THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 Rating List appeal; completion notices; Appellants contended that the notices had not been served; consideration as to whether good service had been provided; Local Government Finance Act 1988, Schedule 4A; UKI (Kingsway) Limited (Respondent) v *Westminster City Council (Appellant)* [2017] EWCA Civ 430; *Delph Property Group Ltd* v *Alexander (Valuation Officer) and Leicester City Council 2018; appeals allowed.*

Re: Units 1 and 2 The Old Sorting Office, 5 Albert Road, Bournemouth BH1 1AX

APPEAL NUMBERS: CHG100661436 and CHG100661454

BETWEEN: The Old Sorting Office (Bournemouth) Limited Appellants

and

Mr D Virk (Valuation Officer) Respondent

BEFORE: Mr A Clark (Vice President)

CLERK: Mrs R James

REMOTE HEARING 2: Wednesday 30 November 2022

APPEARANCES: Mr S Price of Ameliorate Consultancy (on behalf of the Appellants)
Mr L Wilcox, of Counsel, instructed by Ameliorate Consultancy, for the Appellants
Mr J Fox (Respondent's representative)

Summary of decision

1. Appeals allowed; I determined that the completion notices had not been validly served. As such, the appeal properties' assessments were deleted from the rating list, with effect from 7 June 2018.

Introduction

2. These appeals have been brought in respect of the following: Units 1 and 2 The Old Sorting Office, 5 Albert Road, Bournemouth BH1 1AX (the appeal properties), which were entered in

the 2017 Rating List as shop and premises at £34,250 Rateable Value (RV) and £30,250 RV, respectively with effect from 7 June 2018.

3. The Appellants' Challenges to the Valuation Officer (VO) were made on 18 March 2021. The appeals to this Tribunal were made on 6 January 2022, following the VO's Decision Notices of 16 September 2021, in respect of the appeal properties.

4. The appeal properties form part of The Old Sorting Office development which fronts Albert Road in Central Bournemouth. Albert Road provides a mixture of retail, office, leisure and residential accommodation. The Old Sorting Office was a six-storey development, consisting of predominantly residential apartments at ground to upper floors, the two appeal properties were commercial units situated on the ground floor.

5. In accordance with the Tribunal's Business Arrangements, I have been authorised to hear this appeal alone.

6. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

7. These appeals are in relation to the single issue as to the requirement for valid 'service' of a completion notice so as to bring a building into the rating list which the Billing Authority regard as substantially complete and which in their view will be complete within 3 months. The completion notices were dated 31 May 2018, with a completion date of 7 June 2018. The completion notices were addressed to 'The Owner', care of the owner's solicitor. The Appellants contend that neither they nor their solicitors received the completion notices.

8. However, the VOA did receive a copy of the completion notices and entered the appeal properties into the 2017 Rating List, as two separate hereditaments, with effect from 7 June 2018. At that time, the Appellants state that the appeal properties were only completed to shell condition, so were not capable of entry into the rating list but for the effect of the completion notices.

9. The issue to be addressed is did the Billing Authority (BA) serve upon the Appellants the two completion notices dated 31 May 2018?

Decision and reasons

10. In the appeals before me, I have to determine whether or not the appeal properties have been correctly entered into the 2017 Rating List. In this case, the appeal properties are such that they could only have been entered into Rating List via the service of completion notices. The Appellants contend that the appeal properties' entries should be deleted from the rating list as the completion notices were not served upon them in accordance with any of the methods of service set out in statute. Whereas Mr Fox contends that the Valuation Office Agency (VOA) had followed the correct procedure and entered the appeal properties into the rating list following the BA's service of the completion notices. As such, Mr Fox sought dismissal of the appeals.

11. If I find that the BA did validly serve the completion notices, then I will dismiss the appeals and the rating list entries will remain in place. However, if I determine that the BA did not

serve the two completion notices upon the Appellants, then I will allow the appeals and order that the rating list entries be deleted.

