UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROCEDURE – whether a right of appeal lies to the Upper Tribunal against the VTE's refusal of an application to review a decision – held, no right of appeal is available - Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009 – appeal dismissed

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

BY CHRIS AND CAROLE WALL Appellants

Re: Induna Stables
Fordham Road
Newmarket
Suffolk
CB8 7AQ

Martin Rodger QC, Deputy Chamber President and Peter McCrea FRICS

Determination on Written Representations

The following cases are referred to in this decision:

Hobbs v Gidman (VO) [2017] UKUT 63 (LC)

The Appeal of Pearce (VO) [2014] UKUT 291 (LC)

Introduction

1. This unopposed appeal by the ratepayers, Mr Chris and Mrs Carole Wall, is against a decision of Mr A V Clark, Vice-President of the Valuation Tribunal for England ("VTE"), dated 31 October 2019, in which the Vice-President refused an application to review a decision of the VTE dated 25 July 2012 in respect of the rateable value of the Induna racing stables in Newmarket entered in the 2010 rating list.

2. The Valuation Officer ("VO"), having satisfied herself that the appeal to the Tribunal is against the Vice-President's decision refusing a review, rather than against the VTE's decision of 25 July 2012 itself, confirmed that she did not wish to respond to the appeal.

3. In accordance with the appellants' request, we have determined the appeal based on their written submissions.

Procedural history

4. The ratepayers have been represented throughout by Mr W H Simpson FRICS of Tyto Consultancy. Mr Simpson is an experienced rating practitioner, having started his career in the VOA in 1972, leaving in 1988 having risen to Deputy VO. One of his specialisms is the valuation of racing stables, and he represented some 90 racing trainer clients in their proposals against assessments in the 2010 valuation list. Appeals against some of those proposals were dealt with by the VTE at a combined hearing on 28 June 2012. One of those appeals was in respect of the Induna stables.

5. The Induna stables were entered into the 2010 rating list at £30,750 RV. Before the VTE, Mr Simpson contended for a rateable value of £28,000, while the VO considered the compiled list figure to be too low, submitting a valuation of £32,250. In its decision of 25 July 2012, the VTE increased the compiled list figure to £31,500 RV, with effect from the date of its decision.

6. Aficionados of the valuation of racing stables for rating purposes will be familiar with the detailed analysis of the method ordinarily adopted in *Hobbs v Gidman (VO)* [2017] UKUT 0063 (LC), in which Mr Simpson gave evidence. For the purposes of this appeal, it is necessary only to take the following explanation from that decision, at [15]:

> "…the scheme of valuation in the 2010 rating list for racing stables is based on the number of loose boxes at a hereditament, with the basic unit of comparison and therefore valuation being a "box price". This box price is in respect of brick-built loose boxes, and other types of less substantial boxes attract percentage reductions. Any value attributable to minor ancillaries like a smaller trainer's office, feed stores, and tack rooms necessary for running the racing yard is included in the box price, with more substantial or unusual items being separately valued."

7. The Valuation Officer before the VTE was Mr Tim Barraclough. The decision did not refer in detail to Mr Barraclough's valuation, but an appendix showed that his £32,250 was based partly on valuing timber boxes at £585. The VTE recounted how Mr Simpson had described *his* understanding of the VO's approach in relation to box prices, valuing each brick or concrete block box at £650, with American barn boxes at £620.10, and timber boxes at £520 (not £585).

8. Mr Simpson had submitted to the VTE that these fixed rates were too rigid, and that the rates applied should allow for differing quality, suggesting ranges of £585-650 for brick, £550-615 for concrete, £550-615 for American barn boxes, and £455-£520 for timber boxes.

9. The VTE agreed with this in principle:

> "16. The Panel then considered the issue of Quality and agreed that when taking a "stand back and look" approach, there must be a difference in value for items such as a newly constructed box built of timber with a tile/slate roof or of brick with a tile/slate roof and an older box constructed with felt to the rear and an asbestos or tin roof. In essence, the Panel determined that the specific characteristics of each individual yard should be considered. It was agreed that the Valuation Office's approach was too rigid and that as an example, an outdoor arena/sand school or ménage should be valued at the same level as a warm up sand oval, an all weather trotting ring, all weather gallops, lunge ring, or covered ride as they do not appear to be any different and are no more than a sanded area."

However, it went on:

> "18. The Appellant's representative had suggested a lower value for the Timber Boxes and also the Block/Tile Boxes and American barns. No evidence had been presented relating to the quality of these items and the Panel could see no justification for reducing the value of these items to below the value contended for by the respondent Valuation Officer, who considered that the compiled List entry is too low."

