**IN THE VALUATION TRIBUNAL FOR ENGLAND**
**IN THE MATTER OF A 2023 RATING LIST APPEAL**

Case No: CHG101171104

Sitting remotely using Microsoft Teams

Date: 27 June 2025

**SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988**

*Non-domestic rating; 2023 list appeal; Local Government Finance Act 1988; deletion effective date; property undergoing programme of works; Newbigin (VO) v Monk [2017] UKSC 14; Jackson (VO) v Canary Wharf Ltd [2019] UKUT (LC) 136; under reconstruction as at the material date; appeal allowed.*

**Before:**
**MS A VERMA**
**MR SM HOOBERMAN**

**Between:**

**RAFER INVESTMENTS LTD** — **Appellant**

**- and -**

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

**Regarding:**
**1 GREAT ST HELENS, LONDON EC3A 6AP**
(the "subject property")

**Appearances:**
**Mr Richard Nice of Newmark, for the Appellant**
**Mr Ateeb Khan for the Respondent**

Hearing date: 29 May 2025

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**DECISION AND STATEMENT OF REASONS**

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## Decision

1. The appeal is allowed. The tribunal panel found that, at the material date, the subject property was not capable of beneficial occupation and confirmed deletion from the rating list from 1 April 2023.

## Introduction

2. The subject property entered the 2023 Rating List as ‘office and premises’ with effect from 1 April 2023 with a rateable value (RV) of £1,910,000.

3. The subject property was undergoing a schedule of works. As such, the appellant sought deletion from the Rating List. A check was submitted to that effect on 7 July 2023 and the check decision confirmed deletion of the subject property from the rating list as of 15 May 2023. The appellant disagreed with the effective date, as the works had commenced in March 2023, and submitted a challenge on 8 January 2024 which proposed a change to the deletion effective date to 1 April 2023. Whilst the works had started in March 2023, 1 April 2023 is the start of the 2023 Rating List and therefore the effective date being sought. The challenge decision upheld the effective date of 15 May 2023 and consequently the challenge decision was appealed to this Tribunal.

4. Mr Khan, for the respondent, appeared before the panel as advocate. Mr Nice, for the appellant, appeared in a dual role of advocate and expert witness and confirmed that he accepted and understood that their overriding duty was to the Tribunal. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), he declared that he was not instructed under a conditional fee.

5. The hearing of this appeal was conducted via Microsoft Teams. The panel member, Mr Hooberman, had a technical issue with his microphone. He could hear everyone present and if he had any questions during the hearing, it was agreed he would contribute by communicating via the clerk. The parties agreed to this and the panel was satisfied that the hearing could proceed with a full panel and no issues arose throughout.

6. During submissions, it became clear that the Tribunal did not have a copy of the appendices that the appellant was referring to. The appellant should ensure that there are no omissions when submitting the appeal to avoid this occurring during a hearing. However, in this case, the panel accepted the appendices as there was no objection raised in respect of their inclusion as both parties agreed that they had been exchanged. Mr Khan had a copy of them and shared his screen in order for the panel to see them during the hearing. Mr Nice then emailed the documents to the Tribunal to ensure the panel had a copy. The emails from Mr Nice only contained the documents which had been discussed and shared during the hearing. For the avoidance of doubt, the documents sent included photographs, an email from the contractor, an Architect’s site inspection and a Contractor’s site report.

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

## Issue and Relevant Law

8. The issue before the panel was whether the subject property should be deleted from the rating list from an earlier effective date.

9. 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'.

10. 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."

11. 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 2021.

**Discussion**

12. The subject property had been deleted from the rating list with effect from 15 May 2023 but the appellant sought deletion from the earlier date of 1 April 2023, this being the material date for this appeal.

13. 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.'

14. In *Jackson (VO) v Canary Wharf Ltd* [2019] UKUT (LC) 136, the Upper Tribunal clarified the proper interpretation and application of *Monk* stating in paragraphs 35 and 40: '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' 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'.

