Issue 68

May 2023

Valuation Tribunal Service

Valuation in Practice

News in brief

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Second Floor, 120 Leman Street, London E1 8EU.

We continue to encourage all communication with us by email for efficiency. Email us at appeals@valuationtribunal.gov.uk.

Consultation outcome of the Business Rates Review: technical consultation

The Department for Levelling Up, Housing and Communities (DLUHC) published the summary of responses to the Business Rates technical consultation on 15 March 2023, reconfirming government's commitment to the reforms announced at the conclusion of the 2020 Business Rates Review.

Consultation outcome of Digitalising Business Rates: connecting business rates and tax data

On 15 March 2023, the DLUHC published the summary of responses to the consultation connecting business rates information held locally by billing authorities in England and Wales with HM Revenue and Customs (HMRC) tax data.

New Bill to modernise Business Rates system

A Bill seeking to modernise the business rates system was introduced on 29 March 2023. This Non-Domestic Rating Bill introduces more frequent valuations, to take place every three years instead of the current five, meaning those with falling values will see their bills drop sooner. It will also provide new business rates improvement relief, so businesses making qualifying building improvements will not face higher business rates bills for 12 months.

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Open consultation - Consultation on disclosure: sharing information on business rate valuations

The Valuation Office Agency (VOA) has launched a consultation to hear from ratepayers, landlords, agents, and others, regarding plans to disclose more information on business rates valuations. Information on ways to respond can be found here.

Policy paper – Authorities with increased business rates retention arrangements: final local government finance settlement 2023 to 2024

On 6 February 2023, the DLUHC published a table and explanatory note setting out the arrangements for all authorities with increased business rates retention for the 2023 to 2024 financial year.

Business rates information letters

Recent publications from the DLUHC issued on 15 February 2023 are:

1/2023: confirmation of the multipliers for 2023 to 2024

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

Inside this issue:

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

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

Official Statistics - National non-domestic rates collected by councils in England: forecast 2023 to 2024

On 23 March 2023, the DLUHC published information on national non-domestic rates and associated information for the financial year 2023 to 2024.

Council tax rebate monitoring data: April – November 2022

In government's guidance to councils for delivering the council tax rebate, it was announced they would be collecting monthly monitoring data on the rebate. Councils have been asked to report the payments made for both the core rebate and discretionary fund as of the end of the prior month.

These tables provide the reported payments from councils in England as at the ends of April, May, June, July, August, September, October and November. Further information can be found here.

Council Tax statistics

On 23 March 2023, the DLUHC updated this collection that brings together all documents relating to Council Tax statistics. Please click here for further information.

National statistics - Council Tax levels set by local authorities in England 2023 to 2024

On 23 March 2023, the DLUHC published information on Council Tax levels set by local authorities in England and associated information for the financial year 2023 to 2024.

Council tax information letters

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

Our Hearing Programme: April to June 2023

The profile and volume of our remote hearing programme is:

Tribunal Type	April	May	June	TOTAL
Council tax	46	49	53	148
2017 Rating List	9	16	13	38
2010 Rating List	2	2	3	7
2010 Rating List/ Council Tax Mixed	1	0	0	1
Other	2 Completion Notices	1 Completion Notice	1 Transitional Certificate	4
TOTAL	**60**	**68**	**70**	**198**

Appeals stayed at the Valuation Tribunal for England (VTE) - May 2023

Below is our current 'stayed list':

Type of appeal	Reason for stay
2010 Rating Appeals where the VO, following the Supreme Court's judgment in *Cardtronics* undertook a list maintenance exercise deleting the ATM entries and increasing retrospectively the RV of the host store. The appellant argues that regulation 14 (7) of the NDR Regulations prevents a retrospective increase.	Joint application by parties for preliminary effective date issue to be treated as complex. Other related appeals identified have been stayed. Test case relating to 108 Bath Road, Reading – Tesco Stores Ltd v Bunyan (VO) to be heard by the President on 3 July 2023

Decisions of the Upper Tribunal

Dawn Bunyan (VO) and Acenden Limited [2023] UKUT 17 (LC)

The Valuation Officer (VO) appealed a Valuation Tribunal for England (VTE) decision to reduce the assessment of Ascot House from £1.1 million to £875,500 RV. Ascot House was a headquarters type office building situated in Maidenhead. The main issue in dispute between the parties was whether or not the value of the offices should be increased to reflect a Category B fit out.

