

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 rating list; validity of the completion notice on which the entries in the Rating List are based; the panel found the completion notice was valid; appeals dismissed.

RE: 68 Chertsey Road, Woking, GU21 5BJ, Gnd – 1st Flr, 68 Chertsey Road, Woking GU21 5BJ, and 3rd - 7th floors, 68 Chertsey Road, Woking GU21 5BJ (the appeal properties)

APPEAL NO: CHG100388481, CHG100388485, CHG100388488

BETWEEN:	Royal London	Appellant
	and	
	Ms D Bunyan	Respondent
	(Valuation Officer)	

PANEL: Mr K Everett (Presiding Senior Member)
Mr D Winters (Senior Member)

CLERK: Mrs A Keohane

HEARING: Remote Hearing No. 3 on 27 April 2023

APPEARANCES: Mr L Wilcox of Landmark Chambers on behalf of the appellant
Ms S Sackman of Matrix Law on behalf of the respondent

Summary of decision

1. The appeals were dismissed. The panel found the completion notice to be valid and therefore the entries in the rating list for the appeal properties could not be deleted.

Introduction

2. 68 Chertsey Road was a new office building constructed by the appellant as a speculative development. As such there had been no end occupier in mind at the time the work commenced. The building provided around 84,000 sq ft of accommodation from ground to 7th floor, the ground floor as retail space and the upper floors as offices. On 6 September 2019, the second floor was let to a tenant and on being let, that floor became a separate hereditament. The remainder of the property became two hereditaments, one comprising the floors below the second floor, the other the floors above the second floor, thus resulting in three appeals before the tribunal.

3. The Challenge proposals, received by the Valuation Officer (VO) in September 2020, sought deletion of the entries in the 2017 rating list in respect of the appeal properties on the grounds that the completion notice from which the entries stemmed was not valid. The completion notice was issued on 31 July 2019 by Woking Borough Council in its capacity as billing authority (BA) for the area and within the notice the completion date was given as 7 August 2019.
4. After a review of the evidence and available information, the VO did not well-found the proposals and issued decision notices in February and March 2022. As the assessments had not been deleted, appeals were made to the Valuation Tribunal on 4 May 2022 on the grounds that the valuations for the hereditaments were not reasonable.
5. The hearing was held remotely and there were a few connection issues. Ms Sackman's connection had sound problems which persisted during the hearing. However, the panel was satisfied that the parties were able to fully participate in proceedings.
6. The parties had agreed a timescale in which to serve their evidence and skeleton arguments. A substantial amount of evidence was provided. This decision document is not and does not purport to be an exhaustive record of proceedings. However, the parties can be assured that all of the evidence presented was fully considered by the panel before reaching its decision.

Issue

7. Whether the assessments at 68 Chertsey Road had been entered in the rating list as the result of a defective completion notice. Mr Wilcox contended that the completion notice was not valid, and the assessments should be deleted. Ms Sackman argued to the contrary.

Evidence and submissions

8. The hearing bundle contained the submissions of both parties, together with their skeleton arguments. An Authorities bundle was also submitted, which set out the relevant legislation and case law as follows:
 - i. Local Government Finance Act 1988, section 46A and Schedule 4A.
 - ii. Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009/2268, regulation 17 and regulation 19.
 - iii. *Graylaw investments v Ipswich BC* [1979] RA 111.
 - iv. *London Merchant Securities Plc v Islington LBC* [1988] AC 303.
 - v. *Porter (VO) v Gladman Sipps* [2011] RA 337.
 - vi. *R (Reeves) v VTE* [2015] RA 241.
 - vii. *Delph Property Group Ltd v Alexander (VO)* [2019] RA 233, to include the interim decision.
 - viii. *Hermes Property Unit Trust v Roberts (VO)* [2022] RA 1.
 - ix. *Newham London Borough Council v Rad Phase 1 Type B Property Company No 1 Limited* [2020] RA 384.
 - x. *Henderson v Liverpool Metropolitan District Council* [1980] RA 238.
9. A copy of the VTE decision in *Provincial Real Estate Burton Ltd v Virk and East Staffordshire Borough Council* (341019474725/538N10) was also sent to the parties by the clerk prior to the hearing.

10. Documentation was included to show the appellant had applied to the Tribunal for an appeal to be accepted against the completion date contained on the completion notice. This was received outside of the statutory time frame for such an appeal to be made. A Vice President of the Tribunal had declined to extend the time scale for the submission of the appeal due to the time it had taken for the application to be made.

