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Valuation Tribunal Service

Valuation in Practice

News in brief

Want to write to us?

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Email us at appeals@valuationtribunal.gov.uk.

Consultation outcome: Business Rates Improvement Relief: draft regulations

The Department for Levelling Up, Housing and Communities (DLUHC) consulted upon draft regulations to implement the relief during the summer of 2023. The full outcome sets out the consultation views and the government's response, including the final regulations which will implement the relief scheme.

Non-Domestic Rating Bill

The Bill received Royal Assent on 26 October 2023. The Bill is now an Act of Parliament (law) and can be read here.

Government's reply to consultation: Technical adjustments to the Business Rates Retention System in response to the Non-Domestic Rating Bill

An open consultation was launched by DLUHC on 28 September 2023 seeking views on proposals to make technical amendments to how government administer the Business Rates Retention System. The summary of responses and the government's reply to the consultation can be found here.

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

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

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Business rates: information letters

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

Consultation outcome: Council tax valuation of Houses in Multiple Occupation (HMOs)

On 27 October 2023, DLUHC published the summary of the consultation responses and the government's response to how houses in multiple occupation (HMOs) are valued for council tax. Following the consultation exercise, the relevant legislation was amended with effect from 1 December 2023 so that all HMOs in England are to be valued as a single property (aggregated) for council tax purposes.

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Policy paper: Referendums relating to council tax increases (principles)(England) Report 2024 to 2025: draft

On 18 December 2023, DLUHC published a draft report setting out council tax excessiveness principles ('referendum principles') for 2024 to 2025. This will be laid before the House of Commons for approval at the time of the final settlement early in 2024.

Transparency data: Local authorities, Department for Work and Pensions (DWP) and HMRC Council Tax debt reduction pilot 2021

On 19 October 2023, an agreement was published for local authorities, the DWP and HMRC to share data to help manage and reduce customer and council tax debt.

The main benefits will be to:

- increase the amount of council tax debt recovered through knowledge of PAYE and self-assessment information
- identify more vulnerable debtors engaging with the local authority who can be signposted for assistance

Council tax: information letters

See here for the collection of letters that provide information for local authorities on council tax.

Our Hearing Programme - January to March 2024

The profile and volume of our remote hearing programme is:

Tribunal Type	January	February	March	TOTAL
Council Tax	44 (including 1 x Council Tax Invalidity)	41	58	143
2017 Rating List	21	17	13	51
Completion Notices	2	1	0	3
TOTAL	**67**	**59**	**71**	**197**

Appeals stayed at the Valuation Tribunal for England (VTE) – January 2024

The following appeals registered with the Valuation Tribunal for England (VTE) are stayed.

Type of appeal	Reason for stay
Appeals arising from MCC challenges, in relation to the closure of large shops.	Following a meeting held with multiple agents, parties want to stay to facilitate discussions and possible settlements. There are over 3,500 challenges, some of which have now reached the appeal stage, and are expected to be identified as likely to be affected. Parties are confident that they may be able to settle the vast majority before 31 March 2024.

Decision of the High Court

Stanuszek and Bunyan [2023] EWHC 3275 (Admin)

Following a Valuation Tribunal for England (VTE) hearing on 17 March 2023, a panel dismissed a council taxpayer's appeal which sought a merger of six entries into one.

The appeal property, 6 Twyford Abbey Road in London, was placed in band E by the Listing Officer (LO) with effect from 1 April 1993.

Following a report from the billing authority (BA), in which it advised the LO that the property comprised six dwellings, the LO deleted the single entry and replaced it with six new entries with effect from 1 April 2020.

The panel dismissed Mr Stanuszek's appeal because it was satisfied that each of the six dwellings identified by the LO were separate hereditaments.

The appeal property was a house in multiple occupation. Each of the six rooms were let to tenants on Assured Shorthold Tenancies. Each room had a lockable door. All rooms were fitted with a shower/wc but there was no space to hang up any laundry. None of the rooms had cooking facilities but each tenant had access to the cooking facilities in the communal areas. The VTE panel found that the six tenants were in rateable occupation of their respective rooms.

