Issue 27

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VALUATION TRIBUNAL SERVICE

# Valuation in Practice

VALUATION TRIBUNAL SERVICE JANUARY 2013

# News in Brief

## Council Tax Reduction

The next couple of months will be a very busy time for the VTS as we prepare to deliver the IT platform on which the administration of the new type of appeal on Council Tax Reduction (CTR) schemes will operate. This will be a challenging time for the VTS and the billing authorities in England as their local schemes are tested. Alongside this new jurisdiction continue the listing of business rates appeals and council tax valuation and liability appeals.

*We will feature news of CTR cases in our future editions, so subscribe to receive email alerts when each issue of Valuation in Practice is published. (For how to do this, see the blue box below).*

## Local schemes awaited

The deadline is upon councils who are publishing their own schemes following local consultations.
The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (SI 2012/2885) came into force on 27 November 2012. Those councils that do not have a scheme by 31 January will adopt the Government's default scheme.

The Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (SI 2012/2886) came into force on 18 December 2012.

SI 2012/3085 amending both sets of regulations is effective from 10 January and increases some of the figures used in calculating whether a person is entitled to a reduction and if so, how much of a reduction.

Two pieces of guidance for billing authorities were also published by DCLG under the heading *Localising support for council tax.* These were: *Taking work incentives into account,* and *Taking account of Universal Credit income.*

**Inside this issue:**



### ViP issue dates

Our newsletter is published quarterly in January, April, July and October.

You can sign up for an email alert telling you when a new issue has been published, at

www.valuationtribunal.gov.uk/vip_newsletter.aspx.

## Business Rates

Following the postponement of the 2015 revaluation, a ministerial statement on 12 November 2012 from Brandon Lewis DCLG Minister said that the VOA had published their high level estimates of non-domestic rental and rating assessment movements as at January 2012 and analysis produced independently of ministers. The Minister stated that, while aggregate rateable values (RV) have fallen, that would be offset at revaluation by a higher multiplier, requiring firms to pay a higher proportion of their RV. DCLG had forecast a multiplier of 20% because of inflation and the adjustment required for appeals.

In December, DCLG published *Business rates retention and the local government settlement* and *A practitioners' guide: business rates retention and the settlement*.

## VTS workload statistics

In the first nine months of this financial year the VTS listed 20% more appeals than in April-December 2011(100,000 appeals compared with 83,000).

The rounded number of appeals settled was 32,000, with 37,000 appeals struck out. Postponements (27,000) increased by 50% compared to the same period last year.

22,000 Statements of Case were received in the first three quarters of the year, 12,000 from appellants, 10,000 from the VOA.

The number of determined appeals fell to 2,400; reasoned decisions were issued within one month of the hearing date in 90% of cases.

# Decision from the High Court

## Edem v Basingstoke & Deane Borough Council [2012] EWHC (Admin) 2433 (QBD)

This appeal concerned a VTE decision in 2011 that a dwelling was not exempt under Class A. This exemption applies to a property that is vacant and requires or is undergoing major repair work to render it habitable.

The property, which had been let out, was vacated in 2010 and found to be in a poor state of repair by a builder commissioned to inspect the property by the owner. The report said that condensation had caused rotting of window frames so that the windows needed replacing, the boiler and heating system needed replacing, the bathroom needed refitting and the property as a whole needed full redecoration and new carpets. It appeared to him that very little had been done to the property over a number of years and that considerable works were necessary to attract future tenants.

Some of these works were carried out between October and January 2011 and the owner claimed exemption for the duration. The council had refused Class A but awarded Class C exemption as the property was unoccupied and unfurnished. The appellant considered his property was uninhabitable, but the council disputed this.

The VTE panel had upheld the council's decision, deciding that the works carried out were not "major".

An appeal to the High Court in this area must be on a point of law and so here the issue was whether, on the evidence put before the panel it must have concluded that the property was not habitable: was the decision of the VTE *Wednesbury* unreasonable or alternatively was there an error in law? The appellant also argued that the tribunal panel should have made a distinction between making a property habitable for the owner and making it habitable for letting purposes. He had interpreted the decision making him liable for council tax as inferring that he should move from his home in London to live in the appeal property in Basingstoke.

