



RA/39/2005

**LANDS TRIBUNAL ACT 1949**

*RATING – proposal – whether contention of appellant within scope of proposal*

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE  
LONDON SOUTH EAST VALUATION TRIBUNAL**

**BETWEEN**

**BARRY O'BRIEN**

**Appellant**

**and**

**JOHN PETER CLARK  
(Valuation Officer)**

**Respondent**

**Re: Land used for advertising  
1-3 Penge Road  
London SE25 4EJ**

**Before: The President**

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL  
on 20 April 2006**

The appellant in person  
Jeremy Burrows, solicitor, H M Revenue and Customs, for the respondent

The following case is referred to in this decision:

*Galgate Cricket Club v Doyle (VO)* [2001] RA 21

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## DECISION ON A PRELIMINARY ISSUE

1. The appellant in this case, Mr Barry O'Brien, occupied at the material times the site of an advertisement hoarding at 1-3 Penge Road, London, SE25. In the 2000 rating list the hereditament was entered as "Land Used for Advertising" at a rateable value of £7,240. The entry had effect from the start of the 2000 rating list, 1 April 2000. On 8 October 2002 the VO altered the list by deleting the hereditament from it with effect from 17 September 2002.

2. On 20 January 2003 Mr O'Brien made a proposal to alter the list. He used the standard proposal form produced by the Valuation Office Agency (form VO 7012 (2000)). In the part of the form headed "Details of the proposed list alteration" he ticked "C: The existing entry deleted" and where the form said "with effect from" he entered "01/01/01". In the part of the form headed "Grounds for your proposed alteration" Mr O'Brien ticked "D: Circumstances affecting the rateable value of the property changed on" and he entered "01/01/01 & various dates prior". Under "My detailed reasons for believing that the rating list is inaccurate are" he entered "This site was described as land used for advertising but fell into disrepair and effectively ceased to be so used as per it is 2000."

3. The respondent valuation officer, on whom the proposal had been served, was not (to use the wording of the relevant regulation, to which I refer below) of the opinion that the proposal was well-founded and there was no agreement that the list should be altered, and he therefore referred the disagreement to the valuation tribunal as an appeal by the proposer against his refusal to alter the list.

4. At the appeal hearing before the London South East Valuation Tribunal on 8 June 2005 Mr O'Brien sought to advance two arguments – firstly that the effective date for removal of the hereditament from the list should be 1 January 2001 and secondly, in the alternative, that the assessment should be reduced. In its decision of 16 June 2005 the Tribunal determined that it had no jurisdiction in respect of the second argument because the point had not been "specifically mentioned on the form and is ancillary to the actual grounds stated by the appellant". It rejected the appellant's first argument, and it dismissed the appeal.

5. Mr O'Brien appealed to this Tribunal against the VT's decision by notice dated 11 July 2005. In his grounds of appeal he said in relation to the proposal: "I sought in the first place removal of the structures because they were not used for advertising. It clearly states in Part B of the proposal form at Section 11 complete ONE which I did. Likewise at Section 13 I repeat I wish the listing to be deleted and or RV reduced."

6. With the agreement of the parties the Tribunal ordered that the following question should be determined as a preliminary issue:

"Whether Mr O'Brien's appeal is limited by the scope of his proposal, as was determined by the Valuation Tribunal, so as to preclude him from arguing in the alternative for a reduction in Rateable Value should he fail to secure the total

deletion of the Appeal Hereditament from the 2000 Rating List; or whether it is open to him in these appeal proceedings to argue that (a) the entry in the list ought to be deleted, but that if not then (b) the Rateable Value should nonetheless be reduced.”

At the hearing Mr Burrows on behalf of the VO said that he did not actively oppose the appellant’s case on the preliminary issue since there was some visible force in it. It was a matter for the Tribunal to decide whether there was sufficient force. I said that I would allow the appeal and give my reasons in writing. These are my reasons.

