Issue 73

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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.

### Council tax statistics

The accredited official statistics on council tax levels set by local authorities in England 2024 to 2025 were published on 8 May 2024.

See here for the live tables on council tax.

### Guidance: Paying the right level of council tax

On 26 April 2024, Government published the first ever plain English guide to council tax. It gives advice on how council tax bills are set, and how citizens can check they are not paying more than they should.

This guidance can be found here.

### Official statistics – Council tax: stock of properties background information

On 11 July 2024, the VOA published statistics relating to stock of properties on the England and Wales council tax valuation lists. The statistics provide information on the number and type of domestic properties (known as "dwellings"), as well as the insertions to and deletions from the council tax valuation lists. Further information can be read here.

### Investment Zones business rates relief scheme: guidance for local authorities

On 26 April 2024, Government published guidance on the eligibility, value, and operation of the Investment Zone business rates relief scheme for local authorities. This included the process local authorities should follow when awarding relief, the approach to subsidy control, and how local authorities will be compensated for relief provided.

This guidance can be found here.

### Freeports business rates relief: local authority guidance

The Government has committed to creating eight new Freeports sites in England, where businesses would benefit from more generous tax reliefs, including business rates relief. Guidance was published on 26 April 2024 to support local authorities in administering the business rates freeports relief scheme announced in the Budget on 3 March 2021 scheme.

The guidance can be found here.

### Business rates: information letters

On 2 May 2024, Government published a business rates

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## Inside this issue:

information letter relating to Freeports, Investment Zones, Improvement and Film Studio Reliefs.

See here for the latest business rates information letters.

**Official statistics - National non-domestic rates collected by councils in England forecast: technical notes**

Data in this release is derived from the national non-domestic rates (NNDR1) returns submitted by the 296 billing authorities in England that will be in existence from 1 April 2024.

There are a number of changes arising from the Non-Domestic Rating Act 2023 that have affected the data collected. The main change relates to the decoupling of the standard and small business rating multipliers. Changes are explained in the statistical release.

**Official statistics – Non-domestic rating: stock of properties background information**

On 13 June 2024, the VOA published statistics relating to stock of properties for England and Wales. The statistics provide information on the number and value of the stock of rateable properties (known as 'hereditaments'), broken down by sector, geographic location, special category (SCat), property type and rateable value band. Further information can be read here.

**Official statistics – Non-domestic rating: challenges and changes statistical commentary**

On 9 May 2024, the VOA published statistics on challenges made by ratepayers (or their representatives) against the England and Wales 2023 non-domestic rating (NDR) lists, which came into effect on 1 April 2023. It also continues to include statistics relating to challenges made against the 2017 non-domestic rating lists. Further information can be found here.

**Our Hearing Programme – July to September 2024**

The profile and volume of our remote hearing programme is:

| Tribunal Type | July | August | September | TOTAL |
|---|---|---|---|---|
| Council Tax | 62 | 59 | 64 | 185 |
| 2017 Rating List | 15 | 13 | 14 | 42 |
| 2017 Rating List Complex Case | 1 | 0 | 0 | 1 |
| Completion Notices | 2 | 1 | 1 | 4 |
| TOTAL | 80 | 73 | 79 | 232 |

## Appeals formally stayed at the Valuation Tribunal for England (VTE) – July 2024

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

# Decisions of the Upper Tribunal

*Fridays Limited and Dawn Bunyan (VO) [2024] UKUT 149 (LC)*

An appeal against the President's decision that three buildings the appellant occupied at Chequer Tree Farm did not qualify for an agricultural exemption, under paragraph 3 (a) of Schedule 5 to the Local Government Finance Act 1988. Under paragraph 3 (a) an agricultural building is exempt if it is occupied together with agricultural land and is solely used in connection with agricultural operations on that or other agricultural land.

The appellant is one of the largest producers of free range eggs. Chequer Tree Farm consisted of a number of buildings, some of which were agreed to be rateable and some which were accepted to be exempt. The three buildings for which exemption was disputed were the egg packing centre, egg packaging store and egg warehouse. Alternative valuations for the whole site were agreed, depending on whether or not the three buildings were exempt.

Chequer Tree Farm was the appellant's headquarters and it managed a number of farms, within a 10 mile radius, where the eggs were produced and sent to the appeal buildings for packing. None of the eggs are produced at the appeal property.

