Issue 55

January 2020

Valuation Tribunal Service

Valuation in Practice

News in brief

Consolidated Practice Statement

There will be changes to the Consolidated Practice Statement from 1 April 2020. In particular the changes relate to

- complex cases
- bundle submission requirements for respondents (see below)
- the publication of Tribunal decisions. These will be searchable and viewable using a new online facility in the coming months. We will report more on this in our next issue
- the fact that it is not permissible for parties to record proceedings using any electronic device.

Click here to sign up to receive an alert when the new Practice Statement is issued or any future change is made.

Guidance for respondents in council tax cases on tribunal evidence bundles

We have prepared guidance to assist respondents in putting together their council tax evidence bundles for submission to the Tribunal. This explains what needs to be done in order to comply with the Valuation Tribunal's requirements. The onus is on those presenting their case to help the Tribunal find what they need quickly and easily, and to understand what the case is about.

National non-domestic rates collected by local authorities: England 2018-19

This statistical release reported that non-domestic rating income for local authorities was £25 billion. This is what was collected after reliefs, after adjustments and sums retained outside the rates retention scheme were taken into account. Relief was granted to a total of £4.5billion; £1.8 billion relief was granted under the small business rate relief scheme. Local authorities reported a net increase in appeals provision of £122 million for 2018-19.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/847327/NNDR3_2018-19_Statistical_Release.pdf
Meanwhile, the Local Government Association has found that business rates avoidance in England costs councils an estimated £250m each year, as firms exploit loopholes.

Impact of business rates on business

In October last year, the report of the Treasury Select Committee on the administration of business rates in England and Wales was published. The Committee highlighted the problems with the current system and looked at alternative options to replace or reform it. It recommended that the government should take a deeper and more holistic look at possible alternatives and consult on these. In the meantime, recommendations were made to improve the current system, including reducing the statutory response times built into the Check Challenge and Appeal process, making the process for reaching property valuations for business rates purposes more transparent and ensuring that the VOA is properly resourced.

Following the election, a commitment to support businesses, including to "bring forward changes to business rates", was included in the Queen's speech in December 2019.
https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/news-parliament-2017/impact-of-business-rates-report-published-19-20/

Rates relief for pubs

On 25 January, the Chancellor confirmed a new relief would be introduced in April, taking £1,000 off the business rates bills of pubs with a rateable value below £100,000, subject to eligibility. The Treasury expect that up to 18,000 pubs will benefit from the discount. Pubs with a rateable value of below £51,000 already get a one-third reduction in their rates bill through the retail discount. The £1,000 discount is in addition and will apply after the retail discount.

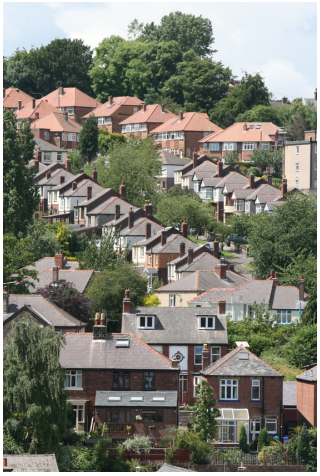
Inside this issue:

Non-domestic multiplier

The statutory instrument to increase the non-domestic multiplier for 2020-21 was laid before Parliament on 4 November 2019. The figure proposed for the calculation to be made in accordance with the Local Government Finance Act 1988 is 288.7. This would result in a small business rate multiplier of 49.9p and a standard multiplier of 51.2p.
http://www.legislation.gov.uk/uksi/2019/9780111191422/article/2/made

Council Tax Information Letter 2020

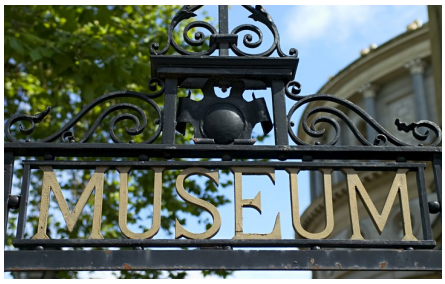
The impact on council tax administration of recent legislation: the Council Tax (Demand Notices) (England) (Amendment) Regulations 2020 and the Council Tax Reduction Schemes (Prescribed Requirements) (England) (Amendment) Regulations 2020. The latter has information about uprating, income and capital disregards, and the habitual residence test. https://www.gov.uk/government/collections/council-tax-information-letters



