Case Name: *London Borough of Tower Hamlets* v *David Jackson (VO)* 2019 Appeal Nos. 590025531922/053N10 and 19 others (5 September 2019)

Topic: Validity of proposal (advertising hereditaments)

Full case: click here

Summary: Where a billing authority made proposals (under the 2010 list) to add advertising rights to the list as a separate hereditaament it must have had reason to believe that the relevant ground for those proposals existed. The VTE decided that as the purported hereditaments were not occupied separately from the occupation of the relevant buildings (at Canary Wharf) they did not meet the statutory requirements, the relevant ground did not exist and the proposals were, therefore, invalid.

Commentary: This VTE case addressed the validity of proposals made by the billing authority (London Borough of Tower Hamlets, LBTH) to amend the 2010 rating list to include in the list as separate hereditaments the iconic rooftop signs at Canary Wharf, each of which indicates the identity of the occupier of the building in question. None of the signage locations was capable of being separately let, this being prohibited by the standard provision in the relevant lease granted by the Canary Wharf Group as freeholder of the development.

The relevant statutory provision is to be found in section 64(2)(b) Local Government Finance Act 1988, which states that an advertising right of this nature can only be a separate hereditament where it is let out or reserved to any person other than the occupier (or, if a vacant building, let out or reserved to any person other than the owner). Clearly, the lease provision referred to above prevented separate letting and (unless reserved to the landlord) the signage rights belonged to the occupiers and formed part of the existing hereditament, in each case.

Notwithstanding this clear provision, the billing authority sought to make proposals in reliance on the terms of regulation 4 of the relevant regulations (SI2009/2268), sub-paragraph (1)(g) of which refers to the entry of a new hereditament which should have been in the list but had been omitted. However, sub-paragraph (2)(b) provides that an authority may only make such a proposal (which in any event would not have met the requirements of section 64(2), as above) if it "has reason to believe" that the ground exists.

The VTE found that LBTH could not be said to have had reason to believe that the ground existed, given that reasonable enquiry was apparently not made of the occupiers as to the basis on which the rooftop signs were being used. Had such enquiry been made it would have become apparent that the occupiers themselves operated the signs (which show only the relevant company logos) and that they were therefore part of the existing hereditament for each building or part thereof (applying section 64(2) in the context of the lease covenants). By describing the signs as "advertising rights" the authority sought to confer the status of hereditament where none in fact existed.

The tribunal also referred to the approach set out in *Imperial Tobacco v Alexander (VO)* [2012] in dealing with the impact of mistakes in proposals. The proposals made by LBTH were found to be of the category containing errors or omissions so fundamental that they

cannot in any circumstances be treated as valid. This was the conclusion in the case of *Mainstream Ventures Ltd v Woolway* [2000] RA 395, where the proposer was not qualified to make the proposal as he was not the occupier. Likewise, the LBTH proposals were fundamentally flawed, putting the ratepayers to significant inconvenience and cost which they were unable to recover in the VTE's jurisdiction (it having no power to award costs).

As the first hurdle (reason to believe) had not been overcome, the tribunal did not need to further consider whether the proposals met the statutory test in section 64(2) but clearly would have found against LBTH on that point also.

Consequently, all 20 proposals were found invalid and the appeals dismissed.