12. I will first turn to the relevant law. By virtue of Section 46A of the Local Government Finance Act 1988 (the 1988 Act) and Schedule 4A to the 1988 Act, BAs were empowered to serve completion notices on properties which, whilst not complete, were in the BA's view, substantially complete and were reasonably capable of completion within three months. I am aware that the VOA cannot bring an incomplete property into the rating list without a valid completion notice having been served. There was no dispute that the appeal properties had been incomplete as at 7 June 2018; the date they were entered into the rating list.

13. I had regard to Schedule 4A, for the purposes of this appeal, the relevant parts are as follows:

> 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.
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> 1 (2) If it comes to the notice of a billing authority 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.
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> 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.
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> 2 (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.
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> 2 (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.
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> 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.
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> 4 (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. …
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> 5 Where a completion notice is not withdrawn and no appeal under paragraph 4 above is brought against the notice or any appeals under that paragraph is dismissed or withdrawn, the day stated in the notice shall be the completion day in relation to the building.

7 (1) A billing authority shall supply to the valuation officer a copy of the completion notice served by it. …

8 Without prejudice to any other mode of service, a completion notice may be served on a person-

(a) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;

(b) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter or by the recorded delivery service addressed to the secretary or clerk of the company or body at that office; or

(c) where the name or address of that person cannot be ascertained after reasonable inquiry, by addressing it to him by the description of "owner" of the building (describing it) to which the notice relates and by affixing it to some conspicuous part of the building."

14. The appeal properties had been entered into the rating list with effect from 7 June 2018. Mr Wilcox explained that a Check had been submitted to the VOA contesting the validity of the assessments in the rating list as the Appellants had not received a copy of the completion notices. The Appellants had been of the opinion that the VOA had unilaterally entered the properties into the rating list without completion notices having been issued. However, the VOA had been in receipt of the completion notices that led to the entries in the rating list.

15. The registered address for the Appellants, and therefore, for the service of the legal documentation, is a firm of solicitors (Ellis Jones Solicitors). Mr Wilcox explained that neither the Appellants, nor their solicitors, had any record of receiving the completion notices.

16. I note that paragraph 8 of Schedule 4A provides the statutory methods of service for completion notices. If a completion notice is served by one of the options outlined in paragraph 8, the notice is deemed to have been served irrespective of whether or not it is actually received by the intended recipient. However, I recognise that the list of service options at paragraph 8 are not mandatory, and completion notices can be served by other means. If a completion notice is served by other means to those outlined in paragraph 8, then the validity of the service will depend on the actual receipt of the notice by its intended recipient.

17. On this issue, attention was drawn to the Supreme Court judgment in respect of *UKI (Kingsway) Limited (Respondent)* v *Westminster City Council (Appellant)* [2017] EWCA Civ 430, which considered whether a completion notice had been validly served. In this case, the BA had asked the agents to confirm the identity of the owner of the building, the agents had declined to do so without obtaining the instructions from their client, which were not forthcoming. At the time, the building was managed by Eco FM under a contract with UKI but Eco FM had no authority to accept service of documents on UKI's behalf. The BA delivered the completion notice by hand to the building. The notice was addressed to 'The Owner' and handed to the receptionist employed by Eco FM, who scanned and emailed a copy of the notice to UKI. An appeal was lodged on the grounds that the service of the completion notice

was invalid. The Supreme Court found that the completion notice in that appeal had been validly served.

