

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating appeal; Shop and Premises; Challenge seeking deletion of list entry; program of works; Newbiggin (VO) v Monk [2017] UKSC 14; Jackson (VO) v Canary Wharf Ltd [2019] RA 411; Decision: Dismissed.

RE: First Floor, 12-16 Blenheim Grove, London SE15 4QL

APPEAL NUMBER: CHG100735173

BETWEEN:	Roundmen Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr M Smith, (Presiding Senior Member)
Mrs N Crawshaw (Senior Member)

CLERK: Ms R Muller

HEARING: Remote Hearing No. 2 on 6 June 2023

APPEARANCES: Mr M Davenport from Hartnell Taylor Cook, representative for
the Appellant
Mr N Islam, representative for the Respondent

Summary of decision

1. The appeal was dismissed as the panel found that the subject property was capable of beneficial occupation on the material day and therefore it remained a hereditament.

Introduction

2. The subject property was a two storey building, built between 1955 and 1964. It had been entered into the 2017 Rating List as first floor offices with a rateable value of £27,250. It was located at First Floor, 12-16 Blenheim Grove, London SE15 4QL with toilet block on the ground floor.

3. The proposal to which this appeal relates was made under Regulation 4 (1) (h) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 and sought a deletion of the subject property's entry from the 2017 Rating List with effect from 28 June 2021.
4. The proposal was served on the Valuation Officer (VO) on 25 August 2021. The challenge period came to an end when the VO issued his final decision on 5 August 2022. The VO refused to alter the list and deemed the proposal to be not well founded. The appellant subsequently appealed to the Tribunal on 2 December 2022. The grounds for the appeal were that the list is inaccurate in relation to the hereditament (other than in relation to the valuation).
5. Both Mr Davenport on behalf of the appellant and Mr Cates on behalf of the respondent appeared as advocates only.
6. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary matter

7. It was noted that within the evidence submitted, the appellant had supplied his supporting documents as links instead of the actual papers. The panel found that all of the documents had previously been submitted to the Valuation Office Agency and had been considered during the challenge stage. Mr Davenport had been appointed as representative to the appellant after the evidence documents had been submitted to the Tribunal. Therefore, he had been unaware that there were missing documents for the panel to consider. As soon as he became aware of the issue, he sent the missing documents, along with two photographs of the works being completed to the Tribunal a week before the hearing.
8. Mr Cates had stated that as the documents had been provided during the challenge stage but not uploaded by the appellant at appeal stage, he did not object to these documents, or the two photographs of the subject property being considered by the panel. Therefore, the panel allowed these documents to be included within the appellant's submission.

Issue

9. The subject property had entered the 2017 Rating List on 1 April 2017 with a Rateable Value (RV) of £27,250. The appellant sought a deletion of the entry with effect from 28 June 2021 which was the date when building works had commenced on the ground floor toilet block. The works had lasted approximately four months.

Evidence and submissions

10. The evidence bundle contained a copy of the VO's decision along with supporting documentation; details of the facts in dispute; photographs of the subject property and a copy of Southern Asbestos Solutions Certificate of Works.

11. Mr Davenport contended that the subject property, even though unoccupied, had become incapable of beneficial occupation on 28 June 2021 and was therefore not a hereditament on the material day. He stated that the appellant had commissioned an asbestos survey in 2019 with regards to the ground floor toilet block and had been informed that it was necessary to demolish this part of the building to remove the asbestos.
12. Mr Davenport contended that the subject property was incapable of beneficial occupation on the material day. This was because the toilet block on the ground floor had to be demolished as asbestos had been identified. Therefore, works had been carried out under controlled conditions to demolish and remove the asbestos from the grounds. After the demolition had been completed, new toilets had been constructed within the first floor office area. Whilst the works were being carried out, some of the back wall to the ground level was also demolished.
13. Mr Davenport stated that the works were done in this order, as it was deemed not necessary to complete the new toilets first with the offices being unoccupied. The offices during the works would have not been able to be accessed even if they were occupied, as the asbestos had to be removed under tight measures, and the workmen used the corridor to where access to the offices was located. As such, Mr Davenport requested a temporary deletion of the entry within the 2017 Rating List from 28 June 2021 for a period of four months, which was the time it took for the works to be completed.
14. Mr Cates stated that at the material day, the works carried out were not sufficient enough to be considered major works. From the evidence submitted with the challenge, he had concluded that the ground floor toilet block was being demolished with construction on only part of the first floor. He stated that there was no evidence that the demolition of the toilet block on the ground floor caused any disruption to the first floor. The works on the first floor to include new toilets did not make the first floor incapable of occupation.
15. Mr Cates was of the opinion that the subject property remained a hereditament whilst the demolition works had been carried out. The fact that the hypothetical tenant would have to access the appeal property via the same corridor that the workers had used whilst removing the asbestos materials, did not make the subject property uninhabitable. He also stated that if tenants had been in occupation of the subject property on the first floor, the landlord would have constructed new toilets within the first floor before carrying out the demolition of the toilet block on the ground floor.

