VTE Procedure: the Scope of the Proposal and the VTE's Jurisdiction

1. The Valuation Tribunal for England is a creature of statute, with none of the inherent jurisdictional powers of the High Court. This paper explores the case law on the breadth of the VTE's jurisdiction and the remedies it can award, and considers the critical role played by the ratepayer's proposal in determining the potential outcomes of a VTE challenge. Finally, analysis of very recent jurisprudence on the difficult issue of completion notice appeals will be analysed, and the implications for ratepayers examined.

The legislative framework

2. By virtue of s. 55 of the Local Government Finance Act ("the 1988 Act"), the Secretary of State is empowered to make regulations governing, amongst other things, proposals and appeals to the VTE.

3. The VTE itself is established by Schedule 11 to the 1988 Act; that Schedule also provides the broad jurisdictional framework for the VTE itself. Para A2 provides those aspects of the rating regime which are under the VTE's jurisdiction; this includes jurisdiction granted by regulations made under s. 55, as well as completion notice disputes under Schedule 4A.

4. Much of the detailed provision for the VTE's powers is contained in two sets of regulations: the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the NDR Regs") and the Valuation Tribunal for England (Council Tax and Rating Appeals (Procedure) Regulations 2009 ("the VTE Regs").

5. A detailed analysis of these regulations is beyond the scope of this paper. There are, however, a number of provisions to which attention must be drawn.

6. The circumstances in which a proposal to alter a valuation list may be made are prescribed by Reg 4 of the NDR Regs. The same regulation also sets down who may make a proposal, and in what circumstances.

7. Regs 9-12 deal with the procedure to be followed where the VO is in receipt of a valid proposal. This includes procedures for the VO's acceptance of the proposal (Reg 10), for the withdrawal of the proposal (Reg 11), and for agreed alterations outside of the terms of the proposal (Reg 12).

8. Reg 13(1) of the NDR Regs provides:

> (1) Where—
> (a) the VO is of the opinion that a proposal is not well-founded, and
> (b) the proposal is not withdrawn, and
> (c) there is no agreement under regulation 12,
> the VO shall refer the disagreement to the VTE as an appeal by the proposer against the VO's refusal to alter the list.

9. Turning to the VTE Regs, the VTE's order-making powers on the determination of a contested appeal are set out in Reg 38. By Reg 38(4), on dealing with an appeal referred following a Reg 13 disagreement, the VTE has the power to "require a VO to alter a list in accordance with any provision made by or under the 1988 Act." Reg 38(10) creates a power for the VTE to order that ancillary matters be attended to.

The role of the Proposal: a brief history of the jurisprudence

10. The case law on the jurisdiction of the VTE and its predecessor tribunals and committees is extensive. Important early decisions under the 1988 Act's predecessor statutes include R v Winchester Area Assessment Committee ex parte Wright [1948] 2 KB 455, Brighton Marine Palace and Pier Co v Rees (VO) [1961] 32 DRA 277, and R v Northamptonshire Local Valuation Court ex parte Anglian Water Authority [1990] RA 93.

11. For present purposes, however, the starting point can be taken to be the decision of the Lands Tribunal in Shaw v Hughes (VO) [1991] RVR 96, which considered the relevant provisions of the General Rate Act 1967. The case concerned a three-storey townhouse in Castle Vale, with a detached garage building. House and Garage comprised a single hereditament. The Appellant sold the house but retained the garage building, and (understandably) wished to see the single hereditament split. His proposal, however, was for the deletion of the single hereditament only.

