Issue 54 October 2019

Valuation Tribunal Service

Valuation in Practice

News in Brief

The VTS at IRRV Conference

Visit us on **Stand 9B** to find out about recent developments, what's new and planned for our service. Tony Masella, Chief Executive will be addressing Conference on Wednesday morning in the Rating & Valuation stream. The session is on appeals on the 2017 rating list (Check, Challenge, Appeal). Lee Anderson, Director of Operations & Development will also be speaking, on Wednesday afternoon, in the Local Taxation & Revenues stream. His topic is the standards of representation the Tribunal expects of billing authorities. We will have more information about this on our stand.

Non-domestic rating assessments under appeal and the rateable values involved

We have been holding discussions with a range of stakeholders, including billing authorities and rating agents, to learn what data would be of most use to them on appeals against the 2017 and later lists.

We understand that it is of major importance for councils to be aware of how many appeals have been made in their authority and the amount of rateable value at stake. As current appeal volumes are very low, this project is timed to coincide with the anticipated increase in appeal receipts. Our aspiration is to develop a means to allow our database to be interrogated to obtain this information and we expect to have this in place at the start of the next financial year.

Council tax reduction – Guidance for practitioners

The Local Government and Social Care Ombudsman published this guide in August. It is based on their experience of complaints they receive about the way councils manage council tax reduction (CTR). Their three main themes are:

- inconsistent recovery of CTR reversals and housing benefit overpayments
- inaccessible or unclear CTR policies
- incorrect signposting and discretionary payments.

Examples from councils' websites are included in the guidance. There are also examples of good practice, aimed at helping councils manage complex CTR enquiries and complaints.
https://www.lgo.org.uk/information-centre/news/2019/aug/new-guidance-launched-for-council-tax-practitioners

Inside this issue:

Decisions from the Upper Tribunal (Lands Chamber)

Ludgate House Ltd v Ricketts (VO) and London Borough of Southwark [2019] UT 278 (LC) RA/56/2018

The former home of Express newspapers, the office building was last occupied for business use in 2015. It comprised lower ground, ground floor and nine upper storeys.

Between 1 July 2015 and May 2017, pending demolition, the appeal property was predominantly empty. To protect the property from trespassers and vandalism., Ludgate House Ltd entered into a contractual arrangement with a property services company, VPS, who recommended that the property be occupied by property guardians. At the material day, 1 July 2015, four property guardians were granted licences by VPS to occupy part of the building as their main residence. VPS's only presence in the building was to provide security staff, one of whom was on duty at all times.
At the start of the period in consideration, Ludgate House comprised two separate hereditaments of rateable value (RV) £3,870,000 and £327,000. Ludgate House Ltd served proposals on the valuation officer (VO) to delete the entries, on the basis that they were now domestic property, and these proposals were well founded. The larger hereditament was deleted with effect from 25 June 2015 and the smaller hereditament from 3 December 2015. As a result, Ludgate House was entered into the council tax valuation list.

The billing authority, Southwark LBC, then made its own proposals seeking the reinstatement of Ludgate House into the rating list as, following an inspection, the council was of the opinion that the property was a predominantly unoccupied business property.

Although there was no change to the facts, the VO came to the view that his earlier alterations to delete were incorrect. The VO decided to alter the list with effect from 25 June 2015 by serving a unilateral notice of alteration giving the building an assessment of £3,390,000 RV. A second unilateral notice was served but only to change the description not the RV. Ludgate House Ltd appealed both notices on the grounds that the entry should be deleted or reduced to £1 RV. The effective date of the alteration was also challenged.

Following the issue of the second unilateral notice of alteration, the whole building was shown in the rating list as a composite hereditament. The main issues in dispute were the identification of the hereditament: whether it comprised a single composite, or whether the property guardians were in rateable occupation of the areas they occupied and therefore the property comprised a number of hereditaments at the material day.

The Upper Tribunal determined that each property guardian was in rateable occupation of the room they resided in; Ludgate House Ltd was not in rateable occupation. As it was held that more than one hereditament existed at the material date, it was accepted that the VO's argument that there was a single composite hereditament could not be sustained and the unilateral entry of £3,390,000 RV was deleted.

Go Outdoors Ltd v Lacey (VO) [2019] UKUT 0051 (LC) RA/90/2017

The appeal hereditament was a warehouse and the issue was one of valuation. The VTE had determined an assessment of £377,500 rateable value (RV) and the ratepayer sought an entry of £300,000 RV.

The appeal property was vacated from 2008 until December 2011 when the ratepayer moved in. Although it was a new letting, there was a 21 months' rent free period, so the actual rent needed considerable adjustment to conform to the rating hypothesis. An analysis of the rent, which was the starting point, revealed that the appellant's proposed valuation was too low. The comparable evidence was not especially helpful as they were not like for like comparables, in terms of size, quality of building and location.

