



VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Completion Notice appeals: Local Government Finance Act 1988; notice served on number of floors with same completion date; real-life constraints on fitting out so many floors simultaneously; should consideration be given to the whole building when setting date; were the logistics of fitting out so many floors at once preparatory works or incidental; appeals dismissed

APPEAL NUMBERS: VT00022936; VT00022937; VT00022938; VT00022939; VT00022948; VT00022949; VT00022952; VT00022955; VT00022956; VT00022957; VT00022958; VT00022959; VT00022960; VT00022961; VT00022962 and VT00022963

RE: Part 2nd Floor, 8 Bishopsgate, London EC2N 4BQ;
3rd Floor, 8 Bishopsgate, London EC2N 4BQ;
5th Floor, 8 Bishopsgate, London EC2N 4BQ;
6th Floor, 8 Bishopsgate, London EC2N 4BQ;
16 Floor, 8 Bishopsgate, London EC2N 4BQ;
17th Floor, 8 Bishopsgate, London EC2N 4BQ;
33rd Floor, 8 Bishopsgate, London EC2N 4BQ;
37th Floor, 8 Bishopsgate, London EC2N 4BQ;
38th Floor, 8 Bishopsgate, London EC2N 4BQ;
39th Floor, 8 Bishopsgate, London EC2N 4BQ;
40th Floor, 8 Bishopsgate, London EC2N 4BQ;
41st Floor, 8 Bishopsgate, London EC2N 4BQ;
44th Floor, 8 Bishopsgate, London EC2N 4BQ;
45th Floor, 8 Bishopsgate, London EC2N 4BQ;
46th Floor, 8 Bishopsgate, London EC2N 4BQ;
47th Floor, 8 Bishopsgate, London EC2N 4BQ
(the "subject properties")

BETWEEN: MEC LONDON PROPERTY 2 (NOMINEE 1) LIMITED
& MEC LONDON PROPERTY 2 (NOMINEE 2) LIMITED)) Appellant

and

City of London Corporation
(Billing Authority) Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 21 October 2024 at 10:40 am

BEFORE: Mr JP Percival (Presiding Senior Member)
Ms S Bryant (Senior Member)

CLERK: Mr A Jolly

APPEARANCES: Mr D Kolinsky KC of Landmark Chambers, Mr B Moore of CBRE and Ms T Marsh of Hush PMC on behalf of the appellant
Mr L Wilcox of Landmark Chambers and Ms L Slade of City of London Corporation on behalf of the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are dismissed. The panel confirmed the date of the 8 June 2024 as contained in the completion notices served on 27 March 2024 as correct.

Introduction

2. The appeals were lodged on 26 April 2024 following the service by the billing authority (BA) of completion notices for 26 floors within 8 Bishopsgate, London on the 27 March 2024. The BA considered the hereditaments could be deemed complete on 8 June 2024. The appellant sought a completion date of 19 July 2025.
3. Originally appeals were made against the 26 completion notices. However, by the date of the hearing it had been accepted by the parties that 10 of those Notices had been invalidly served on the appellant as tenants were in possession at the date of service. These appeals were subsequently postponed, allowing the parties to deal with withdrawing the notices and for the appellant's representative to withdraw the appeals once satisfied the notices had been withdrawn.
4. The subject properties were floors within a 'super' tower comprising 50 floors with accommodation on 48 floors and plant and machinery on the top two floors. There was one loading area and two service lifts, one only serving floors up to 21st and the other all floors. The practical completion date for the whole building was agreed at 19 June 2023 although it was accepted that snagging still had to be completed. Due to the design of the building the floor plates differed between floors.
5. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Issue

6. The issue before the panel concerned the date when the floors could be deemed completed.

Relevant Law

7. Local Government Finance Act 1988 (the 1988 Act)

46A Unoccupied hereditaments: new buildings

(1) Schedule 4A below (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.

(2) Where—

(a) a completion notice is served under Schedule 4A below, and

(b) the building to which the notice relates is not completed on or before the relevant day, then for the purposes of section 42 above and Schedule 6 below the building shall be deemed to be completed on that day.

(3) For the purposes of subsection (2) above the relevant day in relation to a completion notice is—

(a) where an appeal against the notice is brought under paragraph 4 of Schedule 4A below, the day stated in the notice, and

(b) where no appeal against the notice is brought under that paragraph, the day determined under that Schedule as the completion day in relation to the building to which the notice relates.

