Issue 70

November 2023

Valuation Tribunal Service

Valuation in Practice

News in brief

Want to write to us?

Second Floor, 120 Leman Street, London E1 8EU.
Email us at appeals@valuationtribunal.gov.uk.

Non-Domestic Rating Bill

The Non-Domestic Rating Bill's third reading took place on 16 October 2023 and no further amendments were made. The Bill will now go to the Commons for consideration of Lords amendments. Read more about the Bill's developments here.

Open consultation: Technical adjustments to the Business Rates Retention System in response to the Non-Domestic Rating Bill

The Department of Levelling Up, Housing and Communities (DLUHC) launched an open consultation on 28 September 2023 seeking views on proposals to make technical amendments to how Government administer the Business Rates Retention System. This consultation closes at 11:59pm on 2 November 2023; further information can be found here.

Closed consultation: Business rates avoidance and evasion

On 6 July 2023, Government launched a consultation on measures to reform empty property relief, and to gather evidence on wider avoidance and evasion practices within the business rates system. This consultation closed on 28 September 2023, see here for more details.

Official statistics – Non-Domestic Rating: challenges and changes, 2017 and 2023 rating lists, June 2023

Valuation Office Agency (VOA) statistics on checks, challenges and assessment reviews against the 2017 and 2023 local rating lists at 30 June 2023 can be found here.

You can sign up to receive an alert when a new issue of Valuation in Practice is published. Click here to join over 2,200 other subscribers

Business rates: information letters

See here for the latest business rates information letters from DLUHC covering the Non-Domestic Rating Bill.

Rating Manual section 6: check, challenge, appeal and proposals – updated

The VOA has made changes to Part 8C: Challenge stage of the *Rating Manual*. Paragraphs 5.5 (Additional Time and re-submission attempts) and 5.6 (Restriction applying to incomplete proposals relating to external MCCs only) have been changed. Read more about the changes here.

Official statistics – Council tax: challenges and changes in England and Wales, March 2023

Latest statistics on challenges against and changes made to the England and Wales council tax valuation lists between 1 April 1993 and 31 March 2023 can be found here.

Inside this issue:

Official statistics – Council tax: stock of properties, 2023

Read here the VOA's published statistics on the stock of domestic properties by council tax band and property attributes in England and Wales.

Our October to December 2023 Hearing Programme

The profile and volume of our remote hearing programme is:

Tribunal Type	October	November	December	TOTAL
Council Tax	56 (1 x Council Tax Invalidity)	56	32	144
2017 Rating List	12	15 (1 x complex case)	9	36
2010 Rating List	3	0	0	3
2010 Rating List/ Council Tax Mixed	3	3	2	8
Completion Notices	2	1	1	4
TOTAL	**76**	**75**	**44**	**195**

Appeals stayed at the Valuation Tribunal for England (VTE) – October 2023

There are currently no stayed appeals registered with the Valuation Tribunal for England.

Decisions of the VTE – Non-Domestic Rating 2017

Car Parking Spaces

The appeal concerned the Valuation Officer's (VO) refusal to delete the entry for two contiguous parking spaces and create a new entry encompassing the whole car park.

The appellant submitted that the car parking spaces were contiguous and the vehicular access space providing access could be ignored because the spaces were all contained within a walled area.

The panel considered the status of the car park as a mixed-use parking area and whether the spaces were in the rateable occupation of one taxpayer.

After examining the facts, the panel did not find the appellant had demonstrated successfully that the spaces assigned to owners of the nearby flats had been reverted to the appellant company as owner of the car park and there continued to be a mix of Pay and Display plus private parking spaces on the material day.

The spaces did not pass the contiguity test and the panel held that the VO was correct to maintain separate entries for the spaces.

Click here to read the full decision.

Decisions of the VTE – Non-Domestic Rating 2017

Are egg storage and packing buildings agricultural buildings?

This appeal concerns whether three egg storage and packing buildings, located on Chequer Tree Farm in Cranbrook, were agricultural buildings, and thus exempt from rating.

