

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2018] UKUT 420 (LC)
Case No: RA/37/2018**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROCEDURE – scope of proposal – proposal alleging material change of circumstances comprising loss of bedroom to provide staff accommodation – whether capable of covering incorporation of bedroom into hotel dining area – appeal dismissed

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
VALUATION TRIBUNAL FOR ENGLAND**

BETWEEN:

ASHOK PATEL

Appellant

and

**DAVID JACKSON
(VALUATION OFFICER)**

Respondent

**Re: The Brent Hotel
165 Preston Hill
Harrow
Middlesex HA3 9UY**

Martin Rodger QC, Deputy Chamber President and A J Trott FRICS

Royal Courts of Justice, Strand, London WC2A 2LL

on

4 December 2018

Anup Patel for the appellant

George Mackenzie, instructed by H.M. Revenue & Customs, for the respondent

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The following cases are referred to in this decision:

Courtney PLC v Murphy (VO) [1998] RA 77

R v Northamptonshire Local Valuation Court ex p. Anglian Water Authority [1990] RA 93

Introduction

1. This appeal concerns a bed and breakfast hotel known as the Brent Hotel, at 165 Preston Hill, Harrow (“the Hotel”). The appellant, Mr Ashok Patel, is the proprietor of the Hotel and the ratepayer. With effect from 4 May 2011 the rateable value of the Hotel in the 2010 Local Non-Domestic Rating List (“the 2010 List”) was £29,500.

2. On 20 April 2018 the Valuation Tribunal for England (“VTE”) determined that the appellant’s proposal made on 1 June 2016 to alter the 2010 List by reducing the rateable value to £1 was not well-founded. The VTE accordingly dismissed the appellant’s appeal which had been referred to it by the respondent Valuation Officer (“the VO”) under regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations (England) 2009 (“the 2009 Regulations”).

3. The appellant’s proposal (which had been prepared for him by a rating professional) asserted that there had been a material change of circumstances which had the result that the rateable value stated in the 2010 list was too high. The material part of the proposal asserted:

“The Rateable Value appearing in the Rating List is incorrect, excessive and bad in law and should be reduced to £1 with effect from 1 January 2015. There has been a Material Change in Circumstances comprising the loss of one bedroom to provide staff accommodation.”

4. This is the appellant’s appeal against the VTE’s decision. It raises two issues, the second of which arises only if the appeal succeeds on the first. The first issue is whether the alteration sought by the appellant falls within the scope of his proposal; the second is an issue of valuation which will be triggered if the material change of circumstances asserted in the proposal is made out, namely, whether the rateable value of the property shown in the 2010 list was excessive on the material day for the purpose of the suggested change of circumstances.

5. At the request of both parties the appeal was conducted under the Tribunal’s simplified procedure. At the hearing of the appeal the appellant was represented by his son, Mr Anup Patel, and the VO by counsel, Mr George Mackenzie. We are grateful to them both for their assistance.

The relevant statutory provisions

6. Regulation 4 of the 2009 Regulations provides for the circumstances in which proposals for the alteration of a list may be made:

- “(1) The grounds for making a proposal are –
- (a) the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;
 - (b) the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;

- ...
- (2) Subject to paragraph (3), a proposal may be made –
 (a) by an IP who has reason to believe that one of the grounds set out in paragraph (1) exists;
 ...”

7. Regulation 3 of the 2009 Regulations defines a material change of circumstances as a change in any of the matters referred to in paragraph 2(7) of Schedule 6 to the Local Government Finance Act 1988” (“the 1988 Act”). Those matters include (a) matters affecting the physical state or physical enjoyment of the hereditament, and (b) the mode or category of occupation of the hereditament. The combined effect of regulations 3 and 4(1)(b) is therefore that a proposal can be made to alter a list if there has been a change in matters affecting the physical state or enjoyment of the hereditament or its mode of occupation.

8. Under regulation 3(7)(b)(i) of the Non-Domestic Rating (Material Day for List Alterations) 1992 (as at 1 June 2016), the “material day” for the purposes of giving effect to a proposal to alter the list because of a material change of circumstances is the day on which the proposal was served on the valuation officer, which in this case is 1 June 2016.

9. Regulation 6 of the 2009 Regulations contains general provisions relating to the content of proposals:

“(1) A proposal shall be made by notice sent to the VO which shall –

...

- (d) identify the respects in which it is proposed that the list be altered; and
(e) include –

(i) a statement of the grounds for making the proposal;

...

(iii) in the case of a proposal made on the ground set out in regulation 4(1)(b), a statement of the nature of the change in question and of the date on which the proposer believes the change occurred;

...”

10. Regulation 8 is concerned with disputes on the validity of proposals. Regulation 8(1) provides that, subject to paragraphs (2) and (3), where the VO “is of the opinion that a proposal has not been validly made, the VO may, at any time after receiving the proposal, serve notice (an “invalidity notice”) on the proposer that the VO is of that opinion ...”.

