Issue 65

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Valuation Tribunal Service

# Valuation in Practice

## News in brief

### Council tax online appeal portals

The council tax online appeal portal is now live and accessible via our website allowing council tax appeals, and the upload of supporting documentation, to be made electronically. This portal is intuitive and has information that will assist appellants when making appeals.

### Business rates revaluation 2023: Consultation on the transitional arrangements

The 2023 revaluation of properties for business rates will take effect from 1 April 2023, reflecting the rental market at 1 April 2021. A consultation with a closing date of 25 July 2022 from the Department for Levelling Up, Housing and Communities (DLUHC) is looking at transitional arrangements in supporting businesses to adjust to new rate bills post 1 April 2023. Further information on this consultation can be found here.

### Council tax information (CTIL) letters

The latest letter issued by the DLUHC can be viewed in full here.

### Collection rates for council tax and non-domestic rates in England, 2021-22

This national statistics release, published on 22 June 2022 by the Valuation Office Agency (VOA), provides information on the collection rates and the receipts of council tax and non-domestic rates by local authorities for the financial year 1 April 2021 to 31 March 2022.

### Business rates information letters

Recent publications from the DLUHC issued since 1 May 2022 are:

♦4/2022: Business rates revaluation 2023

The business rates information letters can be read in full here.

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### Help with cost of living

The Chancellor of the Exchequer announced on 26 May 2022 a £15billion package of targeted government support to help with the cost of living rises. More information can be found here. On 5 July this was further updated by the Department for Work and Pensions; the published guidance on the cost of Living Payment can be found here.

### Official statistics – Council tax: stock of properties, 2022

The stock of domestic properties by council tax band and property attributes in England and Wales was published on 26 May 2022. Further information can be found here.

### Council tax statistics

On 22 June 2022, DLUHC published statistics on

♦Council tax rates levels set by English local authorities
♦Council tax and national non-domestic rates collection rates
♦Council tax precepts for town and parish councils in England

Further information can be read here.

### Progressing ATM appeals

A steady progress of activity regarding ATMs of around 190 appeals cleared per week continues, with the total amount of 2010 ATMs outstanding reduced to 6,179. This includes 42 petrol filling stations and 400 supermarket let-outs (type 3) appeals. We are now focussing on a further listing of 3,000 appeals in September. A further review of progress is scheduled for 26 August 2022.

### The Hearing Programme – July 2022 to September 2022

Council tax hearings continue to dominate the hearing programme, representing 82% of the scheduled hearings between July and September.

**Inside this issue:**


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| VTE complex case decisions | 6-8 |
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We are beginning to see an increase in the submission of 2017 Rating List appeals. We proceed to manage these within 5 months of their receipt.

As we continue to progress with hearings through MS Teams, the profile and volume of the hearings is set out below:

| Tribunal Type | July | August | September | TOTAL |
|---|---|---|---|---|
| Council tax | 51 | 57 | 51 | 159 |
| 2017 Rating List | 9 | 8 | 9 | 26 |
| 2010 Rating List | 2 | 2 | 3 | 7 |
| Other | 1<br>Completion Notice/ Transitional Certificate and Penalty hearing | 1<br>Central List hearing | 0 | 2 |
| **TOTAL** | **63** | **68** | **63** | **194** |

## Appeals stayed at the Valuation Tribunal for England

There are some hearings that are not being listed. Below is our 'stayed list':

| Type of appeal | Reason for stay |
|---|---|
| Valuation of museums and art galleries | Awaiting Upper Tribunal appeal decision. |
| Questions on occupation of 'empty offices & other buildings' where property guardians occupy | Cases impacted by the Court of Appeal decision in *London Borough of Southwark & Ludgate House Ltd, Ricketts (VO)* [2020] EWCA Civ 1637 Ludgate House Ltd. Although Ludgate House have been refused permission to appeal to the Supreme Court, stay remains in place until the Upper Tribunal has decided whether it should be valued as composite or wholly non-domestic. |
| Premises occupied by the Church of Scientology | Appeals heard by VTE President and the decision has been appealed to the Upper Tribunal. |
| Valuation of offices outside central London where the issue in dispute relates to fitting out costs which replace an existing fit out | VTE decision appealed to the Upper Tribunal. |
| Valuation of offices inside central London where the issue in dispute relates to fitting out costs which replace an existing fit out | VTE to hear 4 appeals in relation to 30 Gresham Street, London as complex as the central London office market is unique from the rest of the country. |
| 2017 list appeals where COVID-19 is raised as a factor for seeking a reduction in RV | VTE decision appealed to the Upper Tribunal. |
| 2017 List appeals made on behalf of Debenhams Retail Ltd | Short stay agreed to allow parties to consider the impact of the Wales VT decision and continued settlement of large-scale shops. |

