THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: 11 Highbury Park, London, N5 1QJ (the "appeal property")

APPEAL NUMBER: CHG100766533

BETWEEN:	Nazli Ozkan	Appellant
	(Represented by Appeal My Rates UK Ltd)	
	And Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mrs L Bryning (Senior Member)
Mr K Richardson

REMOTE HEARING: 16 December 2022

CLERK: Mr J Massey

APPEARANCES: Mr P Phillips of Appeal My Rates UK Ltd for the Appellant.
Mr A Khan for the Valuation Officer.

Summary of decision

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

Introduction

2. The appeal property was a shop unit situated on the ground floor of a three storey building in a retail parade on Highbury Park in the London Borough of Islington.

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 appeal property's entry from the 2017 Rating List with effect from 19 July 2019.

4. The proposal was served on the Valuation Officer (VO) on 19 January 2022. The challenge period came to an end when the VO issued his final decision on 4 May 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 10 May 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. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

6. The existing entry for the appeal property of £20,750 Rateable Value (RV) with effect from 1 April 2017 had been deleted from the rating list with effect from 16 February 2021. The appellant sought a change in the effective date to 19 July 2019, after the previous tenant had vacated the appeal property and when works had commenced stripping out the appeal property in preparation for a program of major refurbishment works.

Evidence and submissions

7. The appellant produced an evidence statement which contained the initial challenge, VO's initial response to the challenge, the appellant's reply and the VO's final challenge decision notice. The evidence exchanged during challenge included a schedule of events, photographs of strip out and invoice, proposed floor plans and an email from the planning authority.

8. On behalf of the appellant, Mr Phillips contended that the appeal property became incapable of beneficial occupation on 19 July 2019 and was therefore not a hereditament on the material day. He stated that the appellant had purchased the appeal property on 23 March 2019 at which time it was occupied by a tenant. The tenant had left unexpectedly on 17 July 2019 and the appellant had commenced works straight away to fully strip out the shop to allow access to its foundations.

9. Once a structural survey had been carried out and funding obtained, plans were drawn up and submitted to Islington Council on 20 December 2021. However, these were not approved until 5 January 2021 and building works commenced on 22 February 2021.

10. As the appeal property was incapable of beneficial occupation on the material day, Mr Phillips contended it was not a hereditament and therefore its entry should be deleted from the Rating List. He stated such a deletion would conform with the Supreme Court's judgment in *Newbigin (VO) v Monk* [2017] UKSC 14 as the strip out works were an essential part of the redevelopment of the appeal property as they were necessary to allow a structural assessment prior to plans and costing being produced.

11. He considered that the deletion of the appeal property was supported by the Upper Tribunal in its judgment in *Jackson (VO) v Canary Wharf Ltd* [2019] RA 411, in which it was confirmed that a stripped-out property can be deleted prior to the commencement of substantial redevelopment works, provided there is a clear intention to redevelop the

property. He contended that the stripping out works, structural survey and planning application demonstrated such intent.

12. Mr Khan stated that at the material day, the works carried out were not sufficient to be considered a major strip out. From the evidence submitted with the challenge, he had concluded that the only stripping out which had taken place was the furnishings and some internal stud walls, and that the works required to render it capable of beneficial occupation constituted ‘repair’. He referred to the photographs provided by the appellant, which he argued showed that the electrics, flooring, air conditioning and kitchen equipment were still in situ. The only other evidence provided of works carried out at the material day was an invoice dated 19 July 2019 for £350.00 for ‘*Making hole to see how deep is foundation and clearing shop fittings’*.

13. There was no evidence of any further works being carried out until 22 February 2021 and Mr Khan considered that the appeal property remained a hereditament until this date.

Decision and reasons

14. 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.

15. The central issue for the panel to determine was the date on which 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.

16. 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.*

17. 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)).

18. 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.

19. **Are the Premises in a State of Disrepair or Undergoing Reconstruction?**

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 19 July 2019.

20. The panel noted that the appellant's representative contended that the appeal property had been fully stripped out at the material day. He had not been able to provide a full description of the works that had taken place by this date but stated that the floors had been lifted and holes dug in part of the property to allow the inspection of the foundations. He stated that much of the stripping out work had been carried out by the appellant and her family and friends, and the invoice provided was for the removal of shop fittings and the digging of inspection holes.

21. In considering the two photographs provided by the appellant which were taken between 19 July 2019 and 24 July 2019, the panel noted that these depicted what appeared to be demolished stud walls and furnishings stacked in the appeal property. It was not evident from these photographs that the floor of the appeal property had been lifted or that any holes had been dug. The panel therefore found that at the material day, only minor works had been carried out to strip out the appeal property and it constituted a property in a state of disrepair and did not consider that the reinstatement of the appeal property would be considered uneconomic.

22. The appellant had referred to the stripping out of the property as being a part of an intended program of redevelopment. The panel noted that a copy of the structural report resulting from the holes dug in the appeal property had not been submitted in evidence and determined that any such investigations would be preliminary to any program of redevelopment.

23. The panel noted that in *Canary Wharf*, it was accepted that at the material day in that appeal of 16 January 2013, the appeal property was fully stripped out to a concrete shell and was incapable of beneficial occupation as an office. The stripping out works were undertaken between 14 February 2011, when the property was marketed to find a new tenant, and 11 September 2011. The nature of the works was described in detail in paragraph 11 of the Upper Tribunal's judgment;

The previous occupier of floors 44, 45 and 46 surrendered its lease on 17 February 2011. The floors had not been comprehensively refurbished for 20 years and, in anticipation of the space becoming vacant, CWCL was instructed on 20 January 2011 to strip out the floors to a shell and core condition. The works were carried out between 14 February and 18 September 2011, and involved the removal of raised flooring, suspended ceilings, partition walls, and mechanical and electrical services, at a cost of £740,254

24. The panel considered that the situation at the appeal property was very different. It considered that the appeal property was at the material day, an empty shop (although it contained demolished furniture and fixtures left by the previous tenant) and there was no evidence before it that it had been fully stripped out to anything like the extent of the property in *Canary Wharf*.

25. Having considered the extent of the stripping out of the appeal property at the material day the panel therefore concluded that it was a property in disrepair and the statutory repair assumptions had to be applied. The appeal is therefore dismissed.

Date: 12 January 2023

Appeal number: CHG100766533

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.