15. In accordance with this, the question for the panel to decide was, as at the material day, was the subject property capable of beneficial occupation and consequently, a hereditament. If so, the repair assumption is engaged, but if the panel find it was not capable of beneficial occupation, it is to be deleted from the rating list.

16. The panel therefore had to examine the evidence before it and make appropriate findings of fact. The respondent agreed that there was a scheme of works, and did not doubt that the works had commenced sooner, but the position was that works were more akin to preliminary investigations. Having regard to the Gantt Chart, the subject property was deleted with effect from 15 May 2023 as the respondent decided that this was the date the subject property became incapable of beneficial occupation. The appellant's position was that although the Gantt chart refers to "strip out works" on 15 May 2023, the works actually started two months earlier (13 March 2023) as the contractor was granted early access prior to commencement of the main contract, taking possession of the entire building to install hoarding, strip out parts and carry out further works, which made the premises incapable of occupation and use as offices from an earlier date. The Gantt chart was not amended as the early works were carried out under a separate arrangement.

17. In its fact finding exercise, the panel had regard to the photographs provided in support of the appellant's contention that the strip out phase of the redevelopment scheme started on 13 March 2023 and continued throughout April and May. There were two documents which contained photographs, one contained photographs taken in March and April 2023 and the others were taken on 10 May 2023. The panel had greater regard to those taken on 14 March 2023 and 17 April 2023 as they better demonstrated the position as at the material date. It was clear from the photographs that strip out works had commenced, the ceiling and walls were stripped at that time. The photographs dated 10 May 2023 demonstrated substantial strip out by that stage which supported that the scheme of works had commenced much sooner.

18. The panel was also presented with site reports and an email exchange. The email was dated 10 March 2023 and confirmed handover. This did support the appellant's contention that the works started sooner but did not provide the panel with details regarding the condition of the property. The panel attached weight to the John Robertson Architects (JRA) Site report and the ODGroup Project report. The ODGroup Project report dated 11 May 2023 demonstrated that progress had been made by April 2023 and the JRA report was dated 6 April and it had examined the opened up ceilings and inspected the internal structure.

19. In paragraph 31 of *Monk*, Lord Hodge states: ‘there is….. no basis for the alternative argument that a building can be listed as under reconstruction only once the works have proceeded so far that it is no longer economic to restore the hereditament to its former state by means of repair.’ The panel found that, on the material date, the subject property was undergoing reconstruction and therefore it should be deleted from the rating list from the earlier effective date to reflect that reality. No counter evidence, such as photographs or its own report was submitted on behalf of the respondent to substantiate the decision that the subject property remained a hereditament on the material date, rather it had seemingly solely relied on the date shown on the Gantt chart rather than the reality of the situation. The respondent referred to two previous Valuation Tribunal cases *De Groot Agency v Valuation Officer* [VTE CHG100773739] and *Richform Estates v Valuation Officer* [VTE CHG100794754] as informative as the decisions discussed the evidence necessary to equate to significant works and his contention was that the situation is similar in this appeal. These decisions were not binding on this panel and, in any case, the panel found that they were different to the facts present in this case. In this appeal, the parties agreed that the works had commenced in March 2023 and the respondent was prepared to delete the property from six weeks later. The panel found that there had been an overt act (the commencement of a programme of works) and reconstruction was under way as at the material date.

20. For the reasons stated, the panel concluded that, as at 1 April 2023, the subject property was not capable of beneficial occupation and therefore was not a hereditament. It therefore follows that it should be deleted from the earlier effective date of 1 April 2023.

**Determination**

21. In view of the above findings and conclusions, the appeal is allowed.

22. Under the provisions of regulations 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to delete the entry in the 2023 rating list with effect from 1 April 2023.

23. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

**Right of further appeal**

24. 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.

25. 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/.

Ms A Verma, Senior Member (Presiding)

Mr SM Hooberman, Member

27 June 2025

Mrs C McAvoy
Clerk to the Tribunal
**Date issued to the parties:** 27 June 2025