Issue 66

November 2022

Valuation Tribunal Service

Valuation in Practice

News in brief

IRRV Performance Awards 2022

The Valuation Tribunal Service received the Institute of Revenues, Rating & Valuation's (IRRV) Award for Excellence in Innovation (Service Delivery) and were Highly Commended for the Award for Excellence in Valuation and/or Rating. We are very proud to be recipients of these awards and to be recognised by the Institute for our work.

Want to write to us?

Our office address is Second Floor, 120 Leman Street, London E1 8EU. We continue to encourage all communication with us by email for efficiency.

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Energy Bill Relief Scheme: help for businesses and other non-domestic customers

This scheme will provide energy bill relief for non-domestic customers in Great Britain. Discounts will be applied to energy usage initially between 1 October 2022 and 31 March 2023. The scheme will be available to everyone on a non-domestic contract including:

- ♦businesses
- ♦voluntary sector organisations, such as charities
- ♦public sector organisations such as schools, hospitals and care homes

Want to find out more? Read here.

Technical adjustment to the Business Rates Retention system: Consultation

The Department for Levelling Up, Housing and Communities (DLUHC) published on 2 September 2022 a consultation setting out proposals for an updated technical adjustment to the Business Rates Retention (BRR) system in response to the forthcoming 2023 business rates revaluation and transfers from local lists to the central list. The closing date for responses was 30 September 2022. Further information can be found here.

Official Statistics: Non-domestic rating: challenges and changes, 2017 rating list, June 2022

Statistics relating to checks and challenges under the new Check Challenge Appeal (CCA) system used for the 2017 rating list in England can be found here.

These statistics will be expanded in future releases depending on user needs, and data availability.

Inside this issue:

Official Statistics: Non-domestic rating: stock of properties including business floorspace, 2022

The statistics provide information on the number and value of the stock of rateable properties (known as "hereditaments") in England and Wales, broken down by sector and geographic location. The stock of properties part of this publication was released first to meet increased user demand and to provide more up-to-date statistics. Floorspace statistics were added to this publication on 15 September 2022. Further information can be found here.

Business rates information letters

Recent publications from the DLUHC issued since 17 August 2022 are:

♦5/2022: Business rates revaluation 2023

The business rates Information Letters can be read in full 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 updated on 22 September 2022. Further information can be found here.

National statistics: collection rates for Council tax and non-domestic rates in England, 2021 to 2022

On 3 October 2022, the Department for Levelling Up, Housing and Communities (DLUHC) updated the information on the collection rates and the receipts of council tax and non-domestic rates by local authorities. Further information can be read here.

Council tax information (CTIL) letters

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

Progressing ATM appeals

The final meeting around ATMs took place on 26 August 2022, where it was established that around 4,800 ATM appeals remain outstanding, with GL Hearn having the bulk of these. The VTS have now taken full control of all outstanding ATM appeals and will progress these to listings during this financial year.

40 appeals relating to Lloyds Pharmacy are being stayed pending a test case to be heard on 8 November 2022. This stay will be lifted at that point.

The VTE will be taking a firm approach regarding further postponement requests regarding the progressing of ATM appeals.

Our Hearing Programme – October 2022 to December 2022

The profile and volume of our remote hearing programme is:

Tribunal Type	October	November	December	TOTAL
Council tax	59	64	36	159
2017 Rating List	9	11	5	25
2010 Rating List	3		1	4
Other		1 Transitional Certificate / 1 Completion Notice	1 Completion Notice	2
TOTAL	**71**	**77**	**43**	**191**

The number of 2017 Rating List hearings have increased this quarter to reflect the increase in appeals received. 83% of hearings remain dedicated to council tax appeals, with six hearings in October and five in November dedicated to council tax

deletion appeals, previously stayed awaiting the re-hearing of *Dawn Bunyan (LO) v Laxmi Patel*. This appeal was remitted back to the VTE by the High Court.

Two hearings, one in October and one in December, are dedicated to 2010 ATM appeals.

Our aim remains to list 2017 list appeals within 5 months wherever possible.

