

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2020] UKUT 0318 (LC)
UTLC Case No: RA/43/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROCEDURE – appeal against VTE’s refusal to review its decision – no jurisdiction to consider such an appeal – right of appeal lies against the VTE’s original decision – The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 – interim decision

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

BETWEEN:

JOHN ANTHONY PETER BARTOLO

APPELLANT

AND

NICHOLAS HANSON
(VALUATION OFFICER)

RESPONDENT

Re: Unit 3,
Showell Road Industrial Estate,
Showell Road,
Wolverhampton,
WV10 9LU

Determination on written representations

A J Trott FRICS

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The following case is referred to in this decision:

Re: Wall's Appeal [2020] UKUT 166 (LC)

Introduction and Procedural History

1. This appeal concerns a workshop and premises at Unit 3, Showell Road Industrial Estate, Showell Road, Wolverhampton, WV10 9LU which was entered in the 2010 non-domestic rating list at a rateable value of £10,000.
2. On 19 January 2017 the occupying freeholder, Mr John Bartolo, made a proposal for the alteration of the rateable value to £1 on the grounds that the rateable value in the rating list on 1 April 2010 was inaccurate (in fact it appears the proposal related to a material change of circumstances which was said to have occurred in December 2013). The detailed reasons for believing the list was inaccurate were said to be:

“Had water leak. Had it repaired. Job not done properly. Sprung leak over Xmas holiday and brought water down bringing ceilings down in upstairs offices damaging floor and downstairs. Received letter of enforcement regarding rates.”

The proposed alteration was to take effect from an unspecified date in December 2013.

3. The valuation officer (“VO”) wrote to the appellant on 26 January 2017 requesting further information and did so again on 25 July 2017. Mr Bartolo replied on 21 September 2017 asking the VO to visit the premises “to actually see my predicament” and saying that he did not have the funds to repair the property. It does not appear that the VO visited the premises at that time.
4. The appeal was listed before the Valuation Tribunal for England (“VTE”) on 13 July 2018, apparently because the VO had rejected the proposal for lack of sufficient evidence. At or around this time Mr Bartolo handed the conduct of the appeal to his son, Mr Nicholas Bartolo, and at his request the VTE postponed the hearing to allow discussions to take place.
5. On 31 October 2018 Mr Jeff Bull of the Valuation Officer Agency (“VOA”) wrote to Mr Nicholas Bartolo explaining the information that the VO required to consider the appeal. Mr Bartolo said he would provide this within 6-10 weeks. He sent photographs of the premises on 8 January 2019 and sought further guidance about obtaining estimates for the cost of repairs.
6. Meanwhile the appeal had been re-listed before the VTE on 17 January 2019. The appellant did not attend the hearing and the VTE dismissed the appeal on 23 January 2019 on the grounds the appellant had failed to comply with the VTE’s directions and had not put forward any case. On 29 January 2019 Mr John Bartolo applied to the VTE for a review of its decision explaining his personal circumstances and referring to Mr Bull’s long-term illness which had seemingly delayed matters at the VOA.
7. The VTE, Mr A. V Clark, Vice-President, reviewed its decision on 16 February 2019 and agreed to re-list the appeal. This was subsequently listed on 23 July 2019.
8. It appears that Mr Bull remained on long-term sick leave for several months and, accordingly to Mr Nicholas Bartolo, nobody covered his workload in the interim. But copies of emails provided in evidence show that Ms Rachel Pike of the VOA wrote to Mr Bartolo on 10 January 2019 and said, “we are unsure how long my colleague [Mr Bull] is going to be off and I can have a look at it for you in the meantime.” Mr Bartolo responded

the same day and sent her photographs of the appeal property. It was only on 3 July 2019 that Mr Bartolo says he realised Mr Bull had returned to work and he sent him an estimate for the cost of repair works to the appeal property. On 9 July 2019 Mr Bull informed Mr Bartolo that the case had been transferred to another valuer, Mr Matthew Dolben. Mr Bartolo emailed Mr Dolben the same day and received a reply on 13 July 2019 saying Mr Dolben would “review the costings and come back to you shortly”.

9. The next time Mr Dolben wrote to Mr Bartolo was on 30 July 2019 by which time the VTE had heard the appeal and dismissed it on 24 July 2019 for the same reasons as it had done so in January 2019, i.e. the non-appearance of the appellant and the appellant’s failure to submit any evidence. In his email to Mr Bartolo dated 30 July 2019 Mr Dolben recommended that:

“You ask the Tribunal to re-instate the case and tell them that you have submitted costs to the VOA which will mean that the case can be progressed.”

