Judgments

QBD, ADMINISTRATIVE COURT

CO/0046/2014

Neutral Citation Number: [2015] EWHC 973 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Thursday, 5 March 2015

B e f o r e:

MR JUSTICE HOLGATE

Between:

JOHN REEVES (VALUATION OFFICER)

Claimant

v

VALUATION TRIBUNAL FOR ENGLAND

Defendant

and

(1) TULL PROPERTIES

(2) SOUTH GLOUCESTERSHIRE COUNCIL

Interested Parties

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165 Fleet Street London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7831 8838

(Official Shorthand Writers to the Court)

Mr Guy Williams (instructed by HMRC Solicitors) appeared on behalf of the **Claimant**

The Defendant did not appear and was not represented

The Interested Parties did not appear and were not represented

J U D G M E N T

(Approved)

MR JUSTICE HOLGATE

1. The Claimant is the valuation officer for the area of South Gloucestershire Council ("the Council") under section 41 of the Local Government Finance Act 1988. He is responsible for compiling the non-domestic rating list for that area. It is by reference to the list that business rates are levied by the Council as the billing authority on rateable units of property within its area, referred to as "hereditaments".

2. The first interested party, Tull Properties Limited, is the owner of Beluga House, Whale Wharf, Littleton-upon-Severn, Bristol. The property was built in the 1980s. It was entered in the 2000 rating list, but deleted in 2003 after having been vandalised.

3. A new list was compiled on 1 April 2005 and was to last until 31 March 2010.

4. In 2007 the valuation officer entered Beluga House in that list. Subsequently he agreed to delete that entry on the grounds that it was incapable of being beneficially occupied and therefore did not constitute a hereditament for the purposes of the 1988 list. That was because works were then carried out to the property with a view to bringing it back into use.

The rating of new buildings

5. The general legal principle is that a building in the course of construction is treated as not constituting a hereditament for rating purposes because it cannot be occupied for its intended purpose (Arbuckle Smith & Co Limited v Greenock Corporation [1960] AC 813). The same principle may also apply where a building cannot be occupied while it is being modified so that it may be used for a new purpose. But where a newly constructed or altered building becomes capable of occupation for its intended purpose, it is then treated as a hereditament which may be entered in the rating list (Porter (Valuation officer) v Trustees of Gladman Sipps [2011] RA 337, paragraph 41).

6. These principles are supplemented by the completion notice code contained in section 46A and Schedule 4A of the 1988 Act. Two types of notice may be served. First, where a billing authority is of the view that a new building can reasonably be expected to be completed within three months, the authority is to serve a completion notice on the owner of the building as soon as reasonably practicable (Schedule 4A, paragraph 1(1)). The notice must specify the completion day proposed by the authority (paragraph 2(1)), being no later than 3 months from the date of service.

7. The second type of notice covers a situation where the billing authority considers that a new building has already been completed (paragraph 1(2)), in which case the completion date in the notice must be the date upon which it is served (paragraph 2(3)).

8. In either case, if the owner does not agree with the completion date specified in the notice he may appeal to the Valuation Tribunal for England ("VTE") under paragraph 4(1). The only ground of appeal under that provision is that the building to which the notice relates has not been, or cannot reasonably be expected to be, completed by the date stated in the notice.

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?

11. Paragraph 7 requires the billing authority to supply to the valuation officer a copy of any completion notice served by it and to notify the valuation officer if the notice is withdrawn, or if a paragraph 3 agreement is reached. Schedule 4A makes no provision for the valuation officer to be a party to, or to take part in, the appeal.

12. The effect of section 46A(2) and (3) of the 1998 Act is that where the building to which a completion notice

relates is not completed by the completion day given by Schedule 4A (which in the absence of an agreement between the owner and the authority will be either the date determined by the Tribunal or the date of the notice), then the building is deemed to have been completed on that day for the purposes of section 42 of the Act. Thus, under the completion notice code a new building may be entered in the rating list as a hereditament from that deemed completion date. But the procedure under this code is only available in relation to "a new building".

13. Section 46A(6) extends the notion of a new building to include a building produced by the structural alteration of an existing building where that building is comprised in a hereditament, which, by virtue of the alteration, becomes, or becomes part of, a different hereditament.

