THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; store and premises; challenge seeking deletion from rating list; Newbigin (VO) v SJ & J Monk [2017] UKSC 14; the panel determined that the available evidence did not show the appeal property had been incapable of beneficial occupation at the material day; appeal dismissed.

RE: Architectural Metal Roofing Ltd, Unit 8 Owlsfoot Business Units, Sticklepath, Okehampton, Devon, EX20 2PA

APPEAL NUMBER: CHG100782352

BETWEEN: Architectural Metal Roofing Ltd — Appellant

And

Ms L Formela-Osbourne (Valuation Officer) — Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 26 January 2024

PANEL: Mr W J Read (Presiding Senior Member)
Ms S Bains (Senior Member)

CLERK: Mrs A Keohane

APPEARANCES: RA of Architectural Metal Roofing Ltd, the appellant
Mr A Durrant for the respondent as advocate and expert witness

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Summary of decision

1. The appeal was dismissed. In the absence of evidence to establish the appeal property was incapable of beneficial occupation on the material day, the panel found that it remained a hereditament that had to be shown in the rating list.

Introduction

2. This appeal is a 2017 rating list appeal brought by RA in respect of Architectural Metal Roofing Ltd, Unit 8 Owlsfoot Business Units, Sticklepath, Okehampton, Devon, EX20 2PA (the ‘appeal property’). The property was entered into the 2017 rating list as a store and premises at £7,000 Rateable Value (RV) with effect from 16 October 2020.

3. The appellant submitted a challenge proposal which was received by the valuation officer on 7 March 2022. This sought a deletion of the appeal property's assessment with effect from 16 October 2020 due to ongoing works. The valuation officer did not agree to the proposal and issued a decision notice to that effect on 17 February 2023.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was made to this Tribunal against the decision notice on 12 June 2023, on the grounds that the valuation for the hereditament was not reasonable.

5. The appeal property was described as an industrial unit situated in a rural location, being of steel portal frame construction with block and clad exterior walls.

6. The appellant submitted photographs and documentation a day prior to the hearing, which appeared to have been provided at the Check stage. Mr Durrant raised no objections to this information being included at the hearing.

7. To assist the appellant and with the agreement of the parties, the panel varied the Tribunal's model procedure and invited Mr Durrant to present the valuation officer's evidence first.

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

Issue

9. The issue for the panel to determine was whether the appeal property should be deleted from the 2017 rating list with effect from 16 October 2020.

Evidence and submissions

10. A bundle of evidence was submitted which included the following: the evidence of both parties; challenge and check documents; various photographs of the appeal property; invoices; schedules of works; correspondence relating to planning permission; and reference to caselaw.

11. On behalf of the valuation officer, Mr Durrant submitted that in line with the *Newbigin (VO) v SJ & J Monk* Supreme Court decision, properties that were subject to major alteration or substantial refurbishment which rendered them incapable of beneficial occupation could be deleted from the rating list for the duration of the works.

12. Mr Durrant confirmed that all of the evidence provided by the appellant had been considered, including the schedule of works and supporting invoices. However, the invoices lacked details of the work to which they related, and the schedule of works did not set out the actual length of time the works had spanned, given the appellant had indicated they had taken longer to complete. Consequently, neither had led the valuation officer to conclude that the appeal property had been incapable of beneficial occupation due to a significant programme of works.

13. The valuation officer submitted that Google Street view imagery showed the property as it was in October 2008 and in December 2021. From this it was concluded that no

significant work had occurred between the two dates, in addition, at the latter date the property appeared to be in use for the storage of materials.

14. The appeal property had been inspected in December 2022, at which time individual storage units were found to be in existence. The rating list had since been amended to reflect this change. The rating list had previously been altered at the request of the appellant, to give effect to a split in the assessment with an entry made for a convenience store. Following the inspection, it was accepted that the convenience store had never materialised and, outside of the proposal, the property's assessment was amended to store and premises at £7,000 RV with effect from 16 October 2020.

