VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Completion Notice appeal: Local Government Finance Act 1992; could the works remaining to be completed be completed by the date in the Completion Notice or should a later date be applied; appeal dismissed

APPEAL NUMBER:	VT00020593	
RE:	54 High Street, Wimbledon, SW19 5AX (the "subject property")	
BETWEEN:	Checkout Wimbledon Limited	Appellant
	and	
	London Borough of Merton (Billing Authority)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Monday 20 January 2025	
BEFORE:	Ms B Knight (Presiding Senior Member) Miss AM Price (Senior Member)	
CLERK:	Mr A Jolly	
APPEARANCES:	Mr M Miller of Miller Property Consultants representing the appellant	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel confirm the date of 21 February 2024 as the completion date as per the Completion Notice served by the billing authority (BA) on 21 November 2023.

Introduction

2. The BA issued a completion notice on 21 November 2023 with a completion date of 21 February 2024. The appellant's representative lodged his appeal to the Valuation Tribunal on 13 December 2023.

3. Mr Miller 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 Miller Miller stated that he had not finalised his fee basis but that it would possibly be conditional fee arrangement.

4. Mr Miller declared 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).

6. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

7. The respondent was not in attendance at the hearing but had requested the matter be heard its absence. The panel considered that both parties had been properly notified of the hearing and that it was in the interests of justice to proceed in the respondent's absence as requested.

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

Issue

9. The issue before the panel concerned what date could it reasonably be expected that the works outstanding at the date of the service of notice could be completed.

Relevant Legislation

10. The relevant law was as follows:

    (a) Section 17, Local Government Finance Act 1992

    (b) Schedule 4A, Local Government Finance Act 1988

    Section 17 of the 1992 Act was as follows:

    (1) Subject to the provisions of this section, Schedule 4A to the 1988 Act (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall, with the exception of paragraph 6, apply for the purposes of this Part as it applies for the purposes of Part III of that Act.

    (2) Any reference in this section to the Schedule is a reference to Schedule 4A to the 1988 Act as it applies for the purposes of this Part.

    Schedule 4A of the 1988 Act, so far as is relevant for the purposes of this appeal, is as follows:

1 (1) If it comes to the notice of a billing authority that the work remaining to be done on a new building in its area is such that the building can reasonably be expected to be completed within 3 months, the authority shall serve a notice under this paragraph on the owner of the building as soon as is reasonably practicable unless the valuation officer otherwise directs in writing.

1 (2) If it comes to the notice of a billing authority that a new building in its area has been completed, the authority may serve a notice under this paragraph on the owner of the building unless the valuation officer otherwise directs in writing.

2 (1) A completion notice shall specify the building to which it relates and state the day which the authority proposes as the completion day in relation to the building.

2 (2) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is not completed, the authority shall propose as the completion day such day, not later than 3 months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed.

2 (3) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is completed, the authority shall propose as the completion day the day on which the notice is served.

4 (1) A person on whom a completion notice is served may appeal to a valuation tribunal against the notice on the ground that the building to which the notice relates has not been or, as the case may be, cannot reasonably be expected to be completed by the day stated in the notice.

4 (2) Where a person appeals against a completion notice and the appeal is not withdrawn or dismissed, the completion day shall be such day as the tribunal shall determine. …

9 (1) This paragraph applies in the case of a building to which work remains to be done which is customarily done to a building of the type in question after the building has been substantially completed.

9 (2) It shall be assumed for the purposes of this Schedule that the building has been or can reasonably be expected to be completed at the end of such period beginning with the date of its completion apart from the work as is reasonably required for carrying out the work.

Decision and reasons

11. Mr Miller explained that the appellant had taken a 15 year lease from 23 April 2020. As the subject property was undergoing works for the appellant’s occupation it was deleted from the valuation list from 2 November 2020. Since that date works have been ongoing and it had been hoped for the works to be completed by 2023/2024, but the property had been beset with problems of water ingress which occurred particular during heavy rainfall. He confirmed that de-humidifiers had been put in place to dry out the property, but the water ingress was an ongoing problem and appeared to be from the shop front which had been replaced. He was unsure whether the problem existed before the shop front had been replaced or since. Due to the type of retailer who would be occupying the shop it was unable to complete the

shop re-fit and open until such time as the water ingress had been resolved but understood works had been started to try to rectify the situation.

12. Mr Miller stated that there was a further issue in relation to planning concerning the equipment for the cooling system. It had been placed on the roof of the adjoining garages at the rear of the property but due to complaints concerning the level of noise the appellant was unable to use the machinery. He understood that the matter had been resolved recently but the machinery required relocating.

13. Mr Miller referred to the case law in particular *Porter (VO)* v *Trustees of Gladman Sipps* [2011 UKUT 204 (LC) stating that a property is entered into the Rating List only if it was ready for occupation and as the subject property was not ready for occupation if could not be deemed complete.

14. Mr Miller considered that the appellant hopes to be open sometime in March 2025 and therefore a date within March 2025 was sought.

15. In its submission the BA stated that it became aware that the subject property was potentially complete in early 2022 from a local resident. Following an inspection in February 2022 it was considered the property was not complete. In July 2023, following information again from a local taxpayer and also the Member of Parliament the BA were prompted to review the circumstances with an inspection of 20 July 2023. Whilst 53 High Street was complete and open the subject property was not open but the BA assumed that it was complete even if not occupied. Whilst the inspector had not been able to gain access internally, he could make out it was fitted out.

16. The BA stated that notice was served on 23 August 2023 with a completion date of 29 August 2023. Following an appeal against that completion notice it was agreed that an internal inspection could be carried out in order to review the date in the notice. It was agreed to withdraw the original completion notice and a new notice was issued on 21 November 2023 with a new date of 21 February 2024.

17. The BA referred to *Berry (VO) v Iceland Foods Ltd* [2015] UKUT 0014LC in support of it contention for the 21 February 2024 being the correct date.

18. The BA considered that the works remaining at the 21 November 2023 could have been completed within the three months given within the completion Notice and requested the appeal be dismissed.

19. The panel noted the appellant's use of the *Porter (VO)* v *Trustees of Gladman Sipps* but in this appeal no completion notice was served and the issue concerned the Valuation Officer entering the property into the list prior to its occupation. In the case before the panel the BA had served a completion notice which gave a date the BA considered it could have been completed by and should be entered into the Rating List whether or not it actually was complete.

20. The panel had to consider the works remaining at the date the completion notice was served and consider whether the works remaining could be completed by the date given in the notice if these works were continuous from that date. The works required did not have to be completed by the completion date, as was the case in this instance, but that the works, if started, could have been completed.

21. The panel noted that the subject property had been substantially fitted out and that minor fitting out works remained once two issues had been resolved. The panel considered that the water ingress had been an issue for a while and therefore drying out and remedying the problem could have, in its opinion, been completed within a three month period given in the notice.

22. The panel then considered the issue of seeking retrospective planning and re-siting of the cooling system. The panel noted the issue was first raised in a letter dated 14 July 2023 which gave twenty eight days to either permanently remove the equipment or submit a planning application for the retention of the equipment. The panel considered that there was considerable time prior to the Notice being served to start to resolve the issue and that it considered that the matter may have been able to be resolved within three months of the notice being served.

23. The panel therefore consider that the works that remained outstanding at the date the completion notice was served could have been completed within the three months provided within the notice, even though the works still had not been completed by the date of the hearing. The panel had not been persuaded by the appellant's representative that a later day should be applied and accordingly dismiss the appeal.

Date issued to parties: 14 February 2025

Right of further appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.
