Issue 53 July-August 2019

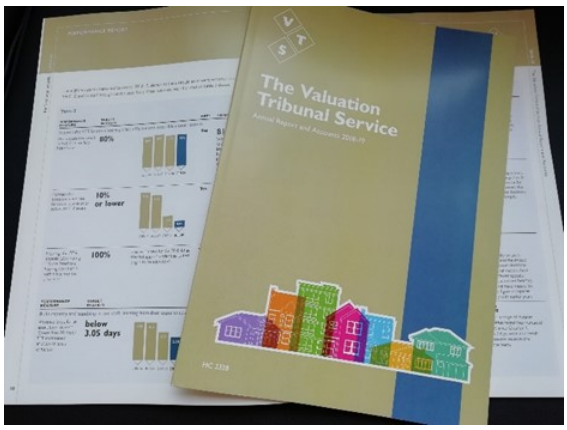
# Valuation Tribunal Service

## Valuation in Practice

## News in Brief

### VTS Annual Report & Accounts

This was laid in Parliament on 24 July and is available on our website: https://www.valuationtribunal.gov.uk/about-us/publications-policies/annual-report-accounts/




### Non-Domestic Rating (Lists) Bill

Makes provision to change the dates on which non-domestic rating lists must be compiled. That date, after 2017, for English local rating lists, will be 1 April 2021 and then three-yearly after that. Draft lists are to be available from 31 December rather than 30 September. https://services.parliament.uk/bills/2017-19/nondomesticratinglists.html

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### Non-Domestic Rating (Preparation for Digital Services) Act 2019

https://services.parliament.uk/bills/2017-19/nondomesticratingpreparationfordigitalservices.html
In the 2014-16 Business Rates Review, the Government made a commitment to link local authority business rate systems to HMRC's digital tax accounts to enable businesses to manage their rates bills in one online location. This Act allows development work on a new digital system: further legislation will be needed to introduce and implement any new system. There is a House of Commons Library, Briefing Paper on this (No 8562, May 2019): https://researchbriefings.parliament.uk/.

### Non-Domestic Rating (Public Lavatories) Bill

https://services.parliament.uk/Bills/2017-19/nondomesticratingpubliclavatories.html
This introduces 100% mandatory business rates relief for public lavatories in England and Wales, so that they are more affordable to keep open. Government intends to implement this from April 2020.


### House of Commons Library, Briefing Paper No 3012, May 2019, Empty Housing (England)

https://researchbriefings.parliament.uk/
This outlines the powers local authorities have to deal with empty properties. Statistics published by MHCLG put the number of empty homes in England in October 2018 at 634,453, a 4.7% increase on the previous year. Of those, 216,186 were classed as long-term empty properties.

### Collection rates and receipts of council tax and non-domestic rates in England 2018-19

Council tax amounting to £29.8 billion was collected for the year; the collection rate was 97%. Authorities collected £25.3billion in non-domestic rates for 2018-19, with a collection rate of 98.3%. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811755/Collection_Rate_Statistics_Release_June_2019.pdf

**Treasury Committee: Impact of business rates on business inquiry.**
Following a call for written evidence to be submitted by 5 April 2019, the Committee heard oral evidence on a wide range of issues on 10 July. Also present were members of the Housing, Communities and Local Government Committee. Those called to give evidence were Melissa Tatton (CEO, VOA), Alan Colston (Chief Valuer, VOA), Jesse Norman MP (Financial Secretary to the Treasury), Rishi Sunak MP (Parliamentary Under-Secretary of State, MHCLG), Mike Williams (Director, Business and International Tax, HM Treasury).
https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/inquiries1/parliament-2017/inquiry3/

**Check, challenge, appeal statistics**
Each quarter, both the VOA and VTS publish their data. The next release from both organisations will be on 22 August. The VTS statistics can be found at https://www.valuationtribunal.gov.uk/about-us/publications-policies/vts-statistics/. The VOA's can be found at https://www.gov.uk/government/collections/non-domestic-rating-challenges-and-changes.

