IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG101127148

Sitting remotely using Microsoft Teams

Date: 7 July 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 rating list; office; challenge seeking deletion from list; Newbigin (VO) v Monk [2017] UKSC 14; Jackson (VO) v Canary Wharf Ltd [2019] RA 411; hereditament test; appeal allowed.

Before:
MR C KAMALAN
MRS P AHARK

Between:

OMASATIS LTD — **Appellant**

- and -

NICOLA JOHNSON (VALUATION OFFICER) — **Respondent**

Regarding:
BST - 1ST FLRS 187-193 GREAT PORTLAND STREET, LONDON W1W 5PR
(the “subject property”)

Mr A Izett, from Daniel Watney LLP for the Appellant
Mr C Tawonezvi for the Respondent

Hearing date: 4 June 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was allowed.

2, The tribunal panel determined that the subject property was not a hereditament and therefore its entry should be deleted from the rating list with effect from 11 April 2022.

Introduction

3. The appeal process began with a Challenge made by the appellant's representative on 12 September 2023 in respect of the valuation officer's (VO) 2017 rating list entry of the subject property. He proposed its deletion from the 2017 rating list with effect from 11 April 2022. The respondent issued a Challenge decision notice on 24 January 2024, which stated that on the basis of the evidence available, the proposal was not well-founded, and the entry of the subject property would remain in the 2017 rating list. The appellant's representative appealed against that decision to this Tribunal on 21 March 2024.

4. Mr Izett on behalf of the appellant and Mr Tawonezvi on behalf of the respondent, appeared as both advocate and expert witness.

5. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Izett informed the panel that he was instructed on a fixed fee, but if the appeal was allowed, a performance fee would be applied. Both declared that they understood and accepted that their duty was to the Tribunal in giving their evidence and that they were aware of and have complied with the requirements of the rules, protocols and directions of the Valuation Tribunal.

6. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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).

7. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

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

Background

9. The subject property was entered into the 2017 rating list at a rateable value of £152,000 with effect from 1 April 2017. It was described as an 'office and premises'. The subject property comprised a part basement, ground and first floor offices within a multi-storey building and was located in Fitzrovia, near Regents Park. It was within walking distance from Great Portland Street, Regent Street and Warren Street underground stations. There were also 10 residential flats above the subject property.

10. Mr Izett contended that the subject property was stripped back to shell and core condition as of 1 April 2017 when the previous owners had gone into administration. However, it was not known by either party as to why the previous owner had not requested a deletion of the entry

within the 2017 rating list. It was only known that the previous owner's company had gone into administration. Mr Izett requested that the subject property's entry be deleted from the 2017 rating list with an effective date of 11 April 2022, the date the appellant purchased the subject property.

11. Mr Tawonezvi was of the opinion that the subject property's entry should remain in the 2017 rating list, as in his view, the subject property was merely undergoing redevelopment and simply a property in disrepair. Therefore, he requested that the appeal be dismissed.

Relevant Law

12. 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.

13. The statutory rating 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.

14. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 11 April 2022, the date the appellant's representative proposed that the subject property was deleted from the 2017 rating list due to it being incapable or beneficial occupation.

Discussion

15. Mr Izett contended that the subject property should be deleted from the 2017 rating list with effect from 11 April 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. He stated that the subject property had been stripped out back in 2017

when the previous occupier had been in occupation. He argued that the facts of the appeal for the subject hereditament were on all fours with Monk and Canary Wharf.

16. Mr Izett stated that the subject property was stripped out by the previous owner in 2017. He stated that the appellant had bought the property as a stripped-out unit. The panel noted that from the report provided from an instructing solicitor Stephenson Harwood LLP, where an inspection had taken place on 18 October 2018, the subject property had been stripped back to shell and core condition, which had included the removal of all fixture and fittings previously at the property. Mr Izett had provided a non exhaustive breakdown of the stripped out items. This included the following:

    (a) Air conditioning
    (b) Central heating
    (c) Suspended ceiling
    (d) Floor boxes
    (e) Lighting
    (f) Electrics and wiring
    (g) All mechanical and electrical equipment

17. The panel referred to the internal photographs which showed the subject property to be in a shell condition. The panel noted that there was not a kitchen or bathroom in situ. There were no partitions there for any kitchen or bathroom. The electrics had been capped and there was no electric on the ground floor, just the mains electric which was in place for the domestic dwellings on the upper floors. The photographs showed a small built-up frame made of wood but had not been completed.

18. The panel was informed by Mr Izett that no works had been carried out by the appellant since the purchase of the subject property, except essential works for the domestic dwellings, that were within the same building, so that they could be occupied. It was noted that a fire alarm had been installed that covered the domestic dwellings, common areas as well as the subject property. The panel was also informed that the subject property’s assessment had been deleted from the 2023 rating list. Therefore, it had been conceded by the VO that the subject property was not a hereditament and therefore, not rateable for the purposes of the 2023 Rating List.

19. Mr Tawonezvi was of the opinion that there was no evidence provided to show that the subject property was undergoing redevelopment or was beyond repair. He also stated that even though the subject property’s assessment had been deleted from the 2023 rating list, the 2017 rating list was a totally different list and he did not know the circumstances of the deletion from the 2023 rating list. Upon enquiry by the panel, Mr Tawonezvi stated that he had not been aware of any change in factual matters between the date of purchase by the appellant on 11 April 2022 and 1 April 2023. He also stated that no programme of works had been submitted or undertaken by the appellant with regards to the subject property.

20. The panel was aware that the correct approach in appeals of this nature was to consider whether or not a hereditament exists at the material date. If it does, then it must be valued on the statutory assumption that it is in reasonable repair, even if in reality it is in need of repair.

21. 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)".

22. Applying Canary Wharf, the panel made an objective finding of fact and determined that, on the material day, the subject hereditament was not capable of beneficial occupation and thus was not a hereditament. The property had been stripped out to a shell on the material day of 11 April 2022.

23. 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 the same to the hereditament in the Canary Wharf appeal.

24. The panel deemed there was a higher 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 is not there. The panel was satisfied that it was demonstrated that no part of the subject hereditament was capable of beneficial occupation on the material day of 11 April 2022.

Determination

25. In view of the above findings and conclusions, the tribunal found that the subject property was not a hereditament as at the material day of 11 April 2022 and therefore, the appeal was allowed.

26. Accordingly, the Tribunal order in accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VO is ordered to delete the list entry for the subject property from the 2017 rating list with effect from 11 April 2022. The VO must comply with this Order within 2 weeks of its making.

Refund of appeal fee

27. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Right of further appeal

28. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within four weeks of the date this decision and statement of reasons is issued.

29. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "A guide to tribunal decisions" available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mr C Kamalan, Senior Member (Presiding)

Mrs P Ahark, Member

7 July 2025

Clerk to the Tribunal: Ms R Muller
Date issued to the parties: 7 July 2025