18. I found parts of the UKI judgment relevant to the appeals before me. I drew specific attention to paragraphs 15 and 16, which states:

> ***Service - the authorities***
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> 15. It is common ground that, by virtue of the opening words of paragraph 8 of Schedule 4A to the Act, the three specific methods there set out do not exclude other methods of service available under the general law. There is no serious dispute as to what that entails. In *Sun Alliance and London Assurance Co Ltd v Hayman* [1975] 1 WLR 177, 185 CA (a case under the Landlord and Tenant Act 1954), Lord Salmon said:
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> > "According to the ordinary and natural use of English words, giving a notice means causing a notice to be received. Therefore, any requirement in a statute or a contract for the giving of a notice can be complied with only by causing the notice to be actually received - unless the context or some statutory or contractual provision otherwise provides …"
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> (No distinction is drawn in the cases between "serving" and "giving" a notice: see *Kinch v Bullard* [1999] 1 WLR 423, 426G). To similar effect in *Tadema Holdings Ltd v Ferguson* (1999) 32 HLR 866, 873, Peter Gibson LJ said (in a case relating to service of a notice under the Housing Act 1988):
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> > "'Serve' is an ordinary English word connoting the delivery of a document to a particular person."
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> 16. Specific statutory provisions such as paragraph 8 are designed, not to exclude other methods, but rather to protect the server from the risk of non-delivery. As was said by Slade LJ in *Galinski v McHugh* (1988) 57 P & CR 359 (in relation to a similar service provision in the Landlord and Tenant Act 1927 section 23(1)):
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> > "This is a subsection appearing in an Act which … contains a number of provisions requiring the giving of notice by one person to another and correspondingly entitling that other person to receive it. In our judgment, the object of its inclusion ... is not to protect the person upon whom the right to receive the notice is conferred by other statutory provisions. On the contrary, section 23(1) is intended to assist the person who is obliged to serve the notice, by offering him choices of mode of service which will be *deemed* to be valid service, *even if in the event the intended recipient does not in fact receive it*."
> > (p 365, original emphasis)

19. On the issue of indirect service (service by other means than paragraph 8), I had regard to paragraph 36 of the UKI judgement, which states:

Indirect service

36. The difference between the Upper Tribunal and the Court of Appeal comes down to a narrow point. The Upper Tribunal thought that, since the notice issued by the council reached the hands of the intended recipient, it mattered not that the route was "unorthodox". Gloster LJ thought that this approach failed to give effect to the concept of "service on the owner *by* the authority" (emphasis added). For my part I would accept that the means by which the notice arrives at its destination is not wholly immaterial. In itself the reference to the billing authority is simply to identify the body responsible for service; it says nothing about how that is to be done. The real issue, as I see it, adopting the words of Lord Salmon in the *Sun Alliance* case, is whether the authority "caused" the notice to be received by UKI. In other words there must be a sufficient causal connection between the authority's actions and the receipt of the notice by the recipient.

20. From the above, I note that should service outside of paragraph 8 be used, then the BA's actions have to cause the intended recipient to have received the notice.

21. In the appeals before me, I accept that the Appellants did not receive the completion notices. As such, the completion notices will only have been validly served if they are deemed served by one of the statutory mechanisms described within paragraph 8.

22. The BA in this case has contended that the completion notices were served by recorded delivery. Therefore, in my opinion, the question to be addressed was has the BA sufficiently demonstrated that the completion notices were actually posted by recorded delivery. If so, then as recorded delivery falls under paragraph 8, it is deemed that they have been validly served and the appeals fail.

23. The VOA had contacted the BA for information on how and when the completion notices had been served. The BA sent the VOA an email dated 20 October 2020 stating, 'Our records show that the completion notices were sent by recorded delivery but unfortunately, signature proof cannot be provided'. Accompanying the email was an extract from the daily mailing report for 31 May 2018; the date the completion notices were purportedly issued. The BA was of the opinion that the mailing report demonstrated that the completion notices were despatched using Royal Mail signed for 1st class service on 31 May 2018. I note that highlighted in yellow on the mailing report on 31 May 2018 it stated one letter in relation to NNDR using Royal Mail signed for service had been issued at a cost of £1.67.