His Honour Judge Seys Llewellyn QC dismissed the appeal. He found that what was presented to the VTE panel did not lead him to conclude that any tribunal could not reasonably reach the decision that it had; this was all the more so for a specialist tribunal, used to dealing with such matters. He did not find that there had been an error in law. He underlined that the evidential burden was on the appellant. The points raised by the appellant under the Human Rights Act were also rejected.

# Interesting VT Decisions — non-domestic rating

## Agricultural exemption

These appeals, against the 2005 and 2010 rating lists entries, were heard before the President of the VTE. Professor Zellick determined that the hereditament constituted a market garden and was therefore exempt from non-domestic rates under section 51 of the Local Government Finance Act 1988.

The business carried out at the hereditament is the cultivation of mushrooms over about seven weeks, to a stage two to three weeks before fruiting occurred. The compost-like material in which the mushrooms grow is then sold on and sent to growing-on farms, where fruiting takes place and the mushrooms are picked. This is common practice in the industry.

The appellants argued that their property should be described as a 'market garden' or 'nursery ground', neither of which is defined in the statute. Both terms appear in Schedule 5 para 2(1)(d) of the Act as a type of 'agricultural land' that is an exempt hereditament. Paragraph 3(b) sets out that an 'agricultural dwelling' is "not a dwelling and it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden".

The valuation officer (VO) rejected the argument for an exemption on this basis because what left the hereditament was not the fully grown mushroom. *Dicta* from *Watter v Hunter [1927], W Farlington & Sons (Holdings) Ltd v Langridge (VO) [1973]* and *Twygen Ltd v Tayside Region Assessor [1993]* appeared to support the VOA's case. His view was that the appellants would have to hold on to the material and harvest the mature mushrooms to qualify for the exemption as a market garden and that here only the growing-on farms would be entitled to the exemption.

The President considered that the cases established the principles that helped define a market garden, and that activities that could be termed preparatory, ancillary, incidental or remote from the cultivation of a mature product would not qualify as a market garden; activities approximate to the final stage would however suffice. Applying common sense and sound judgment to these abstract concepts, he had no doubt that the appeal hereditament was a market garden. The bulk of the cultivation took place there and though the product grown there would not appear in that form on any supermarket shelf, it did not need "elaborate or extensive treatment to turn it into something else"; it was not "a product a long way from maturity".

The appeals were allowed.

Appeal 176014142017/171N05 and others

This decision has been appealed to the Upper Tribunal (Lands Chamber) by the Respondent.

Where we show an appeal number, this can be used to view the full decision on our website. Click on the Listings & Decisions tab and use the appeal number to search Decisions.

## Industrial building with an area of wharf fronting a waterway, used for maintenance on boats and other marine items. An allowance was sought on various grounds and considered as follows:

A) The difficulty of access for large vehicles due to the tight turns in the road; the flood management system and the low water depth at the wharf which limits the size of boat and the times when boats can be brought to the property by water.

It was accepted that access was difficult for large lorries and impossible for low loaders carrying boats; the water level and restrictions imposed by a flood barrier were also understood. However, these factors were in existence prior to the appellant's occupation and had not deterred him from taking up occupation; they would be reflected in the rents paid in the locality. No evidence was provided to show that these factors would result in someone paying less rent for the subject property.

B) The removal of an allowance for poor repair of 30%, which the VO stated was given in error in the 1995 list.

It was held that, under the definition of rateable value (RV), the hereditament must be considered to be in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic. No items of disrepair were identified as being uneconomic to repair. In view of this it was determined that no allowance should be given for disrepair.

C) The purchase price of the property.

