VALUATION TRIBUNAL FOR ENGLAND

Non-domestic Rating Appeal (2010 List): Local Government Finance Act 1988; Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]; offices and premises; guardians; domestic or non-domestic.

APPEAL NUMBERS:	584026075915/537N10	584029623163/537N10
	584026803242/537N10	584029623142/537N10
	584026803065/537N10	584029795308/541N10

BETWEEN:	Ludgate House Limited (Owner / Occupier)	Appellant
	and	
	Mr Andrew Ricketts (Valuation Officer)	First Respondent
	and	
	London Borough of Southwark (Billing Authority)	Second Respondent

SITTING AT: VTS Offices London, 120 Leman Street, London, E1 8EU

ON: Wednesday 28th February 2018; and
Wednesday 7th March 2018

BEFORE: Ms F Dickie (Vice President)

APPEARANCES: *For Ludgate House Limited* –
Mr D Forsdick QC of Counsel
Mr L Wilcock of Counsel
Mr S Harris of Montague Evans LLP as expert witness
Mr D Jayawardene of VPS (UK) Limited as witness
Mr J White of Native Land Limited as witness

For the Valuation Officer –
Mr M Westmoreland-Smith of Counsel
Mr J Spooner of the Valuation Office Agency as expert witness

For the London Borough of Southwark –
Mr R Stone of Counsel
Mr A Townsend as expert witness
M J Drewitt of London Borough of Southwark as witness

DECISION, STATEMENT OF REASONS and ORDER

Regulations 36, 37(1) and 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009 No 2269)

Summary of Decision

1. The 1st July 2015 was the correct effective date for the alteration to the 2010 non-domestic rating list (the "list"). On that material day Ludgate House, 245 Blackfriars Road, London, SE1 8NW ("Ludgate House") was wholly non-domestic. No allowance against the rateable value for disturbance is warranted.

Introduction

Jurisdiction

2. These appeals relate to six proposals to alter the list in respect of Ludgate House. The Valuation Officer ("VO") having disagreed with those proposed alterations, referred the matters to the Tribunal as appeals in accordance with regulation 13 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the "ALA Regulations").

3. Notwithstanding judicial review proceedings pending before the High Court, at the hearing none of the parties disputed the Tribunal had jurisdiction to determine these appeals before me. The matter having been raised by the Appellant but not pursued, for the avoidance of doubt I consider that I have jurisdiction to determine these appeals under regulation 5 of the ALA Regulations, in that the grounds in regulation 4(1)(d) and (f) are made out.

Background and chronology

4. Ludgate House was a commercial office building situated in Southwark, London. Having been acquired by Ludgate House Limited ("LHL"), planning permission was sought to demolish Ludgate House and redevelop the site. By the 25th March 2015, Ludgate House had become vacant.

5. LHL entered into an agreement with VPS (UK) Limited ("VPS"), executed on the 29th July 2015 to provide security services at Ludgate House, which included the provision of "guardians".

6. There is no dispute that prior to 25th June 2015 Ludgate House consisted of two hereditaments. The first hereditament was described in the list as office and premises (inc. Part 2nd Flor South) at Ludgate House and the second as office and premises as Pt 2nd Flr (North). The first proposal (now with appeal reference 584026075915/537N10) was made by Montagu Evans LLP acting as agent for LHL on the 9th September 2015. This proposal sought that the entries in the list be deleted from the 25th June 2015 as Ludgate House was now domestic or exempt from rating. On the 27th November 2015, after an inspection of Ludgate House which took place two days prior, the VO deleted the entries from the list effective from the 25th June 2015 (in respect of the larger part) and from the 1st December 2015 (in respect of the smaller part). These deletions were made on the basis that Ludgate House was occupied by guardians for residential use.

7. The London Borough of Southwark ("LBS") inspected Ludgate House on 11th January 2016 and on the 29th February 2016 it made two proposals (now with appeal references 584026803065/537N10 and 584026803242/537N10). These proposals challenged the VO's alterations of the 27th November 2015 and sought for both entries to be restored to the list as they remained non-domestic property, or alternatively for the creation of a composite hereditament. On 4th May 2016 the VO carried out its second inspection of Ludgate House.

