IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2019] UKUT 385 (LC)
Case No: RA/12/2018

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – HEREDITAMENT – warehouse building converted to wedding venue – deletion proposal – material day – stage at which hereditament became incapable of beneficial occupation – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

COLOUR WEDDINGS LIMITED **Appellant**

and

RITCHIE ROBERTS (VALUATION OFFICER) **Respondent**

Re: 33-35 Cottenham Lane
Salford
Manchester
M7 1TW

Before: Mr P D McCrea FRICS

sitting at

Manchester Civil Justice Centre

24 October 2019

Mr Joy Eshan for the appellant
Mrs Elizabeth Mellors MRICS, for the respondent

The following cases are referred to in this decision:

Newbigin (VO) v SJ &J Monk [2017] UKSC 14
Shaw v Benton (VO) [2018] UKUT 168 (LC)
Jackson (VO) v Canary Wharf Limited [2019] UKUT 136 (LC)

Introduction

1. This is an appeal by the ratepayer, Colour Weddings Limited, against a decision of the Valuation Tribunal for England ("the VTE") dated 17 January 2018 in which the VTE dismissed the ratepayer's appeal that arose out of a proposal against the 2010 Rating List entry for 33-35 Cottenham Lane, Salford, Manchester, M7 1TW ("the appeal property") made on 24 March 2015.

2. I heard the appeal under the Tribunal's simplified procedure. Mr Joy Ehsan represented the appellant company in his capacity as a director. The respondent valuation officer ("VO") was represented by Mrs Elizabeth Mellors MRICS, who called Mr Anthony Bruce, a valuation referencer at the Valuation Office Agency ("VOA") to give evidence of fact, and Mrs Susan Reid IRRV (Hons) to give expert valuation evidence.

Background

3. Mr Ehsan had for some time been searching the Salford area for a building to convert into a wedding venue when he came across the appeal property, which had previously been used as warehouse accommodation, but which had been vacant for some time. It had two buildings, connected by a covered corridor. 33 Cottenham Lane was built in the late 1970s, of steel frame construction with brick walls and an asbestos clad roof. 35 Cottenham Lane was slightly newer, built in the early 1980s, of steel portal frame construction with a metal clad roof. The linking corridor was added in 1984, across a common forecourt with parking.

4. He agreed terms, in principle, to take a lease of the appeal property and on 18 December 2013 he applied for planning permission for a change of use to a wedding venue. The application took some time to be determined, but having secured planning permission Mr Ehsan's company completed a lease of the appeal property on 15 December 2014. I have not seen a copy of the lease. The rent passing was £35,000, but it is accepted by the VO that an element of this rent was agreed by the parties to be a contribution towards an eventual freehold purchase.

5. The appeal property had been entered into the 2010 non-domestic rating list at a rateable value of £56,000, before a reduction to £53,500 was agreed with the agent for the freeholder. On 16 February 2015, Mr Ehsan contacted the VOA to query whether the assessment included all of the buildings on the site. Mr Bruce visited on 18 February 2015, inspected the property, and told Mr Ehsan that the unit of assessment included all of the buildings on site. On 2 March 2015, there was a telephone call between Mr Ehsan and Mr Bruce, the content of which is in part disputed, but following which Mr Bruce sent a proposal form to Mr Ehsan so that he could make an appeal against the rating assessment.

6. Mr Ehsan completed and returned the proposal form to the VOA on 15 March 2015. Its contents are relevant to this appeal. In Part B of the pre-printed form ("details of the proposed list alterations") Mr Ehsan had ticked box B, proposing that the existing entry be deleted with effect from 16 December 2014. In Part C ("grounds for the proposed list alteration") he ticked box D – indicating that the circumstances affecting the rateable value of the property changed on 16 December 2014; and box G – that the entry should be deleted from the rating list for reasons other than that "the property has been demolished and no longer exists" or that "the property is non domestic or exempt from rating and is no longer rateable". At paragraph 16 of Part C, the detailed reasons given for Mr Ehsan's belief that the rating list was inaccurate were stated to be that the property "needs major structural repair and refurbishment to meet the requirement of the users."

7. The valuation officer having considered the proposal not well founded, it was referred as an appeal to the VTE, which dismissed the appeal in its decision dated 17 January 2018.

