THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge seeking deletion of list entry; Restaurant and Premises; validity of completion notice; Tull Properties Ltd v South Gloucestershire Council (0119M27310/212N05); the panel found subject property was a new building for the purposes of section 46A(6)(b) of the Local Government Finance Act 1988; Decision: Dismissed.

RE: The Winston Churchill, Church Street, Dunstable, Beds, LU5 4RP

APPEAL NUMBER: CHG100345417

BETWEEN: Tutu Miah — Appellant

(Represented by JMA Chartered Surveyors)

and

Joanne Moore (Valuation Officer) — Respondent

PANEL: Ms L Dubow (Senior Member)
Prof P Catterall

REMOTE HEARING: 2 August 2022
CLERK: James Massey

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors for the Appellant.
Mr H Wadsworth for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel confirmed that The Winston Churchill, Church Street, Dunstable, Beds, LU5 4RP should remain in the valuation list at Rateable Value (RV) £27,000 with effect from 5 November 2018.

Introduction

2. This was a 2017 Rating List appeal. The Winston Churchill, Church Street, Dunstable, Beds, LU5 4RP (the 'appeal property') had been entered in the 2017 Rating List as 'Restaurant and premises' at a RV of £27,000 with effect from 5 November 2018. As this was an appeal

against the entry in the rating list brought about by a Valuation Officer (VO) notice the material day was also 5 November 2018.

3. The challenge proposal was submitted by JMA Chartered Surveyors on behalf of Tutu Miah and was received by the VO on 14 July 2020. The challenge sought the deletion of the entry in the rating list on the grounds that the building (Hereditament) was not ready for occupation on the completion date proposed by the billing authority (BA) and a valid completion notice had not been issued.

4. The VO issued a challenge case decision notice on 23 November 2020 in respect of the appeal property. The VO's decision was to treat the appellant's challenge proposal as not well-founded and make no change to the rating list.

5. The appeal hereditament is a former public house, which was purchased by the appellant in March 2010.

6. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence. 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 an indication that that statement or item of evidence has been overlooked by the panel.

Issue

7. The issue between the parties concerned the entry in the rating list of the subject property at RV £27,000 with an effective date of 5 November 2018 by the VO. The appellant sought deletion of the entry as he considered that the subject property was not ready for occupation at that date and that the completion notice which had caused the VO to enter it in the list was not validly issued.

Evidence and submissions

8. Mr Bacon explained that the appellant had purchased the public house in March 2010. As a result of a fire, it was removed from the rating list in June 2012 and whilst carrying out works to reinstate the property, the appellant applied for planning permission to convert the building to a restaurant. The most recent planning application was made on 3 October 2018 and concerned the 'Installation of outdoor A/C condensing units, kitchen extraction system and associated acoustic enclosure at roof level'. This application was not granted until 1 March 2019 and, in Mr Bacon's opinion, the subject property could not have been capable of occupation as a restaurant until after the work specified within that planning permission had been completed.

9. He stated that the planning requirements had been altered by the billing authority (BA) as a result of complaints from the neighbours about noise. It was therefore not possible to complete the works converting the premises to a restaurant by 5 November as specified in the completion notice. He therefore considered that the property, at the material day of 5 November 2018 was not a restaurant and could not have become one until it met the specification set out in the latest planning.

10. Mr Bacon also did not consider that the completion notice was valid. He referred to the wording contained in that notice:

"work remaining to be done on this hereditament is such that the erection of the hereditament can be reasonably expected to be substantially completed within one month."

He stated that the reference to substantially completed implied that the BA did not consider that the building could be reasonably completed by the date set out in the notice.

11. Mr Bacon had also stated that the completion notice had been incorrectly served by the BA and had not been received by the owner in time for him to make an appeal against that notice. After taking further instruction from his client, Mr Bacon stated that he no longer wished to challenge the validity of the notice on the grounds that it had not been correctly served.

12. In further submissions, Mr Bacon considered that the appeal property was neither a new building nor was it created as a result of structural alterations of an existing building. He referred to a decision of this Tribunal's President in *Delph Property Group Ltd v Alexander (VO) and Leicester City Council* [2019] RA 233 and considered that on the basis that there were no structural alterations, the completion notice is invalid and would have no effect.

13. In response the clerk provided the parties with a copy of the following authorities which were considered relevant to the appeal:

- *Tull Properties Ltd v South Gloucestershire Council* (0119M27310/212N05)
- *Reeves (VO)* v *VTE (and others)* [2015] EWHC 973 (Admin)
- *Westminster City Council v UKI Kingsway Ltd and MJ Dunlevey* [2018] EWCA Civ 430.

14. Mr Wadsworth on behalf of the respondent stated that the entry in the 2010 rating list for the subject property had been reduced to £0 with effect from 6 June 2011 and it had been entered in the 2017 rating list at £0 from 1 April 2017. As a result of the completion notice, the rating list had subsequently been altered to show the subject property as Restaurant and Premises with effect from 5 November 2018 at RV £27,000.

