studying was not merely her MSc but the MSc plus the study support, which was an adjustment of the course to mitigate the disadvantage arising from her disability. Undertaking both elements was a requirement in her case. Educational establishment were required under the 1992 Act to provide a certificate, but the prescribed contents did not include the number of hours' study required.

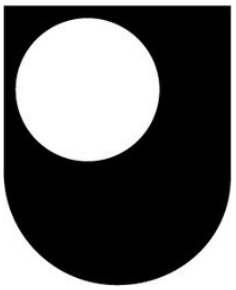
Though his conclusion might place a requirement on BAs to carry out 'modest' investigations in such cases, Lewison LJ did not consider this to be too onerous. As the additional hours were formally documented by the university in this instance, the appeal was allowed and remitted to the VTE to find the facts.

Interesting VTE decisions—Council tax liability

Student exemption

This was the first case concerning student exemption heard since the judgment in *Jagoo.* This appeal concerned a student on an Open University course which was promoted by the OU as a part-time distance learning course, encouraging students to take one module a year. However, for the first two years of the course, the appellant signed up for two modules each academic year. She was warned by the OU about the commitment this gave rise to, but she met the qualifying criteria for being a full-time student by studying 36 hours a week in the first year and 32 hours a week in the second year.

Noting that in *Jagoo* the Court of Appeal focussed on "what the student is receiving", there was no doubt in the panel's mind that the appellant's required study time was over 21 hours a week for those two years. The only difference between the appellant during those years and a student at a red-brick university was the method of study; it would be inequitable to treat the two differently and could not have been Parliament's intention. The panel also noted that the regulations referred to "at least one academic year", suggesting that any consideration must be on a year by year basis. The panel allowed the appeal.



Panels are expected to follow this decision and where OU students are able to provide compelling evidence of full-time study from the university, so as to meet the legislative requirements, they should be awarded the exemption.

Appeal no: 5630M237894/281C

Class F exemption

The billing authority (BA) relied exclusively on their opinion that, as the appellant was the sole beneficiary to the dwelling in accordance with the will, he was a 'qualifying person' and so liable for council tax in respect of the dwelling.

The BA representative cited a previous VTE decision to support its opinion, which recorded that the panel had regard to Section 1 (1) of the Law of Property Act 1925. This stated that only two 'estates' were recognised at law: an estate in fee simple absolute in possession, and a term of years absolute. It further went on at Section 1 (3) to say all other estates, interests and charges in or over land took effect as equitable interests. The panel had found in that appeal that the appellant had an equitable interest in the property and so was a qualifying person and no class F exemption applied.

The panel here attached little weight to the previous decision which was not binding upon it. The judgments of higher courts referred to in it had been made before 1993 and were not in respect of council tax law, therefore the panel concluded that they did not assist when looking at the Local Government Finance Act 1992.

Referring to the definition of owner in the Act, the panel considered this meant a freehold (or leasehold) interest only. No mention was made of the owner being someone who had an equitable interest in the dwelling; the panel considered that had Parliament intended for that to be the case it would have said so.

It was not disputed by the BA that, had there been two or more beneficiaries to the property in the will, the exemption would have been applied. Whilst the appellant was a specific devisee of the will, the grant of probate still had to be obtained before the title of the property could be transferred to him. That, in the panel's opinion, was no different to the same being required if the property were bequeathed to two or more people. The panel found the President's decision in *ZT v LB Lewisham* [VTE 5690M202173/084C] highly persuasive, in which it was stated, "whilst the appellant would eventually have a material interest, the freehold of the dwelling, he simply did not for the period in dispute". If the BA's approach was correct then a class F exemption would never apply as a property left to more than one person would still lead to a joint material interest as all the recipients would have an equitable interest. Until probate was granted the will could be contested and then a beneficiary could lose the bequest. It was therefore not possible for the freehold title of a property to pass until probate had been granted and the Land Registry record amended. The property remained within the estate of the late father and until probate was granted the legal interest did not pass to the appellant.

The panel concluded that the appellant was not a qualifying person in respect of the dwelling and therefore the criteria for Class F exemption had been satisfied. The BA had misinterpreted the regulations. The exemption must be granted for a period up to six months following the grant of probate.

Appeal 0505M242535/282C

Interesting VTE decisions—Council tax liability, continued

Severe mental impairment discount – when is a person 'entitled' to a benefit?

An application for the discount had been turned down by a billing authority (BA) because, although the appellant's husband had been diagnosed with dementia in Alzheimer's disease, he was not entitled to one of the qualifying benefits. The appellant went through the qualifying criteria for the Personal Independence Payment (PIP) and believed that her husband should be disregarded for the purposes of the discount.

The BA had received informal advice from officers at the DWP that a person was not entitled to a benefit until an assessment had been made. It was decided that the BA was not competent to make a decision over entitlement to one of the benefits administered by the DWP and the appeal was dismissed.

The panel was presented with evidence to show that different BAs were adopting different approaches over such cases and that some would have awarded the discount.

