Issue 74

November 2024

Valuation Tribunal Service

Valuation in Practice

News in brief

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

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Council tax information letters

On 16 August 2024, Government published a council tax information letter relating to pension age council tax reduction applicants and universal credit.

See here for the latest council tax information letters.

Council tax: challenges and changes background information

On 29 August 2024, the VOA published a release containing statistics relating to challenges and changes in England and Wales across the council tax valuation lists in England and Wales. Headline facts and figures from 1 April 2023 to 31 March 2024 can be found here.

Guidance: The Collection Fund (Council Tax Reductions) (England) Directions 2024

On 16 August 2024, Government published directions setting out the circumstances in which billing authorities must meet the full cost of providing section 13A(1)(c) discretionary discounts to council taxpayers in their area. Further information can be read here.

Accredited official statistics: Collection rates for council tax and non-domestic rates in England, 2023 to 2024

This annual release contains data on the receipts of council tax and non-domestic rates collected during 2023-24 and the arrears outstanding at the end of the financial year. Read more about this here.

Business rates retention

On 1 August 2024, the Government updated publications that provide information on the business rates retention scheme. This includes updates on levy and safety net, business rates piloting prospectus, arrangements and news. The collection can be read here.

Policy paper: Main Non-Domestic Rating Account 2023-24

On 29 July 2024, the Government published a policy paper setting out the funds received in non-domestic rates and paid to local authorities during 2023-24. You can read this paper here.

Official statistics - National non-domestic rates collected by local authorities in England 2023 to 2024

This release provides data on non-domestic rating income collected by local authorities in 2023-24, including data relating to the amount of business rates reliefs given to businesses.

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Inside this issue:

This update, published in August 2024, includes data for one local authority whose data was not returned in time for the original publication in July 2024 and revisions from several authorities. The data in this version of the release is based on provisional returns received from the 296 authorities by 27 July 2024, with data provisional pending the completion of audit of accounts for 2023-24. Click here to read more.

Guidance: Enterprise Zones

On 11 September 2024, the Government published guidance on Enterprise Zones within England. Enterprise Zones are designated areas aimed at stimulating economic growth by offering incentives to businesses to establish or expand their operations within them. Within these zones, businesses could benefit from incentives such as:

- a business rate discount of up to 100% over 5 years
- Enhanced Capital Allowances for machinery and equipment purchases
- simplified planning regulations through Local Development Orders

Read more about this guidance here.

News story: Warning of false claims

The VOA published in 2024, a news story to be aware of false claims about deadlines to appeal the 2023 list for business rates. Read more about this, and the VOA Agent standards, here.

Our Tribunal Hearing Programme - October to December 2024

The profile and volume of our remote hearing programme is:

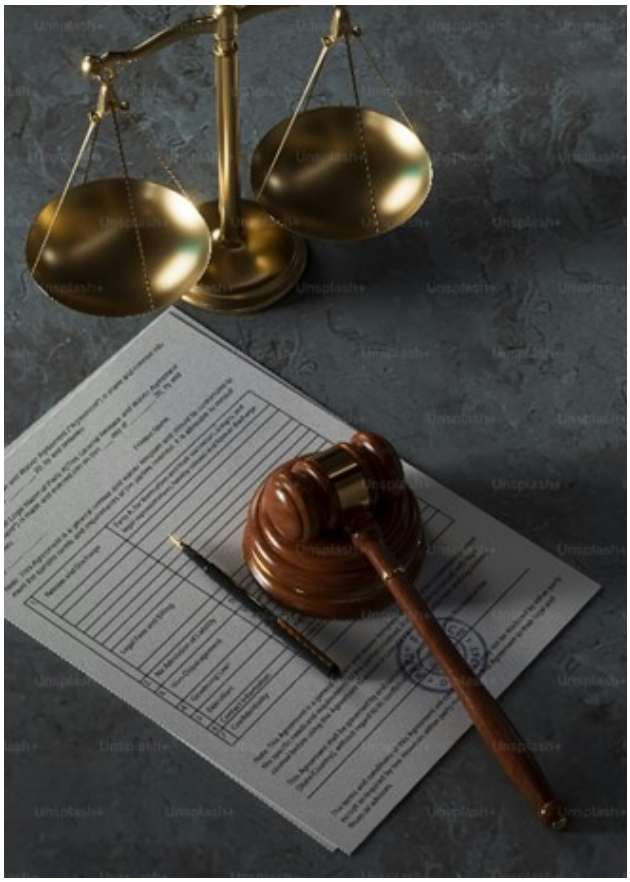
Tribunal Type	October	November	December	TOTAL
Council Tax	65	70	40	175
2017/2023 Rating List	23	13	12	48
2017 Rating List Complex Case	0	2	0	2
2017/2023 Rating List + Transitional Certificate	0	0	1	1
TOTAL	88	85	53	226

