THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Warehouse and Premises; Local Government Finance Act 1988; Statutory Assumptions; Economic Repair; Material Day; The Rating (Material Day for List Alterations) Regulations 1992 (S.I. 1992 No. 556); The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009 No. 2268); Appeal dismissed.

Re:	Wilmot Arms, Public House, Borrowash, DE72 3HA	
APPEAL NUMBER:	CHG100746967	
BETWEEN:	S & C Properties (Derby) Limited Represented by Chartex Chartered Surveyors & Valuers	Appellant
And		
	Joanne Moore (Valuation Officer)	Respondent
BEFORE:	Mr MF Young (Vice President of the VTE)	
CLERK:	Mr James Massey	
REMOTE HEARING 2:	20 March 2024	
PARTIES PRESENT:	Mr H Broadbent of Chartex Chartered Surveyors & Valuers - Appellant's representative Mr I Iqbal - Respondent's representative	

Summary of decision

1. The appeal was dismissed. I consider that there was insufficient evidence to demonstrate that Wilmot Arms, Public House, Borrowash DE72 3HA ("the subject property") was beyond economic repair at the material day.

Introduction

2. As a Vice President of the Tribunal, I was authorised to sit alone in hearing this appeal, in accordance with the Tribunal Business Arrangements set out in the Consolidated Practice Statement 2023.

3. This appeal has been brought in respect of the subject property, which was entered in the 2017 rating list as "public house and premises" at rateable value (RV) £31,500 with effect from 1 April 2017.

4. The challenge process began on 15 November 2021 when the appellant had made a proposal (challenge) to the Valuation Officer (VO) as the appellant was of the opinion that the that the

assessment should be deleted from the rating list with an effective date of 1 September 2019 on the grounds that it was beyond economic repair.

5. Having considered the challenge the VO issued a decision on 15 March 2023 stating that the VO was of the opinion that the proposal was not well founded as a reasonable landlord would consider the cost of repairs to be economic.

6. The subject property is a traditional build, large public house situated in the village of Borrowash in the Erewash district of Derby with a car park to the rear. There are two bars, two dining rooms, a kitchen, a basement, toilets, offices and some bedrooms to the first and second floors. The property measures 317 m^2 on a GIA basis.

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

Issue

9. Whether the RV of the subject property should be reduced to £0 with effect from 1 September 2019 as it was beyond economic repair, or deleted from the rating list from the same date as it was a property under redevelopment.

Evidence and submissions

10. Mr Broadbent appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Broadbent's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

11. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: VO's challenge case decision notice; appellant's challenge submission; a copy of Mr Broadbent's valuation report dated 13 October 2022; photographs of the appeal property; the appellant's cost estimates for the repair works and a details of planning applications and permissions.

10. The appellant stated that the subject property was let to a tenant who left shortly before the appellant took possession of the subject property. The previous tenant had damaged the subject property and stripped it of many of its fixtures and fittings. The appellant immediately placed a 'bund' (mound of earth) in front of the building to prevent access. The electricity had been disconnected and the building boarded up. The appellant's architects provided an estimate of the cost for restoring the property of £3,146,926 including fees.

11. The appellant's architects immediately applied for planning permission to demolish and redevelop the subject property, and planning consent was received on 3 February 2022. It was contended by the appellant that the condition of the appeal property had deteriorated since it became unoccupied due to water ingress, vandalism and arson, however the cost of reinstating the building as a public house would have been considered uneconomic at the point the appellant took possession from the tenant.

12. Mr Broadbent made reference to the fact that the property would be undergoing redevelopment and as per the Supreme Court decision in *Newbigin (VO) v SJ & J Monk* a

scheme of redevelopment had commenced, and the hereditament was to be materially changed or demolished and should be deleted from the list.

13. Mr Broadbent was instructed on 7 October 2022, subsequent to the challenge being submitted, and inspected the subject property both internally and externally on 12 October 2022. Based on his inspection and the architect's appraisal and photographs taken in November 2021, he considered that the current value of the subject property was £95,000. He had used the BCIS dilapidations costings to estimate the costs of reinstating the subject property to a lettable condition to be £684,000, which would result a total loss of £434,000 based on a market value of £345,000. He considered that the state of dilapidation would have had been less severe on 1 September 2019, but it was still beyond economic repair at that date.

14. In response to the challenge, the respondent did not consider that sufficient evidence had been provided by the appellant to demonstrate that at the material day, the subject property was incapable of beneficial occupation and therefore not a hereditament. It considered that the photographs taken in November 2021 did not demonstrate the subject property's state of repair in September 2019, nor did they show all the repairs which it was claimed were required to return the subject property to a functioning pub.

15. The respondent also stated that the evidence provided indicated that a scheme of works had not commenced either in November 2021 or in October 2022, and could not therefore have been in place at the material date and that, until such time that works commence, the hypothetical repairing assumption cannot be over ridden and the subject property should remain in the rating list.

