THE VALUATION TRIBUNAL FOR ENGLAND

Proposal – validity – error in rent – whether invalid – VO's discretion – when invalidity may be raised at hearing.

Appellant:

Imperial Tobacco Group Ltd in respect of:

John Player & Sons, Horizon Factory, Thane Road, Nottingham NG7 2TG: 306018810109/511N05, 306018810330/511N05 and 306018810247/511N05

Respondent:

Ms Janet Alexander (Valuation Officer)

Appearances:

Mr Jeremy Pike of Counsel, instructed by CVS, for the appellant
Mr David Forsdick of Counsel, instructed by The Solicitor, HMRC, for the respondent

Hearing: 29 February 2012 **At:** Black Lion House, London

Before: The President (Professor Graham Zellick QC)

A. Overview[1]

1. A ratepayer's grievance is initiated by making a "proposal" to the Valuation Officer (VO) which, if not settled or withdrawn, is eventually transmitted to the Tribunal as an appeal. Statutory regulations prescribe the contents of a proposal and permit the VO to serve an "invalidity notice" on the proposer, within four weeks, if he (the VO) is of the opinion that the proposal has not been validly made. The proposer may appeal to the Tribunal against the notice or, in some cases, he may submit a new proposal.

2. The regulation dealing with validity disputes concludes that "Nothing done under this regulation shall prevent any party to an appeal … from contending that the proposal to which that appeal relates was not validly made"; and a provision in the Tribunal's statutory Procedure Regulations clearly envisages that (in at least some instances)the validity of a proposal may be raised by the respondent VO at the hearing of the substantive appeal.

[1] This decision is issued at the same time as the decision in *Mayday Optical Co Ltd* v. *Kendrick (VO)*, no. 524017577018/072N10, which was heard at the same time and which also deals with the validity of a proposal where there has been an error in the rent.

3. This appeal raises a number of important issues arising from the above regulations. What errors or omissions render a proposal invalid? What is the status of an "invalid" proposal? Must the VO assert invalidity within the statutory four-week period? In what circumstances, if at all, may he raise it outside this period, *eg* at the hearing of the substantive appeal?

B. Outline conclusions

4. My conclusions, which will be elaborated upon below, are broadly as follows:

   - Not every error or omission will render a proposal invalid.

   - Even an invalid proposal may in some circumstances found a valid appeal.

   - The VO has a discretion, which must be properly exercised, to disregard the invalidity and treat the proposal as valid.

   - But if he wishes to take the invalidity point, he must (subject to the next point) do so within the statutory framework of issuing a notice within four weeks, which notice may be appealed against.

   - There will be some circumstances which will justify the VO in asserting invalidity at the hearing of the substantive appeal, but these are circumscribed special exceptions to the general requirement of issuing a notice; there is no general discretion giving him the option of either issuing a notice within four weeks or raising the issue at the hearing.

5. In arriving at these conclusions, I have sought to make sense of the various regulations, to reconcile apparent conflicts or inconsistencies and to import common sense into the regulatory provisions. I have been able to do this without doing violence to the statutory language or reading more into the gaps than would be legitimate in an exercise of statutory interpretation.

6. I draw support for this approach from the judgment of Lord Woolf MR in *R.* v. *Secretary of State for the Home Department, ex p. Jeyeanthan* [2000] 1 WLR 354, where the Court of Appeal had to consider in the immigration context the effect on the proceedings of a failure to complete the prescribed appeal application form and the omission of a declaration of truth.

7. Mr Forsdick says this case is of no relevance, since the various rules in issue in *Jeyeanthan* were silent as to the effect of a departure from or non-compliance with the rules whereas the NDR Regulations involved here specify the outcome, namely invalidity. I disagree, both because the rules in *Jeyeanthan* are not completely silent on the point but give a discretion and for the reason given in para. 22 below: the NDR regulations do not state explicitly that any and every error or omission leads inescapably to invalidity. They could have done so but do not. It is clear that at least some failures, omissions and errors produce that outcome, but which ones and in what circumstances is for determination on the facts of the particular case. On that basis, *Jeyeanthan* is of considerable assistance, as Lord Woolf observed (at p. 358): "The issue is of general importance and has implications for the failure to observe procedural requirements outside the field of immigration."

8. Lord Woolf rejects exclusive reliance on the conventional categorisation of such rules as either directory or mandatory because it fails to acknowledge the complexity of the position and distracts from the important question of what the legislator intended the consequence of non-compliance to be. If "shall" or "must" is used, the requirement is never intended to be optional.