Appeals stayed at the Valuation Tribunal for England - November 2022

Below is our 'stayed list':

Type of appeal	Reason for stay
The 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.
Lloyds Pharmacy Concessions within Sainsbury's stores	A test case to be heard by the VTE President on 8 November 2022.
Premises occupied by the Church of Scientology	VTE decision 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 four appeals in March 2023 regarding 30 Gresham Street, London to determine whether the central London office market is unique from the rest of the country.
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.

Decisions of the Upper Tribunal

Justin Allen (VO) v Tyne & Wear Archives and Museums [2022] UKUT 206 (LC)

An appeal against the Valuation Tribunal for England (VTE) decisions that a nominal assessment was appropriate for the Shipley Art Gallery, the Laing Art Gallery and the South Shields Museum for the 2010 Rating List entries. The VTE decision cited the earlier Upper Tribunal's (UT) judgment in *Hughes (VO) v York Museums & Gallery Trust* [2017] UKUT 200 (LC) in support of its decision.

The Valuation Officer (VO) argued that all three assessments should have an increased rateable value to reflect their "socio-economic value". This was the value placed on a combination of benefits such as cultural education, community, mental health and wellbeing, which do have a broad economic effect but would have no impact on the income the occupier would receive from his occupation of the property.

In its earlier judgments (York and Exeter Museums) the UT had previously acknowledged that the museums were occupied on a non-profit basis for the benefit of the public and that the cultural and educational value that was conferred on both its visitors and non-visitors had a value to the occupier. The question was, would the occupier make an overbid to reflect this added value? In the previous cases heard, there was no evidence to show what the overbid would be. To calculate this, it required an assessment of the socio-economic value of the hereditament to the occupier and then a judgment as to how much of that value would be reflected in the rent that the hypothetical tenant was willing to pay. Whilst in both the York and Exeter Museums cases the door was left open for the possibility of an overbid, no evidence was presented to support an uplift to reflect socio-economic values. It was against this background that the VO appealed the VTE decision.

To be continued on Page 4

Decisions of the Upper Tribunal cont'd...

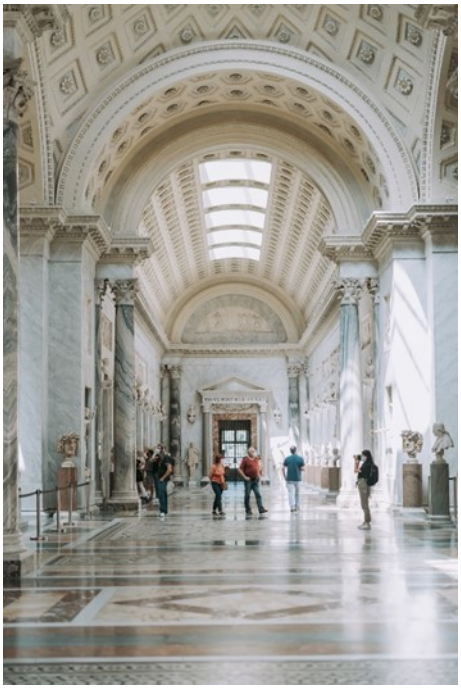
The parties' respective valuations concentrated on three aspects:

- affordability;
- storage; and
- gross receipts.

The UT rejected the affordability approach because local authorities could afford to occupy and pay a rent for museums and the hypothetical landlord would know this. However, the level of rent a local authority was prepared to pay did not necessarily reflect what a hypothetical tenant would be prepared to pay.

The VO had advocated valuing the appeal properties using a storage analogy, given that in a museum there were limited items on display with the rest in storage. However, this approach was rejected, as it came too close to valuing the properties having regard to a different mode or category of occupation.

The VO's valuation using a percentage of gross receipts was also rejected. The UT has been critical of the shortened receipts method in its recent judgments. This valuation method was only appropriate after a rigorous analysis of rental evidence. Although the parties had put forward rental evidence, it was incapable of reliable analysis and there were no full Receipts and Expenditure valuations available for the comparable properties.



