Revised Practice Note on Disrepair and Rating Post Supreme Court

1. The practice note

1.1 This practice note has been amended following the decisions of the Court of Appeal and Supreme Court in *Newbigin (VO) v Monk* [2017] UKSC 14 and replaces the previous practice note in its entirety.

1.2 The content of this practice note has been discussed with representatives of the RICS, the RSA and the IRRV.

2. Introduction

2.1 The Local Government Finance Act 1988 ("the 1988 Act") requires non-domestic property in England and Wales to be valued for rating purposes on a number of assumptions, including 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". This practice note addresses how this assumption operates, in the light of *Newbigin (VO) v Monk* . In short, the statutory repair assumption as set out in para 2(1) of Schedule 6 to the Local Government Finance Act 1988 generally operates as set out in the Court of Appeal's judgment; there is an exception however for those hereditaments which are undergoing redevelopment, as held in the Supreme Court judgment. This practice note addresses both the general position, and the redevelopment exception, in turn.

3. The statutory provisions

3.1 The 1988 Act as amended by the Rating (Valuation) Act 1999 ("the 1999 Act") sets out, in Schedule 6, how properties are to be valued for rating.

3.2 Following the 1999 Act, paragraph 2(1) of Schedule 6 to the 1988 Act reads:

"The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating 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 these three assumptions:

- *the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
- *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;*
- *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 and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above."*

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3.3 In determining rateable value the legislation requires a valuation at the AVD on the statutory basis but taking into account particular stated physical circumstances as they are on the compilation day or, where the RV is being determined with a view to making an alteration to a list, the material day. The physical circumstances are set out in Schedule 6 sub-paragraph 2(7) and are to be taken to be as they are assumed to be on the compilation or material day, as appropriate (see Rating Manual Volume 2 Section 3). NB add hyperlink

3.4 Schedule 6 sub-paragraph 2(8A) makes it clear that the state of the hereditament at any time relevant for the purposes of a list shall be assumed to be the assumed state of repair under subparagraph 2(1). The first assumption simply explains the hypothetical tenancy begins on the antecedent valuation date ('AVD'). The effect of the second assumption is to override the actual situation at the compilation date or material day and replace it with an assumption of reasonable repair (subject, as further explained below, to the question of whether the hereditament is undergoing reconstruction).

THE REPAIRING ASSUMPTION: THE GENERAL POSITION

4. The statutory assumption of a state of reasonable repair in practice

4.1 The following is the general approach to the operation of the repair assumption (where the hereditament in question is, or is said to be, undergoing redevelopment, the guidance that follows at [ref] below is to be adopted in the first instance, unless and/or until it is determined that the hereditament is *not* undergoing redevelopment). As the lead judgment of Lewison LJ in the Court of Appeal decision in *Newbigin (VO) v Monk* [2015] EWCA Civ 78 indicates, to operate the statutory assumption, the following questions arise:

1) Is the hereditament in a state of reasonable repair?

2) If not, can the works which are required to put the property into a state of reasonable repair properly be described as "repairs"? ('the repair question'), and

3) Would a reasonable landlord consider the repairs to be uneconomic? ('the economic question')

4.2 If the answer to question 1 is that the hereditament is already in a state of reasonable repair, then there is nothing to be assumed, and the hereditament can be valued on its actual state. If it is *not* in such a state, however, then it must be assumed to be in such a state providing the works which would be required to put the property into reasonable repair can properly be described as "repairs", and providing such works are not uneconomic.

4.3 At the outset, four points are to be noted.

- The assumption relates to the whole hereditament and not its component parts. So the complete re-installation of an electrical system may still be repair even if that system had been completely removed.
- Inherent to the notion of repair is disrepair, i.e. deterioration from some previous physical condition.
- What needs to be considered is whether it would be economically reasonable to restore the hereditament to a former state.

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- A hereditament that is incapable of beneficial occupation in its actual state still falls to be valued according to the statutory approach, if the works required to enable occupation fall within the definition of "repair" and providing that it is not a building undergoing redevelopment.

a). State of reasonable repair

4.4 The question of whether the hereditament is in a state of reasonable repair will fall to be answered in light of the state of the hereditament on the compilation or material day as appropriate.

4.5 The valuation officer must begin by asking 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: *Proudfoot v Hart* (1890) 25 QBD 42, *Monk* para 24. The starting point for that question is the description of the hereditament in the list: where, for example, the hereditament was described in the list as "offices and premises", the inquiry would be whether it was in reasonable repair as offices and premises.