The appellant supplies supermarkets, mainly Asda and Lidl, with eggs but only about 1.7 million are produced by its managed farms, which is insufficient to meet retail demand. It therefore also grades, packages and sells on around 1.4 million free range eggs from 15 independent farms, who are unable to do the grading and packaging themselves, in accordance with regulations and industry practice. This assists the independent farms and also allows the appellant to meet its contractual obligations with the supermarkets it supplies.

The Upper Tribunal reviewed how the law relating to agricultural exemption had evolved, especially having regard to 2003 amendment of paragraph 3 which meant that the exemption was extended beyond agricultural operations on that land and included operations on other land. Whilst it determined that the House of Lords judgment in *Farmer (VO) v Buxted Poultry Ltd* [1993] AC 369 remained authoritative as regards the meaning of "occupied together with" in paragraph 5 of Schedule 5, it was no longer relevant to the construction of those words in paragraph 3. Therefore, there was no longer a requirement for the land and buildings to be a single agricultural unit and in the same rateable occupation. The Upper Tribunal upheld the appellant's argument that occupation and use had been split up by the 2003 amendment. In doing so, it conceded that it erred in its statutory interpretation of the effect of the 2003 amendment in *Senova Ltd v Sykes (VO)* [2019] UKUT 0275 (LC) but said that its error had made no difference to the outcome of that case.

In view of the above, the Upper Tribunal found the three buildings were occupied together with Chequer Tree Farm, being in the same occupation, business enterprise contiguous and therefore exempt.

As it was impossible to sell eggs which were not graded and weighed, the independent farms sent their 1.4 million eggs to Chequer Tree Farm. Whilst accepting these farms were not contiguous with Chequer Tree Farm or the three buildings, they were not far away, but they were operated as a single agricultural unit. The occupied together test was therefore met.

The Upper Tribunal also found that the three buildings were solely used with agricultural operations on agricultural land, to fulfil the second requirement. This was because it was necessary for the weighing, grading and packaging to be done before they could be sold. This meant that there was

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## Decisions of the Upper Tribunal cont'd...

a close functional connection between the three buildings and the egg production on the land at Fridays farms.

The appeal was allowed.

The Upper Tribunal has since granted the Valuation Officer permission to appeal to the Court of Appeal.

## Decisions of the Upper Tribunal

*Shynar Zhylzhaxynova and Jo Moore (VO) [2024] UKUT 204 (LC)*

An appeal against a VTE panel's decision not to split the appeal property into two hereditaments.

The appellant was the director and sole or majority shareholder of two companies, Quality and Price Limited (QPL) and QNP Toys Ltd. The appeal property comprised a warehouse on the ground floor and offices above it on the first floor. The appellant claimed QNP Toys occupied the warehouse and QPL the offices and both were run as separate businesses for which separate rating assessments were required.

Following its inspection, the Upper Tribunal found that only one hereditament existed. Neither of the separate areas, the ground floor nor the first floor were self-contained but the Upper Tribunal observed that they could have been, albeit with some inconvenience by undertaking physical alterations with the landlord's permission.

Ultimately, the Upper Tribunal had no difficulty finding that QPL, the lessee for the whole property, was in rateable occupation of it and the appeal was dismissed.

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

*Barclays Bank & Poundland and Jo Moore (VO)*

The appeals, related to proposals made on the grounds of a material change of circumstances (MCC). The MCC event related to the negative effect that the Rushden Lakes Shopping Centre had had on the appeal properties, three of which were situated in Kettering Town Centre and one was in Corby Town Centre.

Kettering was around 12 miles from Rushden Lakes, whilst Corby was 20. The Valuation Officer (VO), who was represented by Counsel, invited the tribunal to determine the extent of the appeal properties' locality as a preliminary issue. In their legal submissions, the VO argued that the locality of each of the appeal properties was restricted to what was in reasonable walking distance from the ratepayer's shop. Therefore, Rushden Lakes was outside the locality and therefore the appellants' appeals had no merit, as there was no material change of circumstances.

