Issue 39

January 2016

VALUATION TRIBUNAL SERVICE

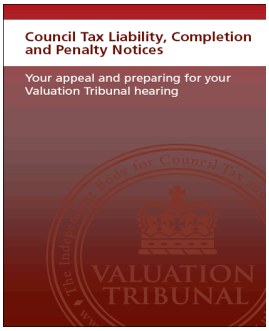
VALUATION TRIBUNAL SERVICE JANUARY 2016

Valuation in Practice

News in Brief

Guidance for appellants

The revised guidance booklet on council tax liability, completion and penalty notice appeals can be downloaded from our website:



www.valuationtribunal.gov.uk .

Staff survey

72% of staff responded to a staff survey recently commissioned. On the question of whether staff enjoyed their work, 89% gave a positive response; 92% disagreed that they were "not interested in the VTS; to me it's just a job", demonstrating that dedication and professionalism that staff have in their work. Fluctuating workload was recognised as being unhelpful by 73% of staff. Attitudes towards line managers were very positive, though change management and communication were among the areas needing improvement. A working group of staff has been established to develop an action plan to address the findings.

Council tax support/reduction

A review into how local council tax support schemes are working across the country was launched on 2 December led by former council leader and MP, Eric Ollerenshaw OBE. The opportunity for interested parties to respond with evidence came to an end on 12 January 2016. The review follows the reform of council tax benefit to give councils the power to design their own schemes according to their local needs. It will examine how this change has been implemented, what it's meant for people receiving this support, and whether it should be part of the Universal Credit payments in the future. The review will report to the Secretary of State by the end of March 2016.

Rates bills

DCLG issued a press release on 19 November announcing that businesses across the country are benefitting from record levels of discounts from their rates bills. Latest figures showed that in the last year, councils have paid out over £3 billion in business rate discounts and reliefs for local companies – a £221 million increase on the previous year. This meant the total amount of business rates actually paid by businesses had gone up by less than 1% in the last year – less than half the rate of inflation.

Parliamentary questions (PQs)

The Financial Secretary to the Treasury said that the average time taken to resolve a challenge to the rating list was 13 months for the 2005 list and 14 months for the 2010 list.

The number of people imprisoned for non-payment of council tax in 2012 was 107, in 2013 108 and in 2014 was 89, it was reported by Lord Faulks on behalf of the government.

Council Tax Information Letter 2/2015 reminds local authorities that they can use data collected for housing benefit or council tax purposes to assist in their housing functions, subject to complying with the Data Protection Act 1998.

Surgeries

Bradford Council reported to its local press that it was facing a £10 million bill for business rates on purpose-built, doctors' surgeries because of the recent decision in *Gallagher (VO) v Read & Partners and Poyser & Partners* [2015] UKUT 00001 (LC) RA 31/2012.

Inside this issue:

From the Court of Appeal

R on the application of Logan v London Borough of Havering *[2015] EWHC 3193 (Admin) CO/1822/2015*
This was a challenge to the legality of the defendant's council tax reduction scheme and the means by which it was adopted. In the financial year 2014-15 people with the claimant's level of income and disability received a reduction in council tax liability of 100% under Havering's scheme. Because of government funding cuts, Havering reviewed its scheme for 2015-16. The chosen option to meet the shortfall was to amend its scheme and, in particular, to reduce the maximum entitlement from100% to 85% which meant that the people affected would now have to pay some council tax, where previously they had not.

Following a consultation, questionnaires were issued to 10,000 people and 363 replies were received and the responses analysed. A report was then prepared for the Council's cabinet on the proposals and reminding members of their public sector equality duty (PSED) under the Equality Act 2010. Attached to it was an Equality Impact Assessment (EIA). The cabinet decided to recommend that the full council should take the decision to adopt the revised scheme and it was duly approved without a division. The minutes record the decision but there was no evidence of the discussion.

In March, the claimant successfully applied for further reduction under the discretionary scheme because of his limited household income and his special needs. He was therefore awarded enhanced 100% council tax support. The principal ground on which permission was granted for judicial review was that there had been a failure by the full council to have due regard to the PSED as not every member of the council had been provided with cabinet report and the EIA to read before the meeting. There was also criticism of the EIA itself. Permission was also granted to challenge the scheme on the grounds that it discriminated on disability and/or age contrary to Article 14 of the European Convention on Human Rights (ECHR), the right to enjoyment of possessions (Article 1 of Protocol 1 of the Convention), and indirect discrimination on the basis of disability and age contrary to the Equality Act.