9. Mr Forsdick would seize on these observations, insisting that the use of "shall" makes it clear that furnishing the information is not optional – and with that I agree – and that we know from the consultation paper (see paras. 23-24 below) that the intention behind the regulations was to establish invalidity in the event of non-compliance. Again, I agree – up to a point. The complete failure to provide the rental figure would very likely render the proposal potentially invalid (unless the VO acquiesced in the omission) and likewise where the figure given bears no relation to the correct figure. But where, as here, an incorrect figure is entered for understandable reasons, it is not such a long way from the accurate figure, and that inaccuracy has no bearing at all on the merits of the proposal, then I am far from satisfied that it was intended that invalidity should be the inevitable result. In *Jeyeanthan* itself, the word "shall" was used in relation to the use of the prescribed form, yet the failure to use it was condoned.

10. As Lord Woolf said (at p. 359):

> "Because of what can be the very undesirable consequences of a procedural requirement which is made so fundamental that any departure from the requirement makes everything that happens thereafter irreversibly a nullity it is to be hoped that provisions intended to have this effect will be few and far between. In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a situation that tribunal's task will be to seek to do what is just in all the circumstances."

11. Lord Woolf reminds us "that procedural requirements are designed to further the interests of justice and any consequence which would achieve a result contrary to those interests should be treated with considerable reservation".

12. Lord Woolf quotes at length from the speech of Lord Hailsham of St Marylebone LC in *London and Clydesdale Estates Ltd* v. *Aberdeen District Council* [1980] 1 WLR 182, 188-190, HL, a brief passage from which is worth reproducing here:

> "When Parliament lays down a statutory requirement for the exercise of legal authority it expects its authority to be obeyed down to the minutest detail. But what the courts have to decide in a particular case is the legal consequence of non-compliance on the rights of the subject viewed in the light of a concrete state of facts and a continuing chain of events. It

> may be that what the courts are faced with is not so much a stark choice of alternatives but a spectrum of possibilities in which one compartment or description fades gradually into another."

13. Lord Woolf posits three questions:

> (i) Is the statutory requirement fulfilled if there has been substantial compliance with the requirement, and has there been substantial compliance in the instant case (the substantial compliance question)?
>
> (ii) Is the non-compliance capable of being waived, and has it been in the instant case (the discretionary question)?
>
> (iii) If it is not capable of being waived or is not waived, then what is the consequence of the non-compliance (the consequences question)?

C. The legislation

14. It will be convenient if at this point the relevant statutory regulations are set out.

The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009 No 2268)

Proposals: general

6.—(1) A proposal shall be made by notice sent to the VO which shall—

(a) state the name and address of the proposer;

(b) state whether the proposer is, in respect of the property—

(i) the IP and, if so, the capacity in which the IP makes the proposal;

(ii) the relevant authority; or

(iii) a person described in regulation 4(2)(c);

(c) identify the property to which the proposal relates;

(d) identify the respects in which it is proposed that the list be altered; and

(e) include—

(i) a statement of the grounds for making the proposal;

(ii) in the case of a proposal made on any of the grounds set out in regulation 4(1)(a), (c) or (g) to (o), a statement of the reasons for believing that those grounds exist;

(iii) in the case of a proposal made on the ground set out in regulation 4(1)(b), a statement of the nature of the change in question and of the date on which the proposer believes the change occurred;

(iv) in the case of a proposal made on the ground set out in regulation 4(1)(d) or (f), a statement identifying the alteration in question, whether by reference to the day on which the alteration was made or otherwise;

(v) in the case of a proposal made on the ground set out in regulation 4(1)(e), the information specified in paragraph (2);

(vi) in the case of a proposal made on the ground set out in regulation 4(1)(f), a statement of the day proposed in place of the day shown in the list; and

(vii) in the case of a proposal made on one or more of the grounds set out in regulation 4(1)(a) to (g) and (i) to (l), in respect of a hereditament occupied under a lease, easement or licence to occupy, other than a proposal made by a relevant authority or a person described in regulation 4(2)(c), the information specified in paragraph (3).