These buildings handle approximately 3.15 million eggs per week, but no eggs are produced at Chequer Tree Farm. Of those eggs processed in the buildings, approximately 55% are produced by four other farms occupied by the appellant. The remaining 45% are produced by 15 farms that are not in the appellant's occupation, and which are geographically spread from Devon to Derbyshire.

The appellant's case that egg buildings were agricultural buildings was made entirely upon paragraph 3(a) of Schedule 5 to the Local Government Finance Act 1988: that they are *occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land.* It was contended by the appellant's counsel that these three buildings formed part of a single agricultural unit with the rest of Chequer Tree Farm. The appellant sought to create a link between Chequer Tree Farm's barley growing operation, its milling into chicken feed, the offsite production of eggs, and then subsequently the packaging of those eggs in the buildings.

However, the President upheld the respondent's argument that that was not the correct approach. It would require looking outside of the proposed single agricultural unit to create functional unity between the land and the buildings. In considering whether the buildings are "*occupied together with*" the land, the President found that the buildings and the land were not "*worked together so as to form one agricultural unit*", being the authoritative test from *Farmer (VO) v Buxted Poultry Ltd* [1993] AC 369. The President found that other than being a part of the same business enterprise, there is no "working together" of the agricultural land and the egg buildings. In fact, the buildings could be located anywhere, it just so happens that the appellant has utilised the buildings on Chequer Tree Farm.

The President also rejected an argument by the appellant's counsel that an amendment to paragraph 3(a) of Schedule 5 to the 1988 Act affected the application of the test. The President held, taking account of the judgment in *Senova v Sykes (Valuation Officer)* [2019] UKUT 275 (LC), that the requirement for the buildings to be "occupied together with" the land was unchanged by the Local Government Act 2003 and that the test from Buxted Poultry remained authoritative.

The decision has now been further appealed to the Upper Tribunal (Lands Chamber).

The decision can be found here.

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 VTE - Council Tax Liability

Class V exemption

The appellant was a tenant and resident at the subject dwelling with his son. The appellant requested an exemption from council tax as he was a representative of the European Bank of Reconstruction and Development (EBRD) which was under the provisions of the International Organisations Act 1968. The respondent determined that no exemption from council tax was applicable as it did not consider the required criteria was satisfied.

The appellant had provided the respondent with a letter from his employer which stated his position was the Alternate Director for Spain/Mexico with effect from 1 October 2021 and that the organisation fell under the provisions of the International Organisations Act 1968.

The respondent considered that the appellant was seeking to be recognised as a foreign diplomat and cited the Council Tax (Additional Provisions for Discount Disregards) 1992. It did not consider that sufficient evidence had been provided to treat the appellant as a diplomat for the purposes of council tax.

The panel held that prior to the consideration of any discounts to council tax or determination of disregarded persons, it must first be ascertained whether the subject dwelling itself was exempt from council tax. Dwellings which are exempt from council tax are not chargeable dwellings. The panel found that Class V in Article 3 of the Council Tax (Exempt Dwellings) Order 1992 (as amended) (SI No 1992/558) was the most appropriate class to consider eligibility given the appellant's circumstances.

The panel was satisfied that the letter provided by the appellant's employer confirmed that the EBRD was specified in an Order in Council made under section 1(2) of the International Organisations Act 1968. The panel was satisfied that the appellant was within the class of persons mentioned in section 1(3) of the International Organisations Act 1968 in his capacity as an employee of the EBRD as Alternate Director for Spain/Mexico. The appellant confirmed he was not a British National, or a permanent resident of the United Kingdom, and he had no other dwelling in the United Kingdom which was his main residence.

Consequently, the panel determined that the criteria for a Class V exemption at the subject dwelling was satisfied.

In view of the foregoing, the appeal was allowed.

Read the full decision here.

Decisions of the VTE - Council Tax Liability

Backdating liability

The appeal concerned whether the billing authority (BA) was correct in retrospectively issuing council tax demands in 2017, for a period of liability from December 2008 to November 2018.

The appellant was the owner of the appeal property, and his mother was living there alone. In December 2008 the appellant

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

To be continued on Page 5

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

moved into the property with his mother to provide full time care for her.

The appellant's mother applied for housing benefit in 2007, and this was denied because it was established that her son owned the property. The benefits department within the BA was therefore aware that the appellant was the owner of the property.

