

UPPER TRIBUNAL (LANDS CHAMBER)



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UTLC Case Number: RA/52/2019**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROCEDURE – power of VTE to order temporary alteration to rating list when giving effect to a proposal – whether exercisable when proposal is for deletion – whether alteration of assessment a matter ancillary to temporary deletion – scope of proposal - regulation 38, 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**

BETWEEN:

MR CHRISTOPHER SYKES (VO)

Appellant

and

GREAT BEAR DISTRIBUTION LIMITED

Respondent

Re: 4 Freeston Drive, Nottingham, NG6 8UZ

Martin Rodger QC, Deputy Chamber President, and P D McCrea FRICS

18 June 2020

Hearing conducted using remote video conferencing platform

*Matthew Donmall, instructed by HMRC solicitor, for the appellant
Daniel Kolinsky QC, instructed by Mills & Reeve LLP, for the respondent*

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The following cases are referred to in this decision:

Arnold v Dearing [2019] UKUT 224 (LC)

Avison Young Ltd (formerly GVA Grimley Ltd) v Jackson (VO) [2020] UKUT 58 (LC)

Baker (VO) v Citibank NA [2007] RA/66/2004

BMC Properties and Management v Jackson (VO) [2016] RA 1

College of Estate Management v HM Customs and Excise [2005] 1 WLR 3351

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

Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 200 (LC)

Jackson (VO) v Canary Wharf Ltd [2019] UKUT 136 (LC)

Leda Properties Limited v Howells (VO) (2009) RA/62/2006, [2009] EWLands RA_62_2006

Orthopaedics Institute v Harrow Corporation [1963] 1 WLR 10

R v Winchester Area Assessment Committee, ex p Wright [1948] 2 KB 455

S J & J Monk v Newbiggin (Rating Surveyors Association and another intervening) [2017] UKSC

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Introduction

1. The questions in this appeal concern the powers of the Valuation Tribunal for England (“VTE”) under regulation 38, Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (“the VTE Regulations”) when it gives effect to a proposal to delete an entry in the rating list. Two questions arise. Does the VTE have power to delete an entry from the list for a temporary period? If so, does it also have power to order that the entry come back into the list at a different rateable value from the value it had before the temporary deletion?

2. The appeal is brought by the valuation officer against a decision of the VTE (Mr M F Young, Vice-President) dated 7 November 2019. The Vice-President ordered the deletion from the rating list of the entry for a warehouse at 4 Freeston Drive, Nottingham, NG6 8UZ (“the appeal property”) with effect from 23 June 2014. He declined to order that the deletion take effect for only a temporary period, although it was required because of works which had continued for less than four months. It was agreed that the rateable value which had been shown for the hereditament before the deletion was no longer accurate in view of the works, and the Vice President took the view that he had no power to alter the rateable value as part of a temporary deletion, nor was he prepared to restore the hereditament to the list at a rateable value which was agreed to be too high.

3. Because of restrictions imposed as a result of the Coronavirus pandemic, the appeal was conducted using a remote video platform. The appellant was represented by Mr Matthew Donmall, while Mr Daniel Kolinsky QC appeared for the ratepayer, Great Bear Distribution Limited (“Great Bear”). We are grateful to both counsel for their assistance.

The facts

4. The appeal property is a modern purpose-built warehouse on an industrial estate north-west of Nottingham. Great Bear acquired it on 16 June 2014 and planned a programme of works comprising the demolition of an office block which formed part of the warehouse hereditament and alterations to its dock-level doors (“the works”). The works were carried out between 23 June and 3 October 2014. During that period the property was incapable of beneficial occupation and the parties agree that it should therefore be deleted from the rating list. Great Bear resumed occupation on 4 October 2014 on completion of the works.

5. Prior to the works, the appeal property was shown in the rating list at £825,000 RV. The parties agree that, as a result of the works, this assessment became inaccurate and that (ignoring the procedural issues in the appeal) the correct rateable value ought to be £745,000 RV.