## And finally…. Finalists for IRRV Performance Awards 2022!

We are extremely delighted to have been announced as finalists in the Institute of Rating Revenues & Valuation (IRRV) Performance Awards 2022 in two categories:

- Excellence in Innovation (Service Delivery); and
- Excellence in Rating / Or Valuation

Being shortlisted as a finalist in these two categories recognises the achievements made and the innovation shown in meeting the challenges presented by this global pandemic in continuing to provide access to justice for local taxation appeals.

# Decisions of the High Court

## Dawn Bunyan (LO) v Laxmi Patel [2022] EWHC 1143 (admin)

The appeal property is a three-bedroom semi-detached house, occupied until 27 August 2019 when the tenants were evicted. The owner of the property had sought a deletion of the valuation list entry with effect from 28 August 2019 on the basis that it was uninhabitable because of rising damp caused by weather penetration. In support of the proposed deletion, the owner provided a copy of a survey report provided by Rentokil which confirmed the existence of rising damp and fungi. The cost estimate for the remedial works was just over £5,000.

The remedial works eventually commenced on 23 September 2020 and once the works began it became evident that the damp issues were worse than envisaged. The plasterwork in the kitchen was contaminated, so the units needed to be removed and the plaster replaced with specialist rendering. Other works involved included the replacement of ceilings, floors, skirting boards and stripping the bathroom fittings. This increased the costs of the works by just under £27,000.

As there was an ongoing programme of works with parts of the property stripped back to bare brick, the respondent agreed to delete the list entry with effect from 23 September 2020, the date when the works commenced. However, the owner pursued her appeal to the VTE and a Vice President found that the property was incapable of beneficial occupation on the relevant date 28 August 2019.

In his decision, the Vice President had more regard to an earlier VTE decision made by the President in *Tewari v Virk (LO)* [2020] M0826076 than the High Court's judgment in *Wilson v Coll* [2011] EWHC 2824 (admin). Having reviewed the President's decision, Mrs Justice Lang acknowledged that *Tewari* was correctly decided and was based on a proper understanding of the Supreme Court's judgment in *Newbigin v Monk* and the High Court's judgment in *Wilson*. She was, however, concerned with paragraphs 32 and 34 of the President's decision which were endorsed by the Vice President. The President had observed that the council tax legislation had changed since 2011, following the abolition of Class A of the Council Tax (Exempt Dwellings) Order 1992. The President had noted that Listing Officers had taken an overly robust approach in refusing requests for deletion on the basis that any dwelling could be repaired without giving consideration to whether it would be reasonable for the owner to do so.

Mrs Justice Lang upheld the respondent Counsel's argument that the President's observations were based on a mis-reading of *Wilson* and as Class A played no part in Mr Justice Singh's analysis in *Wilson,* the Vice President should have followed it as the *Wilson* judgment was binding on the VTE. Instead he applied a less stringent test namely whether the property required major works to remedy the problems and make it fit for occupation as a dwelling. Had the VTE followed *Wilson* in the Patel case it may well have arrived at a different decision based on the facts.

In allowing the Listing Officer's appeal, Mrs Justice Lang also endorsed the contents of the Listing Officer's Council Tax Manual and remitted the case back to the VTE for re-consideration by a differently constituted panel.

