VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeals: proposals to delete; shop and premises; whether capable of beneficial occupation while undergoing a programme of works; Local Government Finance Act 1988; Newbigin (Valuation Officer) (Respondent) v S J & J Monk (a firm) (Appellant) [2017] UKSC 14; Jackson (VO) v Canary Wharf Ltd [2019] RA 411; appeals dismissed.

APPEAL NUMBERS: CHG101129983, CHG101168262, CHG101131069

RE: (1) Superbook Unit 1, 17 The Shires, Trowbridge, Wiltshire, BA14 8AT
(2) Carphone Warehouse, Unit 24 The Shires, Trowbridge, Wiltshire, BA14 8AT
(3) Unit 13, 30 The Shires, Trowbridge, Wiltshire, BA14 8AT

(the appeal properties)

BETWEEN: Sheet Anchor Investments Ltd — Appellant

and

Lucy Formela-Osbourne MRICS
(Valuation Officer) — Respondent

SITTING: Remotely using Microsoft Teams

ON: Tuesday 21 January 2025

BEFORE: Mrs A Fielder, Presiding Senior Member
Mr S Kamalan, Senior Member

CLERK: Mrs L Horne

APPEARANCES: Mr R Short from Knight Frank, representing the appellant
Miss E Woodhouse representing the Valuation Officer

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are dismissed. The panel determined that the appeal properties were capable of beneficial occupation on the material day and should remain in the 2017 rating list.

Introduction

2. These are 2017 rating list appeals in respect of the following:

   (1) Superbook Unit 1, 17 The Shires, Trowbridge, Wiltshire, BA14 8AT.
   Shop and premises - £32,500 rateable value (RV) with effect from 1 April 2017.

   (2) Carphone Warehouse, Unit 24 The Shires, Trowbridge, Wiltshire, BA14 8AT.
   Shop and premises - £29,250 rateable value (RV) with effect from 1 April 2017

   (3) Unit 13, 30 The Shires, Trowbridge, Wiltshire, BA14 8AT.
   Shop and premises - £21,500 rateable value (RV) with effect from 1 April 2017

3. The challenge proposals were submitted by Knight Frank on behalf of Sheet Anchor Investments Ltd and received by the Valuation Officer in September 2023. They had been made on the grounds that the appeal properties were incapable of beneficial occupation and should be deleted from the rating list with effect from 27 February 2023.

4. The Valuation Officer issued challenge case decision notices on 9 April 2024, which disagreed with the proposed alterations and stated that the rating list entries were reasonable based on the evidence and information available.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeals to this Tribunal have been made on the grounds that the valuation for the hereditaments is not reasonable. The appeals were lodged by Knight Frank on behalf of the appellant and received by the Tribunal on 1 August 2024.

6. The appeal properties are retail units within The Shires, a shopping centre in Trowbridge which opened in 1990.

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

Preliminary issue

8. The Valuation Officer served notices of objection on 21 August 2024 in respect of omitted evidence which had not been presented by the appellant in the appeals to the Tribunal. This comprised letting particulars for units 17 and 24 which, it was submitted, was exchanged during the challenge period.

9. On behalf of the appellant, Mr Short objected to the notices, as the letting particulars had not been exchanged during the challenge period. The Valuation Officer had attached them to the challenge decision notices, and as new evidence, he objected to them forming part of the proceedings.

10. In response, Miss Woodhouse accepted that the letting particulars had not formed part of the evidence exchange during the challenge period. She confirmed that they had been added to give factual context and additional photographs of the appeal properties. She further stated that the information was freely available in the public domain, and she did not consider the evidence to be contentious.

11. The panel had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to Tribunal panels in the instance of a breach of standard directions was that the three-stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction. The test reads as follows:

    Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

    Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

    Stage 3 - The panel must consider all the circumstances of the case including:

    (i) the need for litigation to be conducted efficiently and at proportionate cost;
    (ii) a failure to grant a sanction may leave an inaccuracy being uncorrected;
    (ii) the need to enforce compliance with rules, directions and orders (para. 55).

12. The panel considered that the submission of additional evidence with the challenge decision notices constituted a serious breach. PS2 of the Consolidated Practice Statement makes specific provision for parties to apply for additional evidence to be included, however, no such application had been made. It was also stated in the practice statement that there is no need for parties to submit photographs to the Tribunal at the two-week period prior to the hearing, but there should be agreement between the parties that any photographs submitted to assist the panel on the day are a true representation of the situation at the material day.