Blake J rejected the claims under the ECHR and under the Equality Act. He also found that the EIA was not defective but there was insufficient evidence to show that the council members had had proper regard to, or a proper understanding of, it before voting to accept the revised scheme. The importance of reading it in order to discharge their statutory obligation could not be overstated. "There was a pressing economic case to increase revenue by reducing the maximum entitlement under the scheme; the cabinet properly advised by its Officers after considering all options approved the revised scheme without any evidence of dissent…without a division; no council member has stated that they were unaware of the EIA and would have opposed the new scheme if they had been".

The scheme applied to all people of working age whose income fell below the applicable amount; while age was a criterion, it was not this scheme that excluded pensioners from the 100% scheme but the primary legislation. The different situation of the able bodied and disabled in terms of access to the labour market had been acknowledged in calculating the 85% scheme. The existence of a discretionary scheme addressed exceptional hardship, so any indirect difference in treatment on the grounds of age or disability was justified. In looking at the scheme as a whole, the discretion was clearly an important part of it and, along with income disregards and the premiums used in the calculation of the applicable amount, was a further mitigating feature in individual circumstances.

Blake J recognised that there were concerns about the transparency of the scheme and the extent to which the public knew about it. Any future challenge to a refusal would need to be examined in the circumstances then prevailing, depending on competing budgetary needs and the transparency of decision-making under any such scheme. He noted that "a fresh decision will need to be taken in 2016, and conscientious consideration will need to be given to the impact on groups of people with protected characteristics including the severely disabled".

The claimant had not been financially prejudiced by the scheme in 2015-16, but a useful public purpose had been achieved for the future by bringing the appeal, if the council accepted the judgment's conclusions on the requirements to have due regard. No other formal relief was needed.

BMC Properties and Management Ltd v Jackson (VO) *[2015] EWCA Civ 1306 C3/2014/1650*

The Upper Tribunal had dismissed the appeal against an earlier decision of the VTE that an alteration to the 2005 list to include the property as a new hereditament had effect from 1 April 2005, the day the list came into force. BMC continued to contend that the effective date could not be earlier than 22 March 2011 when the alteration was made. In the Court of Appeal they also made an alternative argument that the VO had no power to make an alteration during the currency of a rating list and so the hereditament could only feature in the new list, in 2017.

The property consisted of 19 self-contained units, used for short-term holiday letting. It was agreed that this use had continued since at least December 1989. BMC accepted that this use meant that it should have been included in the 1990 list and each subsequent list but it was not, until the alteration in March 2011. The dispute between the parties was the method used to bring it into the list and the effective date.

BMC argued that from regulation 4(2) of the 2009 Regulations there was no power for a VO to alter a list once it was compiled; the power of alteration was limited to the making of a proposal and the VO was no longer an eligible person to make a proposal. The Court of Appeal noted that usually courts had considered the power of the VO to alter the list as being implicit in his s.41 duty to maintain that list. *(continued on page 3)*

Court of Appeal

(continued from page 2)
The VO's case went along with this but additionally contended that the power was confirmed by s.55 (2) which contemplated the making of regulations allowing VOs to alter a list in order for it to be accurately maintained.

BMC's alternative argument was that an alteration to the list by the VO, which led to a proposal by an interested person, brought into play the provisions of reg. 14(5), excluding the power of the VO to make retrospective alterations to an existing list where the day on which the "the relevant circumstances" giving rise to the alteration occurred was not reasonably ascertainable. The Court of Appeal found that reg. 14(5) had no application to cases of this kind involving changes in circumstances which pre-dated the compilation of the relevant list.

The dispute between the parties was on what is meant by "relevant circumstances". BMC contended that these words referred only to a change of use or other event affecting the hereditament, not to the fact that the property had been wrongly omitted from the list. So the circumstances giving rise to the alteration were not the inaccuracy itself which was known to have existed on 1 April 2005 when the alteration came to be made in 2011, but rather the change of factual circumstances (in this case the commencement of the use as holiday lettings) which created the inaccuracy in the list.

The Court of Appeal did not accept this and so the day on which the relevant circumstances ie the inaccuracy in the list, arose was ascertainable as it was known to exist as at 1 April 2005. Even if "relevant circumstances" was given a wider meaning and included any alteration covered by reg. 14 (2), the result was the same. The inaccuracy in the 2005 list on the day of its compilation was reasonably ascertainable when the alteration was made in 2011. Although it was not possible to identify precisely when the commercial use of the property began, it was common ground that it had started long before 1 April 2005. The appeal was dismissed.