Read the full decision here

# *Decisions of the Upper Tribunal (Lands Chamber)*

## BNPPDS Limited & BNPPDS Ltd (Jersey) as Trustees for Blackrock UK Property Fund v Ricketts (VO) [2022] UKUT 129 (LC)

An appeal in relation to the Putney Exchange shopping centre car park made by the ratepayer against the VTE's decision to dismiss its appeal which challenged the then existing compiled list entry of £229,000 RV. At the Upper Tribunal (UT), the appellants sought a reduced entry of £122,000 RV. Even though the Valuation Officer (VO) did not cross appeal, the VO sought an increased assessment of £290,000 RV. The appellants argued that it was not open to the UT to increase the assessment as the VO had not cross appealed.

There were four issues in dispute:

1. Mode or category of occupation - The appeal property was the Putney Exchange shopping centre car park and the appellant argued unsuccessfully that this meant it had a different mode or category of occupation to standalone car parks. The UT saw no reason to distinguish the appeal car park from any other and preferred to avoid too narrow a focus on the evidence. It therefore should be looked at and valued like other multi-storey car parks.

2. Should the appeal property be valued by the Receipts and Expenditure approach or by the shortened receipts method? The VO's approach was to value the car park by the shortened receipts approach, but the UT preferred the appellants' approach which was on a receipts and expenditure basis. The main reason for rejecting the shortened approach was although it was convenient, it was prone to error unless the valuation was supported by a rigorous analysis of available rental evidence, comparison with agreed assessments where there is a settled tone derived from rental evidence or fair maintainable trade. In determining that the car park should be valued on the Receipts & Expenditure approach, the UT preferred to adopt the VO's figures for the gross receipts in its assessment as they were derived from accounts from 2014 to the Antecedent Valuation Date (AVD). In contrast, the appellants' figures were derived from 2017. The UT also preferred the VO's calculation of the expenses and the VO's round figure deduction for depreciation. The appellants' calculation of the depreciation which was based on a 10% end allowance on the amount left over for rent was rejected.

3. Allocation of the divisible balance - The VO split it 80/20 in favour of the landlord, whilst the appellants went 50/50. Although neither party had proven their calculation of the split, the UT preferred the latter on the basis that after negotiation, a balance would normally be struck at 50/50.

4. The impact of material changes of circumstances (MCC) events that took place after the AVD (1 April 2015) but before the list was compiled (1 April 2017) - One material change related to improvement works to the central concourse, reposition of passenger lifts, stairwells and walkways within the Putney Exchange shopping centre. The second MCC event related to improvement works and subsequent re-opening of the Southside shopping centre which was around one mile away from the appeal property. Whilst it was accepted that receipts for the appeal car park had fallen, the amount that was purely attributable to the material changes could not be ascertained, since some of the decline was clearly due to economic factors. In the event, the UT adopted a figure of 10% which it deducted from the gross receipts/FMT.

Ultimately, it allowed the appeal in part and reduced the assessment to £211,500 RV. As the UT determined a revised RV lower than the VTE, it saw no need to address the interesting procedural issue about whether the VO, having not cross appealed could seek an increased RV.

Read the full decision here

### Consolidated Practice Statement (CPS)

**Don't forget**: the CPS can be found on the new VTS website.

# Decisions of the Upper Tribunal (Lands Chamber)

### Stormhill Properties Limited v Ricketts (VO) [2022] UKUT 109 (LC)

The VTE's decision that the proposal was invalid because it was made out of time was upheld by the Upper Tribunal (UT).

The proposal sought a merger of entries within an office building, Alpha Tower, in Manchester. There were 14 separate assessments. The VTE decision had recorded that as at the material day, 1 April 2010, all of the building apart from the Ground Floor was vacant. Contrary to what was said before the VTE, the Appellants informed the UT that the whole of the building was unoccupied.

The appellants had acquired the head lease in the building in or around 2017 and the building was let out under a number of sub-leases and it was unclear when these came to an end. Contradicting his evidence before the VTE Mr Fitfield, on behalf of the appellants, contended that all of the tenancies had expired by 31 March 2010. He had been involved in the management of the building since 1990 when the owner of the vacant parts was Fleetguild Ltd (now Stormhill). However, when looking at the information provided by the appellants it was not clear to the UT member Mr McCrea whether all of the leases had been yielded up by the material date or whether Mr Fitfield was confusing the right to occupy under a lease and rateable occupation. He decided that the factual situation regarding the leases and who was in rateable occupation of the various parts would have to be a matter for another appeal at a later date.