When a family member advised that the appellant had moved into the appeal property, the benefits department incorrectly held the appellant as a non-dependant relative on the mother's council tax reduction claim. At this point, the benefits department failed to notice that the appellant was the freehold owner of the property.

In March 2017, the benefits department identified that an error had been made, and the council tax team revised the council tax liability to hold the appellant liable at the appeal property from December 2008.

The appellant had been in receipt of benefits throughout the whole period. When the demand notices were issued, it was too late for him to claim council tax reduction, as the council tax reduction scheme only allowed backdated claims of one month from application.

There was no dispute that the appellant was resident during the period in question, or that he was the owner of the property. The dispute centred around whether the BA were restricted by the Limitation Act 1980.

The panel referred to *L.M v Bradford Metropolitan Borough Council* [VTE, 4705M214233/254C, 18 October 2018] because this related to backdated liability and provided some clarification.

The BA wrongly argued that the date that it became aware that the appellant was the resident freeholder was in March 2017, despite the fact that its benefits department had been aware of this fact since 2007. The panel therefore determined that the BA was restricted to issuing demand notices to the appellant to 6 years from the date of issue.

You can read the full decision here.

Decisions of the VTE - Council Tax Liability

Class D discount

The appeal concerned the billing authority's (BA) refusal to award a Class D discount for the subject property having undergone or undergoing major repair work or structural alteration.

The appellant had referred to works carried out to identify and repair a leak at the flat, but the panel found that this work was carried out during a period when the appellant was not liable to pay the council tax, as his tenant was held liable.

It concluded that section 16 of the Local Government Finance Act

To be continued on Page 6

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

1992 only permits an appeal by the person liable to pay the council tax so it could not consider works carried out while the appellant was not the liable person.

The evidence supplied by the appellant during the period of his liability was considered by the panel, but it concluded the works were more akin to redecoration and general repairs than major repair works or structural alteration.

The panel held that the BA was correct to refuse the discount and the appeal was dismissed.

Click here for the full decision.

Decisions of the VTE - Council Tax Liability

Sole or main residence

The appellant felt that she should be awarded a 25% sole occupier discount because her husband lives and works in Scotland.

The panel examined the facts of the case and found that the subject property in England was jointly owned by the appellant and her husband.

Whilst it was accepted that her husband spent most of his time in Scotland, the panel concluded that the reason for this was because his work required him to be there. The appellant spent time at both properties but the accommodation in Scotland was rented and therefore both the appellant and her husband had more security of tenure at the Devon property.

The panel found the strongest evidence was the fact that, when the UK went into a national lockdown in March 2020 due to the global pandemic, the appellant's husband returned to the family home in Devon because his employer no longer required him to be in Scotland. After a few months the tenancy for the Scottish flat was terminated and the appellant's husband remained at the family home until 2022 when he was recalled by his employer. He then rented a new flat in Scotland.

The panel concluded that they remained a married couple, had greater security of tenure in Devon and the appellant's husband clearly had an intention to return as he had done so when not required to be in Scotland by his employer.

The panel found the BA had correctly refused the sole occupier discount and the appeal was dismissed.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Liability for council tax where a tenant vacates earlier than the termination date of the tenancy

In this appeal the owner of the appeal dwelling disputed liability for the council tax.

An earlier tribunal panel had decided that the former tenants were not liable for the council tax at the appeal dwelling from 15 July 2019 to 9 March 2020. The billing authority (BA) therefore made the owner of the appeal dwelling liable for council tax for this period. He disputed liability arguing that the tenants had been granted a tenancy up to 9 March 2020 and therefore the council tax was due from them.

The appellant considered the decision of the BA was wrong stating that he had never in over 40 years as a landlord released a tenant early from a tenancy. He argued that the evidence that was referred to in the Valuation Tribunal for England (VTE) decision had been fabricated. He requested copies of the VTE decision and evidence. He received the decision but was not supplied with the evidence provided by the tenants in that appeal.

Following considerable correspondence between the appellant and the BA, an appeal was submitted on 31 January 2023. On the same day the appellant disclosed to the BA that a tenancy agreement for the appeal dwelling had been granted to new tenants on 5 November 2019. This reduced the liable period to 15 July 2019 to 4 November 2019.