Decisions from the Upper Tribunal (Lands Chamber)

Dog & Gun (Oxenhope) Ltd v Howarth (VO) *[2015] UKUT 0475 (LC) RA 81/2014*

For transitional relief purposes, the valuation officer (VO) issued a certificate on 18 December 2013, value £68,000 rateable value (RV) with effect from 31 March 2010. This superseded an earlier certificate, issued on 9 April 2013 and certifying a value of £77,000. An appeal against the certificate proposed a value of £10,750 RV from 31 March 2010.

The appeal property, a public house, was extended in 2007 and its entry increased from £9,650 RV to £10,750 RV with effect from 1 August 2007, by VO notice. The original 2010 list compiled entry was £12,300 RV, which was subsequently increased to £77,000 RV with effect from 9 April 2013. The assessment was agreed with the ratepayer's representative at £68,000 RV with effect from 9 April 2013.

At the UT hearing, the VO did not defend £68,000 RV that the VTE had upheld but proposed a certified value of £41,000 instead. The VO argued that he was unaware the 2005 list entry was inaccurate until the accuracy of the 2010 entry was investigated, following the receipt of the forms of return (FORs), which should have been returned earlier than they were.

The ratepayer's representative argued that it had been inappropriate for the VO to issue a certificate because he was aware of the material change of circumstances (mcc) that had occurred with effect from 1 August 2007 as he had altered the list to reflect his opinion of value at the time. However, if it was appropriate to issue a certificate, the certified value should be £10,750 RV. No subsequent mcc had occurred to justify a certificate under the circumstances identified by Regulation 17 and that the VO had used Regulation 15 to have a second attempt at the valuation. It was also stated, with reference to case law, that the VO could not impugn his own list and that the FORs were irrelevant, but even if they weren't the VO had failed to serve a certificate as soon as practicable.

The UT found that the VO had not impugned his list; it was not an absolute rule. In this case, the VO did not have reason to believe that the 2005 list entry was wrong, until he looked into the accuracy of the 2010 entry.

In the UT's decision the VTE panel's observations were noted: it would be nonsensical if evidence of a substantial nature came to light at a later date, which clearly proved that an entry in the list was wrong, but the VO was not able to act. If a list was in force, it would be wrong for the VO to impugn an entry, if he had the power to do something about it but here the list was closed, so the VO was unable to alter the list entry.

The UT determined that the VO was invoking a regulation under an SI. However, it was held that the VO had not issued the transitional certificate as soon as practicable, causing undue hardship to the ratepayer, who now had significant backdated liability. The FOR was received on 17 January 2011 but the initial certificate was not issued until 9 April 2013. The UT had no jurisdiction to alter or order the withdrawal of a transitional certificate on the grounds that it was not issued as soon as practicable; Regulations are clear "the appeal is against the value so certified".

The VO's proposed (revised) certified value of £41,000 RV with effect from 31 March 2010, based on the fair maintainable trade, was upheld.

Wonder Investments Ltd v Jackson (VO) *[2015] UKUT 0649 (LC) RA 80/2014*

An application for reinstatement of an appeal, which had been struck out, had been rejected by a Vice-President of the VTE. The appellant's statement of case had not been received as required by Direction. Though the appellant's representative contended that copies had been posted to the VTE and the VOA by the required date, there was no evidence to support this.

Having determined at an earlier preliminary hearing that there was a right of appeal against the VTE's decision to refuse a reinstatement request to the UT providing the party had made written representations, the Deputy President went on to decide the appeal itself. He had invited the parties to provide further evidence but nothing of significance was received.

The UT considered the appropriateness of rehearing the case, as it would for a valuation matter; there were "misgivings", namely because
(continued on page 4)

Decisions from the Upper Tribunal (Lands Chamber) *(continued)*

(continued from page 3)
the case

- concerned a VTE case management discretion in accordance with its own procedural orders and directions;
- was not a matter of valuation (where rehearing a case decided by lay members, whose decisions could not set a precedent, was a reasonable approach);
- it would be disrespectful of the autonomy of the first tier tribunal.

Nevertheless, the UT reheard the case, noted that the opportunity to provide more evidence had not been taken and decided on the balance of probabilities that the Direction had not been complied with. The appeal could not be reinstated.

Edward Wootton (t/a EF Wootton & Son) v Gill (VO) *[2015 UKUT 0548 (LC) RA 60/2014*

The appellant owner had sought agricultural exemption for a retail warehouse, which he used for a period to store bales of silage and agricultural machinery/tools. The land on which it stood was formerly agricultural land with farm buildings which the appellant had owned in the past but sold in 1988 for development. Access to the remainder of his land had been through this land so an alternative means of access had been created.

The warehouse built there was bought by the appellant in 2005 when the occupier went into administration and the appellant let it to a different company, but due to unpaid rent he repossessed it in 2009. The original access to the appellant's land was then restored.