In this appeal, the ratepayer had the opportunity to make a proposal seeking such a merger under Regulation 4(1)(k) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 before 31 March 2017, the date when the 2010 Rating List expired. In the event, the proposal was not served on the Valuation Officer (VO) until 7 November 2019. This was not a case that was affected by the Supreme Court's judgment in *Mazars* and the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 upon which the ratepayer relied was not relevant here, because the law relating to properties which were contiguous and interconnected had not changed. The UT therefore held that the VTE had correctly followed and applied the UT's earlier judgment in *Libra Textiles Limited t/as Boundary Mills and Centric Assets Limited v Roberts (VO)* [2020] UKUT 237 (LC), before dismissing the appeal.

Read the full decision here

# Decisions of the Upper Tribunal (Lands Chamber)

### Ballcroft Estates Ltd v Virk (VO) [2022] UKUT 153 (LC)

The case related to a 2017 Rating List appeal which challenged the compiled list entry for the former Marks & Spencer store in High Street, Kidderminster. M & S had long since vacated the appeal property and had re-located its Kidderminster store to Weavers Wharf, an out-of-town retail park. The appeal property had a compiled list entry of £92,000 RV which the VO defended before the VTE but the latter allowed the appeal and reduced the entry to £57,000 RV. The VO did not defend the VTE's decision and defended a lower revised valuation of £52,500 RV. The VO then lowered his proposed UT valuation to £45,000 RV, having read the appellant's expert witness report.

The appellant sought a nominal £1 RV on the basis that there was no demand. In support, the appellant argued that when the rental evidence for comparable shops were analysed, this resulted in negative values because of various landlord's incentives like rent review caps, rent free periods, inclusion of service charges, dilapidations

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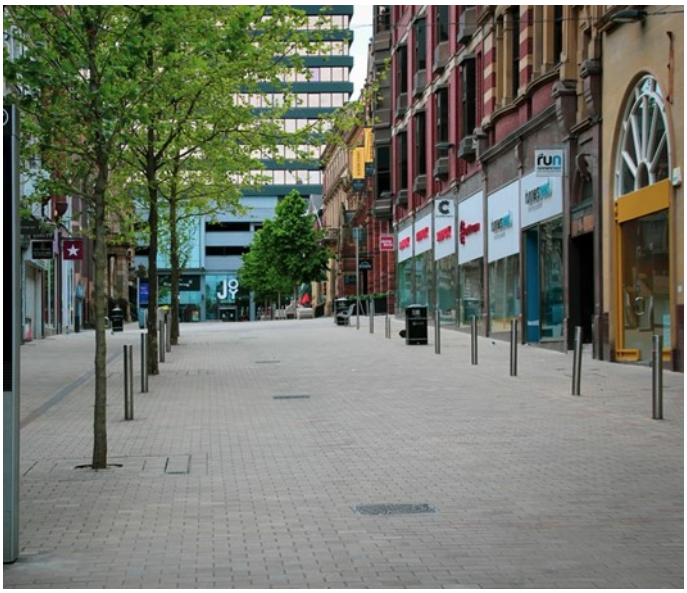
To be continued on Page 6

# Decisions of the Lands Chamber (Upper Tribunal) continued...

waivers and exclusivity clauses. However, the Upper Tribunal (UT) member Mr McCrea rejected the appellant's argument for a nominal value having regard to the Supreme Court's judgment in *Hewitt v Telereal Trillium* [2019] UKSC 23. This held that under the rating hypothesis where other similar properties are occupied demand must be assumed.



Mr McCrea found evidence that there was some demand for large stores within Kidderminster Town Centre. He attached the most weight to the rental evidence on 3-6 Coventry Street and 1-6 St George's Mall which having adjusted for the various inducements both devalued to just over £11 per metre overall. Looking at the evidence as a whole and doing the best he could with it, he determined that the appeal property should be assessed at a rate of £11 per $m^2$ which resulted in an assessment of £17,750 RV with effect from 1 April 2017 and the appeal being allowed.