Mr Stanuszek appealed to the High Court on two grounds;

1. The VTE erred in treating the test for rateable occupation as determinative of the number of dwellings contained in the property; and
2. it failed to apply the geographical and functional tests to the property as set out by the Supreme Court in *Mazars*.

In his judgment, Mr Justice Henshaw found that the VTE panel had conflated the test for rateable occupation and the question of whether each unit was a separate hereditament. The VTE panel therefore failed to properly apply *Mazars*. This was clear from paragraphs 11, 12 and 26 of its decision. The VTE panel also wrongly relied on *James v Williams* [1973] RA 305, as in that case, it was not disputed that separate hereditaments existed; that issue having been conceded in an earlier case about the same property; the issue was the use of the Valuation Officer's (VO) discretion under section 24 of the General Rate Act 1967. Therefore, *Williams* offered no assistance, as the question regarding whether the rooms were separate hereditaments did not need to be considered by the Lands Tribunal.

The appeal was allowed by the High Court because case law treated the identification of a hereditament and rateable occupation as distinct legal tests, albeit there was linkage between them. This can be seen with particular clarity in the Supreme Court's judgment in *Cardtronics* where it applied the principles in *Mazars* to stores with automated teller machines, to identify the hereditament(s). *John Laing* contained the classic ingredients of rateable occupation but the VTE should have considered the principles and tests from *Mazars* when identifying the hereditament.

Although Mr Justice Henshaw heard arguments on the second ground which concerned the actual application of the *Mazars* tests, as he had found for the appellant on ground one, he decided to remit the case back to the VTE. It was not necessary for

To be continued on Page 4

Decision of the High Court cont'd...

him to decide whether the geographical and functional tests from *Mazars* were properly applied. He did, however, say that the respondent's arguments on the second ground had considerable force.

The appellant had argued that if *Mazars* had been properly applied, there would only be one hereditament. One of the appellant's arguments was that the VTE had failed to look at the communal area and determine if it could be separately let, as it had no toilets. However, as the respondent pointed out the tenants only had exclusive use of their rooms with a right to share facilities. The existence of shared rights of use or occupation over communal parts did not prevent separately let parts of a building from being separate hereditaments and *Mazars* was an example of such. The respondent also stated that communal areas in residential blocks are normally disregarded for the banding exercise.

The appeal was allowed and will be remitted back to the VTE to be heard by a differently constituted panel.

Decisions of the VTE - Council Tax Liability

Class G exemption

Social housing shared ownership flat specially for an older person needing extra care, in a scheme that was developed and operated by the landlord, Housing 21. The appellant's mother had owned a 50% share.

Upon her death, the property became unoccupied and after six-month probate exemption, the liability was passed to the executors.

The appellant sought a Class G exemption as she argued that clauses in the lease prohibited subletting and she had struggled to find a buyer for the property. She argued that the landlord was subject to statutory guidance issued to grant-funded social housing providers pursuant to the Housing Act 1996. The clause in the lease that prevented occupation was a product of statute (specifically statutory guidance) rather than contact law, and the Class G exemption applied because it was prohibited by law as a result of powers conferred by or under an Act of Parliament.

The billing authority argued that no prohibition notices had been issued, and occupation had never been prohibited by law. It was the lease of the property which prohibited occupation.

The panel held that it was the lease that placed restrictions on who could occupy the property, but it did not prohibit occupation, but only restricted who the occupier could be. The appeal was therefore dismissed.

Click here to read the full decision.

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

Single person discount

The appellant's mother had owned the appeal property, a first floor flat, since 1996. After a serious stroke in November 2016, it became difficult for her to reside in the property and so, after a stay in hospital and residential care, the appellant's mother took a tenancy on a ground floor flat and moved into it in the summer of 2017. This flat gave her access to an outdoor space and helped with her recuperation. The appellant lived in a rented flat 30 miles away. In order to care for her mother, she gave up her tenancy and moved into the appeal property, a short walk from the rented flat. This 'temporary arrangement' remained in place until the appellant's mother died almost five years later.

The billing authority (BA) only became aware of the actual occupancy of the appeal property following the death of the appellant's mother when the executor made contact. The BA issued a retrospective council tax demand to the appellant on the basis that she was the sole occupier of the appeal property and had been since 18 November 2017. The appellant disputed her liability for council tax up to the date of her mother's death, stating that the appeal property remained her mother's sole or main residence up until the date she died.