Office properties are normally completed by the developer to a **Category A** specification. A Category A fit out will often include raised floors, suspended ceilings, basic mechanical and electrical systems, including lighting, air conditioning, a fire detection system and basic internal finishes. When the property is let, a tenant would then fit the property out to its bespoke requirements by fitting partitioning, installing a kitchen and tea points, additional IT infrastructure, re-routing air conditioning and power points depending on its preferred lay out to achieve **Category B** fit out.

The respondent ratepayer argued that any expenditure incurred by a tenant in fitting out the offices to Category B standard would have no effect on value.

The VO argued that, when substantial sums are spent on fitting out, this must increase the property's value.

In this case, it was agreed that a total of £3.4 million was spent on the building, including furniture and other non-rateable items. It was agreed that £1.6 million of this expenditure was on alterations which would be capable of benefiting other occupiers.

The Upper Tribunal (UT) approached its valuation exercise by adjusting the headline rent of £1,123,375 per annum for a lease term of 11 years with effect from 1 September 2015. The rent reflected the property to Category A specification. The rent required considerable adjustment as there was a 15 months' rent-free period at the outset of the tenancy and after that only 50% of the headline rent was payable until 1 August 2017 when the full amount was payable. There was a break clause after six years which if invoked by the tenant would allow it to vacate the property without penalty. Having heard competing submissions on the point, the UT adopted Mr Penfold's valuation approach which had calculated the adjusted rent to the break clause arriving at a figure of £166 per m^2.

Having had regard to indirect rental and assessment evidence relating to comparable properties, the UT determined that the net adjusted rent sat within the tone of rental values for offices let to Category A fit out albeit towards the lower end. What was also apparent was that the rents for offices let as Category B fit outs, when adjusted to the rating hypothesis, devalued to figures well in excess of £166 per m^2 and the basis determined by the VTE of £180 per m^2 which effectively meant that in the ratepayer's case, there was no value differential between a Category A and B fit out was flawed.

To be continued on Page 4

Decisions of the Upper Tribunal cont'd...

The parties' experts put forward different Category B valuations. For the ratepayer, Mr Penfold's valuation was £880,000 RV which devalued to £186 per m^2. Whilst for the VO Mr Bailey's valuation was £1,119,000 RV which devalued to around £237 per m^2. Having regard to the market evidence from Category B lets, the UT determined that Mr Penfold's valuation was too low and Mr Bailey's was too high. Instead, it determined a basis of £212 per m^2 for the appeal property, being a more realistic figure in tune with the market, in arriving at an increased assessment of £1 million. The VO's appeal was therefore allowed.

Decisions of the Upper Tribunal

Arma Hotels Ltd and Dawn Bunyan (VO) [2013] UKUT 00003 (LC)

The Valuation Tribunal for England (VTE) decision that the Valuation Officer's (VO) existing entry of £31,000 RV for the hotel was correct was appealed by the ratepayer.

The VO had originally assessed the property at £59,000 RV but reduced it to £54,000, following completion of the appellant's check. After the appellant challenged the assessment, the VO further reduced the entry to £31,000 RV which was appealed to the VTE.

The VO based the assessment on a double bed unit (DBU) tone of value of £2,400, contending that the revised assessment was supported by rental and comparable evidence. In the context of the 45 hotels in Harrow and Brent, the appeal property had one of the lowest assessments, in terms of DBU rate. The Upper Tribunal (UT) was not, however, satisfied that the VO's adoptive tone of value was established, as only recently had a review been carried out on a number of assessments, some of which were only altered in 2021 and 2022. Therefore, the majority of assessments were untested and merely reflected the VO's opinion of value.