14. I have said that the completion notice code supplements the general law summarised in Porter because, even where a completion notice is not served, a new building can be entered by the valuation officer in the list, using his power to alter the list directly, when he judges that building to be capable of occupation (see Aviva Investors Property Developments Ltd v Whitby [2013] UKUT 0430 (LC) at paragraphs 21 to 27). Likewise if it should be decided that a completion notice was ineffective, for example, because of a failure to serve the notice correctly, or invalid because it does not relate to a new building within section 46A(6), the valuation officer is not deprived of his usual powers to enter a new or altered building in the rating list when he considers it to be capable of occupation and thus rateable. A decision that a completion notice is invalid simply means that the building in question cannot be rated on the basis of the deeming provisions in section 46A and Schedule 4A of the 1988 Act.

Current proceedings

15. In this case the Council served a completion notice in respect of Beluga House, on 14 August 2008, with a completion date of 20 August. As a result of that notice the valuation officer re-entered the property in the 2005 rating list with effect from 20 August.

16. Tull Properties appealed against the completion notice to the VTE. The parties before the Tribunal were the Council and Tull Properties. The hearing took place on 22 July 2013 and the Tribunal issued its decision on 7 October 2013. It appears from paragraph 1 of the decision that both parties invited the Tribunal to consider, as a preliminary issue, whether the completion notice was valid. The Tribunal decided that it was invalid because the alterations in question had not resulted in a new building (see paragraphs 26 to 28).

17. The Tribunal received written submissions as to the effect of its decision and the order that should be made. It decided to make the following order:

"The appeal is allowed, the completion notice is declared invalid and therefore quashed and the subject hereditament is to be deleted from the 2005 rating list."

18. The Court has been told that in this case the ratepayer did not make, as it could have done, a statutory proposal challenging the inclusion of Beluga House in the list. The time limit for making such a proposal in relation to the 2005 list expired on 1 April 2010.

19. In this claim for judicial review, brought with the permission of Collins J granted on 8 October 2014, the valuation officer contends that the Tribunal had no power to order the deletion of the hereditament, Beluga House, from the rating list.

20. As is usual in cases of this kind the Tribunal has not appeared before the Court. Although Tull Properties was represented before the VTE by leading counsel specialising in this area, it has chosen not to be represented in these proceedings or to make any submissions. Accordingly the court is grateful to Mr Guy Williams, who appeared on behalf of the valuation officer, not only for his clear and helpful submissions but for his answers to a number of

questions from the bench.

21. In paragraph 7 of the skeleton for the valuation officer it is accepted that the VTE had jurisdiction to determine the validity of the completion notice. It is also made plain that the valuation officer does not raise any arguments as to whether the Tribunal's decision in this case on the invalidity of the notice was legally correct. The only challenge made is to the order requiring the 2005 list to be altered by deleting Beluga House, which the Tribunal decided should be the consequence of its decision that the notice was invalid.

Whether invalidity of a completion notice may be challenged under Schedule 4A

22. I note that in UKI (Kingsway) Ltd v Westminster City Council [2014] RA 367 the billing authority submitted that paragraph 4 of Schedule 4A limits the issue, which may be determined by the VTE on an appeal in respect of a completion notice, to consideration of the date deemed for completion. Accordingly it was said that issues as to the validity of such a notice cannot be raised in an appeal of that kind (see paragraph 51). The Tribunal responded that because the scope of its jurisdiction in this respect might be considered in the present proceedings for judicial review, it would not say anything further on that point. However, as I have said, the Claimant does not take issue on this particular jurisdictional issue and so it is not a matter for me to determine.

23. I would simply make a few observations in order to provide assistance in the future. First, the Tribunal has decided that in an appeal concerning a ratepayer's proposal to delete a building entered in a rating list on the back of a completion notice, the "validity" of that notice can be challenged before, and determined by, the Tribunal (Prudential Assurance Company Limited v Valuation Officer [2011] RA 490. On that basis it would appear that a suitable remedy is available for ratepayers who wish to challenge the validity of a completion notice.

24. Second, given the language used in the 1988 Act, issues as to whether the Tribunal has jurisdiction to determine in a Schedule 4A appeal the validity of a completion notice, and if so to quash a completion notice or to declare the same to be invalid, deserved further consideration. Indeed, at paragraph 6 of the decision in the Prudential case the Tribunal took a completely different view of its jurisdiction, in contrast to the present case, by stating that an appeal against a completion notice under Schedule 4A is limited to challenging the date of completion and does not cover "any wider or more fundamental aspects".

25. Third, in the present case, unlike Prudential, there was no issue between the parties to the appeal (Tull Properties and the billing authority) about the Tribunal's jurisdiction to determine the invalidity issue. Self-evidently jurisdiction cannot be conferred on a statutory tribunal by the consent of the parties.