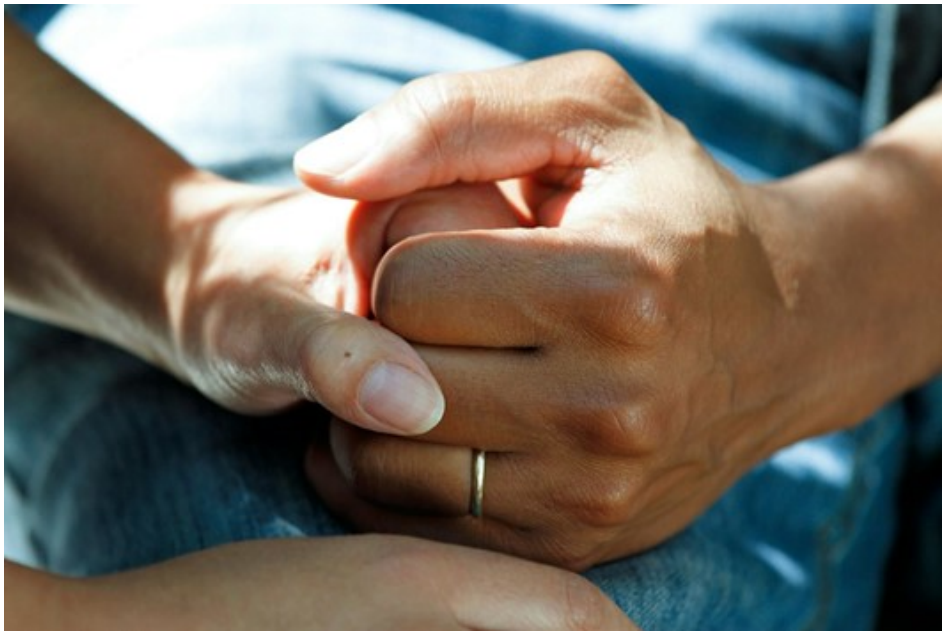
The appellant confirmed that she was living in the flat, having given up her own tenancy. She had no security of tenure at any address, and if she had left her mother's flat, she would have had to stay with friends. The appellant argued that the appeal address was her mother's sole or main residence throughout the whole period. She does not dispute that her mother was living elsewhere but argues that this was a temporary arrangement, made necessary by circumstances (ill-health and the pandemic restrictions), and that her sole or main residence remained the property that she owned.

The appellant referred to the decision in *Codner v Wiltshire VCCT* [1994] RVR 169 in which the High Court confirmed that time spent at a property wasn't decisive in determining sole or main residence. The appellant accepted that the decision of the Court of Appeal in *R (on the application of Williams) v Horsham* [2004] EWCA Civ 39 RA 49 was the leading authority on sole or main residence, but held that the facts differed to her mother's case: Mr Williams chose to live elsewhere for his employment, but her mother had not chosen to live away from her home, she had been obliged to do so because of circumstances. There had never been a point at which it was decided that her mother wouldn't return to the appeal property, things just evolved.

The panel fully accepted that the appellant's mother intended to return to the appeal property but had to consider the reality of the situation. The appellant's mother had not resided at the appeal property since November 2016. Comparing the circumstances to *Williams* the panel was persuaded by the fact that, like Mr Williams, the appellant's mother owned the appeal property but lived elsewhere.

The appeal was dismissed.

Click here for the full decision.



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

Decisions of the VTE - Council Tax Liability

Is the Landlord liable for council tax after his tenants vacated the property but before the end of their tenancy agreement?

The appellant, who was the landlord owner of the property disputed his council tax liability for the period 16 March 2022 to 1 July 2022 when the appeal property was unoccupied.

The appeal property was a ground floor flat in a house owned by the appellant. His tenants had not paid any rent and he had commenced legal proceedings by serving a section 8 Notice although this had not been actioned and the tenants had subsequently moved out voluntarily.

On 16 March 2022 the appellant entered the empty property to undertake gas and electrical safety checks and to change the locks to the front door which was the communal entrance for both the ground floor and first floor flats.