Read the full decision here

# Decisions of the VTE - Non-Domestic Rating 2017

## Aviva Investors v Dawn Bunyan (VO)

An interesting point of law was heard by the President - does a programme of repair works, only part of which involve a strip out of the kitchenette and toilet facilities bring it within the scope of *Monk* or is it to be assumed that the hypothetical landlord would undertake these works prior to the commencement of the hypothetical tenancy, in accordance with the statutory repairing assumptions in paragraph 2 of Schedule 6 to the 1988 Act?

The appeal property was a mid-terrace warehouse. Following the vacation of the tenant, the property underwent a programme of works. The warehouse element comprised 88% of the hereditament and the repair works were minor and easily capable of being remedied. The works involved the replacement of light fittings, minor repairs to the roof and cleaning and decoration. Partitions were removed from the office areas to return them to an open plan layout. However, the appellants argued that it was the stripping out of the small kitchenette and the toilets which brought this case into *Monk* territory. The appellants argued that without toilets the property was incapable of beneficial occupation and therefore a deletion of the list entry was appropriate.

The works were undertaken between 23 September 2019 and 13 December 2019. The appellants' case was not helped by the fact that they had no detailed record of when the itemised works were carried out. They relied on evidence from a third party, who was involved in the management of the project, who believed that the stripping out would have occurred at the start of the project and the new units installed towards the back end. As a corollary, the situation at the agreed material day of 23 September 2019 was unknown. On behalf of the appellants, Mr Wilcox argued that if the President was not satisfied that the property was incapable of beneficial occupation on the material day, it was open to him to delete the list entry to coincide with the date when the hereditament ceased to exist. The President had concerns over the material day being flexible as that coupled with the facts being uncertain would potentially invoke crystal ball glazing.

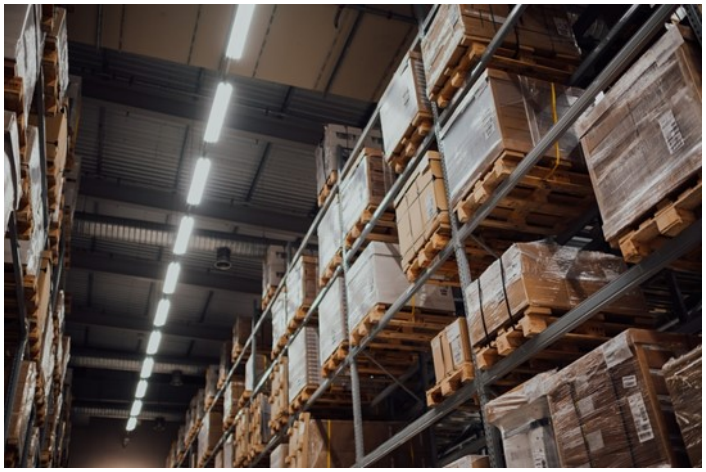
The President determined that as the warehouse remained capable of beneficial occupation, since any minor repairs fell to be disregarded under the statutory repair assumptions, it would be inappropriate to delete the assessment as a whole.

To be continued on Page 7

## Decisions of the VTE - Non-Domestic Rating 2017 cont'd...

Had the proposal/challenge been made on the grounds of a material change of circumstances and the timeline of the stripping out been certain, the President may have given consideration to reducing the assessment. However, in this case the proposal sought a deletion and as the hereditament continued to exist, with the warehouse area capable of beneficial occupation, the appeal was dismissed. In doing so, the President upheld the Valuation Officer's (VO) argument that the appellants were pushing the boundaries of *Monk* too far.

Click here for the full decision



## Decisions of the VTE - Non-Domestic Rating 2017

**Vistra International Expansion Ltd v Dawn Bunyan (VO)**

A tribunal panel, comprised of the President and two Vice Presidents, heard the above case which was identified as the lead appeal amongst the 26 appeals that had been listed. This hearing was convened purely to consider a preliminary legal point namely;

> "Whether it is impermissible to take account of the matters on which the appellants rely as justifying a reduction in rateable value, by reason of the prohibition imposed by section 1(4) of the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021".

The proposal that initiated the appeal process was made on the grounds of a material change of circumstances (MCC) which was coronavirus related. Prior to the passing of the 2021 Act, it was likely that the proposal would have achieved what it was submitted to do and secure a rate reduction for the appellants.

