maples teesdale

Legal alert

March 2017

Back to Reality – the Supreme Court reverses rates liability for developer

In February 2015, there were ructions in the development world when the Court of Appeal gave judgment in the case of SJ & J Monk (a firm) v Newbigin (Valuation Officer) [2015] EWCA Civ 78. The decision confirmed that in deciding rateable value, a statutory assumption that premises are in a state of repair (unless such repairs were uneconomic) should apply to all premises, even ones in the process of being refurbished or redeveloped.

The significance of the decision was to impose a ratings liability on property owners whose premises were in the process of being refurbished and thereby incapable of occupation.

In Monk's appeal to the Supreme Court, both the Rating Surveyors' Association and the British Property Federation felt it necessary to intervene. On 1 March 2017, over 2 years later, the Supreme Court has unanimously overturned what it called the Court of Appeal's "novel" interpretation of the ratings legislation.

Briefly, the facts of the case revolved around an application by Monk to alter the ratings list to reduce the ratings liability for its premises to £1 whilst it undertook extensive refurbishment works. On the date of that application (the "material date"), the premises were vacant and had been predominantly stripped out (which included the removal of air conditioning and sanitary facilities).

The issue before the court was whether on the material date the premises should be rated having regard to their actual condition or whether paragraph 2(1)(b) of Schedule 6 to the Local Government Finance Act 1988, as amended by the Rating (Valuation) Act 1999 (the "paragraph 2(1)(b) assumption"), required the application of an assumption that they were in reasonable repair as "offices and premises" (other than repairs that are reasonably considered uneconomic), which had been the previous use to which the premises had been put.

The Supreme Court ruled that the Court of Appeal had incorrectly concluded that the paragraph 2(1)(b) assumption wholly supplanted the long established principle of reality that premises should be valued as they in fact existed on the material day. The Supreme Court explained that consistent case law over the years required a distinction to be made between whether premises were capable of occupation and whether they were simply in disrepair. Explanatory notes to the 1999 Act as well as Hansard records show that the 1988 Act was designed simply to codify that common law position. The paragraph 2(1)(b) assumption was designed to displace the disrepair scenario.

Therefore, the Judges endorsed the approach submitted by the Rating Surveyors' Association and the BPF, which is that a valuation officer must:

1. determine whether premises are capable of rateable occupation;

2. if they are, he should determine that mode or category of occupation; and

3. only if they are capable of occupation, he should consider whether the premises are in a state of reasonable repair for use consistent with that mode or category

The stages must be considered objectively as at the material day, but reference may be had to the programme of works in fact being undertaken. Works need not have proceeded beyond the stage that it becomes uneconomic to undertake restorative repairs.

On the facts the premises were not capable of occupation, but were undergoing reconstruction. Accordingly, the paragraph 2(1)(b) assumption had no application and the reduced rates liability of £1 applied.

The Supreme Court doubted that its decision would open the flood gates to exploitation by property owners removing sanitary facilities and then claiming their premises are incapable of beneficial occupation. The 1988 Act contains anti-avoidance powers which could be exercised where appropriate.

This is a victory for common sense and is therefore to be welcomed. There will, however, still be areas of dispute. For example, whether a scheme of refurbishment is extensive enough to render premises incapable of occupation, and at what point does some or all of the refurbished premises become capable of occupation and subject to the paragraph 2(1)(b) assumption? Each case will have to be decided on its own facts. We will have to wait and see in the years to come whether further guidance will ensue from the courts.