

Completion Notices

Dan Kolinsky
Landmark Chambers

The Statutory Framework

- Rating liability governed by the Local Government Finance Act 1988
- Two types of liability for NDR:
 - a. s. 43 LGFA – liability for occupied hereditaments
 - b. s. 45 LGFA – liability of unoccupied hereditaments
- Entry in rating list is pre-condition of each
- S. 46A LGFA governs entry of new buildings into the rating list prior to occupation

s. 46A LGFA 1988

- Gives effect to Schedule 4A
- Statutory mechanism for deeming completion for entry in list and valuation (see s.46A(2))
- Purpose
 - certainty as to when completion occurs or
 - deems property to be complete when it is not in fact but could reasonably be completed within specified time

Types of Completion Notice



- Two types of completion notice exist:
 - a. Sch 4A para 1(1): building reasonably expected to be completed within three months. BA must serve the notice as soon as reasonably practicable
 - b. Sch 4A para 1(2): building has in fact been completed.

The Completion Day

- For Sch 4A para 1(1) notices, completion day is the day specified in the notice as the day on which the BA reasonably believes the building will be completed. Must be no more than three months from the day the notice is served.
- For Sch 4A para 1(2) notice, completion day is the day the notice is served
- Completion must be assessed by reference to the purpose for which the building is designed to be occupied: Porter (VO) v Trustees of Gladman Sipps [2011] RA 337 at paragraphs 65 and 66

What is a “new building”?

- See s. 46A(6)LGFA
- “Building” includes part of a building
- An existing building can be a “new building” for these purposes where:
 - a. There are structural alterations to the existing building; and
 - b. Those alterations alter the hereditaments within the existing building

“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.”

Tull Properties Ltd v South Gloucestershire Council (VTE, October 2013), per the President of the VTE

Who is the owner?

- Service on owner
- The owner of a hereditament or land is the person entitled to possession of it: see paragraph 10(2) of schedule 4A
- The entitlement must be to immediate possession; a reversionary interest does not give rise to “ownership” for rating purposes (Sobam BV v City of London Corporation [1996] 1 WLR 1070)

The need for completion notices

- The completion notice procedure is the only way of entering a building which is not in fact ready for occupation into a rating list; even if the building is very nearly ready to be occupied, without a completion notice it will never be able to enter the list until actually complete

See:-

Porter (VO) v Trustees of Gladman Sippes [2011] RA 337 at paragraph 66 (offices)

Aviva v Whitby (VO) [2014] RA 61 (confirms Porter and applies it to warehouses)

Withdrawal and agreement

- BAs can withdraw completion notices by serving a subsequent notice to that effect (LGFA Sch 4A para 1(3)) but only by consent of owner needed if appeal has been brought (para 1(4))
- The prospective ratepayer and the BA are able to agree a completion day in writing; if such an agreement is made, the day in the agreement becomes the day on which the building is deemed to be complete, and the completion notice is deemed to be withdrawn (LGFA Sch 4A para 3)

Challenges to completion notices – jurisdiction of the Valuation Tribunal for England



- LGFA Sch 4A para 4: appeals against completion notices to be made on the ground that the completion date itself is wrong
- However, VTE have allowed challenges to the validity of the completion notice/failure to serve properly under this provision where the challenge related to the failure properly to serve the notice on the owner: Greenside Shopping Centre (August 2010); 4 & 5 St Paul's Square (February 2013) and has used its power to extend time to allow challenges in this way
- Can also rely on invalidity/lack of service of a completion notice in an appeal from a proposal to delete an entry in a rating list: Prudential Assurance Co Ltd v Valuation Officer [2011] RA 490

“If there has been no valid completion notice or agreement, there can be no deemed completion date and the properties should not have been entered in the list.”

Prudential Assurance [2011] RA 490

Timing



- Note, however, that challenges to the validity of completion notices in the VTE must be brought in a timely manner:

“I accept that a challenge must be timely, and excessive delay will create an irrebuttable presumption that the notice is valid, for precisely the same reason as judicial review proceedings must normally be instigated promptly. ... in future appellants will have to act swiftly after discovering the existence of a notice.”

(President of the VTE, Alpha Drive (June 2012))

The content of completion notices: how certain must it be?



- Para 2(1) of schedule 4A requires completion notice to specify the building to which the notice relates and state the proposed completion date
- No prescribed form
- In general, where a statutory notice is so ambiguous and uncertain that the recipient is not informed of the basis upon which the power is being exercised, the notice is a nullity: Miller-Mead v Minister for Housing [1963] 2 QB 196 (CA)
- In the specific context of completion notices, the test for a valid notice has been – does the notice “fairly convey to the recipient what is the subject matter of the notice” (Henderson v Liverpool MDC [1980] RA 238)

Must the notice identify the owner to be valid?



- Current VTE cases suggest that where the identity of the owner is known or could reasonably be discovered, the naming of or service on the wrong owner invalidates the notice: 4 & 5 St Paul's Square [2013] RA 215; Prudential Assurance
- The VTE is considering whether to follow this line in the context of case where no owner is named (decision currently awaited in UKI (Kingsway) Limited)

Multiple notices

- Remember completion notices relate to buildings, not hereditaments; the hereditaments to be comprised in a building is a question for the VO, to be determined once the completion date has occurred.
- Multiple notices served in respect of a single building will not automatically be invalid
- But in 4 & 5 St Paul's Square [2013] RA 215 the use of multiple notices was held to be unlawful where it was demonstrated to have been done for the improper purpose of shortening the time required for completion

“The moral of this tale is that BAs must take extreme care when seeking to identify the owner of a building nearing completion; and caution when contemplating service of multiple notices in respect of a single building.”