11. Regulation 10 provides that where “the VO is of the opinion that a proposal is well-founded, he shall as soon as reasonably practicable alter the list accordingly”.

12. Regulation 13, under the heading “Disagreement as to proposed alteration”, provides:

“(1) Where –

- (a) The VO is of the opinion that a proposal is not well-founded, ...

...
the VO shall refer the disagreement to the VTE as an appeal by the proposer against the VO's refusal to alter the list.
...”.

13. Regulation 42 of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 provides for “Appeals to the Upper Tribunal”:

“(1) An appeal shall lie to the Upper Tribunal in respect of a decision or order given or made by the VTE on an appeal under the NDR Regulations

...
(5) The Upper Tribunal may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made.
...”.

14. It is not in dispute in this reference that the jurisdiction of the VTE to determine a disagreement referred to the VTE under regulation 13 of the 2009 Regulations is limited by the language of the proposal itself. The jurisdiction of the VTE and of this Tribunal on an appeal from it is limited to determining the disagreement that arises out of the originating proposal. In *Courtney PLC v Murphy (VO)* [1998] RA 77 the Lands Tribunal (PH Clarke FRICS) agreed with the submission made on behalf of the VO (at page 86) that:

“The scope of the disagreement and the valuation officer's “refusal to alter the list” are limited by the wording of the proposal.”

At page 87 the Tribunal continued in the same vein:

“The Lands Tribunal may make any order which the valuation tribunal could have made but has no power to make an order which the lower tribunal could not have made. It is not open to this tribunal to go further than the valuation tribunal and extend the scope of the appeal or disagreement referred to the tribunal which in turn is limited by the originating proposal. My conclusion is therefore that it is settled law that...the jurisdiction of a local valuation tribunal is limited to the issues raised by the proposal giving rise to the appeal.”

15. The meaning of a proposal falls to be determined by the ordinary principles of construction. The relevant question is: how would the proposal reasonably be understood by those on whom it is to be served? That approach was explained by Nicholls LJ in the Court of Appeal in *R v Northamptonshire Local Valuation Court ex p. Anglian Water Authority* [1990] RA 93, 101 and has been consistently applied by the Tribunal.

The relevant facts

16. The facts relevant to this appeal are not in dispute. They were explained by Mr Anup Patel (who had regularly visited the Hotel at the material time) and were not contested by Mr Mackenzie on behalf of the VO.

17. Following his retirement after a long career in the civil service the appellant acquired the Hotel from receivers in 2014. At that time there were six rooms on the ground floor of the building, excluding the kitchen, which was quite small but provided the only space in which guests could take breakfast. The appellant decided to remove a brick internal wall between the kitchen and the adjoining room, bedroom 13, thereby amalgamating the two rooms to create an enlarged kitchen/breakfast room. The new enlarged room was to be further enlarged by relocating a stud partition wall between bedroom 13 and the adjoining room, bedroom 16 which was to be reduced in size.

18. Work began on 1 January 2015 (the date is referred to in a builder's quotation for the works and confirmed by a witness statement from Councillor Ramji K. Chauhan, a patron of the Hotel who had been present on the day work commenced). The initial works comprised the gutting of bedroom 13, with the removal of plaster from the ceiling and from the stud-partition wall between it and bedroom 16, and the removal of electric sockets and light switches. Plaster was removed from both sides of the stud-partition wall, but the stud-work remained in place. Bedroom 13 was left in a shell condition. Work proceeded slowly and by May 2015 it ceased altogether when the builder was either dismissed or refused to continue. Bedroom 13 then remained out of use for any purpose. Because of the condition of the stud-partition wall bedroom 16 could no longer be used to accommodate guests, but it was used occasionally by one member of staff on night shift (other members of staff preferred to sleep in any vacant guest room, as had been the general practice before the work to the partition wall).

19. By April 2016 the appellant had accumulated sufficient funds to appoint another builder to complete the work. We were shown a plan of the Hotel dated 11 April 2016 and another dated 9 May 2018, showing respectively the layout of the building before and after the work. The new builder's invoice is dated 13 May 2016 and records that the brick wall between the kitchen and bedroom 13 had been removed and the stud wall between bedroom 13 and bedroom 16 had been relocated.

20. On 1 June 2016, two weeks after the work was completed, the proposal was submitted by the appellant's rating agent.

Discussion

21. The grounds for altering the valuation list which the appellant wishes to advance in this appeal are stated in clear terms in his statement of case. They are that "the hereditament was physically changed when the kitchen breakfast room was extended resulting in a loss of bedroom 13 and additional floor space lost from bedroom 16." The critical question is whether the proposal made on 1 June 2016 contains a statement of the grounds for making the proposal which is capable of including the material change of circumstances on which the appellant wishes to rely. As the authorities we have referred to demonstrate, the jurisdiction of the VTE, and subsequently of this Tribunal on an appeal, is to determine whether the proposal was well-founded. The matter referred to it by the VO under regulation 13 is the disagreement between the proposer and the VO manifest by the VO's expression of opinion that the proposal was not well-founded. It is that disagreement which the VTE has jurisdiction to resolve and it is therefore

necessary that the contention which the appellant wishes to raise on the appeal were raised in the proposal.