(2) The information required by paragraph (1)(e)(v) is—

(a) the identity of the hereditament to which the decision in question relates;

(b) the name of the tribunal or court which made the decision;

(c) the date of the decision;

(d) the reasons for believing that the decision is relevant to the rateable value or other information to which the proposal relates; and

(e) the reasons for believing, in the light of the decision, that the rateable value or other information to which the proposal relates is inaccurate.

(3) The information required by paragraph (1)(e)(vii) is—

(a) where the proposer is the occupier, the amount payable each year by the proposer, as at the date of the proposal, in respect of the lease, easement or licence to occupy; or

(b) in any other case, the amount payable each year to the proposer, as at the date of the proposal, in respect of the lease, easement or licence to occupy;

VO's acknowledgement of proposals

7.—(1) Subject to paragraph (2), within four weeks of receiving a proposal, the VO shall send an acknowledgement of its receipt to the proposer.

(2) Paragraph (1) does not apply where a VO gives a notice under regulation 8 in respect of the proposal.

(3) An acknowledgement under paragraph (1) shall specify the date of receipt of the proposal and shall be accompanied by a statement of the effect of regulations 9 to 13.

Disputes as to validity of proposals

8.—(1) Subject to paragraphs (2) and (3), where the VO is of the opinion that a proposal has not been validly made, the VO may, at any time after receiving the proposal, serve notice (an "invalidity notice") on the proposer that the VO is of that opinion and stating—

(a) the reasons for that opinion, and

(b) the effect of paragraphs (6) to (10).

(2) The VO may not serve an invalidity notice after an agreement has been reached under regulation 4 (arbitration) of the Procedure Regulations or the VTE has given notice under regulation 31 (notice of hearing) of those Regulations.

(3) The VO may not serve an invalidity notice more than four weeks after the proposal to which it relates was served other than with the consent of the proposer, given in writing.

(6) Unless an invalidity notice has been withdrawn, the proposer may, within four weeks of receiving it—

(a) subject to paragraph (7), make a further proposal in relation to the same property; or

(b) appeal against the notice to the VTE.

(7) For the purposes of paragraph (6)(a)—

(a) the time limit applicable under regulation 5 may be ignored; but

(b) a further proposal may not be made where the proposal to which the invalidity notice relates was itself made—

(i) under paragraph (6)(a);[2] or

(ii) after the expiry of the time limit applicable under regulation 5.

(8) Where a further proposal is made under paragraph (6)(a), the proposal in respect of which the invalidity notice was served shall be treated as withdrawn.

(9) An appeal against an invalidity notice shall be made by the proposer sending a notice of disagreement to the VO.

(10) Unless the VO withdraws the invalidity notice within four weeks of receiving the notice of disagreement, once that period has ended the VO shall inform the VTE of—

(a) the entry in the list (if any) which it is proposed to alter;

(b) the grounds on which the proposal was made; and

(c) the reasons for the VO's opinion that the proposal has not been validly made.

(16) Nothing done under this regulation shall prevent any party to an appeal under regulation 13 from contending that the proposal to which that appeal relates was not validly made.

Disagreement as to proposed alteration

13.—(1) Where—

[2] Corrected by SI 2009 No 2268.

(a) the VO is of the opinion that a proposal is not well-founded, and

(b) the proposal is not withdrawn, and

(c) there is no agreement under regulation 12, the VO shall refer the disagreement to the VTE as an appeal by the proposer against the VO's refusal to alter the list.

The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 No 2269)

Appeals relating to validity of proposals

33. Where at the hearing of an appeal under regulation 10 of the CT Regulations or regulation 13 of the NDR Regulations (disagreement as to proposed alteration)—

(a) the LO or, as the case may be, the VO contends that the proposal was not validly made; and

(b) the VTE panel does not uphold the contention,

the VTE panel must not immediately proceed to deal with the appeal unless every party present or represented at the hearing so agrees.

D. The arguments

15. The respondent's argument can be simply stated. It is that any departure, by way of error or omission, from the requirements listed in reg. 6 renders a proposal invalid (save only perhaps for minor clerical errors). The VO may then at his discretion disregard the invalidity; issue a notice within the prescribed period; or assert the invalidity later, at the hearing.

16. The appellants argue that the error in this case was not such as to render the proposal invalid; and even if it were, the VO did not have the right to raise the invalidity at the hearing.

E. The facts

17. The appellants submitted proposals which they later discovered contained an error in that the hereditament was described as freehold when in fact it was held on a leasehold basis. The VO was invited to issue invalidity notices, which she did, and fresh proposals were submitted. These too the appellants realised were incorrect in that they stated that the hereditament was leased at a rent of £40,500 p.a when the correct figure was £44,019. The VO was informed nine days later as soon as the error was discovered "that the proposals were invalid".