8. The assessment of the appeal property was later revised by the VO to £0 RV with a description of "property under reconstruction" with effect from 1 August 2015, before being further revised to £71,500 RV, described as "banqueting hall and premises", with effect from 1 July 2016. The effective date of £0 RV of 1 August 2015 was determined following Mr Bruce's second inspection on 18 November 2015. He noted that while no work had been carried out to the building know as 33 Cottenham Lane, some amount of conversion work had been carried out to 35. The VO estimated that the work which had been carried out to that point would have taken around three months, and accordingly revised the assessment to £0 RV with effect from 1 August 2015.

Case for the appellant

9. Mr Ehsan's case was that substantial reconstruction work to the property commenced in January 2015 and that it should be deleted from the rating list from that date. He submitted photographs showing the condition of the property, and supporting documents including letters from the freeholder and his architect. Planning permission had been granted for a change of use, and correspondence from the building control section of the local council confirmed that their approval was required for the works of conversion. Mr Ehsan said that he asked Mr Bruce the date he should propose from which the property should be deleted from the rating list and was told that this should be from the start of the lease (Mr Bruce disputes this, and in fact the date stated was the second day of the term). At the VTE hearing, Mr Ehsan said, the case officer for the VO accepted that the property should be zero rated until July 2017 (the VTE's decision does not record any such concession).

10. Mr Ehsan was critical of a number of the conclusions of the VTE. He said that while the VTE had referred to the decision of the Supreme Court in *Newbigin (VO) v SJ &J Monk* [2017] UKSC 14, it had not properly reflected the principle of reality in relation to the condition of the appeal property – which at the material day was not usable for any purpose without what he termed substantial reconstruction work.

11. The VTE had recorded Mr Ehsan as having accepted that there was no significant difference in the condition of the appeal property between 16 December 2014 and when the

proposal was made on 24 March 2015. Mr Ehsan denied making this statement and said that "the reconstruction work began in January 2015 and a lot of repair work did take place [in] the period".

12. The VTE had noted that the sum of £343,600 was the estimated cost of work, but that reflected the conversion of the property to a banqueting hall, not the cost or repair as a warehouse. However, Mr Ehsan submitted that the panel had not placed sufficient weight on the witness statement of his architect, who confirmed that the property had been left vacant for several years before 2014, and was in a neglected state, overgrown with weeds and in poor repair. There were several building defects, cracking to the walls and hanging live electric cables. Mr Ehsan submitted that the VTE had not appreciated that basic repair works would be required irrespective of the end use of the property.

13. Finally, Mr Ehsan submitted that since the property had been granted planning permission for a change of use to a wedding venue in July 2014, it could not legally be used for anything else; additionally, the lease stated that the appeal property could not be used for anything other than the permitted use as a wedding venue. The VTE had not reflected this but had instead considered the property in its former use as a warehouse.

Case for the Respondent

14. For the valuation officer, Mrs Mellors resisted the appeal on three grounds.

15. First, the VO considered that since the ratepayer's proposal sought deletion of the assessment from the rating list, the relevant material day is the day on which the circumstances giving rise to the alteration occurred. This, she submitted, meant that the appeal property must be considered as it existed on the date stated in the proposal itself, 16 December 2014, at which point the property still existed as a warehouse, albeit requiring repair, and a rent was passing. It should not, therefore, be deleted from the rating list.

16. Secondly, however, the VO appreciated that the ratepayer was unrepresented and might therefore not be aware of the limitations of a deletion proposal. For the purposes of this appeal the VO was therefore prepared to treat the proposal as one seeking a reduction in the rateable value of the property owing to disrepair. In these circumstances the material day would be the date of the proposal – 24 March 2015. Mr Ehsan had now provided some estimates for roof repairs, dated May 2015 and totalling £19,612, but these had not been made available during negotiations and advice had therefore been sought from the VOA's building surveyors, who estimated a "worst-case" cost of £260,000. Assuming a useful life of 10-15 years, the cost of repair was clearly economic in relation to a hypothetical rent of £53,500, and accordingly the hereditament should be treated as being in repair.

17. Thirdly, in relation to the appellant's reference to *Monk*, the hereditament had remained a warehouse and work to convert it to a banqueting hall had not yet started at the material day for a proposal based on a material change in circumstances (i.e. the date of receipt of the proposal, 24 March 2015). The VO's position was that in any redevelopment scheme, a property would first be made wind and watertight – and any works to the roof, windows and doors would be carried out first. The roof repair estimate that Mr Ehsan had provided demonstrated that roof repairs had not been carried out by May 2015, and the VO did not accept that the property had altered to any

extent between the Mr Bruce's inspection on 23 February 2015 and the material day of 24 March 2015. The VO's position was that, while there might have been a redevelopment scheme in the future, at the material day there was no scheme in place. The property was capable of occupation as a warehouse at the date of receipt of the proposal.

