THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 rating list; material change in circumstance; building undergoing demolition; Newbigin (VO) v SJ & J Monk [2017] UKSC 14; appeal dismissed

RE: Museum Street College Developments, Warrington Collegiate, Warrington, WA1 1HU

APPEAL NUMBER: CHG100100875

BETWEEN:	Museum Street College Development Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

BEFORE:	Ms B Knight (Senior Member) Mr D Gardner
CLERK:	Mr R Gath IRRV Hons

REMOTE HEARING 4 on 11 March 2021

APPEARANCES:	Mr M Hall from Prosperity Network (Employee of appellant company) Mr M Seward (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed.

Introduction

2. This appeal has been brought in respect of the following: Museum Street College Developments, Warrington Collegiate, Warrington, WA1 1HU (the 'appeal property'), which was entered in the 2017 rating list as 'College and premises' at rateable value £24,750 effective from 1 April 2017.

3. The appeal property is a former art college which has been sold and plans were submitted to convert the building into 20 flats.

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 position.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Hall made an appeal to this Tribunal as he wanted the appeal property removed from the rating list as it was going to be converted to flats.

7. This is a material change of circumstance appeal and both parties agreed that the material day was 7 November 2018. The appeal to this Tribunal was made on 17 March 2021 following the Valuation Officer's (VO) Decision Notice of 18 November 2020 in respect of the appeal property (hereditament).

8. In order to assist the appellant and with the agreement of all parties, the panel varied its model hearing procedure and invited the VO's representative to present his case first.

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

Issues

10. The issue in dispute concerned whether the appeal property should be removed from the 2017 rating list.

Evidence and submissions

11. Mr Seward was representing the VO as advocate and expert witness. He contended that the appeal property could only be removed from the rating list if it failed one of three tests: if the appeal property was uneconomical to repair; the appeal property was obsolete or, if it was undergoing reconstruction.

12. He submitted that as a general rule, for a property to be uneconomical to repair, it would require expenditure of more than five times the rateable value. The rateable value for the appeal property was £24,750 and therefore to satisfy the test, it would have to require over £125,000 of work.

13. He suggested that given the photographs of the appeal property, which showed that furniture such as tables and chairs were still in the building, white boards still on the walls and that apart from minor works such as damaged ceiling tiles, the building was still capable of being used as a college, and therefore the appeal property was not beyond economic repair.

14. He also explained that the appeal property could not be removed from the rating list on the grounds of lack of supply or obsolesce as the property was still occupied and being used as a college, as at 1 April 2015, the antecedent valuation date (AVD), and, it was not obsolete as no new college had been built to replace the appeal property.

15. Mr Seward then contended that the photographs, which were taken in February 2019, did not show that any work to convert the appeal property to flats had been started.

16. Therefore, given all three of the scenarios, he considered the appeal property was still a hereditament, that it should remain in the rating list and he asked the panel to dismiss the appeal.

17. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, photographs of the appeal property taken in February 2019, extracts from local newspapers explaining that the appeal property was going to be converted into flats, copies of correspondence that had passed between the parties, an invoice dated 5 June 2018 from the Priestley Group for rip out and stage one demolition, preparing the property for a structural engineer and removal of all items, a letter dated 7 June 2018 from Plan Design Go ltd regarding the proposed conversion and extracts of the following judgments: *Newbigin (VO) v SJ & J Monk [2017] UKSC 14* and *Jackson (V0) v Canary Wharf Ltd* [2019] UKUT 136 (LC).

18. The appeal property was purchased by the appellant company in January 2018. In June 2018, The Priestly Group had made the appeal property secure by draining, shutting off the water supply and making the electrics safe and boarding up the appeal property to prevent squatters.

19. He argued that the property in its condition, even as at the material date, could not be let as it was in such a poor condition, although as it has now been empty for a number of years the roof has subsequently collapsed, it suffers from damp and the rooms had mould on the walls.

20. Furthermore, as the appeal property was going to be converted to flats, Mr Hall argued there was little point in spending money making improvements to a property that is then going to require further changes during the conversion works.