(4) Where—

(a) a day is determined under Schedule 4A below as the completion day in relation to a new building, and

(b) the building is not occupied on that day,

it shall be deemed for the purposes of section 45 above to become unoccupied on that day.

(5) Where—

(a) a day is determined under Schedule 4A below as the completion day in relation to a new building, and

(b) the building is one produced by the structural alteration of an existing building,

the hereditament which comprised the existing building shall be deemed for the purposes of section 45 above to have ceased to exist, and to have been omitted from the list, on that day.

(6) In this section —

(a) “building” includes part of a building, and

(b) references to a new building include references to—

[(i)] a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by virtue of the alteration, becomes, or becomes part of, a different hereditament or different hereditaments;

(ii) a building situated in England which a hereditament shown in a list comprises or includes, or which a hereditament that was previously shown (but is no longer shown) in a list comprised or included, and that has been subject to alterations;

(iii) part of a building situated in England and added to an existing building which a hereditament shown in a list comprises or includes or which a hereditament that was previously shown (but is no longer shown) in a list comprised or included];

[(iv) a building that has been subject to alterations where the building is comprised in a hereditament situated in Wales that was (but is no longer) shown in a list].

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.
- 2) If it comes to the notice of a billing authority that a new building in its areas 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.
- 3) A billing authority may withdraw a notice under this paragraph by serving on the owner of the building to which the notice relates a subsequent notice under this paragraph.
- 4) Where an appeal under paragraph 4 below has been brought against a notice under this paragraph, the power conferred by sub-paragraph (3) above shall only be exercisable with the consent in writing of the owner of the building to which the notice relates.
- 5) The power conferred by sub-paragraph (3) above shall cease to be exercisable in relation to a notice under this paragraph once a day has been determined under this Schedule as the completion day in relation to the building to which the notice relates.
- 6) In this Schedule “*completion notice*” means a notice under this paragraph...
- 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.
 - (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.

Case Law

Porter v Gladman [2011] UKLC 204

Hermes Property Unit Trust v Roberts (VO) [2021] UKUT 308(LC)

London Merchant Securities plc v Islington LBC [1987] 1 AC 303

JLG Investments Ltd v Sandwell District Council (1977) 20 RRC 61
English Cities Fund v Standard Life [2013] RA 215.
Newham LBC v Rad Phase 1 Type B Property Co No 1 Limited [2020] RA 384
Graylaw Investments Ltd v Ipswich BC [1979] RA 111
Delph Property Group Ltd v Alexander (VO) [2019] RA 233

Discussion

8. Mr Kolinsky stated that the matter concerned whether the notices allowed sufficient time to complete the outstanding work. The answer turned on whether practical real-life constraints which restrict simultaneous fitting out of multiple floors were relevant and should be taken into account when setting the date. He considered they were relevant and that the respondent's approach of ignoring the real-world logistical constraints was wrong and appeared to reflect a stark change of approach on its part. If the real-world constraints were relevant, as he contended, the completion date should be 19 July 2025 which allowed a period of 25 months from practical completion, which was 19 June 2023, as a reasonably required period to fit out all of the floors within 8 Bishopsgate.
9. Mr Kolinsky stated that the subject properties were floors within a super tower and were to be offices when they had been fitted out. It was a speculative development without identified tenants when building first began. He referred to paragraph 9 of Schedule 4A to the 1988 Act and to Lord Bridge's explanation of the application of that paragraph in his judgment in the case of *London Merchant Securities plc v Islington LBC [1987] AC 303* the key to which he said was as follows:
 - A) Are we dealing with a case to which customary works are done to (part of a) building which are customarily done after substantial completion?
 - B) If so, the paragraph contemplates allowing a period of time which is reasonably required to carry out the customary work
 - C) The period allowed starts to run from the date on which the building is substantially complete apart from the customary works.
10. In light of this Mr Kolinsky submitted as follows:
 - a) At as 27 March 2024, was the BA contention that the outstanding fitting out works could reasonably be expected to be complete by 8 June 2024, correct?
 - b) To answer that question the BA was required to look back to the date of practical completion and ask whether reasonable period had been allowed to fit out the property from that time.
11. Mr Kolinsky submitted that the respondent's evidence looked at each floor in isolation and contended that three months was enough to fit out and if the right approach was to focus only on each floor in isolation then there is no meaningful challenge to that contention as the appellant accepted that without consideration of the logistical constraints in the building three to four months would be correct for fitting out each floor.
12. However, Mr Kolinsky explained that the appellant's evidence showed significant practical real-life constraints meaning that there would be unworkable congestion if many floor were fitted out simultaneously. This he said was demonstrated by the report of Ms Marsh who project-managed the co-ordination of the actual fit outs within 8 Bishopsgate. The key constraints concerned the loading bay constraints, permitted delivery slots, vehicle

