

THE VALUATION TRIBUNAL FOR ENGLAND



*Non Domestic Rating Appeal; 2017 Rating List; Shop and Premises;  
Repair; Beneficial Occupation; Newbigin (VO) v SJ & J Monk [2017] UKSC 14;  
Appeal dismissed*

Re: 649-651 Ecclesall Road, Sheffield S11 8PT

APPEAL NO: CHG100008446

BETWEEN: Dr Sonil Kalia  
(Appellant)

and

Mr Richie Roberts  
(Respondent Valuation Officer)

BEFORE: Dr J Johnson (Chairman); Mr B Lomax

SITTING AT: Offices of the Tribunal Service, Manchester

ON: Friday 26 October 2018

APPEARANCES:

Mr E Wright of Wright Chartered Surveyors, representing the Appellant as advocate and expert witness.

The Respondent was represented by Mrs J Hughes of the Valuation Office Agency as advocate and expert witness.

**Summary of decision**

The appeal was dismissed and the assessment was confirmed at £31,000 with effect from 1 April 2017.

## **Introduction**

1. This was a 2017 Rating List appeal and the rateable value of the appeal hereditament was £31,000 with effect from 1 April 2017. This was a compiled list appeal so the material day was also 1 April 2017. The appeal was made following the Valuation Officer's Challenge Case Decision Notice of 5 March 2018 not to well found the challenge submitted by the appellant's representative of 6 November 2017.
2. The challenge sought a reduction in the rateable value to £1 and had been made on the grounds that the premises were a building undergoing refurbishment and in contractor's hands with effect from 8 September 2014 until 5 September 2017. The building was substantially altered and improved during this timescale and was not capable of beneficial occupation.
3. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.
4. The appeal property comprises an end of terrace, double shop unit located on the south west side of Sheffield. At the material date the accommodation in assessment comprises basement storage, ground floor retail area, first floor mess room and second floor storage.

## **Issues**

5. The dispute before the panel related to the reduction of the rating list entry for the appeal hereditament to a nominal value with effect from 1 April 2017, when it was, the appellant argued, incapable of beneficial occupation as a result of redevelopment works.

## **Evidence and Submissions**

6. Having described the appeal premises and detailing the appeal before the panel, Mr Wright argued that, on 1 April 2017, the property was undergoing a programme of redevelopment and, in accordance with the Supreme Court ruling in *Newbiggin* the rateable values should be reduced to a nominal sum.
7. Mr Wright explained that, in September 2014 the property had been vacated and the dilapidations were such that the property could not be used. He submitted that there were structural problems and problems with the electrics which needed to be attended to. He provided detailed plans and reports in respect of the works that had been undertaken and he summarised the works that had been done on and off since then as follows:

Structural strengthening of the collapsing shop floor and shop front;  
Renewal of the electrical installation and joinery;  
Renovation and change of use works.

8. In addition Mr Wright referred to a series of photographs taken in September 2017 and highlighted the changes that had taken place with the basement having been tanked, an old staircase removed and old timbers being replaced. He submitted that by that time, the property in fact, comprised two new hereditaments which should be assessed accordingly.
9. Mr Wright referred the panel to the judgement in *Newbigin* and stated that the correct approach to be taken in the cases of premises undergoing redevelopment was set out
  - (i) The first step is to consider whether the property is capable of occupation at all and hence, whether it is a hereditament.
  - (ii) If it is a hereditament the next step is to determine the mode or category of occupation.
  - (iii) Step 3 is to consider whether the property is in a state of reasonable repair for use consistent with that mode or category.
10. Mrs Hughes argued that the property was vacant and to let with a letting agent as at 1 April 2017 and thus was capable of beneficial occupation. She submitted that the appellant had failed to provide evidence to demonstrate that a scheme of works was in existence as at the material date. It was argued that the quotations provided did not demonstrate a programme of works and that the evidence of works that had been provided were from dates between February 2016 and September 2016 and thus could not be considered for the purposes of this appeal.
11. Mrs Hughes argued that none of the evidence provided demonstrated that the subject property was incapable of beneficial occupation as at 1 April 2017 and argued that any repair works carried out to the loadbearing floor were deemed to have been economic to carry out given the completion of these works and the subsequent letting of the premises. Referring to a building survey report that had been prepared she submitted that the budget cost for repairs to a shell state ready for retail fitting out was stated at £57,975. The inspection for the report had taken place on 18 April 2017 and she argued that this expenditure did not suggest a property beyond economic repair.
12. Referring to the *Newbigin* decision, Mrs Hughes submitted that a distinction was made between a lack of repair which does not affect the rateable value due to the hypothetical landlord's obligation to repair and redevelopment works which make a building uninhabitable. She argued that an objective assessment of the position as at 1 April 2017 found no evidence to suggest that a programme of redevelopment or reconstruction was underway and submitted that, the works amounted to repairs which would be reflected under the statutory repairing liability detailed in the definition of rateable value.

## Decision and Reasons

13. In considering the appeal, the panel was mindful that it was required to consider the circumstances and physical character of the building as it existed at 1 April 2017. From the evidence submitted, the panel accepted that the property had been vacant since September 2014 and had undergone various works after that date. The appellant's representative had submitted that the hereditament was reconstituted in September 2017 but, as that was subsequent to the material date, that was a matter for the Valuation Officer to address at a future time.
14. Having regard to the *Newbiggin* judgement the panel referred to para 22 in which the correct approach to be taken in the cases of premises undergoing redevelopment was set out and recognised that the first step is to consider whether the property was capable of occupation at all and hence, whether it is a hereditament. If it is a hereditament the next step is to determine the mode or category of occupation and then the third step is to consider whether the property is in a state of reasonable repair for use consistent with that mode or category.
15. It was argued that para 23 states that the intentions of the freehold owner are not relevant and the matter must be assessed objectively. It goes on to say that in carrying out that objective assessment of the physical state of the property on the material day, the Valuation Officer can have regard to the programme of works which is, in fact, being undertaken on the property.
16. From the evidence provided, the panel found that a substantial amount of works had been undertaken at the property. However, the panel was required to consider the property at a specific date and thus, the panel did not consider that the invoices dating from 2016 to be of assistance. This was prior to the material date and was ignored. The evidence of the property's condition from closest to the material date was the building survey report dated May 2017 and the panel noted that the overview of condition stated 'Whilst the ground floor areas have been modernised, the building as a whole is in poor repair.'
17. The list of items of disrepair identified referred to matters such as decayed gutters; water ingress; areas of failed mortar, overgrown rear courtyard and the like. The panel considered the most substantial items to be those relating to timber decay to ground floor columns, joists and boards; undersized floor joists and corrosion to steel beams within the basement. A budget cost for repairs to a shell state for retail fitting was stated at £57,975 and the panel accepted the argument that this did not suggest a property beyond economic repair.
18. The panel noted that the property was on the market and available to let at 1 April 2017 and, given that the best evidence indicated that the ground floor had been modernised very close to that time. Looking objectively at the situation, the panel found that the property was, in reality, a hereditament at that date.

19. The panel then had regard to paragraph 2(1)(b) of Schedule 6 to the Local Government Finance Act 1998, as amended by the Rating (Valuation) Act 1999, which imposes a statutory assumption that a property is in a reasonable state of repair for the purposes of rating. Paragraph 2(1) provides as follows:

*“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 –*

*“the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*

*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;*

*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.”*

20. Overall, based on the evidence provided, the panel found the subject property at the material day to be a hereditament in need of some repair and, given the above definition, found that the rateable value was not affected. Accordingly the appeal was dismissed.

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**Date: 22 November 2018**