Case Name: *Avison Young Limited v David Jackson (VO)* [2020] UKUT 0058 (LC) (25 February 2020)

Topic: Procedure – material change of circumstances during period when premises incapable of beneficial occupation and whether VTE has power to amend the list during that period

Full case: click here

Summary: Premises at 65 Gresham Street in the City of London were undergoing fitting out, which included the installation by the appellant of an internal staircase linking the two floors. During the works the premises were not capable of beneficial occupation and the RV had been reduced to nil. The question before the Tribunal was whether the VTE had the power to limit the period of nil RV to the duration of the works. The Tribunal upheld the VTE's decision and ruled that with effect from completion of the works the list entry should be restored to the pre-works RV, without regard to the existence of the internal staircase (as it was too late to amend the 2010 list save in response to an extant proposal – but see our case summary on the related decision dated 24 March 2020, in relation to such proposal).

Commentary: The installation by the appellant of an internal staircase linking the two floors at 65 Gresham Street reduced the floor area by a little under 50 sqm. The VO issued a notice as a consequence of the works, reducing the RV from £1.83m to £1.8m with effect from 1 April 2015 (this being the earliest permissible date, although the works started on 1 September 2014). It was also agreed that following commencement of the works the premises were incapable of beneficial occupation from 1 September 2014 until completion of the works on 23 January 2015.

The appellant submitted a proposal on 3 October 2014 to reduce the RV to nil, on the ground (which was implied rather than specified) that a material change of circumstances had occurred following list compilation. The VO did not accept the proposal as well-founded, but by the time the proposal came before the VTE the parties had agreed that the RV should be nil from 1 September 2014 to 8 February 2015; they could not agree whether the RV should subsequently be nil (until 31 March 2015) or £1.83m (as the VO considered he had no power to reduce the RV for any period earlier than 1 April 2015, when his reduction to £1.8m would take effect).

The issue for the VTE was therefore whether the RV should remain nil from the date the premises were once again fit for occupation (23 January 2015) until 1 April 2015 or whether they should be restored to the list at £1.83m.

The VTE reduced the RV to nil for the duration of the works, until 23 January 2015. No new hereditament had been created by the works and in its view regulation 38(7) Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 enabled the VTE to limit the reduction to that period.

Counsel for the appellant argued that the regulation could not be interpreted to enable (as in this case) an alteration to the list in response to a temporary event which is followed by a second event requiring a further alteration, if after the alteration the list would be inaccurate with effect from the occurrence of the second event. The VTE should use its discretion in this

case so as to not to place a limit on the duration of the alteration (which would therefore continue until 31 March 2015). To do otherwise would result in an inaccuracy in the list with effect from 23 January.

The Upper Tribunal was not persuaded by this argument and considered that regulation 38(7) simply conferred a power to make a temporary alteration in the list to correspond with the duration of temporary circumstances. Both parties' counsel accepted that, given that the list can no longer be altered with effect from a date earlier than 1 April 2015, the list would be inaccurate however the discretion under regulation 38(7) is exercised. There is a balance to be struck between an RV of £1.83m and nil – the Tribunal held that the VTE's decision to restore the pre-works RV of £1.83m should not be disturbed. It noted in passing that the ratepayer could have made a further proposal on completion of the works for an appropriate RV (presumably £1.8m) for the period from 23 January to 31 March 2015 but did not do so. The Tribunal's decision may have turned on the fact that to allow the RV to remain nil for the stub period prior to 31 March would have given rise to a windfall for the ratepayer, when no proposal had been made at the time to end the temporary period, but this is conjecture. To allow the appeal would have enabled the ratepayer to profit from an omission, which could be viewed as inequitable.

The circumstances of this case are not unusual and post Monk it would be advisable to carefully consider whether in some cases it would be advantageous for a ratepayer to make a second challenge (post 2010 list) to limit the duration of the first event (e.g. reconstruction works) to the actual period during which beneficial occupation is impossible, allowing a third challenge in respect of a second event (e.g. installation of an internal staircase or adverse impact of works to an adjoining building).

Please also see our summary of the Tribunal's decision dated 24 March 2020 in RA/27/2019 – Avison Young's second proposal made on 22 July 2016 in respect of the same hereditament.

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