8. By May 2017, Ludgate House was again vacant and was being stripped out prior to the commencement of demolition works.

9. The VO altered the list on 31st May 2017 ("VON 1") restoring Ludgate House to the list (excluding floors 1st and 2nd) with effect from the 25th June 2015 at a rateable value of £3,390,000. Following this, on the 16th August 2017, the VO again altered the list ("VON 2") to show a single entry for Ludgate House with effect from 25th June 2015 at the same rateable value.

10. Another two proposals (now with appeal references 584029623142/537N10 and 584029623163/537N10) were made by Montagu Evans LLP, acting as agent for LHL, on the 24th August 2017. The first sought either the restoration of the list to the state prior to the May 2017 alteration (i.e.to re-delete Ludgate House from the list) or, in the alternative, that its rateable value should be reduced to £1 on the basis that Ludgate House was wholly domestic. The second proposal sought that the effective date of the May 2017 alteration should be the 24th May 2017 as opposed to the 25th June 2015.

11. A final proposal (now with appeal reference 584029795308/541N10) was made by Montagu Evans LLP, again acting as agent for LHL, on the 27th September 2017. This proposal sought that Ludgate House should be shown in the list as more than one entry.

12. Pursuant to the Tribunal's general powers under Regulation 6 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 [SI 2009 No 2268] ("the VTE Regulations"), I directed that these six appeals should be consolidated.

13. On the 12th October 2017, I undertook an inspection of Ludgate House in the presence of the parties' representatives.

The matters for determination

14. The principal matters for my consideration relate solely to the proposals (584029623142/537N10 and 584029623163/537N10) made by LHL. These raise interesting questions concerning the use of property guardians as security and the potential for such use to provide mitigation of non-domestic rates. The use of property guardians is not an uncommon practice; such measures have been adopted in respect of many vacant buildings, not least to prevent squatters from taking up occupation (a significant and increasing problem with commercial buildings since section 144 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 made squatting upon residential property a criminal offence). However, the decision I have reached in this case turns very much on its particular

facts which require close examination of the contractual arrangements and physical circumstances in question.

15. The issues for me to determine fall into four distinct areas –

    (1) rateable occupation and the hereditament;
    (2) domestic, non-domestic or composite;
    (3) the non-domestic valuation; and
    (4) the effective date of the alteration.

16. I am indebted to counsel from all parties for their efforts in clearly and concisely presenting their respective cases before me. I am also grateful for their attendance on the first day of the hearing despite the adverse weather conditions and their flexibility in light of them in rescheduling the second hearing day to the following week.

Findings of fact

Ludgate House

17. Ludgate House was a large, nine-storey, purpose-built office building in central London. The floors were mainly open plan with some partitioning to create individual offices. The offices were vacated by its occupiers by March 2015 ahead of planned demolition and redevelopment works upon the site.

18. Despite it being well after the material day and in a position where it had been significantly stripped out, I inspected Ludgate House on the 12th October 2017 as I felt it was important to take the opportunity to do so before the building was demolished. Access was obtained to part of the areas where guardians had lived, including the basement, the first floor and one of the open plan floors. Notwithstanding the extent of the stripped out state, I found the inspection was useful in assisting me in putting the extent of the guardians' occupation in the physical context of the building. I gained an impression of the vast scale of the floors and the enormity of the open space, and the extent of that unadapted office space which would in practice have been unused by the number of guardians in occupation.

19. I was provided with helpful plans of Ludgate House while it was in occupation by the guardians. I also had the benefit of photographs taken on both of the VO inspections. The photographs taken by LBS are much more useful than LHL's photographs, which are taken specifically to highlight areas in use by guardians.

The VPS proposal and agreement

20. Following a business proposal dated 18th June 2015 to LHL from VPS, a security firm, those parties entered into a contract for the provision of security at Ludgate House in the form of property guardians, 24-hour security guards and monitoring.