15. He stated that when the BA's visiting officer visited the appeal property it had been reported that everything was in place for use as a restaurant. Previous planning applications to convert the premises to a restaurant had been granted in 2011 and in 2013 and there was no evidence that the specification set out in the earlier planning permission did not relate to the property's conversion to a restaurant.

16. Mr Wadsworth did not consider that the BA had altered the specification for the appeal property to become a restaurant and he did not consider that the planning application demonstrated that the BA had altered the specification required for the completion of the property as a restaurant and premises.

17. He confirmed that the completion notice referred to the building as being substantially complete and would be read as being able to be complete within one month. There was no mention of the outstanding planning application in the completion notice which had been issued based on the condition of the subject property on 5 October 2018.

Decision and reasons

18. In considering this appeal, the panel had regard to the means by which the valuation officer (VO) is able to enter an empty property in the rating list (the "List"). If he considers that it is

ready for occupation he may do so of his own volition, however if any work, required before occupation can take place (however minor), is outstanding a completion notice must be served.

19. The Local Government Finance Act 1988 (the "1988 Act") makes the following provision for Non Domestic property to be entered in the rating list as follows:

46A Unoccupied hereditaments: new buildings

(1) Schedule 4A below (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2) Where—

(a) a completion notice is served under Schedule 4A below, and
(b) the building to which the notice relates is not completed on or before the relevant day,

then for the purposes of section 42 above and Schedule 6 below the building shall be deemed to be completed on that day.

(3) For the purposes of subsection (2) above the relevant day in relation to a completion notice is—

(a) where an appeal against the notice is brought under paragraph 4 of Schedule 4A below, the day stated in the notice, and
(b) where no appeal against the notice is brought under that paragraph, the day determined under that Schedule as the completion day in relation to the building to which the notice relates.

(4) Where—

(a) a day is determined under Schedule 4A below as the completion day in relation to a new building, and
(b) the building is not occupied on that day,

it shall be deemed for the purposes of section 45 above to become unoccupied on that day.

(5) Where—

(a) a day is determined under Schedule 4A below as the completion day in relation to a new building, and
(b) the building is one produced by the structural alteration of an existing building,

the hereditament which comprised the existing building shall be deemed for the purposes of section 45 above to have ceased to exist, and to have been omitted from the list, on that day.

(6) In this section—

(a) "building" includes part of a building, and
(b) references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments

20. Schedule 4A to the 1988 Act sets out the requirements for a completion notice;

Completion notices

1 (1) If it comes to the notice of a billing authority that the work remaining to be done on a new building in its area is such that the building can reasonably be expected to be completed within 3 months, the authority shall serve a notice under this paragraph on the owner of the building as soon as is reasonably practicable unless the valuation officer otherwise directs in writing.

(2) If it comes to the notice of a that a new building in its area has been completed, the authority may serve a notice under this paragraph on the owner of the building unless the valuation officer otherwise directs in writing.

(3) A billing authority may withdraw a notice under this paragraph by serving on the owner of the building to which the notice relates a subsequent notice under this paragraph.

(4) Where an appeal under paragraph 4 below has been brought against a notice under this paragraph, the power conferred by sub-paragraph (3) above shall only be exercisable with the consent in writing of the owner of the building to which the notice relates.

(5) The power conferred by sub-paragraph (3) above shall cease to be exercisable in relation to a notice under this paragraph once a day has been determined under this Schedule as the completion day in relation to the building to which the notice relates.

(6) In this Schedule "completion notice" means a notice under this paragraph.

2 (1) A completion notice shall specify the building to which it relates and state the day which the authority proposes as the completion day in relation to the building.

(2) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is not completed, the authority shall propose as the completion day such day, not later than 3 months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed.

(3) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is completed, the authority shall propose as the completion day the day on which the notice is served.

Determination of completion day

3 (1) If the person on whom a completion notice is served agrees in writing with the authority by whom the notice is served that a day specified by the agreement shall be the completion day in relation to the building, that day shall be the completion day in relation to it.
(2) Where such an agreement as is mentioned in sub-paragraph (1) above is made, the completion notice relating to the building shall be deemed to have been withdrawn.

4 (1) A person on whom a completion notice is served may appeal to a valuation tribunal against the notice on the ground that the building to which the notice relates has not been or, as the case may be, cannot reasonably be expected to be completed by the day stated in the notice.

(2) Where a person appeals against a completion notice and the appeal is not withdrawn or dismissed, the completion day shall be such day as the tribunal shall determine.

(3) In this paragraph "valuation tribunal" means—

(a) in relation to England: the Valuation Tribunal for England;
(b) in relation to Wales: a valuation tribunal established under paragraph 1 of Schedule 11.