Stayed appeals - Material Change of Circumstances in relation to closure of large shops

Following the receipt of a significant volume of appeals arising from MCC challenges in relation to the closure of large shops, these have been stayed whilst the 33 identified as test cases are heard.

Decisions of the Upper Tribunal

Kevin Prosser KC and Andrew Ricketts (VO) [2024] UKUT 264 (LC)



An appeal against the VTE President's decision that the barristers' chambers formed a single hereditament.

The appellant had sought a split assessment so that the seven rooms occupied by individual barristers would be shown in the Rating List as separate hereditaments. The motive behind the proposed alteration(s) was to secure small business rates relief.

It was common ground that the rooms in question were sufficiently identifiable of being a separate hereditament, if supported by the facts. The appellant's proposed valuations for the individual rooms were not disputed, if the appeal was upheld.

In determining the appeal, the Upper Tribunal (UT) had regard to how the appeal property was acquired, the constitution and policies of Chambers to see how it was run. It found that all members of Chambers were bound together in a contractual relationship through their subscription to the Chambers' constitution, which imposed obligations and conferred rights on them. It also found that each member had an equitable interest under the trust of land, derived from the lease(s) pursuant to clause 46 of the Constitution. Clause 46 contained the express provision that property acquired for Chambers was held on trust for all members.

The allocation of individual rooms within Chambers to members did not alter the fact that there was joint occupation of the whole property, which was occupied for the shared purpose(s) of all members. This enabled each of them to carry on their individual practices from the same premises, under a collective identity, and to benefit from the joint provision of administrative support services and the sharing of expenses.

The UT found that Chambers as a whole was in collective control of the use of its premises and it has not parted with it to individual members. In this case the members of Chambers have retained all their rights of occupation while allocating between themselves the use of individual rooms. Accordingly, the UT held that the individual members of Chambers were not in rateable occupation of their separate rooms because the whole of the premises were in the joint occupation of all members. The appeal was therefore dismissed on that basis.

In the event that the above analysis was incorrect and it was appropriate to regard individual members as being in occupation of their individual rooms with Chambers collectively occupying the rest of the premises, the arrangement would be akin to that of landlord and lodger. Therefore, if its earlier analysis was wrong, the appeal would still fail because Chambers as a collective was in paramount occupation of the whole property.

The decision can be read here.

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.

Decisions of the Upper Tribunal

Charles Waters and Wayne Cox (VO) [2024] UKUT 232 (LC)

An appeal against a VTE panel decision which determined that the VO's existing assessment of £100,000 RV for Finkley Down Farm was correct.

The appeal property was a farm attraction containing three principal elements; activity areas, animal pens and buildings, and a large play barn. The appellant sought a reduced entry of £54,500 RV whilst the Valuation Officer's (VO) valuation was £134,250 RV but as the list was closed, he sought a dismissal of the appeal.

It was not disputed that the appropriate method of valuation was the full Receipts and Expenditure (R & E) basis. To this end, the parties had assisted the Upper Tribunal (UT) by agreeing a number of components, within their respective valuations.