In the UT's view, the nature of the evidence was 'tangled', and it held that in cases where the evidence was inconclusive, the credibility of the expert witnesses had to be assessed. Consistency was valued. The VO's evidence was given more weight because she was consistent throughout and had experience of working both in the private sector and the VO was far more persuasive in comparison with the appellant's expert witness. Ultimately, an assessment of £355,000 RV was determined.

Interesting VTE decisions—Council tax penalty

The appeal concerned a challenge to the penalty notice issued by the BA and presented an interesting moral versus legal argument. The appellant had provided the BA with false information regarding a change in liability at the appeal property which was investigated by the BA and a penalty issued.

The panel considered the legislation and decided that, although the appellant had clearly provided false information, it was not provided in response to a written request for information by the BA as required by the regulations. The BA stated it was relying upon an implied requirement for the appellant to tell them of any change in circumstances. However, the panel found that there is no requirement for a resident to notify the BA of changes to the liable person (moving in or out) and is only required to notify a change of circumstances for liability purposes if in receipt of a discount or exemption which he/she would cease to qualify for as a result of the change.
As no discount or exemption was in place on the account, the panel found that (despite his false declaration) the appellant should not be subject to a penalty and allowed the appeal.

Appeal 1540M251814/282C (We do not publish these decisions on our website)

The panel's decision in the above appeal would appear to be correct in the light of the Court of Appeal's judgment in R v D (Rev 1) [2019] EWCA Crim 209. Despite having every opportunity to do so, counsel for the billing authority was unable to point to any provision within the council tax legislation which placed a duty on a person to inform the local authority that they were liable for council tax. The point to be noted was that the obligation is placed on the authority to request such information from the person concerned under the enabling provisions in the Council Tax (Administration and Enforcement) Regulations 1992 in particular regulation 3 Information from residents etc…

You can sign up to receive an alert when a new issue of Valuation in Practice is published
Click here to join over 1,000 other readers

Interesting VTE decisions—Council tax liability

Backdating council tax discounts

The issue in dispute concerned whether a 50% discount should be backdated to 2003. The BA had already backdated the discount for six years (to 2010) but relying on *Arca v Carlisle City Council* [VTE, 0915M85513/254C], it would not backdate any earlier than that.

However, the BA agreed that the appellant's son met the criteria for discount disregard status on the grounds of severe mental impairment and that the other adults in the household were also disregarded as they qualified as his carers. It also accepted that, had an application been made in 2003, the 50% discount would have been allowed.

The panel found that *HS v Leicester City Council* [VTE, 2465M142876/037C] was a more relevant Tribunal decision. That judgment also concerned the backdating of discount and had distinguished discount from the reduction under the Council Tax (Reduction for Disabilities) Regulations 1992, which was the subject of the appeal in Arca v Carlisle. For the disabled band reduction, there was a requirement on the taxpayer to make an application for each financial year. However, with discounts the obligation was on the BA to take reasonable steps to ascertain entitlement under regulation 14 of the Council Tax (Administration and Enforcement) Regulations 1992.

The panel was not satisfied that the BA had taken reasonable steps. Among other things, the panel found that the information leaflet the BA had used at the time did not mention any disregard for carers despite referring to the various other discount disregard categories.

In *HS v Leicester*, it was stated that the claim must be commenced within six years of the accrual of the cause of action. This was clarified as meaning that the claimant had six years to make a claim for backdating from the date he or she became aware they were entitled to discount. If the claim was made in this six year period there was nothing to prevent the taxpayer being eligible to claim the amount of overpaid council tax from the date he or she first became eligible for the discount.

The panel was satisfied that the appellant had claimed discount within six years of when she became aware of it and thus held that she was eligible with effect from 27 September 2003.
http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=liability&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F2935M220133%2F254C

Interesting VTE decisions—Council tax liability—continued

Student disregards

The appellant had applied for the student disregard but on their certificate their course was described as being "part time" and so the billing authority had refused their application. When it came to appeal the panel had regard to two recent cases on student disregards: Villigran-Souto v Royal Borough of Kingston Upon Thames and Jagoo v Bristol City Council. The panel when considering the cases looked at the emails provided by the educational establishment which showed that the courses, although listed as being part-time, were nevertheless for a sufficient number of hours to qualify for the disregard. In other words they met the requirement in the legislation of being for at least 24 weeks in each academic or calendar year and amount in each such academic or calendar year to an average of at least 21 hours a week.