Appeals stayed by the Valuation Tribunal for England

Class	Issue	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
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
NDR 2017	Issue on fitout costs which replace existing items	Appealed to Upper Tribunal on whether costs to replace existing items on a like for like basis add value and increase rent of the property
NDR	Legal—whether the definition of space in accordance with Rating (Property in Common Occupation) and Council Tax Empty Dwellings Act 2018 extends to a fire exit passageway under the landlord's control, separating 2 single-tenanted office units	VOA appeal to Upper Tribunal
NDR	Legal—Validity of proposals made under reg. 4(1)(k) and PICO legislation (Mazars reversal)	Circumstances when a relevant proposal can be made.
NDR	Legal—VTE reduced the assessment for the period of works which had finished by the hearing date. This meant that the value brought back in at the end of the works was incorrect and could not be rectified by either party. Valuation—office space no longer usable after creation of an internal staircase there	Appellant has appealed to Upper Tribunal on the legal point; VO has appealed on the valuation point
NDR—Museums	Dispute over valuation approach	Judgment from the Upper Tribunal regarding 'contractors test' or receipts and expenditure method to be adopted may be appealed

Decisions from the Upper Tribunal (Lands Chamber)



Hughes (VO) v Exeter City Council [2020] UKUT 0007 (LC) RA/73/2018 Royal Albert Museum and Art Gallery

This decision helpfully reviews case law on the rating hypothesis, the principles of valuation on buildings which are not occupied for profit, as well as the possible valuation approaches. The Upper Tribunal (UT) decided the museum should be valued on the receipts and expenditure method rather than contractors' basis. This led to a decision of £1 RV which had been agreed between the parties should this method be found to be the correct approach. The parties were agreed that there was no comparable rental evidence. The contractors' basis was rejected by the UT as it produced a value at stage 5 of £560,000 which did not reflect the burden of occupation in the real world where, due to the costs of maintaining the property, no tenant would pay a rent. The landlord would be satisfied to grant a lease to a tenant who would take on the maintenance and repair obligations (the costs of which were considerable) and the lack of rent received by the landlord would more than be made up for by no longer having repair obligations. There was also an affordability factor, as no tenant would have been able to make a profit if in occupation, paying a rent in line with this figure. When assessed as in its mode or category of occupation as a museum, occupied not for profit but for socio-economic benefits, the hypothetical tenant could only reasonably be expected to pay no rent or a nominal rent on the statutory hypothesis.

Socio-economic and cultural benefits were not taken into account in a receipts and expenditure method valuation. However, the UT concluded that there may come a time where the cost of providing the facility is so high that it outweighs the socio-economic benefits (which it noted often accrued to third parties, or the wider geographical area, rather than the city council as occupier). That was so for this case where the city council had no legal obligation to provide the museum (freehold was transferred to them in 1870), but had a duty to maintain the listed building even if they didn't occupy it.

Colour Weddings Limited v Roberts (VO) [2019] UKUT 0385 (LC) RA12/2018

A proposal on a warehouse converted to a wedding venue sought a deletion from the 2010 list from 16 December 2014, on the grounds that the property needed major structural repair and refurbishment to meet the requirements of users of a wedding venue.

The appeal property was in the 2010 list at rateable value (RV) £56,000, before a reduction to £53,500 was agreed with the agent for the freeholder. The valuation officer (VO) altered the assessment to "property under reconstruction" with RV £0 with effect from 1 August 2015.

The appellant's case was that substantial reconstruction work to the property began in January 2015 and it should be deleted from the list from that date. He also argued that since the property had been granted planning permission for a change of use to a wedding venue in July 2014, it could not legally be used for anything else.

The VO argued that as the proposal sought deletion of the assessment from the list, the relevant material day was the day on which the circumstances giving rise to the alteration occurred. In the VO's opinion, on 16 December 2014 the appeal property was still a warehouse and, although there might have been a redevelopment scheme in the future, the property was capable of occupation as a warehouse at the date of receipt of the proposal, 24 March 2015. As the appellant was unrepresented, the VO suggested treating the proposal as 'one seeking a reduction in the RV of the property owing to disrepair'.

The material day would then be the date when the proposal was served on the VO. However, the Upper Tribunal (UT) ruled this out.

