VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating appeal; Shop and premises; Proposal seeking a deletion of the assessment; Newbigin v Monk [2017] UKSC 14; Jackson (VO) v Canary Wharf Ltd [2019] RA 411; Appeal dismissed.

APPEAL NUMBER:	CHG101084610
RE:	Unit 44 County Mall, Crawley, West Sussex RH10 1FF (the "subject property")

BETWEEN:	Arora Crawley Retail Ltd	Appellant
	and	
	Lucy Dyer (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	30/09/2024
BEFORE:	Ms N Ryan, Presiding Senior Member Dr T Webb, Senior Member
CLERK:	Mrs C McAvoy IRRV(Dip)
APPEARANCES:	Daud Sadiq of Stiles Harold Williams Partnership LLP for the appellant Stuart Britton for the respondent Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel found that the subject property was a hereditament as at the material day and therefore no change was made to the rating list entry.

Introduction

3. The subject property entered the 2017 Rating List with effect from 1 April 2017 with a rateable value (RV) of £125,000. It was a 'shop and premises' built in 1992 and located on the ground floor within the County Mall.

4. A challenge was made on 7 July 2023 which proposed a deletion from the rating list with effect from 13 March 2023. The Valuation Officer's (VO) decision was that the proposal was not well founded and no alteration was made to the list, a challenge decision was issued on 15 November 2023 to that effect. The challenge decision was appealed to this Tribunal and was received on 12 January 2024.

5. Mr Britton and Mr Sadiq both submitted that they were appearing in a dual role of advocate and expert witness.

6. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Sadiq advised that he was instructed under a conditional fee via a third party company (CPRA Group). He declared that he accepted and understood that his duty was to the Tribunal in giving his evidence regardless of whether or not the evidence supported the client's case.

7. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure Regulations and was allowable due to the Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

9. As part of their induction training, a new member of the tribunal was observing proceedings. It was explained to the parties that it was the panel's intention to invite their colleague to accompany it to the retiring room. The parties were assured that the new member would not participate in the decision making exercise but would simply observe as part of their training. Neither party had any issues or objections to this.

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

Issue and Relevant Law

11. The issue before the panel was whether the subject property should be deleted from the rating list.

12. Section 64 of the Local Government Finance Act 1988 ('the 1988 Act') provides that a hereditament is, by virtue of Section 115(1) of the General Rate Act 1967 a '…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'.

13. The term 'rateable value' as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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."

14. Paragraphs 2(6) and 2(7) of Schedule 6 also require that matters affecting the physical state or physical enjoyment of the hereditament, and the mode or category of occupation of the hereditament, must be taken to be as they are assumed to be on the material day. Thus, a property has to be valued physically as it existed at the relevant material day but having regard to economic factors as at the antecedent valuation date of 1 April 2015.

15. The material day for the purpose of this appeal was 13 March 2023.

16. The case law referred to included the following:

- *Newbigin (VO) v SJ & J Monk (a Firm)* [2017] UKSC 14
- *Jackson (VO) v Canary Wharf Ltd* [2019] UKUT (LC) 136
- *Porter (VO) v Gladman Sipps* [2011] UKUT 2004 (LC)
- *Aviva Investors v Bunyan (VO)* [VTE CHG100345300]
- *The Restaurant Group v Lucy Formela-Osborne* (VO) [VTE CHG101070212]
- *Colour weddings Limired v Ritchie Roberts* (VO) [2019] UKUT 0385 (LC)
- *Shoosmiths LLP and Mando Group Limited and Amanda Hitchings* (VO) [VTE CHG100528632 & CHG100396080]

Discussion

17. In deciding this appeal the panel had regard to the Supreme Court's judgment *Newbigin (VO) v Monk* [2017] UKSC 14. 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.'

18. The panel therefore considered, as at the material day, was the subject property capable of beneficial occupation and consequently, a hereditament.

19. As at the material day, the subject property was vacant and the appellant company (freehold owner and landlord) commenced works following the previous tenant moving out. It was submitted by Mr Sadiq that the previous tenant had gone into liquidation and had left their fit out in place. Therefore, redevelopment works were required to strip the property so that it could be re-let to a new tenant who would require their own branded fit out. Mr Sadiq submitted that the unit was prime retail so attracts a certain type of client and therefore the landlord had to redevelop the unit to a certain standard to generate rental interest.

20. Details of the works were provided which included the set up and commencement, demolish retail partitions and fit out, strip out the kitchen and welfare facilities, and strip out wiring and clean. The works were scheduled to take place between 13 March 2023 and 9 April 2023. Photographs were provided and illustrated how the subject property stood pre strip out works, during the strip out works (as at the material day) and post strip out. Mr Sadiq submitted that in addition to the works mentioned, there was also partial removal of the flooring and ceiling.

21. The photographs provided displayed wiring hanging from the ceiling, when questioned regarding this, Mr Sadiq submitted that they were present but were not safe to use and the contractors should have removed them. He stated that there was only limited power to the subject property which sustained the fire alarm. It was his submission that the subject property was somewhere between Cat A and a shell.