26. All of these points only serve to emphasise that the question whether there is jurisdiction in a schedule 4A appeal to consider the invalidity of a completion notice needs to be determined in a contested case, or at least one where an undisputed assumption that jurisdiction exists is tested with the assistance of counsel appointed as a friend of the court. Full argument and citation of the relevant statutory provisions and authorities would be necessary.

The review process

27. Having considered the Tribunal's decision, the VOA sent an email to the Tribunal, on 5 November 2013, suggesting that the order to delete the hereditament be set aside because of a "procedural irregularity", namely the lack of any power to make such an order. It was also pointed out that no proposal had been made by the ratepayer or owner to seek the deletion of Beluga House, pursuant to regulation 4(1)(h) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009 SI No 2268 ("the 2009 Regulations"). There was an outstanding proposal, which had been referred to the Tribunal as an appeal in March 2009, but I am told that that only concerned the rateable value of Beluga House and not the separate issue as to whether it should have been entered in the list in August 2008.

28. The issue in the present case is simply whether, on the assumption that the Tribunal had jurisdiction to determine whether the completion notice was invalid, or invalid on the ground that it did not relate to a "new

building", the Tribunal also had jurisdiction to order the deletion of the property from the rating list. The valuation officer contends that it did not.

29. Emails were exchanged between the Tribunal and the VO up and until 13 December 2013. On 17 December the tribunal issued a further decision. In summary the tribunal decided:

(i) the VO was not able to make an application for the Tribunal to review it decision of 7 October 2013 under regulation 40 of the Valuation Tribunal for England (Council Tax and Rating Appeals (Procedure) Regulations 2009 SI 2009 No 2269 ("the VTE rules") because he had not been a party to the appeal (regulation 40(1));

(ii) However, the Tribunal had the power to direct a review of the earlier decision or part thereof of its own motion (regulation 40(2)) and in this case it did consider whether it should do so in the light of the Valuation Officer's representations;

(iii) The fact that the valuation officer had not been a party did not give rise to any procedural irregularity. There had been no procedural irregularity in the making of the order. Accordingly, the Tribunal had no power to review its decision (see regulation 40(5)(d) and regulation 40(6)(a));

(iv) The valuation officer's remedy to deal with the vires of the Tribunal to make the order of 8 October 2013 would be to apply for judicial review;

(v) Even if there had been procedural irregularity it would not have been in the interest of justice to set aside the order (see regulation 40(6)(b)). Once it had been found that the completion notice was invalid it followed that the property should be deleted from the rating list.

30. The decision not to set aside the order of 8 October 2013 is not itself the subject of the claim for judicial review, however I think it would be helpful to set out some comments on that aspect at the end of this judgment.

Relevant legislation

31. The VTE is a statutory tribunal and so the question of whether it was empowered to make the order challenged depends upon the proper construction of the relevant legislation.

32. The starting point is Part III of the Local Government Finance Act 1988 which deals with non-domestic rating. In National Car Parks Limited v Baird (Valuation Officer) & Anr [2005] 1 All ER 53 Sir Andrew Morritt, Vice-Chancellor, helpfully analysed key provisions of the primary legislation, the essential aspects of which, for the purposes of this case, have remained unaltered. In summary he held:

(i) Section 41(1) imposes a duty on the valuation officer to compile and then maintain the non-domestic rating list for which he is responsible (paragraph 5). It is a duty to maintain an accurate list (paragraph 42);

(ii) Section 41(1) carries with it an implicit power for the valuation officer to alter the list (paragraph 20;

(iii) Once a list has been compiled by the valuation officer, his duty under section 41 to maintain that list is required to be performed in accordance with Part III of the 1988 Act. Part III includes section 55 and the regulations made thereunder for the alteration of the list by a valuation officer, whether of his own motion or pursuant to a proposal, or pursuant to an order of the Valuation Tribunal or the Upper Tribunal under those regulations (paragraphs 6, 20 and 42).

33. I would add that the responsibility for compiling and maintaining the list and therefore for making any alterations to it is borne solely by the valuation officer. In order to discharge that responsibility he has to obtain and

assess relevant information and apply relevant legal principles using, wherever appropriate, his own professional judgment. The question of whether a valuation officer can be directed to alter the list, therefore, must depend upon the identification of a statutory power conferred upon another body.

34. Sections 43 and 45 of the 1988 Act impose liability for rates in relation to occupied and unoccupied hereditaments respectively entered in the rating list. Thus, the statutory mechanism by which a list can be altered so as to include or delete a property can be of crucial importance to a landowner.