No evidence was found to suggest that the property should be deleted from 16 December 2014. The UT did not accept the appellant's contention that the grant of planning permission for a wedding venue would render the continuing use of the property as a warehouse "illegal".

The appellant had provided a schedule of works commencing in January 2015. However, it was found that it was not until 'stage 3' which ran from 6 April-15 May 2015 that the conversion works from warehouse to wedding venue took place. Once the work had reached a stage which no longer involved repairs or minor internal alterations compatible with continued beneficial use in its original mode and category of occupation, it ceased to be a hereditament liable to rating. It was decided that sufficient work would have taken place at the mid-point of 'stage 3' to render the property incapable of beneficial occupation in its former mode and category of occupation. The UT ruled that the appeal property should be reduced to £0 RV, and described as "building undergoing reconstruction", with effect from 26 April 2015.

In allowing the appeal UT determined that, even though the hereditament continued to exist after the proposal was served on the VO, it should be deleted from the list, with an effective date after the proposal was served. Prior to this judgment, it was generally accepted that an alteration to a rating list could not be effective from a date later than when the proposal was served on the VO.

Decisions from the Upper Tribunal (Lands Chamber)

Wigan Football Company Ltd v Cox (VO) [2019] UKUT 0389 (LC) RA/61/2018

Did Wigan's relegation in 2013 from the Premier League to the Championship and then in 2015 from the Championship to League One amount to a material change of circumstances?

Football stadiums are valued for rating by calculating a basic rateable value (RV) per seat (dividing the cost of building the stadium by the number of seats), which is then adjusted for superfluity by taking the maximum attendance as a proportion of capacity; this is further adjusted for ability to pay, and for any other items forming part of the hereditament, not reflected in building cost.

It was agreed that the reduction in broadcasting revenue on relegation was the major factor in the club's fall in revenue. Relegation also affected attendance at matches and the number of matches played.

The argument for the appellant was that league status was crucial to the RV when the stadium was valued for the compilation of the list and that the list therefore became inaccurate when the club was relegated. It caused a change in the 'mode or category of occupation' of the football stadium and so there had been a material change of circumstances (mcc). The representative contended that the way a stadium is occupied depends on which league the team is in: in a higher league, the requirements for seating, broadcasting facilities, floodlighting provision, pitch size, crowd segregation and stewarding are different.

The appellant's representative also argued that relegation is physically manifest in the locality of the stadium in many forms, with greatly reduced traffic due to the drop in attendance numbers and general lower levels of activity. Relegation also affects the quality of opposition that a team will play against, and that lower quality is physically manifest in lower numbers of supporters travelling to the stadium.

The valuation officer (VO) argued that this case was on all fours with *Merlin Group Entertainments v Cox (VO)* [2018] and that whilst the RV would be reduced if calculated as at the material day, this was not relevant to the issue before the Tribunal. The issue here was whether there had been an mcc within the meaning of para 2(7) of Sch. 6 to the 1988 Act to enable an alteration to be made to the list. The respondent contended that there had not.

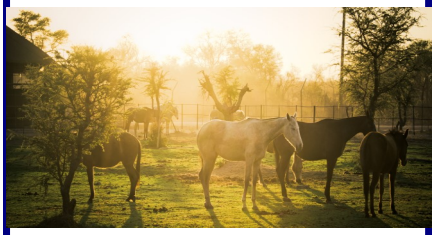
The Upper Tribunal (UT) accepted that ability to pay differed between a Premier League club and a club in League One. If the stadium was being valued at the material day, according to the valuation scheme, the RV would be lower. However, this was not relevant in the case before it, where the issue was whether there had been an mcc. In the absence of an mcc, the existing RV entry could not be altered.

The appellant had argued that when it was in the Premier League, the stadium was a broadcasting studio, whereas now it merely provided entertainment for those attending matches. The UT rejected the contention that the mode or category of use had changed. It held that Premier League and League One clubs were regarded as being in the same mode or category of occupation because playing professional football matches was "the central activity and purpose of each." As the VTE earlier observed, "Football is football. A league is not a mode or category of occupation".

The UT agreed with the VO that the argument here was on all fours with the argument rejected by the Tribunal in *Merlin*: a change in the economic fortunes of the ratepayer does not meet the legislative requirements in respect of matters that are physically manifest in the locality; it was a personal characteristic of the occupier. Though there may be some unfairness, particularly when the period between revaluations is longer than usual, this was the valuation method used for all football stadiums when the list is complied. There had been no material change of circumstance and the appeal was dismissed.