The parties differed in their calculation of the fair maintainable trade (FMT) and the UT found that the appellant's calculation reflected undue caution and was unduly pessimistic by basing his figure on 10% less than the actual revenue received during the year ended 31 March 2015. In contrast, the VO's calculation was based on his belief that the revenue would stay largely the same, which the UT thought was possibly conservative, as the appeal property's income stream was on an upward curve, following the arrival of the play barn in 2013. Nevertheless, the VO's calculation of the FMT was closer to reality and his figure of £1,325,000 was adopted by the UT in its valuation.

For small to medium sized farm attractions, the actual management of the property would be undertaken by the hypothetical tenant themselves. Therefore it was inappropriate, as the appellant had done in this case, to include a Manager's salary as a working expense in the accounts. The tenant's remuneration should therefore be reflected in the tenant's share of the divisible balance which was in line with agreed practice and the Receipts and Expenditure Guidance Note which had been endorsed by professional bodies including the RICS, IRRV and RSA.

There was considerable discussion of the impact of access rights reserved by Taylor Wimpey, following the sale of land to it for development purposes in 2008. These access rights, which could be exercised within a period of 20 years, contained provision to allow the building of an access road through the northern part of the farm to reach land to the east. The contract also provided for Taylor Wimpey to acquire land required for such access. Whilst the appellant argued that the valuation exercise should reflect the probability of these access rights being enforced, the UT decided that there was no certainty if and when they would be enforced. Given the fact that the rating hypothesis assumed a tenancy from year to year, it followed that there was no need to have regard to it in the valuation.

Both parties differed in their calculation of the tenant's share. The appellant had adopted 75%, whilst the VO's figure was 65%. The UT determined that the VO's calculation of the tenant's share was more forensic than the appellant's. As the determination of the tenant's share normally had the most far reaching consequences of the R & E valuation exercise, the UT was surprised that only six comparable properties were cited. Having regard to evidence, the UT determined a figure of 68% for the

To be continued on Page 5

Decisions of the Upper Tribunal cont'd...

tenant's share.

The Approved Guidance recommended a stand back and look stage for the valuer to check whether the value they had arrived at fitted in with the pattern of values adopted for other sites. Having undertaken this exercise, the UT determined a valuation of £123,750 RV which meant that the appeal property was under assessed. As the list was closed, the current entry of £100,000 RV could not be increased retrospectively, so the appeal was simply dismissed.

Decisions of the VTE - Non-Domestic Rating 2017

Shoosmiths LLP and Mando Group Limited and Amanda Hitchings (VO)

Two appeals relating to grade A offices, one situated in Manchester, the other in Liverpool were heard together by the President as test cases.

In what was essentially a re-run of the arguments that were aired before the Upper Tribunal (UT) in *Bunyan (VO) v Acenden Ltd* [2023] UKUT (LC), the main issue in dispute was whether or not there should be an uplift to reflect a tenant's fit out to Category B condition. Category B reflected the state when offices were capable of beneficial occupation.

During the course of proceedings, it was put to the President that he had the benefit of more complete and better evidence, in comparison to what was put before the UT.

Before he could determine what uplift, if any, was applicable to reflect a tenant's Category B fit out, the President had to determine a number of sub-issues in order to arrive at a Category A value for each appeal building. The parties disagreed on the following:

1) The date from when the actual rent should be toned back from. The appellants argued that it should be from the date when the agreement for the lease was made. As the level of rent did not change, once heads of terms were agreed, the Valuation Officer (VO) argued that toning back should be from when heads of terms were agreed. The President determined that the appellants were right on this point.
2) Should car parking incentives be reflected in the valuation? As the car spaces were rated separately, the President rejected the appellants' argument that any incentives conceded by the landlord for the car spaces should be reflected in the office assessment.
3) The period to be deducted for fit out from the rent free period. As the Liverpool property was let out in Category A condition and the Manchester property in a shell state, the President deducted

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To be continued on Page 6

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

three and six months respectively, thereby endorsing the VO's approach.

4) In terms of the quantity allowance for the Manchester property, the appellant's approach based on the pattern of quality allowances conceded for comparable assessments was preferred to the VO's. The VO's approach was to make an adjustment of 2.5% to reflect that the tenant enjoyed greater flexibility of having two leases, one for each floor. The VO's approach was rejected as it was not in line with the rating hypothesis.