Mindful that their proposal was probably likely to be unsuccessful in the light of the new legislation, the appellants relied on additional evidence relating to such matters as COVID-19 anxiety and the public's fears of going out.

Although there had been no physical change to the appeal property's locality, it had become a ghost town and the lack of pedestrians, traffic etc. could be considered a physical manifestation. The Lands Tribunal's judgment in the appeal of *Karen Kendrick (VO)* [2009] RA 145 appeared to support an argument for a reduction if it could be substantiated.

The problem for the appellants, in this appeal, was that the 2021 Act had created another hurdle for them to overcome or hoop to jump through. Even if it was accepted that the appellants had valid grounds to making a proposal under Regulation 4 (1)(b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, because a MCC had occurred, not only had the MCC event to be related to one or more of the matters referred to in paragraph 2(7) of Schedule 6 to the 1988 Act but it also had to avoid capture by the prohibitive provisions of the 2021 Act. Otherwise, no alteration to the relevant rating list entry could be made.

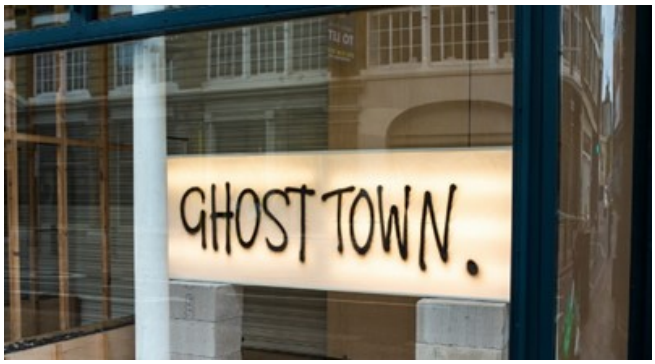
Unfortunately, because of how the 2021 Act had been drafted it was a hurdle the appellants were unable to overcome. In applying a plain and ordinary interpretation of Section 1(4) the panel determined that the 2021 Act had achieved exactly what the Government required it to do. No 2017 Rating List entry could be altered to reflect the effect of the coronavirus. It did not matter whether the coronavirus had directly affected the property (hereditament) or indirectly affected it: any negative effect in valuation terms could not be reflected.

**To be continued on Page 8**

## Decisions of the VTE - Non-Domestic Rating 2017 cont'd...

There were exception provisions within the legislation for instance if the property was demolished because of coronavirus or converted to a different use because of it. However, it was accepted that none of these exceptions applied in the appellants' case. The lead appeal and the 25 others were therefore dismissed.

Read the full decision here




## Decisions of the VTE - Non-Domestic Rating 2017

*Valuation of Day Nursery in dispute*

The appeal property was a converted chapel occupied as a private day nursery. The existing valuation of £51,000 RV was based upon an adopted price of £150 per $m^2$ the highest rate applicable under the respective valuation scheme for day nurseries and playgroups in Welwyn and Hatfield.

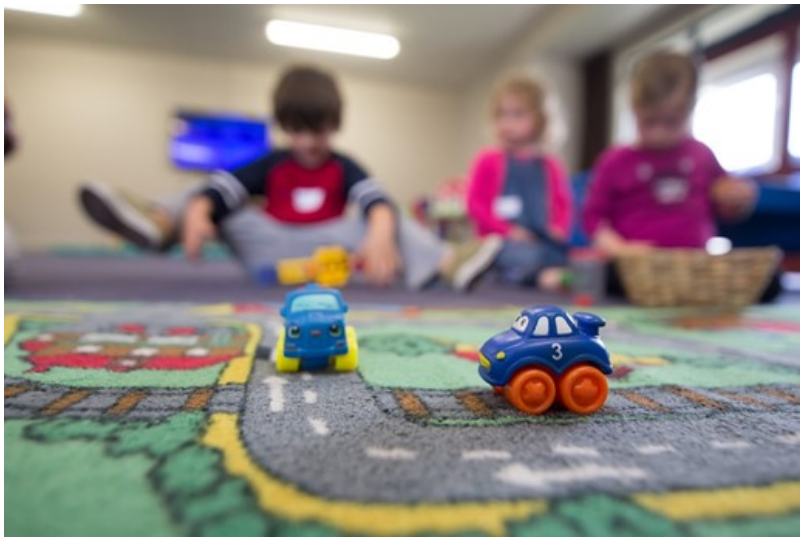
The appellant argued that the property was over-valued in comparison to other properties valued under the same scheme and proposed a revised valuation based on £125 per $m^2$. His proposed valuation was £42,750 RV with effect from 1 April 2017 which was said to reflect its poor quality and inferior location.

