Case Name: *Mr I Alam v Arthur Stoyles (VO)* [2018] UKUT 0266 (LC) (17 December 2018)

Topic: Procedure – validity of proposal under 2010 list where status of occupier was mis-stated and information as to rent was omitted.

Full case: click here

Summary: In a proposal to amend the 2010 list (submitted on 31 March 2015, the last possible day for such a proposal to be valid) the ratepayer's agents had referred to Mr Alam as the owner/occupier, whereas he occupied under a lease dated 3 June 2013 for a term of 15 years. Consequently, the proposal made no reference to the rent payable or the terms of review. This was information required by Regulation 6 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as they applied to the 2010 list). The VTE had found the proposal invalid on the grounds that the omission of the rent was a substantial failure to comply with the Regulations. The parties had agreed that if the proposal was found by the UT to be valid the RV should be reduced from £12,000 to £10,250 with effect from the compilation date of 1 April 2010. The UT ruled that the proposal was, indeed, valid.

Commentary: The proposal was submitted electronically, using the form provided by the VOA. In response to the appropriate question, the agents indicated that the property was owner/occupied, apparently on the instructions of Mr Alam. As a result, the later question asking for details of the rent was not answered.

The proposal was not accepted by the VO as well-founded and the matter was referred to the VTE as an appeal. It was not appreciated at that stage that the ratepayer was a tenant and, accordingly, no notice of invalidity was served. However, shortly after the proposal was submitted (and coincidentally) a form of return was sent to the ratepayer in connection with the 2017 revaluation and in his response he supplied details of the rent reserved under the 2013 lease.

The VO's statement of case for the VTE hearing claimed that the proposal was invalid, as it omitted to provide details of the rent. Just before the hearing he agreed that the RV should be reduced to £10,250 but, given that he treated the proposal as invalid, only with effect from 1 April 2015 (rather than 1 April 2010 had the proposal been, in his view, valid).

The UT reviewed the authorities relating to non-compliance with statutory requirements and the previously-accepted distinction between mandatory and directory requirements (in the former case a failure to comply invalidated everything which followed, but in the latter case this would not necessarily be the outcome). That approach has now been superseded by a contextual test, assessing the purpose and importance of the requirement within the relevant statutory scheme as a whole.

The comments of Lord Woolf in R. v Secretary of State for the Home Department ex parte Jeyeanthan [2000] 1 WLR 354 set the scene for the UT's deliberations. Lord Woolf referred to the concept of "substantial compliance", the finding of which avoids the very undesirable consequences of failure to comply to the letter with a procedural requirement. This entails

the waiver of the non-compliance in question, after consideration of the consequences of non-compliance.

The VTE President (Professor Zellick QC) had taken this approach in a previous case before it in 2012 (Imperial Tobacco Group Limited v Alexander), where he decided that a minor error in the rent stated in a proposal was not sufficient to make the proposal invalid. He took the opportunity to categorise the nature of such errors and their consequences for the proposal:

1. Errors or omissions of a clerical nature which are trivial, insignificant and de minimis – no impact on the validity of the proposal;

2. Errors or omissions of substance, but which are not the result of a deliberate attempt to mislead and which do not (a) impair the VO's ability to consider the case or (b) impact on an assessment of the correct rateable value. Here, if there has been substantial compliance and no prejudice to the VO the proposal will be valid;

3. Errors or omissions which misrepresent the appellant's case or mislead the VO. These will render the proposal invalid if the VO decides to treat it as such. However, the VO may decide to accept the proposal in exercise of his discretionary power to do so (in which case he cannot later say that it was invalid); and

4. Errors or omissions of a fundamental nature will render the proposal invalid. By way of example, this would apply where the wrong hereditament had been referred to.

The UT did not adopt this categorisation, but referred to its own decision (Kendrick (VO) v Mayday Optical Co Ltd [2013] UKUT 0548 (LC)) on appeal from the VTE on similar facts. In that case, the rent had been understated by some 5% and the VO challenged the proposal at the tribunal on that basis (although no invalidity notice had been served). The VTE President had categorised the proposal as "potentially invalid", giving the VO a discretion to treat it as valid or invalid. The UT decided that the VO was entitled to raise the invalidity point at the hearing and, furthermore, had been prejudiced by the error.

Turning to the facts of the current case, the UT referred to the VTE's decision that the proposal was invalid by reason of "a substantial failure to comply with the regulations". It clarified that it is not for the VTE to consider the wider public law question as to whether a VO is acting lawfully in either issuing a notice of invalidity or challenging validity in a later hearing, these being matters for the High Court in a judicial review.

The UT adopted the dictum of Lord Woolf in ex p. Jayeanthan, where he said that the tribunal's task in non-compliance cases is to seek to do what is just in all the circumstances. It is necessary to consider whether the degree of compliance was sufficient in the circumstances to amount to substantial compliance with the procedural requirements as a whole (emphasis added).

The 2009 Regulations do not require a proposal to be made on the from provided by the VO (which contains the owner/occupier question) and Regulation 6(3) does not stipulate that a ratepayer must state if he is an owner/occupier, but instead requires that where the ratepayer is an occupier the amount payable under his lease/easement or licence must be stated. That was the true extent of the non-compliance.

The UT considered that making the VO aware of the rent reserved in Mr Alam's lease was less significant in the overall context of the proposal. The ratepayer was not challenging the tone of the list, but instead the manner in which that tone had been applied to his premises. Also, the proposal was submitted at the end of the life of the 2010 list, by which time the tone had become firmly established and evidence of a rent agreed in 2013 will not have been significant to a valuation by reference to values on 1 April 2008. There was, in addition, no suggestion that the VO had been misled.

In conclusion, the UT ruled that the proposal was valid as it was substantially compliant with the requirements of Regulation 6.