The UT upheld the appellant's argument that its hotel should be valued on a shortened receipts basis. The VO had argued against that because the previous occupier went into receivership on 31 August 2014 and therefore reliable accounting information from the antecedent valuation date (AVD) was not available. In accepting the VO's point that the evidence to establish the fair maintainable trade (FMT) at the AVD was not strong, the UT looked at the previous occupier's accounts and making suitable adjustments to reflect its refurbished and improved state (albeit with less DBUs), together with the improvement in its locality, determined a FMT of £155,000 or £12,000 per DBU. Having regard to Scale A of the Valuation Scheme for provincial hotels, the UT's valuation was FMT £155,000 x 10.5% = £16,275 which was rounded down to £16,250 RV and therefore the appeal was allowed.

Consolidated Practice Statement (CPS)

Please note: the CPS was recently amended and changes were effective from 1 April 2023. The CPS can be found on the VTS website under VTE guidance.

Decisions of the Upper Tribunal

SSE Plc and Jo Moore (VO) [2023] UKUT 24 (LC)

An appeal against a Valuation Tribunal for England (VTE) decision that the mothballing of a power station, Keadby Power Station during mothballing works between April and September 2013, did not constitute a material change of circumstances or change of use.

The appellant's decision to mothball the site was in response to a reduction in spark margins, being the difference between the wholesale price of electricity and gas, which had reduced substantially. As a result, old Combined Cycle Gas Turbine power stations like Keadby became uneconomical to run in such adverse market conditions. Until the market situation improved, all electricity generation activity ceased whilst skeleton staff remained on site to preserve the power station for future use. In late 2014, the appellant began the process for bringing the power station back into use and it became fully operational in November 2015 and commercial activity began the following month.

The appellant relied on two arguments: (1) Its primary argument was that a mothballed power station was a different mode or category of use to an active power station; and (2) throughout the mothballing period, the power station was incapable of beneficial occupation.

Valuations in the alternative had been agreed. If the appellant was successful in either of its arguments the rateable value (RV) would have been reduced to £534,000 with effect from 1 April 2013. However, if it was unsuccessful, the entry would remain at £5,340,000 RV.

In its judgment, the Upper Tribunal (UT) referred to a number of authorities, including its previous decisions in relation to the Royal Albert Memorial Museum in Exeter and the Wigan football club appeals. Both the earlier cases supported a broad approach to the identification of the mode or category of occupation of a particular hereditament, avoiding sub-divisions which were not based upon any real difference in use. Moreover, in *Scottish & Newcastle* (the Milton Keynes case) it was the principal characteristics of the actual use that were relevant rather than the particular occupation of the individual occupier.

With this in mind, in the case of Keadby Power Station, there had been no material change of circumstances on the material day. The mothballing process did not therefore constitute a change of use. On the material day, it remained a power station and was capable of being occupied as such. The appeal was therefore dismissed and the VTE decision stands.

Decisions of the Upper Tribunal

Ludgate House Ltd v Ricketts (VO) & LB of Southwark (BA) [2023] UKUT 36 (LC)

A large office block where the owner, Ludgate House Limited (LHL) entered into an agreement with VPS (UK) Ltd (VPS) for the provision of property guardians' services to secure the premises against trespassers and damage pending the property's demolition. On the material day, 1 July 2015, four property guardians were in occupation of Ludgate House.

On 4 December 2020, the Court of Appeal overturned the Upper Tribunal's (UT) first decision and reinstated the Valuation Tribunal for England's (VTE) decision that Ludgate House was a single hereditament. Agreeing with the VTE's decision, the Court of Appeal held that LHL was in paramount occupation of the whole of the property and that the property guardians did not have exclusive possession of any part of it (applying the Supreme Court's judgment in *Cardtronics*). After permission to appeal to the Supreme Court was refused, the matter was remitted back to the UT to determine the resulting valuation issues on that basis. The UT had to consider three issues: (1) the valuation approach, (2) the valuation figure, and (3) the effective date.

Click here to sign up to be notified of when the Consolidated Practice Statement is updated.

To be continued on Page 6

Decisions of the Upper Tribunal cont'd...