35. Section 55 of the 1988 Act is headed "Alteration of List" and is the key provision in the 1988 Act dealing with that subject. It enables a set of regulations to be made for the alteration of a list. Section 55(2) empowers the Secretary of State to make regulations about alterations by valuation officers of rating lists themselves. Section 55(3) enables regulations to be made with regard to alterations by a valuation officer of the list, particularly with regard to notification of such alterations.

36. Section 55(4) states that regulations may include provision as to who, other than a valuation officer, may make a proposal for the alteration of a list with a view to it being accurately maintained, and also the manner and circumstances in which such a proposal may be made. Section 55(5) provides that the regulations may include rules providing that where there is a disagreement between a valuation officer and another person making a proposal for the alteration of the list, or indeed about the validity of any such proposal or the accuracy of the list, an appeal may be made to the VTE (see also subsection (8)).

37. Schedule 11 of the 1988 Act contains a number of provisions dealing with tribunals. Paragraph A1 constitutes the Valuation Tribunal for England. Paragraph A2 defines the jurisdiction of the VTE so as to include, amongst other things, matters dealt with pursuant to regulations under section 55 and also appeals pursuant to paragraph 4 of Schedule 4A. Paragraph 8(4) of Schedule 11 enables regulations to be made in relation to the VTE which include provision for:

"(e) authorising or requiring an order to be made in consequence of a decision;

(f) that an order may require a register or list to be altered (prospectively or retrospectively);"

38. Paragraph 11 of Schedule 11 provides for regulations enabling appeals to be made on certain matters to the High Court or to the Upper Tribunal.

39. From the provisions in schedule 11 to which I have referred, it is plain that Parliament legislated that the VTE's power to make orders would be conferred and defined by regulations. In other words, Parliament envisaged that the scope of the Tribunal's power to make orders when dealing with appeals would itself be defined through regulations under schedule 11.

40. Having reviewed the primary legislation I then turn to the relevant provisions in the delegated legislation. First, the 2009 Regulations. I note that these were enacted primarily under section 55(2) to (6) and 7A and not under Schedule 11. One would not expect to find in these regulations, therefore, anything which bears upon the Tribunal's powers when determining appeals. Nonetheless, for completeness, I have considered the relevant provisions. Regulation 4 defines the circumstances in which a ratepayer may make a proposal to alter a rating list. Paragraph (1) sets out the circumstances in which such a proposal may be made and subparagraph (h) refers, in particular, to:

"a hereditament shown in the list ought not to be shown in that list."

41. It is submitted, on behalf of the valuation officer, and I accept, that that is a provision which enables a ratepayer to challenge the inclusion of a new building in a rating list on the basis that it is not yet capable of occupation; alternatively, where relevant, on the basis that the building should not have been included in the list on the back of a completion notice. That indeed is the basis upon which the VTE proceeded in the Prudential case.

42. Regulation 5(1) deals with the time limits within which proposals must be made for the 2005 rating list and subsequent lists. Regulation 5(1) provides that a proposal to alter a list compiled on or after 1 April 2005 may be made at any time before the day on which the next list is compiled. So in relation to the 2005 list a proposal had to be made, subject to subparagraph (2) which is not relevant in the present case, by no later than 1 April 2010.

43. Regulation 6 provides for the matters which must be stated in a proposal. In summary, regulation 6(1)(c), (d) and (e) require that a proposal should identify the property to which it relates and the respects in which it is proposed the list be altered. The proposal must also include a statement of the grounds for making the proposal and, for the purposes of this case (that is to say a proposal under regulation 4(1)(h)), a statement of the reasons for believing that those grounds exist.

44. Regulation 8 provides a mechanism for dealing with any disputes as to whether such a proposal is invalid. Regulation 10 enables the valuation officer to alter the list in accordance with a proposal if he is of the opinion that it is well-founded. Under regulation 11 procedures are set out for the withdrawal of a proposal. Regulation 12 enables the valuation officer and other relevant parties to reach an agreement as to how the list should be altered in terms other than the proposal.

45. Regulation 13 is important in the present case because it deals with the circumstances in which the valuation officer is of the view that a proposal is not well-founded, and there is no agreement under regulation 12. In that event he is required to refer the disagreement to the VTE as an appeal by the proposer against his refusal to alter the list in accordance with the proposal.

46. The effect of this legislation is that the contents of the proposal define the ambit of an appeal under regulation 13 (see, for example, the case law summarised in Ryde on Rating and the Council Tax at paragraph F136).