5) As the Manchester property was let in a shell condition with the landlord making a capital contribution to meet the cost of the Category A fit out, there was a dispute over whether or not there should be an addition to the shell rent to arrive at a turn key Category A rent. After some deliberation, the President upheld the appellant's argument that no uplift was justified as effectively the tenant was using the landlord's money to meet the cost of the Category A fit out.

Ultimately, the President determined a Category A value of £195 per m^2 for the Manchester offices and £80 per m^2 for the Liverpool offices.

In terms of the uplift for Category B, the difficulty faced by the President was that Grade A office space was usually let out in Category A condition. Whilst there was comparable evidence available, where offices were let in Category B condition, the President observed that these were second hand deals, often arising from businesses downsizing or business failures. As a corollary, the appellants' comparable evidence was unreliable. The President was mindful that an uplift of £25 per m^2 had been agreed in the London area for the fitting out from Category A to B. Given that London was a more expensive location than Manchester, the President determined that an uplift of £15 per m^2 should apply. As Liverpool was a poorer location, in comparison to Manchester, he determined that an uplift of £10 per m^2 was applicable for the Liverpool offices.

Both appeals were therefore allowed. The Manchester assessment was reduced to £595,000 RV based on a rate of £210 per m^2 and the Liverpool premises reduced to £44,000 RV based on £90 per m^2.

The VO has appealed the decision(s) to the Upper Tribunal. The decisions can be read here.

Decisions of the VTE - Council Tax Valuation

Does the hereditament comprise two self-contained units after creation of an Annexe?

When the appellant purchased the appeal property it was listed in band G. The previous owners had extended the lower ground floor to add an en-suite shower room to an existing bedroom and to enlarge the balcony above, so the purchase triggered a review of the valuation band. The Listing Officer (LO) reviewed the floor plans and determined that the alterations to the lower ground floor had resulted in the creation of a self-contained unit (referred to as 'the Annexe'). The appellant disputed the new list entry, stating that the area identified is part of the main house, is not self-contained, and could not be so without major structural works.

As the Annexe was occupied with the rest of the house and formed part of the family home there was no dispute that the appeal property constituted a single hereditament: the issue was whether the hereditament comprised two self-contained units. In accordance with Article 3 of the Council Tax (Chargeable Dwellings) Order 1992, if there were two self-contained units, each one must be separately banded.

The LO contended that all the constituent components required for a self-contained unit were present. The lower ground floor (the putative self-contained unit) comprised a living room (known as the 'garden room'), bedroom with ensuite shower room and a kitchen area. The Annexe could be accessed from the hallway of the main house or through exterior doors in the kitchen, lounge and bedroom.

The appellant argued that the layout of the building made it impossible for the Annexe to be a separate self-contained unit, as

To be continued on Page 7

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

there was no door between the lower ground floor and the rest of the house. He explained that the Annexe could not be separated from the main house, stating that the landing / hall area formed part of the atrium and as such was an integral part of the overall living space. There was no access to the garden from the rear or side of the house other than through the putative self-contained unit.

The panel considered the characteristics of the house. It noted that a 'self-contained unit' was defined as "part of a building which has been constructed or adapted for use as separate living accommodation". Taking this definition alongside established case law, the panel understood a self-contained unit to be something more than the particular configuration of rooms or facilities, and as such, not something that may be readily determined by looking rigidly at floorplans.

As a whole the appeal property was a large house with five bedrooms. Photographs of the rear of the house showed two sets of patio doors providing access to the garden. Both doors are within the putative self-contained unit, as is the other rear / side door. The panel found it improbable that a house of this size and type would not have direct access to the garden. It also expected that a house of this size would have more than one living area, the presumed function of the 'garden room'. The panel considered that the open aspect conferred by the atrium undermined the feeling of separateness that would be usual in a self-contained unit to a house of this character.

The panel ultimately found that the Annexe did not constitute a separate self-contained unit and that the appeal property was a single dwelling.

