VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeals: Local Government Finance Act 1988; request for deletion of the entry in the list; whether capable of beneficial occupation; uneconomical to repair; appeals dismissed.

APPEAL NUMBER:	CHG101048875	
RE:	104, St James Street, Newport, Isle Of Wight PO30 1UR (the "appeal property")	
BETWEEN:	Dennfinn Ltd	Appellant
	and	
	Lucy Dyer MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Monday 28 October 2024	
BEFORE:	Mr AN Backway (Presiding Senior Member) Mr P Blythe-Bartram (Senior Member)	
CLERK:	Miss K Hendry IRRV(Hons)	
APPEARANCES:	Mr N Finney (Appellant) Ms C Dennett (Appellant) Mr S Britton (Respondent's Representative)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that appeal property was capable of beneficial occupation on the material date and therefore the should not be deleted from the list.

Introduction

3. This is a rating list appeal in which the appeal property had been entered in the 2017 rating list as 'Betting shop and premises' at a RV of £35,750 with effect from 1 April 2017.

4. The challenge proposal was submitted by the appellant and was received by the Valuation Officer (VO) on 12 April 2023. It had been made on the grounds that the appeal property should be deleted from the list with effect from 18 October 2021.

   The VO issued a challenge case decision notice on 1 November 2023 which disagreed with deleting the property from the list from 18 October 2021.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 28 February 2024.

6. The VO agreed to delete the property from the 2023 rating list with effect from 2 May 2023 when works began at the site.

7. With the agreement of the parties, and to assist the appellant, the panel varied Practice Statement 8 (the Model Hearing Procedure) and invited the respondent's representative to present his evidence first.

8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Background

9. The appeal property was a two storey retail unit located in the town centre in the Isle of Wight built pre-1900’s.

Issue and Relevant Law

10. The issue before the panel was to determine whether the appeal property should be deleted from the 2017 rating list. 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 1992/556) as amended. In respect of the appeal property, the material day is 18 October 2021, the date the appellant sought deletion from the rating list.

11. The assumptions to be made when valuing a property for the purposes of non-domestic rating are set out in Schedule 6 of the Local Government Finance Act 1988 (“the 1988 Act”) as follows:

    “2. (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."

12. The panel was also provided with a bundle of authorities. These were:

- *Newbigin (VO) v SJ & J Monk (a Firm)* [2017] UKSC 14
- *Jackson (VO) v Canary Wharf Ltd* [2019] UKUT (LC) 136
- *Colour weddings Limited v Ritchie Roberts* (VO) [2019] UKUT 0385 (LC)
- *The Restaurant Group v Lucy Formela-Osborne* (VO) [VTE CHG101070212]

13. The VO had also referred to Part 9.1 and Part 9.3 of Section 2 of the Rating Manual which states:

> 9.1 The differentiation between the 'ordinary' situation of disrepair and when there is a programme of works of redevelopment means it is essential to identify whether there is, or is not, a programme of works of redevelopment (such term to include a substantial refurbishment or a comprehensive repair scheme that renders the hereditament, as a whole, incapable of beneficial occupation).
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> 9.3 The phrases used by the Supreme Court - 'redevelopment works,' 'undergoing reconstruction,' in a 'process of redevelopment' or undergoing 'radical alterations, whether or not they are structural'- indicate that what it considered constituted a programme of works of redevelopment was not simply redecoration, basic refurbishment or the sort of works an existing tenant might choose, or be obligated, to do during the course of a lease.

Discussion

14. The appellant argued that the property should be deleted from the rating list from when he purchased the property on 18 October 2021. He stated that the property had fallen into a state of disrepair due to it being empty for 18 months. It was in a poor condition and required significant works to bring it back into a useable condition, such as;

    i. Unusable Floor and wall coverings throughout
    ii. The central pillar in the middle of the building was damp and suffering from rot
    iii. Significant damage to the roof leading to leaking
    iv. Electrical wiring had been disconnected and stripped out
    v. Ceiling was in a state of collapse and disrepair
    vi. Stairs to upper floors unsafe
    vii. Bathrooms requiring complete renovation
    viii. On the first floor, no satisfactory or safe access or egress
    ix. Property in its state would fail all fire regulations.

15. The appellant detailed that some essential repair works had began in November 2021, such as the roof, but they had been unable to be completed until the planning permission was granted and the frontage works completed.

