



The Rating Surveyors' Association
(FOUNDED 1909)

President: Martin Davenport MRICS IRRV (Hons)
Vice President Patrick Bond MRICS Dip Rat FIRRV

MEMBERS UPDATE – IMMEDIATE RELEASE

Newbigin (Valuation Officer) (Respondent) v S J & J Monk (a firm) (Appellant) and Interveners comprising - the Rating Surveyors' Association and the British Property Federation) [2017] UKSC 14

The Rating Surveyors' Association is extremely pleased to advise members on the decision of the United Kingdom Supreme Court in the matter of Monk v Newbigin (VO).

The team principles included:

Daniel Kolinsky QC
Luke Wilcox
(Instructed by Berwin Leighton Paisner LLP)

The funding Interveners included the BPF and the firms that supported the RSA in its intervention included:

GL Hearn	Gerald Eve	Montagu Evans	Hartnell Taylor Cook
Colliers	JLL	CBRE	Deloitte
WHR Property	Knight Frank	Altus	GVA

The decision of the UK Supreme Court on the facts found by the Upper Tribunal, which are summarised below, were that the property was undergoing reconstruction on the material day and that the UT was entitled to alter the rating list as it did to reflect that reality.

For these reasons, which differ in some respects from those of the Upper Tribunal, the appeal is allowed and the order of the court is **to restore the determination of the Upper Tribunal set out in paras 88 and 90 of its decision.**

The RSA is extremely pleased to note the comments from the Supreme Court:

In a helpful intervention, the Rating Surveyors' Association and the British Property Federation submitted that, where works were being carried out on an existing building, the correct approach was to proceed in this order:

- (i) to determine whether a property is capable of rateable occupation at all and thus whether it is a hereditament,*
- (ii) if the property is a hereditament, to determine the mode or category of occupation and then;*
- (iii) to consider whether the property is in a state of reasonable repair for use consistent with that mode or category. The first two stages of that process involve the application of the reality principle. At the third stage the valuation officer applies the statutory assumption in para 2(1)(b) if the reality is otherwise.*

In my view, this is a helpful approach where a building is undergoing redevelopment. But it is subject to the useful practice, which I discuss in para 31, of reducing the rateable value of a building, which is incapable of rateable occupation because of such temporary works, to a nominal figure rather than removing it from the rating list altogether.



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The facts:

The appellants ("SJJM") own the freehold of the first floor ("the premises") of a three-storey office building built in the 1990s, known as Avalon House, at St Catherine's Court, Sunderland Enterprise Park, Sunderland. In the past the premises were occupied by tenants as a single office suite of 795.73 square metres. In 2006 the tenants vacated the premises and in December 2009 SJJM accepted the surrender of the lease of the premises. On 9 March 2010 SJJM entered into a contract with Jomast Developments Ltd for the renovation and improvement of the premises with a view to making them more adaptable for use as either three separate suites of offices or as a single suite, in order to attract replacement tenants.

The contracted building works involved the removal of all internal elements, except for the enclosure for the lift and staircase by which people gained access to other floors. This entailed stripping out the cooling system including all internal and external plant, the lighting and power installations, the fire alarm system, the suspended ceiling, all sanitary fittings and drainage connections, the timber joisted and modular raised flooring, and existing masonry walls and metal stud partitions. The contract also provided for the construction of new common parts to the premises and new communal sanitary facilities, which involved new solid partitioning, a raised floor, new sanitary fittings, new drainage and plumbing systems, and new electric lighting, alarm and heating systems. Finally, the contract envisaged the construction of three new letting areas within the premises with three self-contained electrical distribution circuits and air conditioning and heating systems.

After entering into the building contract and until at least 6 January 2012 SJJM had the premises marketed as available for rental either as three separate office suites or as a whole. On 6 January 2012, which is the relevant date for assessing the facts and applying the statutory assumptions discussed below when determining the rateable value of the premises on an application to alter the rating list ("the material day"), the premises were vacant. Contractors had removed the majority of the ceiling tiles and the suspended ceiling grid and light fittings and also 50% of the raised floor. They had also removed the cooling system and the sanitary fittings, demolished the block walls of the lavatories and stripped out the electrical wiring. The contractors had erected and plastered plasterboard partitions to form the outline of the proposed communal lavatories and had erected and plastered a partition across the floor at the east side of the premises. They had completed first fix electrical installations to the lavatory area and had altered the drainage to accommodate the new location of the lavatories.