47. Regulation 14 deals with the time from which an alteration when made to the list is to have effect, as regards the 2005 and subsequent lists. Regulation 14(3) and (4) provide for the date from which an alteration relating to a completion notice is to take effect. Regulation 14(8) imposes a long-stop date for the exercise by the valuation officer of his power to make alterations directly to the rating list. The effect is that he may not alter the list after the first anniversary of the day on which the next list is compiled. So, in relation to the 2005 list, alterations of that nature had to be made by no later than 1 April 2011.

48. The only other provision in the 2009 Regulations of note is regulation 19, which deals with appeals against completion notices and also the imposition of penalties. It provides, for example, that a person who wishes to appeal against a completion notice has to send a notice of appeal to the VTE so that it is received within 28 days from the date on which he received the completion notice served by the billing authority.

49. None of these provisions in the 2009 Regulations is concerned with the powers of the VTE when determining an appeal under schedule 4A of the 1988 Act.

50. From this review of the 2009 regulations it can be seen that there is nothing which would enable the Tribunal to direct the valuation officer to alter the rating list. The relevant powers of the VTE to make any direction of that kind are contained instead in the VTE Regulations 2009. Those regulations were made not only under sections 55(2) to (6) and 7A but also Schedule 11.

51. Regulation 2(1) of the VTE Regulations 2009 defines the appeals to which the regulations apply and they include, in subparagraphs (c) and (d), appeals under regulations 8 or 13 of the 2009 Regulations, that is to say an appeal relating to the invalidity of a proposal or an appeal derived from a proposal to alter the rating list. The regulations also apply to an appeal under paragraph 4 of Schedule 4A to the 1988 Act, that is to say an appeal against a completion notice.

52. Part 3 of the VTE Regulations 2009 deals with decisions and orders made by the Tribunal. Regulation 36 enables the VTE to give a decision orally at a hearing, but subparagraph (2) requires additionally that a notice of the decision must be given in writing to each party as soon as reasonably practicable thereafter. Regulation 37 imposes, in subparagraph (1), an obligation on the VTE to give reasons for its decision.

53. Regulation 37(2) deals with appeals against a completion notice. In such a case the VTE is required to send a notice of its decision and, where the decision relates to a hereditament, the obligation is to send that notice to the valuation officer for the relevant authority. That is the only provision in the VTE 2009 Regulations dealing with the subject matter of decisions and orders in relation to an appeal under Schedule 4A.

54. Regulation 38 deals with "orders other than consent orders". Subparagraphs (1) to (3) deal with appeals in relation to Council Tax. Subparagraph (4) is concerned with an appeal under regulation 13 of the 2009 Regulations, that is to say a disagreement as to a proposed alteration. In that circumstance the VTE is empowered to make an order requiring a valuation officer to alter a list in accordance with any provision made by, or under, the 1988 Act.

55. Two things are to be noted about that provision: first, it only applies to an appeal under regulation 13 and it does not apply to an appeal under Schedule 4A of the 1988 Act. Second, there is no provision in the 1988 Act, or *under* the 1988 Act, that is to say a regulation, which requires a valuation officer to alter the list in consequence of a decision made by the VTE in an appeal under Schedule 4A that a completion notice is invalid.

56. Regulation 38(9) requires the valuation officer to comply with an order under this regulation within two weeks of the day of its making. Regulation 38(10) provides that:

"An order under this regulation may require any matter ancillary to its subject matter to be attended to."

57. That provision is of no relevance in the present case because it is simply dealing with matters which are ancillary to orders made under regulation 38, and, as I have held already, they do not include orders consequent upon a decision by the Tribunal on an appeal under Schedule 4A.

58. I therefore conclude from this review of the legislation that the Tribunal in this case was not empowered to make the order that the subject hereditament, namely Beluga House, be deleted from the 2005 rating list.

59. I do not find that conclusion surprising for a series of reasons. First, the completion notice code simply provides a deeming provision for the completion date of new buildings. However, a completion notice may be invalid simply because it was incorrectly served or because the new structure does not fall within the definition of a new building, that is to say reasons which have nothing to do with the date when a new development is completed. Second, treating a completion notice as invalid merely prevents reliance upon that notice in order to create a deemed completion date. Thirdly, that does not alter the continuing duty of the valuation officer under section 41(1) of the 1988 Act to maintain an accurate list based on the information that comes to his attention. In most cases a building is likely to be completed at some point in time, if not by the date deemed to be the completion date under Schedule 4A. Fourthly, it seems to me to have been unlikely that Parliament would have intended to confer on the VTE a power to direct the deletion of a hereditament simply because a completion notice is held to have been invalid and, as a result, the deeming provisions in section 46A and Schedule 4A do not apply, bearing in mind the valuation officer's continuing duty under section 41(1) and the fact that he is not the originator of a completion notice.