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

Homeless people's accommodation

The appeal properties were self-contained flats leased to a housing company. Agreements were entered into with two London boroughs (not the respondent billing authority) to make these available for homeless people. The occupants were issued with weekly, non-secure tenancies; temporary accommodation for the homeless is precluded from holding a secure tenancy.

The appellant company had been made liable for the council tax and appealed. The billing authority (BA) had continued with recovery action and liability orders had been issued at the Magistrates' Court which had not been contested.

The panel considered whether the granting of a liability order on in January 2019 meant that these appeals had already been decided by a competent court and the appellant was therefore estopped from bringing the appeal before it, as counsel for the BA contended. Appeals against liability for council tax must be made in accordance with section 16 of the 1992 Act and came before the VTE; regulation 57 of the Council Tax (Administration and Enforcement) Regulations 1992 prevented the Magistrates' Court from deciding such matters. The panel noted that the appellant could have applied to the Magistrates' Court for the liability order to be set aside or have sought judicial review of the decision to grant one whilst liability was being disputed. However, until the Tribunal had decided the appeal, the appellant remained liable for council tax.

Therefore, the panel did not consider it a matter of res judicata, issue estoppel or abuse of process, as the only route which the appellant could take to dispute liability was that which it had followed before this Tribunal.

From the definitions in the 1992 Act, the VTE panel held that each of the self-contained units was a dwelling and had therefore been entered correctly in the valuation list as a chargeable dwelling.

The issue to be determined was whether the occupants had their sole or main residence in the dwelling. Referring to Williams v Horsham DC [2004] the panel determined that whilst the appeal properties provided short term accommodation they were where the occupants actually resided as they had no other residence. Each flat therefore became that person's sole residence for the period in which they were in occupation.

The panel made a finding of fact that the non-secure tenancy agreements amounted to a licence to occupy. They were signed agreements providing terms and conditions allowing occupation of the self-contained units. Even if this had not been so determined, the panel considered have none the less been liable in accordance with S.6 (2) (e) as residents.

Whilst the panel appreciated the difficulties the BA would encounter in collecting the council tax for the short-term occupants of the properties this could not be taken into account. The panel determined that the occupiers were residents and therefore liable for the council tax at each of the appeal properties for their period of occupation. If Parliament had intended for council tax liability to fall upon the owner in respect of properties used to house the homeless under Part VII of The Housing Act it could have made provision under S.8 of the 1992 Act and amended regulations; it had not to date done so.

http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=liability&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F5390M247395%2F284C

Interesting VTE decisions—Council tax liability—continued

Sole or main residence

The billing authority (BA) argued that the appellant was liable to pay council tax at the appeal property which it believed was his sole or main residence. The landlord of the property. Had provided a tenancy agreement, signed by the appellant. The BA's representative explained that the appellant had told the BA that he had sub-let the property to his girlfriend because he worked abroad and had never lived in the property. The appellant had been asked on numerous occasions to provide proof of where he worked and lived but this had not been forthcoming.

The appellant argued that he had never lived at the appeal property; he had taken the tenancy on behalf of his girlfriend who was a student and had been unable to obtain a tenancy for herself for financial reasons. He stated that a summons to Magistrates' Court had been issued in his name and he had attended the hearing with his girlfriend. The matter was not heard by the Magistrates because a member of the BA staff outside of the court room had dealt with it. He had been advised that the applications for liability orders would be withdrawn and his girlfriend would be made liable with a student exemption. The evidence showed that, even though no liability orders had been obtained by the BA, the debt had been passed to enforcement agents in error. This was not disputed but the BA had rectified the error as soon as it came to light.
The appellant argued that despite a letter stating that he was not liable for council tax, the BA had reconsidered its position and now held him liable again. Accordingly, he had issued County Court proceedings against the BA.

In appeals of this nature, there is a factual burden of proof on both parties. If a party asserts something, they must prove it. The BA had discharged the factual burden of proof by providing the documents and the communications which showed that the appellant had a tenancy of the appeal property and was residing there. The appellant asserted that was not the case but had no evidence to prove it; he had therefore failed to discharge the factual burden of proof.
There is also the persuasive or legal burden of proof which rests entirely on the appellant. He has to show that the BA's decision is incorrect. In the appeal before it, the panel held that it had been provided with insufficient evidence to demonstrate that the appellant was not living at the appeal address. No evidence whatsoever had been provided to show that he had worked abroad or that his sole or main evidence was elsewhere. Even during the hearing the appellant refused to give his current address. His argument that he had taken out a tenancy to assist a student girlfriend was rejected as it lacked credibility. When a party refuses to answer basic questions, a panel is entitled to draw its own conclusions and make findings of fact on what evidence is produced before it.