**Local Government Ombudsman**
The Ombudsman would not investigate two complaints made about the London Borough of Brent, in relation to overpaid council tax reduction in one case and a council tax discount in another case. The rationale was that it was reasonable to expect the complainants to use their right of appeal to the Valuation Tribunal.

## 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 |
| 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 | Where it is alleged by the respondent that there were no redevelopment plans in place and so it is outside the ratio of *Monk*. (See *Jackson (VO) v Canary Wharf Ltd,* page 3*)* |
| (See NDR—Museums | Disputes over valuation approach | Appeal made to Upper Tribunal regarding 'contractors test' or receipts and expenditure method to be adopted |

**Appeal to the Upper Tribunal (Lands Chamber) over whether the creation of an internal staircase results in a value reduction**. In the April edition of ViP we included a summary of the decision in appeal number 503024540195/538N10. This decision has now been appealed, the issue being: can the VTE exercise its power under Reg 38(7) to value a different hereditament to that which existed before works to the premises took place.

# Decisions from the Upper Tribunal (Lands Chamber)

**Jackson (VO) v Canary Wharf Ltd [2019] UKUT 136 (LC)**

The appeal property was two floors in One Canada Square, a 50-storey office building in Canary Wharf. Because it was a multi-occupied building, Canary Wharf Ltd was not able to modernise the whole building. As a tenant vacated an unmodernised floor, the policy was to strip it to its concrete shell, which would later be fitted out to a new tenant's requirements.

It was agreed between the parties that, at the material date, the appeal property was fully stripped out and incapable of beneficial occupation. The question was whether it should be valued for rating purposes as offices in an assumed state of repair, the valuation officer's (VO) contention, or in its actual condition as premises undergoing redevelopment, as the respondent maintained. If the latter, it was agreed that a nominal rateable value of £1 should be shown in the list in accordance with the practice of reducing the rateable value of a building which is incapable of rateable occupation because of temporary works. The basis of the dispute between the parties was their interpretations of the Supreme Court's judgment in *SJ & J Monk v Newbigin (VO)*.

The Upper Tribunal (UT) upheld the VTE decision in the original appeal and the Tribunal's understanding of *Monk*. The VO's unsuccessful case was that, in order to qualify for a nominal assessment, there had to be evidence at the material day of not only stripping out works but also evidence of construction (a programme of works). This was never the case at One Canada Square, given the policy.

The UT stated that the critical question was whether, in accordance with the 'reality principle', the office was capable of beneficial occupation. As it was agreed that the premises were not, it could not be in the list at full value. However, it may be that the hereditament should remain in the list at a nominal value if it was undergoing works. This meant looking at what had occurred and what was going to occur, which was easily established. Refurbishment would not be completed until a tenant was found. It didn't matter that no detailed programme of reconstruction works was in place at the material day.

**Corkish (VO) v Fiona Bigwood [2019] UKUT 191 (LC)**

The issue was whether the substantial equestrian facilities adjacent to a large country house were domestic, being an appurtenance to the house and therefore to be deleted from the list, as the VTE President had determined.

Planning permission had been obtained in 2007 for works including the creation of a "private equestrian Olympic training yard". Ms Bigwood was an Olympic medal winner in dressage.

With reference to extensive case law, the Upper Tribunal (UT) considered the meaning of 'appurtenances'. In general, it found, stables were a category of building which fell within the scope of appurtenant property. The UT did not agree with the valuation officer (VO) that the size of the equestrian facility in proportion to the house should be a determinative factor, nor that the stables were a standalone facility, as they shared services and a driveway with the house. The VO also contended that the quality of the facility and professional way in which it was run also indicated that this was not domestic.

However, the UT considered the facility could reasonably be viewed as 'part and parcel' with the house. There was no geographical or physical barrier between the stables and the house and the planning permission was granted on the condition that the facility was not used for any commercial purpose or to provide facilities for visitors. The quality and the fact that staff were employed, and it was 'professionally run', were not held to be relevant considerations.