4.6 The valuer must consider the hereditament in the physical state in which it existed at the material day. The reasons why a hereditament is in a particular state is of no concern. It follows that where a property is deliberately damaged with a view to reducing or avoiding rate liability, (i.e. so-called "constructive vandalism" or "soft-stripping"), the factual position and approach to valuation should be regarded in the same way as for any other cause of damage.

b). The repair question

4.7 If the hereditament is not in a state of reasonable repair, then the next question is whether the works which are required to put the property into a state of reasonable repair can properly be described as "repairs".

4.8 Disrepair being the converse of repair, a state of disrepair connotes a deterioration from some previous condition. Therefore to determine what works are required to put the property into a state of repair, it is necessary to compare the hereditament in its actual state with its previous state (i.e. when it was in a state of reasonable repair).

4.9 That is not to say, however, that the works to put it into a state of repair need necessarily be such as to put the hereditament into exactly the same state as it historically had been in. The concept of 'repair' is broad enough to allow some alterations which may result in differences to the historic state. For example, in *Monk,* the Court of Appeal applied the test identified by Buckley LJ in *Lurcott v Wakely*, namely:

> *"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 discussion."*

4.10 It should be noted that this test – whether the alterations went to the whole or substantially the whole of the structure or only to a subsidiary part – is not the only test of repair. In *Monk,* the Court of Appeal noted that in *McDougall v Easington District Council* (1989) 58 P & CR

201, three different tests emerged from the cases which could be applied separately or concurrently as the nature of the case requires:

> *"(i) Whether the alterations went to the whole or substantially the whole of the structure or only to a subsidiary part;*
>
> *(ii) Whether the effect of the alterations was to produce a building of a wholly different character than that which had been let;*
>
> *(iii) What was the cost of the works in relation to the previous value of the building, and what was their effect on the value and lifespan of the building."*

4.11 Therefore works may fall within the repairing assumption even if it would mean that an element is replaced rather than repaired (for example, it may be more economic to replace a defective window with a new window) and/or where the works involve a degree of improvement (for example, if repairs to lighting included such improvement as was necessary to comply with Building Regulations or other legislation).

4.12 It is important to recognise that repairing to a state of reasonable repair does not require the assumed state to be identical to some historic state: some improvement, for example, is possible within the concept of 'repair'. Likewise, some changes to a property may not be relevant to valuation as a hereditament at all, such as some non-structural changes, or the insertion or removal of elements of plant and machinery to be excluded from the valuation of the hereditament under the Valuation for Rating (Plant and Machinery) (England) Regulations 2000.

c). The economic question

4.13 Only if the repairs would be considered economic can one assume the state of reasonable repair that they would produce. The cost of repairs and the hypothetical landlord's attitude to undertaking repairs is to be considered as at the AVD. The question of what is economic for a landlord will vary from situation to situation. What is likely to be economic for a building in one town may not be economic for an identical building in another town where rents are lower. It is fundamentally an economic test based on the hypothetical landlord's likely assessment of what will be the economically reasonable option to pursue. In essence it is a comparison of likely future rental income flow against the cost of repairs. The question is not whether the repair work would be done (and so the necessary repair is not to be considered as against some other option) but rather whether it *could* be done economically – in which case, it will be assumed to be done.

4.14 Conversely, where repair is considered to be uneconomic the hereditament should be valued *rebus sic stantibus* in disrepair. In that scenario, the effective date for that valuation to take effect will be the date when the hereditament first reached the state when it was in *sufficient* disrepair to justify the nil valuation.

4.15 The principle of *rebus sic stantibus* means the hypothetical landlord does not have the option of changing the hereditament by, for example, demolition and rebuilding. What may be the real world best option of future total redevelopment of the site is not open to the hypothetical landlord: the choice is between:

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1. repairing (if it is an economic proposition at the AVD),
2. doing some repair, or
3. doing no work. The question is not whether the repair work would be done but whether it could be done economically.

4.16 In the case of *Thomas and Davies v. Denly (VO) [2004]* the Upper Tribunal was content to accept it was economically reasonable for repairs to be undertaken where the present value of the hereditament assuming repairs were undertaken significantly exceeded the value in disrepair (see 4.20, below). In essence the question of whether repairs would be economic is a comparison of likely future rental income flow against the cost of repairs, as the cases discussed below demonstrate.

4.17 Cost of repairs and the hypothetical landlord's attitude to undertaking repairs is to be considered as at the AVD. The physical state of the property is imagined brought back to the AVD and consideration given to what would have been economically reasonable then.