6. On 2 February 2015, the Respondent submitted a proposal that the existing entry be deleted with effect from 16 June 2014 on the grounds that the property had been demolished and no longer existed and that the assessment was therefore incorrect. The proposal was submitted electronically, and for reasons which neither party can understand or explain, it appears that the

copy kept by the ratepayer and the copy retained by the valuation officer were different. It is common ground, however, that the proposal sought only the deletion of the hereditament. The statement that the property had been demolished was not correct since only part of it had been, but it is common ground that the building was not capable of beneficial occupation while the works were carried out, and that the material day ought to be 23 June 2014, when they commenced.

7. The valuation officer did not consider the proposal to be well-founded, and it was transferred to the VTE as an appeal against his refusal to alter the rating list.

The legislative framework

8. Section 41 of the Local Government Finance Act 1988 imposes on the valuation officer a duty to compile and maintain a rating list for each billing authority, to be called its local non-domestic rating list. By section 42(1) the list must contain each qualifying hereditament within the billing authority's area for each day in each chargeable financial year. In *BMC Properties and Management v Jackson (VO)* [2016] RA 1, at [18], Patten LJ said that it was obvious that "maintain" in the context of section 41 imposed an obligation to maintain the list in an accurate rather than an inaccurate state.

9. Power to alter the list, and so to maintain its accuracy, is conferred on the valuation officer by the Non-Domestic Rating (Alterations of Lists and Appeals) Regulations 2009 ("the ALA regulations"), made under section 55, 1988 Act. Section 55(6) expressly contemplates that regulations may be made authorising alterations to the list with retrospective effect.

10. Although the valuation officer's duty to maintain the list does not cease on the expiry of the period for which it is in force (section 41(7)), the valuation officer cannot make a unilateral alteration to a list later than the first anniversary of the day on which the next list is compiled (regulation 14(8), ALA Regulations). After that date the list can only be altered to give effect to a proposal. The circumstances in which a proposal may be made are prescribed by regulation 4, ALA Regulations. Regulation 4(1)(h) provides for a proposal to be made on the ground that a hereditament shown in the list ought to be deleted.

11. Where the valuation officer considers that a proposal is not well-founded, regulation 13 of the ALA Regulations requires that the proposal be referred to the VTE as an appeal by the proposer against the valuation officer's refusal to alter the rating list. The VTE's powers to determine the appeal other than by making a consent order are prescribed by regulation 38 of the VTE regulations.

12. In this appeal, the relevant version of the VTE regulations is the version in force on 31 March 2017. At that time, so far as material, regulation 38 provided:

“(4) After dealing with an appeal under regulation 13 of the [ALA Regulations] (disagreement as to proposed alteration), the VTE may, subject to paragraph (6), by

order require a VO to alter a list in accordance with any provision made by or under the 1988 Act.

...

(7) Where it appears that circumstances giving rise to an alteration ordered by the VTE have ceased to exist, the order may require the alteration to be made in respect of such period as appears to the VTE to reflect the duration of those circumstances.

...

(10) An order under this regulation may require any matter ancillary to its subject matter to be attended to.”

13. On an appeal to this Tribunal against a decision of the VTE, it may confirm, vary, set aside, revoke or remit the decision or order, and may make any order the VTE could have made (regulation 42(5), ALA Regulations).

The VTE’s decision

14. The Vice-President considered that the power under regulation 38(7) would normally be exercisable where there had been a material change in circumstances under regulation 4(1)(b) of the ALA Regulations. He referred to his own decision (subsequently upheld by the Tribunal in *Avison Young Ltd (formerly GVA Grimley Ltd) v Jackson (VO)* [2020] UKUT 0058 (LC)) where regulation 38(7) was used to restore an entry in the rating list at its previous value when a material change in circumstances which had justified its temporary reduction to a nil value came to an end. He was prepared to hold that circumstances which gave rise to the deletion of a hereditament could also cease to exist within the meaning of regulation 38(7), as where works which rendered a building unfit for beneficial occupation were completed.