Decision and reasons

11. Mr Wilcox, on behalf of the appellant, stated that one of the original grounds on which the appellant had relied was that the completion notice had not been received. He confirmed that this ground had been withdrawn and would not be pursued further. However, the appellant considered there were three further grounds on which the completion notice was not valid, and evidence was provided to support this. Very briefly, the grounds were as follows.
12. Contrary to statute the completion notice was unclear, as it simultaneously treated the property as complete, and not complete and did not identify whether it had been served under Schedule 4A, para 1(1), (a notice relating to an incomplete building) or para 1(2), (a notice relating to a completed building).
13. The completion notice had been issued prior to the property reaching the stage of substantial completion, contrary to statute and case law. As a speculative development work was undertaken in two stages. Firstly, category A works, done by the builder/landlord, followed by category B works, in effect the tenant's fit out works. A property was usually considered to be substantially complete at the end of the category A works. Paragraph 9 of Schedule 4A applied to speculative developments and when this paragraph was engaged a completion notice could not be served until the property reached substantial completion. This was because it was not possible to determine how long it would take to complete a building which was not substantially complete (*London Merchant*), and it was the date of substantial completion from which the three-month period allowed by the completion notice regime was calculated (*Graylaw*). If the start date of the period had not arrived, it was not possible to identify the end date. In the subject, a certificate of Practical Completion was issued on 10 September 2019, which confirmed that practical completion occurred on 6 September 2019. This was after the completion date specified by the BA. As the property had not been substantially complete when the completion notice was served, the notice was considered to be not valid.
14. The BA could not have rationally formed the judgment that the appeal property was reasonably capable of being completed in seven days, given an inspection had not been carried out and at the present-day work was still required. Therefore, the reasoning which led to the setting of the completion date was irrational. Irrationality was argued to be a well-established ground on which a public body's decision could be found to be unlawful and liable to be held invalid.
15. Ms Sackman, on behalf of the VO, argued that the VO was entitled to rely on the completion date, as there was no statutory requirement for the VO to investigate either the physical state of the property, or a BA's decision to issue a completion notice prior to making an entry in the rating list. Mr Wilcox had referred to the VTE President's decision in *Delph Property Group Ltd*, which indicated that the onus was on the BA to ensure they undertook the completion notice process properly, and that VOs should satisfy themselves that the notice was legally compliant. Ms Sackman

stated that the completion notice, on its face, fulfilled the statutory requirements of Schedule 4A and set out what it was meant to convey. As it had not been withdrawn by the BA, nor the completion date formally challenged by the appellant, the VO had entered the property in the rating list with effect from the completion date shown thereon.

16. Ms Sackman submitted that for a completion notice to be ruled not valid because it had been issued prior to a property reaching substantial completion, would require the tribunal to imply words into paragraphs 1 and 9 of Schedule 4A that were absent. She argued there was no indication that a BA was barred from issuing a completion notice until a property reached substantial completion, and the case law referred to by Mr Wilcox did not assist in establishing this to be the case. Further, she considered that Mr Wilcox's argument that the completion date was irrational, was a direct challenge to the completion date and the correct route for such a challenge was via an appeal under Schedule 4A, paragraph 4.
17. The panel considered the evidence provided by the parties in respect of the three issues raised by Mr Wilcox, which he believed rendered the completion notice issued by the BA as not valid. From this evidence, the panel found merit in Ms Sackman's counter arguments, and concluded that the completion notice was valid. Consequently, the subject assessments could not be deleted from the rating list.
18. Addressing whether the completion notice was ambiguous, the panel found it to be clear in its communication. The BA had considered the building as incomplete at the time the notice was issued but decided that it could be completed by the stated future completion date of 7 August 2019. Whilst only a short period of time had been allowed for completion, this would not invalidate the completion notice. The completion notice regime did not specify that the paragraph under which the notice was served had to be identified on its face, the requirements being that it set out the building to which it related and the completion date. The completion notice within the bundle fulfilled these requirements. Having regard to the *Henderson v Liverpool* case, a reasonable test would be, does the notice '*fairly convey to the recipient what is the subject matter of the notice.*' In the subject case, the panel was satisfied that it did.
19. Mr Wilcox argued that a completion notice could not be issued under paragraph 9 (for a speculative development) until the property had reached substantial completion. Various pieces of supporting evidence were provided to show the state of the property and the work that remained outstanding at the time the completion notice was issued, together with case law considered to support the appeal. The panel found that these higher authorities, for example, *London Merchant* and *Graylaw*, addressed different questions to those presented at this hearing and neither had said definitively that a BA could not exercise its power to issue a completion notice until all category A (non-customary works) were finished.
20. That said, the BA had issued a completion notice in respect of 68 Chertsey Road and the panel had no way of establishing what was in the mind of the BA at the time the completion notice was issued. Although Mr Wilcox had argued against it, the BA may have formed the view, that upon the information available to it, the property had reached the stage of substantial completion at the date the completion notice was served or could reasonably have been expected to be completed by 7 August 2019. The panel does not know on what information the decision to issue the completion

notice was based. On balance, the panel was not persuaded that the completion notice was invalid on this ground.

21. Finally, the panel addressed Mr Wilcox's contention that the reasoning which led to the setting of the completion date was irrational, given the state of the property at the time the completion notice was served, and the fact that it had taken three months to complete a single floor of the building following its letting. Mr Wilcox had emphasised that this ground was not a challenge to the completion date but the lawfulness of the notice, which could only be challenged via a proposal to delete. After consideration of the arguments put forward, the panel concurred with Ms Sackman, in that it believed that this ground appeared to be an attempt to distinguish between a date considered to be incorrect and a challenge to the irrational process by which that date was reached. Either way, the panel found this to be a challenge to the completion date.

22. Having regard to the above, the panel was not persuaded that the completion notice issued by the BA was not valid, therefore the subject appeals were dismissed.

Date: 24 May 2023

Appeal number: CHG100388481, CHG100388485, CHG100388488

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.