Turning to the central issue in dispute, the VO expert's approach using the Arts Council for England (ACE) guidance was accepted as more reliable than the appellant's expert's use of the Association of Independent Museum's (AIM) toolkit. The former was more up to date and valued a higher range of benefits, but there were two difficulties using it to calculate the virtual rent. Firstly, it could not be used to translate social value to the public into value to the local authority. Secondly, there was no valuation method available to translate that value to the local authority into a willingness to pay any rent at all, let alone how much.

The UT did not find favour in the VO's argument that as some museums pay a rent, despite operating at a loss, there must be an overbid to represent social value.

The UT found no evidence to support what level of rent a hypothetical tenant/local authority would pay to occupy a museum, also the funding and support that would have to be provided to keep it open.

The appeals were dismissed with the VTE's decision upheld.

Decisions of the Upper Tribunal

Joe and Valerie Fryer v Wayne Cox (VO) [2022] UKUT 0229 (LC)

The appeal was against the Valuation Tribunal for England's (VTE) decision to dismiss the appeal, which had challenged the accuracy of their property's compiled list entry for the 2017 Rating List.

The appeal property was the Apple Jacks Adventure Park near Warrington which the Valuation Officer (VO) had assessed at £35,000 RV. It was agreed that the "attraction" which was located on a farm should be valued using the Receipts and Expenditure method of valuation. However, the parties were poles apart in their respective valuations. The VO defended the existing entry, whilst the appellants sought a nominal £1 RV.

Consolidated Practice Statement (CPS)

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

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Decisions of the Upper Tribunal cont'd...

The attraction was open to the public from Easter to September during weekends and school holidays. It then re-opened as Spooky World for two weeks around Halloween.

Although the method of valuation was agreed and the accounts were accepted as correct, the gross receipts fluctuated between 2011 and 2014 leading to a dispute over the likely turnover at the antecedent valuation date. The Upper Tribunal (UT) upheld the appellants' argument that the hypothetical tenant would exercise caution in budgeting for gross receipts and preferred their expert's estimate of £755,000 which was £25,000 lower than the respondent's.

The UT also preferred the appellants' expert's assessment of the cost of sales £133,000 in comparison to the VO's figure of £140,000.

The cost of repairs was also in dispute and the UT determined a figure of £70,000 which was below the sum proposed by the appellants' expert but in excess of the VO's calculation.

The UT determined a figure of £75,500 for advertising and promotion. The appellants' expert had adopted £96,000 and the VO £46,800.

For the business rates expenditure element, the UT accepted the VO's figure because it was based on the amount of rates actually payable whereas the appellants' expert's approach made the incorrect assumption that the VO would issue a certificate for transitional relief purposes which would have increased the RV as at 31 March 2010. The appellants' expert had also factored into his calculation a 2018 VTE decision, which the hypothetical tenant could not have anticipated on 1 April 2015.

As the appellants were managing the attraction themselves, there was a question regarding the level of expense for the costs of a manager or whether this should form part of the tenant's share. As the attraction was on a working farm, which was exempt from rating, it was felt that the hypothetical tenant (farmer) would most likely employ a manager to look after the attraction. The UT rejected the VO's view that this cost should not be reflected in the working expenses but reflected in the tenant's share and adopted the appellants' expert's approach to deduct the undisputed figure of £35,400 as an expense from the gross receipts, before arriving at the divisible balance.

Having determined the disputed matters, the UT arrived at a divisible balance of £47,138 from which it determined that the tenant's share should be 75%, leaving 25% for the rent/landlord's share; £11,784 rounded down to £11,750 RV.

The appellants' argument for a nominal entry was rejected because the attraction was running at a profit. The appeal was allowed in part.

Decisions of the VTE - Non-Domestic Rating 2017

Car showroom and premises

The appeals concerned the valuation of a car showroom and premises at 1 April 2017 (£241,000 RV) and 16 October 2017 (£239,000 RV, following loss of 710m^2 of land). In dispute was the tone of value, allowance for superfluity and whether repairs were uneconomic to undertake.

The appeal property was built in the late 1960s and was located on the A4 to the west of Bath town centre. It covered an area of 5,343m^2 and was used as a Citroen dealership until February 2019.

The appellant's representative submitted that the appeal property should be valued in line with older comparable properties

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

found in suburban and village locations in the vicinity of Bath which accommodated midrange and budget brands. While the showroom, workshop and much of the storage space was occupied, the minimal occupation of the first floor and lack of occupation of the lower ground floor stores demonstrated that those areas were surplus to requirements.