60. I would add, in relation to paragraph 13 of the VTE's decision in December 2013, a few comments. The making

by this Court of an order to quash the Tribunal's order to delete the hereditament from the rating list does not render the VTE's decision on the invalidity of the completion notice academic, or indeed improperly require the ratepayer to re-litigate an issue. The position remains that the deeming effect of the completion notice could not be relied upon in this case. The correct procedure for the ratepayer to have followed would have been to make a proposal challenging the entry of Beluga House in the list. That could have been dealt with at the same time as any completion notice appeal. That course was open to the first interested party but was not taken.

61. Secondly, if the first interested party had followed the course of making a proposal challenging the entry of Beluga House in the list, the valuation officer at that time could have reconsidered his position and the information available to him and, in particular, he could have done so before the long-stop date of 1 April 2011. For example, he could have decided to maintain the list perhaps on a different basis without necessarily having to rely upon the challenged completion notice.

62. Thirdly, as happened in this case, the completion notice was found to be invalid not on the basis that the building had not been completed by 20 August 2008, but on the basis that the structure did not fall within the definition of a new building so as to engage section 46A and Schedule 4A. However, the effect of the VTE's quashing order, if this court should not intervene, would be to require the property to be removed from the 2005 list altogether and the valuation officer would be unable, at this point in time, to take any further action with regard to that list.

63. Properly considered there is nothing unmeritorious about the judicial review claim which the valuation officer has brought in this case.

64. For all those reasons the order of the Court must be that the order made by the Valuation Tribunal for England requiring Beluga House, Whale Wharf, Littleton-upon-Severn, Bristol to be deleted from the 2005 rating list is quashed.

65. I acknowledge that in the emails between November and Decmber 2013 the Tribunal did not receive as much assistance on the jurisdictional point as has been provided to the Court. That may explain why the Tribunal suggested in paragraph 10 of it decision dated 17 December 2013, that any excess of power should be dealt with by way of an application for judicial review. However, if in a future case the Tribunal should come to the *clear* conclusion that it has made an order in excess of its statutory powers, then it would seem to me that the Tribunal should consider the possibility of exercising its power under regulation 40 to treat any such error as a procedural irregularity and to set that order aside (see by analogy JS v Secretary of State for Work and Pensions [2013] UKUT 100 (AAC) paragraph 28 and Scriven v Calthorpe Estates [2013] UKUT 0469 (LC).

66. The philosophy underlying the introduction by the Tribunals, Courts and Enforcement Act 2007 of a power on the part of a First-tier Tribunal to review its decision, is that in *clear* cases of error, which do not require to be dealt with by an appeal, it is generally preferable for the matter to be corrected by the Tribunal itself rather than for it to be taken to the Upper Tribunal, or indeed to the High Court, on a claim for judicial review. Plainly if such a situation should arise the Tribunal would need to take steps to ensure that representations from any party affected by a proposed review are taken into account.

67. Looking at the phrase "procedural irregularity", it seems to me that, "irregularity" should not be confined to errors less serious than an excess of power, and the Tribunal's "procedure" should be taken to include the issuing of its judgments and the making of orders consequential thereon.

68. Bearing in mind the comments made by the Tribunal in its review decision, I would add that where such a jurisdictional error is made out to the Tribunal's clear satisfaction, it is difficult to see how it could ordinarily be said that it would be against the interests of justice to set aside an order made in excess of power. To the contrary, it is fundamentally in the interests of justice that any order made by a statutory tribunal should fall within the ambit of its statutory powers. A party who benefits from an ultra vires order could not normally claim to be prejudiced by the setting aside, upon a duly made application, of an order which he should never have been granted in the first place.

MR JUSTICE HOLGATE: I do not think there is any need to make any further order, Mr Williams.

MR WILLIAMS: No, there is nothing arising other than our thanks for such a detailed judgment in the time available.

MR JUSTICE HOLGATE: I did not think it was that detailed. If it was, I apologise for that.

MR WILLIAMS: I am very grateful.

MR JUSTICE HOLGATE: I am grateful to everybody for their patience in attending again this afternoon.