

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2020] UKUT 0203 (LC)  
UTLC Case Number: RA/55/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*RATING – PROCEDURE – service of completion notice on 26 June 2019 – whether VTE has the power to determine a completion date later than three months from the date of the notice – whether the VTE has the power to quash a completion notice – appeal allowed – completion date of 11 May 2020 determined – s46 and schedule 4A, Local Government Finance Act 1988*

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF  
THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

LONDON BOROUGH OF NEWHAM

Appellant

and

RAD PHASE 1 TYPE B PROPERTY  
COMPANY NO.1 LIMITED

Respondent

Re: Altitude Building  
14 Lascars Avenue  
London  
E16 2YP

DETERMINATION ON WRITTEN REPRESENTATIONS

PETER McCREA FRICS FCI Arb

The following cases are referred to in this decision:

*UKI (Kingsway) Limited (Respondent) v Westminster City Council (Appellant)* [2018] UKSC 67  
*Spears Brothers v Rushmoor Borough Council* [2006] RA 86

## Introduction

1. Can the Valuation Tribunal for England (“the VTE”) determine a completion date that falls three months or more from the date of a billing authority’s completion notice served under Schedule 4A to the Local Government Finance Act 1988; and if the VTE decides that the relevant completion works cannot be carried out within the three month period specified in the completion notice, does it have the power to quash the notice? Those are the questions in this short decision concerning an appeal by the London Borough of Newham (“Newham”), the billing authority for the Altitude Building, at 14 Lascars Avenue, London, E16 2YP (“the Building”).

2. Newham’s appeal is against a decision of the VTE dated 25 November 2019 to quash Newham’s completion notice issued on 26 June 2019, which specified a completion date of 25 September 2019. Since submitting the appeal, Newham and the ratepayer, Rad Phase 1 Type B Property Company No.1 Limited, have agreed that the completion date should be 11 May 2020. The only remaining issues, which the parties ask the Tribunal to determine under the written representation procedure, are those outlined above.

3. For the appellant, I received written grounds of appeal from Mr George Mackenzie of counsel, while a brief statement of case for the ratepayer was submitted by Ms Victoria Boateng, a partner in Allsop LLP.

## Statutory provisions

4. The completion notice process was summarised by Lord Carnwath in *UKI (Kingsway) Limited (Respondent) v Westminster City Council (Appellant)* [2018] UKSC 67:

“2. Liability for non-domestic rates depends on a property being entered as a hereditament in the rating list. The completion notice procedure, under section 46A of and Schedule 4A to the Local Government Finance Act 1988, as inserted, (“the Act”) provides a mechanism whereby a new building, which has not yet been occupied, may be brought into the rating list. Subject to any appeal, a validly served completion notice has the effect that the building to which it relates is deemed to have been completed on the date specified in the notice. It is then shown in the rating list as a separate hereditament (or hereditaments) and is valued as if it were complete (section 46A(2)). Once the building is so shown in the rating list, its owner (or its occupier if it becomes occupied) becomes liable to an assessment for non-domestic rates.

5. Paragraph 1(1) of Schedule 4A to the 1988 Act provides that if it comes to the notice of a billing authority that the work remaining to be done on a new building in its area can reasonably be expected to be completed within three months, it shall (unless the valuation officer directs otherwise) “serve ... on the owner of the building” a notice, known as a “completion notice”.

6. The completion notice must (a) specify the building to which it relates and (b) state the day which the billing authority proposes as the completion date (paragraph 2(1)). In the case of a

building which has yet to be completed, the completion date proposed should be ‘such day, not later than three months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed.’ (paragraph 2(2)).

7. A billing authority may withdraw a notice under paragraph 1(3) by serving on the owner a subsequent notice, but where the owner has brought an appeal against the notice, the billing authority may only withdraw the notice with the owner’s written agreement (paragraph 1(4)); and may not withdraw the notice once a completion date has been determined as below (paragraph 1(5)).

8. By paragraph 3, a person on whom a completion notice is served may make an agreement in writing with the billing authority that “a day specified in the agreement” shall be the completion date; when such an agreement is made, the completion notice is deemed to have been withdrawn.

9. A person on whom a completion notice is served may appeal to the VTE on the ground that the building to which the notice relates has not been or, as the case may be, cannot reasonably be, expected to be completed by the day stated in the notice. By paragraph 4(2), “where a person appeals against a completion notice and the appeal is not withdrawn or dismissed, the completion date shall be such day as the tribunal shall determine.”

### **The facts in brief**

10. From the VTE’s decision, I find the following facts.

11. The Building provides around 120,000 sq ft of new office space over eight floors, forming part of the Royal Albert Docks development. The parties agreed that the Building had reached the stage of practical completion on 11 April 2019, from when the period for fitting out works could begin. At this date, the Building was substantially complete to a category A standard, with some snagging work to take place. However, until a tenant could be found, and their requirements known, further fitting out works could not begin in earnest. Such works would include the fitting of partitioning, cabling, adequate small power and kitchen facilities.

