

THE VALUATION TRIBUNAL FOR ENGLAND



Non-Domestic Rating Appeal; material change of circumstances; Newbiggin (VO) v SJ & J Monk [2017]; appeal dismissed.

RE: 1 Hand Axe Yard, London WC1X 8QF

APPEAL NUMBER: CHG100663555

BETWEEN:	Careys Plc	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr M Smith (Senior Member)
Mrs V Hollander

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 27 September 2023

APPEARANCES: Mr J Winbourne from Winbourne Martin French
(Appellant's representative);
Miss D Castle (Valuation Officer's representative)

Summary of decision

1. Appeal was dismissed. The panel concluded that as at the material date the appeal property was capable of beneficial occupation.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 19 March 2021. The grounds of the proposal was that there had been a material change in circumstances. The reasons for the material change was that Mr Winbourne considered that the appeal property was not capable of beneficial occupation as there had been water ingress within the lower basement area of the appeal property.
3. Mr Winbourne had declared that he was employed on a fixed fee basis.

4. The appeal was on its second listing. When the appeal was before a lay panel on 17 July 2023 it became apparent that there were additional documents to the evidence bundle that had not been seen by the panel. It was not known if this was due to Mr Winbourne not uploading the documents properly, or if it was an issue within the Tribunal's appeals system. However, whatever the cause, this prevented the panel at the previous hearing from viewing all of the evidence in good time, prior to the hearing.
5. Mr Winbourne subsequently emailed all of his additional evidence to the clerk, Mr Gath, shortly after that hearing and copied in Miss Castle. Miss Castle confirmed that she had already seen all of the documents that Mr Winbourne had provided to the Tribunal.
6. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

7. The issue in dispute concerned whether the appeal property was capable of beneficial occupation.

Evidence and submissions

8. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties' skeleton arguments, a HSE report dated 15 February 2021 from Rockstone Safety; a report dated 27 February 2020 from Simon Levy Associates (Chartered Building Surveyors); an expert report on water ingress and drainage issues dated 6 November 2020 by Arup and a report dated 20 January 2021 from Rascor.

Legislation

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

"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"

Paragraph 6 of Schedule 6 to the LGFA 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.”

Paragraph 6A of Schedule 6 to the LGFA 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.”

Paragraph 7 of Schedule 6 to the LGFA 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.”

Decision and reasons

10. Having regard to the above regulations, the panel had to determine whether the appeal property was capable of beneficial occupation and thus whether there was a hereditament as at the material date.

11. During questioning a timeline of events was given by Mr Winbourne and are as follows:

- 5 February 2020 it came to light that there was water ingress affecting the Lower Basement Office;
- 27 February 2020 – A report by Simon Levy was undertaken to try to establish the cause of the flooding;
- 27 March 2020 – Appeal property vacated due to extensive flooding with rain and foul water entering the Lower Ground Floor;
- 13 October 2020 – A site visit was made by Rascor to propose remedial measures;
- 20 January 2021 Rascor’s report was issued stating the remedial work that was required to be undertaken on the appeal property; and
- 21 April 2021 – repair works completed.

12. Mr Winbourne argued that the nature of the water ingress was such that the lower ground floor of the appeal property was unable to be occupied due to the

water, dampness and other issues such as mould and sewer flies which had also started to affect the ground floor office.

13. He also argued that due to the Covid lockdowns, it took a while for the issue to be resolved as he struggled to get experts and workman in to deal with the issue. Furthermore, it was more of trial and error to try to establish what had caused the flooding and water ingress and then resolve the issue.
14. Mr Winbourne had also confirmed that a nominal peppercorn rent of £1 was being paid for the rent and therefore no reduction in the rent was sought by the tenant as a result of the water ingress and flooding as the rent could not be reduced any further.
15. The panel was restricted to the consideration of the physical circumstances as at the material date, which was 22 November 2020 being the date that the check was completed. However, Mr Winbourne was seeking for the RV to be reduced down to £1 effective from 27 March 2020 as this was the date the appeal property had to be vacated as a result of extensive flooding.
16. However, by Mr Winbourne's own admission, as at the material date, no substantial work had been undertaken.
17. Miss Castle had contended that the VO had refused to reduce the RV as 27 March 2020 was when the Covid Lockdown started and she suggested that was the reason for the appeal property being vacated rather than the flooding. Furthermore, no scheme of works had been provided by Mr Winbourne, as required by the judgment of *Newbigin (VO) v SJ & J Monk* [2017]. However, Mr Winbourne had argued that the Upper Tribunal judgment of *Jackson (VO) v Canary Wharf Limited* [2019] UKUT 136 (LC) supported his argument that there did not require to be a scheme of works.
18. The panel found that as at the material date, the appellant had not undertaken any work to the appeal property. In fact, in accordance with the appellant's own timetable, apart from minor works in trying to identify the cause of the water ingress, the repair work did not start on the appeal property until early 2021 which is nearly two months after the material date.
19. The panel paid particular attention to the Supreme Court's judgment in *Newbigin v Monk*. That was a case which concerned an office building in the process of being redeveloped. The outcome of the case was that once a schedule of works had been produced, and work had started to redevelop the space, the office was no longer capable of beneficial occupation and therefore was not a hereditament and should be removed from the rating list.
20. However, the panel found the judgment of *Newbigin v Monk* was not applicable in this circumstance as no work was underway at the appeal property on the material date.
21. The appellant had also referred to the judgment of *Jackson (VO) v Canary Wharf Limited* where it was held that a programme of works was not required for a property to be considered that it was not capable of beneficial occupation. However, the panel applied less weight to Mr Winbourne's argument as that

judgment referred to a property which was stripped out, rather than undergoing repairs.

22. Whilst the Lower Basement Office had been stripped back to the concrete barriers, it appeared to the panel that this was only when the works started in 2021. The panel had regard to the legislation and the assumption 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.

23. As the panel made a finding of fact that little or no work had been undertaken as at the material date and the repairs were undertaken and were therefore not uneconomic, the panel had to assume that the hereditament was in a state of reasonable repair and it dismissed the appeal.

Date: 24 October 2023

Appeal number: CHG100663555

Right of further 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.