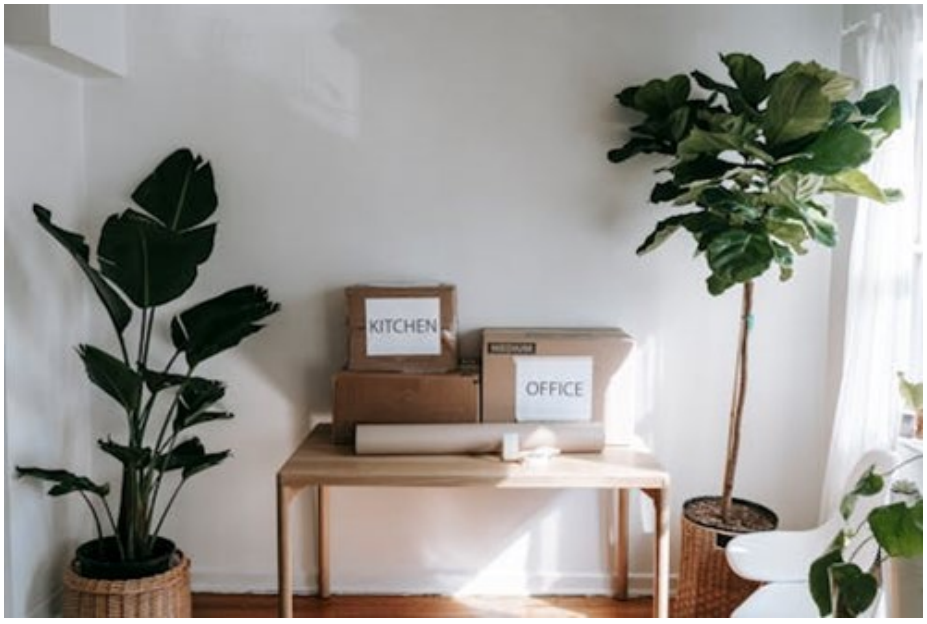
Read the full decision here.

Decisions of the VTE - Council Tax Valuation

Retrospective deletion sought

The appellant was a firm of solicitors which occupied a property that had a self-contained domestic dwelling on the second floor. This had been removed from the valuation list with effect from 25 September 2014.

The appellant sought an earlier effective date for the deletion, as they contended that the flat was incapable of beneficial occupation.



The appellant's case was that the property could not have been occupied due to the lack of a separate entrance which would have been a breach of confidentiality and security of the premises. The water had been disconnected as of 1 October 1995 which rendered it uninhabitable. A Fire Risk Assessment undertaken on 4 January 2007 was submitted as evidence that occupation was not possible due to the lack of fire protection measures, this formed the basis of the alternative retrospective date for deletion. It was also cited as proof that the character had altered, and the use of the subject dwelling was storage for the business by

To be continued on Page 8

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

that date.

There were a number of witness statements and documents submitted to support the deletion including the lease and internal photographs of the dwelling.

The panel had to determine whether the dwelling ceased to exist before 25 September 2014.

The photographs from 2021, after the subject dwelling had been taken out of the list, showed one room where file boxes were on the floor, there was no shelving or fittings for storage. There were also some files in another room alongside several domestic items. There was no evidence supplied that there had been more files stored in the subject dwelling at any time before this.

The lease also provided for the tenant to have access to one room for storage purposes, the remainder was available to the landlord for storage.

The panel concluded that the character of the subject dwelling had not changed substantially as there had been no physical changes to the dwelling and the majority of the rooms were not used as storage for the business.

The photographs also demonstrated that the dwelling was not beyond repair, it was clearly wind and watertight and some of the domestic fittings remained. The panel considered the dwelling was not beyond repair, prior to 25 September 2014 which was the date when the entry was deleted.

The appeal was therefore dismissed.

The full decision can be read here.

Decisions of the VTE - Council Tax Liability

Annexe discount

The appellant purchased the appeal property, Stibbington Hall, on 18 March 2019. Within what the appellant argued was a single property were three dwellings. The main house within the appeal site was Stibbington Hall and the other two dwellings were the Coach House and the Cottage. The latter two were previously let out to tenants by the previous owner and historically had been valued as separate hereditaments.