16. The plan was to renovate the property and change the configuration into two commercial units on the ground floor and the upper floors into residential accommodation. The redevelopment works began on 2 May 2023.

17. The VO referred to Schedule 6(2)(1)(b) can only be set aside in two instances, the first being if the repairs are uneconomic and secondly in the instance that the works being undertaken may be objectively assessed as the premises is undergoing reconstruction, rather than simply being a state of disrepair as set out in the Supreme Court in paragraph 23 of *Monk.*

18. This judgment was a pivotal moment in rating and upheld that if a property is incapable of occupation, the repair assumption did not displace the reality principle. Paragraph 22 of this judgment endorses a three-stage approach:

> ‘22. In a helpful intervention, the Rating Surveyors’ Association and the British Property Federation submitted that, where works were being carried out on an existing building, the correct approach was to proceed in this order: (i) to determine whether a property is capable of rateable occupation at all and thus whether it is a hereditament, (ii) if the property is a hereditament, to determine the mode or category of occupation and then (iii) to consider whether the property is in a state of reasonable repair for use consistent with that mode or category. The first two stages of that process involve the application of the reality principle. At the third stage the valuation officer applies the statutory assumption in para 2(1)(b) if the reality is otherwise. In my view, this is a helpful approach where a building is undergoing redevelopment. But it is subject to the useful practice, which I discuss in para 31 below, of reducing the rateable value of a building, which is incapable of rateable occupation because of such temporary works, to a nominal figure rather than removing it from the rating list altogether.’

19. Mr Britton referred to paragraph 31 and 32 the Upper Tribunal case of Colour Weddings Limited in which stated:

> 31. As Lord Hodge explained in Monk (at [23]), whether premises are undergoing reconstruction (such that they are no longer capable of beneficial occupation) rather than simply being in a state of disrepair, must be assessed objectively. The subjective intentions of the owner are not relevant, but in carrying out the assessment, regard can be had to the programme of works which is in fact being carried out on the premises.
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> 32.
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> ….
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> To put the question in a different way, at what date was the property first rendered incapable of beneficial occupation as a result of works to convert it from a warehouse to a wedding venue?

20. Mr Britton argued that he was required to assume a reasonable state of repair unless it was uneconomic to do so. He argued that the estimated cost provided by the appellant of £52,300 was less than twice the rateable value (£35,750) of the appeal property and therefore did not consider it uneconomical to repair. He stated that a property would be considered to be uneconomical to repair if costs was five times that of the RV, so in this instance more than £178,750.

21. Mr Britton considered the list containing nine issues above to be repair works. He then turned to the *Canary Wharf* decision and did not regard that to be applicable to the appeal property. Some minor stripping had occurred at the appeal property, such as some electric wiring, however the previous tenants fit out had been largely left.

22. Mr Britton referred to the Tribunal case of *The restaurant Group,* known as 'Frankie & Benny's' in which the removal of toilets and lighting / lighting circuitry did not render the property incapable of beneficial occupation. In particular paragraphs;

    17.It was the Valuation Officer's position that the actual date for deletion was a moot point because, at no time had the subject property ceased to be a hereditament as the works were nothing more than soft stripping.

    18.It had broadly been accepted prior to Monk that if a property became unoccupied and was in a state of disrepair then (unless the repairs were uneconomic for the landlord to undertake) there would be no effect on value. Following Monk, the issue was whether the programme of works was enough for it to be deleted from the rating list or whether it was, in reality, capable of repair by a reasonable landlord in accordance with the statutory repairing assumptions contained within paragraph 2 of Schedule 6 to the Local Government Finance Act 1988.

    19.Therefore, in order for this appeal to succeed, the panel must be satisfied that the physical condition of the subject property had, following the programme of works, become incapable of beneficial occupation and ceased to be a hereditament. On the other hand, if the subject property remained a hereditament, albeit in a state of disrepair (for which the statutory assumption as to reasonable repair would apply), then this appeal must be dismissed.

23. The panel therefore considered, as at the material day, was the subject property capable of beneficial occupation and consequently, a hereditament. The panel had regard to the works that were required, and held that they were not uneconomical. The VO had deleted the property from the list with effect from 2 May 2023 as evidence by the schedule of works and when the works began. But there was no evidence to support the appeal property being deleted from the list at the material date.

Disposal

24. In view of the above findings and conclusions, the panel was satisfied that hereditament still existed on the material day of 18 October 2021 and the appeal was dismissed.

Date issued to parties: 20 November 2024

Right of further 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.