15. The Vice-President next considered the ratepayer’s argument that the power under regulation 38(7) was not available because the original hereditament had ceased to exist as a result of the works; what was required, it was argued, was the introduction of a new hereditament into the list, rather than the reversal of the alteration to reinstate the previous entry. He referred to a decision of Cross J in *Institute of Orthopaedics v Harrow Corporation* [1963] 1 WLR 10 which he considered was binding on him in these circumstances and indicated that works of alteration which did not change the boundaries of a hereditament did not cause the original hereditament to cease to exist or require that a new hereditament be entered in the list.

16. The Vice-President declined to exercise the power under regulation 38(7) to restore the hereditament to the rating list from the date the works were completed. To do so would require that the property be entered with a rateable value of £825,000, a figure which the valuation officer knew to be incorrect for the building in its altered state.

17. The VTE’s order was therefore that the assessment be deleted from the rating list with effect from 23 June 2014 and not reinstated for the duration of the 2010 rating list.

The appeal

18. The first issue is whether the power to order that an alteration be made to the list only for a temporary period, ending when the circumstances giving rise to the alteration cease to exist, is available where the alteration arises from a proposal to delete the hereditament from the list. In the recent case of *Avison Young v Jackson (VO)* the Tribunal exercised the power to direct a temporary alteration in the list to give effect to a proposal to reduce the rateable value of an office hereditament to a nominal sum during fitting out works, with the entry being restored to its original value when the works had been completed. The proposal in *Avison Young* was made on the basis that there had been a material change of circumstances and did not seek deletion of the hereditament.

19. Before *Avison Young* the only judicial consideration of regulation 38(7) was by the Tribunal in *Arnold v Dearing* [2019] UKUT 0224 (LC) when it was applied to a hereditament which had been split when part of the property was let temporarily, and which was restored to a single hereditament when the letting ceased. Like *Avison Young*, *Arnold* was not concerned with the consequences of a deletion proposal.

20. Although the hereditament in this case is a distribution warehouse rather than a modern office building, the general nature of the works it is not very different from those carried out to the hereditament in *Avison Young*. In both cases an existing building was adapted to make it more suitable for the needs of the new occupier without fundamentally changing its character, and in both the floor area was reduced. Both sets of work rendered the hereditament incapable of beneficial occupation while they were completed. There was a difference in procedural terms in that in *Avison Young* the ratepayer's proposal was to reduce the rateable value to £1, while in this case the proposal was for deletion. *Avison Young* is the subject of a pending appeal to the Court of Appeal, but whatever the outcome of the appeal it would be surprising if the VTE's power to direct only a temporary alteration in the list was different in the two cases.

21. For the valuation officer, Mr Donmall submitted that regulation 38(7) gave the VTE power to order that a hereditament be deleted only for the duration of the circumstances giving rise to the deletion. The ratepayer's proposal sought deletion on the basis the hereditament was incapable of beneficial occupation during the works. The VTE was right to consider that the hereditament was essentially the same hereditament before and after the works, but that for a temporary period while they were carried out, it was incapable of beneficial occupation.

22. Mr Donmall referred to the definition of a hereditament in section 64(1) of the 1988 Act, incorporating section 115(1) of the General Rate Act 1967: a hereditament was "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list." Not every change in a hereditament resulted in the creation of a new hereditament. That was apparent from the provisions in regulation 3 of the ALA Regulations and paragraph 2(7) of Schedule 6 to the Act concerning material changes of circumstances; these included matters affecting the physical state or physical enjoyment of the hereditament.

23. Mr Donmall also relied on the *Institute of Orthopaedics* case in which (at page 17) Cross J had said that physical changes to a property:

“...may result in an increase or decrease in the rateable value of the hereditament or in a change in its description; but I can see no reason why, so long as the same piece of land appears in the list as a unit of assessment, it should not remain the same ‘hereditament’ notwithstanding such changes.”

24. Mr Donmall invited the Tribunal to follow the approach it had taken in *Avison Young* to the scope of the VTE’s powers under regulation 38(7), where it had suggested (at [34]-[35]) that:

“34. The language of regulation 38(7) is simple and its purpose is clear, namely to enable the VTE to direct temporary alterations to the list where the circumstances justifying those alterations are themselves temporary. Given that the power is a discretionary one there is no obvious reason to give it a narrow interpretation, and to do so would blunt its usefulness.

