THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2010 Rating List; Workshop and premises; Deletion; Local Government Finance Act 1988, Schedule 6; Newbigin (Valuation Officer) v S J & J Monk (Appellant) [2017] UKSC 14; property not being redeveloped; no overt act; cost of repairs considered to be economic; Appeal Dismissed

RE: 76 Adelaide Road, Southall, London, UB2 5PY

APPEAL NUMBER: 527027475707/538N10

BETWEEN:	Mrs Wender Kaur Kakar (owner) Represented by West London Solicitors	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mr M Heslop-Mullens (Senior Member) Mr M Nwosu
CLERK:	Mr J Massey
REMOTE HEARING:	9 December 2021
APPEARANCES:	Mr G Hodkinson - counsel for the Appellant Mr N Woodward of Stockdale LLP – expert witness for the Appellant Mr A Mouland – advocate for the Valuation Officer (Respondent) Ms S Saloranta – expert witness for the Respondent

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Summary of Decision

1. The appeal was dismissed and the rating list entry was left unchanged.

Introduction

2. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as having been overlooked by the panel.

3. 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.

4. 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. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

5. The appeal was brought in respect of the following: The Appellant submitted a proposal dated 1 August 2016 to delete the assessment in the 2010 Rating List of £79,000 Rateable Value from 1 May 2015. The appellant sought a deletion of the entry on the grounds that the subject property was in such a poor state that it was unlettable.

6. The appeal property was a single storey workshop with two ancillary offices constructed in the 1980s/1990s with a steel portal frame and pitched sheet clad roof.

Issues

7. The Appellant sought a deletion of the entry in the 2010 Rating List from 1 May 2015. The Valuation Officer argued that a deletion of the entry was inappropriate and sought a dismissal of the appeal.

Evidence and submissions

8. The Appellant's solicitors had provided a statement of case which contained the grounds of appeal, scope of works required and estimated costs, photographs of the property and a copy of the Supreme Court decision in *Newbigin (Valuation Officer) v S J & J Monk (Appellant)* [2017] UKSC 14.

9. It was the Appellant's case that the property was bought as a speculative investment with an aim to redevelop the site to create two new apartment buildings. Planning permission has not yet been granted and the appeal property remains a vacant industrial unit which requires some repair work before it can be offered to let. It was argued by the Appellant that the repairs required to put the property into a state of reasonable repair would not be considered economic for a reasonable landlord.

10. In support of this, the Appellant had provided a report detailing the scope of works required to return the appeal property to a state of reasonable repair as a workshop and premises, and estimated renovation costs of £700,000.

11. The Respondent had provided a statement of case which included statements of truth by the advocate and the expert witness, background to the appeal, map and plan of the subject property, the Respondent's case and an expert witness report. In his case, the Respondent stated that the appeal property was not undergoing demolition or works of reconstruction which

would allow it to be removed from the rating list. In its expert witness report, the Respondent had provided an initial estimate of the costs of repair at £180,000 and considered that the cost of these repairs would be considered to be economic by a hypothetical landlord bearing in mind the potential annual rent achievable if the works were carried out. The Respondent stated that the costs put forward by the Appellant were excessive as they included a large element of improvement works and did not reflect the costs of works required to merely put the property in a reasonable state of repair.

12. At a previous hearing on 19 December 2019, the panel adjourned this appeal following a joint application from the parties for a joint inspection of the appeal property to be carried out. Directions were issued to carry out a joint inspection, and for both parties to prepare a schedule of repair works required and to identify their respective areas of disagreement. As a result of this adjournment, the Appellant and Respondent provided amended repair cost schedules totalling £394,000 and £232,805 respectively.

13. This appeal was subsequently relisted to a remote hearing on 26 March 2021. Unfortunately the Appellant's expert witness who was due to attend that hearing was unexpectedly absent and the Appellant had made an application for the hearing to be adjourned. The senior member at that hearing adjourned this appeal and directed that the Appellant confirm whether or not a new expert witness would be appointed.

14. The Respondent had also submitted a revised statement of case which the senior member at the hearing on 26 March 2021 determined did not contain any new evidence. The admission of the Respondent's revised statement of case dated 26 February 2021 was therefore allowed.