In support of his contention that the appeal property was beyond reasonable economic repair, the appellant's representative provided photographs dated 12 August 2015, 16 September 2016 and 12 March 2019; a report on the basement valet bay structure dated July 2018; and a condition survey report dated 24 April 2020.

The Valuation Officer (VO) defended their adopted tone of £105.00 per m^2 with reference to rental evidence and comparable assessments. With the exception of one property, the relevance of the appellant's comparable evidence was disputed.

A reduction for superfluity was disputed, as a hypothetical tenant is assumed to want use of all available space. Reference was made to a similarly large car showroom for which no areas had been removed from the valuation for superfluity.

The VO disputed that the appeal property was beyond reasonable economic repair for the following reasons:

- The property was occupied by a main dealership until February 2019.
- The lack of survey and cost analysis evidence at the material days.
- The photographic evidence showing the fair condition at the material days.
- The evidence survey and cost analysis provided being so far from the material day making it much less reliable.

However, for completeness, a cost analysis exercise was undertaken by one of the VO's building surveyors. Their conclusion was that the repairs required would not be uneconomical to undertake.

The panel noted that there was a clear difference in the location of the appellant's comparable properties, which were mostly situated in rural and village locations, whereas the VO's comparable properties were mostly located close to the centre of Bath, and also closer to the appeal property.

It was also significant that the properties relied upon by the appellant were much smaller with limited facilities. Consequently, the panel was not persuaded that the appeal property should also be valued at £90 per m^2.

The panel attached more weight to the evidence of comparable assessments located closer to the centre of Bath valued at £145.00 and £150.00 per m^2.

While it had been acknowledged that the appellant had not utilised the areas in dispute, the panel was not persuaded that this supported the removal of those areas from the valuation. The panel had to consider the property vacant and to let, and in the absence of any evidence to the contrary, it was not unreasonable to assume that a hypothetical tenant would want to use all of the available space.

The panel decided that the appellant had failed to demonstrate that any repairs required at the material days were uneconomic to undertake. Most significantly, the costs, although toned back to the AVD, were based upon the actual condition of the appeal property on 24 April 2020, and not as at the material days of 1 April 2017 and 16 October 2017.

The appeals were dismissed.

Read the decision in full here.

Decisions of the VTE - Central Rating List 2010

Uniper UK Gas Ltd (formerly E.ON UK Gas Ltd) v Helen Zammit-Willson (VO) [2022]

The appeal property was a long-distance pipeline that ran from the Theddlethorpe Gas Processing Terminal to the two power stations at Killingholme and the Humber and Lindsay Oil Refineries. Following the closure of the Killingholme B Power Station, the appellants argued that 49.5km of the pipeline's length (52.8km) was effectively redundant and should have no value. The closure of the power station was cited on the proposal, that gave rise to the appeal, as a material change of circumstances.

The compiled list entry had been agreed at £1.1million RV and if the appeal was allowed, it was agreed that the assessment should be £114,000 RV with effect from 1 April 2015. The pipeline was valued on the Contractors' basis reflecting demand/ economic factors as at the antecedent valuation date (AVD).

At the material day, it was accepted that Killingholme B Power Station was closed. It was also accepted that Killingholme A Power Station was operating at a much lower level, in comparison to its use as at the AVD, before being decommissioned.

At the material date both Killingholme B and the pipeline were in the appellants' ownership but were separate assessments.

The appellants argued that Conoco Phillips' decision to terminate gas supplies to the pipeline from its Theddlethorpe Gas terminal was another material factor to be taken into consideration. However, the Vice President found that the reason why the gas supply was terminated was because it was no longer economically viable for Conoco to provide it, once there was no demand from Killingholme B.

Whilst it was accepted that the pipeline was a separate hereditament, the appellants' case was undermined because it was operated by a subsidiary company of the owner of the power station. It was, as the Valuation Officer (VO) had pointed out, a business decision by one E.ON company to close its power station which had set off a chain of events which had led to the gas being switched off at the Theddlethorpe gas terminal and ultimately this appeal for a reduced assessment for a pipeline operated by another E.ON company.