13. The panel noted that the photographs contained within the letting particulars did not represent the appeal properties at the material day, and it was clear that agreement had not been reached for them to be included. In consideration of all the circumstances of the case, the panel decided that the letting particulars should not form part of the proceedings.

Relevant law

14. The statutory definition of a hereditament is contained within section 64 of the Local Government Finance Act 1988. 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"

15. Paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 contained the statutory hypothesis for determining the rateable value of a non-domestic hereditament. This provides that:

    (1) The rateable value of a non-domestic hereditament property, 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 based 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.

16. Whilst the rateable value is determined having regard to the antecedent valuation date (1 April 2015), the valuation must reflect the physical facts relating to the subject property and its locality on the date the determination is made or amended (the material day). In these appeals, the material day was 27 February 2023, this being the date the appellant's representative had sought the deletion of the subject properties from the valuation list. Paragraphs 2(6), 2(7) and 2(8) of Schedule 6 of the Local Government Finance Act 1988 are relevant:

> (6) Where the rateable value is determined with a view to making an alteration to a list which has been complied (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.
>
> (7) The matters are –
>
> (a) matters affecting the physical state or physical enjoyment of the hereditament,
> (b) the mode or category of occupation of the hereditament,
> (c)….
> (cc)….
> (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
> (e) the use or occupation of other premises situated in the locality of the hereditament.
>
> (8A) For the purposes of this paragraph the state of repair of a hereditament at any time relevant for the purposes of a list shall be assumed to be the state of repair in which, under sub-paragraph (1) above, it is assumed to be immediately before the assumed tenancy begins.

Discussion

17. The issue to be determined by the panel was whether the appeal properties were incapable of beneficial occupation on the material day of 27 February 2023.

18. The case for the appellant was that the appeal properties had been subject to an intensive programme of work which commenced on 27 February 2023. A Gantt chart submitted with the challenge provided the following list of works carried out simultaneously to the three units:

- Demolish all partitions;
- Remove floor coverings;
- Strip out/demolish Landlord's fixtures, fittings and equipment;
- Strip out all lighting and electrical circuits;
- Strip out suspended ceiling grids.

19. In response to the Valuation Officer's request for specific works carried out at each of the units, Mr Short provided schedules of work for each of the units, which comprised:
    - Isolations and de-gas (1 day)
    - Strip out unit (6 days)
    - Lighting and electrical modifications (4 days)
    - Ceiling grid works (1 week)
    - New lighting (1 week)
    - Decorations (7 days)
    - Ceiling tiles (3 days)
    - Latex floors (2 days)
    - Test and commission (1 day)
    - Clean and clear and snagging (3 days)
    - Handover (0 days)

20. With reference to photographs of the units before and during the works, Mr Short submitted that it was evident that the properties had been subject to extensive changes. Applying the 'reality principle' as set out in the Supreme Court decision in *Newbigin (Valuation Officer) (Respondent) v S J & J Monk (a firm) (Appellant)* [2017] UKSC 14, he contended that the properties had clearly been rendered incapable of both beneficial and rateable occupation while the work was ongoing. Therefore, as they were not hereditaments, they should be deleted from when the work commenced on 27 February 2023. This approach, he argued, was in line with the Upper Tribunal decision in *Jackson (VO) v Canary Wharf Ltd* [2019] RA 411.

21. Mr Short also referenced the Upper Tribunal decision in *Porter (VO) v Trustees of Gladman SIPPS* [2011] UKUT 204 (LC). It had been held in that case that in the absence of features which would have to be provided before offices could be occupied, they could not be assessed for rating purposes. In view of the close similarities between the circumstances in *Porter* and the subject properties, Mr Short argued that the outcome must be the same and the RVs deleted.

22. In further support of the deletion of the appeal properties, Mr Short referred to five comparable properties undergoing similar works which had been deleted at check or challenge stage.

23. On behalf of the Valuation Officer, Miss Woodhouse submitted that the appeal properties should remain in the list, as the works were considered to be that of repair, typical of works carried out by a landlord between tenants. The duration of the works of just 30 days for the three units supported that this was not a substantial reconstruction/renovation.

24. In the challenge decision, the following comments were made in respect of the photographs provided:

    Unit 1

    The previous tenant's fit, the suspended ceiling tiles and the floor covering have been removed. It was assumed that the ceiling tiles had been renewed and new lighting provided. It appeared that the kitchen area and WC had remained during the works.