35. It does not seem to me to matter how one describes the circumstances which gave rise to the alteration in the list to reduce the rateable value to nil. The existence of the power does not depend on the form of the proposal or the way in which it has been expressed. In this case it would be equally accurate to say that the relevant circumstances were that the hereditament had become incapable of beneficial occupation, or that the circumstances were the stripping out which rendered it in that condition. The reference to circumstances is consistent with the heading of regulation 4, ALA Regulations (“circumstances in which proposals may be made”), which describes all the grounds or circumstances which may justify a proposal to alter the list. There may be circumstances identified in regulation 4 which do not lend themselves to the exercise of the power in regulation 38(7), but that does not mean the general words in which the power is expressed should be given a restricted meaning, as referring only to a specific event with particular consequences. To do so would introduce unnecessary complexity into a simple provision.”

25. In *Avison Young* it had been appreciated that technically, while the property was incapable of beneficial occupation, it was not a hereditament at all but the ratepayer did not rely on that fact as relevant to its argument on the scope of regulation 38(7) (see *Avison Young* at [28]). Mr Donmall submitted that there was no relevant difference between the ratepayer’s proposal in *Avison Young* for a reduction to £1 RV as a result of the premises being incapable of beneficial occupation, and in this appeal where the proposal was for a deletion from the rating list. Conceptually, the act of removing a hereditament for a temporary period did not involve the creation of a new hereditament.

26. Mr Kolinsky argued that, when considering the scope of regulation 38(7), a principled approach should be taken to the exclusion of property temporarily incapable of beneficial occupation from the rating list. The ratepayer’s proposal sought deletion, and was clearly well-founded as it is agreed that the building was incapable of beneficial occupation from the start of the works. It was therefore not a hereditament. To reinsert a hereditament into the rating list required what Mr Kolinsky called a new principal course of action by the valuation officer which entailed entering the property in the rating list as a hereditament and attributing

a rateable value to it. It would be wrong to extend the VTE's discretionary power under regulation 38(7) to a new principal course of action.

27. We agree with Mr Kolinsky that the *Institute of Orthopaedics* case does not establish any point of principle relevant to this case. It concerned charitable exemptions under the Rating and Valuation (Miscellaneous Provisions) Act 1955 following works to a hereditament which increased the floor area of the buildings constructed on it by about four times although the whole of the unit of property continued to be occupied for the same purposes of medical research. As the President of the Lands Tribunal, George Bartlett QC, explained in *Baker (VO) v Citibank NA* [2007] RA/66/2004 at [32] that case was concerned with a narrow question of fact. If any broader statement of principle is sought to be derived from Cross J's observations substantial difficulties are immediately encountered (see the criticism in *Ryde on Rating and the Council Tax*, Ch. 2, K).

28. As Mr Kolinsky pointed out, the current definition of the hereditament appeared first in the Rating and Valuation Act 1925, which predated liability for empty property rates. At that time property which was capable of beneficial occupation would only enter the rating list when it became occupied. Property which was not capable of beneficial occupation was not liable to a rate and would not fall to be shown in the valuation list. The definition remains unchanged and the statute does not contemplate the entry in the list of property incapable of beneficial occupation. Physical alterations may be made to a building without a new hereditament coming into existence, but the treatment of material changes of circumstances is concerned with valuation and not with the prior question of the existence of a hereditament capable of appearing in the list at all.

29. In *Monk v Newbiggin (VO)* [2017] UKSC 14 the Supreme Court considered the treatment for rating purposes of a building in the course of redevelopment and confirmed, at [21] and [31], that whether a property is capable of rateable occupation at all and thus whether it is a hereditament liable to be rated, are questions which arise before consideration of matters of valuation. It is clear, however, that the fact that property is not capable of beneficial occupation is not a reason for excluding it from the rating list entirely. Lord Hodge approved the "useful practice" of reducing the rateable value of a building, which is incapable of rateable occupation because of temporary works, to a nominal figure rather than removing it from the rating list altogether. He discussed that practice at [31]:

"Further, while a building which is undergoing reconstruction may be incapable of occupation for a time, it has been the practice of the Valuation Office to treat the property as a hereditament with only a nominal value rather than to remove the property from the rating list temporarily: see, for example, *Hounslow London Borough Council v Rank Audio Visual Ltd* and *Paynter v Buxton*. There is no bar to implementing a proposal to alter the description of the hereditament on the rating list from "offices and premises" to "building undergoing reconstruction" and consequently to reduce the listed rateable value to a nominal amount if the facts, objectively assessed, support that alteration."

