

Case Name: *Colour Weddings Limited v Ritchie Roberts (VO)* [2019] UKUT 0385 (LC) (10 December 2019)

Topic: Hereditament – stage in the conversion of a building when the hereditament became incapable of beneficial occupation.

Full case: [click here](#)

Summary: This case (decided under the Tribunal's simplified procedure) concerned a building undergoing redevelopment from a disused warehouse to a wedding venue, where the project timetable was not entirely clear. The date at which the original hereditament ceased to exist by reason of the construction works was determined by the Tribunal after an analysis of the facts, being later than the date referred to in the proposal and earlier than the date set by the valuation officer. The ratepayer was unrepresented.

Commentary: This 2010 list appeal followed a decision of the VTE relating to a proposal received on 24 March 2015, which sought deletion from 16 December 2014 on the basis that the building needed major structural repair and refurbishment to meet the requirements of the users (as a wedding venue). The VTE had dismissed the original appeal.

The ratepayer took a lease of the property on 15 December 2014, when the property was in the 2010 list at RV £53,500. Mr Ehsan of the ratepayer company completed the proposal form himself and there was some doubt as to the effective date (although he referred to 16 December 2014 as the effective date, no works were being carried on at that date). The VO later revised the assessment to reduce the RV to nil with effect from 1 August 2015 (being "a property under reconstruction") and increased it to £71,500 with effect from 1 July 2016 following completion of the reconstruction works.

Mr Ehsan's case was that substantial reconstruction had commenced in January 2015, although this appears to have been repairs only at that stage (the VTE recorded this fact based on statements by the ratepayer). He was, however, clear before the Upper Tribunal that at his effective date of 16 December 2014 the property was not capable of beneficial occupation for any purpose (and that the reality principle referred to in *Newbiggin v Monk* [2017] UKSC 14 should have been applied to reduce the RV to zero with effect from that earlier date).

The VO's case in response was based on three grounds:

1. At the effective date of 16 December 2014 (when the circumstances giving rise to the alteration occurred) the premises were in disrepair only (as a former warehouse) and could not, therefore, be deleted;
2. The conversion works had not commenced on the effective date, but as the ratepayer (being unrepresented) may not have been aware of the limitations of a deletion proposal (as interpreted by the VO) the VO offered to treat the proposal as one seeking a reduction in RV, meaning that the material day would be 24 March 2015 (the date of service of the proposal). As the cost of repairs appeared to be economic, the VO considered that the hereditament should be treated as being in repair and incapable of deletion; and

3. At the material day applicable to a material change of circumstances (24 March 2015), works had not yet started to convert the building into a wedding venue (it appears that they may not have started until April or May 2015) and the property was accordingly capable of occupation as a warehouse on the date of service of the proposal.

The relevant regulations (SI2009/2268, in the form current when the proposal was served) did not require a date to be specified in relation to a proposed deletion or exemption from rating (grounds (h) and (i) of para 4 of the regulations). On that basis the Tribunal rejected the arguments of the VO and stated that there is no reason to restrict the ratepayer to the date stated in the proposal if the facts dictate a different date.

The Tribunal found that it was not open to the VO to treat a proposal for deletion as anything else (e.g. a proposal for reduction of the RV) and explained that it was not constrained by the decision in *Shaw v Benton* [2018] 0168 (LC) (where the Tribunal agreed to treat a proposal for deletion as extending to a reduction in RV, without setting a precedent). It was clear that the appellant could not go outside the scope of the proposal in this instance.

The Tribunal then went on to consider the date from which the premises could objectively be said to be incapable of occupation, being "under reconstruction". It was apparent that this was not the case at the effective date of 16 December 2014 proposed by Mr Ehsan. There was no evidence of major work when the VO's case officer inspected on 18 February 2015 and such work as was scheduled for that date was work of repair. By April 2015 (according to the schedule supplied by the ratepayer to the VO) material conversion works had in fact commenced and the Tribunal member assessed the date at which the premises ceased to be capable of beneficial occupation as 26 April 2015. With effect from that date, it was ordered that the RV be reduced to £0.

No costs were awarded, in line with the usual practice in simplified procedure before the Tribunal (where no exceptional circumstances had been established).

This case is a good example of where the ratepayer's persistence has been rewarded in a case founded on the clear decision in *Newbiggin v Monk*, despite substantial opposition from the VO and an adverse decision of the VTE. It remains to be seen if the VO will alter its practice in the light of this decision.

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