18. The error in the revised proposals relating to the ground rent is said to have arisen because of the complicated nature of the tenure arrangements. This has not been challenged. The principal area of land comprises 45 acres held on a 99-year lease dated 21 January 1972, effective from 29 September 1968, with predetermined rents at specified rent review dates. In 1988, part of the land was sold and the rent apportioned as between the land sold (£1,350) and the land retained (£39,150). In 1998, the sold land was re-acquired, the rent for the whole returning to £40,500. On 22 October 1974, the appellants entered into a supplementary 999-year lease for 16.5 acres. In 1987, most of

this was sold in two separate transactions, only 3.91 acres being retained. The rent apportioned for that part of the land is £3,159 p.a., giving a total rent of £44,019. The error arose because the appellants had failed to mention that they had leased the additional 3.91 acres.

19. The VO did not issue an invalidity notice (as the appeal had already been listed: reg. 8(2)) but indicated she would challenge validity at the hearing. If invalid, the appellants are now precluded from making fresh proposals: reg. 5(1).

20. The discrepancy in the rent is £3,519. The difference between the parties as to the correct rateable value is £600,000. It is common ground that in this case the rent is not a material factor in determining the rateable value.

21. The appellants now deny that the second set of proposals was invalid, despite so describing them to the VO; and the VO takes no point with regard to this statement or admission. I therefore pay no attention to the statement made at the time by the appellants' representative to the VO.

F. The Law

22. Reg. 6 sets out the information that must be contained in a proposal and reg. 8 deals with disputes as to a proposal's validity, but nowhere is invalidity defined. The respondent takes the view that any error or omission – any failure to comply with the requirements of reg. 6 – leads to invalidity, but no regulation says that in so many words. It is a plausible inference to draw, though draconian. It would introduce into rating appeals a degree of formalism almost medieval in character and would, in my opinion, be inimical to the interests of justice. I prefer the approach of Scott LJ (albeit in relation to what is now reg. 6 (1)(e)(i)) in *R.* v. *Winchester Area Assessment Committee, ex p. Wright* [1948] 2 KB 455, 460, CA, who said: "The language of proposals … should … be read without too much legal strictness; … the requirements … must be substantially satisfied if the 'proposal' is to be effective and valid." (The appellants invoked reg. 3 of the Procedure Regulations to support their argument as to flexibility but I do not think this is relevant as reg. 3 governs the interpretation and application of the Procedure Regulations only.)

23. The respondent maintains specifically that any error in the rental information makes the proposal invalid, even if entirely irrelevant to the particular case, citing the Government's consultation paper in 2005 which led to the requirement now found in reg. 6 (3) (*Business Rates Appeals*, ODPM, January 2005).

24. The Office of the Deputy Prime Minister (ODPM) thought that a requirement to state the rent in a proposal would give the VO the single most important piece of information in determining an appeal, which would ease the administrative burden, expedite consideration of proposals and reduce the number of cases going to the Tribunal: "Failure to provide this information will render the proposal invalid" (para. 38). A further advantage was said to be to ensure that unauthorised agents would be less able to make proposals as they would not have access to the information. "Non-inclusion of accurate information will mean that the proposal is not validly made" (para. 42).

25. I accept that due weight should be given to the Government's view in construing a statutory instrument (as in *Re Appeals against Harrow, Hounslow and Waltham Forest London Borough Councils* [2012] RA 36) and that the consultation paper provides a clear indication of the policy behind the introduction of reg. 6 (3). A failure to put any figure on the form, or to put a figure that was wildly and arbitrarily inaccurate, invites a finding of invalidity, but I am unable to accept that the opinion expressed in the ODPM paper (quoted in para. 24 above) is apt to cover the facts in this case or should lead me to revise the conclusions to which I have come as to the kinds of errors or omissions that give rise to invalidity.

26. The respondent's argument would, in particular, sit uneasily with the VO's discretion under reg. 8(1) which provides that he "may" serve an invalidity notice if of the opinion that the proposal has not been validly made.

27. If *any* failure under reg. 6 had the effect contended for by the respondent, invalidity would be tantamount to voidness and it would therefore be difficult to accept an argument that the VO could, and in due course the Tribunal must, treat as valid a proposal that in law was void purely because the VO had chosen to treat it as valid.