12. HHJ Marder QC held that the proposal was not well-founded: there was no basis for the outright deletion of the hereditament, and the Lands Tribunal was not empowered to enter replacement list entries if such a request was not made in the proposal:

> "the jurisdiction of the [valuation] tribunal is restricted to determining whether or not the contention of the "appellant" as reflected in the appellant's proposal is well-founded. If it is, then the [tribunal] is required to give effect to the proposal; in any other case the [valuation] tribunal must dismiss the appeal. Upon further appeal to the Lands Tribunal, the tribunal has the same powers as the [valuation] tribunal, no more and no less.
> The jurisdiction of both tribunals is thus limited to the issue raised by the proposal and can be extended no further. …
> Can it therefore be said that the contention of the ratepayer in the present case as set out in his proposal was "well-founded"? In my judgment patently not. The hereditament had not in any sense ceased to exist. All that had happened was a change of ownership and of occupation. But the hereditament remained in existence, both as discernible in fact on the ground, and as the subject of an entry in the valuation list. There was no doubt cause to split the hereditament to produce two distinct hereditaments. But that could in no sense be construed as the intent or the natural meaning of the proposal. The proposal was made deliberately to propose deletion."

13. The judge's view that a change of occupation cannot cause a hereditament to cease to exist may be open to question; that, however, is another topic for another day. For present purposes, Shaw sets out in unequivocal terms that the tribunal's jurisdiction under the General Rate Act was limited to giving direct effect to the proposal before it.

14. The applicability of the Shaw principle under the 1988 Act regime was considered by the Lands Tribunal in Courtney Plc v Murphy (VO) [1998] RA 77. The ratepayers made a proposal seeking a reduction in RV following a material change in circumstances; the date of the material change in circumstances was specified in the proposal as 30 January 1995, and the valuation tribunal ordered the amendment of the list from that effective date. The ratepayer subsequently sought, on appeal, to argue that the list alteration should have been made with effect from 1 April 1990.

15. The Lands Tribunal held that it did not have the power amend the list with effect any earlier than 30 January 1995: the principle set out in Shaw remained good law under the 1988 Act, and properly construed the proposal in question did not request a list alteration any earlier than the date specified therein. The member noted that, under the NDR Regulations then in force (which were in materially the same terms as the current regulations), it is the disagreement between the ratepayer and the VO which is referred to the tribunal for determination; and the scope of that disagreement is necessarily governed by the words of the proposal itself. The member concluded that it was "settled law"

under the 1988 Act that "the jurisdiction of a local valuation tribunal and [the Lands Tribunal] on appeal is limited to the issues raised by the proposal giving rise to the appeal" (87).

16. Courtney was followed by a two-member Lands Tribunal in Davey (VO) v O'Kelly [1999] RA 245. That case also affirmed that, when examining the scope of the proposal for the purposes of determining the tribunal's jurisdiction, the proposal should (254):

> "be construed solely by reference to the wording of that document. We cannot look outside the proposal. We cannot have regard to extrinsic material, that is to say any special knowledge of the valuation officer as to the position, the covering letter and the earlier proposal … The test is: how would the proposal be reasonably understood by those on whom it was served, disregarding any extrinsic material."

17. This rule of construction was derived from the decision of the Court of Appeal in R v Northamptonshire Local Valuation Court ex parte Anglian Water Authority [1990] RA 93, where emphasis was placed on the fact that, as a public document, the proposal ought to be self-contained.

18. The rule in Courtney was refined, and its impact on ratepayers softened somewhat, by the Court of Appeal in Marks & Spencer Plc v Fearney (2000) 79 P&CR 514. That case, like Courtney, was concerned with the power of the valuation tribunal to adopt a different effective date to that contained in a proposal which challenged the RV of a property. Unlike Courtney, however, the parties had disagreed as to the effective date from the beginning of the tribunal process. The court held that the VT did have the power to differ from the proposal as to the effective date (520):

