THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating penalty appeal; information sought by the valuation officer had not been provided within 56 days; no extension of time had been requested by the appellant; appeal dismissed.*

RE: Aachen Hotel, 89-91 Mount Pleasant, Liverpool L3 5TB

APPEAL NUMBER: VT00008828

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| BETWEEN: | Mr P Wilson | Appellant |
| | and | |
| | Mr R Roberts (Valuation Officer) | Respondent |

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| BEFORE: | Mr A Clark (Vice President) |
| CLERK: | Mr D Mulgrew |
| HEARING: | Remote hearing No.5 on 25 January 2022 |
| APPEARANCES: | Mr M Bates (Appellant's representative)<br>Ms E Mellors (Respondent's representative) |

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## Summary of decision

1. Appeal dismissed. I decided not to mitigate or remit the penalty.

## Introduction

2. 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 relevant legislation[1]. The VTE may determine the form of any hearing.

3. Therefore, in pursuance of the relevant regulations[2] 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. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

4. I conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. Both Mr Bates and Ms Mellors joined using the full audio/video link. However, during the introduction of the appeal, Mr Bates lost connection. I retired from the hearing until he re-joined using the audio link from his telephone. Upon his return, I repeated my introduction and Mr Bates confirmed to me he was clear with the procedure. There were no further disruptions to the hearing and I was satisfied both parties were able to fully participate.

5. The appellant, Mr P Wilson, along with Mrs E Driver, had on 1 July 2021 been served a notice by the Valuation Officer (VO) in which information was sought with regards the 2023 non-domestic rating revaluation in respect of the Aachen Hotel, 89-91 Mount Pleasant Street, Liverpool, L3 5TB.

6. For non-domestic properties, paragraphs 5, 5A and 5B of Schedule 9 to the Local Government Finance Act 1988, as inserted by section 72 of the Local Government Act 2003, provides the VO with the power to levy civil penalties on the owners or occupiers of hereditaments who fail to provide the information requested, which the officer reasonably believes will assist him in carrying out his functions, within 56 days.

7. Paragraph 5C of Schedule 9 allows an appeal against the imposition of a penalty to the VTE within 28 days of the notice being served. The VTE may mitigate or remit a penalty if it is satisfied on either or both of the following grounds:

   (a) that the appellant had a reasonable excuse for not complying with the request, or

   (b) that the information requested is not in the possession or control of the appellant.

8. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that I considered all of the evidence presented before coming to a decision. Consequently, the absence of a reference to any

[1] 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).
[2] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulations 2 and 6(3)(g).

statement, or item of evidence, should not be construed as it having been overlooked.

**Issue**

9. The penalty amount had initially risen to £720, which the VO had subsequently decided to reduce by £520 to £200. The appellant wanted the full amount remitted.

**Decision and reasons**

10. The VO had requested information from the appellant and Mrs Driver on 1 July 2021, with reminders being sent on 2 and 16 August 2021. The information sought concerned rental evidence and trade information.

11. As the information had still not been provided the VO issued a penalty notice on 5 October 2021. The VO imposed a penalty charge of £100 and indicated that the required information had to be provided by 26 October 2021.

12. As the information had still not been provided a further penalty notice was issued on 30 October 2021 for an additional £100. Further, a charge of £20 per day was payable until such time as the information was provided.

13. The information sought was eventually provided on 26 November 2021 by which time the total penalty charge had risen to £720 (2 x £100 plus 26 x £20).

14. Of the £720 penalty charge £200 had been paid on 16 November 2021 and the VO gave notice that the balance of £520 had been remitted.

15. Prior to that, on 13 October 2021, Mr Wilson had appealed to this Tribunal against the imposition of the penalty charges.

16. The appellant wants the penalty charge balance of £200 remitted so that he can be refunded this amount.

17. In respect of such an appeal the VTE may either mitigate or remit any penalty charge if it is satisfied on either or both of the grounds specified in the relevant legislation.

18. Those grounds being (a) that the appellant had a reasonable excuse for not complying with the request for information or (b) that the information requested is not in the possession or control of the appellant.

19. Mr Bates argued the case for the appellant on three grounds.

20. Firstly, he said there was moral or ethical grounds. He stated that there were thousands of statutory forms not returned to the Valuation Office Agency (VOA) and there was some inconsistency over when penalties were applied.

21. I noted Mr Bates' observation but did not consider this to be a justifiable reason to remit the penalty, as I was only interested in the circumstances of this case.

22. Secondly, Mr Bates did not consider the information sought by the VOA was necessary for compiling the 2023 rating list. He had emailed the VOA on 20 August 2021 to ask why this information was required because he believed the rateable value was determined on a double bed space unit price, rather than rental value or sales receipts. He had not had a response and believed the VOA should have put a hold on the matter in view of his query.

23. Ms Mellors stated that while properties were valued on the number of double bed spaces, this was derived from analysis of turnover data in the locality to draw up scales. She stated that an average bed price was then achieved for the average type of property in the locality. While the rental information was not always needed, the turnover information was.

24. Mr Bates stated that when the form was completed, sales figures were provided. However, he had not been required to provide any rental evidence because the lease had not started or been renewed in the last three years. The appellant had not realised this and part of the delay had been caused by him having to wait for a copy of the lease. Mr Bates argued that the sales figures would be of no use to the VOA without the rental evidence.

25. Ms Mellors stated that it was for the VO to decide what information was needed for compilation of the rating list, not individual ratepayers. The VOA did not benefit from the penalty charge as the income went straight to the Treasury. The VOA was more concerned about changing behaviours.

26. I agreed with Ms Mellors that it was for the VOA to decide what information it needed. I asked Mr Bates if there was any legislative provisions which allowed an occupier or owner to query why the information was being requested by the VOA. He stated he was not aware of any.

27. Finally, the appeal property had been closed during this period (until the beginning of September 2021) and the appellant had not received the request until August 2021. It had been difficult to obtain the information during this period because accountants had been busy with grants and furlough payments. Mr Bates said that at all times the appellant had co-operated with the VOA.

28. On 25 October 2021 Mr Bates stated that he emailed the VOA to provide the lease and to say that he did not yet have the sales figures sought by the VOA.

29. Ms Mellors did not consider this to be an excuse because the VOA had emailed the appellant to offer help with the completion of the form after the 56 days had passed and to warn of the impending penalty.

30. I asked Mr Bates if he or the appellant had requested an extension of time because they were struggling to obtain the information sought. Mr Bates

informed me he had not. While I recognise that there were unusual circumstances connected with the Covid pandemic, I would have had greater sympathy for the appellant's case if there had been a request for such an extension citing difficulties in obtaining the information, or some form of contact to explain that the information was not in his possession and what steps were being taken to obtain it. In the absence of such a contact, I was not persuaded to remit or mitigate the penalty.

31. The appeal is therefore dismissed.

**Date:** 9 February 2022

**Appeal number:** VT00008828