THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal 2017 compiled list appeal; Challenge seeking deletion of the assessment; Newbigin (VO) v Monk [2017] UKSC 14; Appeal dismissed.

RE: Tuckers Garage, B3257 Between Lime Tree Way and Tremollett Road, Coads Green, Launceston PL15 7LY

APPEAL NUMBER: CHG100744569

BETWEEN: Kwalita Developments Limited Appellant

and

The Valuation Officer Respondent

PANEL: Miss A Griffiths (Presiding Senior Member)
Mrs S Nix (Senior Member)

CLERK: Mr A Johnson Tech IRRV

ON: 22 May 2023

APPEARANCES: Mr C Gubbin and Mr A Bloomfield (for the Appellant)
Miss C Stead (for the Respondent)

REMOTE HEARING CONDUCTED VIA MICROSOFT TEAMS

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was dismissed. The panel found that the appeal property was, on the material day, capable of beneficial occupation and therefore remained a hereditament which must be valued in accordance with the statutory repair assumptions.

Introduction

2. This decision notice is not, and does not purport to be, a verbatim record of the proceedings. The absence of a reference to any statement or item of evidence should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. When the challenge was submitted the appeal property was entered into the 2017 rating list as 'Tuckers Garage, B3257 Between Lime Tree Way and Tremollett Road, Coads Green, Launceston PL15 7LY'. It is since been amended to 'Kwalita Developments Ltd, Coads Green, Launceston, Cornwall, PL15 7LY'.

4. The appeal property entered the 2017 non-domestic rating list with effect from 1 April 2017 as a 'vehicle repair workshop and premises' with a rateable value (RV) of £10,750. The Appellant's challenge sought the deletion of the appeal property from the rating list with effect from 14 August 2019.

5. The Valuation Officer (VO) considered the challenge and decided that it was not well-founded and a decision notice was issued to this effect. The Appellant subsequently appealed to this Tribunal.

Issue

6. The only issue for the panel to determine was whether the appeal property was a hereditament on 14 August 2019 and, therefore, whether it should remain in the rating list or be deleted.

Summary of evidence

7. The evidence before the panel comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Summary of evidence and submissions

8. Mr Gubbin submitted that the Appellant had purchased the appeal property on 14 August 2019 with the intention of demolishing it and redeveloping the site. However, the Appellant's plans had been delayed, he said, by the planning application/permission process.

9. Mr Gubbin understood that the previous owner of the appeal property had been exempt from paying non-domestic rates and he considered that the Appellant should also be exempt.

10. Mr Gubbins further submitted that he had challenged the appeal property's entry in the rating list because it had no electricity or water supply, there were holes in the roof and it suffered from sewerage problems.

11. Miss Stead submitted that the appeal property, when viewed against the relevant legislation and case law, remained a hereditament. Miss Stead added that the appeal property was not exempt from rating as it did not fall to be included within any of the exempt property types contained within Schedule 5 (of the Local Government Finance Act 1988).

Decision and reasons

12. It appeared to the panel that the Appellant may have confused the validity of the appeal property's entry in the rating list with the local billing authority's decision(s) with regard to the awarding of rate relief. Entitlement to rate relief is a matter for the billing authority to determine which, if awarded, will reduce the amount payable (possibly to nil) but does not exempt the property itself from inclusion within the rating list. The panel was also aware that just because one ratepayer received rate relief it did not necessarily follow that a subsequent rate payer would do so.

13. It also appeared that the Appellant's reference to an 'exemption notice' within their letter to the Valuation Officer dated 31 October 2021 had caused the Valuation Officer to reference the statutory exemptions from rating which are contained within Schedule 5 of the Local Government Finance Act 1988. The panel found that, in reality, the Appellant was referring to a demand notice which had been addressed to the previous rate payer showing that rate relief had been awarded.

14. Schedule 5 contains a list of properties which are exempt from rating. These (broadly) include properties such as agricultural land and buildings, fish farms, places of religious worship and public parks. Importantly, Schedule 5 does not provide a statutory exemption for vehicle repair workshops.

15. As set out in paragraph 6 above, the only matter for the panel to determine in this appeal was whether the appeal property constituted a 'hereditament' on 14 August 2019.

16. The term 'hereditament' is an archaic term derived from section 115(1) of the General Rate Act 1967 as:

> '…property which is or may become liable to a rate, being a unit of such property which is or would fall to be, shown as a separate item in the valuation list [or rating list]'.

17. Put simply, a 'hereditament' is a unit of property (such as a factory, a warehouse or a workshop) which is capable of beneficial occupation and must therefore appear as a separate entry in the rating list.

18. The statutory definition of RV is contained within paragraph 2 to Schedule 6 of the Local Government Finance Act 1988:

(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.

19. Therefore, this appeal concerned whether the appeal property should be valued on the basis of its physical condition on 14 August 2019 (irrespective of the Appellant's intentions to demolish it) as opposed to the reasonable repair assumption. This principle of reality and its relationship with the statutory repair assumption was examined in detail by the Supreme Court in *Newbigin (VO) v Monk [2017] UKSC 14*.

20. Paragraph 15 set 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.'

21. 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)).'

22. The Supreme Court has distinguished between a lack of repair (which did not affect rateable value because of the hypothetical landlord's obligation to repair) and redevelopment works that make a building uninhabitable. In short, if a property is rendered incapable of beneficial occupation as a result of ongoing redevelopment works then the repair assumption in Schedule 6, paragraph 2(1)(b) cannot apply. However, if a property can undergo an amount of reasonable repair to render it capable of beneficial occupation, then the repair assumption applies.

23. Whilst the Appellant had provided a schedule of work concerning the Appellant's future intentions for the site there was insufficient evidence before the panel to show that the appeal property was beyond reasonable repair as it stood on 14 August 2019. Whilst the panel acknowledged there were issues with regard to the electricity, water and sewerage it was not presented with sufficient evidence to show that remedying these issues could not reasonably be done.

24. Consequently, the panel concluded that whilst the appeal property was in a state of disrepair it was, on 14 August 2019, a hereditament which must be valued in accordance with the statutory repair assumptions.

25. After full consideration of the evidence presented by the parties, the panel found that the Appellant had not discharged its evidential burden of proof to demonstrate that the appeal property should be deleted from the rating list. This appeal was therefore dismissed.

Date: 24 May 2023

Appeal Number: CHG100744569

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.