

Case Name: *Ashok Patel v David Jackson (VO)* [2018] UKUT 0420 (LC) (18 December 2018)

Topic: Material change of circumstances (MCC) – scope of proposal

Full case: [click here](#)

Summary: This case (decided under simplified procedure) concerned an appeal by the ratepayer of a VTE decision that a proposal to amend the 2010 list was not well-founded. The proposal referred to an MCC comprising a loss of a bedroom in the appellant's hotel, to form staff accommodation. The Upper Tribunal dismissed the appeal, as the wording of the proposal referred to neither a change in a matter affecting the physical state or physical enjoyment of the premises nor a change in the mode or category of occupation. The wording of the originating proposal necessarily limits the jurisdiction of both the VTE and the Upper Tribunal.

Commentary: This case confirms the importance of framing a proposal to fit within the framework established by the 2009 Appeal Regulations (SI2009/2268), as amended. The 2009 Regulations define an eligible MCC by reference to para 2(7) of Schedule 6 to the Local Government Finance Act 1988, which includes (a) matters affecting the physical state or physical enjoyment of the hereditament and (b) a change in the mode or category of occupation of the hereditament. If the proposal fails to refer to the appropriate ground in para 2(7), then it must fail.

The proposal made on 1 June 2016 referred to "the loss of one bedroom to provide staff accommodation". This was construed by the Upper Tribunal as a change to the use of the hereditament by the appellant rather than a change to any of the matters referred to in para 2(7). Had the proposal been framed to refer correctly to an MCC comprising the amalgamation of a former bedroom with the hotel kitchen to create a larger kitchen/breakfast room (or words to similar effect) it would have been valid. Regulation 6(1)(e)(iii) (prior to the amendments to the 2009 Regulations effective from 1 April 2017) makes it clear that such a proposal must include "a statement of the nature of the change in question and of the date on which the proposer believes the change occurred".

The 2009 Regulations now provide in Regulation 6 (with effect from 1 April 2017) that a proposal based on an MCC affecting any of the matters in para 2(7) must include evidence to support the grounds of the proposal and a statement as to how the evidence supports such grounds. Further, Regulation 6A potentially extends (to 16 months from receipt of any confirmation issued by the recipient, following a check, as to the accuracy of information requested from the VO) the validity period for a proposal in respect of an MCC affecting the locality (either affecting the physical state or physically manifest) or the use or occupation of other premises in the locality.

The validity window would otherwise have expired 4 months following completion of the check (as for proposals on grounds other than (d) or (e) of para 2 (7)).

This was a case where the ratepayer appears to have taken professional advice when framing the proposal, but the terms of the 2009 Regulations were still not complied with. Following the 2017 amendments, it is now even more critical for validity to ensure that the terms of the Regulations are followed and that the correct wording is used in the proposal. The VO is not, after all, under an obligation to issue an invalidity notice and could delay a challenge of imprecise or incorrect proposal wording until a VTE hearing, by which time it would be too late for any remedial action to be taken.

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