The parties began performing their obligations under their agreement (and thus regarded themselves as subject to its terms), from 24th June 2015. The VPS proposal was that 32 guardians were recommended to provide "…a robust level of protection". The proposal provided that "the rooms in use by guardians will be labelled with VPS Guardian Services Stickers. All unused rooms will be secured and labelled as out of bounds".

21. The contract expressly provided that LHL retained control, possession and management of Ludgate House and that VPS would not occupy, or allow a guardian (or other person) to take possession. The preamble to the agreement sets out the main purpose of the arrangement, namely that "*…services are provided with a view to securing premises against trespassers and protecting them from damage.*" It also expressly stated that VPS was not LHL's agent.

22. Under the contract with VPS, LHL would receive a rebate of £200 per week per guardian placed in Ludgate House and works to be carried out for the guardians to occupy were the provision of five shower pods and water heaters, 7 cookers and locks to existing partitioned offices. Such additions were temporary and designed to be easily removed when LHL no longer required property guardians at Ludgate House. However, for all intents and purposes, Ludgate House was still an office block: the presence of showers and cookers are not uncommon in office accommodation and these minor and, from the photographic evidence, clearly temporary installations, do not detract from that. While no application for planning permission for use of the building as residential or domestic accommodation was made and there was no attempt to obtain a licence as a house in multiple occupation, these matters, whilst part of the factual background against which the evidence and agreements came into existence, do not directly impact on the question of whether Ludgate House was wholly occupied for domestic purposes.

The guardians and their licences

23. The placement of guardians involved VPS granting licences to persons who would undertake obligations, in particular, the requirement to "*live in, and not without* [VPS's] *prior written consent sleep away from* [Ludgate House] *for more than 2 nights out of any 7.*" The licences also imposed positive duties on the guardians to report to VPS the presence of any persons whom they suspected did not have permission to be within Ludgate House and to "*politely but firmly challenge*" any such person to "*determine their identity and purpose.*" These were specific security obligations which went beyond any traditional licence to occupy residential premises. The licences did not grant the right to occupy any specific room, and there was a requirement to move to different rooms as requested.

24. The licence provided that VPS had no authority to grant, and did not grant, any right of possession or exclusive possession of Ludgate House or any part of it. The guardian was not permitted to use any other part of the property other than the living space or designated communal areas. Further the licence provided that a guardian could not enter particular areas within Ludgate House as designated by

VPS; although such areas were not identified in a document. Mr Jayawardene, VPS Business Development Manager, confirmed that there was no separate occupation of any individual floor and that, in reality, only the plant room was designated out of bounds to guardians on health and safety grounds. As a minimum, this area could therefore never be domestic as there was no right to access it.

25. The licence explicitly stated that no tenancy was created. A guardian would be required to pay a licence fee to VPS, which was below market rates for accommodation which would provide greater security of tenure and which came without such obligations as existed in this case.

26. It appeared on the evidence before me that occupation by guardians did not in fact commence until 1st July 2015. There were evidently some discrepancies in the records as to dates of occupation including final vacation, no underlying documentation was produced to support these records, and no actual agreements with any guardian were in evidence.

27. However, there was a level of agreement between all parties that between that date and May 2017 there were at most 52 guardians and normally between 40 and 50 at one time present at Ludgate House. Witness statements from certain occupants were before me but those witnesses were not produced to give evidence on cross examination. Though the terms of the licences are very prescriptive, I cannot assess whether in reality the guardians occupied Ludgate House as their sole or main residence in accordance with those terms.
28. These guardians were spread out through the various floors within Ludgate House. Some were placed within partitioned offices (on the upper two floors), whilst others fashioned partitions by hanging curtains or positioning other items of personal property to segregate a space from the open plan floor space (the boundary of which in each case Mr Jayawardene acknowledged could not be identified). Most floors were very sparsely occupied. All guardians had access to the whole of the floor space and communal lounges were formed by the guardians at various locations throughout. However, importantly, in accordance with their agreement, the guardians did not have exclusive possession of any part of Ludgate House.