28. I accept that the word "may" in reg. 8 (1) gives the VO a discretion whether to treat a proposal as invalid, but like all statutory discretions, it must be exercised lawfully, which here means reasonably, rationally, perhaps proportionately, and in accordance with the statutory scheme.

29. There are, in my judgment, four different categories into which departures from the requirements of reg. 6 will fall, and they have different consequences.

30. First are errors of or omissions of a clerical nature which are trivial, insignificant and *de minimis*. These have no impact on the proposal's validity and should be ignored.

31. Secondly, there are errors and omissions of substance but not the result of a deliberate attempt to mislead, which do not impair the VO's ability to consider the appellant's case and which have no adverse impact on an assessment of the correct rateable value. This encapsulates two questions: (a) Has there been substantial compliance? (b) Has it caused the VO any prejudice? If the answer to (a) is yes and to (b) no, these failures do not render the proposal invalid.

32. Thirdly, there are errors or omissions of a kind that misrepresent the appellant's case or mislead the VO in considering the matter on its merits. Such error or omission will render the proposal invalid if the VO decides so to treat it. But if in the exercise of his discretion he chooses to disregard it and proceeds on the basis that the proposal is valid, that is entirely proper and the VO may either adjust the rateable value or allow the case to proceed to appeal before the Tribunal, but he may not thereafter raise or rely on the invalidity.

33. I draw attention to the comment of the President of the Lands Tribunal in *Tuplin (VO)* v. *Focus (DIY) Ltd.* [2009] UKUT (LC) 118, [2009] RA 226, 237, para

27, where he expressed some pleasure in rejecting the VO's argument as to invalidity –

> "… since she failed to serve an invalidity notice on the proposer … and thus deprived it of the opportunity of serving a further notice to make good the claimed deficiency …. In such circumstances, it seems to me, a valuation tribunal may often be able to treat the fact that the valuation officer did not serve an invalidity notice as a good indication that the proposal was not invalid."

34. Finally, there will be errors or omissions so fundamental that the proposal cannot in any circumstances be treated as valid (as in R v. *Northamptonshire Local Valuation Court, ex p. Anglian Water Authority* [1991] RA 93, CA, where a sewage works that no longer existed was named in the proposal instead of one half a mile away; and in *Mainstream Ventures Ltd* v. *Woolway (VO)* [2000] RA 395, where the proposer was not qualified to make the proposal as he was not the occupier). In this category, the VO has no alternative but to pronounce the proposal (in his opinion) invalid; and should such a proposal come before the Tribunal, whether on appeal against an invalidity notice or otherwise, the Tribunal, whatever stance taken by the VO, would have to declare the proposal invalid and either uphold the invalidity notice or strike out the appeal on the basis that the Tribunal had no jurisdiction to entertain it. This is clear from the *Mainstream* case *(supra)* where the invalidity was raised for the first time by the VO on appeal to the Lands Tribunal although the defect should have been noticed at a much earlier stage.

35. I turn now to the respondent's argument that the discretion implied by "may" is in fact a discretion whether to issue an invalidity notice in accordance with reg. 8 or to assert invalidity later, notably at the hearing. This interpretation would drive a coach and four through the reg. 8 framework of proposal, time limit, notice with reasons and appeal or the opportunity to remedy the defect, for which I can see no justification either in the language of the Regulations or in policy.

36. How then is it that reg. 33 of SI 2009 No 2269 states or implies that invalidity can be challenged at the hearing even where a notice to that effect has not been issued under reg. 8? Before answering that, it is necessary to point out that reg. 8(16) is of no relevance here. It has apparently long been thought that this is the provision that allows a VO to challenge invalidity whenever he chooses, whether within four weeks of receipt of the proposal under reg. 8(3) or at any other time. But reg. 8 (16) says no such thing. It does no more than allow validity to be raised on a substantive rating appeal under reg. 13 where some action has been taken under reg. 8. It says nothing about a situation where no action has previously been taken under reg. 8. The words "Nothing done under this regulation" in this context mean "Where something has been done under this regulation", not "Nothing" as if the words "done under this regulation" were omitted. This view follows the reasoning of the Lands Tribunal in *Mainstream Ventures Ltd* v. *Woolway (VO)* [2000] RA 395, 398.