12. On 26 June 2019 Newham issued a completion notice (“the notice”) under Schedule 4A specifying a completion date of 25 September 2019. It was sent to ABP (London Investment) Ltd which Newham believed, erroneously, to be the owner of the Building, but that is not an issue in this appeal.

13. In February 2020, the parties confirmed to the Tribunal that they had agreed a completion date of 11 May 2020.

### **The proceedings in the VTE**

14. Before the VTE, the ratepayer was represented by Ms Jenny Wigley of counsel, while Mr Mackenzie represented Newham. The VTE was advised by the tribunal clerk that it did not

have the power to determine a completion date later than three months after the notice was served, and if it made a finding of fact that the remaining fitting out work could not be completed within three months of the service of the notice, it should quash the notice. The clerk referred the panel to the decision of the Upper Tribunal (N J Rose FRICS) in *Spears Brothers v Rushmoor Borough Council* [2006] RA 86. Neither counsel being familiar with *Spears*, it was agreed that they could make further written submissions before the panel made a determination. Ms Wigley's subsequent joint submission observed that *Spears* was heard under the Tribunal's simplified procedure and did not identify any statutory power enabling the VTE to quash a completion notice. However, in its decision of 29 November 2019, the panel accepted the clerk's advice that it was bound by the Tribunal's decision in *Spears*, and in the absence of any authority giving the VTE power to determine a completion date later than three months after the date of the Notice, it quashed the notice.

### **Grounds of appeal**

15. Mr Mackenzie submitted that it followed from paragraph 4 of schedule 4A, an appeal against a completion notice may be withdrawn by the appellant; or dismissed (in which case the completion date specified in the notice is upheld); or be "such day as the tribunal shall determine". It was plain that the VTE has the power to determine *any* day as the completion date, as there was no indication that this day must be within the initial three month period specified in paragraph 2(2).

16. There is no good reason, Mr Mackenzie submitted, why the VTE would have a power, on an appeal, to specify a completion date within the three month period but not outside of it. This would give rise to absurd results in for example a case which the VTE decided that works would take, say, three months and one week. This would result, on the panel's determination, of the notice being quashed and the billing authority having to start again resulting in a windfall to the ratepayer. Moreover, under paragraph 3(1) the billing authority and the ratepayer can agree a completion date – again there is no indication that such a day must be within the three month period referred to and relevant for the purposes of paragraph 2. There is no rational reason why the parties could agree a completion date after three months, but the VTE only had jurisdiction to specify a date within the three month period. Such a disparity would reduce the incentive to agree completion dates under paragraph 3(1) and increase the number of appeals burdening the VTE.

17. As for the VTE's purported power to quash a completion notice, Mr Mackenzie submitted nothing in the 1988 Act provides such a power. It is clear from paragraph 4 of schedule 4A that the only outcomes open to the VTE on appeal that is not withdrawn by the appellant are to either dismiss the appeal or to determine the completion date. The VTE does not have inherent jurisdiction under common law to quash a completion notice; in doing so the VTE was acting *ultra vires* and was unable to identify any enabling legislation containing a power to quash a notice.

### **Discussion**

18. As Ms Wigley observed, *Spears Brothers* was conducted under the Lands Tribunal's simplified procedure. The appellant was represented Mr Robert Spears, while the billing

authority was represented by Mr Robert Gear, its local taxation manager. The appeal was largely concerned with the physical factors determining completion – lighting and electrical wiring for instance – and as the Member noted (at [12]), he was not referred to any authorities to assist with interpretation.

19. It is relevant to note that the parties to this appeal have agreed a completion date of 11 May 2020, nearly 11 months after the completion notice –illustrating the point that Mr Mackenzie made.

20. In my judgment, there is no doubt that a billing authority and a ratepayer can make such an agreement. It seems highly unlikely that a ratepayer would agree a completion date earlier than that specified in a notice, bringing forward its liability for non-domestic rates, except perhaps in circumstances where a tenant, or the owner itself, was taking occupation within that period. There is also force in Mr Mackenzie’s submission that the draftsman cannot have intended that a billing authority would have to start the process again in the event that the VTE determined on the facts that works could be completed slightly later than the three-month deadline, although I accept that taxpayers receiving a windfall is not a determining factor in interpreting the legislation.

21. On my reading of Schedule 4A, there is nothing to prevent the parties agreeing, or the VTE determining, a date outside of the three-month period specified for the purposes of the initial notice.

22. I also accept Mr Mackenzie’s submissions as to the VTE’s powers to quash a completion notice. While the VTE is given express power to “quash” an estimate or penalty under council tax legislation<sup>1</sup>, no such wording is used in the completion notice regime. The options open to the VTE under paragraph 4(2) of Schedule 4A to the 1988 Act, in the absence of the notice being withdrawn, are to dismiss the appeal and confirm the date in the completion notice, or to determine an alternative date.

23. Accordingly, I allow the appeal. Given the parties’ agreement as to the appropriate completion date, it is unnecessary for me to remit the matter back to the VTE. I determine a completion date of 11 May 2020 under paragraph 4(2) of Schedule 4A to the 1988 Act. I make no order for costs.

P D McCrea FRICS FCI Arb

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<sup>1</sup> Regulation 38 of the The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Dated: 28 July 2020