Senova Ltd v Sykes (VO) [2019] UKUT 0275 (LC) RA/87/2018

The appellant sought deletion of the property from the rating list on the grounds that it was exempt from non-domestic rates in accordance with para. 1, Sch.5 of the 1988 Act, as an agricultural building.
Senova is a plant breeder, developing seed for eventual sale to farmers. The hereditament comprises a warehouse and offices with labs and stores, and includes 1.6 hectares of arable land.



There is also a paddock, classed as agricultural land. However, for the warehouse and offices to be exempt, they had to be occupied together with agricultural land and used solely in connection with agricultural operations on that or other land. The appellant's expert witness said the paddock had not been used for growing seed since at least as far back as 2005.

The Upper Tribunal (UT) held that the appellant was not in rateable occupation of the paddock; another individual had a grazing licence for it and there was no access to it from the appellant's property. On the seed trialling and multiplication land, it was noted that the appellant company does not itself carry out trialling of the seeds; this is done by specialist trialling companies under contract. There are also contractual arrangements in place for multiplication, whereby a farmer/grower buys the seed, grows it at his own risk and then the appellant may buy it back if it is up to standard.

The UT determined that the crop was not the appellant's crop, but the farmer's. It could not be said that the buildings were occupied together with this land to form one agricultural unit. The appeal was dismissed.

Decisions from the Court of Appeal

Criminal Division— Regina v D [2019] EWCA Crim 209

The case was brought by the billing authority (BA), which argued that a trial judge was wrong in law to rule that the defendant was under no obligation to inform the BA of the fact that she resided at a particular address.

Though the defendant rang the council to say she had moved out of the property she owned (leaving a tenant there who was granted the single occupier discount), the prosecution contended that she had remained at the property and had made a false statement to escape liability for council tax.

While the Fraud Act 2006 s.3 relates to dishonest disclosure of information, this is qualified by the fact there must be a legal duty to disclose the information.

The prosecution had been unable to point to any provision in the Local Government Finance Act 1992 or any statutory instrument which imposed a liability to notify the BA of residency. This was the case even though the Crown Court had adjourned the case there to allow further investigation of the legislation, the judge having been surprised by the omission. The prosecution instead relied on the argument that the obligation of such notification was to be statutorily implied.

The Court of Appeal found that it was wrong to equate a liability to pay with a liability to notify. It also disagreed that there was any implied obligation to notify. There was "no common law relationship between the council and the defendant that could give rise to any such duty of notification; nor was there any relevant fiduciary duty or equitable obligation in this regard". The Council Tax (Administration and Enforcement) Regulations 1992 require information in specific circumstances when requested from residents under Reg.3 and for correction of discount assumptions under Reg 16. The fact that these are explicit means that a statutory implicit obligation does not exist.

The BA was in any case not without a remedy. Information could be sought under Reg.3 and where there has been a failure to pay council tax, civil recovery proceedings can be used. Where any other suspicion of dishonesty arose, the provisions of the Fraud Act might be relied upon. The appeal was dismissed.

Civil Division- Lone v London Borough of Hounslow [2019] EWCA Civ 2206

The issue in this appeal was whether the County Court has jurisdiction to deal with a claim for repayment of overpaid council tax. The County Court case was allowed, the Court finding there had been a serious and significant breach by the billing authority (BA). The BA appealed the decision, which as a result was set aside on the grounds that the Denton test had not been applied correctly and because the County Court did not have the jurisdiction to hear a case relating to council tax. Mr Lone was granted permission to appeal but only on the latter point .

Mr Lone argued that he could make this claim in the County Court under regs. 31 and 55 of the Council Tax (Administration and Enforcement) Regulations 1992 (which the County Court has jurisdiction to hear under of section 16 of the County Courts Act 1984).

He contended that his claim was for "the recovery of a sum recoverable by virtue of an enactment" as described in that regulation. He also argued that regulations allowed him to claim repayment of amounts which he had overpaid because the payments he was required to make by the BA were in excess of his actual liability having regard to his entitlement to SPD.

He believed in common law he could make a 'restitutionary' claim for 'unjust enrichment', (circumstances in which one person is required to make restitution of a benefit acquired at the expense of another in circumstances which are unjust), which he believed the County Court has j jurisdiction to hear under s.15 (1) of the 1984 Act.