Unit 13

The previous tenant's fit has been removed and the walls made good and painted. The suspended ceiling tiles have been removed, but the evidence does not suggest an extensive strip out of services from the whole hereditament, with only lighting and electrical modifications listed.

Unit 24

The previous tenant's fit has been removed and the walls made good and painted. The suspended ceiling tiles have been renewed and new lighting installed. The evidence does not suggest an extensive strip out of services from the whole hereditament, with only lighting and electrical modifications listed.

25. Miss Woodhouse confirmed that the properties had been inspected on 5 December 2024, and the following had been noted:

Unit 1

There had been no change to the floor areas and no structural alterations. No air conditioning was present.

Unit 13

The unit had full air conditioning but no heating. The ceiling tiles had been removed but not replaced as the ceiling was painted. Subsequent to the works under appeal, walls had been removed.

Unit 24

There had been no change to the floor areas and no structural alterations. The unit had partial air conditioning in Zone A, but no heating. Flooring had been removed on the first floor, but otherwise appeared not to have been subject to any works.

26. Miss Woodhouse contended that the Valuation Officer was required to first objectively assess a) whether the property is undergoing reconstruction or redevelopment at the material day and then ask b) in the context of said development, are the premises incapable of occupation.

27. The appellant's representative had cited the *Monk* and *Canary Wharf* cases in support of the deletion of the appeal properties. However, Miss Woodhouse submitted that in both *Monk* and *Canary Wharf*, the properties had been subject to a scheme of redevelopment. As part of that redevelopment, they had been stripped back to shell so that substantial reconstruction and improvement work could be carried out. She contended that this was different to the subject properties, as it was not clear that the units were subject to a scheme of redevelopment, but rather a scheme of repair, putting the units back into a state ready for reletting. This type of repair works had been considered in *Aviva Investors v Bunyan (VO)* [2022].

28. Mr Short's reliance on the *Porter case* was disputed by Miss Woodhouse as this case related to the rateability of brand new properties which the President considered to be a "totally different situation."

29. In response to the five properties submitted by Mr Short, Miss Woodhouse emphasised that each case must be considered on its own merits. She provided further details of the works for the properties, which demonstrated that they were each subject to a scheme of redevelopment which involved a more substantial strip out of services. The duration of the works was also longer than that for the subject properties.

30. As the Valuation Officer considered that the works were repairs, rather than redevelopment, the statutory assumption of reasonable repair required that they are considered to have been completed and therefore the subject properties were capable of beneficial occupation.

31. With reference to the photographs and the schedules of works, the panel was not persuaded that the subject properties were undergoing a scheme of redevelopment which rendered them incapable of beneficial occupation at the material day. The term 'redevelopment' implied that the works would result in some form of change to the hereditament, and there was no evidence presented to support that this was the case. On the contrary, the Valuation Officer's comments following an inspection after the subject works supported that the properties had not been subject to redevelopment or structural alterations. The relatively short duration of the works for all three properties supported the Valuation Officer's argument that these were repair works typical of those carried out by a landlord at the end of a tenancy.

32. The panel attached little weight to the five properties referred to by Mr Short which had been deleted from the list. He submitted that the circumstances were the same, however, further details provided by the Valuation Officer showed that the strip out of the five properties included a more substantial strip out of services.

33. Mr Short submitted that the Valuation Officer had failed to follow the leading cases of *Monk* and *Canary Wharf*, however, the panel considered that the schedule of works undertaken at the appeal properties could be distinguished from those cases. In *Monk*, a three-storey office building was subject to renovation and improvement with a view to making the offices more adaptable for use as either three separate suites or a single suite. This involved substantial construction work with the premises stripped to a shell. Similarly in *Canary Wharf*, offices had been stripped back to a shell and core condition. Mr Short submitted that the appeal properties had been stripped out to a shell, but it had been shown that it was not a complete strip out of all the services.

34. The panel acknowledged that the appeal properties had been subject to a programme of works, however, they were not as extensive as those outlined in the leading cases. The panel considered that they were works of repair and/or refurbishment, and as such, they were assumed to have been completed in accordance with Schedule 6 paragraph 2(b) of the 1988 Act.

Disposal

35. In view of the above findings and conclusions, the panel determined that the appeal properties were capable of beneficial occupation on the material day of 27 February 2023 and therefore the appeals were dismissed.

Date issued to parties: 6 February 2025

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.