The panel found that the appeal property was Mr M's sole or main residence and dismissed the appeal.
In view of these findings, the panel dismissed the appeal.

http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=liability&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FCT%5FEngland%2F4230M253499%2F280C

Interesting VTE decisions—Non-domestic rating

Eastern Power Networks plc

The appeal premises consisted of 2,902.6 m2 of hard and fenced land. The buildings comprised the offices and 241.4 m2 of store. The parties agreed that all the premises together constituted one hereditament and that the offices would not be a separate hereditament in the conventional meaning of the term. The appellant contended that the value of the offices was 27.1% of the value of the yard and stores. The yard and stores were part of the ratepayer's operation though were not operational land but were correctly placed in the Central Rating List.

The appellant's arguments amounted to a conclusion that the offices in themselves were not a hereditament, but contained within a larger single hereditament they described as 'land used for storage and premises' and as such should not be treated as an excepted hereditament within the meaning of Regulation 13 of the Central Rating List (England) Regulations 2005. That Regulation deals with Electricity distribution hereditaments. Accordingly, they should form part of the Central Rating List entry in respect of the entry specified for the then EDF Energy Networks (EPN) plc within Part 8 of the Schedule to the Central Rating List (England) Regulations 2005. The valuation officer (VO) argued that the offices should remain in the Local Rating List as they are an "excepted hereditament" in that the offices were a "hereditament consisting of or comprising premises used wholly or mainly as office premises, where those premises are not situated on operational land of the designated person" as defined within Regulation 13. Only around 27% of the hereditament was office so therefore, within the proper reading of the exception, the appeal hereditament should be placed in the Central Rating List.

Following an examination of much case law, the VTE Vice-President's opinion was that the VO had erred in considering whether or not the offices should be in the Local Rating List rather than the Central Rating List. The VO appeared to have focussed on the offices and created a 'notional' or 'fictional' hereditament to make his case, having accepted that using the statutory definition of a hereditament in the 1988 Act meant that the offices should not be included in the Local Rating List. "If he had asked himself to identify the hereditament he would have come to the natural and only sensible conclusion that the offices are only a small proportion of the entire hereditament and therefore cannot be placed in the Local Rating List".

The appeal was allowed as the office itself was not a hereditament but part of a much larger hereditament and therefore failed the excepted hereditament provision; the entry was to be removed from the Local Rating List.
http://info.valuation-tribunals.gov.uk/decision_document.asp?Decision=&appeal=%2Fdecision%5Fdocuments%2Fdocuments%2FNDR%2F159033376712%2F282N10

News in Brief—continued from page 1

VTS Twitter feed

The VTS wishes to expand its reach to stakeholders by providing key information about the service via the social media platform. A three-month pilot on Twitter was undertaken during May-July 2019. The pilot proved quite successful, with some engagement with the Tweets that were posted. The Tweets reached 697 Twitter feeds and it is thought that the visits to the VTS website generally increased during the pilot's launch. The Tweet that had the highest engagement rate during the pilot provided information about how to appeal against council tax or business rates.

The VTS Twitter page can be found at

https://twitter.com/VTSgovuk

Valuation Tribunal guidance

We currently have a project underway to review all our guidance material for parties. This includes our website, and printed guidance booklets. We are also planning to produce templates to help those preparing their cases for the Tribunal. You can find out more on our stand at IRRV Conference.

Advice for BAs on withholding evidence

The VTE President issued advice to billing authorities on this topic, following a number of queries from BA staff about data protection concerns.
If you have not seen this, you can find it at: https://www.valuationtribunal.gov.uk/about-us/vte-publications/vte-guidance/ or ask for a copy on our exhibition stand.

www.valuationtribunal.gov.uk

Business Rates Information Letter 2/2019 contains information about the Business Rates Retail Discount Scheme; Non--Domestic Rating (Preparation for Digital Services) Act; Non-Domestic Rating (Lists) Bill; Non-Domestic Rating (Public Lavatories) Bill.

https://www.gov.uk/government/collections/business-rates-information-letters

A plea to billing authorities!

The VTS receives many phone calls daily from people who really need to speak to their council. **Please will you help us and ensure that your contact details are more prominent than ours on your letters**

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

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

The photographs used here are for illustration purposes only and may not be of the actual properties or people referred to.
Copyrights:
iStockphoto©Waldermarusi;
iStockphoto©cdamircudic
iStockphoto©DenBoma;
ARM Photography.

Valuation in Practice is published quarterly; the next issue will be in January 2020. We welcome any feedback.
Editorial team:
Diane Russell
David Slater
Tony Masella
Contact us:
ceo.office@valuationtribunal.gov.uk