The BA argued that it is clearly set out in the statutory scheme that the VTE has exclusive jurisdiction over disputes over the correct amount of council tax payable under s.16 of the Local Government Finance Act 1992. The VTE is a specialist Tribunal which has its own procedures,. He submitted that it was implicit in the statutory scheme that the County Court had no jurisdiction to determine council tax issues, otherwise, the conditions and restrictions involved in an appeal to the Valuation Tribunal could be avoided by making a claim via the County Court. This could ultimately result in inconsistent decisions.

In support of its contention, the BA relied on the reasoning in a housing benefit case *Haringey LBC v Cotter* (1997). It also contended that Mr Lone could not make a common law claim within s.15 of the 1984 Act, citing *A Restatement of the English Law of Unjust Enrichment* (Burrows, A, OUP, 2013): "Normally the right to restitution from a public authority, especially of tax from HMRC, is embodied in a statute. …So in *Monro v Revenue and Customs Commissioners* [2008] it was held that the common law right to restitution of overpaid capital gains tax … was impliedly replaced by s.33 of the Taxes Management Act 1970: the statutory remedy was inconsistent with common law restitution."

The judge found the BA's analysis was correct, that it was exclusively the jurisdiction of the VTE to determine the correct amount of council tax payable under section 16(1)(b) of the 1992 Act. Nor could there be any common law claim for 'unjust enrichment'. The appeal was dismissed.

Interesting VTE decisions—Non-domestic rating

Valuation officer's requirement to provide information

This was a preliminary point appeal on interpretation of the challenge regulations (Reg. 9, Non-Domestic (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended)). The appellant argued this required the valuation officer (VO), immediately on receipt of the proposal, to provide any information held relating to the particulars of the grounds of the proposal, including not only a schedule of all rental evidence used to compile the list entry, but also the sources of such information (the forms of return).

The President held that:

- on receipt of the proposal' didn't mean 'immediately'; there needed to be a degree of realism or flexibility as there were many situations where it would be reasonable and justifiable for the VO to issue the information later
- the correct time for a Reg. 17 notice to be served by the VO was when providing his information at challenge stage;
- there was no requirement for the VO to provide forms of return then; these could be inspected by the appellant on request
- the VO must provide all relevant information in his possession.

The President could not, from the evidence and argument provided, identify that the VO had failed to do this in the appeal before him. If there was rental evidence missing that the appellant considered relevant, he could have sought comparable rents from the respondent direct, which he had failed to do.

Click here for the full decision.

Scope of proposal - VTE jurisdiction

Following a request from the billing authority to make a new entry in the list, the valuation officer (VO) and representative from the occupier/owner RWE Generation UK Ltd (RWE) carried out a joint inspection in February 2018. This was confined to land and property occupied/owned by RWE and did not include land and property later found to be in the occupation /ownership of a different company. The site was inspected again on 20 March 2018 by the VO and a representative of that company.

RWE's proposal challenged a VO notice dated 29 March 2018, which inserted an entry in the 2010 list for Workshop and Training Centre at rateable value (RV) £520,000. The proposal sought a reduction to RV £1 on the grounds that the alteration was inaccurate and excessive. It also stated that the hereditament was incorrectly identified.

As a preliminary matter, the Vice-President was asked to consider whether the Tribunal's jurisdiction allowed the VO's position, which was to consider a reconstitution or a division of the hereditament within the scope of the proposal. The appellant was neutral on this argument, seeking only a reduction for the area it occupied. The Tribunal subsequently received a letter which said that the parties were now agreed that this was within the scope of the proposal and that the occupier of the other part should be added to the proceedings, necessitating a postponement.

The Vice-President rejected this, determining that a split of the assessment was outside the scope of the proposal. Any determination could only reflect the land and buildings occupied by the appellant on the material day.

The VO respectfully submitted that these views were incorrect and that in the interests of natural justice he should have an opportunity to be heard on the subject at a hearing. At the hearing, it was argued that the Tribunal did have jurisdiction in respect of the hereditament as a whole, but in the alternative, the Tribunal could treat the matter as 'ancillary' under reg. 38(10) of the Procedure Regulations 2009.