> "I have no difficulty with the proposition [in Courtney] that the disagreement which is referred to the Valuation Tribunal is limited by the contents of the proposal which the valuation officer regards as not well founded. But it does not follow that where there is an entry which is challenged, there can be no jurisdiction in the Valuation Tribunal to determine what is the correct entry that should be in the list. As I read regulation 16(1), the disagreement there mentioned is that which arises from the valuation officer not being of the opinion that the proposal is well founded. That disagreement which defines the issues to go to the Valuation Tribunal is what is referred by the valuation officer to the Valuation Tribunal and gives the Valuation Tribunal jurisdiction in respect of those issues.
> The Valuation Tribunal, in my judgment, is not bound by an agreement between the appellant and the valuation officer or the abandonment of points by an appellant after the disagreement is referred. The Valuation Tribunal must decide the issues before it in accordance with the law, and in doing so, it will no doubt keep in mind that its decision may affect persons other than the parties before it. The powers of a Valuation Tribunal setting an effective date are not the same as those of a valuation officer altering the list. The effective date will be governed by how the regulations apply to the particular circumstances of the case. Thus, if the rateable value which is found by the Valuation Tribunal is in excess of that in the list at the date of the proposal and in excess of the amount contended for in the

> proposal, the list would have had to be altered with effect from the day on which the decision is given."

20. The strict Courtney approach was further eroded by President George Bartlett QC in Galgate Cricket Club v Doyle (VO) [2001] RA 21. The cricket club appealed against the RV of its clubhouse; the proposal form then in force, however, allowed the ratepayer to select only one ground of challenge, and the wording used by the club to describe its detailed reasoning for the challenge included the statement "that the assessment of the hereditament is bad in law". The President held that this wording was wide enough to cover rateability as well as valuation; as such, Courtney did not preclude the tribunal from considering a rateability appeal on jurisdiction grounds. The President said (para 6):

> "The words quoted are indeed wide enough to encompass the question of rateability, and I can see no reason to limit their scope so as to prevent the ratepayer from advancing a legitimate argument and this Tribunal from ordering the list to be corrected if it finds it to be inaccurate in this respect. Indeed, since it is desirable that inaccuracies in the list should be corrected and since the valuation officer has had sufficient notice of the point, there are strong reasons against adopting such a restrictive approach. The valuation officer certainly under stood that rateability was raised by the proposal. He conducted his case in the valuation tribunal on this basis, and invited it to amend the entry to take account of the non-rateability of the cricket ground and the pavilion. I have no doubt at all that this Tribunal has jurisdiction to consider whether the clubhouse also is exempt"

21. Galgate represented something of a high point in the jurisprudence on the scope of the VTE's jurisdiction. Eight years later, President Bartlett QC distinguished Galgate in in Leda Properties Ltd v Howells (VO) [2009] RA 165. In Leda, the proposal was for the deletion of an entry from the list; it was later contended, however, that the tribunal also had the power to consider a challenge to the RV of the property in the alternative. The proposal form had not indicated an intention to challenge the RV; only the deletion box was selected (it appears that by this point the standard form may have allowed the selection of more than one ground for a proposal, unlike the form in Galgate). The reasons set out in the proposal were that the assessment was "incorrect excessive and bad in law."

22. The tribunal held that it did not have jurisdiction to consider a challenge to the RV in these circumstances. President Bartlett QC held, at para 18:

> "It is not in my view reasonably possible to construe the completed form as encompassing a proposal for a change in the description of the hereditament or the reduction in its rateable value. The option to specify these (alterations B and G in Part B) was not exercised, and the ground specified in Part C was deletion. In these circumstances the inclusion of the standard formulaic words "The present assessment is incorrect excessive & bad in law" was in my judgment patently insufficient to permit the proposal. This is not one of those cases (cf Galgate Cricket Club v Doyle

> (VO) [2001] RA 21) where a proposal can properly be treated as encompassing two grounds. It was quite evidently one for deletion alone. … I have no doubt at all that if the intention had been, as a further alternative, to seek an alteration in the hereditament's description and a reduction in rateable value a proposal to this effect would have been made."

23. The President set out the reasoning underlying the rule (para 19):

> "The purpose of requiring that the alterations proposed should be identified and that the reasons for the alterations should be specified is so that the VO is able to deal with the proposal in the way that he is required to deal with it under the Regulations. Reading the form as submitted he could not possibly have known that he was, or even might be, being asked to alter the description of the hereditament to "Store" or to reduce the rateable value to one that reflected its use for that purpose."