The Decision of the Upper Tribunal

On the issues:

(i) Whether the VTE erred in finding that the correct date of the material day, for the purposes of considering the physical state of the appeal hereditament, was 6 January 2012; and

(ii) Whether the VTE erred in upholding the respondent's position that the appeal hereditament has a rateable value of £102,000, or whether (as contended by the appellant) it ought to have been a rateable value of £1 because at the material day it was undergoing a scheme of refurbishment that altered the hereditament.

88. I refuse the appeal on issue (i) and allow the appeal on issue (ii). I therefore determine that the hereditament shall be entered in the local non-domestic rating list at a rateable value of £1 with the description of "building undergoing reconstruction" with effect from 1 April 2010.

We are extremely pleased with the decision and hope that clarity and understanding will not be provided to all parties.



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**PRESS RELEASE – IMMEDIATE -
LANDMARK DECISION OF SUPREME COURT ON BUSINESS RATES**

Newbigin (Valuation Officer) (Respondent) v S J & J Monk (a firm) (Appellant) and Interveners comprising - the Rating Surveyors' Association and the British Property Federation) [2017] UKSC 14

The Supreme Court has today given its judgment in a property dispute which will dictate future business rates levels for properties undergoing works or refurbishment.

The case relates to a commercial office building undergoing a scheme of works and had been stripped to shell and whether it should be valued for the purposes of non-domestic rating (business rates) and went beyond “repairs” and if it were still a useable office?

In the Valuation Tribunal and the Court of Appeal the judgement was for the Valuation Officer but many expressed concern as to the practical application of the decision and the matter was appealed by the owner of the building, a firm S&J Monk. A key aspect of the case was the intervention of the BPF and the Rating Surveyors' Association that considered that the Court of Appeal decision was likely to produce manifest unfairness and needed further clarification by the highest court in the land.

In today's unanimous judgment the Supreme Court reversed the Court of Appeal decision and agreed with the judgment of the Upper Tribunal (Lands Chamber) that the property should be reduced in value to Rateable Value £1 and be described as a “building undergoing refurbishment”.

The effect of the judgment is that ratepayers will not need to pay business rates where the rating list is amended in circumstances where the property is subject to significant building works. The benefit will be ensuring that rates will not have to be paid whilst the property is subject to redevelopment – such an approach was stifling development, causing uncertainty, and was considered by many to be unfair, limiting the appetite to invest and redevelop a property, which is in nobody's interest.

Addressing the question of whether this may create a danger of ratepayers abusing the system the Court of Appeal decision was described in the judgment of the Supreme Court as “novel”, and that prior practice and the guidance previously applied by the Valuation Office Agency in its own rating manual should be followed despite the Agency's change of approach following the earlier decisions.

Handing down its ruling today, the Supreme Court confirmed that it was entirely appropriate, where the premises were undergoing reconstruction on the material day, that the Upper Tribunal was entitled to alter the rating list as it did to reflect that reality – the assessment was reduced to Rateable Value £1 and described as a building undergoing refurbishment works.

Commenting on the decision the convenor for the Rating Surveyors' Association – Andrew Hetherington a Past President of the Association said:

“There was considerable concern from many professionals at the approach argued by the Valuation Office Agency and determined by the Court of Appeal. We are extremely pleased that the judgment of the Supreme Court confirmed the helpful intervention of both the BPF and the RSA and that common sense has prevailed. We were very concerned at the approach adopted by the Valuation Office Agency as we are also with the changes for the forthcoming 2017 Revaluation under Check Challenge and Appeal”.

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Further information:

The Rating Surveyors' Association is a professional organisation for Chartered Surveyors and experienced Rating Surveyors dealing with the assessment and review of properties for non-domestic rates.

The Association was founded in 1909 and currently has over 475 members and works closely with both the Royal Institution of Chartered Surveyors and the Institute of Revenues Rating and Valuation on matters relating to non-domestic rating.

The Association comprises both those working in the public sector (the Valuation Office Agency and local authorities) and private sector practitioners, dealing with the assessment and review of non-domestic rating assessments. It supports its members in their continuing professional development, organises training and networking events as well as mentoring and supporting those interested in becoming qualified surveyors.

For further details please contact

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