It was not in dispute that the appellant was the owner of the appeal property. He argued that the tenant held the material interest up to 10 March 2020 as the tenancy had been granted for a period in excess of six months and it had not been ended within the contractual terms of the lease.

The panel placed weight on the findings of the previous panel. Although the decision was not binding upon this panel, it noted that in the reasons for the decision the previous panel referred to the evidence seen by it, including text messages that notice had been given and accepted, a rental statement confirming the rent was fully paid and the evidence of the tenant that she had not been asked for rent after the 15 July 2019.

The appellant failed to produce any evidence to support his claim that the previous tenant had not given notice and had fabricated evidence, or that he had pursued the tenant for rent due from 15 July 2019. He had stated he had contacted the previous tenant's father but produced no evidence to support this contention. He also failed to give a credible explanation why he had continued to argue that the previous tenants should be held liable for the council tax until 9 March 2020 when he had received the keys and granted a new tenancy in November 2019.

The panel found that the appellant had not discharged his evidential burden to prove on the balance of probabilities that the decision to hold him liable for the council tax for the period 15 July 2019 to 4 November 2019 was erroneous and dismissed the appeal.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Billing Authority tenancies and the lack of the tenant's 'material interest'

This appeal highlights why billing authorities should understand the terms of their own social housing tenancy agreements and the implications for council tax liability.

The appellant was the tenant of a property she had rented from the billing authority (BA) (which was also the respondent in this appeal). The tenancy had been granted on a weekly basis from 12 January 2015.

On 9 June 2020 the appellant vacated the property and terminated her tenancy after following the advice of the BA and being told to place the keys of the dwelling through its letterbox.

The BA disputed the appellant's version of events and, as far as it was concerned, the appellant had vacated the property without giving any notice. The appellant's vacation of the property had only come to the attention of the BA following forced entry by West Midlands Police following reports that the tenant had not been seen for some time.

The appellant argued that she was not liable for any council tax following her vacation on 9 June 2020. The BA argued that the appellant was liable from the date of her vacation to the end of May 2021 when it formally terminated the tenancy.

The panel found that whilst the appellant's explanation concerning the termination of the tenancy was questionable, this was not determinative when establishing the 'owner' of the property for council tax purposes which must primarily be established in accordance with the Local Government Finance Act 1992.

Whilst the tenancy could indeed have been in existence for a significant number of years, far exceeding six months, the fact remained, the appellant could not be its 'owner' for the period in dispute because her tenancy did not meet the necessary requirements of Section 6(6) of the 1992 Act. Therefore, the panel allowed this appeal.

The decision can be read here.

Decisions of the VTE - Council Tax Liability

Eligibility for a 50% discount due to being an annexe

In this case, an owner of two flats, within the same building, sought a 50% discount on one of them in accordance with the Council Tax (Reductions for Annexes) (England) Regulations 2013. The appellant submitted that the first floor flat was an annexe and therefore qualified for the 50% discount. He was the owner occupier of the ground floor flat.

Both flats were fully self-contained and had previously been in different occupations before the appellant became the owner of the two.

Both flats were entered into the valuation list as separate hereditaments. The unoccupied flat could not therefore be classed

To be continued on Page 9

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

as an annexe. The panel therefore dismissed the appeal.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Class G exemption

The appellant sought a Class G exemption on the grounds that he could not let the appeal property due to extensive mould in the bathroom and toilet. It required the ceilings to be replaced in both the bathroom and toilet.

The appellant argued that he was prevented by the Homes (Fitness for Human Habitation) Act 2018 and the Housing Health and Safety (England) Regulations 2005 from letting the appeal property due to the mould and that these regulations fell under the provisions of the Class G para (b) the occupation of which is otherwise prohibited by law. Effectively these laws prevented him from letting the appeal property to a tenant.

The panel accepted that the property was not in a condition to re-let. However, it could have been occupied despite existence of mould. The appeal dwelling therefore did not qualify for exemption under Class G and the appeal was dismissed.

Click here for the full decision.