5 Where a completion notice is not withdrawn and no appeal under paragraph 4 above is brought against the notice or any appeal under that paragraph is dismissed or withdrawn, the day stated in the notice shall be the completion day in relation to the building.

21. The parties were in agreement that the appeal property was not ready for occupation as a restaurant at the material day, and therefore required the issue of a completion notice to enter it in the List. In considering the matter, the panel found that if the completion date specified in the notice was premature, because outstanding works remained and/or could not be undertaken without council approval, the appellant should have made a completion notice appeal under Schedule 4A and challenged the completion date proposed by the BA. The panel was satisfied that an appeal had not been made by the appellant in respect of the completion notice under Schedule 4A and therefore it was not open to the appellant to challenge the date set out in that notice in this appeal.

22. However, the appeal turns on whether a valid completion notice had been issued. With regard to the wording on the completion notice, the panel was of the view that if an appeal had been made against the completion notice, Mr Bacon would then have been allowed to argue his point about the terminology "substantially complete" used by the BA and argue for a later completion date pending the planning application. As this appeal results from a 2017 rating list challenge, the panel was considering the matter on the material day assuming the hereditament is complete. The panel also noted that the completion notice also stated

"For the purposes of the Local Government Finance Act 1988, the new hereditament is to be treated as completed on 5/11/2018"

It found that this was a clear indication to the appellant that the BA was of the opinion that the subject property could reasonably be expected to be completed by the date set out in the notice.

23. The panel proceeded to consider the argument raised by Mr Bacon that the subject property was not a 'new' building or one which had been substantially altered. It referred to the legal test set out by the past President of this Tribunal in *Tull Properties*:

7. "The legislation governing this matter is found in the Local Government Finance Act 1988, s. 46A and Sched. 4A. The notice in this case was issued under para. 1(1) of Sched. 4A, where a new building is incomplete but can be completed within three months. The respondent contends that Beluga House falls within what Mr Lewsley *calls the expanded meaning of new building which is found in s. 46A(6), which is the only provision that needs to be set out in full:*

"In this section –

(a) "building" includes part of a building, and

(b) references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments."

8. I accept Mr Lewsley's submission that subsection (6)(b) introduces an alternative test so that under the Act the building must either be "new" under subsection (1) or a building that satisfies the requirements of subsection (6)(b) and is thus regarded as or deemed to be new for this specific purpose. He calls this the expanded meaning which goes beyond the natural meaning in ordinary English.

9. He asserts, and I accept, that the two components of the test under subsection (6)(b) are –

(i) was the present building produced by the structural alteration of an existing building; and

(ii) has the hereditament, by virtue of the alteration, become a different hereditament or different hereditaments?

10. The questions for me, therefore, are (i) whether the works done to Beluga House have produced a "new building" in the ordinary sense of that expression or (ii) whether they constitute a structural alteration to the hereditament which in consequence becomes a different hereditament or hereditaments. There is no dispute over the meaning of "hereditament", so I shall not lengthen this decision by exploring its meaning. "

24. Therefore the panel determined that if it found that either structural alterations took place or that a new hereditament was created, a completion notice could be served and the appeal property could be entered on the Rating List. If neither of the above occurred the entry must be deleted unless there is evidence that the hereditament was ready for immediate occupation and a notice was not required.

25. No pictures or plans of the subject property had been submitted by either party and there was no schedule of works before the panel. Mr Bacon did not consider that there had been sufficient alteration of the subject property for it to be considered a new hereditament. Whilst Mr Wadsworth had referred to the installation of steelworks in the subject property, Mr Bacon stated that these had been to facilitate the repair of the appeal property after the fire which had caused it to be removed from the List. The panel also noted that Mr Bacon had referred to the kitchen being moved from the ground floor to the basement of the premises. The panel questioned why such an extensive extraction system had not been specified in earlier planning applications if this was essential to the property being occupied as a restaurant. The panel noted from the planning history that the initial planning application had been granted to include the 'construction of a new glass façade on the right corner'.

26. In considering the limited evidence before it, the panel determined that the creation of a glass façade would entail the removal of structural walls and replacement using a steel framework to support the roof and the windows. There also appears to have been a change in the configuration of the property if, as stated by Mr Bacon, the kitchen is now located in the basement of the building. Whilst this would not necessarily structural alterations, it would necessitate a more elaborate extraction system.

27. The panel concluded that there had been significant alterations to the subject property, some of which entailed structural works, and that these were sufficient to create a new hereditament. It was of the opinion that such alterations would satisfy subsection 6(b) specified above in creating a new hereditament.

28. Having made this finding, the panel therefore determined that a completion notice could be served on what was essentially a new hereditament, which had been created from an existing hereditament. As the appellant was no longer disputing that this notice had been correctly served, the panel concluded that it was valid and the entry in the List for the subject property was correct.

29. The appeal is therefore dismissed.

Date: 30 August 2022

Appeal number: CHG100345417

Right of Appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.