Appeal no: 0915M241294/280C

In this case the appellant's wife had been diagnosed with dementia in Alzheimer's disease from October 2015 but was only granted attendance allowance from September 2017. From this date the BA granted the appellant a single person discount backdated to the date of the diagnosis. This was on the basis that she would have been entitled to the allowance if it had been claimed. The BA had asked the appellant to seek evidence that his wife had an "underlying entitlement" to the attendance allowance. The panel was concerned if this was common practice for council taxpayers to be asked to obtain such evidence; they would be highly unlikely to get it from the DWP and in any event this would not meet the test of being entitled to the benefit to qualify for the disregard.

The Social Security Administration Act 1992 stipulates that as well as meeting the conditions of a benefit, a person must have made a claim for it to have an entitlement to it. The panel found no justifiable reason for interpreting 'entitled to' in a way that disregarded that.

The panel concluded that BAs should contemplate whether to use their discretionary powers under section 13A(1)(c) of the Local Government Finance Act 1992, rather than induce taxpayers to make ultimately futile endeavours in seeking such evidence.

Appeal no: 5450M242655CTR
(CTR decisions are not published on our website)

Interesting VTE decisions—Council tax valuation

Effective date

The subject dwelling was a three-bedroom semi-detached house, banded at council tax band C when the tax was introduced on 1 April 1993. An entry was subsequently made in the rating list for a 'Cattery' with effect from 30 July 1998, and the council tax band was reviewed and reduced to a band B (Comp), by listing officer's notice (LON) issued on 25 January 2000, to reflect the 'composite' nature of the property. The 'cattery' was then deleted from the rating list with effect from 1 April 2003. No change to the council tax band of B (Comp) was made at that time.

The band was later reviewed and increased to band C by LON on 8 July 2018, with an effective date of 1 April 2003. This appeal challenged the effective date of the alteration, the appellant arguing that it was date limited to the date of the alteration.

The panel determined that when the 'cattery' was removed from the rating list the LO should have altered the band. The failure to do so was down to an error. It was reasonable, therefore, for the panel to conclude that this subsequent change to the band was as a result of an error in the list and made under regulation 3(1)(b). Therefore, the change will be effective from the date of the notice changing the band under regulation 11(9)(b). In conclusion the LO is therefore precluded from backdating the increase in the band before the date of the notice of alteration.
The panel allowed the appeal, with band C effective from 8 July 2018.

The panel would add that this must be the correct approach otherwise the appellant would not have been aware of the incorrect banding when the appeal dwelling was purchased and be faced with a large backdated bill due to an error by the LO. The purpose of the restriction on backdating increases in bands due to LO errors was put in place to avoid taxpayers being faced with large backdated bills through no fault of their own, as is the case here.

Appeal no: 3315834510/285CAD

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Interesting VTE decisions—non-domestic rating

National Bowl, Milton Keynes

The appeal property is an amphitheatre, formerly a brick-making pit that was filled with rubble and surrounded by a mound from which the stage could be viewed. It was used for concerts, shows, corporate events and car boot sales. The issue in dispute was the method of valuation.

Though there was a rent passing on the hereditament, it was unusual in that it fluctuated year on year and was effectively influenced by turnover, being calculated on the basis of ticket sales. The parties agreed that there were no useful comparable properties from which evidence of value could be gleaned. The valuation officer (VO) had valued the property having regard to the fair maintainable trade and the panel upheld with this approach. Regard was therefore had to all the trade figures available from 2007-2009.

The VO argued that the 2009 trade figure should not be used since it was past the AVD. His revised assessment was £41,500. However, the panel rejected this argument, noting that performance artists were often booked over 12 months in advance and therefore receipts from ticket sales were likely to be known well in advance of the financial year accounts being filed.

The VO had first applied an appropriate percentage of 11% but on reflection increased it to 13% because he contended that maintenance costs for the appeal property would be low. The panel concluded that a large number of staff would only be required for those rare major events and it therefore upheld his argument on the appropriate percentage, resulting in an RV of £32,000.

Appeal no: 043525424974/541N10

Material change in circumstances – reinstatement at higher RV

A scheme of works had begun on 1 September 2014 in this large office building; these included the installation of an internal staircase which reduced the floor areas. It was agreed between the parties that the rateable value (RV) should be nil from that date to 8 February 2015, but the valuation officer (VO) sought to have the RV reinstated at a higher value (£1,830,000) from the 9 February 2015 (the date the property was re-occupied). The VO was therefore seeking two determinations from the Tribunal because he was not empowered to alter the 2010 rating list entry to what he believed was the correct level of value, following completion of the works.

The appellant contended that the list showed RV £nil only for administrative reasons (as described in *SJ & J Monk v Newbigin (VO)*) and was tantamount to a deletion from the list; in reality no hereditament existed. Further he argued that the hereditament that existed from 9 February 2015 was not the same as that that existed before September 2014.

The Vice-President examined the Tribunal's jurisdiction with particular reference to Reg. 38(7) of the Procedure Regulations. Having given effect to the agreement between the parties that a nil RV applied from 14 September 2014, he went on to determine that the alteration ceased to exist on 23 January 2015, the date an architect certified practical completion. Whether the hereditament was exactly the same as before did not arise; the Tribunal was bound by the scope of the proposal, which did not seek deletion from the list. He concluded that Reg. 38(7) could be applied in this case as sought by the VO. The list entry was to be altered to show Premises under construction, RV nil from 14 September 2014, RV £1,830,000 from 23 January 2015.

