THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeal; 2010 Rating List; Office and premises; Conversion to Residential Accommodation; Newbigin v S J & J Monk [2017] UKSC 14; *Appeal Dismissed*

RE: 13A High Street, Clapham, Bedford, MK41 6EQ

APPEAL NUMBER: 023528347632/221N10

BETWEEN:	Mr Stephen Singh	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mr M Heslop-Mullens (Chairman)
Mr M Nwosu
CLERK: Mr James Massey

REMOTE HEARING: 9 December 2021

APPEARANCES: Mr S Singh (Appellant)
Mr N Green (Valuation Officer's Representative)

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 appeal was brought in respect of the following: The Appellant submitted a proposal dated 4 February 2016 to delete the assessment in the 2010 Rating List of £17,000 Rateable Value from 12 January 2016. The Appellant sought a deletion of the entry on the grounds that the circumstances affecting the rateable value of the property changed on 12 January 2016 in that it was being converted to domestic accommodation.

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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

6. The appeal property was a business unit and premises, built of brick and tile in the post war period. It is a two-storey detached building located on the main road through Clapham, approximately two miles from Bedford town centre.

7. With the agreement of the parties the panel varied the procedure outlined in the Consolidated Practice Statement PS8- Model Procedure and requested the Respondent to present his evidence first.

Issue

8. The issue for the panel to determine was whether the rateable value of the property should be £nil as proposed by the Appellant or £17,000 as contended by the Respondent. The nil value was based on the physical state of the property on the material day, whilst the £17,000 value was based on the reasonable repair assumption set out in Schedule 6 Local Government Act 1988. The panel had to decide if the correct approach was to adopt the reality principle or the reasonable repair assumption.

Evidence and Submissions

9. Mr Green referred to the Respondent's statement of case, which had been submitted in respect of a previous listing of this appeal on 16 December 2020?. It included, amongst other things, a copy of the proposal, a floor plan of the appeal premises, a map of its location, a copy of the Billing Authority's inspection report, and a copy of the proposal.

10. Mr Green stated that the Respondent VO had removed the subject premises from the Rating List with effect from 23 May 2016 as a result of a report from the Billing Authority. He referred to the supreme court case of case of *Newbigin (Valuation Officer) v S J & J Monk (a firm)* [2017] UKSC 14 which confirmed that where there are major alteration works or substantial refurbishment which render a property incapable of beneficial occupation, it is possible to delete the property from the Rating List for the duration of the works. He stated that although this had been requested, the Appellant had provided no evidence that there were sufficient works being carried out at the material day from which it could be concluded that the works were being carried which were sufficiently substantial to render the premises incapable of beneficial occupation.

11. In support of his assertion that the subject premises remained rateable as a non-domestic property on 12 January 2016, Mr Green referred to an inspection carried out by Bedford Borough Council on 22 February 2016, and a plan of the subject premises which showed that the layout of the premises had not been altered to allow it to become a domestic property.

12. In his proposal, Mr Singh stated that the circumstances affecting the rateable value of the property had changed on 12 January 2016 and the detailed reasons given for this was that there had been a change of use from offices to residential. In his statement of case he stated that the appeal premises had not been used as business premises since his purchase on 12 January 2016, and therefore no business rates should be charged from this date. He stated that the appeal premises remained empty until mid-July 2016 when he moved in with his family.

13. He contended that works had commenced to convert the subject premises as soon as he had purchased it with the removal of the office partitions on the first floor and the construction of new stud walls.

Decision and Reasons

14. Paragraph 2 Schedule 6 Local Government Finance Act 1988 provides

2(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.

15. The central issue was whether the premises should be rated by having regard to the physical condition as they were on the material day or whether para 2(1)(b) of Schedule 6 as amended by the Rating (Valuation) Act 1999 required the valuation officer to assume that they were in reasonable repair. In this case the proposal made by the Appellant sought an alteration to the list due to a material change in circumstances. The proposal was made on 4 February 2016 and this is the material day for the instant appeal.

