

THE VALUATION TRIBUNAL FOR ENGLAND



*Council tax completion notice appeal; section 17 Local Government Finance Act 1992; Schedule 4A to the Local Government Finance Act 1988; new dwelling; the panel held that the date set by the BA was reasonable; appeal dismissed.*

Re: Flat 1 to Flat 8 Castle house at 17 Castle Street, Hertford SG14 1ER

APPEAL NUMBERS: VT00002140; VT00002141; VT00002142; VT00002143;

VT00002144; VT00002145; VT00002146; VT00002147

BETWEEN:	Brookjade Properties Limited	Appellant
	and	
	East Hertfordshire District Council	Respondent
	(Billing Authority)	

PANEL: Mr J M Imperato (Chairman)

Miss L Moses

CLERK: Mrs C McAvoy

REMOTE HEARING No.4 on 14 July 2021

APPEARANCES:

Mr C Ravenscroft (for the appellant)

Mrs J Burrow (on behalf of the Billing Authority)

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**Summary of decision**

1. Appeal dismissed; the panel found that that date set by the Billing Authority (BA) was reasonable.

**Introduction**

2. This appeal was brought in respect of completion notices issued by the BA for eight flats (flat 1 to flat 8) at Castle House, 17 Castle Street, Hertford SG14 1ER. For flat numbers 1,2,3 and 4, the completion notices were issued on 4

July 2019. The completion notices for flat numbers 5,6,7 and 8 were issued on 9 July 2019. All eight notices provided that the properties would be treated as complete for council tax purposes with effect from 30 September 2019.

3. An appeal to this Tribunal was made on 5 December 2019. Such appeals should be made within 28 days of the completion notice being served, however, an out of time application was made to this Tribunal. A decision was issued on 26 March 2020 to allow the appeal to be accepted.
4. 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 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) the VTE may determine the form of any hearing.
5. Therefore, in pursuance of regulation (6)(3)(g) 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.
6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

## **Issue**

7. The issue before the panel was, having regard to the amount of works outstanding as at the date the completion notices were issued (4 July 2019 and 9 July 2019), was the completion date set by the BA of 30 September 2019 reasonable?

## **Evidence and submissions**

8. With the agreement of the parties, the panel varied the procedure outlined in the Consolidated Practice Statement PS8 - Model Procedure and invited the respondent to present her evidence first to assist the unrepresented appellant.
9. The BA served, prior to the hearing, an evidence bundle containing submissions from both parties. In summary, it contained a copy of the completion notice for each flat; various communication between the parties; extracts from the relevant legislation and case law; photographs; a report from the BA’s visiting officer and various communication regarding the receipt of the mail, including correspondence from Royal Mail.

10. The BA joined the remote hearing via audio only and summarised the BA's written submission, stating that the visiting officer had been to the properties on 4 July 2019 and was satisfied that the works outstanding could have reasonably been expected to be complete by 30 September 2019. He was unable to attend the hearing as he had since retired but his report was included within the submission. The BA sought dismissal of the appeal.
11. The appellant joined via video but had an issue with his microphone/sound. As such, he remained on video but to overcome the technical problem, he also joined via telephone, so that he could be heard. Mr Ravenscroft referred to the written submission and provided oral representation regarding the condition of the properties and the progress made since 2019. Mr Ravenscroft sought a new completion date of February 2020, which he considered to be more practicable.

### **Decision and reasons**

12. The statutory framework for council tax completion notices was provided in section 17 of the Local Government Finance Act 1992. It placed an obligation on billing authorities to issue completion notices under the provisions of Schedule 4A to the Local Government Finance Act 1988 (which had previously only applied to non-domestic properties).
13. Section 17 essentially allowed both complete and incomplete dwellings to be deemed to have come into existence for council tax purposes. Schedule 4A provided the rules within which each billing authority had to operate.
14. Paragraph 1(1) of Schedule 4A provided the following:

“If it comes to the notice of a billing authority that the work remaining to be done on a new building in its area is such that the building can reasonably be expected to be completed within three months, the authority shall serve a notice under this paragraph on the owner of the building as soon as is reasonably practicable unless the valuation officer otherwise directs in writing.”

15. Paragraph 2(2) of Schedule 4A further provided:

“Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is not completed, the authority shall propose as the completion day such day, not later than three months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed.”

16. Thus, a BA is under a statutory duty to serve a council tax completion notice in respect of a complete dwelling or one where the work remaining to be done could reasonably be expected to be completed within three months. The authority could propose a date of completion it considered was reasonable

provided it fell within three months of the date the completion notice was served.