Appeal no: 503024540195/538N10

Antecedent valuation date (AVD)

A challenge to the 2017 list assessment of an industrial unit was made on the basis that an appeal made in August 2016 had resulted in a reduced rateable value (RV). The site manager believed this reduction had been based on the rental value of the property at that time, only six months before the implementation of the 2017 list, so it should be carried through to that list. However, it was pointed out that the assessment for the 2010 list was based on the rental estimated at the AVD, 1 April 2008.

Comparable properties' rental evidence presented by the valuation officer (VO) supported the unadjusted main space price. The panel upheld the VO's argument that the two lists were distinct and separate. The property and its locality had to be considered as they existed at the material day but with market conditions and the economic climate that existed at the AVD. Comparisons between the two lists were not conclusive. The appeal was dismissed.

Appeal no: CHG100008213

Interesting VTE decisions—non-domestic rating, continued

New list entry – no completion notice

Following a billing authority (BA) report the valuation officer (VO) valued the appeal property as show apartments, rateable value (RV) £32,000 from 1 August 2016, without inspecting it. No completion notice had been served.

The VO argued that the appeal should be dismissed because the appellant's proposed arguments for the hearing fell outside the scope of the proposal, which sought an RV of £10. However, the clerk advised the panel that the appeal property fell to be valued having regard to the physical factors as at the material day. From the final completion certificates required under building regulations, the apartments were completed on 17 November 2016 and 6 December 2016 respectively. The panel therefore concluded that at 1 August the apartments were not ready for occupation.

Had the proposal sought a deletion, the panel would have given an order to delete it. However, this was outside the scope of the proposal and therefore it was also outside the panel's jurisdiction. Because of this, the panel upheld the proposed valuation sought by the appellant: the entry was reduced to RV £10 and the list entry was to be amended to reflect that the show apartments were under construction. This was on the basis that they formed part of an ongoing development and were incapable of beneficial occupation at the material day.

This case again highlights the importance of BAs using the completion notice procedure and the importance of the VO carrying out inspections to ascertain the physical facts before carrying out an assessment.

Appeal no: 185030695926/541N10

Royal Opera House

The appeal arose from a proposal seeking a split of the hereditament into two, being in separate occupations, the Royal Opera House (ROH) and the Royal Ballet School, from 1 April 2010, and seeking a rateable value (RV) of £740,000 for the ROH "in line with other prestige theatres". The valuation officer (VO) had made the split in 2018, effective from 1 April 2015, with the ROH's RV at £2,150,000.

There were two preliminary points. The first was a request from the ROH for the appeal not to be determined as there was a potential issue in respect of effective date rules if the appeal was lost, and therefore a decision on valuation only was sought. The VTE Vice-President (VP) did not agree to a partial hearing of the appeal. The second point was raised by the Registrar in respect of the expert witness appearing for the appellant in a complex case following the Upper Tribunal decision in *Gardiner & Theobald LLP v Jackson (VO)* [2018], as his firm was operating under a conditional fee arrangement. The VP's view was that this should have been raised earlier (either by the Registrar or the respondent) and that doing so at the hearing could disadvantage the appellant, who would no longer have a chance to find an alternative witness. He was satisfied that the witness understood his role and therefore accepted his expert witness evidence, giving it weight (as the respondent had not inspected).

Most of the valuation was by reference to the value per seat; the remainder was valued in terms of main space. The parties agreed that the ROH should be valued based on 1,537 'equated' seats, it being accepted that not all seats were as good as each other. The appellant contended that £215/seat was appropriate, compared with the London Palladium, the Theatre Royal and the Lyceum, which had similar capacity. The Royal Albert Hall seat value was £214.96 and the National Theatre's £200.

The VO defended his assessment based on £270 per seat and argued that the 'comparables' cited by the appellant were for premises that were either dated and in need of refurbishment or offered a lower standard of accommodation. Both the Royal Albert Hall and the National Theatre differed in some respects from the appeal property.

The VP noted that the ROH stood out as having a programme of the highest standard productions, with performers, costumes and props being among the best in the world. He accepted the appellant's point that the ROH was a "production theatre" rather than a "presenting theatre" and as such needed workshops, stores, rehearsal dance studios and an armoury. The value of these areas would be reflected in the seat price so the VP removed them from the valuation on the basis of the expert evidence from the appellant. The Registrar recommended that the VP inspect the hereditament to see for himself how it operated and whether such areas should be valued (as there had been little change to how the Opera House functioned since the material day) due to the expert for the appellant being under a conditional fee and the respondent not inspected. The VP considered he had sufficient documentary and oral evidence to decide the appeal. The appellant's contention that a 30% discount should be applied to the equated seat value for the additional space was not challenged by the VO and the Vice-President determined this should be applied to the seat value of £270, giving a value of £189 per equated seat. The resulting RV that he ordered the VO to alter the list to show was £830,000 with effect from 1 April 2010.

Appeal no: 599022471764/537N10

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