22. Both parties had referred to the Upper Tribunal judgment, *Jackson (VO) v Canary Wharf Ltd* [2019] RA 411. Paragraph 11 of this judgment provides:

> '11. 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. Additional expenditure of £42,852 was incurred in stripping out the common parts of the three floors, comprising lift lobbies and wc's. As part of the work, new fire-detection systems and sprinklers were installed. The opportunity was also taken to introduce an element of future-proofing, in the form of a new riser which was added to the core to accommodate any additional mechanical or electrical infrastructure that might be required in the future.'

23. The panel considered that works in the *Canary Wharf* case were more substantial, the offices were stripped back to a shell and essentially new hereditaments were being created. This differed to the works described in the subject appeal. Whilst the panel accepted that the landlord had removed the fittings from the previous tenant, the subject property was not stripped to its core condition. There was still wiring and plumbing in place which could be connected to new tenants fittings.

24. The panel was not persuaded that the *Colour Weddings* judgement supported the appellant's case. In this case, the property was reduced to £0 RV on that basis that it was a building undergoing construction. At paragraphs 36 to 38 it detailed a schedule of works spanning over nine months. At stage 1 the works involved fixing a crack in the wall and replacing doors and bricking a window. At stage 2, a partitioning wall was being installed and the frame insulated and lined with plasterboard. The Judge found that the property was still capable of beneficial occupation during stage 1 and 2. At stages 3 to 5 more substantial works were undertaken. Furthermore, this was a warehouse building being converted to a wedding venue. On the contrary, the appeal property remained a shop and premises.

25. The panel did not find *Porter (VO) v Gladman Sipps* [2011] UKUT 2004 to be of assistance because it concerned properties which were yet to be entered into the rating list until they were capable of occupation for their intended use or purpose. It therefore did not accept Mr Sadiq's argument derived from *Porter v Gladman* that the subject property would require small power, welfare facilities and partitioning before being capable of occupation. The subject property was already a hereditament and there had been no overt act to change the nature of the hereditament.

26. Although previous Tribunal decisions are not binding on the panel, it found *The restaurant Group v Lucy Formela-Osborne (VO)* (CHG101070212) to be persuasive as the grounds were similar to this appeal. The property was a restaurant which had ceased to operate. As stated in paragraph 16 of the decision, a scheme of works was undertaken which commenced on 1 September 2022 and took approximately ten to fourteen days to complete. The intention of the works was to make the subject property more marketable to prospective tenants because, it was said, any new tenant would prefer to find the restaurant in a stripped out/blank canvas state rather than have to undertake the works themselves.

27. Paragraphs 27 to 29 of *The restaurant Group decision* assisted the panel:

> '27. Turning firstly to the removal of sanitary ware, the panel found that the subject property had not been stripped to anything like a shell state (as was the case in *Jackson (VO) Canary Wharf*. The stalls remained in place, as did the bespoke tiling, flooring and mirrors. Furthermore, the water supply had not been removed, instead the pipework had merely been capped. The panel concluded that the removal of sanitary ware did not render the subject property as being incapable of beneficial occupation. The sanitary ware had been removed as part of a programme of soft stripping which, by Mr Gutt's own admission, was intended to make the subject property more marketable to a future tenant (which, in itself, suggested that a hereditament remained after the works had been completed). Any new tenant would fully remove the Frankie & Benny's fittings in their entirety before installing their own flooring, tiling, and sanitary ware in a relatively short space of time and apply their own decorative branding. The panel held that if it was possible to render a property

incapable of occupation solely by removing the sanitary ware then it would defeat the purpose of the repairing assumption.

28. Turning secondly to the dispute regarding the lack of lighting and the alleged cutting of the circuitry from the main board, the panel found that it had not been presented with any compelling evidence to show that this had actually occurred. Mr Gutt had referred to a conversation between himself and an electrician, but, with all due respect to Mr Gutt, this was hearsay evidence and no compelling documentary evidence had been provided. Furthermore, the relevant photographs were not found to show that this had occurred. The panel concluded that even if it had, this would have been part of the soft stripping and the work required to return the electrics to good working order represented disrepair which a reasonable landlord would be expected to undertake

29. The panel concluded that the argument put forward by Mr Wilcox exceeded the boundaries of *Monk*. If Mr Wilcox was correct then the statutory assumption as to reasonable repair would seldom, if ever, be engaged. Any tenant will, when vacating a property, invariably leaves behind a degree of damage. Whilst a prospective tenant will be reluctant to occupy a property which is in need of repair, it does not mean that a hereditament has ceased to exist.'

28. The panel found that the works carried out to the subject property were more consistent with soft stripping. The work required represented disrepair which a reasonable landlord would be expected to undertake. It was not persuaded that the one month work schedule was out of the ordinary between tenants and it did not result in the subject property being uncapable of occupation. The wiring and plumbing remained in place, ready for the new tenant to utilise with their own fixtures and fittings.

29. In conclusion, the panel found that the caselaw had set a threshold and it was not persuaded that this threshold had been met. The subject property remained capable of beneficial occupation and therefore was a hereditament which should remain in the rating list.

Disposal

30. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the subject property was capable of beneficial occupation and the appeal was dismissed.

Date issued to parties: 30 October 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.