The Valuation Officer (VO) disputed the assertion that the appeal property was of poor quality in an inferior location and defended the existing entry. She referred to rental and comparable evidence in support of her argument.

The actual rent on the appeal property was unreliable as the rent was agreed 3 years after the Antecedent Valuation Date and there was some uncertainty over the length of the rent-free period.

Having studied the photographic evidence, the panel was not persuaded by the appellant's arguments that the appeal property was inferior to a purpose-built nursery. On the contrary, it appeared to provide good facilities inside and out.

The panel was also not persuaded that the residential location of the appeal property was inferior to any of the comparable properties, given its proximity to two schools, a hospital and the town centre.



Most weight was attached to the VO's rental and comparable evidence. The panel was satisfied that it supported the current assessment. The valuation of the appeal property at £51,000 RV with effect from 1 April 2017 was therefore held to be not unreasonable by the panel and the appeal was dismissed.

Click here for the full decision

# Decisions of the VTE - Council Tax Valuation

*Valuation of a property on a private island*

The appellant, a new taxpayer, sought a reduced entry from band F to E with effect from 1 April 1993.

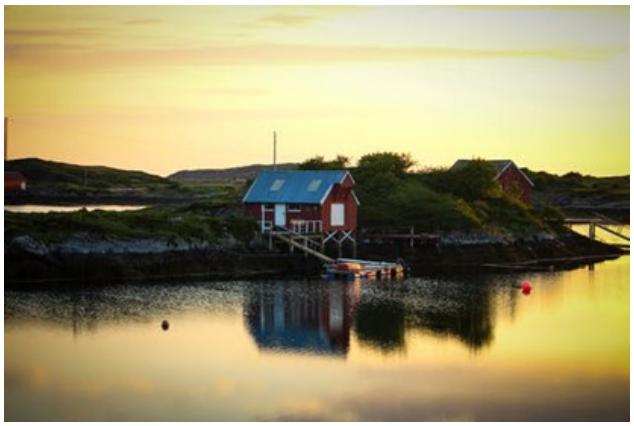
The appeal property was a relatively small detached bungalow dating back to between 1919 and 1929. It was located on Pharaohs Island, which was a private island accessible by boat. The island was situated in the middle of the River Thames between Shepperton and Weybridge Banks.

The appellant argued that property values in Pharaohs Island were lower in comparison to those on the mainland. The Listing Officer's counter argument was that there was a premium attached to properties on the island and presented tone of the list evidence in support of the existing band F entry.

The appellant highlighted the disadvantages of living on the island which included the following:

1. They were required to take waste across the river to bins on the mainland
2. Building work was more expensive and inconvenient owing to the complexity of delivering materials to the island
3. They did not have the option of adding an electric car charging point to their property on the island, so had to find alternative places to recharge electric vehicles on the mainland
4. Food shopping had to be taken across the river
5. Additional charges were payable for a reliable internet connection
6. Flooding was an issue
7. Crossing the river in bad weather was hazardous
8. The island required its own Fire Brigade, which the citizens manned
9. Whilst the appeal property benefitted from a garage, cars were unable to access the island

Having heard the competing arguments, the panel accepted that the island location was unique and therefore found evidence drawn from mainland properties to be unhelpful. Instead, it had more regard to the 23 properties on the island, 21 of which were detached bungalows. The majority of these (17) were in band F, 3 were in band G and only one was in band E and that one was smaller than the appeal dwelling. The tone of the list evidence suggested that the existing band F entry was correct. The panel also noted that its accuracy had never previously been challenged throughout the 29 years lifetime of the list. The appeal was therefore dismissed.



Read the full decision here.

VALUATION TRIBUNAL SERVICE

We welcome any feedback.

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