VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; Local Government Finance Act 1988; deletion of the Property from the list with effect from 9 January 2020 sought as not new building; appeal allowed.

APPEAL NUMBER: CHG1000732694

BETWEEN:	Wilton Place Properties Ltd	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

RE:	1st and 2nd Floors Tyndale House, 134A Cowley Road, Oxford OX4 1JH
PANEL:	Ms N Salh (Presiding Senior Member) Mr D Winters (Senior Member)
CLERK:	Ms J Routledge IRRV (tech)
SITTING ON:	29 February 2024 (Remote hearing number 1)
APPEARANCES:	Mr Luke Wilcox of Landmark Chambers for the appellant Mr A Khoshan for the respondent Valuation Officer

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Summary of decision

The appeal was allowed; the panel found that the appeal property was not a "new building" produced by structural alterations to those parts of the building that were the subject of this appeal and the entry in the rating list from 9 January 2020 should be deleted.

Introduction

1. This appeal had been brought by Lambert Smith Hampton on behalf of Wilton Place Properties Ltd in respect of the subject property, which was entered in

the 2017 Rating List as Office and premises, First and Second Floors Tyndale House, Oxford OX4 1JH (the appeal property).

2. The challenge proposal was received by the Valuation Officer (VO) on 27 September 2021. It had been made on the grounds that the alteration made by the VO on 19 February 2020 to bring the appeal property (incorporating a slight change in address to 134A Cowley Road Oxford OX4 1JH) as a new hereditament with effect from the 9 January 2020 at £88,500 RV was inaccurate.

3. The Valuation Officer issued a challenge case decision notice on 9 August 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was accurate based on the evidence and information available.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, as amended, an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was inaccurate in that a property was shown in the list when it ought not to be.

5. The material day was therefore the 9 January 2020 the effective date on which the property was brought into the list.

6. The whole building Tyndale House which comprised ground floor retail units and three floors of office accommodation was subject to a check decision notice which confirmed the RV of £0 with effect from 17 April 2017 whilst works were ongoing, it was subsequently removed from the list. The original first floor was not entered into the rating list as it was exempt. The second floor was previously occupied with the third floor. Following the refurbishment and letting of the third floor, a completion notice was issued in respect of the appeal property.

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

Issue

6. Whether the appeal property was a new building within the meaning of Section 46A to the Local Government Finance Act 1988 (LGFA 1988) and should be entered into the rating list from 9 January 2020

Evidence and submissions

7. The appellant's representative provided a consolidated bundle which included the check challenge and appeal documents, building plans, structural reports, photographs, and extracts from the legislation.

8. The following caselaw was also included in the bundle or referred to by the parties:

- *Delph Property Group Ltd v Alexander (VO) (246525454690/538N10, 22 May 2018)*
- *Tull Properties v Gloucestershire County Council (2014) RA 180*
- *Porter (VO) v Trustees of Gladman SIPPS [2011] RA 337*
- *Newbigin v S J & J Monk [2017] UKSC 14*
- *Jackson (VO) v Canary Wharf Limited (2019) UKUT 0136 (LC)*

9. Mr Wilcox for the appellant argued that the appeal property was not a new building and cannot lawfully have been the subject of a completion notice. The completion notice was therefore invalid. Since the entry of the appeal property in the rating list is entirely contingent on the deeming effect of the completion notice, it followed that the entry must be deleted.

10. The VO argued that there had been a complete refurbishment of the property as it was stripped back to shell with replacement windows, curtain walling, removal of all internal fixtures and fittings and structural alterations to the ground and third floor. The appeal property was part of 2.5 year development scheme, the offices had a completely different appearance externally and there had been a reconstitution of the hereditaments within the building, which was sufficient to defend that this was a 'new building' for the purposes of the Act.

Decision and reasons

11. It was not in dispute that Tynedale House in which the appeal property was situated had undergone considerable alterations or that the appeal property was not capable of beneficial occupation on the effective date that it was entered in the Valuation List. Therefore the panel had regard to whether the appeal property could be regarded as a new building in accordance with the legislation that was current at the time of the decision.

12. The panel had regard to s46A of the Local Government Finance Act 1988:

    "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."