30. The practice of retaining a property incapable of beneficial occupation in the list for a temporary period was recognised by the Tribunal in *Jackson (VO) v Canary Wharf Ltd* [2019]

UKUT 136 (LC) at [36]:

“If premises are not capable of beneficial occupation, they are not a hereditament. The only basis on which they may then be included in the rating list is under the convention that allows property temporarily incapable of occupation to remain in the list at a nominal value as a matter of administrative convenience, rather than deleting the entry and creating a new entry when the property once again becomes capable of beneficial occupation.”

31. Mr Kolinsky warned against allowing the tail of administrative convenience to wag the dog of correct legal analysis, but we see no reason to be too precious when considering the use of a practical administrative tool like the rating list. Lord Hodge was clearly untroubled by the presence in the list of a building undergoing reconstruction with a nominal value. In *Leda Properties Limited v Howells (VO)* (2009) RA/62/2006, to which Mr Kolinsky also referred, the President of the Lands Tribunal also seemed disinclined to regard the practice of the Valuation Officer as giving rise to an issue of principle. At [22] he distinguished between premises which were no longer capable of occupation for their original purpose, but could be put to some use, and those which were wholly incapable of beneficial occupation. He appeared to regard the proper approach to the latter category as a matter for the VO:

“22. There was some discussion at the hearing as to the course that is in practice taken where a hereditament has become incapable of beneficial occupation, and after the hearing I was provided with examples of alterations to valuations lists that had been made in these circumstances. It is clearly necessary to draw a distinction between the deletion of a hereditament from the list and the deletion of an entry in the list. Where a hereditament is incapable of occupation for any purpose because of its physical state, I can see that a VO might well decide to delete the entry relating to it and not to insert any other entry until it had been rendered capable of occupation.”

32. The purpose of Mr Kolinsky’s submission that property incapable of beneficial occupation should not appear in the rating list at all was, of course, to support his contention that regulation 38(7) does not apply where a proposal to delete an entry in the rating list is well founded. Once deleted (giving effect to the proposal), a new entry needs to be made.

33. We do not agree that, for the purpose of regulation 38(7), a distinction should be made between an alteration which is the result of a deletion proposal and an alteration which follows a proposal to reduce the rateable value of the hereditament to a nominal amount. Nor do we think it matters whether the deletion and restoration are viewed as distinct alterations to the list or whether, as Mr Donmall suggested, there is only one alteration which is made for a temporary period. In each case an alteration or series of alterations is made to the list to reflect circumstances which exist for a temporary period; we can see no good reason to curtail the general power conferred by regulation 38(7), as suggested by the respondent, so that it is not available in relation to certain alterations. The language of the regulation does not require any such limitation, there is no reason to imply one, and to do so would simply make the power a less useful one and the task of maintaining an accurate list more difficult.

34. In principle, therefore, we consider it is open to the VTE to direct that an alteration which consists of the deletion of a hereditament should be for a temporary period ending when the circumstances which justify the deletion cease to exist.

35. We have greater sympathy with Mr Kolinsky's argument that the power to direct that an alteration be made for only a temporary period cannot be extended to the making of further substantive alterations which do not fall within the scope of the proposal which gave rise to the primary alteration. Specifically, we see force in the objection that the power under regulation 38(7) cannot be used to restore a hereditament to the list, after a temporary deletion, with a different rateable value to that which it had at the time of the original alteration unless the rateable value of the restored hereditament was within the scope of the proposal which gave rise to the alteration.