The UT dismissed the argument that the facility was non-domestic, considering it "essentially domestic", and dismissed the appeal.

# Interesting VTE decisions—Council tax liability

### Is a sole beneficiary liable as the owner for council tax?

The appeal property was owned and occupied by the appellant's mother, until she passed away on 10 January 2018. Probate was granted on 20 February 2018, and the billing authority (BA) applied a class F exemption for six months from that date. At the end of the six months, the BA made the appellant liable for council tax, following confirmation that she was the sole beneficiary, and ended her liability when the property was sold.

The case for the BA was that the appellant was deemed to be the liable person as she was the sole beneficiary of her late mother's estate. It was argued that the fact that the Land Registry had not been updated did not prevent the appellant from being the owner, or from selling the property.

Refering to the High Court's judgment in *Macattram v London Borough of Camden* [2012] and s. 6 of the Local Government Finance Act 1992, the appellant submitted that she was not an owner of the property as defined, as she did not have a material interest in it.

In order to assist the parties and the panel, the clerk provided a copy of the President of the VTE's decision in the appeal of *Mr Z T v London Borough of Lewisham*. The panel derived most assistance from the President's determination as to whether the sole beneficiary had a material interest in the dwelling. In para. 14 of the decision he stated:
*Whilst in due course Mr Z T is most likely to have a material interest, that being the freehold of the dwelling, he simply did not for the period in dispute. At best he may have had a beneficial interest, but certainly no freehold interest in the dwelling.*

The BA relied on the fact that the appellant was the sole beneficiary, and an assumption that there was no legal requirement to update the Land Registry.

The panel held that the appellant did not hold a material interest for the disputed period. According to the Land Registry, the title remained registered to her mother until the property was sold, and therefore at no point did the appellant hold a freehold or leasehold interest. The appeal was allowed.
http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=liability&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F4315M255874%2F280C


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### Liability of the owner

The appellant contended that during the period in dispute (15 September 2016 to 31 March 2018 ) the appeal property was let to tenants. The billing authority (BA) had made him, as the owner, liable as it believed a tenancy agreement to cover that period was a sham agreement.

The four tenants who had signed the original six months' tenancy agreement, which ran from 15 March 2016, had advised the BA that they had all moved out in April 2016 and provided a copy of their council tax bill from Nottingham City Council as evidence that they lived elsewhere. The BA was then provided with a further 12 months' tenancy agreement, to start 15 September 2016 with the same four tenants. The appellant argued that one of them had asked for the tenancy to continue for a further 12 months. As the tenants were unable to attend the office to sign the tenancy agreement, he had asked the tenant to alter the dates of the original agreement. He argued that as the property was occupied, albeit by persons unknown, he should not be liable for the council tax and requested the panel allow the appeal.

The BA concluded that the new agreement was a sham tenancy agreement; it appeared to be an exact copy of the first one, apart from the dates, as all four signatures were in exactly the same place and they argued that no-one would have signed a 12 months' tenancy agreement when they had already provided evidence that they lived in Nottingham. The BA contended that the owner should be liable for the council tax, in the absence of any other information with regard to the names of the actual tenants and/or residents.

The appellant did not produce any rent receipts but had provided a statement showing that the rent had been paid each month. He argued that the property was let out and, as far as he was concerned, so long as the rent was paid and the property in a satisfactory condition, he was not bothered who it had been collected from.