4.18 The genesis of the economic reasonableness test lies in the case of *Saunders v. Maltby* where Lord Denning said that the hypothetical landlord would not do all repairs but only those that were economically reasonable. This case and a number of old domestic rating cases examined the question in the context of valuation to the former Gross Value (which assumed a landlord's repairing liability). More recently, a VT gave useful guidance in *Princes St Ltd (Ipswich) v Bond (VO)* [2002] RA 212. In that case the VT took the view that any reasonable landlord would look at the local property market, consider the location of the premises, the likelihood of finding a tenant for the actual property, the likely length of any lease, whether further tenants were likely and from these answers determine over what period the landlord would be prepared to spread repair costs. For a prime property in a buoyant market it could foresee a long period of occupation and, as a consequence, amortisation could be expected to be over a similar period. For a very poor property, where similar properties were vacant, only a year might be expected.

4.19 Evidence was given that the likely letting was for a 10 year lease with a five year break clause. The tribunal considered, having regard to the state of the market at the antecedent valuation date, a likely landlord would amortise the cost of repairs over a five year period to the first break clause. Amortising the repair cost figure gave £55,000pa, after making an allowance for contingencies. This was the same as the total rateable value. On this basis there was nil profit to the landlord in undertaking the repairs for the first five years. The valuation tribunal noted, however, that there was no evidence to suggest the property would definitely not let after five years. A landlord who by his very nature is in the business of taking risks to make a profit would take this risk. Therefore the costs could not be said in the mind of the hypothetical landlord to be uneconomic. The rateable values were confirmed.

4.20 The approach was broadly followed in *Thomas and Davies v Denly (VO)* [2014] RA 515 in the Upper Tribunal. In this case the Upper Tribunal examined whether works of repair to a car showroom would be economic. The VO adopted a similar approach to the Ipswich case preparing three calculations showing the present value of the landlord's interest assuming no repair works were carried out and with varying levels of rent reduction to reflect the lack of repair. These were compared to the likely rent if repairs were done but deducting from the capitalised rent the likely cost of repairs. Comparing the valuations the Tribunal considered the hypothetical landlord would have regarded the repairs as economic. The repair works represented 5.65 YP on the rent.

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4.21 The situation in *Thomas and Davies* was perhaps slightly unusual in the premises still having a rental value, albeit for a few years only, even if no repairs were done. Nonetheless the effective comparison is the same:

Rent assuming no repairs are done
X YP % for y years

Rent assuming repairs are done
X YP % for z years
LESS cost of repairs

4.22 It may be economically reasonable to undertake repair works to some part of the hereditament but not to all parts. For example it may be economically reasonable to repair the roof and the ground floor of a shop but not the dilapidated first floor and damp basement to the shop. However, the subject of the repair test is the whole hereditament and not its various parts. It is not correct to apply the test of what is economically reasonable separately to each individual component or part of the hereditament e.g. a particular window, a floor or an air conditioning system without considering the whole. The question is whether, in the context of the whole hereditament, it is economically reasonable to envisage the repair work being undertaken. In the example, if it was judged not economically reasonable to repair the first floor and the basement then these should be valued as they are, whereas as the repairs to the ground floor and roof are judged economically reasonable these should be assumed to be repaired. As the landlord would not do all of the repairs, the landlord would, instead, accept a lower rent for the premises consistent with only having repaired part of the hereditament (see *Marshall v. Ebdon (VO) 1979 RA 238*).

4.23 Reasonable repair may mean that an element is replaced rather than repaired as it may not be economic to repair certain elements e.g. it is often more economic to replace a defective window with a new window.

4.24 Some repairs may well include an element of improvement and any works would be expected to comply with Building Regulations and any other construction based legislation in force at the time of the AVD.

5. Hereditaments where repair works are under way

5.1 Works may be underway in the hereditament at the material day. However, the approach remains the same whether repair works are actually underway or not, even though there may sometimes be difficult questions of fact to determine.

5.2 Works underway may be simply repair works or other works. If the works are repair works then they are deemed to have already been done – providing they are economically reasonable - on the same basis as if they were repairs needing to be undertaken and not yet commenced (*Civil Aviation Authority v Langford (VO) and Camden BC* [1980] RA 369). It follows that no allowance to reflect the ongoing repair works should be made if it is economically reasonable for them to be done by the hypothetical landlord as at the AVD.