17. In this case, the BA had served a completion notice on each of the eight flats. The notices were issued on 4 July 2019 and 9 July 2019 and provided that the properties would be treated as complete for council tax purposes with effect from 30 September 2019.
18. Mr Ravenscroft's main contentions were, that he did not consider the properties to be complete and he proposed a revised completion date of 1 February 2020. His appeal documentation also stated that he did not consider the completion notices to be validly served. Regarding the latter point, he submitted that the completion notices had been sent to a third party and following return to Royal Mail, the appellant received them in November 2019.
19. Prior to proceedings, the clerk to the tribunal had provided all parties with a copy of the President of the VTE's decision, *Delph Property Group Ltd v Alexander (VO) and Leicester City Council* [VTE, 246525454690/538N10, 17 JANUARY 2018]. The President found that a completion notice appeal can only decide whether the date set on the completion notice was correct, it could not decide whether or not a completion notice had been served. This would appear to meet the words of Mr Justice Holgate when he heard the judicial review application in *Reeves (VO) v. VTE (and others)* [2015] EWHC 973 (Admin):

*“9. In effect, Schedule 4A contains provisions for determining the date on which the new building is deemed to be completed. Under paragraph 3 an agreement may be made between the owner and the billing authority as to the completion date, in which case the completion notice is treated as having been withdrawn. Under paragraph 5 if no appeal is made against the completion notice, and no agreement reached under paragraph 3, the completion date is taken to be the date stated in the notice. But where an appeal is made the completion date is the date determined by the Tribunal (paragraph 4(2)).*

*10. Where an appeal against a completion notice is made, the only question which the Tribunal is asked by Schedule 4A to answer is: what is the completion date?”*

20. Therefore, the panel was unable to consider the arguments surrounding the appellant's written submission that the completion notices had not been correctly served. However, the panel gave due consideration to whether the completion date of 30 September 2019, set by the BA, was reasonable. Both parties understood the Tribunal's jurisdiction and their oral submissions were in relation to the completion date set.
21. Before a completion notice is served, the building must have reached the stage of substantial completion. This generally means that the building is wind and watertight with four walls and a roof. In the *London Merchant Securities Plc and Trendworthy Two Limited v Islington Borough Council* [1987] RA

99 judgment, as referred to in the BA's submission, it was explained why developments which had reached the end of Phase 1 (structural completion) could be subject to unoccupied property rates, and that when a completion notice is issued, the approach is to assess the estimated time when the remaining work can reasonably be expected to be done.

22. The panel was presented with a statement from Mr George Smith, who was the BA's visiting officer at the time. He was aware of the works commencing in 2016 and had visited the site on 1 December 2016. He continued to monitor progress and confirmed that the flats were at first fix stage with electrical cabling being installed as at 27 September 2018.
23. On 2 July 2019, Mr Smith and Mr Ravenscroft discussed the condition of the flats over the phone, and then Mr Smith had visited the site again that same day. The parties agreed a completion date of 30 September 2019, which Mr Ravenscroft also confirmed agreement of via email on 3 July 2019.
24. During proceedings, Mr Ravenscroft submitted that he had agreed to this date to enable him to arrange for services, such as water, gas and electricity. He stated that he could not obtain the services until the properties were shown on the national data base. Mr Smith's submission referred to this point, as it had been discussed over the phone on 2 July 2019, and he believed they were talking at cross purposes as he considered that Mr Ravenscroft was referring to Building Control sign off. It should be noted that the completion notice procedure and legislation for council tax purposes differs from the completion for building regulations. Mr Ravenscroft asserted that he informed the BA's visiting officer that the time limit was impractical, but he was told he could appeal this later, hence he agreed the date originally.
25. The panel understood Mr Ravenscroft's contentions and recognised that, in reality, the flats had taken longer to complete. This was due to various factors, including Mr Ravenscroft falling ill and that there were only a small amount of people working on the flats at any given time (usually Mr Ravenscroft's sons). He therefore submitted that it was a staggered completion with slow progress, they were a small business and when one flat needed to be completed sooner, it was an 'all hands-on deck' approach. For example, their attention turned to Flat 7, to ensure it was ready for occupiers. This had resulted in the remaining flats progressing slower, but the panel did not find that this evidenced that the flats could not have been reasonably been completed by 30 September 2019, had they been worked on.
26. Whilst it was apparent that the flats had not been completed by 30 September 2019, the panel found that this was not the legal test. The panel had to consider what further work was essential for the purpose of occupation of each flat and the assumption is continual progress. It therefore did not consider the lack of workers or staggered approach to be a persuasive factor. During proceedings, Mr Ravenscroft had himself agreed that it may have been possible to complete each flat much quicker, had they not been limited in resources and had it not been necessary to work on individual flats to ensure completion in line with the market demand.

27. Ultimately, the panel found it was not presented with any compelling evidence to demonstrate that the works outstanding, as at the date of issue of the completion notices, could not have reasonably been completed by 30 September 2019.

28. For the reasons stated, the appeal was dismissed

**Date:** 28 July 2021

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