15. The appellant confirmed that the appeal property had been purchased in June 2020 in a shell condition, as it had been in the process of being converted to offices. As the plan for the appeal property to be used as a convenience store had not transpired, the unit had remained under construction and without a tenant or electricity.

16. Due to the Covid-19 pandemic a decision was taken to abandon the plan to turn the building into offices and permission was sought to further reconstitute Unit 8 into five individual storage units (Units 8 to 12). Permission was granted in April 2022, and work commenced to create the units. Invoices and schedules of works were submitted to show the extent of the works.

17. Having regard to the state of the appeal property at the time of its purchase, reflective of the previous owner's programme of works, and the nature and extended duration of the works carried out to create storage units, the appellant sought deletion of the property from the rating list.

Decision and reasons

18. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> (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—
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> > (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> > (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. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. Regulation 3(4) sets out that where the determination is with a view to deleting any hereditament which has ceased to exist, the material day is the day on which the circumstances giving rise to the alteration occurred. In this appeal, the material day is 16 October 2020, the day the appellant proposed the property should be deleted from the list due to being incapable of beneficial occupation.

20. The valuation officer referred to the Supreme Court decision in *Monk* in which it was determined that before the statutory assumption of repair can be applied, the valuer must first consider the "*logically prior*" question of whether the property was capable of beneficial occupation and a hereditament was in existence at all.

21. The appellant contended the appeal property was not capable of beneficial occupation and sought a deletion of the assessment from 16 October 2020. It was argued that the property was already deleted from the rating list at the date of its purchase due to the previous owner's programme of works. Mr Durrant indicated this was not a matter that had been covered within the decision notice, and he was unable to confirm with any certainty the status of the property prior to October 2020. However, it appeared from a quick search that it may have been entered in the rating list, as a new property, with effect from 26 June 2020.

22. The appellant argued that the appeal property was undergoing a programme of works at the time of the purchase in June 2020 and these works had rendered the property incapable of beneficial occupation, and this had remained the case at the material day. In considering this point, the panel found insufficient evidence to demonstrate the reality of the appeal property at the date the deletion was sought. Undated photographs were submitted, which the appellant indicated confirmed the state of the property at the time of its sale. However, these images were not persuasive and did not convince the panel that the whole of the appeal property was incapable of beneficial occupation on 16 October 2020.

23. Within the bundle were Google Street images of the appeal property. From these the panel concluded that the images dated October 2011 and December 2021, did not appear to demonstrate that significant works had been undertaken, either by the previous owner or the appellant. The image from September 2022, however, showed the conversion to storage units was almost complete.

24. The panel placed little weight to the invoices and schedules of work submitted. The invoices, dated from May 2022 to October 2022, were not for substantial amounts and did not identify the nature and extent of the work they related to, and the appellant confirmed they covered labour only. The schedules of work indicated that stripping out work would commence in March 2022, with other works taking place through April and May, culminating in decoration at the end of May 2022. The appellant argued the schedules of work had been prepared at the time planning permission was sought and were not comprehensive and did not cover all of the substantive work required to the appeal property. However, this was the evidence of work placed before the panel for consideration and it was apparent that this work was undertaken after the material day in this appeal.

25. On balance, whilst the appellant had argued that the appeal property had been left incapable of beneficial occupation following the works by the previous owner and this existed at the material day, the panel found insufficient evidence to demonstrate this was the case. Further, the invoices and schedules related to work undertaken after the material day. It had therefore not been established to the satisfaction of the panel that the appeal property was incapable of beneficial occupation at the date the deletion was sought, 16 October 2020. As a consequence, the panel concluded it had remained a hereditament that had to be shown in the rating list.

26. Having regard to the above, the subject appeal was therefore dismissed.

Date: 16 February 2024

Appeal number: CHG100782352

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.