29. There was also evidence that guardians moved within Ludgate House on at least two occasions where LHL required them to do so. Mr Forsdick argued before me that those guardians did so willingly and that, notwithstanding the provisions of the licences, the Protection from Eviction Act 1977 prevented LHL from moving a guardian within Ludgate House without their consent unless a court order had been obtained. I reject those contentions: It is clear that LHL required the guardians to move to another area within Ludgate House and the guardians did so because of that requirement. Further, the Protection from Eviction Act 1977 provides basic protection from eviction from a property and I am not persuaded such provisions apply to a move within Ludgate House (as opposed to eviction from it).

Relevant law

The non-domestic rate

30. Part III of the Local Government Finance Act 1988 ("the 1988 Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England.

31. The rateable value of a non-domestic hereditament (used to determine the rate payable) is defined at paragraph 2 of Schedule 6 to the 1988 Act. It is not necessary to set out all of these provisions, but suffice it to say that the rateable value of a non-domestic hereditament is, subject to the statutory assumptions, the amount of rent at which the non-domestic hereditament might reasonably be expected to let at on the 1st April 2008 (the "antecedent valuation date").

The hereditament

32. Section 64 of the 1988 Act, by reference to section 115 of the General Rate Act 1967, defines a hereditament as a property which may become liable to a rate, being unit of property which is, or would fall to be, shown as a separate item in the valuation list. It also provides that –

> *(8) A hereditament is non-domestic if either –*
>
> > *(a)it consists entirely of property which is not domestic, or*
> > *(b)is a composite hereditament.*
>
> *(9) A hereditament is composite if part only of it consists of domestic property.*

31. Section 66(1) of the 1988 Act defines that a property is domestic (and thus not subject to a non-domestic rate) where, *inter alia*, it is used "*wholly for the purposes of living accommodation*". If used wholly for the purposes of living accommodation, then the whole property would be a "dwelling" for the purposes of section 3 of the Local Government Finance Act 1992 ("the 1992 Act"), and in accordance with section 22 of the same 1992 Act, would be required to be listed on the Council Tax Valuation List.

Effective date of alterations

32. Regulation 14 of the ALA Regulations prescribes the effective dates of any alteration to the list. Relevant to these proceedings –

> *(2) Subject to paragraphs (2A) to (7), where an alteration is made to correct any inaccuracy in the list on or after the day it is compiled, the alteration shall have effect —*
>
> > *(a) from the day on which the circumstances giving rise to the alteration first occurred, if the alteration is made —*

(i) on or after 1st April 2016 where the circumstances giving rise to the alteration first occurred on or after 1st April 2015 and the alteration is made otherwise than to give effect to a proposal;

…

(7) An alteration made to correct an inaccuracy (other than one which has arisen by reason of an error or default on the part of a ratepayer) —

(a) in the list on the day it was compiled; or

(b) which arose in the course of making a previous alteration in connection with a matter mentioned in any of paragraphs (2) to (5),

which increases the rateable value shown in the list for the hereditament to which the inaccuracy relates, shall have effect from the day on which the alteration is made.

Conclusions

33. There was much alignment in the positions of LBS and the VO, but the latter sought to take a practical approach to the application of the law. Whilst LBS considered the property to be 100% non-domestic, it was nevertheless content with the current (composite) approach which the VO advocates, as what it considered a logical application of the law (the VONs issued in November / December 2015 being correct) would have produced worse results for LHL. The decision I have reached is on all fours with the position of LBS.

Rateable occupation and the hereditament

34. I was referred to a number of authorities, but importantly on this point to the judgments of the Court of Appeal in *John Laing & Son Ltd v Kingswood Area Assessment* Committee [1949] 1 KB 344, [1949] 1 All ER 224 and *City of Westminster v Southern Railway* [1936] AC 5, and to the Supreme Court's judgment in *Woolway (VO) v Mazars LLP* [2015] UKSC 53. *Laing* is well known as a principal case encapsulating the law when considering who is the rateable occupier. Their Lordships held that there are four factors – or ingredients – in determining rateable occupation –

"Firstly, there must be actual occupation; secondly that it must be exclusive for the particular purpose of the possessor; thirdly, that the possession must be of some value or benefit to the possessor and fourthly, the possession must not be for too transient a period."