From the evidence before it, the panel concluded that the appeal property had been let to tenants. Although the appellant may have been guilty of not taking an interest in who was residing in the appeal property and failing to keep proper records, it did not automatically follow that his punishment was to be the liable person for council tax under section 6(2) (f) by default. Under the hierarchy of liability, he could only be liable for each day that the appeal dwelling was unoccupied. In this case, the evidence showed that the property was occupied by a number of residents. The BA had accepted that this was the case and, even though the identity of the residents was unknown, this meant that the appellant could not be deemed liable as the non-resident owner.
http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=liability&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F2465M238745%2F282C

# Interesting VTE decisions—Council tax valuation

**Prefabricated homes**

The appeal properties were on a gated park home residential development for the over 55s. They were a non-standard build, prefabricated off site. Each had its own drive with parking for two cars, and a garden to both the front and rear. Six of the properties measured 100 - 103 $m^2$ and were in band D. Three sold for £411k - £435k in 2018-19. The seventh property was 113 $m^2$, sold for £530,000 in 2018 and had been placed in band E.

From a VOA inspection, the appeal properties were found to have been completed to a very high standard and were exceptionally well furnished with all furniture included in the purchase price. The listing officer (LO) therefore considered that the standard was more like that of a chalet or a traditionally built bungalow than a caravan/mobile home.

The appellants' representative explained that, whilst externally attractive, the properties were fundamentally large caravans. Each was on wheels and capable of being hitched to a vehicle and transported. Potential purchasers were from a market restricted to the over 55s. He used two sets of comparable properties, one in Dorset and one in Cheshire, which comprised park homes all in band A. He contended that these were comparable because of their characteristics and prefabrication. He believed that the band D/E assessments clearly offended the established tone of the list at band A for this type of property.

From the sales literature, the panel found the Dorset site to be a similar development of high specification prefabricated park home properties. However, it found that argument on tone lacked credibility as the Dorset site was too distant from the subject development to be considered reliable. As no further details had been provided about the Cheshire site, the panel could attach little weight to it. Properties at both comparable sites were sold on a leasehold basis whereas the appeal properties were freehold.

The panel placed greatest weight on the sales on the appeal properties. It did not find those sales to be indicative of sales achieved in respect of band A properties, even allowing for the fact that furniture and other chattels were included within the purchase price.

The LO gave sales figures for traditional detached bungalows, similar in size to the appeal properties, which achieved £165k and £116k in 1992. They were in band F. He had allowed a two-band reduction to take account of the market for the appeal properties being restricted to the over 55s, the non-standard build of the properties, and the fact that the original sales prices included the furniture packages.
The appellants' representative argued that the construction methods and market perception of such properties had evolved since 1991. Had they been marketed as at 1 April 1991, there would have been significant stigma associated with the non-standard build and any recent sales would not reflect this factor. The panel accepted that the appeal dwellings would not have the same value as standard brick and tile constructed dwellings. However, there was no evidence to prove that there would have been no market for them and found that any value differential had been reflected in the reductions applied by the LO. The appeals were dismissed.

http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F0655838841%2F285CAD

**House in multiple occupation (HMO)**

The issue was whether the properties known as rooms 1 to 10 at the appeal property should be shown as separate entries in the list or should be treated as an HMO, as the appellant contended. He argued that the 10 'rooms', each in the list at band A, did not meet the requirements of the 'hereditament test' because occupation of the rooms was not 'exclusive', because the landlord reserved the right to move the tenants from room to room if required, thus giving him paramount control of the property. Occupation was not of a 'non-transient' nature because the assured shorthold tenancy agreements were open ended with a month's notice of intention to leave required.

The appellant referred to properties in the locality which he believed supported his argument for aggregation, treating the rooms as one HMO setting a precedent had been set in the area. Also, he contended that the alterations, to what had previously been a working men's club, had not been structural and therefore did not meet the VOA guidelines for a sufficient level of adaptation.

The listing officer (LO) contended that the current list entries were correct; the physical characteristics of the 10 properties met the four requirements of the hereditament test.

