Case Name: *Christopher John Shaw v Leigh Benton (VO) [2018] UKUT (LC) (11 May 2018)*

Topic: Repair/ *rebus sic stantibus*

Full case: click here

Summary: Where there has been no material change of circumstances to justify a deletion at the material day a property which cannot be let in the real world will be assumed to be in repair if the works required to put it into repair would not be uneconomic from the hypothetical landlord's perspective. Any economic circumstances will be taken into account as they were at the antecedent valuation date (although in this case that was 6.5 years before the material day).

Commentary: This Upper Tribunal decision related to an appeal from the VTE following a dismissal of the ratepayer's proposal to delete an industrial hereditament from the rating list on the grounds of disrepair (or to reduce the RV). The subject premises (Unit C1A) appeared in the compiled 2010 list as part of a larger hereditament. That hereditament was split into two hereditaments with effect from 1 July 2014, when Unit C1B commenced to be separately occupied. Unit C1A was, as a result of the split, entered in the 2010 list at an RV of £18,000 effective from 1 July 2014 (the antecedent valuation date being 1 April 2008).

On 11 November 2014 the ratepayer submitted a proposal that Unit C1A should be deleted from the list with effect from 1 September 2014 on the grounds that work had commenced to split the unit into three and there was a great deal of renovation work to carry out. As a separate issue, the appellant argued that the RV of £18,000 was excessive and should be reduced, although this had not been the subject of a substantive proposal and the argument was therefore rejected by the VTE. However, the UT agreed to deal with this argument as part of the appeal (without setting a precedent), given that the VO did not object to this approach.

The site of which Unit C1A formed part comprised an industrial building forming part of a former ICI factory site, extending to 17 acres and containing 460,000 square feet of floor space divided into around 50 separate industrial units. Unit C1A itself was a single-storey building of 648 square metres constructed in the 1920s. At the material day little or no work had been commenced to split the unit.

The appellant's argument was that the unit was in very poor physical condition and could be described as derelict. It would have been uneconomic for the appellant to have prepared the premises (on a speculative basis) in advance of a committed tenant. There were a number of derelict units on the estate (approximately 5% of the total number), but the appellant had chosen the appeal property as a test case, the driver being the burden of empty rates since 2008. By September 2014 the ratepayer had come to the conclusion that it was unsafe to use the unit for any purpose and it had not been used since that date.

The VO's counter-argument was that the premises were simply in disrepair and the works required to put them into repair were such that a reasonable landlord would not consider them to be uneconomic. The appeal property continued to exist as a hereditament and no

significant works had been commenced by the material day to divide the unit into three separate units.

The appellant did not submit any reasoned argument to the effect that the property should be deleted from the list, but instead concentrated on the reduction of the RV to £1, or a sum substantially less than £18,000. He relied on the Supreme Court decision in *Newbigin* v *Monk (VO)* [2017] UKSC 14 and the reality principle recognised by the court. By contrast with the *Monk* property, works had not commenced at Unit C1A but that unit was derelict, with no tenant in prospect. At the material day, the unit was unlettable with potential hazards. He saw himself as the embodiment of the hypothetical landlord and in the best position to reach the conclusion that speculative works would be uneconomic.

In response, the VO rejected the option of deleting the property from the list and focused on the proposal to reduce the RV. He argued that the cost of repairs would not be considered uneconomic by the hypothetical landlord and that the rating hypothesis requires it to be assumed that a letting will take place (dismissing the appellant's argument against speculative works). He went on to say that economic factors were not relevant at the material day, which must be taken to be as they were at the antecedent valuation date.

The UT confirmed that the appeal property should not be deleted from the list, there being no change of circumstances to justify such a deletion. No significant works of division had been carried out. As to the state of the property, no evidence had been produced (e.g. a schedule of condition) and the extent of disrepair could not be ascertained. However, the tribunal concluded that more works of repair were required to put the appeal property into a state of reasonable repair than were recognised by the VO's valuer. Against the appellant, the UT found that the works of repair which he would be prepared to carry out to achieve a letting fell short of what the hypothetical landlord would undertake (which is the relevant test, as opposed to what the "real world" landlord would be prepared to do). The only pertinent question for the hypothetical landlord is whether works to achieve the (assumed) letting would be uneconomic.

The tribunal also confirmed that the economic conditions at the material date are irrelevant as there was insufficient evidence of a change in such conditions at that date (the business park in 2014 was about 80% let). It concluded that there was, on the contrary, evidence from various lettings to justify an RV of £18,000. The only point which the tribunal conceded in the appellant's favour was that the absence of toilet facilities (being an improvement rather than repair) justified a reduction of 10%, so it ordered that the RV be reduced to a rounded £16,000 (including an agreed 2.5% for lack of heating).