(Continued on page 4)

# Interesting VT Decisions — non-domestic rating

(Continued from page 3)

The appellant contended that the 1995 list assessment was based on the amount paid for the freehold of the property rather that any allowance; it was suggested that the 30% allowance had been a device used by the VO to arrive at a final RV. It was held that the VT was not in a position to make a determination on what the facts of the 1995 list agreement were, but for this appeal the RV must be based on rental values passing in the area. It was further held that as capital value does not translate directly into rental value, it was not appropriate to have regard to the purchase price.

It was determined that the evidence of the rents paid on comparable properties, supported by the assessment evidence, indicated that the level of value adopted for the appeal hereditament was not excessive. In the absence of any rental or valuation evidence from the appellant to show that the RV should be reduced beyond that offered by the VO, the appeal was dismissed.

Appeal: 225516808369/537N05

## Sponsored roundabouts

The appeal properties were described in the 2010 rating list as land used for advertising and premises, each with an RV of £1,000. The appeals were made by the City of York Council, whose representative sought RVs of £35, £45 and £55 depending on the number of signs on the roundabouts.

The issues in dispute were the levels of values to be applied to the signs on the roundabouts, and the method of valuation.

The appellant's representative contended that the appeal properties should be valued using the contractors' test method, whilst the VO, in defence of the list entries, provided comparable evidence of sponsored roundabouts in Yorkshire and extracts from VOA guidance regarding the valuation approach.

There was no reliable direct rental evidence that could be analysed to accord with the statutory definition of RV. It was

submitted that there was an element of profit from the sponsorship fee paid, which could be deemed to be a rent. However insufficient detail was provided to the panel to determine what the level of profit/rent element was, so regard had to be had to other methods of valuation.

The panel was aware that the value of advertisements is heavily influenced by location, a fact clearly demonstrated by the range of values (£300 to £2,000) adopted for sponsored roundabouts in Yorkshire and the values adopted for bus shelters, which ranged from £150 to £1,000 depending on whether they were in London or provincial towns. Location affects how much exposure the potential advertiser receives.

An advertisement on a busy main road was obviously more valuable than one on a back street, with little or no through traffic. However, the construction costs would be the same. With this in mind, the contractors' test was wholly inappropriate for this type of hereditament because the RV that would be derived from the application of this valuation method would not properly reflect its value to a potential occupier.

The panel then looked to the comparable evidence submitted by the VO and covering the Harrogate and York areas; the RVs ranged from £600 to £1,000. Having regard to the competing locations, there did appear to be some inconsistencies in the values and no explanation was offered to explain this. The Halifax area was also considered to be a less sought after location than York.

Although the VO had failed to convince the panel that the existing entries were accurate, the burden of proof was on the appellant's representative, who had failed to convince the panel that the entries were excessive. With this in mind, the panel dismissed the appeals.

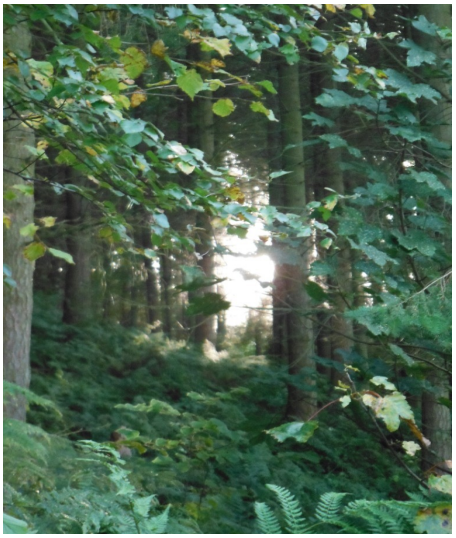
Appeal: 274118698920/538N10 and others

# Interesting VT Decisions — non-domestic rating

## Woodland burial site

The subject property was entered in the 2005 rating list at a nominal rateable value (RV) of £1 as a result of a billing authority report seeking to include the property 'Natural Burial Ground on land also used for forestry and farming'. The owner/occupier lodged an appeal against the entry seeking deletion of the assessment.

