THE VALUATION TRIBUNAL FOR ENGLAND

2010 Rating List Appeals; vacant industrial buildings; deletion of entry sought on the basis that no valid completion notice was served; retrospective completion date set; properties complete apart from minor tenant specific works; Schedule 4A to the Local Government Finance Act 1988; Provincial Real Estate Burton Ltd v Virk (VO) [2015]; Miller-Mead v Minister for Housing and Local Government and Another CA [1963] 1 All ER 459; appeals dismissed.

Re: Units 13-15, Units 14-15 and Unit 18 Guinness Trading Estate, Guinness Road, Trafford Park, Manchester M17 1SB

APPEAL NUMBERS: 424527635124/537N10, 424527749525/539N10 and 424527305411/539N10

BETWEEN:	Hermes Property Unit Trust	Appellant
	and	
	Richie Roberts (Valuation Officer)	Respondent
	and	
	Trafford Council (Billing Authority)	Interested Party

BEFORE; Dr John Johnson (Senior member sitting alone)

CLERK: David Slater (Deputy Registrar)

REMOTE HEARING held on Friday 11 December 2020

PARTIES PRESENT; Mark Hayes from CBRE (Appellant's representative)
Brian Slater (Valuation Officer's representative)

Summary of decision

1. The appeals were dismissed. The completion notices were substantially compliant with Schedule 4A to the 1988 Act and were therefore not invalid.

Introduction

2. The three appeal properties originally formed part of Units 13 to 19 Guinness Trading Estate. This property was built in the 1970's of steel portal frame construction. After the vacation of the tenant, the list entry for Units 13-19 was deleted as it was no longer capable of beneficial occupation, following the commencement of an extensive programme of works. In 2014 the properties were extensively reconfigured and refurbished before being advertised to let.

3. On 3 May 2016, the billing authority issued two completion notices, one in respect of Units 13 to 15 and a second notice in relation to Unit 18. In both instances, the completion notice specified a completion date of 3 May 2016. The completion notices were addressed to the appellant care of JLL, the managing agents. Having regard to the Supreme Court's judgment in *UKI Kingsway Ltd v Westminster City Council* [2018] UKSC 67, the appellant did not contest the validity of the notices on the grounds that the notices were addressed to a third party, who was not authorised to receive them. The appellant did, however, challenge the notices validity on the basis that they were not received until 9 May 2016. As a result, the billing authority had failed to comply with paragraph 2 (3) of Schedule 4A to the Local Government Finance Act 1988 which stated;

   > Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is completed, the authority shall propose as the completion day the day on which the notice is served.

4. Following the receipt of a billing authority's report, the Valuation Officer split the assessment relating to Units 13-15 in order to reflect that Unit 13 was a separate hereditament which had been let to SGS IMS Testing Ltd. The property was let on 25 February 2016 and SMS IMS Testing Ltd took up occupation with effect from 15 May 2016, the effective date for the separate entries in the list as a result of the split.

5. I have been authorised by the President to hear and determine these appeals alone.

6. Ordinarily, I would have considered and determined these appeals, following a public face to face hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, a remote hearing was held. The parties having not given their consent to the appeal being disposed of without a hearing.

7. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5)(arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

8. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated “remote hearings” as part of that definition and for the time being as the default option until it is safe to return to normal working.

9. Mr Mark Hayes appeared on behalf of the appellant in a dual capacity as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), in his witness statement, Mr Hayes confirmed that he was instructed on a conditional fee basis. However, he understood and accepted that his first duty was to the tribunal when giving expert evidence and this overrode any duty to his client, regardless of whether or not the evidence supported his client’s case.

10. I accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) Regulations 2009 (“the Procedure Regulations”). Further, under regulation17(2)(a) the Tribunal can admit evidence whether or not it would be admissible in a civil trial.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by myself before I came to a decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

12. There were no preliminary issues for me to address.

13. The billing authority was notified of the proceedings but was not represented and did not forward any evidence or submissions for me to consider.

Issue

14. The issue before me to decide was whether or not the completion notices were valid on the basis that by the time they had been served the completion date set by the billing authority was in the past. If the answer was no, the next question was whether the assessments should be deleted from the rating list?

Evidence and submissions

15. The appellant argued that the completion notices were defective due to defects in service. The appellant’s representative invited me to follow the lay panel’s decision in *Millennium Investments 2000 Ltd v Ipswich Borough Council* (VT appeal number 3515M27143/022C) and to allow the appeals and delete the disputed entries.

16. In open tribunal, the Deputy Registrar advised me that the lay panel decision referred to by Mr Hayes was not binding and had been superseded by the former VTE President’s judgment in *Provincial Real Estate Burton Ltd v Virk (VO)* (VT appeal number 34109474725/538N10) which would provide greater assistance. He also referred me to two authorities *North Somerset District Council v Honda Motor Ltd and Others* [2010] EWHC 1505 (QB) and *Miller-Mead v Minister for Housing and Local Government and Another CA* [1963] 1 All ER 459.