restrictions and capacity limitations and good lift availability together with the further challenges which arose concerning fitting out a partially occupied building.

13. These real-world constraints that would mean that the 16 floors could not be completed simultaneously. Ms Marsh's evidence was that the constraints on fitting out the whole building concerned the use of the loading bay and lifts including working round tenants already in situ, parking, waste materials, keeping noise levels to a minimum to avoid disruption to other occupiers, timing hot works (welding etc) to minimise disabling the sprinkler system to a minimum number of floors which had insurance implications, out of hours deliveries and working, and restrictions on times for delivery. She stated that there were only two service lifts with one serving floors up to 21st floor and the other serving all floors. Also, materials were delivered to a remote warehouse before being moved at the relevant time to the subject properties. She provided a schedule taken from information produced by the on-site logistic company which considered 14,583.33 m² of fit outs could be conducted over a six-month period and 29,166.67 m² fit outs over a 12-month period. She stated that, for a building the size of the 8 Bishopsgate, the completion date of the whole would be 24-months from practicable completion date.
14. Mr Kolinsky also led evidence from Mr Moore of Colliers International who provided details of other super towers within London and the period between practicable completion date and the date of the final space was brought into the Rating List. These properties included 22 Bishopsgate, a 61 storey building with 1,275,000 sq ft of space with a practical completion date in November 2020 and the date final space was brought into the list was January 2024, a period of 37 months; 52 Lime Street, a 36 storey building with 639,000 sq ft of space with a practical completion date in September 2018 with the final space being brought into the list in April 2021, a period of 30 months; 122 Leadenhall, a 46 storey building with 610,000 sq ft of space with a practical completion date in July 2014 with the final space being entered into the list in December 2016, a period of 30 months.
15. Mr Kolinsky submitted that what he described as the BA's "fictitious island" approach failed to give due regard to such realities and the issue before the panel concerned which approach was right. He submitted that, in his speech in the *London Merchant* case, Lord Bridge offered assistance but did not provide a definitive answer. In that decision the House of Lords decided that time required for planning, tendering and designing was to be excluded from the reasonable period allowed under the statutory predecessor to paragraph 9 of Schedule 4A of the 1988 Act and that the Court of Appeal decision of *JLG Investments Ltd v Sandwell District Council* (1977) 20 RRC 61 also excluded the time to find a tenant.
16. Mr Kolinsky stated that Lord Bridge observed that he did not find the decision before him easy and the essential distinction that he drew in his reasoning was as follows:

"I do not doubt that the phrase "carrying out the works" is wide enough to include some incidental operations going beyond the physical activities of craftsmen and labourers employed to work on the building of which account must be taken in estimating the period required for carrying out the work. But it seems to me that a distinction must be drawn between what is truly incidental and may prolong the period required once the works have been commenced and what is merely preparatory and necessary to be undertaken before the work can be commenced at all"
17. The question was therefore whether the constraints described by Ms Marsh were incidental to the task of fitting out the subject properties, which the appellant considered they plainly were. He stated that the fitting out of each floor could only be carried out in the real world, ie.

in the context of the building as a whole, and to treat each separate floor of the building in effect as “an island” free from these real-world constraints for the purposes of determining the reasonable period of time for completion of the customary works was “fictitious”. In his submission, these real-world logistical challenges imposed real constraints which affected how much time was necessary to fit out the properties and in his submission these constraints were therefore incidental to the task of fitting out, for the purposes of the test set out by Lord Bridge in *London Merchant Securities*.