The appellants argued that locality was not defined in the legislation and in a number of cases heard by the Lands Tribunal, it had noted that locality was an imprecise term which it would not wish to identify. The appellants also referred to the fact that it had been custom and practice for many years to treat new out of town retail park developments as potential MCC events for which allowances were often conceded if the evidence supported same. Where allowances could not be agreed in the past, appeals had been determined by the Upper Tribunal and previously the Lands Tribunal. The advice within the VO's own Rating Manual appeared to support the appellants' case.

The VO acknowledged the past custom and practice but argued that whatever went on before may not have been right. They also argued that as the locality point had never been raised before the Lands or Upper Tribunal before, there were no earlier authorities to assist.

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

The VTE Senior Member, Mr Levy sitting alone, rejected the VO's arguments. He determined that both Kettering and Corby were within the same locality as Rushden Lakes. He was of the opinion that the VO's approach to what locality meant was too narrow and a more purposive approach should be applied.

Sometimes, the effect that the opening of an out of town retail park had on town centre locations was seismic. In the past, some retail parks have had the effect of decimating local town centres, as major multiples relocated to the retail park leaving their vacated unit behind and shoppers follow them migrating away from town centres, where parking was often expensive, to take advantage of free car parking. This hollowing out of town centres has been termed the doughnut effect and in the past the coming into existence of a retail park and/or its expansion has been accepted as being within the same locality as the towns which have been physically affected.

Mr Levy was satisfied that Rushden Lakes may draw retail trade away from Kettering and Corby Town centres. Having decided the preliminary legal point, in favour of the appellants, he disposed of the appeals by giving effect to the parties' agreed valuations in the Kettering appeals and dismissing the Corby appeal.

This decision has now been appealed to the Upper Tribunal.

Click here to read the full decision.

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

*Barclays Bank, Poundland & Others and Jo Moore (VO)*

On 12 June 2024, two weeks after the locality issue (referred to in the previous decision summary) had been determined in favour of the ratepayers, the same parties and their representatives appeared before a different VTE panel.

The material change of circumstances for which reductions in assessment were sought again related to the opening and subsequent expansion of the Rushden Lakes Shopping Centre. The appeals before the panel related to shops within Wellingborough town centre, which was closer to Rushden Lakes in comparison to both Corby and Kettering.

Reduced assessments of 10% had been agreed, subject to the panel determining that Wellingborough was in the same locality as Rushden Lakes.

The respondent was again represented by Counsel and the Valuation Officer (VO) intended to argue as a preliminary issue that Wellingborough was not in the same locality as Rushden Lakes.

### Consolidated Practice Statement (CPS)

**Please note**: the CPS was recently amended and changes were effective from 1 April 2024. The CPS can be found on the VTS website under VTE guidance.



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

Whilst the respondent acknowledged that the earlier VTE decision had determined that Corby and Kettering were in the same locality as Rushden Lakes, the VO's Counsel submitted that Mr Levy's (VTE Senior Member) lengthy VTE decision was flawed and not binding on the panel. However, no appeal to the Upper Tribunal had been lodged at this stage.

Having read the evidence bundles, skeleton legal arguments and Mr Levy's detailed decision, the panel found the latter to be highly persuasive and set a precedent which it was minded to follow. As an earlier VTE decision had determined that Kettering and Corby were in the same locality as Rushden Lakes, common sense suggested that Wellingborough, which was closer than both to Rushden Lakes, was also in the same locality.

In addition, it was not impressed by the fact that the respondent sought to relitigate the same legal point, that had already been decided by one of its legally qualified colleagues, in the hope of a different outcome. The panel was therefore not prepared to permit the respondent to re-argue the same legal point. Having announced its oral decision that Wellingborough was clearly in the same locality as Rushden Lakes, the panel disposed of the appeals. In so doing it gave effect to the revised valuations that had been prior agreed by the parties.

Read the full decision here.

The panel's decision(s) have now been appealed to the Upper Tribunal.

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

*Michael Stanuszek and Dawn Bunyan (LO)*

An earlier VTE panel decision, which dismissed the appellant's appeal, was remitted back to the VTE by the High Court to be re-heard by a different panel.

Mr Justice Henshaw had upheld the appellant's High Court appeal because he found that the earlier VTE panel had conflated the test for rateable occupation and whether each of the six rooms, in a house in multiple occupation, was a separate hereditament. It also disregarded the Supreme Court's judgment in *Woolway (VO) v Mazars* [2015] UKSC 53.