10. Accordingly, the VTE adopted Mr Barraclough's rate of £585 for the timber boxes and, determined a rateable value of £31,500, which it said reflected "a consistent approach to the valuation of all the appealed assessments". The thrust of the ratepayers' dissatisfaction with the 2012 decision is that the VTE did not, in fact, value Induna stables consistently with its valuation of the other appealed assessments.

11. Following receipt of the VTE's decisions on the various appeals on 25 July 2012, Mr Simpson entered an email dialogue with the VTE and Mr Barraclough. In the background, the clock had started running down the 28-day window during which an application could be made to the VTE to review the decision (regulation 40(3)(a) of the Valuation Tribunal for England (Council Tax and Rating Appeals)(Procedure) Regulations 2009) ("the 2009 Regulations") and the four-week window during which an appeal against the decision should be made to the Upper Tribunal (regulation 42(3)).

12. It is convenient to draw attention to two points of procedural detail at this stage. The first is that where a request is made for a review of a decision on any of the grounds identified in regulation 40(5), 2009 Regulations (with the single exception of ground (c) which applies where a party or its representative shows reasonable cause for their absence from a hearing) the time for bringing an appeal is not postponed until after the request for a review has been determined. The second is that a review is a judicial matter and not an administrative act; regulation 40(3)(b), 2009 Regulations requires that an application for a review must be considered by the VTE President (although no doubt he is entitled to delegate that function to another appropriate VTE member).

13. On 27 July 2012 Mr Simpson sent an email to the VTE about another of the stables considered at the combined hearing, saying "the decision is at £20,250 whereas the Notice is at £21,500 (same as the RV). This appears to be an error. Could you amend please." We assume that the reference to the Notice was to the VTE's notice ordering an alteration to the entry in the list to give effect to the VTE's decision. A tribunal officer replied on 30 July saying that she had corrected the Notice to read £20,250 "which accords with the panel's decision".

14. On 3 August, Mr Simpson sent an email to Mr Barraclough pointing out a second apparent error in the VTE's decision:

> "On Induna Stables the VT appear to have got the valuation wrong. They have valued the timber boxes at £585 (90%) when all the other boxes are at £520 (80%). Eg. Freemason Lodge, Moulton Paddocks, Somerville. The VT refers to Timber Boxes at £520 on page 4 of the Flint Cottage decision. According to my figures this would result in the valuation reverting to the current list figure of £30750, rather than an increase to £31500 (ie no VO Notice to increase). Otherwise it means an appeal to the Lands Tribunal and we go through the process of a consent order/costs/time. What do you suggest?"

15. Mr Barraclough replied on 7 August, referring to an earlier email (which we have not seen), and attaching a link to the VO's practice statement in respect of reviewing and setting aside VTE decisions. He suggested that Mr Simpson contacted the VTE, setting out the circumstances and seeking their guidance on the options open to him.

16. Later the same day, Mr Simpson sent an email to the VTE case officer in response to her email of 30 July:

> "I have noticed that there may be an error in the decision on Induna Stables, Fordham Road. The timber boxes should probably be valued at £520/box not £585. In particular see the decision on Flint Cottage para 18 which confirmed the value of timber boxes at £520. Could you kindly ask the chairman to review? ... from my figures I arrive at a Rateable value of £30750 which is the figure in the 2010 list."

That email included an explicit request for the VTE to review its decision. It was sent on 7 August and was therefore well within the 28-day window allowed by regulation 40(3)(a) of the 2009 regulations for making such a request.

17. On 24 August 2012, after the time allowed by regulation 42(3) for bringing an appeal to this Tribunal had expired, a more senior VTE team leader sent an email to Mr Simpson:

> "I have been able to go through the paperwork with the clerk who was running the tribunal. The notes that were agreed with the Chairman show that for the Induna Stables… the timber boxes being constructed of wood were of a higher quality and therefore attracted the higher price. This gave a value of £31,545 rounded to £31,500. Please let me know if this helps."

18. Mr Simpson replied later that day, citing examples of decisions where the VTE had valued timber boxes at £520 or less. He disagreed with the clerk's explanation and again requested a review of the decision by the VTE:

> "I cannot agree with the comment from the clerk that the Tribunal found the timber boxes at Induna were of a higher quality. I suggest that it was a mistake and there is an understandable reluctance to admit that. Could the chairman review these papers please?"

