VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List Appeal; public house and premises; whether repairs were economic to undertake; Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999; *appeal dismissed.*

Re: Earl of Eldon, Brighton Road, South Croydon, Surrey, CR2 6ED

APPEAL NUMBER:	CHG100099152	
BETWEEN	Kullars Ltd	Appellant
	and	
	Mr A Corkish, Valuation Officer	Respondent
PANEL:	Dr J Johnson (Senior Member), Mr D Greensmith	
CLERK:	Mrs L Horne	
REMOTE HEARING:	Monday 19 October 2020	
APPEARANCES:	Mr J S Landa from Kullars Ltd, the appellant	
	Mr A Baker (advocate and expert witness) and Mr L Burridge (expert witness) representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the Rateable Value (RV) of the appeal property at £11,400 with effect from 1 April 2017.

Introduction

2 This was a 2017 rating list appeal. Earl of Eldon, Brighton Road, South Croydon, Surrey, CR2 6ED, (the ‘appeal property’) had been entered in the 2017 rating list as ‘public house and premises’, £11,400 RV with effect from 1 April 2017.

3 The challenge proposal was submitted by Mr S Barwick on behalf of Kullars Ltd and was received by the Valuation Officer on 21 May 2019. It had been

made on the grounds that “the property has been demolished or no longer exists.” The appellant proposed an effective date of 27 November 2018.

4 The Valuation Officer issued a challenge case decision notice on 24 December 2019, which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the appeal property was not reasonable. The appeal made by Mr J Landa from Kullars Ltd was received on 8 April 2020.

6 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.

7 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.

8 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 it being overlooked by the panel.

Preliminary issue

9 The Valuation Officer had served a notice of objection to additional or omitted evidence on 13 August 2020. As part of the appeal submission, the appellant had included a schedule of works that had not been exchanged at the challenge stage. Mr Baker objected to the evidence being included in the proceedings.

10 Mr Singh submitted that as an unrepresented appellant it was only fair that the schedule of works should be allowed, as this was key to the appeal; the evidence had been available at the challenge stage but due to a lack of experience of the process, this was not provided at the appropriate time.

11 The panel adjourned briefly to consider whether the schedule of works should be admitted.

12 In *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460 the Upper Tribunal’s guidance to tribunal panels was that the three stage test

as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction.

> Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).
>
> Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).
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> Stage 3 - The panel must consider all the circumstances of the case including:
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> I. The need for litigation to be conducted efficiently and at a proportionate cost;
> II. A failure to grant a sanction may leave an inaccuracy being uncorrected;
> III. The need to enforce compliance with rules, directions and orders (para. 55). However such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56).

13 In this case, it was clear that there had been a breach, as the appellant had failed to serve the schedule of works at the appropriate time. However, the panel was prepared to accept that there were good reasons for that failure, namely inexperience of the check, challenge and appeal process, and a lack of staff presence in the appellant's office in August due to the pandemic.

14 Considering all of the circumstances, the panel decided that it was in the interests of justice to allow the schedule of works to be admitted. To not do so would prejudice the appellant. The panel considered that the Valuation Officer was not prejudiced, as he had been aware of the evidence since the appeal was lodged in April 2020.

Issue

15 Whether the appeal property was beyond reasonable economic repair as at the material day of 27 March 2019 (the day that the check was submitted, in accordance with the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No 556) as amended.

Evidence and submissions

16 On behalf of the Valuation Officer, Mr Baker provided a timeline of events, which commenced with the closure of the appeal property as a pub in August 2018, and ended with an inspection of the property on 7 October 2020. With reference to the statutory provisions and relevant caselaw, and in consideration of the evidence provided by the appellant, Mr Baker contended that the appeal property was not beyond reasonable economic repair as at the material day, 27 March 2019.

17 In support of the removal of the appeal property from the rating list, Mr Landa described the damage that had been caused by squatters and referred to photographs of the interior. With reference to the schedule of works, he contended that at a cost of £157,236, the repairs were not economic for a landlord to undertake.