In arguments on the valuation approach issue, the Valuation Officer (VO) and billing authority (BA) contended that the effect of the Court of Appeal's judgment was that Ludgate House was wholly non-domestic (as was the VTE's judgment). However, agreeing with LHL, the UT concluded that Ludgate House was in fact a composite hereditament as, although it was one hereditament in single rateable occupation, parts of the property were being "*used wholly for the purpose of living accommodation*". However, the UT also held that the mode and category of the non-domestic part should not be restricted to a "*building for occupation by property guardians*", but how it was on the material day, an "*office building subject to temporary occupation by property guardians*". The hypothetical tenant therefore would have all the same rights that existed in reality, pursuant to the agreement with VPS and the licences granted to the property guardians to terminate the scheme or to consolidate their occupation of Ludgate House to make most efficient use of the space.

Turning to the valuation figure, the UT was presented with agreed valuation figures by the parties' expert witnesses. It was agreed that if the property guardians remained on the second, eighth and ninth floors of Ludgate House, the rateable value would be £4,000,000, and if they were consolidated into a single location the rateable value would be £4,100,000. Given the UT's conclusions as to the valuation approach, and the restriction upon the Tribunal increasing the rateable value after the closure of the 2010 rating list, the rateable value of Ludgate House remains at the £3,390,000 as re-entered by the VO.

Before concluding, the UT also had to determine the arguments as to the effective date of the alteration. The VO had re-entered Ludgate House into the 2010 rating list on 24 May 2017 as a composite hereditament with effect 25 June 2015. The UT initially identified that, as the VO's re-entry of Ludgate House was not made to give effect to a proposal and accordingly fell to take effect from the day on which the circumstances giving rise to the alteration first occurred, 1 July 2015 as was determined by the VTE.

However, LHL also contended that it should be afforded the protection of regulation 14(7) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]. This regulation applies where an alteration is made to correct an inaccuracy in a previous alteration by the VO which increases the rateable value. The regulation restricts the effective date to the date of the alteration, thereby preventing retrospective increases in the rateable value consequent to the VO's error in a previous alteration. If applicable in this case, it would have the effect that Ludgate House could not be re-entered into the 2010 rating list as the VO's alterations took place after the list had closed. LHL also contended that regulation 14(7) should be interpreted in a way that was compatible with rights to protection of property contained at Article 1 of the First Protocol to the European Convention of Human Rights (and at Part II of Schedule 1 to the Human Rights Act 1998). This contention was made on the basis that the VO's mistake in removing Ludgate House from the rating list in November 2015 and that the re-entry retrospectively increases LHL's rates liability. But after undertaking a detailed analysis of relevant law and case law, the UT disagreed holding that the statutory construction of regulation 14(7) did not bite when entering a new hereditament into the rating list. The UT concluded, again agreeing with the VTE, that the present case is not one of state error but is more accurately characterised as the simple working of the statutory rating scheme.

In conclusion, the UT confirmed the VTE's decision that Ludgate House falls to be shown in the 2010 rating list from 1 July 2015 at a rateable value of £3,390,000.

The Upper Tribunal's full judgment can be read here.

Decision of the VTE - Non-Domestic Rating 2010

Waste Recycling Plant and Premises

A mechanical biological treatment facility which had been built by UBB, a joint venture company, to process Essex County Council's household waste.

Under the terms of the 25 years' contract, the facility was required to meet strict performance targets relating to such matters as recycling, converting waste into solid fuel and the reduction in the amount going to landfill. However, due to the flaws in its design, the main flaw being that the bio halls were half the size that was required to process the amount of waste, as required by the contract, the facility was never in a position to meet the required performance targets. As a result, Essex County Council began proceedings to terminate the contract, which when successful resulted in the cessation of use of the facility pending its demolition.

The appellant contended that the appeal property was not a hereditament. If it did not succeed in that argument, the appellant sought a nominal entry. The billing authority (BA) had made its own appeal to protect its interests, as at the time the proposal was made, the Valuation Officer (VO) had not entered the assessment into the 2010 rating list. The VO defended his existing assessment of £1,150,000 RV.

The BA's expert witness conceded that, the scope of the proposal giving rise to its appeal meant that, its appeal could not succeed. This was because the BA's proposal sought to enter the appeal property into the rating list as a new hereditament with effect from a date later than when the VO's retrospective assessment took effect.

Both UBB and Essex County Council had been before the High Court and the latter was successful in suing the former for breach of contract. As the High Court judgment was lengthy the factual background of the case was known, the Valuation Tribunal for England (VTE) Vice President did not have to speculate as to the facts.