At that time, the appellant was informed that there was an oversupply of retail warehousing in the area. The appeal property was eventually converted and today it is now a Waitrose supermarket. Discussions about selling to Waitrose may have begun in 2008 but planning permission for change of use was only granted in 2011.

Between 2009 and 2011 the appellant made some adaptations to the building so that it could be used temporarily as described above. This protected the equipment and silage from the elements, and the silage protected from some bird/ rodent damage. It also kept it secure from the vandalism to which it had been subjected when kept in open fields. Prior to using the appeal property for this purpose, he had transported the bales some 10 miles to another part of the farm for security.

The valuation officer's (VO) representative argued that the adaptations had been minor, leaving a building which could still be let as a retail warehouse, there were still redundant shop fittings and shelving present in the property and that the appellant's use of the building as indoor storage was unnecessary. It was also contended that the use was "contrived, unnecessary and transient". The UT pointed to Inland Revenue Commissioners v Duke of Westminster [1936] and other case law to demonstrate that "an arrangement should not be treated differently because it exists for the purpose of tax avoidance". Such an arrangement should not be considered incapable of forming the basis for a valid application for deletion.

The VO's representative also argued that the building would need to be an adjunct or necessary aid to agricultural operations and that there should be a relationship between the building and the land. The UT disagreed, as the statute said "used solely in connection with the agricultural operations". This it found to be the case: "the use was substantial, exclusive, beneficial and prolonged"; the produce of the agricultural land was stored in the appeal property which was adjacent to it and a new access created for it. The appeal was allowed and the property was to be deleted from the list for the period sought.

Interesting VT Decisions

Non-domestic rating

Day nursery

The appeal property was formerly a restaurant and had been renovated to a very high standard and converted into a day nursery on the ground floor with offices on the first floor. Its design was based on the Kids Allowed chain of nurseries. The property had initially been assessed at £90 per m2 but had been reduced by agreement with the valuation officer (VO) on an earlier appeal to £70 per m2. The appeals arose after a VO notice increased the assessment following refurbishments.

The appellant argued that, though he had agreed an assessment based on £70 per m^2 he had always sought one based on £50 per m^2; this was based on comparable evidence in Burnley rather than properties in South Manchester cited by the VO, where house prices were higher. The appellant argued that the rate should be reduced by 55% in line with the gap in house prices between Burnley and South Manchester and sought a revised price of £30 per m^2 for the ground floor. As the only access to the offices was through the nursery, and first floor accommodation at another Kids Allowed branch was at 90% of the ground floor rate, he sought the same.

The panel considered that £70 per m^2 would appear to be too high in comparison to Kids Allowed in Cheadle and Macclesfield, when looking at the general prosperity of South Manchester compared to Burnley; there was a ceiling price in Burnley and irrespective of the quality of modernisation the panel believed that, vacant and to

(continued on page 5)

Interesting VT Decisions

Non-domestic rating

(continued from page 4)
let, the rental return would be insufficient to justify the level of expenditure invested by the appellant. However, this quality would place the appeal property at the very top of the range of values for Burnley, at £70 per m^2; the panel therefore dismissed the appeal in respect of the nursery.

When viewed against the poorer comparable properties in the area, £70 per m^2 for the offices did not appear excessive. However, as the only access was through the nursery, the panel considered a rate of £63 per m^2 to be more appropriate and it allowed the appeal to that extent.

Appeal no: 231524406085/539N10

Flood zones

The VTE panel held that a bicycle shop's location in a flood zone (in Tyne & Wear) should be taken into account by the valuation officer (VO) in respect of an assessment in the 2013 rating list. The ratepayer owner-occupier of the shop, successfully argued that, he would have difficulty letting the appeal property because:

- The appeal property was in Flood Zone 3. According to the Environment Agency there was a one in 100, or greater, probability of annual river flooding.
- Since a severe flood in 2012, the appeal property's freehold value had fallen by 40% according to insurance companies. House prices in the locality had also plummeted.
- The ratepayer's insurance premiums had been sharply increased from £2,000 per annum (with flood cover) to £6,500 per annum (without flood cover).

The panel appreciated the ratepayer, as owner, could not take his business elsewhere as could the hypothetical tenant envisaged in the rating hypothesis. For the purposes of the appeal it was necessary to consider the hypothetical tenant and whether he would adjust his rental bid because (a) he was not able to obtain insurance with flood cover and/or (b) was also required to pay high premiums.

The panel held that this consideration limited the market of prospective tenants for the appeal property as many would not invest in fitting it out given the risk from flooding, which could not be insured against. Therefore, an allowance could be justified.