Decision and reasons

18 When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis 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 the 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.

19 The relevant assumption in the subject appeal is part (b). Essentially, if it can be shown that the cost of the repairs are uneconomic to undertake, then a property is not assumed to be in a reasonable state of repair, and can be valued accordingly.

20 The statutory repair assumption had been the subject of a leading judgment in the case of *Newbigin (VO) v Monk* [2015] EWCA Civ 78, and more recently in *Jackson (VO) v Canary Wharf Limited* [2019] UKUT 136 (LC); both cases had been cited by Mr Baker in support of the Valuation Officer's case. In *Newbigin v Monk*, the Supreme Court decided that the application of the repairing assumption was not appropriate for a building undergoing reconstruction and which was consequently incapable of beneficial occupation.

21 The panel noted that in the appellant's challenge it was stated that "the property has been demolished inside including the bar and toilets, broken windows and missing doors have been boarded up and secured." The use of the word "demolished" implied that there had been some form of development works undertaken. However, it appeared to the panel that the word had been used to describe the state of the property, following damage caused by squatters. In the subject appeal, the panel held that there was no evidence of a scheme of reconstruction or any ongoing significant refurbishment at the material day. Rather, the appeal property was in a state of disrepair, and therefore the issue for determination is whether the repairs were economic to undertake.

22 The panel turned to the interior photographs which had been submitted with the appellant's check and challenge. It appeared that as at the material day, (i.e. when the check was submitted) the bar was still in situ; later photographs submitted with the challenge illustrated that the bar had subsequently been removed.

23 The panel next considered Mr Burridge's expert witness statement following his inspection on 7 October 2020. Although this had taken place sometime after the material date, Mr Burridge confirmed that the appearance of the appeal property had not changed significantly from the photographs that had been supplied with the appellant's check and challenge. He described the appeal property as an empty public house full of materials and rubbish. It appeared to be structurally sound, but damage was noted to part of the ceilings, floorboards, toilets and basins; the bar had been removed and windows and doors were boarded up. On the first floor he noted damage to the toilet in the flat.

24 Mr Landa referred to the schedule of works dated 3 April 2019, prepared by Hampshire 4 U. The total cost of the works amounted to £157,236, which he contended was uneconomic when viewed alongside the RV of £11,400.

25 In response, Mr Baker highlighted that the estimate of £157,236 related to repairs for the whole of the building, both ground and first floor. The appeal property comprised the ground floor, and there was a three bedroom flat on the first floor. He commented that the schedule included an amount to remove rubbish left by squatters, however it had been stated that the squatters had not entered until 23 December 2019. Mr Baker further submitted that apart from the floorboards and toilets, there was little physical damage but rather a lot of mess and rubbish. The bar itself had been in situ at the material date, as evidenced by the photographs.

26 In consideration of the fact that the schedule of works had been prepared in respect of the whole building, the panel was not persuaded that the stated cost of £157,236 was a true representation of the amount required to put the appeal property into a state of reasonable repair. The panel was only required to consider repair to a standard expected for its age, character, locality and the type of tenant likely to occupy it. Furthermore, repair means fixing any parts of the property that are in disrepair and can include an

element of renewal, but not improvement. For example, the schedule of works included £15,488 to install a new heating system, however, the panel was only required to consider the repair costs of what was already there.

27 In the absence of an estimate of the cost required to put the appeal property into a state of reasonable repair, the panel upheld the Valuation Officer's contention that the cost would not exceed 5.65 times of the RV (a general principle derived from *Thomas & Davies v Denly (VO)* [2014] UKUT 146 (LC)).

28 The panel concluded that at the material day, there was no compelling evidence to support the contention that the repairs required were uneconomic, and therefore the appeal property was assumed to be in a state of reasonable repair, in accordance with Schedule 6 to the Local Government Finance Act 1988. The panel therefore confirmed the RV of £11,400 with effect from 1 April 2017, and dismissed the appeal.

Date: 6 November 2020

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