37. So why is there a recognition in the regulations that validity might be an issue raised on a substantive appeal? And how can that be reconciled with the largely self-contained procedure in reg. 8?

38. The answer is obvious. It is to permit invalidity to be raised on a substantive rating appeal where it was not possible or reasonable for the VO to have exercised his powers under reg. 8, *eg* because the appeal has already been listed (reg. 8(2)), the inaccuracy or omission only came to light after the four-week period had expired (see the *Mainstream* case at 398, para. 11), or it has emerged that the proposal was the result of fraud, deception or other dishonesty. This list is not intended to be exhaustive.

39. It would be an unfortunate lacuna in the regulations if the VO had no further opportunity to impugn a proposal's validity after the four-week deadline where he was not in a position to recognise the error or omission and act on it within the statutory period or where the defect was such that it meant that the Tribunal lacked jurisdiction to hear the appeal. As the President of the Lands Tribunal (Mr George Bartlett QC) put it in the *Mainstream* case:

> "There may well be circumstances in which the doctrine of estoppel may prevent a valuation officer contending for the first time in an appeal to the Lands Tribunal that the proposal on which the appeal is founded is invalid. Unless a valuation officer follows the invalidity notice procedure he may be at risk of a finding that the appeal has proceeded on the basis of a common assumption that the proposal is valid and that it would be unconscionable for him to argue at this particular stage that it is invalid. I do not think, however, that an estoppel can arise where, as here, the invalidity consists of the absence of any power on the part of the proposer to make a proposal. The provision as to who may make a proposal, creating as it does substantive statutory rights and duties, is not in my judgment capable of being overridden by the conduct of those who may have an interest in the proceedings that have been set in train by a proposal" ([2000] RA at 399, para. 13).

40. It is a pity that all this is not spelt out clearly in the regulations themselves, but it is not unusual for statutory provisions to require elaboration and clarification in this way.

41. Several other cases were cited in argument – including *R.* v. *Northamptonshire LVC, ex p. Anglian Water Authority* [1991] RA 93, CA and *Green (VO)* v. *Barnet LBC* [1994] RA 235 – but I have not found them of assistance in resolving the issues before me.

G. Conclusion

42. In this section I shall apply the above analysis to the facts of the case.

43. First, the VO could not have issued an invalidity notice as the appeal had already been listed. She was therefore entitled to raise it as a preliminary issue at the substantive appeal. The appellants say that the VO should nevertheless have given an indication of her view within the four-week period specified in reg. 8(3), but there is no basis for this contention and in any event I do not see how it would have benefited the appellants.

44. Secondly, the relatively minor error in the rental information was not only insignificant but of no relevance to the consideration or determination of the issue in dispute. To prevent this appeal being determined on its merits because of an explicable (if regrettable) and irrelevant mistake in the rental information would be unconscionable. The error here falls into the second category as described above in para. 31.

45. We can apply Lord Woolf's three questions (para. 13 above) to the provisions on the invalidity of proposals in the rating regulations:

    i. Substantial compliance will normally suffice, and it does in this case.
    ii. The VO may disregard most errors or omissions that would otherwise give rise to invalidity, but she has not done so in this case.
    iii. The consequence of non-compliance here (if it can be so characterised) is that the proposal is valid.

46. I therefore conclude that the proposal is, notwithstanding the error, valid and the appeal should now proceed to be considered on its merits.

47. Finally, I should like to record my thanks to both counsel for their written and oral submissions and their help in resolving these issues.

H. Addendum: Appeal to the Upper Tribunal

48. This Tribunal may deal with an issue in proceedings as a preliminary issue (Procedure Regulations, reg. 6(3)(e)), as I have done here. Although this is not "a decision which finally disposes of all issues in the proceedings" (reg. 36(2)), it is "a decision … given or made by the VTE on an appeal under the NDR Regulations" (reg. 42(1)) from which an appeal lies to the Upper Tribunal. It is not for me to speculate whether the respondent will wish to appeal the preliminary issues determined in this decision in advance of the decision on the substantive appeal, still less to anticipate the view of the Lands Chamber of the Upper Tribunal on whether it would entertain such an appeal at this stage. I merely raise the issue because I can understand that the Valuation Office Agency may have concerns about my decision and its implications which it would wish to see submitted to the Upper Tribunal irrespective of the outcome of the ultimate decision in this case.

Professor Graham Zellick QC
President

Mr Jon Bestow
Registrar

24 April 2012