Appeal no: 451024846284/539N10

Lock-up shop

The VTE panel understood that the subject property was never in any rating list (from its creation sometime between 1991 and 2008) until 2013, when the assessment was entered retrospectively with effect from 1 April 2010, resulting in a large rates bill for the appellant. The appellant was occupying the premises from 24 November 2008. Usually, the billing authority would advise the valuation officer (VO) when a hereditament requires to be brought into the list but, for whatever reason, no such advice was ever received.

The panel was presented with evidence from both parties regarding the history of the subject hereditament; it paid particular attention to the form of return (FOR) received by the VO in June 2013 from the appellant, which among other things confirmed the address which the VO held, dispelling the confusion which the appellant alleged about this.

The appellant also believed that, as the property did not have its own rating assessment, it might have been part of a storage unit and included in the common parts assessment of the adjacent shopping centre. However, the panel noted that the appellant took the tenancy of the shop to trade and not to use the premises as storage, so it was satisfied that this had not been subsumed within the common parts assessment or any other assessment in the shopping centre for that matter.

As the property fell to be treated as a separate hereditament it had to be entered in the rating list. Regulation 14(2) of SI 2009 No. 2268, as amended, provides that an alteration of a list that is made before 1 April 2016, and that is made to correct inaccuracy in the list on the day it was compiled, shall have effect "from the day on which the alteration first occurred". If a property met the criteria for treatment as a separate hereditament on or before 1 April 2010, then, for the purposes of the 2010 rating list, the effective date must be shown as 1 April 2010. There is no discretion within the regulation for application of a later date.

The appellant suggested that a later effective date be used, such as the date of the schedule or the date of the proposals, which would solve her problem of backdated liability, which was causing financial difficulties. The panel could not obtain any support for this to happen from the legislation or from case law. The omission of the property from a succession of rating lists until 2013 was extremely unfortunate, but the legislation was clear and permitted backdating. The appeal against the effective date in the list was accordingly dismissed.

The rent passing on the property, as stated on the FOR, was £15,000, with effect from 24 November 2008; the revised rateable value of £11,750 had been agreed with the current occupier who was currently paying a rent of £16,000.

On the available evidence, it found that there was no reason to reduce the assessment any further than the level contended for by the VO. The appeal was allowed to that extent.

Appeal no: 011623986921/541N10

Clubhouse in a retirement village

Deletion of the property from the rating list was sought on the grounds that it was domestic. Those residing in the 55 dwellings in the retirement village had rights under the terms of the lease, including, "to use and enjoy common parts and communal facilities in the estate, including the [appeal property] intended for the common use and enjoyment of the tenants and occupiers of all the dwellings in the estate and their visitors". *(continued on page 6)*

Interesting VT Decisions

(continued from page 5)

The valuation officer (VO) argued that the appeal property, or 'Pavilion', did not meet the statutory definitions for an appurtenance or for domestic property because

- it would not pass under a conveyance of the dwellings,
- it did not fall within the curtilage of one dwelling, or block or the entire 55 units
- the lessees did not occupy the building and they had no licence to do so,
- they only had usage rights,
- the lessees did not have paramount control,
- the landlord put the building to some commercial use
- it was not used by the occupier for living accommodation.

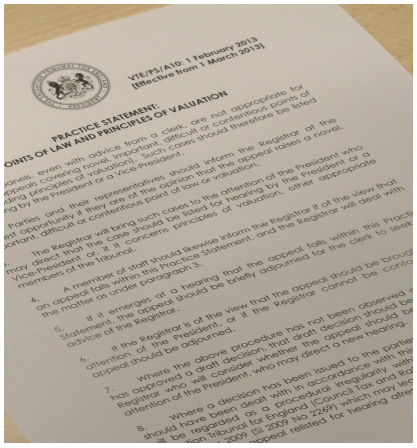
The appellant argued that such use as was not for the purpose of living accommodation was insignificant. The Vice-President concluded that who was in occupation and paramount control were not relevant factors in determining whether a property was domestic or not. The facts were that the property was used wholly for the purposes of living accommodation within the statutory definition, which referred to use not occupation. The provision of overnight stays for guests at break-even cost and events not attended by all guests did not detract from the provision of the facility for the benefit of the social well-being of the residents under the terms of their leases.

In considering curtilage, the Vice-President concluded that the estate had a clearly defined curtilage within which all of the common parts were situated; there was no dwelling which was separated from the Pavilion by anything other than common parts of the estate. The appeal was allowed.