The appeal was re-heard by a Vice President who found that each room was a separate putative hereditament that clearly satisfied the geographical test, as set out by the Supreme Court in *Mazars*.

All of the rooms were let out on an Assured Shorthold Tenancy basis, with a fixed term of 12 months, to tenants. The Vice President found that each tenant was in rateable occupation of their respective room.

The appellant's Counsel sought to apply the functional test in *Mazars* in reverse to persuade the Vice President that the rooms were incapable of being separate hereditaments, as only the house as a whole was capable of passing the test. However, the Vice President's understanding of the relevant tests was that the primary test was geographic and if the

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

putative hereditament passed that test, the secondary functional test was not necessary. It was only necessary to consider the functional test if a merger of assessment was sought and it was not possible to unify them under the geographic test. This being the case, regard could be made to the secondary functional test.

In dismissing the appeal, the Vice President arrived at the same conclusion as the panel whose decision was set aside and remitted back to the tribunal for re-determination. It was a pity that the earlier panel failed to apply the correct tests, to identify the hereditaments, as set out by the Supreme Court in *Mazars*. However, in his opinion, the reason why the panel failed to apply the correct test(s) was because the answer was obvious as the rooms were clearly capable of qualifying as putative hereditaments and it was quite clear that the tenants were in rateable occupation of same.

Click here for the full decision.

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

*Charles Wells Brewery and Pipeline, Havelock Street, Bedford Marstons Brewery v Dawn Bunyan (VO)*

The parties invited the tribunal to decide as a preliminary issue whether two assessments formed a single hereditament.

The two assessments involved related to a brewery, formerly occupied by Marstons, and a borehole site which supplied water to the brewery. The two sites were approximately 2.7 kilometres apart and linked by a pipeline, which was predominantly underground. The pipeline formed part of the borehole assessment.

Having heard the competing legal arguments and submissions and reviewed the authorities, the panel was satisfied that the geographic test was met in this case. The pipeline interconnected with the brewing process, inside the brewery's curtilage, which meant that not only was the contiguity test met, which would have been sufficient pre-*Mazars*, but also that there was a degree of intercommunication as well, in terms of the passage of water from the borehole site to the brewery site. Therefore, the appellant's case that the two existing entries constituted a single hereditament was upheld.

Even if the panel was wrong on the geographic test, it found that the functional test was also met.

Since at least 2008, both the brewery and the borehole together with the pipeline had been in the same rateable occupation. Whilst it could be argued that the brewery could be let out separately from the borehole and pipeline, some physical alterations would be required to be undertaken by the incoming tenant, before mains water could be used in brewery production.

This would have potentially resulted in a breach of the reality principle or, to put it another way, offended the principle of *rebus sic stantibus*.

With regard to the borehole and pipeline, it was difficult to see how this property could be separately let out, as without the brewery, it would have no useful function. The brewery was therefore necessary for the effectual enjoyment of the pipeline and borehole.

Having determined the preliminary issue, the valuation of the single hereditament will need to be determined by the VTE at a later date.

# Decisions of the VTE – Non-Domestic Rating 2017

*Appeal property incapable of beneficial occupation and should be deleted from the rating list?*

In this case, the appellant's Counsel tried to persuade the VTE panel that the appeal property should be deleted from the rating list. He argued that the warehouse and premises was incapable of beneficial occupation, following a ten weeks' programme of refurbishment works which commenced on 28 November 2022. As a result of the works, it was contended that the property was no longer a hereditament. The works undertaken were those that would normally be done, following the end of a tenancy, to enable the landlord to be in a position to re-let it.

The panel was not convinced by the appellant's Counsel's arguments as it found that the hereditament continued to exist at the material day. Although the property was subject to a programme of works, the panel was not persuaded that the property was incapable of beneficial occupation. It was not therefore a *Monk* type scenario, where the whole of the property was incapable of use. The panel found it more akin to the case that was heard by the President in *Aviva Investors v Bunyan (VO)* where the hereditament continues to exist and the statutory repair assumptions are engaged. It was therefore distinguished from a case, where a new property has recently been built but never occupied, which lacks certain features, and for which no completion notice has been issued. The appeal was therefore dismissed and the panel's decision has been appealed to the Upper Tribunal.

The decision can be read here.

