

Completion Notices

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Statutory framework

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- Section 42 LGFA88 requires rating list to show each relevant non-domestic hereditament in the area
 - How to determine whether a new hereditament has come into existence?
 - Exercise of VO's judgment
 - OR deeming provision in s46A
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s46A Local Government Finance Act 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



Two types of completion notice



- Sch 4A para 1(1): building reasonably expected to be completed within three months; BA must serve the notice as soon as reasonably practicable
- Sch 4A para 1(2): building has in fact been completed



Completion Day

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- Sch 4A para 1(1): 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.
 - Sch 4A para 1(2): 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 Sipp [2011] RA 337 at paragraphs 65 and 66
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What is a “new building”?

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Section 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;
 - b. Those alterations alter the hereditaments within the existing building
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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.”
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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)
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How to serve the owner



- Paragraph 8 of Schedule 4A:

Without prejudice to any other method of service, a completion notice may be served on a person:

- (a) by sending it in a pre-paid registered letter...
- (b) ...by delivering it to the secretary or clerk of the company or body at their registered or principal office...; or
- (c) where the name or address of that person cannot be ascertained after reasonable enquiry, by addressing it to him by the description of “owner” ...and by affixing it to some conspicuous part of the building.

Westminster CC v UKI (Kingsway) Ltd [2015] UKUT 0301 (LC)



- ...the word “serve” is an ordinary English word which connotes the delivery of a document to a particular person
 - Using methods of service in Sch 4A para 8 passes risk of non-receipt to intended recipient, but not required
 - Coming in to hands of owner via third party is sufficient
 - No need to identify owner by name even where possible
 - But not condone sloppy procedure...
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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 Sippis [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)



Multiple notices



- Completion notices relate to buildings, not hereditaments; the hereditaments to be comprised in a building must be determined by the VO 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 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



The authority to serve



- 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 notices (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)

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

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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.

Estoppel and waiver

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- 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))

Challenges to completion notices

(1) Appeal under Sch 4A paragraph 4

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- Person served with completion notice may appeal on ground “the building to which the notice relates has not been or, as the case may be, cannot reasonably be expected to be completed by the day stated in the notice”
 - If appeal is not withdrawn or dismissed “completion day shall be such day as the tribunal shall determine”
 - Must be brought within 28 days, although this may be flexible in some cases: Sainsbury’s Supermarkets Ltd v Eden DC
 - Parties to the appeal are usually the owner and the BA
 - No power to order VO to alter list: Reeves (VO) v VTE [2015] EWHC 973 (Admin)
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Challenges to completion notices

(2) Scope of para 4 appeal

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- Former President of VTE expressed differing views as to whether this could be done on appeal under paragraph 4:
 - 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.”
 - Tull Properties: “This decision ... deals with just one point that arises in this appeal ... namely, the validity of the completion notice.”
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Challenges to completion notices

(2) Scope of para 4 appeal



- Holgate J. in Reeves: “the question whether there is jurisdiction in a schedule 4A 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.”
 - VTE in Royal London Mutual Insurance Society v Crawley BC [2016] R.V.R. 209 thought High Court had ruled that the only ground on which an owner could appeal to the tribunal was that the building had not been completed or could not reasonably be expected to be completed by the date stated in the notice...
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Challenges to completion notices

(3) challenging validity in other appeals



- VTE in Prudential: “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.”
 - Reeves suggests that this is only way VO can be compelled to act, so proposal should be made simultaneously at least if end of list in prospect
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