Decision and reasons

16. The statutory definition of rateable value is set out in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 as follows;
 - (1) 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.

17. The main issue for the panel to determine whether the works carried out on the ground floor toilet block warranted a temporary deletion of the RV with regards to the subject property.

18. The main issue for the panel to determine was the date on which the premises should be valued by having regard to its physical condition as opposed to the reasonable repair assumption. For the appeal to succeed, the appellant needed to establish that the Supreme Court decision in *Newbiggin (VO) v Monk* [2017] UKSC 14; *Jackson (VO) v Canary Wharf Ltd* [2019] RA 411 applied at the material day for this appeal. This case was discussed by Mr Cates within his submission. It examined the principle of reality in detail and its relationship to the statutory repair assumption. Throughout there are references to a building undergoing redevelopment and/or reconstruction.

19. Paragraph 15 sets out the position of the Supreme Court:

The decision appealed against interprets Schedule 6 to the 1988 Act as entailing a major departure from the reality principle by requiring that the hereditament be assumed to be in a reasonable state of repair for the mode of occupation listed in the rating list, namely as "offices and premises". I do not agree with that approach. In my view, the legislative history shows that the repairing assumption which para 2(1) of Schedule 6 introduced did not supplant the reality principle to that degree.

20. Paragraph 20 expands on the issue:

The 1999 Act can thus be seen as applying principles analogous to those in Wexler, Camden London Borough Council and Saunders (para 16 above) to a hypothetical lease in which the tenant bore the obligation to put the hereditament in repair. In my view the Court of Appeal goes too far in interpreting the 1999 Act as completely displacing the reality principle in relation to both the physical state and the mode of occupation of a hereditament which is undergoing redevelopment. The 1999 Act, by introducing the assumption of reasonable repair at the outset of the hypothetical tenancy ("the repair assumption"), is not addressing the question of whether the premises were capable of beneficial occupation, which, in the context of a building undergoing redevelopment, is a logically prior question. Thus the repair assumption (para 2(1)(b)) applies to matters affecting the physical state of the hereditament (para 2(7)(a)) but not to the mode or category of occupation of the hereditament (para 2(7)(b)).

21. The panel established that this authority distinguished between mere lack of repair, which did not affect rateable value because of the hypothetical landlord's obligation to repair, and redevelopment works that made a building uninhabitable. If the hereditament is not capable of beneficial occupation as a result of redevelopment works, the reality principle applies such that the repair assumption in Schedule 6 2 (1) (b) does not apply.

22. As the judgment makes clear, the matter must be considered with the aim of making an objective assessment of the property on the material day. The material day in this appeal is the effective date of the deletion sought by the appellant, namely 28 June 2021.
23. The panel considered the two photographs provided by the agent, which were taken before and after the demolition of the ground floor toilets. The panel noted that the ground floor toilet block was located outside and had been connected to the side of the building. No evidence had been provided to show that the works carried out to the external wall demonstrated any disruption to the first floor offices.
24. The panel noted an external fire escape staircase had been in place at the side of the building. The panel asked the parties if the fire escape could have been used to access the first floor offices. However, neither party could verify this.
25. It was not disputed that demolition work had been carried out. However, the panel found that as at the material day, the demolition of the ground floor toilet block did not render the subject property from being occupied. The panel did note that the corridor that was used to access the first floor had also been used by the workmen during the removal of the asbestos. However, the panel held that if the subject property had been in occupation during the time of the works, the removal of the asbestos would not have caused a disturbance to the extent to render the first floor offices uninhabitable for a time that would warrant a deletion of the RV from the 2017 Rating List, even for a short period of time.
26. The appeal was therefore dismissed.

Date: 27 June 2023

Appeal number: CHG100735173

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.