Consequently, having regard to the authoritative advice given by the Upper Tribunal (UT) in *Merlin Entertainment Group v Cox (VO)* [2018] UKUT 0406 (LC), the Vice President decided that this appeal fell at the first hurdle. Nothing had changed to the appeal hereditament in the same way that nothing had changed to the stadium in the *Wigan Football Club Ltd v Cox* appeal. It remained a long-distance pipeline, the fact that no gas was running through did not alter the situation. There had therefore been no material change of circumstances and the reason why the pipeline was not in use was solely because of a change in economic demand. Economic factors were to be taken as at the AVD.

The appeal was therefore dismissed, and the appellants have appealed the Vice President's decision to the UT.

To obtain a copy of this decision, please contact the Valuation Tribunal Service directly.

Decisions of the VTE - Council Tax Liability

Is the landlord liable for council tax on the day the tenant departs?

This appeal was brought under section 16 of the Local Government Finance Act 1992 (1992 Act) on the grounds that the appellant, who was landlord owner of the property, disputed his council tax liability for one day. The appeal rested on the interpretation of section 2 of the 1992 Act, namely, that 'it shall be assumed that any state of affairs subsisting at the end of the day had subsisted throughout the day'.

The appellant argued that this statement meant that liability was determined having regard to the legal affairs as at the end of the day. He relied on contract case law to demonstrate that the tenant had a legal rental liability until the end of the day. He therefore submitted that his council tax liability should commence the following day.

The panel found that in accordance with section 2 the 1992 Act, liability is determined on a daily basis and the liable person is

To be continued on Page 8

Decisions of the VTE - Council Tax Liability cont'd...

determined by reference to section 6 of the 1992 Act. It therefore found that it was tasked with finding who was liable under section 6 at the end of the day. The panel found that whilst the tenant's and landlord's contractual relationship may have continued by virtue of the tenancy, this did not necessarily equate to a 'material interest' for the purpose of council tax liability.

The panel had regard to the tenancy agreement in place and the binding judgments brought before it, *Macattram v Camden LBC* [2012] EWHC 1033 (Admin) and *Leeds City Council v Broadley* [2016] EWCA Civ 121. Making a finding, it concluded that the tenancy agreement created a monthly periodic tenancy upon expiry of its one-year term. This was more in line with the *Macattram* case which confirmed that when a statutory periodic tenancy arises following an initial fixed term, it is, in effect, a new monthly tenancy. The panel therefore found that the monthly periodic tenancy arising following the expiry of the one-year fixed-term tenancy was not a material interest for the purpose of section 6 of the 1992 Act, because it was not a tenancy 'granted' for a period of six months or more.

It was concluded that as there was no resident at the end of the day in dispute, the tenant did not hold a material interest. At the end of the day, the property was an unoccupied property, and the owner held the material interest, thus, in respect of determining liability for that day under section 2 of the 1992 Act, it is assumed that this was the state of affairs for the full day and therefore, the appellant had correctly been made liable for this day under section 6(2)(f) of the Local Government Finance Act 1992.

Further information can be found here.

Decisions of the VTE - Council Tax Valuation

Separate council tax valuation list entry for staff rest room in a care home

The appeal concerned a care home that was in band H. Following a report from the billing authority, the listing officer (LO) entered a self-contained flat, within the care home, into the valuation list at band A. The list entry had been backdated by approximately 10 years. The LO believed it was a self-contained unit for the purposes of the Council Tax (Chargeable Dwellings) Order 1992.

The appellant was aggrieved because that part of the care home was used as staff break rooms and storage. It was used by employees to rest when their shift ended, as there was a lack of public transport in this rural area.

The panel had regard to the High Court case law and decided that the LO was correct to hold it as a self-contained unit as the test concerned the physical characteristics of the property rather than the intentions of the owner, or the use of the property. Having regard to this part of the care home, the panel found the following physical features:

- Independent access via a communal passageway
- A kitchen area with sink and worktop as well as kitchen cabinets
- A bathroom
- Two further rooms

Referring to the plan of the property, the panel found that it could quite easily draw a ring around the area in question, meaning that that part of the hereditament was reasonably suitable for use as separate accommodation.