The tenants' belongings had remained at the flat until they arranged with the appellant to collect them which they did on 19 March 2022 upon payment of £100 in cash.

The appellant then placed the property for sale on 23 May 2022 and relet the flat to tenants B on 2 July 2022.

The appellant argued that the property had been let to tenants A on a 12 month Assured Shorthold Tenancy from 11 November 2011 and that the contractual term of the tenancy agreement meant that they held a material interest in the property until it was relet on 2 July 2022.

The panel concluded that the actions of the appellant of entering the property on 16 March 2022, without written notice to the tenants, brought the fixed term tenancy to an end by implied surrender and that from this date the appellant was liable for council tax on the empty property as owner, in accordance with section 6 (2)(f) of the 1992 Act.

Read the decision here.

Decisions of the VTE - Council Tax Liability

Hierarchy of Liability

The issue before the panel was whether the appellant, as tenant, was liable for the council tax for the period 31 May 2022 to 18 September 2022.

The appellant contended that after being harassed, she called the police who advised her to leave the appeal property. The billing authority (BA) had asked the appellant to provide it with the date of the incident and a copy of the police report so it could review her council tax liability.

On 4 May 2022 the appellant informed her landlord housing association that she intended to leave the property on 31 May 2022. This was corroborated by a copy of the email in the evidence provided. The billing authority, however, preferred to rely on information it received from the housing association. It stated that because the appellant did not complete an end of

To be continued on Page 7

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

tenancy form until 18 August 2022 the tenancy did not end until 18 September 2022.

The panel noted that the tenancy agreement provided by the appellant stated that "This Tenancy Agreement is a weekly periodic assured shorthold tenancy of the premises pursuant to section 19A of the Housing Act 1988 ("The Act"). This means that this Tenancy Agreement will continue as a periodic tenancy until and unless it is ended in accordance with the Act or with the terms of this Tenancy Agreement", it also stated that "This tenancy may be brought to an end by the Tenant on giving four weeks' notice to the landlord expiring on a Monday".

It was not disputed that the appellant vacated the appeal property on 31 May 2022, therefore the panel held that she could not fall to be liable under section 6(2)(a) to (e) of the 1992 Act, which all related to the resident of a property. However, section 6(2)(f) made the owner(s) liable if there was no adult who had their sole or main residence in the dwelling concerned. As the weekly periodic tenancy was not a leasehold interest which was granted for a term of six months or more, the tenant in such an arrangement could not be liable for council tax if he or she was not resident in the dwelling.

The appeal was allowed. The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Liability of the owner in dispute

The appeal challenged a decision made by the billing authority (BA) that the appellant was liable for council tax as the non-resident owner of the appeal property, for the period from 1 September 2018 to 22 September 2022. The appellant submitted that the property had been occupied by tenants for the disputed period.

The BA's representative explained that the appellant had emailed the BA on 24 April 2018 to notify it that G N was a tenant at the appeal property from 22 January 2018. A copy of the tenancy agreement had been provided.

On 16 May 2022, information was received by the BA from an enforcement agency, that G N was no longer resident at the appeal property, and that S H had been in occupation since September 2018.

The BA decided on 29 June 2022 to make the appellant liable for council tax from 1 September 2018 to prompt further information regarding occupancy and rent liability. Following correspondence with the appellant, the BA had not been able to contact the former tenants, and in the absence of tenancy agreements or proof of rental payments, the final decision was that the appellant would remain liable.

The panel made a finding that the property was occupied by S H on 16 May 2022, as confirmed by the visiting enforcement agent. During that visit, S H confirmed that he had occupied the property since September 2018.

To be continued on Page 8

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

Although a tenancy agreement had not been provided, the appellant submitted that S H occupied the property between May 2018 and October 2022. It was clear to the panel that conflicting dates had been provided for when G N had left the property, but by his own admission, the appellant's administration skills were somewhat lacking.

The panel was satisfied that the appeal property was occupied throughout the disputed period. Whether or not the BA was able to trace the occupants was of no relevance to the determination of the liable person. As the property was occupied by another person, the appellant as the non-resident owner was not the liable person.

Click here to read the full decision.