The Vice-President concluded that the ratepayer was seeking purely a reduction in the RV for their property, not the creation of any other hereditament. The VO on the other hand was concerned with correcting an error of omission that he had made. Though there had earlier been agreement between the parties that the correct RV for RWE's property would be £317,500, the VO argued that if a split could not be determined, the assessment at £520,000 must refer to the whole site; the appeal should be dismissed and the £520,000 RV remain in force. However, it was clear that the list entry as described referred only to the RWE site and not the other company's site. The appellant's representative contended that the VO had made no enquiries of RWE or the other occupier to establish the factual position at the material day.

The Vice-President remained of the view that the scope of the proposal was clear and that it was not for the parties to confer on the Tribunal by agreement a jurisdiction that it did not have. Similarly he did not agree that the ancillary powers under reg. 38(10) could be used to widen the scope of the proposal since he could not make a determination that was prejudicial to a potential ratepayer who was not a party to the proceedings.

Click here for the full decision

Interesting VTE decisions—Non-domestic rating (continued)

New entry for a Helipad - validity of the proposal

On behalf of the appellant, London Borough of Tower Hamlets, its representative sought a new entry in the rating list for a helipad with effect from 1 April 2010. The property is a large concrete apron at the rear of 188 Westferry Road, in east London, used as a landing pad for a single helicopter with parking for a further helicopter.

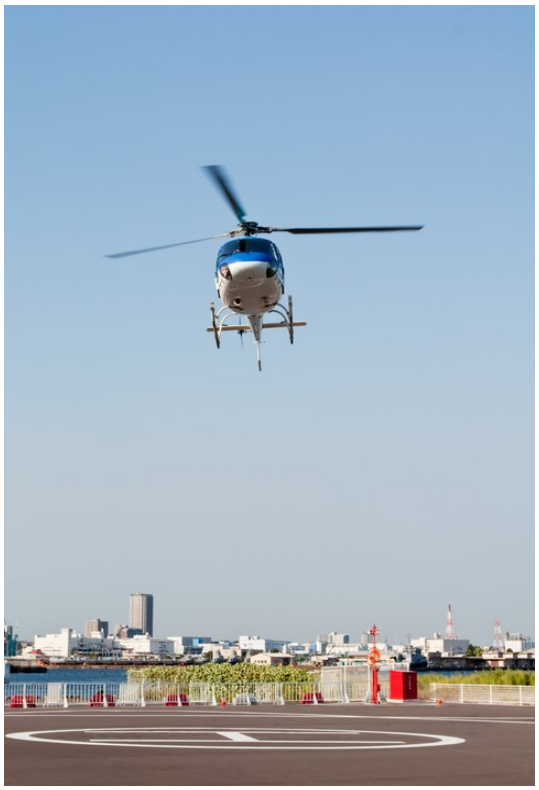
The issue in dispute was whether the proposal had been validly made, in accordance with 2009 Regulations.

The valuation officer's (VO's) representative explained that the concrete apron was included in the 2010 assessment for Vanguard Engineering Ltd, 188 Westferry Road, as wharfage, but by the material day, 1 April 2010, such use had ceased. It was believed the apron had been used as a helipad since 1980 and up until 2015 was operated by Vanguard. On 21 April 2015, a lease was granted to the current occupier, Falcon Heliport Services (UK) Ltd.

It was contended that the proposal was invalid because:

- regarding reg. 4(2)(b) the billing authority (BA) did not have "reason to believe"
- this was not a new hereditament within the meaning of reg.4(1)(g) but one coming into existence through 4(1)(l), which was a ground of appeal not available to a BA
- the property had not been correctly identified.

The BA's argument was that the proposal had been validly made under reg.4(1)(g), a hereditament not shown in the list which ought to be shown in the list. They submitted that the BA's "reason to believe" had been discharged, as there had been discussions with the VOA since September 2013 regarding heredita-



ments which had not been included in the list (ATMs, advertising rights and heliports).

The representative of the owners, Vanguard Engineering Ltd, asked the panel to determine that the proposal was invalid, as it was not a new hereditament within the meaning of reg.4(1)(g), but rather one coming into existence through 4(1)(l).

The representative of the present occupier, Falcon Heliport Services (UK) Ltd, also contended that the proposal was invalid as:
The helipad was not a new hereditament, as it already appeared in the list.
The BA had not provided evidence of any enquiries made to Vanguard Holdings Ltd, the occupier at the date of the proposal

By virtue of reg. 4(2)(b), the BA had limited grounds under which a proposal could be made. Here the proposal was made on the grounds of reg. 4(1)(g), a hereditament not shown in the list ought to be shown in the list.