36. The VO's case was that regulation 38(7) and (10) could be used to enter a rateable value of £745,000 in the rating list despite there having been no proposal to alter the value of the hereditament, and despite the time within which the valuation officer himself could have made the necessary change having expired. It was submitted that the Tribunal could direct the removal of the hereditament from the list be for the period of the works only and then, as a matter "ancillary" to that alteration, could direct that the rateable value of the hereditament be reduced to the figure of £745,000 which the parties had agreed was its value after the works. Mr Donmall referred to *College of Estate Management v HM Customs and Excise* [2005] 1 WLR 3351 in which Lord Walker, at [30], said that "ancillary" means "subservient, subordinate and ministering to something else". The inclusion of a different rateable value would, he suggested, be ancillary to the reintroduction of the hereditament following the works.

37. The significance of the proposal in setting the limits of the VTE's jurisdiction is well established. In *R v Winchester Area Assessment Committee, ex p Wright* [1948] 2 KB 455 the Court of Appeal considered the requirements of section 37 of the Rating and Valuation Act, 1925, that a proposal for the amendment of a valuation list should "specify the grounds on which the proposed amendment is supported." Scott LJ explained what a person making a proposal must do:

"The language of proposals, by whomsoever made, should therefore be read without too much legal strictness; none the less the requirements of sub-ss. 1 and 2 must be substantially satisfied, if the "proposal" is to be effective and valid. Some sort of "specification" of grounds of the proposal is demanded: e.g., it must be clear whether it is an increase or a decrease of the assessment that is proposed - the actual figures need not be stated - but the grounds for proposing a charge must be "specified," and that means clearly stated and stated with some definiteness or particularity. On the one hand if an increase or decrease is plainly proposed, it is not necessary to quantify it as the proposer must be presumed to be ready to justify before the assessment committee his resistance to change. On the other hand the proposer must give a reason of sufficient legal validity and relevance to constitute a good ground in law for some increase or decrease, as the case may be, ..."

38. *Ryde on Rating and the Council Tax* at paragraph 111.24 refers to numerous decisions of the Tribunal and its statutory predecessor which reflect this principle, including *Courtney plc v Murphy (VO)* [1998] RA 77, 85 in which the Lands Tribunal (P H Clarke FRICS) explained that the jurisdiction of the VTE and of the Tribunal on an appeal against a valuation officer's refusal to give effect to a proposal is limited to the issues raised by the proposal.

39. In *Leda Properties* the ratepayer had made a proposal to delete the entry in the list for a computer centre on the grounds that it was obsolete. The VO did not accept the proposal and before the Lands Tribunal the ratepayer sought to argue, in the alternative to deletion, that the assessment should be reduced to that appropriate to a warehouse. The President of the Lands Tribunal considered that the alternative case was outside the scope of the proposal and rejected the submission that the predecessor of regulation 38(10) (regulation 44(7) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993) could be employed to achieve the desired result:

“20. The ratepayer contended that the VT would have been able to alter the assessment pursuant to the proposal in the exercise of its power under rule 44(7) to require any matter ancillary to the subject matter of the appeal to be attended to. The VT rightly rejected this contention, in my judgment. 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.

21. In a case like the present, where a ratepayer is simply seeking the deletion of an entry in the list on the ground that the hereditament has become incapable of occupation, it would be open to the VO, if he accepted the correctness of the proposal (or if the VT on appeal concluded that it was well-founded) to insert in the list a fresh entry relating to the hereditament in the event that he took the view that it was capable of beneficial occupation for some other purpose. Such a new entry could then be the subject of a proposal by the ratepayer, if he disagreed with the VO's action, and would form the subject-matter of a fresh appeal.”

40. Relying on *Leda Properties* Mr Kolinsky submitted that following the deletion of the hereditament from the list it was for the valuation officer to make a new entry reinstating the property when it became capable of beneficial occupation. It was not within the scope of the deletion proposal for the property to be re-entered in the rating list with a different rateable value. This was also consistent with the Tribunal's analysis in *Canary Wharf* at [36], referring to “deleting the entry and creating a new entry when the property once again becomes capable of beneficial occupation”. It was also consistent with the statutory scheme which made the entry of a hereditament into the rating list a separate ground for making a proposal to alter the list (regulation 4(1)(g) of the ALA Regulations).