Decisions of the VTE - Council Tax Liability

Class D uninhabitable discount

The appeal concerned whether the property met the criteria for the uninhabitable discount under Class D, Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003. Following storm Christoph in 2021, the property had been damaged by foul flood water from a nearby drain.

The appellant was the owner of the appeal property, and tenants were in occupation at the time of the flood. The tenants had remained resident for six months after the damage occurred, which was one of the factors that had been considered by the billing authority (BA) when it had made the decision not to award the discount.

The other arguments put forward by the BA was that the works undertaken were not as a direct result of the flood, and that the discount could not be awarded for replacing a kitchen and bathroom. In its opinion, the property could be occupied whilst the works were being undertaken.

Whilst the panel understood the BA's position that the replacement of a kitchen and bathroom would not normally fall within the meaning of major repair work, the panel considered it important to have regard to the overall cost, time and extent of the work carried out, along with the flood that had led to the work being done.

At the hearing, the panel established that the property had undergone a drying out process and was disinfected, and once the tenants were relocated to emergency accommodation by the local council, the need for further repair works was identified.

The panel found that the aggregation of the combined works required at the property constituted major repair works. As a result of the flood at the property, substantial repair work was required. This was undertaken to make the property safe to live in. It also included essential structural work to install a lintel above the kitchen door and replace floor joists in the upstairs bathroom. The panel also

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

established that the only rooms not affected by the repair works were the two upstairs bedrooms.

The panel was satisfied that major repair works were required and undertaken at the property to render it habitable, as well as the property having undergone essential structural repair work. On that basis the appeal was allowed.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Discretionary relief to council tax

S13A of the Local Government Finance Act 1992 includes a general power for billing authorities to allow discretionary relief to council tax. The appellant was resident at the subject dwelling with her partner and three children. She had sought discretionary relief of council tax citing low income. The respondent had refused the application.

The appellant's grounds of appeal stated she had used savings of £7,000 to pay for a family holiday which had taken a significant amount of time to save for. She had provided bank statements as evidence of income and capital as requested by the respondent, and declared she had no other outstanding debts except for council tax arrears.

The respondent was not satisfied that the appellant had demonstrated financial hardship when considering her application for relief. The bank statements showed income received for both her and her partner and the balances of each respective account were in credit. No evidence was provided of any other debt. The respondent's representative stated that she did not begrudge any person for saving and paying for a family holiday, however, she considered the sum of £7,000 to be excessive when considering council tax as a priority debt. The respondent had its own Council Tax Exceptional Hardship Relief Scheme which stipulated that each case would be considered on its merits in light of exceptional financial hardship.

The panel was aware that billing authorities were unable to fetter their discretion to award council tax relief in accordance with the former President's decision of *SC and CW v East Riding of Yorkshire* (VT appeal numbers: 2001M113393 & 2001M117053), however, it was satisfied that the respondent had considered the application on its merits and conducted a stringent financial assessment in line with its scheme. There was also no evidence provided by the appellant to prove she had exceptional circumstances. The panel was therefore not persuaded that there were strong grounds to interfere with the decision of the respondent.

In view of the foregoing, the appeal was dismissed.

Read the decision here.

Decisions of the VTE - Council Tax Liability

Class N exemption

These were two council tax liability appeals lodged by the same appellants concerning the same property and disputed period. One appeal concerned the appellants' entitlement to an exemption as full-time students. The appellants occupied the subject property along with two other students and the property was classed as an exempt dwelling under Class N of the Council Tax (Exempt Dwellings) Order 1992 from August 2020. However, the university supplied a letter giving the appellants' study end date as 20 May 2022 and, as there were then two non-students in the household, the exemption ended. The appellants contended that they remained full-time students beyond 20 May 2022 and the exemption should continue until their liability ended on 25 August 2022. In support of this they referred to various other documents concerning their student status, including student ID passes remaining valid until 31 July 2022 and argued that the academic year did not end until 31 August 2022. After examining the council tax legislation and the definitions of full-time study specifically for council tax purposes, the panel found that the appellants ceased to qualify for the exemption from 21 May 2022 after completing their final exams and in accordance with the university's letter. It found that the university, as the course provider, was best placed to confirm when the course ended, and the appellants had not provided any conclusive evidence to contradict the date provided by the university.