# Decisions of the VTE – Non-Domestic Rating 2017

*Agricultural exemption*

This appeal sought a deletion on the basis of agricultural exemption.

The subject property was an engineering workshop situated on a farm, it was built in 1999 and extended in 2011.

The panel had to consider a number of arguments from the parties including:

a) that the workshop should be included in the overall farm assessment as it had been in the past,
b) that part constituted domestic storage,
c) whether the workshop was an appurtenance as it was separated from the farmhouse by a hedge,
d) that an agricultural exemption should be applied to part of the building used to store fertilisers and tools, and
e) that it was a composite hereditament with an area used for domestic storage of privately owned motor vehicles.
f) The panel had no regard to the previous treatment of the premises. It was occupied by a limited company and a separate entity to the farm therefore it should be a separate entry in the rating list.

The panel had no regard to the previous treatment of the premises. It was occupied by a limited company and a separate entity to the farm therefore it should be a separate entry in the rating list.

The panel was aware from the legislation that for the agricultural exemption to be awarded the subject property must form, in a real sense, a single agricultural unit with the



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

land. The business was engineering and car restoration and the storage area was used by both, therefore the storage area could not be treated as a single unit with the land and the agricultural exemption would not apply.

At the challenge date on 15 May 2022 the area where the privately owned vehicles were stored was not separately identifiable from the area occupied by the engineering company, it was confirmed the cars were moved to different areas on occasions to facilitate the business.

The panel was aware that where use of any part of a property is shared, unless the non-domestic use can be considered to be *de minimis*, that part of the property does not constitute domestic property for the purposes of Part III of the 1988 Act because it is not used wholly for the purposes prescribed in S.66(1)(c). These areas were not used wholly or mainly for the purpose of accommodating private motor vehicles and therefore the panel found the subject property was not a composite hereditament.

The panel dismissed the appeal.

Read the full decision here.

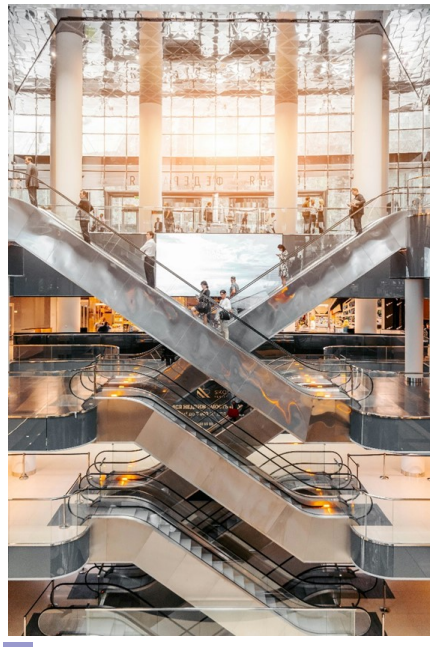
## Decisions of the VTE – Non-Domestic Rating 2017

*Material Change of Circumstances*

The appeals sought reduced entries, following a material change of circumstances (MCC). The MCC event related to the closure of Debenhams with effect from 1 February 2020. However, proposals all referred to a later MCC as also having an impact which was AFC Wimbledon moving into the locality on 13 July 2020, its new stadium was nearby. There were two issues in dispute, the end allowance for the MCC and the effective date from which it should apply.

Effective date issue

The panel determined that any such effective date, should it find that a material change of circumstances had impacted was 13 July 2020. It was fundamental that rating valuations had to be undertaken, having regard to the facts as they stood on the material day, which in these appeals was 17 July 2020.



The panel found that a subsequent material change of circumstance in the locality of the subject hereditaments had occurred following the closure of Debenhams on 1 February 2020, as, on 13 July 2020, AFC Wimbledon began occupation of a vacant unit in the Centre. The appellant's representative was hung by his own petard as the proposals stated that the effective date of the material change of circumstances was 13 July 2020 when, it cited that the last change in occupation in the Centre took place. At the hearing, the appellant's representative resiled from the above and sought an effective date of 1 February 2020, which was accordingly rejected by the panel.

End allowance issue

The appellant's representative sought an allowance of 7½% for the effect of the departure of Debenhams in February 2020. The appellant's representative stated that the premises accounted for 37.8% of the total size of the shopping centre and argued that the vacation of Debenhams, which was described as an anchor store, had a detrimental impact affecting the entire centre. Allowances at shopping centres which Debenhams had departed from given by the Valuation Office of 7½% in Stoke and Scarborough were also relied on.