24. The President also rejected the contention that the RV and description alterations could be effected using the tribunal's power to attend to any matter ancillary to the subject matter of the appeal (para 20):

> "An alteration of the assessment pursuant to a proposal to delete the hereditament from the list would not be a matter ancillary to the subject matter of the appeal. It would be a separate principal course of action that could only be based on the consideration of evidence and arguments different from those of relevance to the issue of deletion. The VT did not have power, and this Tribunal does not have power, to direct an alteration of the list pursuant to the proposal that has led to this appeal."

25. The approach to the tribunal's jurisdiction in Leda was upheld by the Lands Chamber of the Upper Tribunal in Johnson (VO) v H&B Foods Ltd [2013] UKUT 0539 (LC). In that case the tribunal was faced with a proposal for a merger of two hereditaments; it was accepted, however, that on its true construction the proposal was wide enough to cover the determination of the RV for the new hereditament if the tribunal allowed the appeal and ordered the merger. As for the breadth of Reg 38(10) of the VTE Regs and the of the VTE to determine ancillary matters, Lindblom J indicated, albeit obiter, that the Lands Chamber "would not be prepared to decide here that the determination of rateable value could be seen as a matter "ancillary" to the parties' dispute on the question of one hereditament or two" (para 58).

26. The scope of Reg 38(10) was also recently addressed by the VTE in Metis Apartments Ltd v Grace (VO) [2014] RA 222. The President of the VTE, Professor Graham Zellick QC, deleted an entry from the 2010 List on the basis that the completion notice issued by the VO was invalid. The completion notice in question was issued in November 2007; the president held, however, that the Reg 38(10) power did not enable the VTE to delete

the property's entry in the 2005 List as a matter ancillary to the 2010 List proposal. Completion notices are discussed in more detail below.

Where are we now?

27. The current position as to the role of the proposal appears to me to be as follows:

a. The proposal plays a critical role in determining not just the course of the VTE appeal hearing, or the remedies available, but the VTE's jurisdiction. As such, this is not a matter of the tribunal's discretion; the VTE cannot act in a manner inconsistent with the scope of the disagreement referred to it, even if it wants to.

b. Put another way: if you don't propose it, it cannot happen!

c. Given that the VTE's jurisdiction is statutory, and is strictly defined by the proposal, the parties cannot consent to the determination by the VTE of a matter outside the scope of the proposal: Reeves (VO) v VTE [2015] EWHC 973 (Admin) at para 25.

d. The importance of careful and comprehensive drafting of proposals is clear; the language of the proposal must be wide enough to encompass any issue which the ratepayer may wish to have determined by the VTE, including arguments in the alternative.

e. The scope of the proposal will be construed by the VTE solely by reference to the proposal document itself: it is not enough to rely on other documents in the VO's knowledge or possession.

f. Jurisdictional errors probably cannot be saved by reference to the VTE's power to make ancillary orders: the cases consistently treat this power as being of very limited scope, and it seems highly unlikely that it can successfully be used to secure an order which would otherwise be outside of the VTE's jurisdiction.

Current issues: completion notice appeals

28. By virtue of para 4(1) of Schedule 4A to the 1988 Act, completion notice appeals to the VTE can be made only on the ground that the completion day itself is incorrect. By para 4(2), the VTE is empowered to determine the completion day for the building in question.

29. In the very recent case of Reeves (VO) v VTE [2015] EWHC 973 (Admin) (aka Tull Properties), the Administrative Court examined the remedies within the VTE's jurisdiction on a Schedule 4A completion notice proposal.

30. The case concerned the completion notice served on Tull Properties in respect of a property called Beluga House, in Bristol. Tull made a proposal against that completion notice; it did not, however, make a concurrent proposal challenging the entry of Beluga House in the valuation list. The VTE considered, as a preliminary issue and at the request of the parties, whether the completion notice was valid. The tribunal decided that it was not valid, on the basis that the alterations in question had not resulted in a new building. Having made that decision, the VTE ordered the deletion of the Beluga House hereditament from the list.