The appellant's argument that a hereditament did not exist was rejected because at the material date, the facility was in use and was processing large amounts of waste.

The VTE Vice President found that in bidding for the contract, the appellant had made promises and agreed contractual performance targets which it simply could not possibly deliver. Even though the facility was the largest of its kind in the UK, when it was built, the bio halls were not large enough to process the amount of waste that the appellant was contractually obliged to achieve. It was determined that the appeal property was a hereditament as it was being occupied and used for the purpose for which it was built. In terms of the valuation exercise, the facility fell to be valued by the contractor's basis.

The two appeals were dismissed and the VO's valuation was upheld.

The VTE's decision has now been appealed to the Upper Tribunal.

The full decision can be read here.

Decisions of the VTE - Non-Domestic Rating 2017

LGFA 1988 Schedule 5 exemption

A shop and premises occupied by the appellants and located in Fineshade Wood, operating as a bicycle hire, sales and service shop known as Grounds Cycle Centre. The appellant sought an exemption of the basis it was ancillary to a park.

The panel considered the authoritative guidance in *Lancashire County Council v Lord (VO)* [1987] RA 153 and *Sheffield Corporation v Tranter (VO)* [1957] 2 All ER 583.

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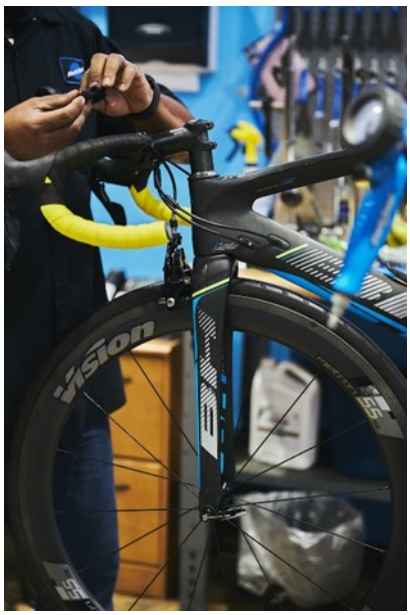
Decisions of the VTE - Non-Domestic Rating 2017 cont'd...

The appellants contended that the property was an essential and necessary amenity to Fineshade Wood which was primarily used as a bike hire service for visitors to the park. They referred to *Tranter* and considered that the shop did not have a distinct status from the park. They argued that it was an essential amenity in line with *Lord*.

The appellants accepted that the bicycle hire store also offered the services of bike repair and sold bikes. However, they argued that they sold relatively few bikes, and the repair service was primarily for the hire bikes.

The respondent contended that the bicycle store provided additional purposes that were of no relevance to the park. The provision of bike sales and servicing was considered to be a significant function of the hereditament. The respondent stated that the store offered a wide range of bikes for sale and bikes were displayed for sale at the hereditament. Bikes could also be purchased through the website on a click and collect basis.



The panel was not satisfied that the connection between the subject hereditament and Fineshade Wood was so inextricably linked that it existed wholly as one. However, it found that the subject hereditament did not exist solely to serve the park. The appellants' website and the store layout clearly demonstrated that bike sales and a repair service were available to the general public and not confined to visitors to Fineshade Wood. The subject hereditament was not an integral part of a visit to the park, as visitors could utilise their privately owned bikes on the trails of the park.

It was clear to the panel that the subject hereditament did not just complement Fineshade Wood, in line with *Lord*, but had a distinct status from the park and was not therefore exempt. The appeal was therefore dismissed.

Read the full decision here.

Decisions of the VTE - Non-Domestic Rating 2017

Fitness Centre and Premises

The appeal property was on the lower ground floor of a mixed-use building, Salisbury House, with office accommodation on the upper floors. Its description was amended to Fitness Centre and Premises to reflect its mode or category of occupation at the material day. The appellant's proposed valuation was based on £160 per m^2, the maximum value applicable to a band 4 fitness centre within the Valuation Office Agency's (VOA) Rating Manual. Reliance was also placed on comparable properties in the same mode or category of occupation. He placed little weight to the property's rent as it was set two years prior to the antecedent valuation date (AVD).