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

Whilst the panel determined that the closure of Debenhams had an impact on footfall and trade, it considered that the 7½% allowance sought by the appellant's representative was excessive due to the subsequent occupation of a unit by AFC Wimbledon. The panel found that event, which preceded the imminent move of the football club to its new stadium at Plough Lane, signified that trade was picking up again at the Centre. This was a positive factor when considering footfall and trade which lifted some of the gloom of the departure of Debenhams.

The panel attached no weight to the agreed reductions to RVs for premises in Stoke and Scarborough. Whilst reduced RVs may have been agreed or conceded elsewhere, each locality is different and the evidence in those other localities may have justified an allowance. It would not be typical rating practice for a valuer to source assessments, especially in the form of shopping centres which are abundant, from significantly distant locations to the subject.

Having considered the evidence, the panel determined an end allowance of 5% for each appeal property. The appeal in respect of the Debenhams unit was not pursued and was dismissed.

Read the decision here.

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

*Proposal seeking a deletion of the assessment*

This appeal concerned an unoccupied restaurant in Stafford. The appellant company had ceased to trade from the property which had subsequently been the subject of a scheme of works which had, it was argued, rendered it as being incapable of beneficial occupation. A deletion of the entry was sought on the basis that it was no longer a hereditament. Whilst the scope of the works had largely been agreed between the parties, there remained a dispute concerning the removal of sanitary ware, works to the lighting and the alleged cutting off of the electricity supply from the main circuit board.

In order for this appeal to succeed, the panel had to be satisfied that the property had, following the programme of works, become incapable of beneficial occupation and had ceased to be a hereditament. However, if the property remained a hereditament, albeit in a state of disrepair (for which the statutory assumption as to reasonable repair would apply), the appeal must fail.

In *Newbigin (VO) v SJ & J Monk (a Firm)* [2017] UKSC 14, the Supreme Court had clearly distinguished between a state of disrepair (which had no impact upon value because of the landlord's obligation to undertake reasonable repairs) and redevelopment works which renders a building incapable of beneficial occupation. As *Monk* makes clear, this is an objective judgement having regard to the facts on the material day.

The panel found that the property had not been stripped to anything like a shell state (as was the case in Jackson *(VO) v Canary Wharf Ltd* [2019] UKUT (LC) 136). The stalls remained in place, as did the bespoke tiling, flooring and mirrors. Also, the water supply had not been removed, instead the pipework had been capped. The panel found that any new tenant would fully remove the existing fittings in their entirety before installing their bespoke flooring, tiling, and sanitary ware in a relatively short space of time and apply their own decorative branding. The panel held that if it was possible to render a property incapable of occupation solely by removing the sanitary ware then it would defeat the purpose of

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

the repairing assumption. As far as the work to the lighting was concerned, the panel concluded that it represented repairs which the hypothetical landlord would be expected to undertake.

The panel concluded that the argument put forward by the appellant exceeded the boundaries of Monk. If it was correct then the statutory assumption as to reasonable repair would seldom, if ever, be engaged. Any tenant will, when vacating a property, invariably leave behind a degree of damage. Whilst a prospective tenant will be reluctant to occupy a property which is in need of repair, it does not mean that a hereditament has ceased to exist.

The appeal was dismissed.

Read the decision here.

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

*Agricultural exemption*

This appeal also sought an agricultural exemption for some buildings situated on agricultural land owned by the appellant. The land was predominantly used for the growing of Christmas trees. Some of the buildings comprised open sided barns, with other parts being fully clad, and internally converted to provide a café area, sales area, mezzanine storage and a grotto area.

As the property was only used for selling Christmas trees for no more than five weeks of the year, the appellant argued that any non-agricultural use was *de minimis*. In any case, he considered that such use was ancillary to the use of adjacent land which was used for growing Christmas trees.

The respondent argued that the property was non-agricultural. In the run up to Christmas, it was used for retail purposes and for the rest of the year, it was used to store non-agricultural products.