Appeal no: 151018588656/022N10

Imperial War Museum

An appeal regarding the Museum's storage buildings for the specialist storage of nitrate film for the National War Film Archive was decided on the basis of the contractor's test in November 2015. That decision has now been set aside by a VTE Vice-President on the grounds of a procedural irregularity.
As the appeal raised a number of difficult and contentious points of


VTE/PS/A10: 1 February 2013
Effective from 1 March 2013)

PRACTICE STATEMENT:
POINTS OF LAW AND PRINCIPLES OF VALUATION

valuation, Practice Statement VTE/PS/A10 came into play. The appeal will be relisted for hearing afresh before the Vice-President.

Council tax valuation

Banding appeals remitted back from the High Court

Both these appeals were allowed in 2014 but on appeal to the High Court by the listing officer (LO) the decisions were set aside and the matters remitted back to the VTE for further determination. The VTE was found to have erred in taking into account the shared ownership nature which was the basis on which the appeal properties were sold. (A summary of the legal position was set out in the judgment). The matter in dispute in each case was the banding for a flat, with both appellants seeking a reduction from band E to D.

The first case concerned a flat in a purpose built block in a development on the site of the old Arsenal Football Club stadium. All flats in the block in question were sold on shared ownership leases. The appellant contended that the flats in the entirely new building of conventional modern style known as Southstand would not attract the same price as flats in the character buildings in the Weststand and Eaststand, which retained the original football terrace frontage (and which did not contain any flats sold on shared ownership leases). The old football pitch now formed attractive, secured landscaped gardens. Some flats there enjoyed a view of these gardens, though the subject property did not. The appellant said that shared ownership dwellings were fitted with kitchens and bathrooms which were of a lower quality to those sold privately, which also benefitted from wooden flooring and in many cases pitch views. This was not disputed by the LO.

A decision of the VTE in respect of 27 Southstand was cited where a reduction from band E to D was ordered; the appellant submitted that this flat was almost identical to her flat though one of her rooms was larger. The LO said that following that decision, the banding of the whole development had been reviewed, but the conclusion was that no further banding changes should be made. All two bedroom flats in the development had been put in band E, and one bedroom flats in band D. The panel accepted that the housing trust's original shared ownership pricing schedule showed that there was a large price differential then between flats the size of the subject flat and those similar to flat 27.

The LO also relied on historic decisions of the VTE relating to five flats as demonstrating the tone of the list, evidence of the sales prices of other similar sized flats in the locality close to the valuation date and details of settlements that had taken place around that date and banding evidence from comparable flats.

Particularly at issue was whether the specification and finishes of the subject flat compared to the private flats and the valuation impact of not overlooking the landscaped gardens. Though it seemed likely that these factors would have an effect on value, there was insufficient evidence as to how much, or whether it would reduce the value of the flat at the valuation date below £88,000.

The panel that heard the appeal on 27 Southstand considered that it would have had a value at the top end of the band D range on 1 April 1991. The difference in size between that flat and the appeal property was such that the Vice-President was satisfied there would be a material difference in the value of the two at the valuation date; the subject flat would have been in the band E range, though at the lower end of it. The appeal was therefore dismissed.

Appeal no: 5570677135/084CAD

Interesting VT Decisions (continued)

(continued from page 6)

In the second case, the 45m2 flat was in a purpose built block with lift, constructed in 2013, and comprising two bedrooms and one bathroom. The flats were all sold on shared ownership leases. Other blocks in the development consisted of flats all sold on conventional long leases.

The development was above the mainline railway serving Kings Cross station, (which impacted on noise as well as on the view). This was a busy, noisy main road with down-market retail outlets, student accommodation, warehouses, Pentonville prison and period buildings showing poor maintenance. Though there were new developments which might improve the area and have a positive effect on value, the area remained mixed in its attractiveness as a residential location.

The appellant's use of a property price index to support a 1991 valuation of £71,737 was found to be too general to be an accurate indicator. The appellant presented evidence of two-bedroom flats that were in band D, and a much larger four bedroom flat which had been assessed as band E. As these flats were new and in the local area, she argued that they were more relevant than the comparable evidence submitted by the LO, which was from a wider area and included much older flats and flats with an additional bathroom. She explained that the quality of the fixtures and fittings in the shared ownership flats (including kitchens, bathrooms, floorings, windows and doors, and the common areas), was poorer than in the privately owned flats.

The LO's evidence was not considered to offer adequate support for the case. All of the flats were larger than the subject flat and even when adjusted for size only one of them indicated that the value of a 45m2 flat on the valuation date was above £88,000. Two new build flats cited were located in a conservation area, which the Vice-President considered a better residential locality. The LO also relied on decisions of the VT relating to three flats as demonstrating the tone of the list, though none of these decisions was produced at the hearing to demonstrate how, if at all, the panels had considered the evidence.