19. Mr Simpson says that he did not receive a reply to this email.

20. On 3 September 2012 Mr Simpson made another proposal in respect of the value of the Induna stables in the 2010 list, which having been accepted by the VO as valid was set down for hearing on 28 July 2014. The purpose of this appeal seems to have been to get the VTE to reconsider its own decision of 25 July 2012. That, of course, was not something the VTE had power to do, except by means of a review under regulation 40, but that does not appear to have occurred to anyone at that stage. In Mr Simpson's statement of case, he reiterated the points made above, and asked that the VTE "review the valuation and amend the Rateable Value from £31,500 to £29,000."

21. On 22 July 2014 Mr Barraclough requested a postponement of the hearing, with Mr Simpson's agreement, as he considered that the outcome would depend on a decision of this Tribunal in a case concerning the West London Aero Club (*The Appeal of Pearce (VO)* [2014] UKUT 0291 (LC)). A postponement was duly granted.

22. Inexplicably, it took more than five years for the hearing of the ratepayers' second appeal against the 2010 list entry to be rescheduled, as it eventually was for a hearing on 11 October 2019. Before that hearing took place, Mr Simpson withdrew the appeal as he had come to appreciate, or had been advised, that the VTE could not consider an appeal against its own previous decision. It was not then until 28 October 2019 that Mr Simpson again sought a review of the decision of 25 July 2012. He did not mention that two previous requests for a review remained undetermined but asked, as if for the first time, for "a review in accordance with VTE Procedure Regulations to correct a wrong".

23. Mr Simpson summarised his application in the following terms:

> "13. The Tribunal Decision 28 June 2012 has been proven to be wrong and the valuation is incorrect in comparison with the Tribunal decision on all the other yards which have timber boxes. The reason this has taken such a long time to correct is the delay in considering my further appeal dated 3 September 2012.
>
> 14. The email correspondence with the Tribunal should have allowed the decision to be corrected.
>
> 15. The Tribunal did not reply to my email of 7 August until 24 August which was based on erroneous facts and but which time the Tribunal could have pointed out the appeal timetable to the Lands Tribunal if the reply was not within the appeal period."

24. Mr Simpson finished by accepting that:

> "In hindsight an appeal to the Upper Chamber could have been made to safeguard the unlikely response from the Tribunal not to correct the decision. The associated costs of an appeal would have been questionable. My email to the Tribunal 7 August was well within the timescale for an appeal to be made to the Upper Chamber. The reply was outside the timescale. It was unreasonable for the Tribunal to take 17 days to reply knowing that time was of essence to the appeal. My actions were reasonable in assuming the Tribunal would amend and correct the valuation. As a result of an unreasonable time in the Tribunal replying my clients lost the ability to decide whether an appeal should be made."

The VTE's decision

25. The application for a review was given short shrift in the Vice-President's decision of 31 October 2019. He drew attention to the requirement that any application made under regulation 40(1) for the review of the whole or part of a decision which disposes of proceedings on appeal must be made within 28 days of the date on which the notice of decision was sent to the party. The Review application was not made until 28th October 2019 which is well over seven years later. There was said to be no good reason to excuse the lack of any action by the ratepayers over such a long period of time. They could not use the review procedure to challenge a decision they had failed to challenge seven years earlier.

26. In his appeal to the Upper Tribunal against the VTE's refusal to undertake a review, Mr Simpson explained that the reason for the delay had been that his second appeal was postponed until October 2019, which was a fact not considered by the Vice-President. He said there was clear evidence that the VTE's original decision was in error, and no reference was made to the VO to confirm the point. Finally, he submitted that it was in the interests of justice to revoke and set aside the decision, which he described as a key point which the Vice-President had failed to address. He suggested that the ratepayers had been prejudiced by the actions of the VTE, its erroneous decision, the delay in responding to his emails, and the delays in setting down his subsequent appeal.

Discussion

27. The determination of this appeal first requires us to consider whether a right of appeal lies against a refusal of the VTE to undertake a review of one of its own decisions.

28. Regulation 40(1), 2009 Regulations enables a party to apply to the VTE in writing for the review of the whole or part of a decision which disposes of proceedings. By regulation 40(3)(b) such an application must be considered by the VTE President. The power of review is a useful one, the purpose of which is to enable decisions which have been affected by some procedural irregularity to be identified and set aside without the delay and expense of an appeal. The power to set aside a decision on review is not open ended, but exists only where at least one of the conditions specified in regulation 40(5) is satisfied conditions. Those conditions are as follows:

> (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative;
>
> (b) a document relating to the proceedings was not sent to the VTE at an appropriate time;
>
> (c) a party or its representative was not present at a hearing relating to the proceedings and the party shows reasonable cause for its or its representative's absence;
>
> (d) there has been some other procedural irregularity in the proceedings;
>
> (e) the decision is affected by a decision of, or on appeal from, the Upper Tribunal or the High Court;
>
> (f) where the decision relates to an appeal against a completion notice, new evidence, whose existence could not have been discovered by reasonable inquiry or could not have been foreseen, has become available since the conclusion of the proceedings.

