

Non- Domestic Rates: A Beginners Guide

Hot Topics/ Key Recent Cases

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State of Repair: relevance to rating

Paragraph 2 of Schedule 6 to the Local Government Finance Act 1988:

- (1) the rateable value of a non-domestic hereditament... 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 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...

SJ & J Monk v Newbiggin [2015] 1 WLR 4817 (CA) (1)



- Decision expected from the Supreme Court: 1 March 2017!
- Key issue is how to value a building undergoing refurbishment
- The property was the first floor in an office building which had been empty since 2006 (LL accepted a surrender of lease in 2009)
- The CA (the leading judgment was given by Lewison LJ) adopted was might be said to be a 'property lawyer's' approach
- It is not relevant that the outcome of the scheme of works would result in a different hereditament

SJ & J Monk v Newbigin [2015] 1 WLR 4817 (CA) (2)



- Starting point:

“whether the hereditament in its actual state is in a condition such as to make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it”

- Repair is the converse of disrepair: Quick v Taff Ely Borough Council [1986]

- The test for repairs is:

“Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject matter under consideration”

Lurcott v Wakely & Wheeler [1911]

SJ & J Monk v Newbiggin [2015] 1 WLR 4817 (CA) (3)

- See also the 3 tests in McDougall v Easington District Council (1989) 87 LGR 527:
 - Do the alterations go to the whole or substantially the whole of the structure or only a subsidiary part
 - Is the effect of the alterations to produce a building of a wholly different character; and
 - What is the cost of the works relative to the value of the building and their effect on the value and lifespan of the building
- The question is whether the works of repair could and not would have been done economically

Repairs Held Uneconomic: *Barber (VO) v Cerep III TW* *Sarl* [2016] RA 20 (1) C

Empty retail unit forming part of a redevelopment site. Unit had been vacant since 2008 was boarded up and had been vandalised leaving asbestos exposed. Immediately adjoining units had been surrounded by hoardings for several years.

Issue

- Following **Monk** was the VTE correct in holding the rateable value to be £0

Determination and Reasoning

- Following **Monk** there are 3 questions:
 - a) Are the premises in such repair as having regard to the age, character and locality of the property, would make it reasonably fit for the occupation of a reasonably minded tenant?
 - b) If not are the works required to put the premises in such condition works of 'repair'?
 - c) Could these works of repair be carried out economically?

Barber (VO) v Cerep III TW Sarl [2016] RA 20



- Common ground that the premises were not in repair

- The work required were works of repair as:
 - a) They involved restoration by renewal or replacement of subsidiary parts of a whole not reconstruction of the entirety or substantially the entirety of the property;
 - b) Would not produce a building of a wholly different character;
 - c) Cost (£112,000) described as modest as against annual rent of £57,500

- However, repairs were not economic:
 - a) Hypothetical LL have regard to fact that property and others within the redevelopment area were vacant and hoarding had been erected;
 - b) Hoarding, boarding up dereliction and neglect followed the boundary of the planning permission
 - c) Owners who had allowed their properties to become derelict etc...since 2000 would be looking to redevelop sooner rather than later

Barber (VO) v Cerep III TW Sarl [2016] RA 20

(3)

- d) Highly unlikely that hypothetical landlord would spend £112,000 on repairs;
- e) LL faced with a risk that redevelopment come forward sooner rather than later and would be left with a 1960s building surrounded by a building site and then new development

Implications

- First practical application of **Monk**
- Repairs costing 2 years rent not economic where rental return not sufficiently certain due to the risk of the 1960s property being surrounded by building works and then new development
- Test is whether a reasonable landlord would consider works economic not whether he would carry them out

ATMs separate rateable hereditaments: *Sainsbury's & ors v VO*



Identification of a hereditament: Woolway v Mazars LLP [2015]
AC 1862

- Primarily by a geographical test
- Exceptionally a functional test may enable geographically distinct spaces to be treated as a single hereditament where one is necessary to the effectual enjoyment of the other (could they be let separately?)
- Effectual enjoyment is objective and not based upon the ratepayer's use of the premises
- Occupation may be relevant, an office block let to and occupied by a single occupier would be a single hereditament if each floor was let to a different company each floor would be a separate hereditament

ATMs separate rateable hereditaments: *Sainsbury's & ors v VO*



- ATMs separate rateable hereditaments to host stores (Woolway applied)
 - Each of the ATM sites is a self-contained piece of land
 - Each site meets the test set out by Lord Neuberger: “*there is a clear defined physical area*”;
 - That land is not used by the host store but by the operator as a site for an ATM
 - Appellants wrong to focus on whether host store was itself self-contained: correct approach was to focus on identifying the hereditament in dispute and then determine who was in occupation

ATMs separate rateable hereditaments: *Sainsbury's & ors v VO*



- ATM operator in paramount occupation (*Westminster Council v Southern Railway and W H Smith & Sons Ltd* applied)
 - The fact that the ATMs were subject to licences or agreements rather than leases not determinative;
 - The obligations / restrictions in those licences or agreements did not “*interfere with the enjoyment by the ATM operators of the premises in his possession for the purposes of which he enjoys them*”;
 - The restrictions / obligations were “*all simply within the spirit of the Westminster decision*”.