To be continued on Page 9

Decisions of the VTE - Council Tax Valuation cont'd...

However, the panel decided that the LO was wrong to backdate the valuation list entry by 10 years after noting regulation 11 (6) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009. This stated the following:

> "(6) … where an alteration—
>
> (a) is made to correct an inaccuracy in a list; and
>
> (b) the inaccuracy was to show as one dwelling property which should have been treated as two or more dwellings by virtue of article 3 of the Council Tax (Chargeable Dwellings) Order 1992,
>
> ***the alteration shall have effect from the day on which the alteration is entered in the list."***

The decision can be read in full here.

Decisions of the VTE - Council Tax Valuation

Banding of a caravan

A council tax valuation appeal against a new caravan's entry into the valuation list at band B. In making his proposal, the appellant, in his capacity as the new taxpayer, made a proposal on the Listing Officer (LO) which sought the property's entry be reduced to band A. The respondent determined the proposal as not well founded. The appellant appealed to the Tribunal against that decision.

The appeal property was a mobile home of the Prestige Homeseeker Park & Leisure design 'Affinity'. The property was measured as 81.75m^2 (44ft x 20ft) and comprised of two bedrooms, one bathroom, one living room and one kitchen. It was situated on a residential development site southwest of Selby in North Yorkshire.

As part of his submission, the appellant relied upon how similar caravans on other caravan sites within North Yorkshire were banded to support his case. He contended that every caravan was in band A. The respondent argued that those caravans were older, smaller and selling for lower prices than the appeal property. However, no specific evidence was provided by the respondent pertaining to the caravans on the sites referred to by the appellant.

The respondent relied upon sales evidence relating to semi-detached bungalows. The panel rejected this evidence, as semi-detached bungalows were not comparable to a caravan.

The respondent also relied on six comparable caravans, which were smaller than the appeal property where the band B entries had been the subject of earlier tribunal panel decisions. The appeal property was located in a former mining village in North Yorkshire. The band B caravans relied on by the respondent were located in Devon, Kent, East Sussex and Eastbourne. The panel attached no weight to those comparable properties because of their remoteness from the appeal property.

Consequently, the evidence put forward by the appellant was far more reliable and supported his argument for band A. The appeal was therefore allowed.

The decision can be read in full here.

Decisions of the VTE - Council Tax Valuation

Laxmi Patel v Dawn Bunyan (LO) re-hearing

As reported in the last issue of ViP, the Vice President's decision to allow Mrs Patel's appeal was revoked and set aside by the High Court and the matter was remitted back to the tribunal for reconsideration.

Unfortunately for Mrs Patel, the President came to a different conclusion to the Vice President and dismissed her appeal.

The appellant's argument that the appeal property should be deleted from the list with effect from 28 August 2019 was undermined by the fact that it was occupied by resident tenants until they were evicted only the day before. If the property was capable of occupation on 27 August 2019, it was difficult to see what had changed within the next 24 hours which meant it ceased to be a hereditament. Although the initial Rentokil report, following a survey undertaken within six weeks of the tenants being evicted, highlighted the presence of damp, water penetration and fungal growth, the President was not convinced that the issues highlighted in the report had gone beyond what could be deemed to be a reasonable amount of repair works being required to render the property habitable as envisaged by Mr Justice Singh in *Wilson v Coll (LO)* [2011] EWHC 2824 Admin.

The President was prepared to accept that when the appellant's programme of repair works began on 23 September 2020, the issues relating to damp and fungal growth were worse than envisaged when the initial survey was undertaken on 7 October 2019. However, the likelihood was that issues relating to rising damp and fungal growth were bound to increase as the property was unoccupied for over 12 months before the works began.

Ultimately, the President found that as the property was capable of beneficial occupation at the relevant date 28 August 2019, it remained a hereditament and therefore a dwelling. Consequently, the entry could not be deleted from the list with effect from 28 August 2019 and the appeal was unsuccessful.

The full decision can be read here.

VALUATION TRIBUNAL SERVICE

We welcome any feedback.

Contact us:
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