Case Name: *David Jackson (VO)* v *Canary Wharf Limited* [2019] UKUT 0136 (LC) (7 June 2019)

Topic: Premises undergoing stripping out and refitting, with a delay until new tenants were found. Should they be treated as premises "under reconstruction", as a consequence of which there was no hereditament?

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Summary: Where premises have been stripped to a bare shell awaiting a tenant, the question arises whether in the meantime the Valuation Officer is entitled to assume the premises are in repair, applying the statutory assumption. The alternative, under the reality principle, is for the premises to be valued in their actual physical condition at the material day, with the result that the inability to beneficially occupy the premises leads to a nominal assessment. Reference was made to the Supreme Court case of *Monk* v *Newbigin* [2017] 1 WLR 851, in which Lord Hodge spoke of the "logically prior question" of establishing if the premises are capable of beneficial occupation at all, as if not there is no hereditament capable of being valued. The UT (applying *Monk*) decided in this case in favour of the ratepayer, holding that the separation over time of the stripping out from the fitting out for the new tenant (during a period of over 3 years) did not prevent the premises from being under reconstruction and, therefore, incapable of beneficial occupation. A continuous programme of works, including both stripping out and fitting out (as referred to in the VOA's rating manual), was not required for the disapplication of the repair assumption in the statutory formula. This is consistent with the provisions of the Rating (Valuation) Act 1999 and the rateable value was restored to a nominal £10 during that period.

Commentary: Canary Wharf had taken possession of Floors 45 and 46 of One Canada Square in February 2011 on surrender of the previous lease. Consistent with its normal practice (as part of a rolling modernisation programme in a large multi-occupied building), both floors were stripped out to the bare concrete shell and left in that condition pending terms being agreed with an incoming tenant, at which point fitting out would commence according to the new tenant's requirements. In the event, it was not until 2014 that an agreement for lease was entered into with a tenant of Floor 46 and part of Floor 45 and an agreement for lease for the rest of Floor 45 followed in 2015. It had been agreed by the valuation officer that following the strip-out the premises were incapable of beneficial occupation after the material day (16 January 2013, the date of the proposal).

The statutory valuation formula in the Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999) requires the valuer to assume that premises in disrepair are in fact in good repair, save in respect of works which the hypothetical landlord would consider it uneconomic to carry out. In respect of the latter category of works, they will be taken into account in the valuation, depreciating the rateable value.

In *Monk*, Lord Hodge had been clear that a building undergoing redevelopment (which fact is to be determined objectively) cannot during such works be capable of beneficial occupation and, therefore, cannot be a hereditament to be inserted in the rating list. By convention, such premises are left in the list (at a nominal value) to avoid the administrative

inconvenience of having to be the subject of a completion notice at the end of the works but that does not alter the fact that there is no hereditament at all during the redevelopment. The Valuation Office rating manual had stated that for this to apply there would need to have been a continuous programme of works, but that was not part of Lord Hodge's *dicta*.

Applying *Monk* to the Canary Wharf facts, the VO had accepted that the premises were not capable of beneficial occupation. That being the case, the sole question for the UT was whether there was any need for a programme of both stripping out and refitting the premises as a precondition of the premises being "under reconstruction", as opposed to being merely in disrepair (in the latter case the agreed RV would have been £1,830,000). The UT was clear that no such programme of works was required and it had been established in *Monk* that under the 1999 Act the property must be considered in its actual state (*rebus sic stantibus*, in the time-honoured language) at the material day. On 16 January 2013 the premises had long-since been stripped out and incapable of beneficial occupation and, therefore, did not constitute a hereditament.

Accordingly, the Upper Tribunal ordered that the rateable value of the relevant floors of One Canada Square be £10 for the duration of the works (including the relatively lengthy period when the premises remained empty during the marketing of the space).