The panel considered that there was no dispute that the adjoining land was agricultural land, owned by the appellant and used for the growing of Christmas trees and the subject property was occupied together with that agricultural land. In order to be exempt under as an agricultural building the panel considered that the subject property must satisfy the second limb of Schedule 5 (3)(a);

'and is used solely in connection with agricultural operations on that or other agricultural land'

Having considered the photographs of the subject property and the submissions of the parties, the panel noted that there was some equipment which could be described as agricultural stored in some of the buildings. However, it was evident to the panel that the majority of the areas described as sales area and mezzanine storage were, in February 2022 being extensively used for the storage of stock, such as tree stands, lights and decorations, and other Christmas paraphernalia. There was also a café, Christmas grotto area and children's play area.

The panel investigated whether parts of the subject property, particularly the open sided barn areas, may have been used to store agricultural equipment when the shop was closed for 47 weeks of the year. However, it was accepted that for five weeks of the year those parts were used for retail purposes and not agricultural. The panel was therefore unable to conclude that any parts of the subject property were used solely in connection with agricultural operations on adjoining agricultural



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

land. The subject property did not therefore qualify for an exemption as an agricultural building within the criteria set out in Paragraph 3 of Schedule 5 to the 1988 Act. The appeal was therefore dismissed.

Click here for the full decision.

## Decisions of the VTE – Council Tax Valuation

*Converted outbuilding and subsequent sale*

This appeal related to Firsby Manor after its council tax assessment was reviewed by the Listing Officer following a sale. Following that review, the band entry for the main house was increased from band E to G and a converted outbuilding was also valued as a separate dwelling in band A.

The two issues in dispute were:

(1) Whether the outbuilding should be listed as a separate entry in the valuation list.
(2) The correct banding of Firsby Manor.

The appellant submitted that the Firsby Manor and the outbuilding should be assessed as a single property in band E.

Firsby Manor had a number of outbuildings and the previous owner had converted one of them into additional living space which was detached from the Manor house itself and was linked to the garage. The appellant argued that he used it as part of the Firsby Manor. It had a planning restriction and could not be let out or sold separately.

The panel found that the outbuilding had been adapted for use as separate living accommodation. With reference to the photographs and layout plans, the panel was satisfied that it contained all the facilities required for separate living accommodation. It therefore formed a separate dwelling for council tax purposes. The panel also decided that band G was correct for the main house and the appeal was dismissed.

Read the decision here.

## Decisions of the VTE – Council Tax Valuation

*Hereditament test*

The appellant was seeking a deletion of the appeal property. It was approximately 250 years old and had last been occupied by the same family for 60 years with no improvements being made to the property during that time. The property had been empty for several years.

A developer had since purchased the appeal property and sought planning permission for redevelopment purposes. However, the property had been targeted by vandals and thieves. Pipework had been stolen and the property had fallen into ruin and was now in a dilapidated state.



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## Decisions of the VTE – Council Tax Valuation cont'd...

The appellant had employed the services of a property consultant who identified the following issues which needed to be remedied, before the property could be re-occupied as a dwelling;

a) it required repairs to all principal elements…some window fittings have failed;
b) it had significant damp;
c) the report confirmed that the plumbing installation had been vandalised including the hot water cylinder and pipework had been stolen;
d) the corrugated metal roof over the lean-to was overgrown and sub-standard.
e) rising and penetrating dampness was noted;
f) spores in internal joinery;
g) Plasterwork was severely defective;
h) the mains electrics was obsolete with a temporary builders supply;
i) no kitchen fittings;
j) sanitary fittings had been vandalised; and
k) it was in a very poor condition and not wind or watertight.

No counterfactual evidence was put forward by the Listing Officer (LO) to challenge the accuracy of the survey. The LO had never carried out an inspection and had based their case on images downloaded from the internet in 2019 which led them to believe the property was wind and watertight.

The LO's position was that they would only consider deleting the entry once a programme of works had begun.

In the case under consideration, the panel only had one expert surveyor's report before it, which stated in their opinion that the property was derelict. No evidence was put forward by the LO to explain how it could be rendered suitable for occupation, in the light of the expert's report which suggested otherwise. The appeal was therefore allowed and the entry deleted.

The decision can be read here.

## Decisions of the VTE – Council Tax Liability

*50% discount for an annexe of appeal property*

The appellant sought a 50% discount under The Council Tax (Reductions for Annexes) (England) Regulations 2013 which the billing authority had refused.