7. The relevant provisions relating to the making of proposals to alter 2000 rating lists are contained in the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 as amended, made under section 55 of the Local Government Finance Act 1988. Regulation 4A(1) provides: “The grounds for making an alteration to the list are as follows –” and it sets out some 15 grounds, which include the following:

- “(a) the rateable value shown in the list for a hereditament was inaccurate on the day the list was compiled;
- (b) the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled;
- .....
- (e) the day from which an alteration is shown in the list as having effect is wrong;
- .....
- (f) a hereditament shown in the list ought not to be shown in that list;”

8. Regulation 5A deals with the manner of making proposals and information to be included. It provides, so far as material:

- “(1) A proposal to alter a list shall be made by notice in writing served on the valuation officer which shall –
- (a) state the name and address of the proposer and the capacity in which he makes the proposal;
- (b) identify the property to which the proposal relates;
- (c) identify the respects in which it is proposed that the list be altered; and
- (d) include –
  - (i) a statement of the grounds for making the proposal and, in the case of a proposal made on any of the grounds set out in paragraphs (1)(a) or (f) to (k) of regulation 4A a statement of the reasons for believing that those grounds exists;
  - (ii) in the case of a proposal made on the grounds set out in regulation 4A(1)(b), a statement of the nature of the change in question and of the date on which the proposal believes the change occurred;

....

- (v) in the case of a proposal made on the grounds set out in regulation 4A(1)(e), a statement of the day proposed in place of the day shown in the list.”

9. Regulation 12 provides that where the VO is not of the opinion that a proposal is well-founded, and the proposal is not withdrawn, and there is no agreement on the alteration, the disagreement shall, no later than three months after the date of the proposal, be referred to the VT by the VO as an appeal by the proposer against his refusal to alter the list. Under regulation 44(1) on or after deciding an appeal under regulation 12 the tribunal may require the VO, in consequence of the decision, to alter the list in accordance with any provision made under the Act.

10. Form VO 7012 (2000) is, as I understand it, a form that is given by the valuation officer to a person who wishes to make a proposal. It is not provided for by the Regulations and there is no statutory requirement that it should be used. It comes with guidance notes about completing it. In Part B “Details of proposed list alteration” it says:

“Please complete **one** of 11 A-G, or 12 below as appropriate (see guidance notes 11 and 12)

11 I propose that the rating list entry shown for the above property (and those on the attached sheet) should be altered as follows: (Note: please tick the relevant box and supply additional information as necessary).”

There then follow boxes marked “A” to “G” with the word “or” between them to emphasise that they are alternatives. B is “The rateable value reduced to ...” C is “The existing entry deleted”. F is “The effective date changed to ...”

11. Part C “Grounds for your proposed alteration” states:

“13 Tick only **one** box. If more than one of the following statements apply, select the one you consider most appropriate. Detailed reasons for believing that grounds A or D-K are applicable should be given at 14 below.

I have reason to believe that the rating list is inaccurate and that the alteration proposed in Part B of the form should be made because.”

Then follow a series of boxes marked A to L with the word “or” between them. They include: “A The rateable value(s) in the rating list as at 1 April 2000 was/were inaccurate”; “D Circumstances affecting the rateable value of the property changed on ...”; “E The property has been demolished and no longer exists”; and “G The property should be deleted for reasons other than those at E and F above.”

12. There are thus 12 boxes specifying grounds on which the proposal may be made, in contrast to the 15 grounds specified in regulation 4A(1). Some correspond more or less

precisely, but others do not. The guidance contained in the guidance notes about the completion of part B includes some examples. After the examples, this is said:

“If you are seeking to make more than one alteration to a rating list, such as where each proposed alteration relates to different events in time, please use a separate proposal form for each event. For example, if you are (a) disputing a rating list alteration made by the Valuation Officer on 1 May 2000 (to increase the rateable value) and (b) seeking a reduction on the grounds of a ‘material change of circumstances’ that occurred on 10 June 2000, use separate Proposal forms for each proposed alteration to a List.”

In relation to part C the guidance notes emphasise that only one statement must be selected.