Mr Dolben did not suggest that Mr Bartolo should file a notice of appeal to this Tribunal.

10. Mr Bartolo followed this advice on 30 July 2019 but received an email from the VTE dated 31 July 2019 stating that he needed to submit a formal request for a review of the decision that was made at the hearing.
11. Mr Bartolo applied on 15 August 2019 for a review of the VTE’s decision dated 24 July 2019. Under Regulation 40(5) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (“the 2009 Regulations) there are six specified grounds of review ((a) – (f)). Mr Bartolo relied on grounds (a)-(d) and supported his application with a brief statement referring to his father’s ill health and the lack of a response from the VOA due to Mr Bull’s long-term illness.
12. The appellant’s application to review was declined by Mr A V Clark, Vice-President of the VTE, on 2 September 2019. He said the appellant had failed to give reasons or supporting information regarding any of the grounds cited. On 20 August 2019, before reaching his decision, Mr Clark gave Mr Bartolo a further 10 days to provide such reasons and information. On 2 September 2019 the appellant applied for an extension of time. This was refused by Mr Clark because he said the appellant must have known at the time he applied for a review what documents he and the Tribunal were not sent at an appropriate time (grounds (a) and (b)); why Mr Bartolo and his father were not present at the hearing (ground (c)); and what procedural irregularities had taken place regarding the VTE’s conduct of the appeal (ground (d)). Furthermore, the Vice-President noted that the appellant had already had 40 days since the original decision to present his case, i.e. 12 more days than provided for in the 2009 Regulations. The Vice-President was satisfied that there had been no procedural irregularity which he said could only occur where there had been a failure by the VTE (and not the parties) to comply with relevant procedures. Any failings of the VO in the matter were not relevant as regards the proceedings before the VTE.
13. Mr Bartolo gave notice of appeal to the Upper Tribunal on 14 October 2019. The appeal was against the decision of the VTE dated 2 September 2019, i.e. the decision not to review the VTE’s earlier decision dated 24 July 2019 dismissing the appellant’s appeal on the grounds of lack of evidence and non-appearance at the hearing. It is not an appeal against the VTE’s decision dated 24 July 2019.

14. Mr Bartolo's grounds of appeal are:

- (i) The VTE did not make a meaningful decision on the merits of the appeal;
- (ii) The VTE did not give the appellant sufficient time to provide the information required; and
- (iii) The VOA and not the appellant was the cause of the delay.

The main outcome sought was that the appeal be reinstated.

15. The appeal was determined under the Tribunal's written representations procedure. The appellant was represented by his son, Mr Nicholas Bartolo, and the respondent VO by Mr Brad Davies Dip Surv, MRICS, a case manager at the VOA.

Representations

16. The appellant says all relevant documents in support of the appeal against the assessment had been sent to the VOA prior to the request for the same by the Vice-President of the VTE on 20 August 2019. The documents were not presented to the VTE until 2 September 2019 because Mr Bartolo's son had difficulty in contacting his father due to the latter's ill health and Mr Nicholas Bartolo's residence in the north west of England. He says neither he nor his father attended the hearing because they had not been told about it by the VOA "or other parties involved in facilitating the hearing" (presumably the VTE). He was only told about the hearing after it was over, when Mr Dolben of the VOA emailed him. Mr Dolben had said on 13 July 2019 that he would review the appellant's estimate for the cost of repair and get back to him. Mr Bartolo had previously discussed the appellant's case with Mr Bull of the VOA but had not been aware of Mr Bull's prolonged absence from the office due to illness. Mr Bartolo said that he had provided evidence to support the four grounds for review that he relied on under Regulation 40(5) of the 2009 Regulations, both in his statement of case to the Tribunal and email audit trials with the VOA.

17. Mr Davies says the VTE acted appropriately in refusing to review its decision dated 24 July 2019 as he understands the appellant showed no reasonable cause for not attending the hearing and had produced no evidence to support the other grounds ((a), (b) and (d)) upon which he relied under Regulation 40(5) of the 2009 Regulations.

18. Mr Davies also relies on the recent Tribunal decision in *Re: Wall's Appeal* [2020] UKUT 0166 (LC)¹, the facts of which are very similar to those in the current appeal, i.e. it was an appeal against the VTE Vice-President's decision refusing a review rather than against the VTE's decision itself. The Tribunal, Martin Rodger QC, Deputy Chamber President, and Peter McCrea FRICS, determined at paragraph 31 that:

"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."