17. Mr Hayes argued that the lay panel decision in *Millennium Investments* was more reliable than the former President's judgment because in the latter case the billing authority did allow a few days to effect service. In addition, the appeal in the latter case was served two years after the completion notice was served in *Provincial Real Estate Burton Ltd.* In the appeals before me, the proposals seeking a deletion were served soon after the rating list was altered.

18. The Deputy Registrar also advised me in open tribunal that I needed to consider whether or not the billing authority had substantially complied with the requirements of schedule 4A to the 1988 Act when it served the completion notices. He also advised me that I needed to take into consideration what, if any, prejudice was suffered by the appellant as the completion date set was retrospective given that there was a statutory remedy available, to appeal the completion date set.

19. I adjourned the hearing for around 40 minutes, the length of the adjournment being agreed with the parties, to enable them to read the authorities, comment on their relevance and challenge the Deputy Registrar's advice if they wished.

20. Mr Hayes argued that an appeal against the date specified by the completion notice in accordance with paragraph 4 of Schedule 4A was not open to the appellant because they had no valid completion notice to challenge. He suggested that I should apply a binary test. Did effective service take place bearing in mind that the billing authority was not empowered by the legislation to set a retrospective completion date?

21. Mr Hayes also argued that his client did suffer prejudice because of the retrospective completion date because it had incurred 6 additional days' liability to unoccupied property rates. He contended that the authorities referred to me by the Deputy Registrar were not relevant to these proceedings. He also contended that in *Honda Motor Europe Ltd* the case related to billing, collection and enforcement of rate liability whilst he was unsure why *Miller-Mead* was referred to. The Deputy Registrar explained that he had referred to this judgment because in *Miller-Mead* as in this case the appellant had argued that a statutory notice was a nullity. Therefore he was of the opinion that the Court of Appeal's judgment contained useful guidance on how I should decide the point.

22. The Valuation Officer's representative, Mr B Slater, informed me that he was taking a neutral position in these appeals. He did, however, express his personal opinion that the appellant had chosen the wrong appeal route to challenge the completion notices. He said that the Valuation Officer was unable to well found or action the proposals of his own volition.

Decision and reasons

23. The appeals arose from proposals that were served on the Valuation Officer on 31 August 2016. In each case the proposed alteration was a deletion of the existing entry. At the date of the proposals, the following entries appeared in the Rating List;

    Units 13 to 15 - £106,000 RV with effect from 3 May 2016
    Units 14 to 15 - £71,000 RV with effect from 15 May 2016

Unit 18 - £29,000 RV with effect from 3 May 2016

24. The proposals were therefore made in accordance with Regulation 4(1) (h) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the grounds being a hereditament shown in the list ought not to be shown in the list.

25. The material date and the effective date in each appeal was the date sought for the deletion.

26. The relevant law relating to completion notices is contained in Section 46A of the Local Government Finance Act 1988 and Schedule 4A to the same Act.

46A Unoccupied hereditaments: new buildings.

(1)Schedule 4A below (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2)Where—

(a)a completion notice is served under Schedule 4A below, and

(b)the building to which the notice relates is not completed on or before the relevant day, then for the purposes of section 42 above and Schedule 6 below the building shall be deemed to be completed on that day.

(3)For the purposes of subsection (2) above the relevant day in relation to a completion notice is—

(a)where an appeal against the notice is brought under paragraph 4 of Schedule 4A below, the day stated in the notice, and

(b)where no appeal against the notice is brought under that paragraph, the day determined under that Schedule as the completion day in relation to the building to which the notice relates.

(4)Where—

(a)a day is determined under Schedule 4A below as the completion day in relation to a new building, and

(b)the building is not occupied on that day, it shall be deemed for the purposes of section 45 above to become unoccupied on that day.

(5)Where—

(a)a day is determined under Schedule 4A below as the completion day in relation to a new building, and

(b)the building is one produced by the structural alteration of an existing building, the hereditament which comprised the existing building shall be deemed for the purposes of section 45 above to have ceased to exist, and to have been omitted from the list, on that day.

(6)In this section—

(a)“building” includes part of a building, and

(b)references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments.