The appellant's Counsel argued that, following the Supreme Court's judgment in *Woolway (VO) and Mazars LLP* [2015] UKSC 53, the appeal site formed a single property, the geographical test being met. Therefore, it was argued that the appellant was entitled to an annexe related discount for both the Coach House and the Cottage under the Council Tax (Reduction for Annexes) (England) Regulations 2013.

As the appeal before the VTE President, related to a dispute over the calculation of the appellant's council tax liability, he determined that he had no jurisdiction to consider whether or not the appeal site should now be treated as a single hereditament. The fact was that, rightly or wrongly, the valuation list currently showed that the appeal site consisted of three separate hereditaments. Neither the Coach House nor the Cottage had been assessed by the Listing Officer as an article 3 dwelling, self-contained unit, forming part of a single property under the Council Tax (Chargeable Dwellings) Order 1992.

Annexe discount(s) were sought from the date when the appeal site was purchased. However, it was apparent from the evidence that both the Coach House and the Cottage were not used by the appellant's family then, as part of their sole or main residence. At the time, they were superfluous to the family's requirements and the appellant was considering renting

To be continued on Page 9

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

them out as holiday lets, until he changed his mind.

Therefore, the tripartite test as set out in Regulation 3 of the 2013 Regulations was not met and the appeal was dismissed.

Read the full decision here.

Decisions of the VTE - Council Tax Liability

Student exemption

The appellant and her partner appealed the Billing Authority's decision not to award Class N exemption for a property occupied by full-time students, under the Council Tax (Exempt Dwellings) Order 1992. It was submitted that she and her partner were obtaining a work-related qualification, namely a degree level 6 BSc (Honours) in Professional Policing Practice. She considered that this met the criteria to be a full-time course of education and qualified the appeal property for exemption as both occupiers are students.

The panel examined the submissions, and the definitions set out in council tax legislation. It found that the course was tied to the employment with North Yorkshire Police and was provided jointly by the Open University (OU) and the police service.

The appellant was required to work full-time (40 hours per week) for the police and was paid accordingly. While there was no dispute that the qualification to be attained was degree level, the panel noted that the course was consistently referred to in the documentation as an apprenticeship and the requirement was for 20% of the appellant's paid hours to be spent on 'off the job' training. It therefore concluded that the majority of the course was spent learning 'on the job' as an employee carrying out their usual duties.

After considering all the evidence, the panel found that Schedule 1 to the Council Tax (Discount Disregards) Order 1992, specifically paragraph 4(3), prevented classification as a full-time course of education because the periods of work experience outweighed the 'off the job' study.

The appellant highlighted that student nurses and teachers in training, where work experience is part of the qualification, are treated differently.

However, the panel could not make changes to the legislation but only apply it to the case before it.

On the facts of this case, the panel found the appellant and her partner were not full-time students for council tax purposes and the appeal was dismissed.

You can read the full decision here.

Decisions of the VTE - Council Tax Liability

Disabled Band Reduction

The appellant had made the following arguments as to why a disabled band reduction should be granted. She has been disabled and house bound since 2018 due to surgery of the left hip which has caused restricted mobility. She relies on a walking stick, a walking frame and grab rails and has a swivel seat over the bath and double banisters on the stairs to help her to get around the appeal property. She stated that a wheelchair, extra bathroom, extra kitchen, or extra room would be of little use to her as she lives alone. The appellant argued that she is in constant pain as she also fell and broke her humerus bone and had been told that surgery to rectify the injury was not usually successful, so she had not had it done. The appellant contended that she should be treated like a human being and granted a discount due to her disabilities and not the rooms in her home.

The panel did not have any discretion in making this decision as its jurisdiction only extended to ensuring that in making the decision, the billing authority (BA) had applied the law correctly. It turned to the relevant legislation, Regulation 3 of The Council Tax (Reductions for Disabilities) Regulations 1992 (as amended).