The panel held that a reasonable enquiry by the BA would have revealed that the whole of 188 Westferry Road was occupied by Vanguard Holdings Ltd as at the material date and at the date of the proposal, 31 March 2015. The summary valuation included line entries for wharfage totalling £10,802, which was agreed by all parties to be the area used as a helipad.

As the helipad already appeared in the list, albeit under a different description, the panel determined that the proposal to include it as a hereditament not shown which ought to be shown, was invalidly made by the BA.

The panel understood the rationale of the BA in seeking to insert an entry in the list in order to discharge its function in the collection of business rates. Indeed, it was confirmed that the VOA did not disagree that the helipad should have been assessed. However, the BA was unable to rely on any of the limited grounds for making a proposal, and consequently, there was no legal platform that could be used to bring the property into assessment for the 2010 rating list.

Click here for the full decision

Private school

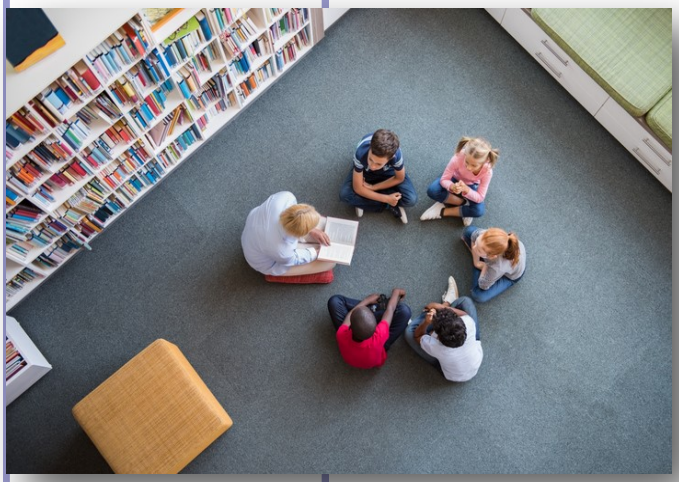
The case turned on whether there was sufficient comparable rental evidence available to determine rateable value or whether the appeals should be decided on the contractor's basis, as the appellant contended, because:

- of an assumption that primary and secondary schools form their own mode and category of occupation/use
- there was no rental market for them within the area
- planning restrictions prevented it from being used for another educational purpose.

The principal characteristics of the appeal hereditament were that of an educational establishment and the planning permission for D1 included creches, day nurseries, day centres, schools and non-residential education centres. The appellant's representative interpreted it as being restricted to nursery and education for pupils up to the age of 11, which was far too narrow an interpretation, according to the President. When secondary schools and other educational establishments were also considered, there was sufficient rental evidence available for a rental valuation.
In respect of the 2005 and 2010 Lists, there were no planning restrictions in place, other than one change of use of the lower flat on the first floor from residential to educational

Interesting VTE decisions—Non-domestic rating (continued)

(*Continued from page 7)*
The parties did not dispute the President's view that, because the school had been in existence for so many years, there was a long-established use for D1 purposes. It would be extremely difficult for the council to prevent such use from continuing. The D1 use did not distinguish between different types of educational establishments, therefore there was nothing in planning law to prevent the appeal hereditament being used for a number of educational uses.
The exception was in respect of the conversion of the first-floor residential area to classrooms, with conditions which severely restricted the use. Whilst of value to the appellant, it would have limited value to others and therefore required adjusting downwards from an open market value. The appeal was allowed in part on this basis.



Interesting VTE decisions—Council tax valuation

Click here for the full decision

Deletion for lack of septic tank/sewerage

The band F appeal property was transferred by a farmer to his daughter. When he transferred it to her, he was very careful to only outline the house and a very small patch of garden. As it was his daughter, he let her use the sewer and septic tank on his land. Sadly, the daughter died, the property was repossessed by the mortgage company and they put it up for sale at auction. The farmer wished to buy it back. However, the appellants bought it cheaply, aware that there was no easement in place for the right to use the farmer's septic tank/sewerage. He disconnected them, so the appellants had no access and no way of installing their own system as there was no land on which to do so. There was an ongoing court case to obtain an easement but success appeared unlikely.