21. He also criticised the photographs that had been taken and provided by the VO. Mr Hall argued that they only photographed three of the classrooms and that it was not representative of the condition of the entire building.

22. With regards to lack of supply and obsolescence, Mr Hall disagreed with the VO and had referred to the newspaper articles dated 16 January 2018 and

20 December 2018 which stated "that the property had been underutilised for a number of years" which was evidence that there was no requirement for the building for use as a college and proved that it was obsolete.

23. He also argued that builders would not undertake partial work to a stage where the appeal property could be removed from the rating list, but that they would undertake all of the conversion works at the same time.

24. Given all of the above, Mr Hall asked the panel to allow the appeal.

Decision and reasons

25. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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"

26. Paragraph 6 of Schedule 6 to the Local Government Finance Act 1988 states:

> "Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day."

27. Paragraph 6A of Schedule 6 to the Local Government Finance Act 1988 states:

> "For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State."

28. Paragraph 7 of Schedule 6 to the Local Government Finance Act 1988 states:

"The matters are—

(a) matters affecting the physical state or physical enjoyment of the hereditament,

(b) the mode or category of occupation of the hereditament,

(c) the quantity of minerals or other substances in or extracted from the hereditament,

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

(e) the use or occupation of other premises situated in the locality of the hereditament."

29. Having regard to the above, the panel had to determine whether the subject property was capable of rateable occupation and thus whether there was a hereditament as at the material date.

30. The panel therefore considered the economic test.

31. The panel accepted that, as a general rule, for a property to be uneconomical to repair, it would require expenditure of more than five times the rateable value. The rateable value for the appeal property was £24,750 and therefore to fail the economic test, it would require over £125,000 of work.

32. Mr Hall had not provided any evidence of the nature or cost of any repair works, but suggested that to relet the appeal property, it would require modernisation such as electrical works.

33. Although the panel heard that the appeal property had fallen further into disrepair, the panel had to consider the uneconomical test as at the material date of 7 November 2018 and it could not consider any further deterioration after that date. The panel noted that the appeal property was used by the previous occupier until October 2017 and therefore it had only been unoccupied for a year. It therefore concluded, that in the absence of any evidence to prove otherwise, the appeal property as at the material date was not uneconomical to repair.

34. It then considered the lack of supply or obsolesce test.

35. Although the material date for this appeal was 7 November 2018, for the supply or obsolesce test, the panel have to consider this test as at the antecedent valuation date (AVD) which is 1 April 2015. The use of the AVD was supported by the Supreme Court judgment of *Telereal Trillium* v *Hewitt (VO)* [2019] UKSC 23 at paragraphs 10 and 11.

36. Although the newspaper articles presented by the appellant had stated that the college building was underused, it did not automatically mean that there was a lack of supply as demand will vary over time. Rental levels and demand were reflected

at the AVD, 1 April 2015, at which date it was still being used as a college and continued to be used as such for another couple of years.

37. As no evidence was presented to the panel from either party to prove that there was no demand for the appeal property, the panel concluded that it was not obsolete or unoccupied through lack of supply, especially as the appeal property was being used as at the AVD.

38. The panel then considered whether the appeal property should be deleted from the rating list on the grounds that it was undergoing reconstruction

39. The panel found that as at the material date, the appellant had not done anything to the appeal property to facilitate a change of use as no alterations had been undertaken to convert the appeal property to domestic use.

40. Therefore, the panel found that *Newbigin (VO) v SJ & J Monk* [2017] is not applicable in these circumstances as no overt act had been done to the appeal property to redevelop it.

41. The panel understood the reasons why the appeal property was unoccupied and that a company would not wish to spend money on improvements when the intention was to convert it.

42. However, the panel had to have regard to the relevant legislation, in particular the relevant dates in respect of this appeal, and the authorities. Having reviewed the evidence provided, the panel could not find anything erroneous in the VOA's decision refusing to delete the appeal property from the rating list. The panel therefore dismissed the appeal.

Date: 9 July 2021

Appeal number: CHG100100875