31. The VO applied to the Administrative Court for judicial review, on the ground that the VTE had no jurisdiction to order deletion on a Schedule 4A proposal. The case came up before Holgate J.

32. In the course of the proceedings, the VO accepted that the VTE had jurisdiction to consider the validity of a completion notice on a Schedule 4A proposal. That aspect of the VTE's jurisdiction was not therefore at issue. Nevertheless, the learned judge recognised that this was a matter of some concern to the VTE (see for example the comments of the President of the VTE in UKI (Kingsway) Ltd v Westminster CC [2014] RA 367 on this point), and as such made a number of (obiter) comments to assist the future determination of the matter:

> "23. … First, the Tribunal has decided that in an appeal concerning a ratepayer's proposal to delete a building entered in a rating list on the back of a completion notice, the "validity" of that notice can be challenged before, and determined by, the Tribunal (Prudential Assurance Company Limited v Valuation Officer [2011] RA 490. On that basis it would appear that a suitable remedy is available for ratepayers who wish to challenge the validity of a completion notice.
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> 24. Second, given the language used in the 1988 Act, issues as to whether the Tribunal has jurisdiction to determine in a Schedule 4A appeal the validity of a completion notice, and if so to quash a

completion notice or to declare the same to be invalid, deserved further consideration. Indeed, at paragraph 6 of the decision in the Prudential case the Tribunal took a completely different view of its jurisdiction, in contrast to the present case, by stating that an appeal against a completion notice under Schedule 4A is limited to challenging the date of completion and does not cover "any wider or more fundamental aspects".

25. Third, in the present case, unlike Prudential, there was no issue between the parties to the appeal (Tull Properties and the billing authority) about the Tribunal's jurisdiction to determine the invalidity issue. Self-evidently jurisdiction cannot be conferred on a statutory tribunal by the consent of the parties."

33. His Lordship stressed the need for the question to be considered in a case where the question is live, so that a determination can be made on the basis of full argument and citation of authority (para 26). It seems to me, however, that the tenor of Holgate J's comments clearly casts doubt on the VTE's power to determine validity in Schedule 4A proceedings.

34. On the principal issue before him, namely the VTE's power to order the deletion of the hereditament from the list, the judge came to the firm conclusion that, on the proper construction of the relevant legislation, the VTE was not entitled to have made the order it did.

35. The judge analysed Schedule 11 to the 1988 Act:

"37. Schedule 11 of the 1988 Act contains a number of provisions dealing with tribunals. Paragraph A1 constitutes the Valuation Tribunal for England. Paragraph A2 defines the jurisdiction of the VTE so as to include, amongst other things, matters dealt with pursuant to regulations under section 55 and also appeals pursuant to paragraph 4 of Schedule 4A. Paragraph 8(4) of Schedule 11 enables regulations to be made in relation to the VTE which include provision for:

"(e) authorising or requiring an order to be made in consequence of a decision;

(f) that an order may require a register or list to be altered (prospectively or retrospectively);"

38. Paragraph 11 of Schedule 11 provides for regulations enabling appeals to be made on certain matters to the High Court or to the Upper Tribunal.

39. From the provisions in schedule 11 to which I have referred, it is plain that Parliament legislated that the VTE's power to make orders would be conferred and defined by regulations. In other words, Parliament envisaged that the scope of the Tribunal's power to make orders when dealing with appeals would itself be defined through regulations under schedule 11."

