VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List; showroom, warehouse and premises; challenge seeking deletion from valuation list; Newbigin (VO) v Monk [2017] UKSC 14; Jackson (VO) v Canary Wharf Ltd [2019] RA 411, appeal dismissed.

APPEAL NUMBER: CHG101095563

RE:	Units 2-3, Rex Trade Centre, Laskew Avenue, Peterborough PE1 2AS (“the subject hereditament”)

BETWEEN: Leonard F Jollye (Brookmans Park) Ltd — Appellant

and

Joanne Moore (Valuation Officer) — Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	18 November 2024
BEFORE:	Mrs A Fielder (Presiding Senior Member) Ms J Hopkinson (Senior Member)
CLERK:	Mr S Fletcher
APPEARANCES:	Mr J Watson of Evans & Payne LLP (Appellant’s representative) Mr T Manyadza (Respondent’s representative)

DECISION and STATEMENT OF REASONS

Decision

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

Introduction

2. The appeal process began with a proposal made by the appellant’s representative on 19 July 2023 in respect of the Valuation Officer’s (VO) 2017 rating list entry of the subject

hereditament. He proposed its deletion from the list with effect from 14 November 2022. The respondent issued a challenge case decision notice on 20 February 2024, which stated that on the basis of the evidence available, the proposal was not well-founded, and the rating list entry was reasonable. The appellant's representative appealed that decision to this Tribunal on 16 June 2024.

3. The subject hereditament was a purpose-built detached showroom, warehouse and premises of steel portal frame construction, located north of Peterborough city centre.

4. Mr Watson 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 Watson declared that he was instructed under a conditional fee basis and 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.

5. The panel accepted this expert witness evidence on the above basis as the appeal was not 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 Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

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

Issue

7. The issue for the panel to determine was whether the subject hereditament should be deleted from the 2017 rating list with effect from 14 November 2022.

Relevant law

8. The statutory definition of a hereditament was contained in section 64 of the Local Government Finance Act 1988. A hereditament was anything which, by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967 would have been a hereditament for the purposes of that Act had this Act not been passed.

9. The statutory hypothesis is contained in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988. The statutory definition of rateable value is as follows:

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   (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.

10. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the material day. The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] provides for determining the material day. Regulation 3(4) stipulates 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, that date is 14 November 2022, the day the appellant's representative proposed that the property was deleted from the list due to works which he considered rendered it incapable of beneficial occupation.

Evidence and submissions

11. Evidence from both parties was provided which included evidence exchanged at challenge, photographs and a plan of the subject hereditament, a schedule of works, invoices for works, sections of the Valuation Office Agency (VOA) Rating Manual and references to various pieces of caselaw.

12. Mr Watson contended that the appeal property should be deleted from the rating list with effect from 14 November 2022, as, in accordance with *Newbigin (VO) v Monk* [2017] UKSC 14 and *Jackson (VO) v Canary Wharf Ltd* [2019] RA 411, it was no longer a hereditament capable of beneficial occupation from that date. Mr Watson stated that the appellant was liable for rates at the subject hereditament with effect from 17 October 2022, and at that point, he argued that the property was in a shell-state. He stated that a scheme of works commenced at the material day to redevelop and fit-out the entire premises by the occupier. The works comprised the complete internal fit-out of a new unit for the appellant which included but not limited to, installation of new internal partitions, suspended ceilings and lighting, heating ventilation, power and data distribution infrastructure, emergency lighting and fire safety, and general building works and decorations. Mr Watson stated that the works were a lengthy and costly, amounting to circa £270,000. He argued that the costs were significant being circa five times larger than the existing RV of the subject in the list. He contended that the premises was not capable of beneficial occupation until completion of the programme of works and opening of the store with effect from 28 January 2023. Mr Watson stated that the respondent had deleted other hereditaments from the rating list which were under occupation of the appellant where the circumstances were on all fours with the subject hereditament, citing assessments in Gosport and Llanelli.

13. Mr Manyadza contended that the works undertaken to the subject hereditament were not works of reconstruction or development beyond a standard fitout at the start of a property's new occupation, and therefore its entry should remain in the rating list. The respondent had made an objective assessment of the physical state of the property on the material day, and was satisfied that the works cited by the Mr Watson were not of reconstruction or redevelopment. As such, and in accordance with the rating hypothesis, it was assumed that the property was in a reasonable state of repair and therefore remained a hereditament. Mr Manyadza did not consider that the stripping of toilets, dismantling kitchen units and lifting floors, which he contended only took circa five days to complete, constituted major works, and the facts of the subject appeal were not on all fours with those in *Monk* and *Canary Wharf*.