Decisions of the VTE - Council Tax Valuation

Accuracy of the band for a holiday home

The appeal property is a purpose-built holiday home in Cornwall; it is an end of terrace house built in 2010. There are eight properties on this small but exclusive development. The appeal property is one of the larger ones, benefitting from four bedrooms, four bathrooms, one reception room, and a kitchen. The living accommodation is on the first floor to take advantage of the sea views. It has parking for two cars and a balcony to the first floor. The appellant purchased the property in October 2014, at which point the property was in the list in band F. As a holiday let, the property had been taken out of the list with effect from 1 April 2015 and placed in the non-domestic rating list. The property re-entered the valuation list from 1 April 2022, again at band F. The appellant submitted a proposal to have the band reduced to E.

The most interesting aspect of the case related to the property's restrictive use condition: it could not be occupied as a person's residence, being restricted to holiday use only. The appellant contended that such a restriction adversely affected the open market value. The Listing Officer's representative's counter argument was that this user restriction had a positive effect on its valuation. The panel accepted the principle that the restriction on use might be considered an 'incumbrance', but unfortunately there was no evidence presented to it to demonstrate whether the restriction to holiday use had impacted the sales value either positively or negatively. Therefore, it could not attach weight to this argument and so upheld the band F entry and dismissed the appeal.

Read the decision here.

Decisions of the VTE - Council Tax Valuation

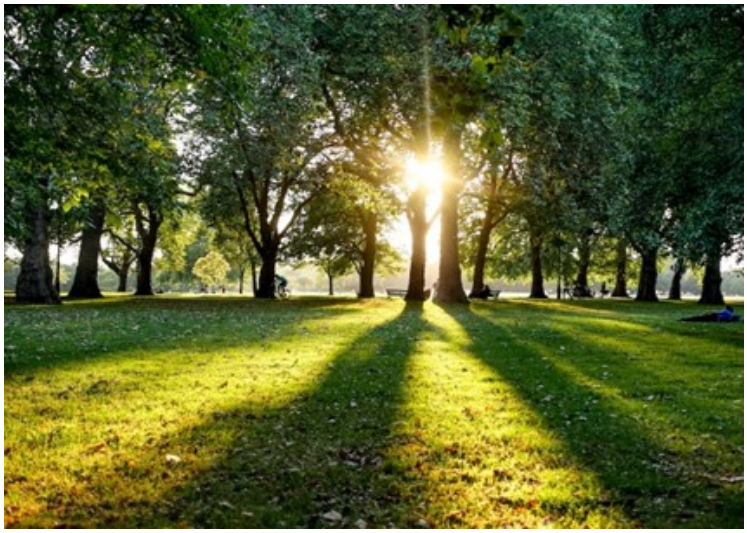
The value of location

The appeal concerned a property located at The Prince of Wales Gate in Hyde Park which was in band H from the start of the list.

It was a detached grade II listed stone lodge built pre-1900 in the Palladian style with one bedroom, open plan reception/ kitchen and a bathroom. The agreed external measurement was 28m^2. It had the advantage of a private garden and off-street parking. The proposal made by the appellant as the new occupier was for band B.

The appellant highlighted a number of disadvantages; it was small, was subject to an improvement notice, and of inferior quality with an Energy Performance Certificate of F. The panel was aware that one of the assumptions that was to be made when determining the value of the appeal property was that it was in a reasonable state of repair. Therefore, the issues regarding the state of the building could not be given weight.

The appellant also cited a number of material reduction events that had occurred since the original valuation which he considered reduced the value of the appeal property. None of these events were referred to in the grounds of the proposal and therefore could not be taken into account.



None of the comparable evidence put forward by the appellant supported his case. He had therefore failed to prove his case. This was a very desirable location which would have, in the panel's opinion, attracted a premium price in 1991 and the tone of the list/comparable evidence provided by the respondent supported band H.

The appeal was therefore dismissed.

Read the full decision here.

Decisions of the VTE - Council Tax Valuation

Accuracy of band entry in the list

The appeal property had a single band D entry from 1 April 1993 and the appellant had lived there since 2006. The Listing Officer (LO) then decided to alter the valuation list to reflect the existence of an annexe with effect from 25 May 2022.