There was no dispute between the parties that the commercial woodland was exempt from rating under Schedule 5 of the Local Government Finance Act 1988, paragraph 2(1)(b), as "land used for plantation or a wood or for the growth of saleable underwood". But the appellant's view was that the description in the list was wrong; the burial site was not physically separate from the commercial woodland and therefore did not form a separate hereditament. The site had not been consecrated and was purely for burials, where decay is rapid and natural; there were no markers, tombs or memorials and the site was not for people who seek an eternal resting place. The appellant said that people were told that, with time, their plot will be indistinguishable from the rest of the woodland, although he did keep a record of individual burial sites. He said that the primary and predominant use of the land was for commercial woodland; its use did not allow the hereditament, or any part of it to be classed as mainly or exclusively used for burials. It was not an entirely different purpose nor capable of a separate letting. In conclusion, he believed that the hereditament did not consist "wholly of a woodland burial site", and he requested the panel to delete the entry in the list.



The valuation officer (VO) agreed the land was planted with productive woodland within which, and between existing trees, burials take place allowing approximately 10 square metres per burial. He provided the Panel with a location plan of the burial site within the woodland, however, at the hearing, this location plan was corrected by the appellant.

The VTE panel noted that the VO had valued the hereditament based on information on a Form of Return, a legal declaration by the occupier. He had analysed this information which produced a minus divisible balance hence a RV of £1. The cost of a grave there appeared to be between about £500 and £820. The VO also provided a list of eight other natural burial sites in Devon and their approximate charges, which ranged from £500 to £1,200.

The VO referred to a number of decisions by the Courts which supported his contention that the burial ground was assessed correctly for rating purposes, in particular *Gilbert (VO) v S Hickinbottom & Sons Ltd [1956]* on the identification of the hereditament and from which general rules can be derived. In it, Lord Denning said "…*There are exceptional cases however where for some special reason they may be treated as two or more hereditaments. That may happen for instance where one part is used for an entirely different purpose.*"

The matter for the panel to decide was whether there was more than one hereditament on the subject land. Having considered the evidence, the panel was satisfied that land or property comprising a single geographical unit and in a single occupation may form more than one rateable hereditament if parts are used for entirely different purposes, as in this case. The burial site consists of land used for a wholly different purpose from the woodland and that use is clearly non domestic. In reaching its decision, it found the judgment in *Gilbert* to be valuable guidance and noted that, when shown the OS map of the woodland, the appellant was able to identify the area (hereditament) within the woodland where commercial burials take place.

The appeal was dismissed.

Appeal: 112516207552/537N05

## Plant & Machinery - Air handling system in retail premises held not rateable

The appeal concerned an Iceland retail warehouse in Liverpool. Both parties were represented by Counsel and various experts provided evidence. The issue for the panel to decide was whether or not the "air handling system" installed at the appeal property was rateable under Class 2 of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 (SI 2000/540). *(Continued on page 6).*

# Interesting VT Decisions

## Non-domestic rating

*(Continued from page 5)*

The air handling system was regarded by the appellant as "process cooling equipment" but the Valuation Officer (VO) considered it to be rateable as an "air conditioning system".

The panel heard that Iceland's system was unique and not suitable for use by other retailers. It held that the air handling system was not rateable because, under Class 2, it *"is used or intended to be used in connection with services mainly or exclusively as part of manufacturing operations or trade processes."*


In determining whether the air handling system was mainly or exclusively used as part of trade processes, the panel first considered what was a "trade process" for the purposes of the 2000 Regulations. In *Union Cold Storage Co Ltd v Southwark Assessment Committee* [1932] refrigeration equipment in buildings designed to store perishable goods was regarded as not rateable on the grounds that it was used for trade processes. Additionally, in *Hays Business Services Ltd v Raley (VO)* [1986] it was recognised that the trade process could involve maintaining an environmental condition. In that case, it was storage of sensitive material and similarly, in the case of the appeal property, Iceland was concerned with maintaining a safe environment for the operation of its freezers to avoid freezer failure and food thawing.

As in *Hays*, Iceland had designed a system to avoid its "worst-case scenario" from occurring.