41. Mr Donmall referred to *Hughes (VO) v York Museums and Gallery Trust* [2017] UKUT 200 (LC) in which the Tribunal decided that the Castle Museum shop was not a separate

hereditament, but said at [107] that if it had considered that the shop should appear in the list as a separate hereditament for the first time it would have been necessary for a rateable value to be ascribed to it and the Tribunal would have directed such an entry, treating it as a matter ancillary to the introduction of the shop into the list. But in that case the issue of valuation was squarely before the Tribunal whereas in this case it is not.

42. Mr Donmall also referred to cases in which the Tribunal had countenanced the list being inaccurate. In *Hughes (VO) v York Museums* at [55] and [84] the Tribunal had accepted that if it found against the ratepayer on the scope of its challenge to existing entries (the Hospitium and the shops at the Castle Museum and the Yorkshire Museum) it would be too late for the valuation officer alter the list to reflect the valuations which the parties had now agreed. We do not think there is anything in that point, which was simply the consequence of the relatively generous statutory time limits for the making of alterations after the closure of the list.

43. Nor do we think Mr Donmall can derive assistance from the Tribunal's willingness in *Avison Young*, at [40] to countenance the inclusion in the list of a rateable value which neither party considered to be accurate. The Tribunal had decided that it had jurisdiction to direct a temporary alteration in the list and neither party was suggesting that the Tribunal could include the figure which they had agreed for the hereditament in its altered form. The question for the Tribunal was whether it should exercise its discretion by restoring the original entry, which was a little too high, or by leaving it at £1, which was agreed to be £1.8m too low.

44. Mr Donmall urged on us the consequences of the VTE not having power to order a temporary deletion and restoration of the hereditament with a different rateable value. It was now too late for the valuation officer himself now to re-enter the hereditament into the rating list with effect from 4 October 2014 since the alteration was not giving effect to a proposal. Mr Kolinsky pointed out that the ratepayer making a well-founded proposal leading to the deletion of the hereditament, which had the effect of making the list accurate for the period of the works. As a result of amendments to the ALA Regulations by the Non-Domestic Rating (Alterations of Lists and Appeals) (England)(Amendment) Regulations 2015, the valuation officer had had until 31 March 2016 to give effect to an alteration before 31 March 2015 and his duty to maintain an accurate list was subject to that limitation. Any subsequent inaccuracy was caused by the inaction of the valuation officer in failing to make a valuation for over a year.

45. We do not think the valuation officer lacked the powers necessary to make the required amendments to the list to ensure that it remained accurate, and we do not think the fact that in this case no steps were taken to enter a correct rateable value for the hereditament in its condition after completion of the works is capable of influencing either the scope of regulation 38(1) or the scope of the ratepayer's proposal itself.

46. We therefore agree with the Vice President that the VTE had no power to restore the hereditament to the list with a different rateable value. The only alteration which followed from acceptance that the ratepayer's proposal was soundly based was simply the deletion of the hereditament. The VTE had power to order that deletion be temporary, but the effect of that direction would simply be that the assessment would return to the list unchanged. The entry of a significantly lower rateable value was not a matter ancillary to the temporary deletion.

47. The Vice President considered that he did not have power to order an alteration in the rateable value and he declined the valuation officer's alternative invitation to restore the original entry at its original value of £825,000. He took the view that to do so would neither be in the public interest nor in accordance with the ratepayer's rights under Article 1 of the First Protocol to the European Convention on Human Rights. Mr Kolinsky did not seek to support the second of those considerations but emphasised instead that the VTE was right not to make an order which would result in the list being significantly inaccurate when it had been within the power of the valuation officer to enter an accurate valuation and he had failed to do so within the period allowed. We agree with that submission and we therefore decline to make an order restoring the hereditament to the list at its original rateable value. That value is about 10% higher than the parties agree the altered hereditament is worth.

48. The appeal is therefore dismissed.

Martin Rodger QC
Deputy Chamber President

Peter McCrea FRICS FCI Arb

31 July 2020