36. The crux of the judge's reasoning concerned Reg. 38 of the VTE Regulations 2009:

> "54. Regulation 38 deals with "orders other than consent orders". Subparagraphs (1) to (3) deal with appeals in relation to Council Tax. Subparagraph (4) is concerned with an appeal under regulation 13 of the 2009 Regulations, that is to say a disagreement as to a proposed alteration. In that circumstance the VTE is empowered to make an order requiring a valuation officer to alter a list in accordance with any provision made by, or under, the 1988 Act.
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> 55. Two things are to be noted about that provision: first, it only applies to an appeal under regulation 13 and it does not apply to an appeal under Schedule 4A of the 1988 Act. Second, there is no provision in the 1988 Act, or *under* the 1988 Act, that is to say a regulation, which requires a valuation officer to alter the list in consequence of a decision made by the VTE in an appeal under Schedule 4A that a completion notice is invalid."

37. It followed that, since Reg 38 did not create an express power for the VTE to order a list alteration on a Schedule 4A proposal, and since such a power cannot be identified anywhere else, the VTE did not possess the power.

38. The judge said that he did not find this outcome surprising, for a number of reasons:

> "59. I do not find that conclusion surprising for a series of reasons. First, the completion notice code simply provides a deeming provision for the completion date of new buildings. However, a completion notice may be invalid simply because it was incorrectly served or because the new structure does not fall within the definition of a new building, that is to say reasons which have nothing to do with the date when a new development is completed. Second, treating a completion notice as invalid merely prevents reliance upon that notice in order to create a deemed completion date. Thirdly, that does not alter the continuing duty of the valuation officer under section 41(1) of the 1988 Act to maintain an accurate list based on the information that comes to his attention. In most cases a building is likely to be completed at some point in time, if not by the date deemed to be the completion date under Schedule 4A. Fourthly, it seems to me to have been unlikely that Parliament would have intended to confer on the VTE a power to direct the deletion of a hereditament simply because a completion notice is held to have
> been invalid and, as a result, the deeming provisions in section 46A and Schedule 4A do not apply, bearing in mind the valuation officer's continuing duty under section 41(1) and the fact that he is not the originator of a completion notice.
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> 60. I would add, in relation to paragraph 13 of the VTE's decision in December 2013, a few comments. The making by this Court of an order to quash the Tribunal's order to delete the hereditament from the rating list does not render the VTE's decision on the invalidity of the completion notice academic, or indeed improperly require the ratepayer to re-litigate an issue. The position remains that the deeming effect of the completion notice could not be relied upon in this case. The correct procedure for the ratepayer to have followed would have been to make a proposal challenging the entry of Beluga House in the list. That could have been dealt with at the same time as any completion notice appeal. That course was open to the first interested party but was not taken.
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> 61. Secondly, if the first interested party had followed the course of making a proposal challenging the entry of Beluga House in the list, the valuation officer at that time could have reconsidered his position and the information available to him and, in particular, he could have done so before the long-stop date of 1 April 2011. For example, he could have decided to maintain the list perhaps on a different basis without necessarily having to rely upon the challenged completion notice.
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> 62. Thirdly, as happened in this case, the completion notice was found to be invalid not on the basis that the building had not been completed by 20 August 2008, but on the basis that the structure did not fall within the definition of a new building so as to engage section 46A and Schedule 4A. However, the effect of the VTE's quashing order, if this court should not intervene, would be to require the property

> to be removed from the 2005 list altogether and the valuation officer would be unable, at this point in time, to take any further action with regard to that list."

39. The judge concluded his judgment by indicating that the VTE's power to set aside its own judgments in the case of procedural impropriety was, in clear cases, an appropriate mechanism for the VTE to undo the effects of its own orders, where it comes to the view that it lacked the jurisdiction to have made the order in question.

40. The Tull Properties decision has, in my view, provided clarity on the VTE's jurisdiction when deciding completion notice appeals. It is now clear that a completion notice appeal cannot result in an order to alter the list; it must also be doubtful whether the VTE will in future regard itself as having the power to determine the validity of a completion notice in such an appeal. In practice, this emphasises the importance for ratepayers of ensuring that, where the validity of a completion notice is at issue, a specific proposal is made (on the Prudential Assurance model) expressly to seek that result. The VTE is likely, in future, to limit its consideration of completion notice appeals to the single issue explicitly prescribed in Schedule 4A.

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