18. Mr Kolinsky submitted that a way of testing the competing approaches might be to ask how Lord Bridge’s approach would apply if a completion notice was served on the whole of the building. He stated that it could not be conceivably argued that the practical constraints which lay in the way of completing the works should be ignored. He strongly submitted that it would not be sensible for the division of the building into component parts to result in a different approach being applied by the BA. The real-world constraints were accordingly, in his submission, truly incidental to the task of fitting out the properties.
19. Mr Kolinsky also referred the panel to the decision of the former President of the Valuation Tribunal in *English Cities Fund v Standard Life* [2013] RA 215. This is a case where the BA had accepted in cross examination that they had sliced up the building into parts in order to shorten the period allowed. The President had found this was unlawful as it defeated the purpose of the statutory provisions. He accepted that the facts of the present case are not so stark and that no complaint was made of the service of the individual notices per se - the issue in this case being that the appellant did not consider sufficient time had been allowed for the works. He also accepted that the remedy granted in that case of quashing the notices was controversial following the decision of *Newham LBC v Rad Phase 1 Type B Property Co No 1 Limited* [2020] RA 384. He submitted, however, that the judicial instinct demonstrated in that decision, to the effect that creating smaller areas for the purpose of completion notices should not necessarily change the approach to how long is need for the works, was correct.
20. Mr Kolinsky also submitted that the Upper Tribunal has held that it is legally permissible to set a completion date more than three months after the notice was served and that there would be no windfall to the ratepayers in adopting the approach as the evidence showed that 8 Bishopsgate was an attractive proposition to the market, and it was being fitted out as quickly as logistics allowed. If a floor, or combination of floors in single occupation, were completed before 19 July 2025 the hereditament would still be entered into the rating list on the basis that they were completed. The setting of a statutory date for deemed completion fitted comfortably with the purpose of ensuring the building, after a reasonable period, could be rated whether or not it was complete and that the notices would only be operative for the floors which are not fitted out earlier. This effect was explained in paragraph 68 of *Porter v Gladman* [2011] UKLC 204.
21. Mr Kolinsky stated that upon practical completion it was not a case of lack of activity as the developer was working through the snagging list and installing amenities including fitting of a commercial kitchen and the developers decanting from the 1st and 2nd floors. The document in Ms Marsh’s report was a live working document changing all the time. He also reminded the panel that in other super towers the BAs had given between 30 and 37 months between practical completion and the final space being entered into the rating list.
22. In response, Mr Wilcox submitted that the respondent’s case was in essence as follows:
 - a) When the law was properly understood each of the Notices had to be considered individually rather than in aggregate.

- b) The calculation of the period required for the completion of each floor was based on the amount of time it would actually take a contractor to carry out the works which remained to be done. Preliminary matters like tendering, scheduling and logistical arrangements were to be disregarded.
 - c) The starting date for the calculation in question was the date on which the floors were substantially completed, which on the basis of the appellant's own evidence was 19 June 2023.
 - d) The evidence showed that the time required to complete the actual works to each floor (as opposed to the irrelevant preparatory time) was between four and five months. The completion date specified in the notices was just under 12 months after the date of substantial completion. The completion date in the notice was thus unimpeachable.
23. Mr Wilcox led evidence from Ms Slade the Business Rates Manager for the BA. Ms Slade confirmed Covid had caused an issue in relation to inspecting properties and created a backlog which was the possible reason why the properties mentioned by Mr Moore had longer periods before the final property was entered into the rating list. She confirmed from her inspection in October 2023 that the property was at Cat A stage and accepted that further works to complete the fit out were required. She confirmed that she was familiar with super towers and that the subject properties were within a 50-storey building with up to 48 possible tenants. She stated that she had concentrated on the date being three months from the service of notice and not one year from practical completion and that she was the person who had served the notices. She stated that some floors were in occupation at the date of practical completion. She also confirmed that she had not served completion notices on all floors, but she did not have evidence on what stage those floors were at. She also confirmed that it was normal practice for discussions with the managing and letting agents and would monitor progress of fit out but that she considered each floor as individual floors.
24. Mr Wilcox submitted that 8 Bishopsgate had achieved practical completion, subject to snagging issues, on 19 June 2023 but that no further information had been provided regarding the snagging issues nor any evidence when the floors reached Cat. A if not on the date of practical completion. The BA therefore proceeded on the basis that the date of practical completion was the date on which the property was completed save for tenant's fit out works. However, it was confirmed that the BA had inspected the floors on 18 October 2023 and found them to all be completed to Cat A standard.
25. Mr Wilcox stated that the BA had served a completion notice on floors which had reached substantial completion and that all that remained to be done was the tenants' fit out works. The question for the Tribunal was, could the fit out works be completed if those works started on the date of substantial completion and not the date of the service of the notice. He referred to *London Merchant* for the correct approach to customary works and the issue before the Tribunal on whether certain preparatory activities were to be taken into account when calculating the period required for the fit out works to be completed.
26. Mr Wilcox submitted that preparatory works were described as 'outline design, detail design, local authority approvals and preparation of contract documentation and tender period. Also, Lord Bridge in the earlier case of *JLG Investments* concluded that time finding a tenant was to be left out of account in calculating the period to allow for the works. Although Lord Bridge held that the statutory language was wide enough to accommodate some incidental operations going beyond the physical activities of the craftsmen and labourers employed to work on the building, a distinction had to be drawn between what was truly incidental and