35. In *Southern Railway* Lord Russell considered, in summary, that there was a general principle that if the owner of the hereditament retains general control over the occupied parts then he will be in rateable occupation, whereas if he retains no control, he is not.

36. Most recently, in *Mazars* the Supreme Court held that identifying whether there is a single hereditament or multiple hereditaments is not simply a question of contiguity or a common occupier, but one relating to the ability for an occupier to enjoy the use of a part separately from the other. However, issues of geography and /or contiguity are not relevant if LHL is in occupation of the whole building and the unit under consideration is the whole building and this is a single hereditament.

37. In the case of Ludgate House I am satisfied that whilst the guardians were physically present, their occupation was heavily restricted and under the control of, and on behalf of, LHL. It is clear to me that LHL, not the guardians, was in fact in paramount occupation of the whole of Ludgate House as a single hereditament. Though VPS were not agents for the purpose of contractual relations, that does not mean that LHL can avoid the actuality of being in control of these premises.

38. The true position is that the guardians are in occupation on behalf of LHL. The question is one of fact and it is clear to me, with regard to the position and rights of the parties, that the occupation of LHL is paramount. VPS are specifically engaged to provide security services, and grant licences in order to do that, but are not given possession or occupation of the premises, and the guardians are not granted exclusive occupation of any part, nor is the extent of areas which may be occupied clearly defined. As such LHL are in possession of the whole building. There are no smaller separate hereditaments which are readily ascertainable either from the agreements or the evidence. In the circumstances I conclude that LHL is in rateable occupation of the whole of Ludgate House as a single hereditament.

Domestic use

39. The Court of Appeal in *Wimborne District Council v Brayne Construction Company Limited and another* [1985] RA 234 found that the "purpose of" in section 66 means the object of the activity in question, not the motive. In that case there was an issue over whether the primary use of the land was to extract gravel for profit or to remove that gravel as a necessary precursor to the operation of a fish farm, and what was the object of occupation as opposed to the motive. Lloyd LJ stated that (a) the same activity can have more than one purpose, (b) a secondary purpose alone is capable of amounting to rateable occupation and (c) each purpose is capable of giving rise to a rateable occupation.

40. The fact that LHL intended to avoid liability for NDR by the use of guardians does not in itself have any impact on the legal issues arising. Despite Mr Forsdick's arguments before me that the purpose of the guardian's occupation was one of residential accommodation, the VPS agreement and licences make clear that their presence was to provide a security function. The provision of living accommodation was as an additional object was the means to achieve that purpose. These licenses were not ordinary residential licences. Both LHL and VPS were instituting a security function to Ludgate House and expressly provided that possession of any part was

not given over to the guardians. Whilst the guardians may have been motivated by the attractiveness of this form of cheaper accommodation, it does not detract from their positive obligations to provide the security functions.

41. The evidence including the plans clearly shows that various parts of the hereditament are stated to be ancillary and it is not argued that they were in use by the guardians. This includes locked and out of bounds areas. These are parts of a commercial building, not areas ancillary to residential occupation, that could not be used for the purposes of living accommodation. The ability was retained to change the living areas, they could be moved or altered in size, with the effect that the whole space was so intermingled that in any event no part could be said to be wholly used for the purposes of living accommodation.

42. I was addressed on authorities on the proper interpretation of whether a hereditament is “wholly or mainly used” for charitable purposes in the context of section 43(6) of the 1988 Act.

43. In *Sheffield City Council v Kenya Aid* [2014] QB 62 the Administrative Court determined that it was necessary to look at all of the evidence and consider the issue on a broad basis, taking into account both whether these was charitable but also the extent or amount of the actual use. Tracy LJ referenced the decision in *English Speaking Union v City of Edinburgh Council* [2010] RA 227 that, concerning all cases where a building is used for a single purpose, “wholly used” is not synonymous with “solely used”.