On the evidence presented and the assumption that the flat was sold on a conventional long lease, the Vice-President was not persuaded that band E was appropriate for a flat of that style and size in its location. Relevant in the appeal were its specification and finishes, its outlook and location, which would all impact on value. The appeal was allowed and the correct band determined at D.

Appeal no: 5570678063/084CAD

Council tax reduction

Assessing a taxi driver's income

A VTE panel dismissed an appeal by a taxi driver who claimed the billing authority (BA) had incorrectly assessed his income.

The appellant undertook fewer journeys than an average taxi driver might, and he argued his fares were mainly for the local authority clients when he drove people to different towns for care or educational needs. He said the BA adopted an incorrect percentage (50% not 70%) of his mileage as "dead mileage", where he was returning from a destination and not receiving a fare. The BA argued there were grounds to reduce the figure even further, possibly to 40%.

The panel examined the documents provided to it and found some conflict within the information provided to the BA by the appellant and his overall assertion.

It was from those documents that the BA had made its decision, preferring them to the appellant's accounts.

The panel made a finding of fact that there was a formula-based assessment process available to assess a taxi driver's income and, from that, his entitlement to council tax reduction (CTR). It also preferred the alternative income and mileage data provided to the BA by the appellant over his accounts. In this case, having adopted a 50% figure for dead mileage, the appellant's net income exceeded the amount that would have entitled him to some level of CTR. Further, using the information provided to the BA by the appellant, the panel upheld as reasonable the BA's decision to adopt a lower percentage figure (50%) than that contended for by the appellant.

(CTR decisions are not published on our website)

Council tax liability

Empty home premium and discretionary relief

The appeal property was seriously damaged by fire and so was uninhabitable during works of repair of the fire damage and then extension. The house, a long-term empty dwelling for two years prior to 1 April 2013, then became subject to a charge of 150% of the council tax otherwise due following the council's determination under S. 11B of the Local Government Finance Act 1992.

The council the established a discretionary fund for its council tax payers adversely affected by that higher rate of tax. A claim was made on the basis that:

- the house was unoccupied and completely "uninhabitable",
- works, of major renovation, had been delayed due to financial and family circumstances,
- the family were living in rented accommodation for which they were paying rent and council tax,
- works to the house were expected to be completed by August 2014.

The billing authority's (BA's) response was that the house did not qualify for further exemption on the grounds that it was uninhabitable.

(continued on page 8)

Interesting VT Decisions (continued)

(continued from page 8)

The BA rejected the appeal against the 'empty property premium' and also refused to allow any discretionary relief because:

- there was no basis in law not to apply the premium here,
- there was no consistent picture of financial hardship,
- the building works went beyond repairing the fire damage and included extension in to the roof space with new windows. The family were able to pay for this themselves and it also extended the period of the works.

The VTE Vice-President underlined that the Tribunal had no jurisdiction to investigate whether or not the determination under section 11B was reasonable; such a matter could only be challenged in the High Court by way of judicial review.

With regard to the discretionary relief application, from the evidence provided, he found that the appellant, with the support of her family living with her, was able to live within her means without financial hardship despite the difficult circumstances of being in alternative accommodation. The building works at the house took longer than expected, so the house was unoccupied and eventually liable for the premium but the decision to extend into the roof, (necessitating seeking planning and building regulation consent) had played a significant part in the delay. Also, the cost of those works would not be met entirely by the insurance payment. There was no criticism of the appellant for the choices she had made but they were important factors which suggested the rejection for a discretionary reduction, on individual need was correct. The appeal was dismissed.

Appeal no: 4205M137018/254C

Where we show an appeal number, this can be used to see the full decision on our website, www.valuationtribunal.gov.uk.

Click on the 'Listings & Decisions' tab, select the appeal type and use the appeal number to search 'Decisions'.

Discretionary reduction

An appeal was allowed in part in respect of an application for discretionary reduction in council tax (section 13A(1)(c) LGFA 1992). The Vice-President ordered that the billing authority (BA) remove the higher rate premium for three months so that the appellants only paid 100% council tax.

The authority turned down the application for discretionary relief as they considered that the appellants had not done enough to sell the property. At one time it was removed from the market for sale but still offered privately and the council thought that the price could have been reduced.

The appellants owned two shops with at least one containing domestic accommodation. One of them was seriously injured when he was robbed and lost an eye. As a result of this, one shop was sold and at the other the business failed. They were then liable for council tax on the domestic accommodation at the shop.