19. In dismissing the appeal the Tribunal said at paragraph 34:

¹ Issued on 26 May 2020, after this appeal was made.

“[The ratepayers] 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.”

Accordingly, Mr Davies contends that the appellant has no right to appeal to the Tribunal against the VTE’s refusal to review its decision and asks that the appeal be dismissed.

Discussion

20. The appellant’s notice of appeal states that the date of the VTE’s decision against which it is appealing is 2 September 2019. That is the decision of the VTE Vice-President to decline to review the VTE decision dated 24 July 2019. It is not an appeal against the VTE’s substantive decision to dismiss the appeal against the VO’s refusal to accept the appellant’s proposal.
21. As such this appeal is on all fours with that in *Re: Wall’s Appeal* and, for the reasons given in that decision², the appeal must fail. As the Tribunal said at paragraph 38:

“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.”
22. It is doubtless cold comfort to the appellant, who was not professionally represented, to be told that “the proper course would have been for the ratepayers to have appealed against the VTE’s original decision” (paragraph 34).
23. Regulation 42 of the 2009 Regulations deals with appeals to the Upper Tribunal. Such an appeal lies at the instance of any party who appeared at the VTE hearing or, under regulation 42(2)(b), any person whose application under regulation 40(1) for the review of the decision relied, as here, (whether in whole or in part) on satisfaction of the condition mentioned in regulation 40(5)(c), namely that although they did not attend the hearing they had reasonable cause for their non-attendance.
24. Regulation 42(4)(b), states that where the appeal is made by a person of the description specified in paragraph (2)(b) and the VTE gave notice in relation to the person’s application that it would not undertake a review, “the appeal may be dismissed if it is not made within four weeks of the date of the VTE’s notice”, which in this case means by 30 September 2019. The appeal was filed on 14 October 2019 so it was out of time as an appeal against the VTE’s substantive decision of 24 July 2019. But the use of the words “may be dismissed” rather than “shall be dismissed” means the Tribunal has a discretion to consider a late application to appeal the VTE’s decision dated 24 July 2019.
25. Although the appeal was two weeks late the VO took no objection to it on that ground. The Tribunal’s Rules give it wide powers of case management which are to be employed to further the Tribunal’s overriding objective of dealing with cases fairly and justly. By rule 5(3)(a) of the Tribunal’s procedural Rules (The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010) the Tribunal may extend the time for complying with any rule or practice direction. By rule 5(3)(c) the Tribunal may permit or require a party to amend a document. The Tribunal could therefore grant the appellant the required two-week extension of time to cure the lateness of the appeal followed by permission to amend the notice of appeal to specify the VTE’s decision of 24 July 2019 as the subject of the appeal, which is how the VO originally treated it. It will be remembered that Mr Bartolo

² See paragraphs 27-34

is acting without the benefit of professional advice and that his request to the VTE of 30 July 2019 to reconsider its decision was made at the suggestion of Mr Dolben of the VOA, and the formal request for a review which followed it was made at the suggestion of the VTE itself. Neither Mr Dolben nor the VTE appears to have pointed out to Mr Bartolo that he could appeal the VTE's decision dated 24 July 2019 and obtain a rehearing. It might fairly be said that the procedural muddle in which the appellant finds himself is not of his own making.

26. For that reason I am concerned that the course of action which the VO urges on me, namely the dismissal of the appeal, would not produce a fair or just result. So far in these proceedings there appears to have been no proper consideration of the facts on which the appellant's proposal of 19 January 2017 was based. I propose therefore to make no final determination on the appeal at this stage, but to invite the parties' further submissions. From the VO I invite submissions within 28 days stating whether he objects to the appeal being treated as an appeal against the VTE's decision of 24 July 2019 and, if so, why. In this connection I note that in his statement of case the VO described the appellant's case in terms of the substantive issues rather than as an appeal against the refusal of the VTE to review its decision. It was not until the VO made his written representations, after the decision in *Re Wall's Appeal* had been issued, that he focussed exclusively upon the appeal as being against the refusal of a review.
27. If the VO does object Mr Bartolo may have 28 days within which to respond with any further submissions of his own. If the VO does not object I will give the appellant formal permission to amend the notice of appeal so that the appeal is against the dismissal of his original proposal, and I will postpone the further consideration of this appeal for a period of two months to allow the parties the opportunity to exchange information. I will then set a short procedural time table for evidence to be filed so that the merits of the proposal can be considered.

17 November 2020

A J Trott FRICS
Member, Upper Tribunal (Lands Chamber)