15. Subsequent to the parties being notified of the current hearing of this appeal, the Respondent had submitted to the tribunal and the Appellant on 9 November 2021 a revised expert witness report as a result of discussions with the Appellant's replacement expert witness. This report detailed the Respondent's revised repair costs totalling £267,000, which reflected typical costs in the location of the appeal property at the AVD of 1 April 2008. It also referred to the total cost of repairs of £394,000 as detailed in the Appellants cost plan date 21 July 2021 as prepared by Stockdale LLP. It noted that these costs were based on 2021 prices in the location of the appeal property, and adjustment of these costs to April 2008 values provided an estimated repair cost of £265,000.

Decision and Reasons

16. Both parties had agreed that the proposal is to be treated as a material change of circumstances, which means that the material day for this appeal is the day on which the proposal was served on the Respondent, namely 1 August 2016.

17. The panel was required to consider the appeal property as it existed at the material day subject to the repairing assumptions found under Schedule 6 of the Local Government Finance Act 1988, as amended by the Rating (Valuation) Act 1999, which provides the statutory definition of rateable value (RV) -

> *(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions—*

(a) The first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(b) The second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

(c) The third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

18. Reference had been made to the Supreme Court's judgment *Newbigin (VO) v S J Monk* [2017] UKSC 14. The panel paid particular interest to paragraph 22, which stated:

    22. In a helpful intervention, the Rating Surveyors' Association and the British Property Federation submitted that, where works were being carried out on an existing building, the correct approach was to proceed in this order (i) to determine whether a property is capable of rateable occupation at all and thus whether it is a hereditament, (ii) if the property is a hereditament, to determine the mode or category of occupation and then (iii) to consider whether the property is in a state of reasonable repair for use consistent with that mode or category. The first two stages of that process involve the application of the reality principle. At the third stage the valuation officer applies the statutory assumption in para 2(1)(b) if the reality is otherwise. …..

19. The panel was satisfied that as at the material day, there was no evidence before it that a program of works was in place to convert the appeal premises into something other than a workshop and premises, and it therefore remains a hereditament and its mode or category of occupation is still a workshop and premises.

20. The panel accepted from the photographs provided and the schedules of repair works required, that at the material day of 1 August 2016, the appeal property was in a poor state of repair. The question which the panel must determine the answer to, based on the evidence before it was 'is the property capable of economic repair?', or put another way would a reasonable landlord carry out the repairs given their cost and the expected rent attainable for the property.

21. The Appellant had argued that what is economic for one landlord may not be economic for another. In this instance the Appellant had bought the property with a view to redevelop the premises and change its use, therefore it would not be economic to carry out repairs to render it useable as a workshop and premises. The panel was aware that the tribunal receives a lot of appeals from appellant owners who have purchased a property in disrepair but have no intention of undertaking the necessary repairs. Their motive for purchasing the property is merely to demolish it and turn it into something else. Sometimes, they already have planning permission for a change of use. However, if the building or hereditament still exists but it is in disrepair, it should still be valued having regard to the statutory assumptions in line with its last mode or category of use.

22. The RV of the subject property was £79,000 with effect from 1 April 2010, and the panel considered that in line with the definition of rateable value, this would reflect the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on the assumption that it is in a state of reasonable repair but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic. There was no evidence

before it that the compiled list entry at £79,000 for the appeal premises had been challenged by the current or previous ratepayer and the panel therefore concluded that rent achievable for the subject property at the AVD was £79,000 per annum.

23. The panel therefore had to determine whether the costs of repair were such that they would be considered economic by a reasonable landlord who would undertake the repairs rather than accept a lower rent for the property. The cost of repairs, adjusted to 2008 values, had been calculated at £265,000 by the Appellant and £267,000 by the Respondent, the higher figure of which is advantageous to the Appellant for the purposes of this appeal.

24. Based on the rent achievable for the appeal premises at the AVD of £79,000 the panel determined that the cost of such repairs would be recouped by the landlord in less than four years. Given that there was no evidence before it that there were any factors specific to the appeal property or its location which would indicate that the appeal premises would not achieve this rent if the repairs were carried out, such as an oversupply of similar properties, the panel concluded that a reasonable landlord would consider the repairs to be economic.

25. The panel determined that the appeal property was a hereditament and had value. It was not persuaded by the Appellant's evidence that the repairs were uneconomic to carry out, in order to attract a rent for the appeal property, based on a rateable value of the appeal property of £79,000. Having established that the property was not beyond reasonable repair at the material date, the panel dismissed the appeal.

Date: 10 January 2022

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