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Briefing Note

Sense restored as Supreme Court rules in favour of developers

Following a long-running legal battle, the unanimous judgement of the Supreme Court on 1 March 2017 in the case of *Newbigin (Valuation Officer) (VO) V SJ & J Monk (a firm) (Monk)* now potentially relieves properties undergoing redevelopment or refurbishment from business rates payments while the works are undertaken.

Background

The case involved first floor offices in a three storey building in Sunderland which, from March 2010, was being marketed for let. However, two years later, the property was still vacant and substantial construction works had been undertaken with the premises stripped to shell.

Monk, the developer, wanted to reduce its empty property rates liability and sought to have the building deleted from the Rating List and the rateable value reduced to £1 as the property could not be occupied due to the building works.

The appeal proceeded to the Valuation Tribunal England which found for the VO and did not reduce the rating assessment. This was appealed to the Upper Tribunal which confirmed the rateable value of £1. The VO appealed to the Court of Appeal which reversed the Upper Tribunal decision. Monk appealed to the Supreme Court which has now reversed the Court of Appeal decision and effectively restored the decision of the Upper Tribunal. Works of alteration cannot be ignored.

Why did the Supreme Court come to this decision?

Rating law is complex but, in essence, it had long been an established principle that a property should be valued as it existed on the material day (the date of an appeal), a principle known as “the reality principle”. This continues to be a fundamental principle of rating law which provides that certain matters relating to the property, including its physical state and mode or category of occupation, shall be taken to be as they are assumed on the material day.

When valuing properties for rating purposes, there is a repairing assumption but, in the case of Monk, it did not overtake the “reality principle”. The Court of Appeal went too far on interpreting that assumption thereby displacing the reality principle. So, in other words, the Court of Appeal asked the wrong question. The assumption of reasonable repair did not address the question of whether the premises were capable of beneficial occupation.

In the case of a building undergoing redevelopment, the Supreme Court says that is the question that should be asked first. So the Supreme Court has said the VO “must assess objectively whether a property is undergoing reconstruction, and therefore incapable of beneficial occupation, rather than simply being in a state of disrepair”.

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If the works are assessed as undergoing redevelopment there is no basis to consider whether the property is in reasonable repair and the rating assessment should be a rateable value of £1.

The decision does not alter the position on properties in disrepair. The repairing assumptions will still apply in those cases and advice should be sought on whether there are grounds to reduce an assessment.

What impact does this have on owners, developers and ratepayers who have or are contemplating carrying out redevelopment works to a property?

While Monk was about offices, the principle will apply to any category of property. If you have made an appeal to reduce a rateable value to £1 or similar, it is likely to have been held up pending this decision. The VOA should now be in a position to resolve those appeals following the principles set out in the Monk decision. However, each case has to be considered on its own and the timing of the appeals is important.

What if works were undertaken rendering the property incapable of occupation but action was not taken?

All might not be lost and the ratepayer should seek urgent advice from a professional rating consultant. If works are still ongoing you can make a proposal before 31 March 2017 to reduce the rating assessment. After that date you will need to persuade the VOA to alter the rating assessment but they only have until 31 March 2018 to do this and I suspect they might need some persuading to do this. It will involve providing detailed information when the works started, what they entailed to determine that the property was incapable of beneficial occupation.

What if the works have finished and the property is reoccupied?

The ratepayer can still take action. Again it will involve providing the VOA with evidence of what happened and, subject to the 31 March 2018 deadline, they can still alter a 2010 rating list assessment to rateable value of £1. However, other regulations limit any backdating to 1 April 2015 in England. So, if your works ended prior to that date there is nothing that can now be done. In Wales, this backdating deadline is not applicable and an earlier effective date could apply.

This is a hugely significant decision which could potentially unlock thousands of business rates refunds. Anyone who thinks they may be affected should consult a rating specialist immediately.

For more information, please email Rating@lsh.co.uk or visit www.lsh.co.uk.