IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A NON-DOMESTIC COMPLETION NOTICE APPEAL

Case No: VT00027295
VT00027294
VT00027296

Sitting remotely using Microsoft Teams

Date: 19 May 2025

Non-Domestic completion notice appeal; Section 46A and Schedule 4 A to the Local Government Finance Act 1988; new dwelling; substantially complete; *asbestos discovered; Graylaw Investments Ltd v Ipswich Borough Council [1978] RA 11; JLG Investments Ltd v Sandwell District Council* [1977] RA 78 *; Post Office v Nottingham City Council [1976] RA 49*; *appeals allowed*

Between:

EVERGREEN MARINE UK LIMITED	**Appellant**
- and -	
LONDON BOROUGH OF CAMDEN (BILLING AUTHORITY)	**Respondent**

Regarding:

3RD, 6TH, 7TH FLR EVERGREEN HOUSE, 160 EUSTON ROAD, LONDON, NW1 2DT

(the "appeal properties")

Mr A Izett from Daniel Watney (on behalf of the appellant as advocate)
Mr J Skelly from Daniel Watney (on behalf of the appellant as expert witness)
Mr P Beckham (on behalf of the Respondent as advocate**)**

Hearing date: 17 April 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed.

2. The Tribunal finds that the appeal properties could not reasonably have been completed on the date of 16 December 2024 as set out in the completion notice dated 6 November 2024. A new completion date of 5 May 2025 was determined by the panel.

Introduction

3. These appeals were against completion notices which the billing authority (BA) had served upon the appellant dated 6 November 2024. The BA proposed the completion day for the appeal properties as 16 December 2024 as it considered that customary works required to be done on the appeal properties was such that it could be reasonably be expected to be completed within this time.

4. Completion notices are referred to in Section 46a and Schedule 4A of the Local Government Finance Act 1988 (LGFA 1988). Appeals may be made to the Valuation Tribunal for England (VTE) under paragraph 4 of Schedule 4A.

5. The “relevant date” (the date the panel considered the physical state of the appeal properties) for the purposes of these appeals was 16 December 2024, being the effective date proposed by the BA for the completion of the appeal properties.

6. Mr Izett was appearing on behalf of the appellant as advocate and Mr Skelly was appearing on behalf of the appellant as expert witness. Therefore, it was important to ascertain if Mr Skelly was instructed on a success related fee and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Skelly confirmed that he was representing the appellant on a success related fee basis.

7. 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).

8. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9. The parties had prior to the hearing agreed in writing that the late evidence that they had both served on each other could be included in the hearing.

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

Background

11. The appeal properties were three floors of serviced offices. In the case of the third floor it was taken out of rating on 28 May 2023 due to the fact the partitioning walls were removed and so the smaller assessments in the rating list at that time no longer existed. In connection with floors six and seven they were were removed from the rating list with effect from 12 May 2023. Mr Izett submitted that during the course of the work it was discovered that there was asbestos in each of the floors and that it had been disturbed. This meant that before any other work could be done to the properties the asbestos would need to be removed by professionals to make it safe. The delay that this would cause meant that the assessments could not be complete on 16 December 2024, the date stated on the completion notices. Mr Izett submitted that the correct date for substantial completion of the appeal properties was 5 May 2025

12. Mr Beckham submitted that the appeal properties could have been completed by 16 December 2024 and therefore requested that the panel dismiss the appeals.

Relevant Law

13. The LGFA 1988 makes the following provision for Non Domestic Rates:

46A Unoccupied hereditaments: new buildings

a. 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.

b. For the purposes of sub paragraph (3) 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—

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

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

(g) "building" includes part of a building, and
(h) references to a new building include references to

1. 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.
2. …
3. …

Schedule 4A LGFA 1988

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 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.

(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.

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) 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.

(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.

14. Having regard to the legislation, it is apparent that a BA must serve a completion notice if it comes to its attention that a building is complete or if it is structurally complete and the remaining work can be completed within three months. In the appeals before the panel, the BA issued completion notices under Section 46a of the LGFA 1988 as it was considered that the appeal properties would be complete by 16 December 2024.

Discussion

15. The panel noted that the appeal properties were removed from the rating list from 12 and 28 May 2023. The former tenant of the appeal properties had left them in a bad state of repair despite carrying out dilapidation repairs in accordance with the lease.

16. The panel was aware that a new tenant had now been found for the appeal properties and Heads of Terms had been signed with the tenant. This enabled the repair work to commence. Mr Skelly confirmed that this work would take twelve weeks to achieve category A standard and nineteen weeks to achieve category B standard. He stated that normally a fit out such as the one required on the appeal properties would take approximately six months.