may prolong the period required once the work has been commenced and what is merely preparatory and necessary to be undertaken before the work can be commenced at all.

27. Mr Wilcox referred to the definition of “new building” in s. 46A which extended to parts of a building. As such, it was open to a billing authority to serve a completion notice on a building in parts, instead of on the whole of the building; such an approach was particularly apt for a multi-storey building which was expected to be let on a floor-by-floor basis, in which the different floors may be expected to reach completion at different times. Indeed, in cases such as the present where different parts of the building had different owners, the BA had no choice but to serve multiple notices.
28. Mr Wilcox referred the panel to *Delph Property Group Ltd v Alexander (VO)* [2019] RA 233 where the President of the Valuation Tribunal had to consider the correct approach to determining whether or not a completion notice had been served on a new building and found that the property as a whole was not a new building but a redeveloped existing one and observed:

69. *‘even if I am wrong on this point, the Billing Authority didn’t serve one completion notice but a number for various parts. It is each of those parts I needed to focus on as new buildings and in each case; they were not the elements where significant alterations occurred to convert from offices to domestic accommodation.*

70. *The question then for me to answer was whether each part meets the criteria in s46A(6) (that is the three areas subject to individual completion notices).’*
29. Mr Wilcox submitted that the focus of the s46A test was on the building as identified in each notice in isolation and that the status and treatment of other properties beyond the scope of the individual notice was irrelevant to the analytical exercise. Therefore, when considering the time, it would take to complete a building the focus was on the building identified in each individual notice and factors relevant to other property in the wider area, including other floors in the same property were immaterial. This approach, he submitted was consistent with *London Merchant* decision. The appellant’s case was that the completion date could not be that specified in the notice because the existing pressure on the work in the property meant there was no scheduled space for the development of the floors specified in the notices taken together. It therefore was sufficient to note that the appellant’s case was not that the work within each floor would take longer than otherwise but that the start of the works on each floor must be postponed and this was accordingly concerned with matters he submitted were preliminary to the commencement of the contract state date. He submitted that the concern was about scheduling.
30. Mr Wilcox submitted that, taking the principles in *Grayslaw*, *London Merchant* and *Delph* together the question the Tribunal had to answer for each individual floor was as follows, namely if the contractors actually commenced the tenant’s fit out work in June 2023 how long would it have taken to complete the works. He submitted that the answer to that question was clear, as the appellant’s own evidence confirms that the amount of time it would actually take a contractor to fit out a floor at the property was approximately 16-20 weeks. The many months of planning and management on which the appellant sought to rely to justify a longer period, he submitted, was an irrelevant consideration for these purposes applying the approach of the House of Lords in *London Merchant*.
31. Mr Wilcox submitted in the alternative that, if his primary submission was wrong, and even if the works to the 16 floors must be considered in aggregate and taking account of the other

works happening in the wider property, the completion date of 8 June 2024 remained correct. The evidence produced by the appellant focused on the intense period of fit out underway between February and June 2024. Accordingly, the appellant's witness had focused on development pressures which existed at or around the time Notices were served.

32. Mr Wilcox submitted, however, that *Graylaw* confirmed that that was the wrong period as the notional works assumed for completion notice purposes did not commence at the date of service but on the date of substantial completion of the property, which in this case was 19 June 2023. The report showed very little capacity issues in the property at that time, with only four floors being fitted out and three of those floors were finished by the end of June 2023. In his submission, there was therefore plenty of capacity for commencement of the floors subject to completion notices at that time. Also, the total floor area of all 16 floors where completion notices remained was approximately 17,081 m², well below the 12 month capacity threshold of 29,166.67 m² which was identified in the report and only slightly above the six months threshold. He also noted that 16 floors within the building were, at one time, undergoing fit out works. He also queried the calculation contained within the Wilson James Capacity study concerning the number of pallets that could be delivered in one day and the total delivered in a week.
33. Mr Wilcox therefore sought the dismissal of the appeals.