For Regulation 3(1)(a)(i) to apply, the appellant must have a room, predominantly used for meeting her needs that was of essential or major importance to her well-being. In addition, there had to be a causal link between her use of that room and the extent and nature of her disability. The criteria also specified that the room in question, could not be a kitchen or a bathroom. The appellant had stated that she did not. The panel therefore concluded that the criteria within Regulation 3(1)(a)(i) had not been met.

For the application of a reduction under Regulation 3(1)(a)(ii), the appeal property was required to have an additional kitchen or bathroom, to meet the needs of the appellant due to the extent of her disability. In her evidence, the appellant confirmed that it did not. As there was only one kitchen and bathroom within the property, the required criteria had not been fulfilled.

Finally, the panel addressed Regulation 3(1)(a)(iii). This, in effect, required the appellant's property to have enough floor space to permit the use of a wheelchair which was required for meeting her needs. Regulation 3(3) specified that a wheelchair was not required for meeting an individual's needs if the individual did not need to use the wheelchair within the property. The appellant had stated that she did not use her wheelchair within the appeal property and the panel therefore concluded that the required criteria had not been fulfilled.

The panel accepted that the appellant was a qualifying individual; however, it found that none of the requirements set out in the criteria in subparagraphs (a)(i), (ii) or (iii) of Regulation 3(1) had been fulfilled.

Consequently, the BA's decision was upheld, and the subject appeal dismissed.

Click here for the decision.

Decisions of the VTE - Council Tax Liability

Removal of single person discount in dispute

The appeal challenged the Billing Authority's decision to remove the appellant's single person discount with effect from 25 July 2023.

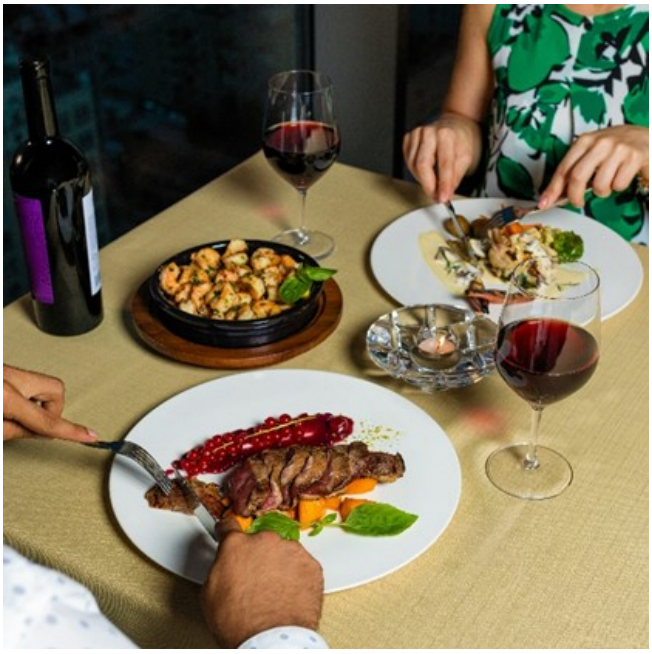
The Billing Authority had determined that the appellant's partner had his main residence at the appeal property from 25 July 2023, and he was therefore jointly liable from that date. The appellant disputed the decision as his partner was not a UK resident and was subject to a fiancé visa with no entitlement to public funds or employment.

The appellant's main contention was that he had continued to receive a single person discount when his partner was resident from August to November 2022 on a visitor visa. He submitted that when his partner returned on 25 July 2023, the conditions of the fiancé visa were the same, in that his partner was not a UK resident, he had no access to public funds, and he was unable to work. The appellant considered that his partner's liability should not commence until 8 October 2023 when he was granted leave to remain in the UK.

The panel determined that the UK residency status of the appellant's partner was not a relevant consideration for the purposes of council tax liability. The panel was required to consider whether the appeal property was the appellant's partner's sole or main residence at the material time. On this point, the panel noted that the appellant had confirmed in response to a question, that the appeal property was his partner's sole residence from 25 July 2023.

The appeal was dismissed as the panel held that the appeal property was the appellant's partner's main residence with effect from 25 July 2023.

Read the decision here.



VALUATION TRIBUNAL SERVICE

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