24. I accept that in order to rely on recorded delivery as a statutory method, the evidential burden is placed on the BA to demonstrate that the completion notices had been passed into the custody of the Royal Mail. After having regard to the evidence supplied by the BA, I am not satisfied that the evidential burden has been discharged for the following reasons:

i) The mailing report does not specify that the NNDR letter issued on 31 May 2018 related to the appeal properties, the Appellants, or the Appellants' solicitor.
ii) The mailing report recorded one NNDR letter having been issued on 31 May 2018, when in fact there were two completion notices, was it that the two completion notices had been sent in the one envelope?
iii) There is no copy of the signed post book, or anything of that nature, to confirm that the completion notices had been handed over to an officer of the Royal Mail.

iv) The BA have not been able to provide the recorded delivery reference number, which would enable the matter to be investigated.
v) No copy of the franking book had been provided.
vi) No signature from any employee at the BA had been provided.
vii) No proof of stamp.

25. I found that the BA had not met any of the above safety grounds when purportedly serving the two completion notices in question. I find that the BA's record keeping fell well short of what is expected if they wish to rely on recorded delivery for the service of completion notices. All that was provided was a single page extract from the mailing report. From that page, it cannot be identified if the one NNDR letter recorded related to two completion notices in the one envelope. Furthermore, there is no entry on the mailing report to connect that one NNDR letter to the appeal properties, the Appellants or their solicitor.

26. When questioned on the matter, Mr Fox could not explain when and how the VOA were served the completion notices.

27. Mr Fox stated that the VOA had no discretion and as completion notices had been served on it, it was obliged to enter the appeal properties into the rating list. However, on this issue, I turned to the Valuation Tribunal Decision in relation to *Delph Property Group Ltd* v *Alexander (Valuation Officer) and Leicester City Council* (VTE number 246525454690/538N10, dated 22 May 2018). At paragraph 40, it states:

> '40. As found in *UKI Kingsway* the service (or indeed the contents) of a completion notice, which is a statutory notice and can have significant repercussions for ratepayers, should not been taken lightly by the Billing Authority or in a shambolic way. The onus is on the Billing Authority to ensure they undertake the process properly. Indeed Valuation Officers should satisfy themselves that the notice they receive complies with the law and that they are correctly making an entry in the rating list. It would be wrong to require the recipient to undertake judicial review as a check for both the Billing Authority and Valuation Officer.'

28. Whilst the *Delph* decision was not caselaw, it was a case heard and determined by the President of the Valuation Tribunal for England. I noted that it had not been appealed to Upper Tribunal and accordingly, I considered it appropriate to place some reliance on it. Having regard to the *Delph* decision, it confirmed that the onus was on the BA to ensure that they issued completion notices correctly. However, it also stated that the VOA should be satisfied that the completion notices complied with the law before the properties in question were entered into the rating list, which did not appear to have occurred in the case before me.

29. Mr Fox also pointed out that the correct course of action would have been for the Appellants to appeal against the respective completion notices. However, the Appellants did not receive a copy of the completion notices. Furthermore, as confirmed in the *Delph* decision, the only issue the Valuation Tribunal can determine in relation to an appeal against a completion notice is the correct date to be used for the completion of the property in question. It was confirmed that the correct course of action to appeal against an invalidly served completion notice was by way of a proposal seeking the deletion of the property's entry from the rating list.

30. Having regard to the above conclusions, I find that I have no alternative other than to allow the appeals. I determine that the completion notices have not been correctly served. Indeed,

from the evidence before me I draw the conclusion that they were not served at all. As such, the appeal properties' entries should be deleted from the rating list, with effect from 7 June 2018.

Order

31. As a consequence of the above decision, the Valuation Officer is ordered to delete the appeal properties' entries from the 2017 Rating List, with effect from 7 June 2018, within two weeks of the date of this Order.

Refund of fees

32. A refund of the paid fees will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 19 December 2022
Appeal Numbers: CHG100661435 and CHG100661454

Rights 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.