The current entry reflected an adjusted rate of £267.50 per m^2 on an office basis. The Valuation Officer (VO) argued this was reasonable as the property was in an office location. To put this in context, when the appellants vacated the property, it was advertised as office space.

The panel considered the property should not be valued according to the VOA Manual. It found little assistance from the appellant's comparable properties, which had assessments supported by local rental evidence.

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

Whilst the panel acknowledged that the appeal property's mode or category of occupation was a fitness centre, the actual rent and office rents from the same building formed the best evidence. Although it was a fitness centre, the appeal property occupied a building containing office space and its own rent suggested that its value as a fitness centre was not too dissimilar to office values. In addition, if it was vacant and to let, it could be viewed as office space. The appeal was dismissed.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Disabled Band Reduction: appeal allowed for additional bathroom

The appeal concerned whether the appellant was entitled to a disabled band reduction (DBR) on the grounds that she had extended her living room and/or had an additional bathroom.

The billing authority (BA) provided the following reasons for refusing DBR:

- With reference to the living room extension, increasing the floor space in a room was not sufficient grounds to qualify for DBR. This was the living room within the property, and it was not required predominantly to meet the appellant's needs.
- With reference to the additional bathroom, the appellant had purchased the appeal property as a bungalow and subsequently extended upwards to provide an additional bathroom and bedrooms on the first floor. The bathroom on the ground floor was the existing bathroom within the property.
- Paragraphs 7 and 15 of *Hanson v Middlesborough Borough Council* [2006] EWHC 1700 (Admin).

The panel had regard to regulation 3 of the Council Tax (Reductions for Disabilities) Regulations 1992 (as amended). There was no dispute that the appellant was a qualifying individual. The application had been made on the basis of regulation (3)(1)(a)(i) for the extension to the living room and regulation 3(1)(a)(ii) for the additional bathroom.

The panel determined that regulation 3(1)(a)(i) was not applicable, with reference to *Howell Williams v Wirral Borough Council* [1981] CA. It was held in this case that a living room was not essential or of major importance to the well-being of the respondent ratepayer by reason of the nature and extent of her disability, since she needed the living room in the way that anybody, whether disabled or not, needed a living room as part of ordinary life.

The panel determined that the appellant was entitled to reduction under regulation 3(1)(a)(ii). It was clear to the panel that in its reference to paragraph 7 of the *Hanson* judgement, the BA had relied on the original Valuation Tribunal for England (VTE) decision which had been overturned. The High Court had in fact allowed the appeal and held that the Tribunal had misdirected itself in law in three respects.

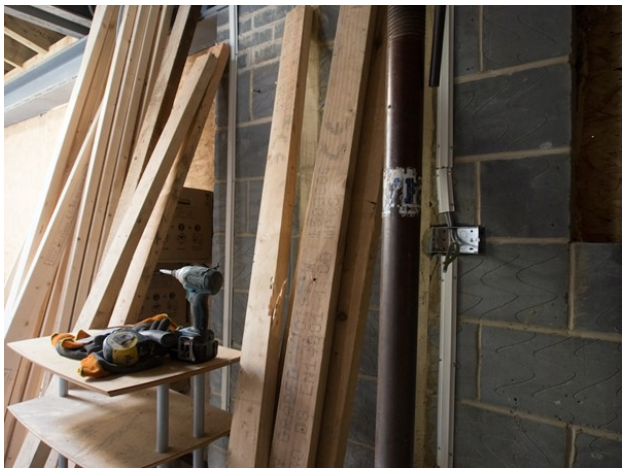
It was also apparent that the BA had focused on the fact that the bathroom used by the appellant was the original bathroom on the ground floor. With reference to regulation 3(1)(a)(ii) the panel found no requirement for the bathroom to have been added. In consideration of the nature and extent of her disability, the panel was satisfied that the bathroom was of major importance to the appellant's well-being. The appeal was allowed.

Click here to read the full decision.

Decisions of the VTE - Council Tax Liability

Class G exemption

An Improvement Notice had been served by the Housing Standards team of the Council on the owner of a rented first floor flat in Derby in November 2018. A variety of works were required to be undertaken when the property next became unoccupied and were required to be finished before it could again be let.