(President of the VTE in 4 & 5 St Paul’s Square [2013] RA 215)

Service of completion notices: what is required?



- S 46A(2) LGFA makes clear that a building cannot enter a rating list by virtue of a completion notice unless and until the completion notice is served in accordance with Sch 4A
- Confirmed in Alpha Drive (VTE, June 2012):

“...the legislation is clear and unequivocal in requiring service on the owner. (There may be a case for making the arrangements for service ... more flexible, but at present they are not).” (President of the VTE)

- Sch 4A para 8 sets out framework for service of completion notices. A notice may be served on a person:
 - a. By sending in a prepaid registered letter to the person at the usual or last known address, or the address given for service
 - b. In the case of an incorporated company or body, by delivering to the secretary or clerk of the company at its principal or registered office, or sending it to that person at that place in a prepaid registered letter
 - c. Where the name or address of the person cannot be ascertained after reasonable inquiry, by addressing the notice to the “owner”, describing the building, and affixing it to a conspicuous part of the building

- Sch 4A para 8 methods of service stated to be “without prejudice to any other mode of service” – unclear what this means where method of service is expressed as depending on reasonable enquiries having been made
- Also note Local Government Act 1972, s. 233, which creates a comprehensive service regime for local authority documents. S. 233(2) allows service on a person by personal delivery, leaving at a proper address, or posting to a proper address.

The authority to serve

- The requirement to serve a completion notice rests on the BA, rather than on the VO: LGFA Sch 4A para 1
- This function can properly be delegated to the BA's own officers; no resolution of the BA is required: Provident Mutual Life Assurance Assoc v Derby CC [1981] RA 117

- However, BAs probably cannot delegate the consideration or service of completion notices to private contractors:
- The Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 permits BAs, in relation to NDR, to serve certain notice (Reg 50). These include e.g. demand notices and liability orders, but not completion notices
- Worth checking, therefore, who exactly has served completion notices, and whether the BA has improperly delegated this function
- (see Chris Lewsley's note on this point at [2013] RVR 65)

The VO's duties

- BAs must supply the relevant VO with a copy of any completion notices which it serves or withdraws, or where it agrees a completion day with the prospective ratepayer (Sch 4A para 7)
- The VO is under a duty to notify ratepayers of alterations to the rating list, including those arising from completion notices: NDR (Alteration of Lists and Appeals) (England) Regulations 2009, Reg 17(2)
- Unclear what if any consequences flow from any failure to comply with these provisions - probably does not affect the validity of either the completion notice or the list alteration itself.

Customary works

- Sch 4A para 9 provides:

(1) This paragraph applies in the case of a building to which work remains to be done which is customarily done to a building of the type in question after the building has been substantially completed.

(2) It shall be assumed for the purposes of this Schedule that the building has been or can reasonably be expected to be completed at the end of such period beginning with the date of its completion apart from the work as is reasonably required for carrying out the work.

As clear as.....



Estoppel and waiver

- Where liability for rates arises by virtue of a completion notice, the payment by the ratepayer of rates purportedly due can never amount to an estoppel or a waiver preventing the ratepayer from challenging the validity of the completion notice; these doctrines have no application in this context, and provide no defence to BAs (Metis Apartments Ltd v Grace (VO) (VTE, January 2014))

“... when the revenue makes a demand for tax, that demand is implicitly backed by the coercive powers of the state and may well entail (as in the present case) unpleasant economic and social consequences if the taxpayer does not pay. In any event, it seems strange to penalise the good citizen, whose natural instinct is to trust the revenue and pay taxes when they are demanded of him ... the simple fact that the tax was exacted unlawfully should prima facie be enough to require its repayment.”

(Woolwich Equitable Building Society v Inland Revenue Commissioners [1993] AC 70, House of Lords) and see also FI
Claimants [2012] 2 WLR 1149 (SC) at paragraph 173

Procedural hints and tips

- Worth ensuring that both the BA and the VO are parties to appeals which turn on the effect of a completion notice; the BA's and VO's roles are complementary, and both will need to be present to address all the issues.

“To the valuation officer’s claim that he is in no position to defend what are in effect the actions and decision of the BA, we simply point out that he could have applied to have the BA added as a party; and if we thought that he had been impaired in arguing the matter, or if we had been left in want of evidence or elucidation, we would have added the authority as a party of our own motion”

(Prudential Assurance [2011] RA 490 at paragraph 7)

- Note the VTE has the power to substitute a party if the wrong person has been named as a party, or if a change of circumstances renders a substitution necessary
- The VTE also has the power to add persons to the proceedings, either on an application by a party or on its own motion
- See the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, Reg 11

The future...

- Post Porter and Aviva service of completion notices are now in many cases a pre-requisite for entry of buildings before occupation – hence they are in the front line of unoccupied rates issues and lots of money may turn on whether the process has been done properly
- The statutory provisions are at best imperfect
- Much of the case law on completion notices is at VTE level – at some stage the approach adopted will be tested at Upper Tribunal level (and possible higher)
- So watch this space.....