16. For the appeal to succeed, the Appellant needed to establish that the Supreme Court decision in Newbigin v Monk applied. The case examined the principle of reality in detail and its relationship to the statutory repair assumption. Throughout there are references to a building undergoing redevelopment and/or reconstruction.

17. The panel held from this judgment that the hypothetical rent is determined with reference to the actual physical condition of the hereditament. It was also established from the case law presented; that the intentions of the actual landlord are not relevant at the material day since it is the hypothetical owner who is being considered.

18. Paragraph 15 sets out the view taken by the Supreme Court:

The decision appealed against interprets Schedule 6 to the 1988 Act as entailing a major departure from the reality principle by requiring that the hereditament be assumed to be in a reasonable state of repair for the mode of occupation listed in the rating list, namely as "offices and premises". I do not agree with that approach. In my view, the legislative history shows that the repairing assumption which para 2(1) of Schedule 6 introduced did not supplant the reality principle to that degree.

19. Paragraph 20 expands on the issue:

The 1999 Act can thus be seen as applying principles analogous to those in Wexler, Camden London Borough Council and Saunders (para 16 above) to a hypothetical lease in which the tenant bore the obligation to put the hereditament in repair. In my view the Court of Appeal goes too far in interpreting the 1999 Act as completely displacing the reality principle in relation to both the physical state and the mode of occupation of a hereditament which is undergoing redevelopment. The 1999 Act, by introducing the assumption of reasonable repair at the outset of the hypothetical tenancy ("the repair assumption"), is not addressing the question of whether the premises were capable of beneficial occupation, which, in the context of a building undergoing redevelopment, is a logically prior question. Thus the repair assumption (para 2(1)(b)) applies to matters affecting the physical state of the hereditament (para 2(7)(a)) but not to the mode or category of occupation of the hereditament (para 2(7)(b)).

20. From this it was established that case law distinguished between mere lack of repair, which did not affect rateable value because of the hypothetical landlord's obligation to repair, and redevelopment works that made a building uninhabitable.
21. The judgment means that, if the hereditament is not capable of beneficial occupation, the reality principle applies such that the repair assumption in Schedule 6 2 (1) (b) does not apply.

Are the Premises in a State of Disrepair or Undergoing Reconstruction?

22. As the judgment makes clear, the matter must be assessed objectively with the aim of making an objective assessment of the property on the material day.

23. Mr Green argued that the Appellant had not provided any evidence that the works being undertaken would create a hereditament which was substantially different to that which previously existed, which was a major consideration in determining whether or not the works constituted redevelopment.

24. Mr Singh had not provided details of the program of works carried out but contested that part of the works included the removal of office partitions on the first floor and the installation of new stud walls to create bedrooms on the first floor. He stated that a skip had been ordered on 2 February 2016 to facilitate the removal of the debris from the office partition and referred to a receipt from Wickes for stud wall materials including plasterboard which he stated had been delivered on 23 February 2016.

25. The panel had regard to the report from the inspection carried out by the Billing Authority on 22 February 2016. It noted that there were six photographs depicting what appeared to be empty offices, with floor coverings and electricity and other services still in situ. There was no evidence that any works were being carried out, or had been undertaken by this date, to convert the subject premises to residential accommodation. Mr Singh had been present on the

occasion of this inspection and it would be reasonable to expect that he would have drawn the inspector's attention to any works which were being carried out during the inspection. The panel also noted that the plans submitted of the proposed residential development did not show that any changes had been made to the configuration on either the ground or first floors from that of the existing office premises.

26. In Newbigin all the building's systems had been removed so that at the material day it was found that the hereditament was incapable of beneficial occupation. Looked at objectively, the panel considered that the appeal premises were not in a state of disrepair within the accepted meaning of that term and were not in a stripped-out, shell state as a result of an ongoing program of refurbishment and redevelopment.

27. Having established that at the material date the subject premises was capable of beneficial occupation as an office, the panel considered that the reasonable repair assumption in Schedule 6 2(1)(b) does apply and therefore dismissed the appeal.

Date: 5 January 2022
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