The property became unoccupied and unfurnished on 17 November 2020 and the Council awarded a 100% discount until 14 December 2020 under its vacant property policy.

The owner requested an exemption from council tax under Class G until 11 September 2021 on the grounds that the Housing Standards team had stated that it would not have been possible for the property to be occupied until a new kitchen was fitted and a bath was installed.

However, the Council refused the request as no Prohibition Order had been served on the property and therefore the requirements of Class G had not been met.

The panel noted that the Housing Standards team had not issued a Prohibition Order, only a Notice requiring works to be undertaken to bring the property up to a suitable standard to be let. Consequently, the Class G exemption could not be applied and the appeal was therefore dismissed.

The decision can be read in full here.

Decisions of the VTE - Council Tax Liability

Class N exemption

The appeal was lodged by the appellant against the billing authority's (BA) decision not to award a Class N exemption, as she was the only resident at the property during the period in dispute and claimed to be a full-time student. The appellant had chosen to study multiple modules of her course, meaning that she was studying at a higher intensity than was usually required. She claimed that the total number of hours studied exceeded the 21 hours per week required by the legislation and that she had been studying for more than 24 weeks. She asked the panel to grant the exemption for a calendar year, 6 January 2021 to 6 January 2022.

The definition of a student for council tax purposes is found in the Council Tax (Discount Disregards) Order 1992 (SI 1992/548). The definition states in Schedule 1, Part 2 (as far as is relevant to this appeal) –

> *"4. (1) A full-time course of education is, subject to subparagraphs (2) and (3), one—*
> *(a) which subsists for at least one academic year of the educational establishment concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;*
> *(b) which persons undertaking it are normally required by the educational establishment concerned to undertake periods of study, tuition or work experience (whether at premises of the establishment or otherwise)—*
> *(i) of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and*
> *(ii) which taken together amount in each such academic or calendar year to an average of at least 21 hours a week."*

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Decisions of the VTE - Council Tax Liability contd...

After considering the legislation, the panel found that all parts of the test must be met and, before considering the number of hours and weeks studied, it must have regard to the requirement for the course to subsist for at least one academic year or, failing that, a calendar year. This position was supported by the High Court decision *Wirral Borough Council v Farthing* [2008] EWHC 1919. On the evidence presented, the panel was unable to conclude that the course studied by the appellant met the criteria for the duration of the course. It appeared that the course was flexible in nature and students could study at an intensity and duration of their choosing. The appeal was therefore dismissed.

Read the decision here.

Decisions of the VTE - Council Tax Liability

The importance of establishing who holds a material interest when determining liability for council tax

The appeal dwelling had been leased by the respondent billing authority (BA) from the appellant for the purposes of temporarily housing persons who would otherwise be homeless. The lease was for a fixed term of two years which commenced on 10 April 2017. The lease did not contain any provision for what should happen upon its expiry and, when it did expire in April 2019 (without the parties being able to agree a renewal and with the respondent BA continuing to pay rent), the lease converted to a periodic monthly tenancy.

On 10 July 2020 the respondent BA attempted to surrender the dwelling back to the appellant by returning the keys to her. However, this was swiftly rejected by the appellant because the dwelling required remedial work to be undertaken and completed to a standard she considered to be satisfactory. The appellant did accept surrender on 11 February 2021.

The period in dispute was therefore 10 July 2020 to 11 February 2021 (a period during which the BA had not used the dwelling to house anyone).

It was clear that the appellant was relying upon the contractual arrangement between her and the BA; because the tenancy remained in place, she asserted that the BA was also liable for the payment of council tax from 10 July 2020 to 11 February 2021. During the remote hearing she argued that the BA was liable in accordance with Section 6(2)(b) of the Local Government Finance Act 1992 ('the Act') as the resident owner of the dwelling. However, the BA was not resident.

Therefore, liability must fall upon the 'owner' who holds a 'material interest' in respect of the dwelling in accordance with Sections 6(5) and 6(6) of the Act.

