

Annual Rating Conference 2018 Completion Notices

David Nicholls
Landmark Chambers

Section 42 LGFA 1988



s.42 requires the rating list to show each hereditament

Question:

How do you determine if there is a new hereditament?

Answer:

s.46A & Schedule 4A

Section 46A LGFA 1988

- Gives effect to Schedule 4A
- Deems a building to be completed on the completion day
- Provides for the completion day to be as per Schedule 4A (unless there is an appeal)
- Deems the following to happen on the completion day:
 - The building to be completed
 - A building that is not occupied to become unoccupied
 - Where there has been a structural alteration of an existing building, the hereditament to cease to exist and be omitted from the list

Section 46A LGFA 1988

Subsection 6 defines “*building*”

- It may include part of a building
- An existing building can be a ‘new building’ provided:
 - There are structural alterations to the existing building;
and
 - Those alterations alter the hereditaments within the existing building.

Tull Properties Ltd v South Gloucestershire Council



“I am sure that there can be buildings so transformed by alterations that it is apt to describe them as new buildings, but it takes more than a new floor, a lift, some windows, additional lavatories and a reception desk.”

“The alterations did not divide the building in two so that it could no longer operate as a single building ... the Respondent must show not only that the building acquired the capacity to be split but also that it lost its quality as a single hereditament.”

[2014] RA 180

Schedule 4A – para. 1

Two types of completion notices:

- Where the building has been completed (para. 1(2))
- Where the building has *not* been completed (para. 1(1)), provided:
 - It is reasonable to expect the building to be completed in three months
 - The billing authority shall serve the notice as soon as is reasonably practicable

Schedule 4A – para. 2



The completion notice shall specify:

- The building to which it relates
- The completion day proposed by the billing authority
 - If the building is completed, use the day notice is served.
 - If the building is *not* completed, choose a day within 3 months by when the building can be reasonably expected to be completed.

Porter (VO) v Trustees of Gladman Sippys



“A building is only a hereditament if it is ready for occupation, and whether it is ready for occupation is to be assessed in light of the purpose for which it is designed to be occupied. If the building lacks features which will have to be provided before it can be occupied for that purpose and when provided will form part of the occupied hereditament and form the basis of its valuation, it does not constitute a hereditament and so does not fall to be shown on the rating list. There is in consequence no scope for including in the list a building which is nearly, even very nearly, ready for occupation unless the completion notice procedure has been followed.”

[2011] UKUT 204

Why is a completion notice necessary?

Because it is the *only* means of entering a building in the rating list which is not in fact ready for occupation

See:

- *Porter v Gladman Sipps* [2011] RA 337
- *Aviva v Whitby* [2014] RA 61

Who is the owner?

Completion notice should be served on the owner of the building (para. 1, Sch. 4A)

‘Owner’ is defined in para. 10:

- The person entitled to possession of the building

NB the entitlement must be to immediate possession because a reversionary interest does not give rise to “ownership” for rating purposes.

(Sobam BV v City of London Corporation [1996] 1 WLR 1070)

How do you serve the completion notice?



Para. 8 of Schedule 4A:

A completion notice may be served:

- By pre-paid registered letter or recorded delivery
- By delivery to a company at its registered or principal office
- By affixing it to the building (where the owner is unknown)

'Without prejudice to any other method of service...'

UKI (Kingsway) Ltd v Westminster City Council



- Para. 8 of Sch. 4A is *permissive*.
- Does *not* provide a complete or mandatory code
- Does *not* limit other modes of service to statutorily intended modes of service
- But, indirect communication or transmission of the notice via an unauthorised third party would not constitute good service

[2017] EWCA Civ 430

Who is to serve?

Para. 1, Sch. 4A: The billing authority shall serve a completion notice – NB, not the VO

This function can be delegated to the billing authority's officers and no resolution of the authority is required (*Provident Mutual Life Assurance Association v Derby CC* [1981] RA 117).

But it *cannot* be delegated to private contractors

Therefore, it is worth checking who has served the completion notice

Withdrawal and deemed withdrawal



Schedule 4A:

Para. 1(3): Billing authority may withdraw a completion notice by serving a subsequent notice

Para. 1(4): But where there is an appeal on foot, the billing authority may only withdraw with the owner's consent

Para. 3: Where the billing authority and the owner agree a completion day in writing, then the completion notice is deemed withdrawn on that day

Multiple notices

- Completion notices relate to buildings, not hereditaments
- Therefore, the VO must determine the hereditaments to be comprised in a building following the completion date
- Multiple notices served in respect of a single building will not automatically be invalid
- But in *4 & 5 St Paul's Square* multiple notices were unlawful because they were used for the improper purpose of shortening the time required for completion - [2013] RA 215

After the completion notice has been served



Para. 7, Sch. 4A: The billing authority should let the valuation officer have:

- The completion notice
- Any agreement with the owner as to a completion day
- Knowledge of any withdrawal

VO should then notify ratepayers of alterations to the rating list, including those arising from completion notices (see NDR (Alteration of Lists and Appeals) (England) Regs 2009).

Consequences of breach unclear but unlikely to invalidate the completion notice or the alteration of the list

Customary works



Para. 9, Sch. 4A:

- **Applies** where a building to which work remains to be done but that work is customarily done after the building has been substantially completed
- **Assume** that the building has been or can reasonably be expected to be completed at the end of the period beginning with the date of its completion, apart from the work that is reasonably required for carrying out the work

Estoppel and waiver

Metis Apartments Limited v Grace [2014] RA 222

- Payment by the ratepayer of rates following a completion notice can never amount to an estoppel or waiver that prevents the ratepayer from challenging the validity of the completion notice

Appealing a completion notice

Para. 4, Sch. 4A:

Ground for appeal is that:

- Building has not been completed
- Building cannot reasonably be expected to be completed by the completion day

If appeal is not withdrawn or dismissed, then the completion day shall be such day as the tribunal shall determine - para. 4(2)

Procedure governed by Regulations – usually have 28 days in which to appeal

Scope of appeal

- The appeal is primarily concerned with the date of completion:
Prudential Assurance Company Ltd v VO [2011] RA 490
“an appeal against a completion notice under para. 4(1) ... is limited to challenging the date of completion and not any wider or more fundamental aspects”
- See also *Royal London Mutual Insurance Society v Crawley BC* [2016] R.V.R. 209
- There is no power to order the valuation officer to alter the list:
Reeves v VTE [2014] EWHC 973 (Admin).

Scope of appeal

- But:

“the question whether there is jurisdiction in a schedule 4A appeal to consider the invalidity of a completion notice needs to be determined in a contested case... Full argument and citation of the relevant statutory provisions and authorities would be necessary” (Holgate J)

- And it is possible to challenge the validity of the completion notice in other appeals (e.g. an appeal concerning entry in the list)