18. Mrs Mellors submitted that in any of these three scenarios, the appeal should be dismissed.

Statutory Provisions

19. Before turning to the statutory basis of rateable value, it is useful to first consider the regulations (as they stood at the relevant dates) which governed the making of proposals against the 2010 rating list; and their relationship with the VOA's standard proposal form, which is not a statutory document but simply a convenient way for ratepayers and other interested parties to make proposals to alter the rating list.

20. The Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 ("the 2009 regulations) set out the circumstances in which proposals may be made. For the purposes of this appeal, as at 15 March 2015 regulation 4 provided:

> "4.— Circumstances in which proposals may be made
>
> (1) The grounds for making a proposal are—
>
> …
>
> (h) a hereditament shown in the list ought not to be shown in that list;
>
> (i) the list should show that some part of a hereditament which is shown in the list is domestic property or is exempt from non-domestic rating but does not do so;
>
> …"

21. Regulation 6 specified what was to be included in a valid proposal. By regulation 6(1)(e), the proposal should include:

> (i) a statement of the grounds for making the proposal;
>
> (ii) in the case of a proposal made on any of the grounds set out in regulation 4(1) [(h) and (i)] a statement of the reasons for believing that those grounds exist;

22. It will be noted that there is no requirement, in the case of a proposal made either on the grounds that the hereditament ought not to be shown in the rating list or that some part of it is exempt from non-domestic rating, for the proposer to state the date on which the deletion or exemption should take effect.

23. Accordingly, I do not think Mrs Mellors is correct, nor were the VTE in following her, that in treating Mr Ehsan's proposal as one based on deletion, the property must be considered at the

date which Mr Ehsan stated in the VOA standard proposal form. There is no requirement in the regulations that the date of deletion be specified in the proposal and no reason to restrict the ratepayer to the date so stated if the facts on which the ratepayer relies suggest a different date.

24. That being the case, how, and with reference to its condition at what date, should the property be valued?

25. The statutory definition of rateable value is that contained in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 which provides:

> "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."

26. Subparagraphs (6), (6A), and (7) provide, as far as relevant to this appeal:

> "(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (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.
>
> (6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.
>
> (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
>
> …"

27. The regulations referred to in paragraph 6A were the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 ("the 1992 regulations"), as amended. These provided, as far as material to this appeal:

"3 – Material day for list alterations

(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.

…

(4) Where the determination is with a view to making an alteration so as to show in, or delete from the list any hereditament which-

(a) has come into existence or ceased to exist;

(b) has …become… property exempt from non-domestic rating;

...

the material day is … the day on which the circumstances giving rise to the alteration occurred."

28. Accordingly, in a proposal which is based either on the ground that the property ceased to exist, or that it became exempt from rating (whether in whole or in part), the matters listed in paragraph 2(7) of Schedule 6 affecting the physical state or physical enjoyment of the hereditament, or its mode or category of occupation, are to be taken as they were at the date that the circumstances giving rise to the alteration in the rating list occurred.

Discussion

29. While I applaud the spirit in which the VO was prepared to accept the proposal as being for something other than the deletion of the property from the rating list, that is not an approach that is available under the regulations. In this case the alteration sought by Mr Ehsan was deletion, and only deletion. The Tribunal, in allowing this dual argument to be advanced in *Shaw v Benton (VO)* [2018] 0168 (LC), was careful to state that the decision should not be taken to be a precedent in the future, and I do not consider it appropriate to permit the appellant to go outside the scope of the proposal in this case.

30. I therefore turn to the deletion proposal.

31. As Lord Hodge explained in *Monk* (at [23]), whether premises are undergoing reconstruction (such that they are no longer capable of beneficial occupation) rather than simply being in a state of disrepair, must be assessed objectively. The subjective intentions of the owner are not relevant, but in carrying out the assessment, regard can be had to the programme of works which is in fact being carried out on the premises.

32. This is what the VO appears to have done, in altering the assessment to "property under reconstruction" with a rateable value of £0 with effect from 1 August 2015. The simple issue in this appeal is whether the date of 1 August 2015 is a correct statement of the date from which the property came to be "under reconstruction". To put the question in a different way, at what date was the property first rendered incapable of beneficial occupation as a result of works to convert it from a warehouse to a wedding venue?