The appellants argued that the property was incapable of beneficial occupation. The billing authority had accepted that the property had ceased to be a dwelling and had unsuccessfully asked the listing officer (LO) to remove it from the list. The LO contended that it was capable of repair, citing Wilson v Coll (LO).

The panel found this case law of assistance, as it set out that the question did not turn on whether it would be financially viable to carry out the repairs, but whether a hereditament exists or continues to exist. The panel allowed the appeal, finding that this could not be classed as a normal repair, as there was nothing to repair. The property did not meet the definition of a hereditament and was deleted from the list.

Click here for the full decision

Deletion for lack of electricity supply

A Completion Notice (CN) was served on the then owner in March 2017 giving a completion date of 6 April 2017 for the appeal property. It was not appealed and so the listing officer entered the appeal property in the list at band C from that date, when it became a potentially chargeable dwelling.

The appeal property was one of three new dwellings on this site. It was purchased by the appellant for his mother during August 2018 at auction. He lodged a proposal as he believed that the CN should never have been issued because the property had no electricity supply. The appellant argued that substantial works were required and as a result of these works, the property could not be deemed habitable, hence the deletion request. A schedule of works was provided. The appellant in this case appeared to be challenging a building certificate of completion which is not the same as a CN and is served for a different purpose. A building certificate verifies that the property complies with legal guidelines and building regulations. It does not determine the effective date when a dwelling has to be considered complete for the purposes of council tax. When a CN is served, unless the completion day is challenged and a different date agreed or set by the Tribunal, the dwelling is deemed to be complete and ready for occupation on that date. Even if the building works are in reality not completed by the date specified in the Notice, the dwelling has to be valued for council tax purposes on the assumption it is complete.

The panel had no discretion to depart from the legislation, irrespective of the problems which the appellant had encountered since purchasing the property. Although the appellant had proved that the dwelling had no current utility supply, this was capable of rectification albeit at some cost as the utility company had the monopoly. As no physical changes had been made to the property since the CN had been issued, the entry should remain in the list. The panel found no reason to delete the entry. Consequently, the appeal was dismissed.

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Interesting VTE decisions—Council tax liability

Sole or main residence

The appellants contended that their bungalow ('Property B'), which they jointly owned, should be classed as their sole or main residence throughout the disputed period. The billing authority (BA) determined that the appeal property was the appellants' main residence for the period in dispute.

Property B was in a poor state of repair when it was purchased by the appellants. As a result, the appellants found somewhere else to live, temporarily, until repair work had been completed. Throughout the period in dispute, Property B was their registered address. The temporary address was the subject of this appeal and related to one of three self-contained units at a holiday let complex. The appeal property was originally part of an entry in the rating list before being removed and entered into the valuation list at band B for the period in dispute. The rateable value (RV) for the holiday let complex was reduced during this period and the original RV was reinstated when the period ended.

The appellants contended that they did not live at the subject property continuously, as they also stayed with friends and family. The appeal dwelling was a refuge rather than a residence, where they just slept and showered. Each day, they ate out at breakfast and lunch time and had a sandwich or salad meals in the evening.

The respondent confirmed that whilst the appellants were living at the appeal property, Property B received a 100% discount because it was uninhabitable whilst undergoing major repairs. The application for discount was agreed and granted for a period and was not appealed against. To receive that discount the property had to be unoccupied and substantially unfurnished which meant it could not be treated as the appellants' main residence during the period in dispute. The respondent contended that as the appellants were sleeping and living at the appeal property, it was not unreasonable for that dwelling to be considered their main residence for the 145 days that it was rented by the appellants.

The panel determined that the appeal property was the appellants' main home throughout the period in dispute whilst work was being undertaken at Property B. As Property B was not capable of beneficial occupation during the period, it could not be the appellants' main residence; on each day, they only had one residence and that was the appeal dwelling. Despite its limitations, the appellants used the holiday let, as their intended future residence was not in a state to be lived in. The appeal appeared as a dwelling in the valuation list for each day during the period in dispute and the appellants could not legitimately dispute the fact that they were the residents. Liability for the council tax therefore rested with them and nobody else.
The appeal was therefore dismissed.

Appeal number: 1860M261695/283C

This decision is not available in full on our website. Please contact us if you wish to see it. We are currently developing an improved online search facility for VTE decisions, listed appeals and appeals waiting to be listed. We will be making a further announcement about the launch of this service in the April issue of ViP.

VALUATION TRIBUNAL SERVICE

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