6. The treatment of buildings damaged by fire, bomb, storm, flood, etc.

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6.1 There is no exceptional treatment of buildings damaged by fire, bomb, storm or flood. The statutory assumption applies irrespective of the reasons why a hereditament is in a particular state, and the steps identified above are to be followed in the normal way.

7. Works external to the hereditament

7.1 Different considerations apply in respect to the state of repair of areas *external* to the hereditament. Works external to the hereditament are not covered by the provisions of the 1999 Act and no assumptions in respect of these can therefore be imported by virtue of the provisions of this Act. The condition of areas external to the hereditament should generally be considered as they actually are at the material day.

7.2 However, Woodfall's 'Landlord and Tenant' states that "*where the landlord retains in his possession and control something ancillary to the premises demised, such as a roof or staircase, the maintenance of which in proper repair is necessary for the protection of the demised premises or the safe enjoyment of them by the tenant, the landlord is under an obligation to take reasonable care that the premises retained in his occupation are not in such a condition as to cause damage to the tenant or the premises demised*".

7.3 It follows that there is an implied obligation on the landlord to ensure that the property demised is not adversely affected by other parts of the building retained within the landlord's control. This approach reflects the reality of the real world and would place a repairing obligation on the landlord in respect of certain common parts which are required for the safe enjoyment of the hereditament including maintaining reasonable access to the property even though it may not be in the landlord's control, e.g. stairs, lifts, access, lighting on stairs, etc.

7.4 There will be many services in multi-occupied buildings which are provided by the actual landlord which are essential to the satisfactory occupation of the hereditament. It is reasonable to assume that they will also be available to the hypothetical tenant, for payment of a service charge, to the extent that they exist from time to time. It can be inferred that the hypothetical landlord will need to maintain the supply. As with other physical matters in the locality, they should be taken to be as they are on the material day, but with the real prospect that they will be maintained within the landlord's control. For example, in *Murphy (VO) v Courtney plc* [1999] RA 1, repair works were required to the air conditioning in both the hereditament and the central plant room. The Lands Tribunal Member accepted that the tenant would expect the works to the central plant to be completed by the landlord as a condition of the grant of the hypothetical tenancy and such costs would not be recoverable as part of the service charge.

7.5 The rating hypothesis makes no assumption about who is landlord of other hereditaments and so it may be that the landlord of other floors in a building or on an estate development is different from that of the hereditament being considered. Nonetheless, it is reasonable to infer there will be mutually binding covenants between the landlords to ensure necessary access and services are maintained to the benefit of all as this would be the situation in the real world.

7.6 The cost of ongoing maintenance of central plant, including provisions for eventual replacement, are matters which are usually included in service charges. Any such liability may be reflected in a tenant's rental bid.

7.7 Works to other hereditaments or to the common parts of the building containing the hereditament being considered do not fall under the repairing assumption of the hypothetical

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tenancy. They represent real world physical changes in the locality and should be considered as being as they are at the material date. Their likelihood of completion is also something to be taken into account as they are not subject to the *rebus sic stantibus* rule.

HEREDITAMENTS INCAPABLE OF BENEFICIAL OCCUPATION DUE TO WORKS OF REDEVELOPMENT

8. Works of Redevelopment

8.1 The Court of Appeal judgment saw no difference between the situation where a hereditament was in disrepair through the actions of time, use or accidental or deliberate damage and the situation where a programme of redevelopment or reconstruction works was underway. The Supreme Court rejected this, considering that the Court of Appeal 'went too far' in interpreting the 1999 Act as completely displacing the 'reality principle' where the hereditament was 'undergoing redevelopment.'

8.2 The Supreme Court examined a series of rating cases and found case law 'distinguished between a mere lack of repair, which did not affect rateable value because of the hypothetical landlord's obligation to repair, and redevelopment works which made a building uninhabitable.' (para 17)

8.3 The Supreme Court identified a 'logically prior question' that needed to be asked when a building was undergoing redevelopment: requiring the valuation officer to ascertain whether the premises were 'undergoing reconstruction rather than simply being in a state of disrepair.' If so, the premises would be incapable of beneficial occupation and of only nominal value.

8.4 It considered the repairing assumption applied to matters affecting the physical state of the hereditament but not the mode or category of occupation. The implication appears to be that the repairing assumption cannot apply where there is no mode or category of occupation due to the premises being under reconstruction. Without the assumption of reasonable repair the hereditament has to be valued as it actually is (in line with the principle of reality, *rebus sic stantibus*) and would usually have a nominal value.