It was made clear in *Macattram v London Borough of Camden* [2012] EWHC 1033 (Admin) that a periodic tenancy is *not* a continuation of the fixed term periodic tenancy. Whilst the contractual status of the relationship between the appellant and the respondent BA did not change the relationship between the parties, it did have significant implication for council tax liability. This was because the periodic tenancy did not confer a material interest upon the respondent BA because it had not been granted for a period of six months or more. Consequently, the appellant was held to be liable for the period in dispute despite the fact she was receiving rent from the respondent BA.

Practitioners should note the key difference between the *Macattram* case cited above and *Leeds City Council v Broadley* [2016] EWCA Civ 1213. In the *Leeds* case it was held that where a tenancy agreement is granted for a fixed term of six months or

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Decisions of the VTE - Council Tax Liability contd...

more and contains express provision for the tenancy to continue after the expiry of the fixed term, then the tenant retains a 'material interest'.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Non-resident owner disputes liability

The appeal concerned liability for council tax on the appeal property which was an annexe within the grounds of the appellant's home. The disputed liability related to the period of time when the annexe was occupied by the appellant's goddaughter.

The billing authority (BA) encountered difficulty in collecting council tax from the goddaughter, so it decided that the appellant should be the liable person for council tax on the annexe.

The BA granted the appellant a single person discount, as it accepted that there was only one person occupying the annexe. The appellant argued that she was not liable for council tax on the annexe, as another person was resident in it who was her tenant.

The BA argued that the rent passing under the tenancy was inclusive of council tax. However, the panel decided this was a contractual matter which has no bearing on the matter of liability. It was the provisions of Section 6 of the Local Government Finance Act 1992 which determined the person who is liable for council tax in this case.

The panel found that the legislation was clear, the person who fell within the highest paragraph on the hierarchy of liability is the person liable for the council tax. In accordance with Section 6(2) a resident is above an owner on the hierarchy of liability and therefore the appellant is not liable for council tax on the appeal property during the period in dispute. The appeal was allowed.

Read the decision here.

Decisions of the VTE - Council Tax Valuation

Appeal against Listing Officer (LO) not to reduce valuation band

The appellant bought the property on 3 March 2022 and sought a reduction from band F to D on the grounds that it was only a small bungalow and should not be in a higher band than the larger four bedroomed properties which were nearby.

The Listing Officer (LO) contended that the floor area of the property was greater than other bungalows and that the sales evidence, from on or around the antecedent valuation date (AVD) of 1 April 1991 supported a valuation in band F.

However, the panel found that the appeal property did not compare favourably with other bungalows, as it was a large garage conversion and not purpose built from new.

Moreover, its upstairs space was configured in such a way that it would have had a negative effect on its market value. The stairs opened into one bedroom through which was the second bedroom, through which was the only bathroom in the property.

The panel therefore found that the valuation evidence put forward did not support band F and the appeal was allowed in part with the band being reduced to band E.

Read the decision in full here.

Decisions of the VTE - Council Tax Valuation

Self-contained unit – capable of use as separate living accommodation?

This appeal concerned a property that had been extended and deemed to be two self-contained units by the Listing Officer (LO) at the Valuation Office Agency (VOA).

The appellant had obtained planning permission from the council to carry out a two-storey side extension at the property. The plans indicated that an extra living room and utility room would be added on the ground floor, and a master bedroom, dressing room, and ensuite added to the first floor. There would be an external door on the ground floor at the side of the property, an open lobby area that connected the extension on the ground floor to the existing house, and a connecting door on the first floor between the dressing room and existing landing.

The appellant stated that due to financial and time constraints, the extension work was being completed in parts.

The panel was provided with photographs and an updated floorplan by the appellant to demonstrate what had actually been built.

What was listed as a utility room, appeared to the panel to be a fully fitted kitchen, there was no connecting door on the first floor between the extension and the original house, and a staircase had been installed within the extension that was not referred to in the planning documents.

It was these deviations to the planning approval that led the panel to determine the two-storey side extension was capable of use as separate living accommodation and therefore the appeal property was a single hereditament comprised of two self-contained units. The appeal was dismissed.

Read the full decision here.

VALUATION TRIBUNAL SERVICE

We welcome any feedback.

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Valuation in Practice is published quarterly; the next issue will be in August 2023