Disposal

34. The panel considered that the first issue for it to determine concerned whether or not, applying the decision of the House of Lords in the *London Merchant* case, the real-life constraints of fitting out all the floors at the same time were preparatory works and therefore should not be taken into account when setting the date or were incidental and should be taken into account. The panel noted Mr Kolinsky acceptance that if the works were preparatory then the appeals failed with confirmation of the 8 June 2024 as the deemed completion date, as per the completion notices, but if the constraints were incidental then a second issue, the matter of the new date, needed to be considered.
35. The panel noted that, as some floors were already occupied at the date the completion notices were served and some floors were already in the possession of a tenant, the BA would not have been able to serve one notice in respect of the whole building.
36. The panel noted that the caselaw referred to the works being assumed to have started on the date the property was practically complete, which the parties agreed in this instance was the 19 June 2023.
37. In the *London Merchant* decision, it was considered that preparatory works such design, planning permission should be ignored but Lord Bridges accepted that some incidental works could be taken into account. The panel therefore had to consider whether the real-life constraints were preparatory or incidental.
38. In the *London Merchant* decision Lord Bridge's stated "But it seems to me that a distinction must be drawn between what is truly incidental and may prolong the period required once the works have been commenced and what is merely preparatory and necessary to be undertaken before the work can be commenced at all"

39. The panel considered that it was necessary, in order to determine for the purposes of the application of paragraph 9 of Schedule 4 to the 1988 Act whether constraints such as those relied upon by the appellant in this case are, in the words of Lord Bridge in the *London Merchant case*, “truly incidental and may prolong the period required once the works have been commenced” or instead “merely preparatory and necessary to be undertaken before the work can be commenced at all”, to determine whether the “commencement of works” in question meant the commencement of those works relating to the hereditament which was the subject of the Completion Notice in question (in this case each floor under consideration), or, in the case a property such as those under consideration in the present case, meant such works taking place in the building as a whole.
40. Only if the latter were the case could matters relating to the scheduling of commencement of the works specific to each floor be “truly incidental” such as to “prolong the period once the works have commenced”.
41. In the panel’s view, commencement of the works for these purposes must refer to commencement of works on site in the hereditament which was the subject matter of the Completion Notice in question. As such, considerations which affected the commencement of those works must be treated as “merely preparatory and necessary to be undertaken before the work can be commenced at all”. As such, they cannot be “truly incidental” for the purposes of the test laid down by Lord Bridge in his decision in the *London Merchant case*.
42. The panel concluded therefore that the logistical issues which the appellant sought to rely upon in this case to extend the period beyond that which was accepted otherwise to be a reasonable period for the completion of the customary works to each of the separate floors themselves, were “merely preparatory works” and not “incidental” for the purposes of the application of the test in the *London Merchant case*.
43. The panel therefore considered that as each floor should be treated as a separate hereditament for these purposes and, assuming works started for each floor on the date of practical completion of the building, then both parties agreed that works to fit out each floor would take between 16 and 20 weeks. The panel therefore considered that 8 June 2024, eleven and half months after practical completion was reasonable.
44. On this basis, the panel concluded that the appeals should be dismissed.
45. However, in the alternative, had the panel deemed instead that the real-life constraints were incidental for the purposes of the *London Merchants test*, the panel would still have considered the 8 June 2024 as a reasonable date for deemed completion. Whilst it noted that there were the physical constraints within the building described by Ms Marsh in her evidence, it noted that 16 floors were, at one point, being fitted out simultaneously and therefore it was of the view that it was nonetheless possible for the 16 floors under appeal before the panel to have been fitted out simultaneously. It also noted that it was generally accepted that fit out for offices as a shell normally would take approximately six months and those that were at Cat A would normally take three months.
46. In view of the above findings and conclusions, the Tribunal Panel is satisfied that date of 8 June 2024 was correct for all the completion notices before the panel and accordingly dismissed the appeals.

Date issued to parties: 20 November 2024

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.