The panel held that the provision and maintenance of suitable conditions for the effective storage and preservation of frozen and refrigerated food, with a view to sale by Iceland, was part of its trade process.

The panel then considered whether the air handling system was used *"mainly"* as part of the trade process. The VO contended that the system was mainly for the comfort of customers and staff. However, the panel held that, as it was used 24 hours a day, 365 days a year, it was mainly used as part of the trade process. Both parties agreed that a substantial amount of heat was being generated from the cabinets that needed to be managed to maintain the operation of the freezers. Expert evidence was given to the panel which showed that the system operated 24 hours a day to ensure the refrigerated cabinets worked effectively. Even when there were no customers present and the store was closed the cabinets still produced heat, so it remained necessary to maintain the temperatures which support the operation of the cabinets.

Appeal: 431017544327/134N10

## Council tax liability

### HMO

This appeal was made by the landlord of a property against a council's decision that the property was a HMO. It was let as a furnished dwelling on a five year lease. The council inspected the property and found that the tenant was only using some of the rooms and others were locked with items belonging to the owner stored in them. The council's view was that although the tenant had a lease for the whole property, under the principles established in *UHU Property Trust v Lincoln City Council, [2000]* the reality of the situation was that the tenancy was only of part of the property, with the remainder being retained under the landlord's control. The appellant argued that the tenant only used part of the property and locked internal doors by choice. She also had some furniture of her own and so did not need to use all of the owner's furniture, so this was stored in other rooms.

The panel allowed the appeal following the reasoning in the decision in *R (On the application of Goremsandu) v London Borough Of Harrow [2009] EWHC 1873 (Admin)*. The panel found that "while the tenant may not have used all the rooms in the property and some may have been locked for a time and contained items of the landlord's furniture that she chose not to use, the evidence presented by the authority did not, in the panel's view, show that she was not entitled to call for, if she was not already in possession of, the key(s) to these room(s) or that the landlord was using them for storage of any items not included in the letting of the property as a furnished dwelling." The panel therefore decided the lease and the rent being paid under it were for the whole property and the dwelling was not a HMO. The landlord was not therefore the liable person for council tax purposes.

The tenant was not a party to this appeal, which the panel acknowledged in concluding that, should an appeal be made by the tenant then it would be for the council to show why the principle of *res judicata* should apply.
Appeal: 5300M88193/084C

# Interesting VT Decisions — council tax valuation

## Agricultural occupancy condition

The appeal property was in the valuation list at band C; the listing officer asked the VTE panel to confirm band B, however the appellant sought band A.

The property was one of four residential units in converted barn. Among standard clauses, the planning consent included an Agricultural Occupancy Condition, which limited the occupation to a person solely or mainly working or last working in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any residential dependents.

The parties adopted a common approach in valuing a property with such a condition. Firstly the unrestricted value of the property had to be established from comparable evidence; this value was then adjusted by a percentage discount. However, the parties differed in their opinion of the unrestricted value, based on their comparable properties, and the percentage discount to be applied.

The sales evidence presented by the appellant was closer to the antecedent valuation date (AVD, 1 April 1991) and therefore provided a more reliable guide to the unrestricted value of the appeal property at the AVD.

The panel concluded that the unrestricted value of the appeal property would be in the region of £53,000. In arriving at an opinion of value for the percentage discount, it was considered that the appellant's 33% went beyond the normal discount (10 %-30%). The panel considered that 30% discount was appropriate in this circumstance, which resulted in a valuation of £37,000. The panel was satisfied that the correct band for the appeal property was band A.

Appeal: 0665599831/133CAD

## Material reduction

The proposal was on the grounds that band for this semi-detached bungalow was too high due to a further material reduction in the value of the dwelling caused by the erection of an aviary attached to a pigeon loft adjacent to the appeal property.

The appellant's plan and photographs, showed how close to his property the 41m$^2$ pigeon loft/aviary was, which he said was an eyesore whose use gave rise to significant noise, smell and other nuisances. This, he argued, was detrimental to the value of his bungalow and he referred to current and recent sale prices of properties in his street. He considered that the aggregate effect of this latest physical change, when considered alongside previous changes in the locality, warranted a band reduction.