Schedule 4A to the 1988 Act, so far as is relevant for the purposes of this appeal, is as follows:

> 1 (1) If it comes to the notice of a billing authority that the work remaining to be done on a new building in its area is such that the building can reasonably be expected to be completed within 3 months, the authority shall serve a notice under this paragraph on the owner of the building as soon as is reasonably practicable unless the valuation officer otherwise directs in writing.
>
> 1 (2) If it comes to the notice of a billing authority that a new building in its area has been completed, the authority may serve a notice under this paragraph on the owner of the building unless the valuation officer otherwise directs in writing.
>
> 2 (1) A completion notice shall specify the building to which it relates and state the day which the authority proposes as the completion day in relation to the building.
>
> 2 (2) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is not completed, the authority shall propose as the completion day such day, not later than 3 months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed.
>
> 2 (3) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is completed, the authority shall propose as the completion day the day on which the notice is served.
>
> …
>
> 4 (1) A person on whom a completion notice is served may appeal to a valuation tribunal against the notice on the ground that the building to which the notice relates has not been or, as the case may be, cannot reasonably be expected to be completed by the day stated in the notice.
>
> 4 (2) Where a person appeals against a completion notice and the appeal is not withdrawn or dismissed, the completion day shall be such day as the tribunal shall determine.
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> …
>
> 9 (1) This paragraph applies in the case of a building to which work remains to be done which is customarily done to a building of the type in question after the building has been substantially completed.
>
> 9 (2) It shall be assumed for the purposes of this Schedule that the building has been or can reasonably be expected to be completed at the end of such period beginning with the date of its completion apart from the work as is reasonably required for carrying out the work.

27. Section 46A of the 1988 Act contains a deeming provision to enable new hereditaments to be entered into the Rating List, following the service of a completion notice. As Mr Hayes explained the Valuation Officer cannot enter newly built unoccupied buildings into the rating list, of his own volition, unless he is certain that they are ready for occupation see *Porter (VO) v Trustees Gladman Sipps* [2011] RA 337 *and Aviva Investors Property Developments Ltd v Whitby (VO)* [2013] UKUT 0430 (LC). However, if a completion date is set by a completion notice served in accordance with Schedule 4A the property can be deemed complete and ready for occupation by the date specified in the notice, even in if in reality that is not the case and there is work remaining.

28. In the appeals before me, two alterations were made as a result of the completion notices. The third alteration which was to split Units 13 to 15 to reflect SMS IMS Testing Ltd's occupation of Unit 13 was undertaken by the Valuation Officer, of his own volition.

29. Both the appellant and the Valuation Officer were in agreement that if no valid completion notices had been served, the disputed entries should be deleted.

30. Mr Hayes accepted that the billing authority was entitled to serve completion notices on 3 May 2016 as the properties were complete apart from minor tenant specific works requiring to be undertaken once a tenant was found. He confirmed that the appellant had not challenged either completion notice by making an appeal under schedule 4A. He argued that this appeal route was not open to the appellant, as there was no valid completion notice to appeal against in the first place. He contended that recent Valuation Tribunal judgments like *Provincial Real Estate Burton Ltd v Virk (VO) and East Staffordshire Borough Council* [2015] *and Delph Property Group v Alexander (VO)* [2018] had established that if an appellant wished to challenge the validity of a completion notice the appropriate course of action was to make a proposal to alter the rating list and seek a deletion on the basis that no valid completion notice was served.

31. Both parties were familiar with the High Court's judgment in *Reeves (VO) v VTE* [2015] EWHC 973 (admin). This case proceeded by way of judicial review. Following the hearing of a completion notice appeal, the former President of the VTE decided that the completion notice was invalid and ordered the deletion of the 2005 rating list entry. However, the Valuation Officer was not a party to the completion notice appeal made in accordance with schedule 4A and the tribunal's order was set aside. Although Mr Justice Holgate was not called upon to decide the point it appears from the judgment that, if the only issue in dispute relating to a completion notice is the completion date specified, it is a matter that should be challenged by way of an appeal under schedule 4A. Any issue relating to validity other than the completion date specified is a matter that may be challenged by way of a proposal to alter the rating list. For instance, the failure to effect proper service or the failure to properly identify the new building. This appears clear from paragraphs 10 to 14 of the judgment

> 10. Where an appeal against a completion notice is made, the only question which the Tribunal is asked by Schedule 4A to answer is: what is the completion date?
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> 11.Paragraph 7 requires the billing authority to supply to the valuation officer a copy of any completion notice served by it and to notify the

valuation officer if the notice is withdrawn, or if a paragraph 3 agreement is reached. Schedule 4A makes no provision for the valuation officer to be a party to, or to take part in, the appeal.

12. The effect of section 46A(2) and (3) of the 1998 Act is that where the building to which a completion notice relates is not completed by the completion day given by Schedule 4A (which in the absence of an agreement between the owner and the authority will be either the date determined by the Tribunal or the date of the notice), then the building is deemed to have been completed on that day for the purposes of section 42 of the Act. Thus, under the completion notice code a new building may be entered in the rating list as a hereditament from that deemed completion date. But the procedure under this code is only available in relation to "a new building".