29. If one of these grounds is shown to exist the President, or his nominee, may review the decision and set all or part of it aside if he is satisfied that it is in the interests of justice to do so (regulation 40(6)). In this case the only ground under which an application for a review could arguably be brought was under paragraph (d) on the basis that the suggested inconsistency between the valuation of different stables, despite the VTE stating that it was applying a common approach, was the result of a procedural irregularity. We express no view at this stage on whether that contention is sustainable.

30. A right of appeal to this Tribunal from a decision of the VTE is conferred by regulation 42(1), 2009 Regulations, which provides as follows:

> "An appeal shall lie to the Upper Tribunal in respect of a decision or order given or made by the VTE on a NDR appeal, an appeal under paragraph 5C of Schedule 9 to the 1988 Act (penalties) or an appeal against a completion notice under paragraph 1 of Schedule 4A to the 1988 Act as it applies for the purposes of Part 3 of the 1988 Act."

The reference to an "NDR appeal" means an appeal under regulation 13A of the NDR Regulations.

31. Regulation 42(1) establishes that a right of appeal is only available in respect of a decision or order made on an appeal to the VTE. Although not so stated in express terms, we interpret this to mean that no separate right of appeal is available in respect of a decision or order on an application to the VTE for a review. The right of appeal lies against the decision itself, not against the refusal to entertain a request for a review, or against a refusal to set the decision aside after undertaking a review.

32. This interpretation is consistent with regulation 42(2) which identifies those who may make use of the right of appeal. Any party who appeared at the hearing or who made representations in writing may appeal; so too may a person who was not present, but who applied for a review of the decision on the grounds that they had reasonable cause for their absence. In the latter case time for making an appeal runs from the date on which the VTE gave notice in relation to that person's application that it would not undertake a review, or, having done so, would not set aside the decision. No reference is made to a right to appeal the refusal to undertake a review.

33. We note that the learned authors of *Ryde on Rating and the Council Tax* express the view at paragraph [304] that no appeal lies to the Upper Tribunal against a decision on an application for review. We agree.

34. It follows, therefore, that the ratepayers' appeal must be dismissed. They have no right to appeal the VTE's refusal of their third application for a review, and this Tribunal has no jurisdiction to entertain such an appeal. The proper course would have been for the ratepayers to have appealed against the VTE's original decision (the course Mr Simpson was initially keen to avoid).

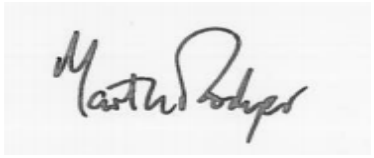
35. Before leaving this matter we mention an important point of which the Vice President may have been unaware. That is that Mr Simpson's email to the VTE on 7 August 2012 was an application, in terms, for a review of its decision dated 25 July 2012. It was made well within the 28-day deadline prescribed by regulation 40(3)(a) of the 2009 Regulations. That request appears to us never to have been dealt with.

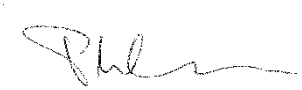
36. The only response received by the ratepayers to their first application for a review of the decision was in the senior team leader's email of 24 August 2012. The team leader had spoken to the VTE clerk and was able to relay a suggested justification of the VTE's decision. But neither the clerk nor the team leader had the authority to determine the ratepayer's application for a review, which required a judicial decision by the VTE itself. Their suggested explanation of the VTE's thinking formed no part of the decision. While they may have regarded the matter as closed, it was not and will not be until the application made on 7 August 2012 is determined by the President or his nominee.

37. A proper appreciation of the facts demonstrates that the grounds on which the Vice President dismissed the third application for a review did not apply to the first application. The application was dismissed on the basis that it was made seven years late, but the application of 7

August 2012 was within time. The application seems to have been treated by the VTE's staff as an administrative matter and never to have been referred to the President as its own rules required. It therefore remains undetermined, and while some responsibility for that state of affairs falls on the ratepayers' representative (who should have insisted on his application being considered rather than commencing a second appeal when it was ignored) it might be thought that the greater part falls on the VTE's own administration.

38. For these reasons we dismiss the appeal. Strictly speaking the matter is not properly before us and it is therefore not for us to remit it to the VTE for further consideration. We nevertheless suggest that the ratepayers should now ask the VTE to consider and determine on its merits the application for a review which they made on 7 August 2012.





26 May 2020

Martin Rodger QC
Deputy Chamber President

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