16. Mr Iqbal stated that when assessing a property for non-domestic rates the Valuation Officer must assume that the property is in a 'reasonable state of repair'. It is then necessary to consider its actual state at the material day and cost of repair, which relate to the hereditament, necessary to bring the actuality up to the assumed state (as at the antecedent valuation date of 1 April 2015 for the 2017 rating list).

17. Once the repair works have been costed it is then necessary to consider whether the reasonable hypothetical landlord would consider the repair works economic or not. If considered economic, then the hereditament can be valued in an assumed state of reasonable repair; if not then it will be valued *rebus sic stantibus* as it is at the material day (which for a derelict property would usually be with a nil rateable value).

18. In light or Mr Broadbent's report date 13 October 2022, the respondent had stripped out what it considered to be improvement works or unnecessary repairs and estimated the cost of repairs to be £192,112. Based on the hypothetical rent passing on the appeal property of £31,500 at the AVD, the respondent was prepared to accept that the subject property would be considered by a hypothetical landlord to be uneconomic to repair as of 13 October 2022 and had reduced its RV to £0 from this date. However, the respondent did not consider that sufficient evidence had been provided by the appellant to prove that it was beyond economic repair from an earlier date.

Decisions and reasons

19. For this appeal I found that the material day, the day on which the VO is required to assess matters involving an alteration to the list, was 1 September 2019, the proposed date of deletion in the appellant's challenge proposal.

20. 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.

16. The central issue for me to determine was whether at the material day the premises should be valued by having regard to their 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 *Newbigin v Monk* applied at the material day for this appeal. This case 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.

17. 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.*

18. 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)).*

19. I 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.

Is the subject property in a state of disrepair or undergoing reconstruction?

20. As the judgment of the Supreme Court makes clear, the matter must be considered with the aim of making an objective assessment of the property on the material day.

21. I noted that the appellant's representative contended that the appeal property had been fully stripped out at the material day. No actual works had taken place by this date but many of the subject property's fixtures and fittings had been removed by the previous tenant and the subject property had been left in a state of disrepair.

22. In considering the photographs provided by the appellant which were taken in November 2021 and October 2022, I noted that these depicted what appeared to an unoccupied public house in some disrepair. It was not evident from these photographs that the subject property had been fully stripped out to the extent that it was no longer a public house, or that any program of redevelopment had commenced. I therefore found that at the material day, only minor works had been carried out by the appellant to secure the appeal property and it constituted a property in a state of disrepair.

23. The appellant had referred to there being an intended program of redevelopment, as demonstrated by the fact that planning consent had been applied for and granted. Whilst I am satisfied that this demonstrated an intention to demolish and redevelop the subject property, there was no evidence it had been fully stripped out at the material day of 1 September 2019. I therefore concluded that it was a property in disrepair and the statutory repair assumptions had to be applied.

24. The appellant's alternative argument was that the rateable value of the subject property should be reduced to £0 as the works required to reinstate the subject property to a state of reasonable repair would be considered uneconomic. The respondent had contended that the appellant had quoted incorrect grounds in the challenge for the RV of the subject property to be reduced to £0 as it was beyond economic repair. However, I note that the respondent processed the challenge on this basis and having considered the evidence provided by Mr Broadbent of the state of the subject property on 13 October 2022, it had decided to reduce its rateable value to £0 from this date.

25. The appellant's contention was that the physical state of the subject property was such that it was beyond reasonable repair prior to 13 October 2022. I do not consider that the estimated rebuild costs as of 22 August 2022 of over £3 million provided by the architects represent repair costs for the appeal property. The photographs submitted by the appellant which were taken in November 2021 are mostly of the exterior of the premises, depicting a boarded-up pub. None of these showed the extent of the damages described by the appellant, in particular to the roof, wine cellar, bedrooms, kitchen and restaurant.

26. The appellant had submitted a schedule of repairs which represented the condition of the appeal property as of 12 October 2022 along with his estimate of repair costs totalling £684,000. He accepted that the property had deteriorated over time and costs of repairs

would have been less at 1 September 2019, however he considered that the costs would have still rendered that subject property beyond economic repair on the material day. The respondent had provided its own analysis of the costs based on the condition report provided by Mr Broadbent, in which some of the costs were disregarded as improvements or not required for the premises to function as a pub. A 25% reduction had also been made to index the costs to 1 April 2015, which resulted in total estimated costs of £192,111.83. The appellant had not challenged the respondent's analysis of the repair costs.

27. Whilst I was aware that the appellant had chosen to demolish the subject property rather than carry out repairs, I considered that this was a subjective choice and was not persuaded that a hypothetical landlord would make the same choice in the same circumstances. It was accepted that the state of the subject property had worsened since 1 September 2019, and therefore its repair costs had increased over the period since the material day.

28. I found that there was insufficient evidence provided by the appellant to demonstrate that the state of repair of the subject property was beyond economic repair prior to 13 October 2022 and therefore considered that it must be valued on the statutory assumption that it was in a reasonable state of repair. The appeal was therefore dismissed.

Date: 15 April 2024

Appeal number: CHG100746967

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.