14. Mr Manyadza argued that there was no evidence the subject hereditament was in a shell condition on the material day and that the warehouse remained in place. He described the

works as basic repairs along the lines of redecoration which were completed in a short period of time and did not change the property's footprint. He argued that the subject hereditament underwent similar works to the property in the President of the Valuation Tribunal's decision in *Aviva Investors v Dawn Bunyan (VO)* (VTE: CHG100345300, 7 June 2022) which was dismissed. Mr Manyadza maintained that the subject hereditament should remain in the list.

Discussion

15. In *Monk*, the Supreme Court determined that before the statutory assumption of repair can be applied, the valuer must first consider the "*logically prior*" question of whether the property is capable of beneficial use and whether there was a hereditament in existence at all. The repairing assumption had no role to play in addressing that question. Lord Hodge endorsed the following analytical framework (para 23):

    "*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.*

    When deciding whether a property is undergoing redevelopment, rather than being in disrepair, valuers can have regard to the programme of works which is being undertaken at the property. If it is assessed objectively on the material day that the property is undergoing redevelopment and no part of it is capable of beneficial use, then there is "*no basis*" for applying the repairing assumption to the property, which must be valued as it stands.

16. In *Canary Wharf*, the Upper Tribunal clarified the proper interpretation and application of *Monk* stating "*Before one considers the repair assumption in the context of a building undergoing redevelopment, the logically prior question is whether the property is capable of beneficial occupation at all, and thus a hereditament at all*" (para 35) and "*The question whether a building is incapable of beneficial occupation as a result of a programme of refurbishment is a matter of objective fact* (para 40)".

17. Applying *Monk* and *Canary Wharf*, the panel made an objective finding of fact and determined that, on the material day, the subject hereditament was capable of beneficial occupation and thus remained a hereditament. Mr Watson had stated that the appellant had acquired the subject hereditament in a shell state on 17 October 2022 following the vacation of the previous occupier. However, the panel was not satisfied that any evidence provided substantiated that the property was in a shell state at that time or on the material day. For the appeal to succeed, the panel must have been satisfied that an overt act on the material day had rendered the property incapable of beneficial occupation. A timeline of works was provided which cited commencement of works beginning on the material day, however, the only works stated as beginning on that day were external signage by Zillwoods. The grinding of the floor was not stated to begin until 16 November 2023, two days later. Photographs were provided of the warehouse during the period of works, of which the panel found demonstrated that the floor was covered. The panel found that the

works were predominantly pertaining to the preferences of the tenant and was not satisfied that the works rendered the property incapable of beneficial occupation.

18. The panel found the state of the hereditament at their respective material days in the judgments of *Monk* and *Canary Wharf* to be of valuable assistance in making its decision. At the material day in *Monk*, contractors had removed the majority of the ceiling tiles, the suspended ceiling grid and light fittings and 50% of the raised floor. They had also removed the cooling system and the sanitary fittings, demolished the block walls of the lavatories, and stripped out the electrical wiring. The contractors had erected and plastered plasterboard partitions to form the outline of the proposed communal lavatories and had erected and plastered a partition across the floor at the east side of the premises. They had also completed first fix electrical installations to the lavatory area and had altered the drainage to accommodate the new location of the lavatories. At the material day in *Canary Wharf*, raised flooring, suspended ceilings, partitioned walls and mechanical and electrical services had all been previously removed. In contrast, it was clear to the panel that the situation at the subject hereditament on the material day was significantly different to the hereditaments in those two appeals.

19. The panel determined that the appellant's representative's evidence to demonstrate that any such overt act to render the subject hereditament incapable of beneficial occupation by or on the material day was relatively weak. It found that it consisted solely of a verbal testimony by Mr Watson that the property was in a shell-state, and works to the external signage had commenced. The panel did not consider that the property was incapable of beneficial occupation in its visual state on the photographs provided as the only apparent detriment was that the floor was covered. Lighting was in place and in use from the ceiling. The panel noted that Mr Watson stated he had successfully had hereditaments similar to the subject deleted from the list, however no such evidence of their condition at their day of deletion was provided to make any such comparisons. The panel also recognised that the cost of the works was significant when compared to the existing RV of the subject hereditament, however it found them to be fairly standard for typical works undertaken at the start of fresh occupation.

20. The panel deemed there was a high bar for appellants to overcome if their challenge was made on the basis of a deletion. As per *Monk*, to succeed in a deletion, it must be shown that no part of a building was capable of beneficial occupation. A valuer cannot value what isn't there. The panel was not satisfied that it was demonstrated that no part of the subject hereditament was capable of beneficial occupation on the material day.

Disposal

21. In view of the foregoing, the appeal was dismissed.

Date:16 December 2024

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.