The panel agreed, finding that the properties met the requirements of the test:
*Actual occupation* – each tenant was in actual occupation of the property
*Beneficial occupation* – each tenant benefitted from use of the property and the communal areas, as was evidenced by the rent paid
*Exclusive occupation* – each tenant had a key to their room and an exclusive right of occupation
*Not too transient* -though the appellant argued that he had the right to move his tenants from one room to another, in practice this had not happened, and no evidence was provided to support this assertion;
*(Continued on page 6)*

## Interesting VTE decisions—Council tax valuation (cont'd)

each tenant had an open-ended assured shorthold tenancy agreement allowing them to stay in the property for an unlimited period, on average this was at least six months, with some staying much longer. The panel also found that each of the properties was separately identifiable, self-contained to the extent that it had its own bathroom, with only kitchen facilities shared. Because of this, the panel considered that *James v Williams (VO)* [1973] supported the LO's case. The Lands Tribunal held that four flatlets should not be a single assessment having had regard to the degree of sharing common facilities, the degree of adaptation and self-containment, the capability of accurate identification and the degree of transience of occupation.

Though the appellant had provided comparable evidence of large HMO properties which had been treated as single hereditaments, the panel only had the jurisdiction to determine if his property had been correctly assessed. The appeal could not be allowed simply because other houses in multiple occupation had been treated differently. Whilst uniformity of assessment was desirable, it should not be sacrificed for uniformity of error. The appeal was dismissed.

http://info.valuationtribunals.gov.uk/decision_document.asp?Decision=&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F2004813982%2F537CAD

# Interesting VTE decisions— non-domestic rating

### Interested person

The appellant sought deletion of the entry from the list. It was accepted that the appeal property was used wholly for religious worship and had been certified in compliance with the Places of Worship Registration Act. It was registered in July 2015 and exempt from that date. The Christ Apostolic Church occupied the property until 30 November 2016. The proposal was served on 31 March 2017.

The definition of an interested person and the circumstances in which a proposal may be made are set out in the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regs 2009. The panel also had regard to the Lands Tribunal judgment in *Mainstream Ventures v Woolway* (VO), which made it clear that a proposal made by a person who, at the date of the proposal, was no longer in occupation of the property was invalid.

By the time the proposal was made, the appellant had vacated the property. Therefore, he was no longer the ratepayer as he was no longer the occupier, nor did he own any legal interest in the property. The appellant also had no qualifying connection with either the current occupier or any other person who owned an interest in the property. As a result, the appellant did not meet the statutory definition of an interested person and so the proposal was invalid.

http://info.valuationtribunals.gov.uk/decision_document.asp?Decision=&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FNDR%2F463529057619%2F221N10

### 2017 rating list – preliminary matter

The President has recently considered, which decision notice should be considered as the 'proper' one where two were issued, one to the representative which didn't provide sufficient detail and a different one to the ratepayer which contained information that had not formed part of the Challenge discussions. The VO was not entitled to include this within a decision notice.

The President decided that, where the ratepayer has a representative, then it was only the decision notice that was issued to the representative that the VTE would consider.

The President added that to have, "*two discreetly different 'decisions' in circulation is, in administrative law terms, totally unacceptable and mutually destructive to both. If I allow a system, as promoted by the VO, that different notices can be sent to the ratepayer and their representative, it fundamentally undermines the whole process and defeats the intention of parliament to create a simpler and more effective appeals process. This results in ratepayers not being able to rely on their representative for advice or to undertake actions on their behalf. It also puts the burden back on to the ratepayer to manage the process rather than their representative: all of which is highly undesirable*".

In this case, the appellant had raised further argument during Challenge having inspected the forms of return, which the VO responded to in the decision notice and not during the Challenge process. The President underlined that the purpose of the Challenge stage is to exhaust discussions between the parties; the respondent could not have a final evidential word on the subject in a decision notice which the proposer (appellant) could not rebut.

If either party wished for elements to be considered by the Tribunal which had not been discussed during Challenge, then application would need to be made to the Tribunal, in accordance with the legislation and the Consolidated Practice Statement.

https://www.valuationtribunal.gov.uk/wp-content/uploads/2019/07/CHG100063118-Extra-Mech-Services-Ltd.pdf

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