Case Name: *Meadowbank International Ltd v Martin Allis (VO)* [2020] UKUT 0321 (LC) (19 November 2020)

Topic: Premises undergoing reconstruction – proposed 2010 list alteration to show RV at nil

Full case: Click Here

Summary: This case involved a conversion of second floor premises at Tamworth Road, Long Eaton, Nottingham from a gym to residential purposes, where the key question was whether at the material day the premises were undergoing reconstruction rather than being in a state of mere disrepair. The material day was 18 September 2017 (the date of the appellant's proposal) but the effective date was 1 April 2015 (see below). The Tribunal determined that the process of reconstruction had not commenced by the material day (it appeared to have commenced around May 2018, according to the chronology referred to in the VTE's decision) and therefore dismissed the appeal.

Commentary: The catalyst for the appellant's proposal (referring to an effective date of 25 April 2014, when a material change of circumstances was claimed to have occurred) was the Upper Tribunal's decision in favour of the ratepayer in Newbigin (VO) v SJ & J Monk [2017] UKSC 14, handed down on 1 March 2017. Although the proposal was not made until 18 September 2017, the ratepayer took the opportunity (pursuant to Regulation 5 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009) to submit it within 6 months after the next rating list came into force on 1 April 2017, so the proposal was found to be valid.

Monk had determined that the rateable value of premises undergoing reconstruction at the material day (and not being in mere disrepair) should be reduced to nil or a nominal value on the basis that they were incapable of beneficial occupation. The Tribunal in this case had to decide a narrow issue, namely what was the evidence that the premises were in the process of reconstruction at 18 September 2017? The effective date referred to in the appellant's proposal was 25 April 2014 (when the previous tenant was unable to continue paying rent but did not vacate until July) but this was restricted to 1 April 2015 by the operation of Regulation 14(2) of the 2009 Regulations (as amended).

According to the VTE's decision (based on the appellant's witness statement), the property at Tamworth Road (including the premises) had been purchased in 2014 and over time the owners developed a scheme to convert the first and second floors to residential accommodation. A revised planning application was made in March 2017. However, only in September 2017 (when the proposal was submitted in respect of the second floor) was a revised quote received for the conversion works, after which funding was agreed in October. The conversion works actually started towards the end of May 2018.

Despite the appellant's attempts to show that the premises could not be let in 2014 because of the state of the market, the Tribunal was clear that the only matters of relevance which it was required (as a matter of law) to establish were whether the premises were incapable of beneficial occupation on the material day (18 September 2017) due to reconstruction works and, if so, when the works started.

The Tribunal found that the works did not in fact start until May 2018, so the appellant fell at the first hurdle. Pre-app discussions with a local planning authority (or indeed the submission of a planning application) cannot constitute commencement of works. As the works had not started by the material day there were no grounds for the rateable value to be reduced.

It is surprising that this case reached the Upper Tribunal. The requirement for reconstruction works to be taking place (and, consequently the premises being incapable of beneficial occupation) at the material day before the rateable value can be reduced to nil or a nominal amount are clearly set out in Monk. Indeed, the application of the long-established principle of rebus sic stantibus (in recent times renamed the "reality principle") serves to rule out such proposals as being pointless and, ultimately, not a good use of the Tribunal's resources. A more rigorous analysis at the outset would have led the ratepayer (if properly advised) not to make the proposal at a time when the conversion works were contemplated but not commenced. One can only assume that the impending closure of the 6-month window of opportunity to seek an amendment to the 2010 list blinded the ratepayer to the minimal prospects of success…

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