8.5 The first question must always therefore be – is there a programme of redevelopment / reconstruction underway?

9. A programme of works - Objective assessment

9.1 The differentiation between the 'ordinary' situation of disrepair and when there is a programme of works of redevelopment means it is essential to identify whether there is, or is not, a programme of works of redevelopment. The Supreme Court identified that this had to be 'assessed objectively' and that the subjective intentions of the freehold owner are not relevant. It is for the valuer to make a judgment, based on objective evidence, about whether the building is undergoing redevelopment.

9.2 The easiest situation to consider is when, on inspection, it is found on the ground that the hereditament is being changed, perhaps converted to something different at the material day, e.g. offices to flats; being significantly improved; extended so the existing accommodation cannot be used or the boundaries of the existing hereditament(s) are being changed.

DRAFT

9.3 The phrases used by the Supreme Court - ‘redevelopment works,’ ‘undergoing reconstruction,’ in a ‘process of redevelopment’ or undergoing ‘radical alterations, whether or not they are structural’- indicate that what it considered constituted a programme of works of redevelopment was not simply redecoration, basic refurbishment or the sort of works a tenant might do during the course of a lease.

9.4 The programme of works therefore needs to be fairly substantial so as to constitute redevelopment or reconstruction. Simply re-organising an office floor, refitting a shop or undertaking cosmetic works are therefore not sufficient, even if there is a temporary period in which the hereditament is incapable of beneficial occupation as a result.

9.5 Rather, works of redevelopment are where the works will result in a materially different hereditament to that pre-works (and, by the Supreme Court’s definition, they will be works which have rendered the building incapable of beneficial occupation while they are undertaken).[1]

9.6 A useful test may be to consider whether after the works have been completed the rateable value will be greater, although this will not be determinative.

9.7 On completion of the works the RV will need to be reassessed. The RV as a result of the changed character and/or use will be determined by evidence from comparable properties of similar character and use in the locality. In the example given above the level of value may have been £100/m2 pre works reflecting the absence of air conditioning and lift. Comparable properties in the locality with air conditioning and lifts may be at £120/m2 and on completion of the works the subject property would fall to be assessed in accordance with the new character created by the improvements at a similar value. It will usually be the case that if the works will result in an increase in the £/m2 used for the RV on their completion then the works probably go beyond mere refurbishment and are creating something materially different.

9.8 A programme of reconstruction works may include stripping out what was there before. The work undertaken by the building contractors in both stripping out what was there before and the new work will constitute the programme. However mere stripping out on its own does not of itself constitute or evidence a programme of reconstruction but rather simple damage, putting the hereditament in a state of disrepair.

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[1] A typical example of the sort of works not creating a materially different hereditament would be the refurbishment of a floor in a 1960s multi storey office block hereditament where partitions were removed and new ones installed, suspended ceilings and Category 2 lighting installed, redecoration undertaken and the floors re-carpeted. The works are not substantial; the parts undergoing works are not out of occupation and on completion the nature of the hereditament is unchanged to that originally demised. This is the sort of refurbishment any tenant might do from time to time. On the other hand more extensive works providing new items not previously present, for example involving re-fenestration to give double glazing or the installation of air conditioning where none previously existed, resulting in the knocking of holes in walls and perhaps ceilings, or a lift shaft was to be installed where one did not exist before, go further and create something different and better. So too would substantial works changing the use of a floor, for example from storage to office use.

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9.9 It may be that there is a short gap between the firm of demolition contractors moving out and the building contractors moving in. If this is short this should be seen as a single programme of works. If the stripping out is not preparatory work to an immediately following reconstruction project then it should be treated as mere disrepair.

9.10 The Supreme Court appeared content to examine all the facts surrounding the case in deciding whether there was a programme of works of redevelopment. This included not just the actual physical position on the ground but also facts such as whether any building contract had been agreed, the existence of an approved planning consent or building control application etc. At first sight this appears contrary to the statutory valuation scheme which requires certain matters which are broadly physical in nature (Schedule 6 para 2(7) matters) to be taken as at the material day and the other matters at the AVD. However, the Supreme Court ruled that deciding whether or not there is a programme of works is a prior question to be answered before considering valuation. The limitations of the valuation assumptions do not apply until this is decided and therefore all facts can be objectively considered. The subjective intentions of the actual owner are not to be considered.

9.11 A project of demolition, if objectively evidenced that it is a project of demolition and not simply some stripping out with the vague expectation of future demolition, is similar to a programme of redevelopment works.