13. Section 46A(6) extends the notion of a new building to include a building produced by the structural alteration of an existing building where that building is comprised in a hereditament, which, by virtue of the alteration, becomes, or becomes part of, a different hereditament.

14. I have said that the completion notice code supplements the general law summarised in Porter because, even where a completion notice is not served, a new building can be entered by the valuation officer in the list, using his power to alter the list directly, when he judges that building to be capable of occupation (see Aviva Investors Property Developments Ltd v Whitby [2013] UKUT 0430 (LC) at paragraphs 21 to 27). Likewise if it should be decided that a completion notice was ineffective, for example, because of a failure to serve the notice correctly, or invalid because it does not relate to a new building within section 46A(6), the valuation officer is not deprived of his usual powers to enter a new or altered building in the rating list when he considers it to be capable of occupation and thus rateable. A decision that a completion notice is invalid simply means that the building in question cannot be rated on the basis of the deeming provisions in section 46A and Schedule 4A to the 1988 Act.

32. Mr Hayes did not dispute the fact that the completion notices were served, he accepted that the appellant received them on 9 May 2016. However, he argued that service was defective because the billing authority had not allowed time in setting the completion date for the period when the completion notice was in transit. As the billing authority had not engaged in these proceedings, I was unable to establish the method of service delivery that was used. The appellant did not have the envelope which the completion notices arrived in. What was not disputed was that they were both dated 3 May 2016 and both were stamped as received on 9 May 2016. On the basis of that, I accepted that the statutory requirement of paragraph 2(3) of Schedule 4A had not been met. However, does that failure automatically result in the notices becoming null and void as Mr Hayes suggested. The Deputy Registrar invited Mr Hayes to identify where in Schedule 4A a failure to comply with paragraph 2(3) automatically invokes invalidity and he was unable to do so.

33. In *Miller-Mead v Minister for Housing and Local Government and Another CA* [1963] there were a number of defects within the planning enforcement notice but these errors did not mean that the notice was invalid and therefore a nullity. This authority shows that if there has been substantial compliance with

statutory requirements and it is clear to the recipient on what basis it is served and the intention and effect of the notice is readily understood, then the notice cannot be said to invalid.

34. In the appeals before me, I am satisfied that that there was substantial compliance with the requirements of schedule 4A by the billing authority. It was accepted that the properties met the criteria of being new buildings, following extensive re-development works in 2014, they were complete apart from tenant specific works, the property to which each notice related to was clearly identified and the purpose of the notice(s) was clear. They cannot be said to be ambiguous or misleading. The only defect in the notices was that by the time they were received the completion date set was in the past. If a completion notice was held invalid, following a strict interpretation of paragraph 2 (3) it could produce a financial windfall for a ratepayer who has suffered no prejudice at all as a result of delayed service, especially when a statutory remedy was available in the form of an appeal under paragraph 4.

35. In my opinion, any prejudice suffered by the appellant in this case was relatively minor and the billing authority’s failure to strictly observe paragraph 2(3) of Schedule 4A when setting a completion date does not invalidate either completion notice. The appellant could have overcome any prejudice caused by the retrospective completion date simply by appealing the completion date set under paragraph 4 of schedule 4A. It was not open to the appellant to decide of its own volition that the completion notices were null and void that is a matter for this tribunal to decide.

36. The lay panel decision relied on by Mr Hayes in *Millennium Investments 2000 Ltd v Ipswich Borough Council* (VT appeal number 3515M27143/022C) is not binding on me and in any event has been superseded by the former President’s decision in *Provincial Real Estate Burton Ltd*. The panel held that because there billing authority had not strictly complied with paragraph 2(3) the completion notice was invalid. The written decision document was very brief and the panel did not look at the law in a wider context and determine, if there was substantial compliance with Schedule 4A or whether any prejudice had been suffered by the appellant by the delay in service.

37. Ultimately, the decision I have arrived at accords with the former President’s view which he eloquently expressed in *Provincial Real Estate Burton Ltd* in paragraph 23;

> I would add this on the matter of dates. I would be very slow to strike down a notice because of minor discrepancies over dates even if it constituted an infringement of the statutory provisions, unless it could be shown that prejudice had been caused to the recipient. It is trite law that not every departure from a statutory procedural requirement will render the document a nullity. For example, a notice proposing a completion date slightly earlier than the notice itself is clearly not in accordance with the statutory provisions, but can be readily cured on appeal without resorting to the concept of invalidity……….

38. For the reasons expressed above, I have found that the completion notices were not invalid and therefore a deletion of the disputed entries was inappropriate. The appeals were therefore dismissed.

Date: 21 December 2020

Appeal numbers: 424527635124/537N10, 424527749525/539N10 and 424527305411/539N10