13. I approach the point at issue in this way. The function of the VT was to decide the appeal. Under paragraph 12 the subject-matter of the appeal consisted of the disagreement between the proposer and the VO as to whether the proposal was well-founded. The question, therefore, is whether the contention that the rateable value should be reduced formed part of the proposal. If it did, the VT had jurisdiction to consider it.

14. The proposal was required to identify the respects in which it was proposed that the list be altered (regulation 5A(1)(c)). If it was made on any of grounds (a) or (f) to (k) of regulation 4A, it had to include a statement of the grounds for making the proposal and a statement of reasons for believing those grounds existed (regulation 5A(1)(d)(i)). Alternatively, if the proposal was made on ground (b) it had to include a statement of the nature of the change in question and of the date when the proposer believed the change occurred (regulation 5A(1)(d)(ii)).

15. Mr O’Brien’s proposal identified as the alteration proposed the deletion of the existing entry. It gave as the grounds for making the proposal that circumstances affecting the rateable value had changed. It set out reasons for believing that the rating list was inaccurate.

16. It is immediately apparent that the alteration that the proposal sought – deletion – was not supported by the grounds on which the alteration was stated to be based – change of circumstances affecting the rateable value. This was not, however, a matter that the VO, having received the proposal, saw fit to do anything about. Under regulation 7, where a VO is of the opinion that a proposal has not been validly made, he may serve an invalidity notice on the proposer; and the proposer may then within 4 weeks make another proposed. The VO did not serve an invalidity notice on Mr O’Brien. He accepted the notice as valid. Nor did he ask for clarification of the alteration that Mr O’Brien was seeking or the grounds on which he was doing so.

17. What then was the proposal for the purposes of the appeal? It is, in my judgment, tolerably clear that Mr O’Brien, in completing the form as he did, was seeking to advance two matters – firstly that the hereditament should be deleted from the list with effect from 1 January 2001 because it had by that date ceased to be used for advertising; and secondly, that the rateable value of the hereditament should be reduced because of a change in

circumstances consisting of disrepair and disuse. The proposal sufficiently identified both matters, in my judgment, and accordingly they both became the subject-matter of the appeal.

18. The difficulty in this case appears to have arisen, as it did at least in part in the case of *Galgate Cricket Club v Doyle (VO)* [2001] RA 21, because the ratepayer was confronted by a proposal form requiring him to opt for one particular alteration and one particular ground for making it. The guidance notes say that separate proposal forms should be used where the proposer is seeking to make more than one alteration to the list. They do not say that separate proposal forms should be used where the proposer is seeking to advance arguments (and alterations) in the alternative. While I have no doubt that the proposal form was intended to make things as easy as possible for a person making a proposal and to assist in the processing of proposals, it seems clear that in a case like the present it may not achieve these objectives. It is also somewhat surprising that the form does not mirror the relevant contents of paragraphs 4A and 5A of the Regulations and does not refer to the Regulations at all. It is hard not to feel sympathy for a ratepayer who does his best to complete the form and is then met by a contention before the VT that a particular argument cannot be advanced because of the provisions of regulations of which he may have no knowledge.

19. I would add that in *Galgate Cricket Club* (see paras 3 to 6) I said that there were strong reasons against adopting a restrictive approach to the construction of proposals, and it is perhaps a pity that the VT was not referred to that decision.

20. I determine the preliminary issue in the appellant's favour. It is open to him, if he fails to establish that the entry in the list should be deleted with effect from an earlier date than 17 September 2002, to contend that the rateable value of the hereditament should be reduced. Since the question of value was not considered by the VT, Mr Burrows submits, and I accept the submission, that, if the issue of deletion is decided in the VO's favour, the case should be remitted to the VT. No order in relation to this needs to be made until the appeal has been determined.

21. The appeal will now proceed under the simplified procedure under the terms of the Registrar's order of 7 March 2006. I make no order as to costs.

Dated 21 April 2006

George Bartlett QC, President