The Vice-President noted that the appeal dwelling was not the appellants' home but a residential property from which they would normally derive rental income. Though this distinguished it from the VTE President's decision in S.C. v. East Riding Of Yorkshire Council he still considered he should follow the guidance in that decision. Here, the appellants had a capital asset which was not their home and so was capable of being sold to meet their liability.

However, the Vice-President determined that the BA could have done more to advise the appellants of their impending liability for a council tax premium and the financial consequences it would have on them. He therefore allowed them three months grace from the charge (which he considered a reasonable period of time to dispose of the property).

Appeal number: 4210M139633/254C

Sole or main residence

Earlier decisions of the Tribunal in 2010 and 2011 had confirmed the appellant did not have Property 2 as his main residence, for the purpose of sole occupancy discount, from before 18 November 2009 and then from 19 November 2009 until 17 February 2011. The billing authority (BA) had contended his main residence had been at his mother's dwelling and this was accepted by the Tribunal in those decisions. The 2011 decision was tested on appeal to the High Court in 2013 and dismissed because, on the evidence, the Tribunal's decision was not irrational.

The BA's representative argued that "by continually claiming that one's place of residence has changed, between a number of addresses, can have significant knock-on effects and create large council tax savings, especially if it takes longer than planned to find suitable tenants for one or more of the addresses in question". He summarised the appellant's contentions as being based on an "unconventional lifestyle" being content to have his main residence at an address that did not have some of the conveniences of modern day homes.

The VTE Vice-President's view was there would be nothing wrong in any council tax payer who owned a number of dwellings ordering his affairs so as to minimise liability for council tax for the purposes of this discount, provided there was a genuine change of sole or main residence as part of that. He accepted that the appellant moved his furniture and possessions out of Property 2 on 26 May 2011 into the appeal dwelling and that a BA inspection within a week of that established that the appellant was able to live there, using water and electricity to "an extent consistent with residence, albeit in somewhat spartan conditions". There was no evidence that the appellant was living with his mother.

The issue was whether the appellant's sole or main residence had become the appeal dwelling on 26 May and remained his sole or main residence until 5 October that year or whether it continued to be at Property 2 while it was vacant and unfurnished. Such supporting documentary evidence as there was (electoral registration, passport application and telephone account) indicated residence at the appeal dwelling. There was no other dwelling in contention as a sole or main residence on the basis of the time spent there within that period. In addition,

(continued on page 9)

(continued from page 8)

the appellant chose not to let the appeal dwelling but moved in there himself and took steps to change his address. There appeared no intention to return to Property 2 when he moved to the appeal property.

The Vice-President applied the test set out in Williams v Horsham DC [2004] EWCA Civ 39, [2004] 1 WLR 1137 that: "….Usually… a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time".

On the evidence provided, the VTE was satisfied that the appeal dwelling became the appellant's home and his sole or main residence for the material time. The appeal was allowed.

Appeal no: 3115M81253/221C

Hierarchy of liability

The billing authority (BA) had made the appellant, the owner / landlord, liable for the council tax on the basis that the property was unoccupied from 20 September 2010 onwards. However this was not based on any concrete evidence and in part relied on reports from unidentified neighbours who were of the opinion that the appeal property was empty. The VTE panel considered it was hearsay evidence and it had not been provided with any substantive information on these neighbours in order to test their contentions.

An officer from the council had made several unannounced visits to the property but only got a response on one occasion, when one of the named tenants answered the door and confirmed he lived in the property and also provided a credit card as identity. The BA also had contact with another of the tenants and had also been able to confirm with this person's University that he had his term time address as the appeal property. Nonetheless the BA contended that this did not establish residency. A third tenant had written to the BA on 20 December 2013 stating that he had vacated the appeal property on expiry of his tenancy agreement and there did appear to be a period until 1 January 2014 when the property had been unoccupied.

The VTE panel came to the conclusion that the tenancies were not a sham, no evidence was presented to persuade it that they were not genuine.

Based on the evidence produced before it, the panel considered that it had been established to its satisfaction that the property had been occupied from 20 September 2010 to 20 December 2013 and from 1 January 2014 to date by tenants who were resident. The landlord was therefore not the liable person under section 6 of the 1992 Act.

Appeal no: 5300M164814/084C

VALUATION TRIBUNAL SERVICE

Chief Executive's Office
Valuation Tribunal Service
2nd Floor
120 Leman Street
London
E1 8EU
ceo.office@vts.gsi.gov.uk

Production team:

Diane Russell
Tony Masella
David Slater
Nicola Hunt

The summaries and any views given in this newsletter are personal and should not be taken as legal opinion

The photographs used here are for illustration purposes only and may not be of the actual properties or people referred to in the articles.