9.12 Where an owner is substantially refurbishing and altering an existing building assessed in parts, each hereditament should be considered individually and the test of what would be economically reasonable applied to the hereditaments individually not collectively. If it is economically reasonable then the subject hereditament will be deemed in repair. However, the other floors should be viewed as they actually are at the material day. This may have a detrimental effect on the value of the hereditament being considered in the same way as other external MCCs. The effect may vary over time and require successive amendments to the rating list to reflect a significant change in disability.

10 Works of redevelopment to part of a hereditament

10.1 Where a programme of works of redevelopment is underway for only part of a building similar considerations will apply. It is always a question of fact and degree whether what is being done can be described as repair or whether in contrast it results in a materially different hereditament.

10.2 Reconstruction works to part of a hereditament are taking place to the hereditament and are not external to it. Because of the principle of *rebus sic stantibus*, the prospect of completing the works cannot be envisaged and the whole hereditament needs to be valued on the assumption the part under reconstruction is effectively out of use on a permanent basis. As the part is within the hereditament, there can be no allowance for disturbance on an ‘external building works’ basis reflecting the ‘real world’ presence of the builders, e.g. dust and noise; however it still does enable consideration of how the physical state of those parts affects the whole and this may or may not be value significant. If the work is, say, to only one floor of an office block, unless this is the reception floor it is unlikely having one floor out of use (notionally permanently) will damage the value of the rest.

10.3 However, if. for example, access is prevented through the main reception due to works to install a glass atrium and lift; this may affect the value of the occupation of the remainder

providing, under the principle of *rebus sic stantibus*, the part is physically unusable. Each case must be judged on its merits. Any reduction in value for the loss of the part undergoing alterations will reflect the hypothetical rental bid for the hereditament in that notionally permanent state.

11. Effective date where hereditament under works of redevelopment

11.1 The effective date for a rating list alteration is usually found by looking back from the material day to the earliest date that those circumstances first arose. In some cases the material day and effective date are the same.

11.2 The valuer needs to consider the physical factors listed in Schedule 6 para 2(7) as they are on the material day but envisaged as at the AVD. If it is considered the hereditament has a nil valuation on those facts, perhaps because repair is not economic due to the extent of the work required or because a programme of works renders the building incapable of occupation then the effective date will need to be determined. For disrepair this will be the date when the hereditament first reached the state when it was in *sufficient* disrepair to justify the nil valuation.

11.3 Where it is judged that the hereditament is undergoing works of redevelopment justifying a nil assessment, then the value of the hereditament should be reduced to nil from the day the redevelopment works scheme commenced.

11.4 As with demolitions, to ensure ratepayers are not paying empty rates longer than necessary, even though a refund will be made, VOs should endeavour to make early decisions whilst having regard to the need to properly establish the nature and extent of the works being undertaken at the material day.

11.5 It should be noted that where VOs take early action to reduce an entry to nil on the grounds that stripping out works constitute the commencement of a scheme of conversion/reconstruction or demolition, but this is subsequently found not to be the case and the works therefore are merely soft stripping or damage to the hereditament, then the nil entry can be restored to its original level. But this can only be with effect from the date of the correction ('Date of Schedule' as it is known) as the facts have not changed, only the judgment of the VO on the effect of the works; consequently the restoration of the RV will be a correction arising from the inaccurate earlier alteration that reduced the RV to nil.

11.6 If the programme of works has not commenced, then the hereditament is by definition not subject to such a programme of works, will not be incapable of beneficial occupation for that reason, and the assessment in the rating list should remain unaltered, subject to the usual tests of demand and economic repair.

12 Entry in the rating list

12.1 The Supreme Court saw the retention of a nominal figure in the rating list rather than deletion as a 'useful practice' (paras 22 and 31). Where a building is undergoing redevelopment as above so as to justify a nominal figure, it is recommended valuation officers adopt a nil assessment when a nominal figure is appropriate. The Supreme Court was content with the practice of describing the hereditament in the list as 'Building undergoing reconstruction' as an

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aid to identification. It is not appropriate to include the former use in that description [e.g. 'Offices (undergoing reconstruction)'] as the basis of the Supreme Court judgment was that the former mode or category of use has ceased.

12.3 To reiterate, where a hereditament is undergoing reconstruction, it should remain in the rating list, at a nominal rate value with amended description, rather than being deleted. Whilst the ongoing works may result in a decrease in the rateable value of the hereditament and/or a change in its description; the hereditament should remain in the rating list until it is evidenced that it has ceased to exist, as detailed in Rating Manual: Volume 4: Section 2: Part C - The Hereditament. NB ADD hyperlink

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