13. The appellant's submission included a great deal of evidence in support of the contention that the appeal property had not been structurally altered, including floor plans denoting the floor plates before and after the works, emails from the project manager and structural engineer confirming the only alteration to the appeal property was the curtain walling. It was also confirmed that there had been structural alterations to the third and ground floors and that the external look of the building was significantly altered.

14. The respondent submitted that the fact that it was a new hereditament consisting of the first and second floors and the information from the billing authority supported the contention that this was a new building. The information was provided to explain why the completion notice was issued as follows:

Structural works, effecting the building and namely 1st-2nd floors in summary:

- *Erection of third floor extension. Installation of glazed enclosure to exist ing escape stairs at rear,installation of double glazed curtain wall to fro nt side and rear elevations and provision of new handrail at third floor level. Alterations to roof. (15/02667/FUL)*
- *Amendment to the third floor west gable end, to reduce the profile of th e building and replace the brick with an alternative glazed façade. (15/02667/NMA)*
- *Installation of new roof top plant and screening mesh. Alterations to security enclosure. (17/00049/FUL)*
- *Single storey rear extension and emergency escape stair and security enclosure (17/00233/FUL*

The replacement of the roof, the full height fire escape structure and replacem ent of external brick walls with a glazed façade would in our view constitute a structural change and therefore render the 1st-2nd floors a "new building" for the purpose of the notice.

15. The panel had regard to the decisions of the Past President of the Valuation Tribunal for England Professor Zellick in *Tull Properties Ltd v South Gloucestershire Council* and the current President Mr Garland *in Delph Property Group Ltd v Mrs Janet Alexander* which had been provided by the appellant in the bundle. This provided guidance to the panel on what questions it should ask itself when considering the decision. In both appeals the question was whether there had been a new building created.

16. In *Tull,* it was accepted that there should be two components to the test, firstly was the present building produced by the structural alteration of an existing building and has the hereditament by virtue of the alterations become a different hereditament. The finding in that case was that despite the blocking up of doors, removal of roller shutters, upgrading of services and various miscellaneous improvements which allowed the possibility of the floors being let to separate tenants, it did not divide the building into separate parts. Professor Zellick concluded that it had to be shown that there had been structural alterations that would change the way in which the building could be occupied for a new building to be created.

"*26. I have no hesitation in rejecting the respondents first argument that the alterations to Beluga House created a "new building" according to the ordinary meaning of that expression. In my judgment, it was plainly the same building after the alterations as it was before. I am sure there can be buildings so transformed by alterations that it is apt to describe them as new* *buildings, but it takes more than a new floor, a lift, some windows, additional lavatories and a reception desk*."

17. In *Delph* it was again emphasised that the alterations to the ground floor which created a new entrance for the newly created flats, a bin storage area and other associated services could cause there to be a new hereditament except that there had been no structural work done to create these new areas and therefore in accordance with the court of appeal in *Newbigin* and the observations of Professor Zellick in *Tull* a building which was developed but not structurally altered could not be brought back into the Rating List. At para 67 it was stated:

    "I believe there would need to be a clear and significant change to the shape or size of the building or to its character to create a new building out of an existing one. A change of use from full non-domestic to part non-domestic and domestic was not sufficient in my opinion to change its character."

18. The panel found that having had regard to the work that had been completed on the first and second floors, it was satisfied that there had been no structural alteration to the appeal property, it had not changed in size layout or character, the changes to the external cladding and windows were not of a structural nature. Although the outward appearance had changed this had no real effect on the internal layout or use the appeal property would be put to.

19. The panel was also satisfied that although there had been changes to the letting of the floors within Tynedale House that caused a different hereditament to be created once the third floor had been separately let the changes that were made to the appeal property did not prevent the floors within Tynedale House being let either together or independently in the same manner as they had been let in the past and that merging and splitting hereditaments within a building would not require a completion notice.

20. On that basis the appeal was allowed.

Order

21. As a result of this decision the Valuation Officer is ordered to delete the entry for 1st and 2nd Floor Tynedale House Oxford OX4 1JH in the Rating List in accordance with Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 from 9 January 2020.

Date: 26 March 2024

Appeal number: CHG100732694

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.