The listing officer (LO) contended that the metal aviary to the side of the pigeon loft would not have reduced the value of the dwelling to below £52,000, in terms of 1 April 1991 levels of value.

Band C had been upheld by previous tribunal panels following earlier appeals against the tone of the list and events that were alleged to have cause material reductions in value. The tone had been established for the appeal dwelling in a 2008 determination, upholding the LO's opinion that the dwelling's potential sale price at 1 April 1991 was around £58,500. This figure was therefore used as the basis, before establishing what effect on value the later physical changes to the locality had.

The appellant had explained to the panel that, when he moved into his property in 1986, it was in a quiet residential area. But his quiet enjoyment of the property had since been disturbed by various material changes to the locality. These included:

- expansion of a nearby industrial estate,
- enlargement of the recycling and sewage plants,
- creation of a fishing lagoon,
- erection of a new school,
- erection of the original pigeon loft and the external open aviary.

In the determination of the earlier appeals, previous panels had acknowledged that, while the various physical changes had some impact upon the value of the property, each one was not enough to justify a reduced band. However, there came a point when the cumulative effect of significant physical changes would have the effect of reducing the appeal dwelling's potential value below the threshold for band C (£52,000). The panel determined that the erection of the metal aviary (with its inherent nuisance effect) was the event that triggered the band reduction and the appeal was allowed at band B.

**Appeal:** 3010619556/037CAD

# Interesting VT Decisions

## Chargeable dwelling

This appeal concerned the 'disaggregation' of a wooden annex in the garden of a detached dwelling. It had been built for the appellant's elderly father, but from the photographs, its use was now ancillary to the main house, with items of gym equipment inside.

The panel was satisfied, and it did not appear to be seriously contested by the appellant that the structure was effectively self contained. The issue turned on access to the annex and, effectively, whether it was a chargeable dwelling.

The appellant had been advised (by, it was understood, the VOA) that, in order for the annex to be disaggregated and deleted from the valuation list, he needed to ensure that the only access to the annex was through the main house. The appellant felt he had complied with this, so the entry in the list should be deleted. The VOA's inspector described going "through the kitchen and conservatory in the main house to get to the rear garden", where the annex was.

The listing officer's (LO's) view was that the findings in *Batty (LO) v Merriman* meant that, should access to a unit of separate living accommodation only be possible through the living areas of another unit of separate living accommodation within the same property then that property should not be disaggregated. However, while in this case access was through living areas of the main house, the LO's view was that access to this annex around the side of the house, notwithstanding the fencing, etc that the appellant had installed, was sufficient for it to remain disaggregated. The panel noted that, for example in the case of *Jorgensen (LO) v Gomperts,* where access to a self contained unit was through the front door, hall, stairs and landing of the main house, the courts have made it clear that it is not necessary for an entirely separate access to the self contained unit to exist for it to be a dwelling under disaggregation provisions. Following on from that decision, and, on a "bricks and mortar test", the panel was satisfied that the access to the rear of the property, including that via the side passages, was sufficient for the annex to be disaggregated and form a self contained chargeable dwelling.

Appeal: 0350606630/165CAD

## Plain English Campaign Annual Awards 2012

The VTS has for many years been a Corporate Member of the Plain English Campaign (PEC) and aims to produce clear, jargon-free information for its various audiences.

The PEC's Annual Awards celebrate some excellent examples of communications. The website award was given this year to the National Trust and among those winning awards for printed guidance were Age UK, NHS Derby City/NHS Derby County and the Liverpool Housing Trust. Posthumous awards were given to journalist Christopher Hitchens and to Ceefax.

Less effective communication is also singled out in the Golden Bull Awards and the Foot in the Mouth Award, which this year was 'won' by Mitt Romney:

*" I believe in an America where millions of Americans believe in an America that's the America millions of people believe in. That's the America I love."*

VALUATION TRIBUNAL SERVICE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