44. In *Public Safety Charitable Trust v Milton Keynes Council* [2013] EWHC 1237, another case in which there were no competing uses under consideration, the Administrative Court found that Kenya Aid had been properly determined.

45. Mr Forsdick also relied on *South Kesteven DC v Digital Pipeline Ltd*. [2016] 1 WLR 2971 in support of the proposition that a property may be “wholly” used for a purpose even if not all of it is so used (though I note in that case that Elias LJ at [27] considered that if there had been another activity sharing the same premises this would have been material to the "wholly or mainly” question).

46. While Mr Forsdick was technically correct to advance that proposition, there is a need to assess the extent of the use on the facts. Applying a broad consideration to the facts in this case, it is clearly not the case that the whole of Ludgate House, being the hereditament, or any part of it, is wholly in use as living accommodation.

47. In view of this, I am not satisfied that Ludgate House (or any part of it) was used wholly for the purposes of living accommodation. Consequently, Ludgate House cannot fall to be a domestic hereditament, and nor can it be a composite hereditament. It only falls to be valued as a composite hereditament because, for reasons addressed below, that cannot now be changed.

48. Further, given that I am not satisfied that any part of Ludgate House was used wholly for the purposes of living accommodation, I dismiss the argument that the common areas of floor space are appurtenances of domestic accommodation under section 66(1)(b) of the 1988 Act. The example relied upon by Mr Forsdick of

demarcated market stalls in *Brook(VO) v Greggs plc* [1991]RA61 was not analogous to the facts of this case.

49. What was in place was described by Mr Forsdick a classic guardian scheme. Guardian schemes are common and apparently, until this case, had been accepted by the VOA and billing authorities for rate mitigation use, including by local authorities themselves. In my view at Ludgate House LHL has applied a guardianship scheme to a non-domestic building on a vast scale. I do not agree with Mr Forsdick's characterisation that doing so simply meant that it was providing more housing to more people without creating any discernible downsides. Owing to the nature of the building and the arrangements, the legal framework it tried to impose in fact defied reality and logic. Each case must be determined on its facts, and the scale of the building and the nature of the occupational licences tipped the scales far away from LHL. I considered the circumstances as to the routes of passage used by the guardians to be contrived and counter-factual, unnatural in a domestic context.

Valuation

50. As summarised at paragraph 30, the rateable value of a non-domestic hereditament is the amount of rent at which the non-domestic hereditament might reasonably be expected to let at on the antecedent valuation date.

51. Following the longstanding principle of *rebus sic stantibus,* the hereditament must be valued as it stands on the material day. On the material day Ludgate House was, in my finding, an office. It falls that it must therefore be valued as such.

52. I agree with the LBS primary argument that Ludgate House was all non-domestic, but that (owing to the issue of the effective date addressed below) the VO valuation for the composite hereditament must be adopted.

53. In Mr Harris's evidence, he concluded that Ludgate House had no value as an office on the basis that a hypothetical tenant would not be prepared to accept the presence of the guardians with access throughout, though he had not read the licences when he formed his view. However, in determining the value for rating, it is necessary to assume the hereditament is vacant and to let, consequently, the presence of the guardians falls to be disregarded in any such valuation. The challenge to the independence of his evidence was not fully made out, therefore I made an analysis of its content which nevertheless had shortcomings. As an alternative, I would accept the VO approach to valuation of that composite hereditament as a proper, though perhaps original, one on the facts of this particular case.

54. The parties have agreed that a base rate of £320/m^2 is the appropriate price per square metre applicable to Ludgate House. However, LHL contended that a further 5% reduction to the rateable value should be allowed to reflect disturbance suffered from nearby construction works at 1 Blackfriars. It sought to compare Ludgate House to Guy's Hospital and the construction works affecting that hereditament;

which had been given a 5% allowance by the VO. However, I am not satisfied that Ludgate House and Guy's Hospital were at all comparable, in nature, scale or impact of the relevant works, the latter being a major infrastructure project. I am not satisfied, on the limited evidence before me, that the disturbances suffered were of a similar nature.