17. The panel took into account that the previous tenant had carried out dilapidation repairs at the end of its lease and had disturbed the asbestos. This made it impossible to begin any work until the risks and work on the asbestos had been completed. The panel took into account the various surveys put into evidence by the appellant which demonstrated that the risk from the asbestos was very high in all areas. The appellant landlord had been unaware of the problem caused by the disturbance of the asbestos until the surveys were carried out.

18. The panel noted that the cost of the work required to make the asbestos safe was estimated at £289,000 per floor and would take approximately seven weeks to complete as each floor would need to be treated separately. The work would also have to be carried out in a way to avoid disruption or put at risk other occupiers in the same building as well as the people in the neighbouring hospital and fire station. The panel noted that after the work on the asbestos had been completed only then could the programme of works commence. The programme of works had been put into evidence and suggested that the further work would take approximately three months.

19. The panel noted that the appeal properties had been empty and no work had been carried out on them since they were removed from the rating list in May 2023. The delay in carrying out any work was as a result of the landlord needing to know how any new tenant would want to use the space and what, if any, particular requirements were needed. The panel found that although the appellant had not carried out any work they were unaware of the problem with the asbestos. They could not therefore have anticipated the delay it would cause to returning the appeal properties to a standard suitable for occupation as offices.

20. The panel then turned to the BA's evidence. Mr Beckham explained that a visiting officer had continually monitored the site since it had been removed from the rating list. They had noted that there had been no work carried out on the appeal properties since they had been removed from the rating list. Mr Beckham referred the panel to the case of *Graylaw Investments Ltd v Ipswich Borough Council* [1978] RA 111, in which it was held that it was not the date on the completion certificate but the date by which the work could have been carried out that was the relevant date. The panel found that the date by which the work could have been carried out would have been affected by the discovery of the asbestos. The works listed on the schedule of works were due to take six months but once the asbestos was discovered this meant that the programme of works suddenly had to be extended in this case. The programme of works was not accurate as it did not allow for or include the treatment and work required to deal with the asbestos.

21. Mr Beckham referred the panel to the case of *JLG Investments Ltd v Sandwell District Council* [1977] RA 78 in which he submitted the time to find a tenant could not be included in the date by which a property is substantially complete. Mr Beckham explained that the appeal properties had been advertised for let during the whole period since they had been taken out of the list and the work could have been commenced then. This case was binding but the panel found that in this case the extra time requested by the appellant in relation to the completion notices was not due to finding a tenant. The time was to allow the work on the asbestos to be completed and so the panel placed little weight on this case.

22. Mr Skelly referred the panel to the case of *Post Office v Nottingham City Council* [1976] RA 49. He submitted that in that case there was specialist equipment required to be installed before the subject property of that case was substantially complete. In this case the discovery of the asbestos meant that the period of time required for it to be substantially complete was longer as a result. The panel found that the presence of the asbestos was something which changed the normal scope of the programme of works. It required longer for the appeal properties to be substantially complete compared to any other office. The panel noted that had the asbestos not been in the building then the programme of works included in the evidence would have been very similar to any other office. The presence of the asbestos meant that the period of time for the work to be substantially complete was increased.

23. The panel noted the photographs relating to the appeal properties which appeared to demonstrate that they were substantially complete. Mr Izett however explained that the electrical and mechanical equipment seen in the photographs were redundant. The air system had been isolated and the small power system and lighting had been removed. The floors needed stripping back and replacing. The presence of the asbestos which was not visible in the photographs meant it was unsafe for anyone to even enter the space without protective equipment. The panel found that the presence of the asbestos meant that the appeal properties were not substantially complete.

24. The panel was aware that the other floors in the same building which are still in the rating list also contained asbestos. These floors however did not have any damage to the asbestos and so were safe at present. The panel therefore put little weight on this evidence.

Determination

25. Having regard to all of the evidence presented and the description of the outstanding works required to the appeal property as at 6 November 2024, the panel found that the period of approximately six weeks as allowed by the completion notice was unreasonable. The requirement of Schedule 64A and 4A LGFA 1988 state that the completion date is the date the property could be substantially complete. In view of its findings, the panel allowed the appeal and amended the completion date to 5 May 2025, allowing an additional time for the asbestos to be safely removed.

Order

26. The billing authority is ordered to amend its records, to reflect the revised completion date as determined by the tribunal above.

Right of further appeal

27. 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 if the Tribunal Procedure Regulations. Any appeal must be made directly to the Upper Tribunal within **four weeks** of the date this decision and statement of reasons is issued. A party does not require permission from the Tribunal to appeal.

28. 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/.

Mrs PA Crowther-Newman, Senior Member (Presiding)

Mr SM Hooberman, Member

16 May 2025

Miss F Willson
Clerk to the Tribunal
Date issued to the parties: 19 May 2025
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