The second appeal was on the grounds that the appellants should not be liable to pay council tax for the subject property because it was a house in multiple occupation and liability should fall to the owner under the Council Tax (Liability for Owners) Regulations 1992. The panel was provided with a copy of the tenancy agreement signed by the four tenants jointly as one household. It was not persuaded that the fact that each tenant paid a quarter of the rent directly to the owner meant that they were not one household and there was insufficient evidence presented to demonstrate the tenancy agreement was a sham, as argued by the appellants.

After considering the evidence, the panel dismissed both appeals.

Read one of the decisions here.

Decisions of the VTE - Council Tax Valuation

Accuracy of band entry in the list

Following a relevant transaction, the Listing Officer (LO) increased the appeal dwelling's band entry from E to F, in order to reflect a material increase as the property had been extended by the previous owner.

The appellant argued that the property had been over assessed for council tax from the beginning and should have been in band D before the value of the extension was reflected. The panel's jurisdiction was restricted to the value of the property post the extension(s) and therefore it was academic whether the historic band entry was right or wrong.

There was a dispute about whether the appeal property was a house or a bungalow as the respondent's sales evidence related to bungalows which the appellant contended had a higher value than houses.

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

The appeal property was built as a bungalow. However, the previous owner had built a two-storey extension to the rear of the appeal property, keeping the front of it as a bungalow. The planning permission for the extension was granted on the basis that the appeal property was required to fit in with the style and character of properties within the locality.

The appellant argued that the appeal property was a house as the planning application referred to it as such.

Ultimately, the panel determined that the property was a bungalow that had been extended albeit that the two-storey extension to the rear made it somewhat unique in design. Having decided this point, the evidence supported the LO's case for band F. The appeal was therefore dismissed.

Read the full decision here.

Decisions of the VTE - Council Tax Valuation

Retirement flat

The appeal was against the compiled list entry for the subject property at band C from 1 April 1993. The property is a purpose built two-bedroom retirement flat and the appellant's representative argued for a reduction to band A.

He considered that the flat should be treated as a one-bedroom property due to the small size of the second bedroom and the fact that most residents use the second bedroom as a dining room. There was also some debate about whether the age restriction and levels of service charge on such retirement flats should be considered an 'incumbrance'.

The governing legislation requires the valuer to assume that the subject property was sold free from incumbrances. The appellant's representative had provided a definition of an 'encumbrance', which the panel found to be a different legal term. The panel considered case law on the subject, *Coll v Walters* [2016] EWHC 831 (Admin) and found that the age restriction placed on retirement flats was more akin to a restrictive covenant and, in accordance with the Walters case, should be a factor in deciding the value of the property on the antecedent valuation date. It was decided that the service charge was not an incumbrance within the meaning of the statutory assumptions and, even if it was, it would fall to be disregarded for valuation purposes. The panel was not persuaded that the level of service charge would necessarily have a negative impact on value. After considering all the evidence presented, the panel did not find band C excessive, and the appeal was dismissed.

Read the full decision here.

Decisions of the VTE - Council Tax Valuation

Accuracy of existing band entry in the valuation list

This was a council tax valuation appeal where the band of the appeal dwelling had increased from band E to band G following a relevant transaction. Prior to the appellant purchasing the dwelling it had a double and single-storey side extension and a single-storey rear extension, that increased its size from 120m^2 to 250m^2. However, the extensions did not increase the number of bedrooms. The appellant believed that as the appeal dwelling still had three bedrooms, and no other three-bedroom house in the locality was in band G, the Listing Officer was wrong to place it in band G.

Whilst it technically still had three bedrooms, these had all increased in size and two were located over two floors. There were also three living areas, three bathrooms and a large open plan kitchen/dining room.

Evidence was provided that demonstrated the appeal dwelling would have been valued at the top of band E in its un-extended state. Based on the sales and comparable evidence provided, the panel found that the appeal dwelling was the largest and would have sold in excess of £160,000 had it sold on 1 April 1991, and therefore band G was confirmed and the appeal dismissed.

Click here to read the decision.

VALUATION TRIBUNAL SERVICE

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