33. I am satisfied that there is no evidence to justify a deletion of the assessment on 16 December 2014, the date specified in the proposal. By Mr Ehsan's own submission in his reasons for appealing against the VTE's decision, "reconstruction work began in January 2015". It is not necessary for me to resolve the disagreement between Mr Ehsan and Mr Bruce about what was said during their telephone conversation on 2 March 2015.

34. Mr Bruce's evidence was that when he inspected the appeal property on 18 February 2015 (I have adopted the date in his witness statement, rather than the 23 February which is cited in Mrs Mellors' submissions) the property was in poor condition, and no contractors were on site. Whilst some work might have taken place to make the buildings watertight, there was no evidence of the programme of work having commenced. Whilst Mr Ehsan put to Mr Bruce that the builders might have had a day off, or been on their lunch break at the time of Mr Bruce's inspection, I am satisfied from Mr Bruce's evidence, describing a lack of personnel, plant, skips etc, that on 18 February the major work to convert the property had not yet commenced. It may be that some work had been carried out, but not sufficient yet to have rendered the property incapable of beneficial occupation.

35. On 7 January 2016, the VO received from Mr Ehsan a schedule of works, broken down into various chronological stages. The project start time was stated to be 20 January 2015, to be completed by 15 February 2017. Mr Eshan told me that the schedule did show the approximate dates when each stage of work occurred.

36. Stage 1, scheduled to take place between 20 January 2015 and 20 February 2015, comprised fixing a crack to the wall, bricking in windows, replacing a shutter door and fitting a new entrance door. In my judgment the property was capable of beneficial occupation throughout that period.

37. Stage 2 involved making a wooden frame around the inside one of the buildings, to be insulated and lined with plasterboard. This work was said in the schedule to have taken place between 23 February 2015 and 1 April 2015. Mr Ehsan submitted a photograph showing this stud work, prior to it being insulated and lined. I am not persuaded that the property would have been incapable of beneficial occupation while the partitioning was being installed. The wooden frame was around the inner perimeter of only one of the buildings but would not in my view render it un-occupiable.

38. Stage 3 involved the construction of seven customer toilets and a "bridal suite", plumbing work, drainage work, central heating and something described as "involution". It was shown as having taken place between 6 April and 15 May 2015. Stage 4 involved plastering the entire interior of the building, between 30 May and 15 July 2015. Stage 5 involved making a wooden ceiling frame and ceiling, between 15 July and 15 September 2015. The remaining 15 stages were to take place up to February 2017. The total estimated cost was £343,600 plus VAT.

39. The VO's assumed material day falls somewhere within stage 5. On the evidence available to me, I consider that the property had already become incapable of beneficial occupation some time before that date. Doing the best I can with the evidence, in my judgment the correct date falls within during stage 3 – the construction of customer toilets, a bridal suite, drainage and central heating would have involved sufficiently extensive work to make the

occupation of any part of the building impossible. At the point when stage 2 had been completed, but stage 3 had only just begun, the property remained capable of beneficial occupation. But at some point in stage 3, the work was not work of repair but involved the conversion of the premises from warehouse use to a wedding venue. Once the work had reached a stage which no longer involved repairs or minor internal alterations compatible with continued beneficial use in its original mode and category of occupation, it ceased to be a hereditament liable to rating. Quite when that point was reached is impossible to accurately assess on the evidence available to me. But in my judgement sufficient work to the toilets, drainage, heating and the construction of the "bridal suite" would have taken place at the mid-point of stage 3 to render the property incapable of beneficial occupation in its former mode and category of occupation. I assess that date to be 26 April 2015.

40. I should add for completeness that Mr Ehsan's submission regarding planning permission is incorrect. The grant of planning permission for a wedding venue does not in itself render the continuing use of the property as a warehouse "illegal" as he puts it. It simply means that the property *could* be used as a wedding venue under the planning regime, subject to satisfaction of any conditions.

Determination

41. Using the VO's practice in preference to actual deletion, I therefore determine that the appeal property shall be reduced to £0 RV, and described as "building undergoing reconstruction", with effect from 26 April 2015.

42. The appeal was determined under the Tribunal's simplified procedure, under which costs are only awarded in exceptional circumstances. Neither party claimed that this was the case, and I therefore make no award of costs.

10 December 2019

P D McCrea FRICS