The appellant was the owner of 1 Strangways Terrace, a building housing five self-contained flats. Each flat was for council tax purposes valued as a separate hereditament. With the exception of the ground floor flat, which was occupied by the appellant, each flat had been let to tenants. When the tenant vacated the rear flat on the first floor, the appellant claimed he was also occupying that and sought the council tax "annexe" discount. He confirmed that his other three flats in the building remained separately let.



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## Decisions of the VTE – Council Tax Liability cont'd...

Flat (rear first floor), is situated directly above the ground floor flat on the first floor. Each flat has its own separate entrance and there was no intercommunication between them.

The appellant argued that he had moved some of his personal effects into flat (rear first floor), this included books and some furniture including bookcases and he argued that it fits the definition of an annexe.

The panel held that flat (rear first floor) was not an annexe, but a hereditament in accordance with S.3 of the LGFA 1992. Therefore, flat (rear first floor) did not meet the criteria for an annexe discount and the panel dismissed the appeal.

Read the full decision here.

## Decisions of the VTE – Council Tax Liability

*Sole or main residence*

In this case, the appellant sought a 25% discount for being the sole adult occupier of the appeal property from 9 April 2013. She contended that she had not been aware of the discount earlier to make a claim at the time, but her husband had moved out on that date to live in another property they had purchased together. The billing authority requested evidence to support this but, after considering that evidence, decided that the appellant's husband had his sole or main residence at the appeal property and refused the discount.

As the dispute between the parties in this appeal concerned a retrospective period, the panel needed to consider the evidence available to demonstrate that the appellant's husband's main residence had changed in April 2013. The appellant and her husband attended the remote hearing and relied heavily on utility bills addressed to him at the other house.

The case from the appellant was that she and her husband had decided to separate, amicably, and purchased a second property for him to live in. She submitted that he had moved as soon as their purchase of the other property completed but, due to the continued amicable nature of their relationship, he had continued to receive mail at the appeal property and had not updated many of his records. The panel noted the appellant's explanation that they had chosen not to divorce but were separated, although neither had a new partner, and remained in regular contact and the situation was amicable. However, it found that the actions of the appellant's husband did not support the claim that his sole or main residence had changed. He not only received mail at the appeal property but had continued to apply for credit from that address and, although he had advised his car insurer of a change to where his car was kept overnight, he had not updated the insurance policy to reflect a change of residence at the same time. The appellant and her husband had registered to vote at both properties and the appellant's husband had not updated his driving licence with the DVLA to reflect a change of address.

After considering all the available evidence, the panel was not persuaded that the appellant's husband had changed his main residence. He retained strong ties to the appeal property, both financial and practically. The panel accepted that it may take time to update records following the breakdown of a relationship and a change of address but, even in an amicable situation, it struggled to accept that a decade later the appellant's husband had still not updated records to reflect a permanent change of address. When asked at the hearing whether any records had been updated since this appeal was lodged, for consideration of the discount from a later date, the appellant's husband confirmed he had not. The panel found that on balance the




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

evidence suggested his main residence remained at the appeal property and the appeal was dismissed.

Read the decision here.

## Decisions of the VTE - Council Tax Liability

*Disregard discount for member of a religious community*

The appeal concerned whether the appellant could be disregarded for council tax as a member of a religious community.

The appellant had been the tenant of the appeal property, which was owned by a housing association since 1994. She had made an application for a disregard discount from 1 April 2022 on the basis that she is a member of the Genuine Orthodox Christian Church community, she has a room within her house converted to a small chapel and is dependent on the community to provide for her material needs.

In order that the disregard discount could be awarded, the appellant had to demonstrate that she was a member of a religious community the principal occupation of which consists of prayer, contemplation, education, the relief of suffering, or any combination of these; and that she had no income or capital of her own (disregarding any income by way of a pension in respect of former employment) and is dependent on the community to provide for her material needs.

At the hearing the appellant explained that she received no income from either any gainful employment or unemployment benefits and that she was reliant on the generosity of others, but she had provided very little in way of demonstrating what 'donations' had been received and when.

On the basis that the appellant had not provided sufficient evidence to demonstrate that she was dependent on the community for her material needs, the panel found in favour of the billing authority and dismissed the appeal.

Click here for the full decision.

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