Effective date

55. Finally, I am required to determine whether the effective date of the VO's alteration was correct.

56. Regulation 14(7) of the ALA Regulations provides a protection from alterations having retrospective effect where they are the result of an inaccuracy otherwise than by an error or default of the ratepayer. LHL seek to argue that this regulation applies to this case and therefore that the effective date of the alteration to the list should be at the date of the amendment by VO notice in May 2017. I reject that contention however as in this case the effect of the VO notice was a new composite hereditament which had not previously appeared in the list.

57. The Court of Appeal in *Lamb & Shirley v Bliss (VO*) [2001] EWCA Civ 562 considered Regulation 13(8A) of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, which has been replicated at Regulation 14(7) of the ALA Regulations. In that instance, the Court held that the provision can only be construed as applying where there has been an increase in the rateable value of a single hereditament, not where the hereditament itself has changed (in that case the entry of a new hereditament by the merging of multiple hereditaments).

58. I note that Mr Forsdick contended that *Bliss* was wrong and decided *per incuriam* (without due regard to the law or the facts) on the basis that it does not accord with Article 1, Protocol 1 of the European Convention of Human Rights and was made without the Court of Appeal having been referred to the judgment in *Holland v Ong* [1958] 1 QB 425. He also referred me to the jurisprudence of the European Court of Human Rights on this point.

59. I do not however consider that the facts support a state error and, whilst being cautious in commenting on matters beyond my jurisdiction, I observe that it is the nature of the statutory rating scheme that another interested party, in this instance LBS, was entitled to make a proposal following the alterations of the 27th November 2015. On the facts, the VO made a decision, and LBS thereafter made a proposal of which LHL was clearly aware. That is the nature of the statutory scheme. LHL knew the state of Ludgate House and the evidence showed that LHL exercised its own judgement, on the advice of their experts, in implementing the guardian scheme as they felt appropriate, and considering whether they had taken the correct action to mitigate their rates liability. Further, it was clear from the evidence-in-chief given by Mr Jayawardene that consideration had been given to whether to place more guardians.

60. Whilst the resulting double taxation on the composite hereditament was acknowledged, in fact I do not consider that Ludgate House was a composite hereditament - it has merely been charged as one and this is to the advantage of LHL. I accept the LBS substitute valuation.

61. The effective date of the VO's alteration being subject to appeal, I am in a position to correct the material and effective dates, given the evidence, to the 1st July 2015.

Disposals

62. The summary of my conclusions is that Ludgate House is wholly non-domestic with effect from the 1st July 2015.

63. The appeal by LHL (584029623163/537N10) is allowed in part. Pursuant to regulation 38 of the VTE Regulations, I order the VO, within two weeks, to VO to alter the entry in the list to take effect from the 1st July 2015.

64. The appeal by LHL (584029623142/537N10) fails and accordingly must be dismissed. However, the effect of regulation 38(5) of the VTE Regulations would be to restrict an increase in rateable value to date of my order, and thus on the facts of this case such an order would be otiose.

Agreed Disposals

65. As set out above, the list entries for Ludgate House were deleted from the 25th June 2015 and the 1st December 2015. It must therefore follow that the VO had determined this proposal (584026075915/537N10) was well-founded or at least is now against a historic entry in the list, which has not been pursued further before me. Thus, I find that this appeal need not be considered further by the Tribunal and is dismissed.

66. It was agreed by the parties that the proposals 584026803065/537N10 and 584026803242/537N10 made by LBS whilst not technically well-founded, are now historic and need not be considered by the Tribunal further. They are dismissed.

67. Finally, at the commencement of the first day's hearing the parties jointly sought an adjournment of proceedings relating to the most recent appeal (584029795308/541N10), described at paragraph 12 above. Mr Forsdick confirmed it was a protective appeal that, dependent on the outcome of the proceedings in the earlier appeals, may or may not be relevant. I was satisfied that this appeal should be adjourned pending the conclusion of the proceedings on the remaining appeals and ordered accordingly.