22. It is not sufficient in our judgment that the material change on which the appellant in fact wishes to rely would fall to be taken into consideration if a revaluation was undertaken on the material day. That may simply be, as in this case, an accident of timing, and it is not relevant to the extent of the VTE's jurisdiction unless the same change was fairly comprehended within the scope of the original proposal.

23. Nor is it relevant to the issue of jurisdiction that the VO did not serve a notice of invalidity under regulation 8. There is no obligation on the VO to serve an invalidity notice, and it will often not be obvious when a proposal is received that there is a discrepancy between the proposal itself and the alteration to the list which the proposer really wishes to achieve or the grounds which are really intended to be advanced in support of that alteration.

24. The proposal identified in paragraph 2 that it was concerned with premises described as a "hotel and premises" and in paragraph 8 named these as the Brent Hotel. Those are relevant pieces of information contributing to the recipient's understanding of the proposal. The essence of the proposal in this case was contained in paragraphs 15 and 16. Through his agent the appellant asserted that circumstances affecting the rateable value of the property changed on 1 January 2015 and gave as his detailed reasons for believing that the list was inaccurate that there had been a material change of circumstances "comprising the loss of one bedroom to provide staff accommodation".

25. On its own, a suggestion that a bedroom in a hotel has been "lost" might be capable of being understood in a variety of senses. It could mean that a room previously used as a bedroom has ceased to exist and has thus been lost as a room; alternatively, it could mean that a room previously used as a bedroom has been put to some different use, i.e. it had been lost as a bedroom, but not necessarily lost for other purposes. In the case of the proposal made by the appellant's agent on 1 June 2016 the intended meaning was clarified by the addition of an explanation of the purpose or effect of the change relied on, namely, that the change was "to provide staff accommodation". Read as a whole the ambiguity as to what might have been intended by saying that a room had been lost was resolved: the room had been lost in the sense that it was being used for some purpose other than as a guest bedroom, namely as staff accommodation.

26. We do not think it is possible to construe the proposal as meaning anything other than that one room in the hotel had ceased to be used as a bedroom and was now used as staff accommodation. In particular, we are satisfied that the statement in the proposal cannot fairly be understood as meaning or implying that there had been a change of circumstances affecting the physical state or physical enjoyment of the hereditament. It was not suggested that the number of rooms in the hotel had been reduced by one, with one bedroom being "lost" by the removal of its walls and incorporation into a larger kitchen space. The suggestion was that a single bedroom had been "lost" because it was now used for staff accommodation. That change went to the

appellant's use of the hereditament rather than to any of the matters mentioned in paragraph 2 (7) of Schedule 6 to the 1988 Act.

27. No part of the information conveyed by the appellant's proposal suggested that the material change of circumstances on which the appellant wished to rely consisted of the amalgamation of a former bedroom with the kitchen of the hotel to create a larger kitchen/breakfast room, or that it included the relocation of a partition wall to further enlarge the new kitchen/breakfast room area with a corresponding reduction in the size of a different bedroom. The reason stated in the proposal was of a different nature.

28. The grounds for altering the valuation list which the appellant wishes to advance in this appeal, as identified in his statement of case, were not the grounds which the VO was asked to assent to in the proposal, nor are they the grounds which he considered not to be well-founded and referred to the VTE. We do not mean to suggest that any lack of precision in the description of the change suggested by a proposal will be fatal, but regulation 6(1)(e)(iii) makes it necessary that the proposal state "the nature of the change in question" and that the proposer establish that the change alleged did in fact occur, before the Tribunal is able to consider the rateable value of the hereditament in the changed circumstances. Where the nature of the change described in the proposal is different from the nature of the change on which the proposer wishes to rely when the matter comes before the VTE or this Tribunal the proposer will face an insurmountable difficulty. Regrettably, therefore, it is not open to the Tribunal to consider whether the grounds stated in the appellant's statement of case amount to a material change of circumstances justifying an alteration in the list. We have no jurisdiction to do so and, in our judgment, the VTE was right to consider it had no jurisdiction either.

29. For these reasons, which we explained in summary at the conclusion of the hearing, we dismissed the appeal.

30. At the same time we dismissed an application by the VO that the appellant pay his costs under the power conferred by rule 10(3)(b) of the Tribunal's Procedure Rules. Both parties asked that the appeal be assigned to the simplified procedure, under which no orders for costs are ordinarily made. Rule 10(3)(b) allows an exception where a party has acted unreasonably in bringing, defending or conducting the proceedings. We are satisfied that the appellant did not act unreasonably in bringing the appeal, and the hearing before us was conducted with moderation and efficiency by his son. There are therefore no grounds on which an order for costs could be made against him.

Martin Rodger QC
Deputy Chamber President

A J Trott FRICS
Member Upper Tribunal (Lands Chamber)

18 December 2018