

Case Name: *London Borough of Newham v RAD Phase 1 Type B Property Company No.1 Limited* [2020] UKUT 203 (LC) (28 July 2020)

Topic: Completion notice – confirmation of VTE’s powers to determine a date for completion outside the three-month period allowed to billing authorities

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Summary: Where a completion notice is appealed and it is apparent that the period for completion of the works exceeds three months the VTE has no power to quash the notice but may instead either dismiss the appeal or determine a completion date based on the evidence before it (which may be a later date than that referred to in the original notice). This appeal was decided under the Tribunal’s written representations procedure.

Commentary: As referred to in a previous Town summary (relating to the VTE decision), under schedule 4A to the Local Government Finance Act 1988 a billing authority is required to serve a completion notice on the owner as soon as reasonably practicable (unless the VO otherwise directs) if it comes to the authority’s notice that the work remaining to be done on a new building in its area is such that the building can reasonably be expected to be “completed” within 3 months.

“Completed” in this context is construed as enabling occupation following completion of Category B works (which are bespoke works undertaken to meet the tenant’s specific requirements after completion of Category A works, being the basic landlord’s finish).

The completion notice issued in this case by Newham (relating to the Altitude Building in the Royal Albert Docks development, East London) was dated 26 June 2019 and had specified a completion date of 25 September 2019.

The clerk had advised the VTE panel that if it found that the remaining works could not be completed within 3 months, the only option was for it to quash the notice rather than determine a date later than 3 months (the authority for this advice being the Lands Tribunal decision in *Spears Brothers v Rushmoor Borough Council* [2006] RA 86). The parties’ barristers both disagreed with this advice to the VTE, pointing out that the 2006 case had been decided under the simplified procedure (with limited scope for argument) and that there was no reference in that case to a specific power for the VTE to quash a completion notice. The panel was invited by them to determine the completion day based on the evidence presented at the hearing.

RAD argued that a period of just over 5 months was insufficient for completion of fitting out of the Altitude Building to Cat B and supported this by reference to comparable buildings elsewhere (where a period of 15 months was typical). The extended period was due in part to the need to stagger occupation of multi-occupied buildings (which applied to the subject building) to avoid contractor conflict, leading to sequential fitting out works floor by floor. In addition, the standard of fitout has a material impact on the time required for its completion, a higher-quality fitout taking appreciably longer (an aspect that cannot be determined until a tenant had been found).

Despite that evidence, the VTE decided (based on the clerk's advice) that it had no option but to quash the notice.

The Upper Tribunal was clear in its reasoning that schedule 4A did not enable the VTE to quash the notice (such a power would need to have been expressly referred to in schedule 4A, which it was not); instead, the options available to the VTE were to either dismiss the appeal (and confirm the date referred to in the completion notice) or determine an alternative date beyond the three-month period.

In this case, the parties had (subsequent to the notice and before the Tribunal reached its decision) agreed a completion date of 11 May 2020. This was adopted by the Tribunal, thus avoiding the need to refer to the case back to the VTE to consider and determine an alternative deemed completion date.

This decision brings welcome clarification as to the operation of completion notices where new (or structurally-altered) premises (having reached practical completion) lie empty for some time before a tenant is found and the fit-out works are carried out. Although billing authorities may have no alternative but to issue a completion notice (to safeguard local authority funding) there is nevertheless an opportunity for the ratepayer to challenge the notice where a property proves difficult to let, thus allowing time for evidence to be gathered (as to the likely duration of the fit-out) for presentation to the VTE at the hearing. It should be borne in mind, however, that the time taken to find a tenant is not permitted to be taken into account when calculating the completion date (to include customary fit-out works).

The moral of the story here is that the billing authority needs to adopt a reasonable approach to both the timing of service of a completion notice and any proposal from the owner (in response to the notice) to agree a later date, as the VTE has a wide discretion to determine a later date based on the evidence before it.

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