What was interesting was, that the LO also increased the entry for the main house to band E with effect from 25 May 2022. This was because physical alterations had occurred at the property; a small extension to the back and a loft conversion which had created a completely different hereditament (property).

To be continued on Page 11

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

Following the list alterations, the appellant had effectively 2 council tax bills to pay, so the annexe was physically altered so that it was no longer self-contained. The LO agreed to delete the annexe's entry with effect from 22 August 2022. Now that the annexe's band entry was no more, the appellant argued that the entry for the main house should return to band D.

Unfortunately for the appellant, a band E was justified and the appeal was dismissed.

Click here for the full decision.

Decisions of the VTE - Council Tax Valuation

Property uninhabitable following a fire

The appellants served a proposal on the Listing Officer (LO) to delete the appeal property from the valuation list as they considered that it had been rendered uninhabitable by a fire on 6 April 2022 which occurred in one of the other flats in the block.

Although the fire had not resulted in any significant damage to the appeal property, it had caused both the electricity and water supplies to the whole block to be turned off, and all the residents were required to vacate the block by the fire officer and council officials. The freeholder of Tollgate Court had also changed the lock on the entrance door to the block and had replaced the individual flat doors, which resulted in the appellants not being able to enter the appeal property. The appellants contended that the appeal property was therefore not habitable until 11 December 2022 when they were given keys to the new locks.

The legal test for the panel to consider was whether, at the date of the fire, the appeal property constituted a dwelling under Section 3 of the Local Government Finance Act 1992 for the period 6 April 2022 to 11 December 2022.

In coming to its decision, it was assisted by the authorities set out in *Wilson v Coll (LO)* [2011] EWHC 2824 (Admin) *and Bunyan (LO) v Patel* [2022] EWHC 1143 (Admin).

With regard to the former, it considered that a property remained a dwelling if works constituting normal repairs are required to bring it into a state fit for occupation.

With regard to the latter, the panel considered that there was a very high bar to overcome before a property could be deleted from the valuation list, which would entail evidence of significant works being carried out or being required, and this was not the case.

The panel could not conclude that the lack of gas and electricity supply and inability to access the appeal property prevented the appeal property from remaining a dwelling during the period of the appeal.

Whilst it understood the appellants' frustration with the length of time taken by the freeholder to carry out works, which included installation of fire doors and upgraded electricity meters, the panel was bound by the legislation and case law before it and dismissed the appeal.

Click here for the full decision.

Decisions of the VTE - Council Tax Valuation

Are annexes self-contained units?

This was a council tax valuation appeal where the subject property had been extended by a previous owner and then sold to the appellant. Following the sale, the band of the subject property was increased from Band E to Band F and two annexes had been entered into the valuation list, both at Band A. The main property had increased in size from 81m^2 to 188m^2, and the annexes measured 11m^2 and 16m^2 respectively.

The appellant had requested that the annexes were deleted from the list and the property reduced to Band E, as it was when he purchased it. He stated the two 'annexes' were used as a study and a guest room.

In this appeal, photographs, real estate brochures, and floorplans had been provided that clearly showed each annexe had a living/sleeping area, a bathroom, and food preparation areas which included cooking hobs, sinks, and cupboards. Additionally, the annexes could only be accessed externally, with no internal connection to the main house.

The panel found that in this appeal there were three self-contained units within the property. In addition, following a rear and first floor extension, the main house had more than doubled in size, and the panel found the increase in band was justified based on the sales evidence of comparable properties that had been provided.

The appellant's argument of fairness was not one that the panel could consider within the relevant legislation.
The appeal was therefore dismissed, and the three separate assessments remained in the list at Band F, Band A and Band A.

Click here for the full decision.

VALUATION TRIBUNAL SERVICE

We welcome any feedback.
Editorial team:
David Slater
Tony Masella
Amy Dusanjh
Charlotte Stafford
Gersy Sebastiao

Contact us:
0303 445 8100

The photographs used here are for illustration purposes only and may not be of the actual properties or people referred to.

Copyrights:
Unsplash
Pexels

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

Valuation in Practice is published quarterly; the next issue will be in February 2024.