THE VALUATION TRIBUNAL FOR ENGLAND

Appeal Number: 341019474725/538N10

25 February 2015

Completion notice – validity – whether ambiguous – whether billing authority entitled to think building complete – whether subsequent owner can challenge validity – Local Government Finance At 1988, Sch. 4A

Provincial Real Estate Burton Ltd **Appellants**

v.

Mr D. Virk **1st Respondent**
(Valuation Officer)

and

East Staffordshire Borough Council **2nd Respondent**

Re: The Duke, Wellington Road, Burton-on-Trent DE14 2AP

Before: The President (Professor Graham Zellick QC)

At: Cornwall Buildings, Birmingham

On: 2 February 2015

Appearances:

Mr Daniel Kolinsky, of Counsel, instructed by Altus UK LLP, for the Appellants.

Mr Robin Woolway, Valuation Office Agency, for the Valuation Officer.

Ms Jenny Wigley, of Counsel, instructed by Mr David Duckitt, Head of Legal and Democratic Services, East Staffordshire Borough Council, for the second Respondent.

The issues

1. There are two issues in this appeal:

    - Was the completion notice valid?
    - If not, can this appellant challenge it in these proceedings?

2. The second issue will not require decision if I find that the notice was valid.

3. Alternatively, it would be possible to take the second point first and deal with the notice's validity only if it is established that the appellant is entitled to challenge the notice in these proceedings, but I shall take the points in the order listed in para. 1 above.

Overview

4. The billing authority issued a completion notice in January 2010. It was correctly addressed and served. It stated that the building was completed and the date given in the body of the notice was several days later than the date of the notice.

5. The recipient – the owners of the building – made no complaint or appeal; the building was duly entered in the rating list by the Valuation Officer ("VO"), who is the first respondent, on the basis of the notice; and the owners paid the rates. Almost two years later, the building was acquired by a new owner – the appellants in these proceedings – who by way of a proposal now seek to challenge the validity of the notice and thereby have the entry in the list deleted.

The statutory regime

6. A new building may be brought into the rating list by the billing authority's serving a completion notice on the owner of the building: Local Government Finance Act 1988, s. 46A. It can do this in two circumstances: if it comes to its notice that the building is already completed (Sched. 4A, paras. 1(3) and 2(3)) or if it comes to its notice that completion is reasonably possible within three months (paras. 1(2) and 2(2)). In the latter case, the notice must propose the date by which it believes the building can reasonably be completed (*ibid.).*

7. The owner may appeal to this Tribunal on the ground that the building has not been completed or cannot be completed in the time specified (para. 4(1)); such appeals must be brought within 28 days (Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, SI 2009 No. 2268, reg. 19(1)) unless the Tribunal extends the time (*ibid.*, reg. 19(3)) under reg. 6(3)(a) of the Procedure Regulations (SI 2009 No. 2269); and on such an appeal the Tribunal shall determine the completion day (para. 4(2)). In the absence of an appeal, the day stated in the notice shall be the completion day for the building (para. 5).

8. A completion notice may (but not must) be served by pre-paid registered letter or recorded delivery: para. 8(a). And section 7 of the Interpretation Act 1978 provides:

> "Where an Act authorises . . . any document to be served by post . . . then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

The completion notice

9. The notice bears the date "Thursday 7th January 2010". It then has a heading "Local Government Finance Act 1988 Completion Notice" but refers to no particular provisions. The opening two paragraphs read as follows:

> "The Charging Authority give notice that they are of the opinion that this building is now complete.
> For the purpose of the Local Government Finance Act 1988 the new hereditament is to be treated as complete on Wednesday 13th January 2010."

10. It then invites the recipient to confirm agreement with this date or provide written reasons for a different date; and points out that there is a right of appeal against the notice to this Tribunal if agreement is not reached.

11. The owners made no response. They did not, as requested, indicate their agreement, but nor did they express any disagreement or propose an alternative date, as happened with an earlier notice in 2008 which in consequence was withdrawn.

Validity of the notice

12. Mr Kolinsky for the appellants argues that the completion notice is invalid. It is, he says in an arresting phrase, either "ambiguous or unambiguously unlawful". I shall take each of his two grounds of attack separately.

(a) Ambiguity

13. He claims the wording is contradictory, uncertain and ambiguous so that the notice is invalid and ineffective. It is contradictory because the notice states that the building is complete but then says that it "is to be treated as complete on Wednesday 13th January 2010", some six days later. Thus, the first sentence implies a notice under para. 2(3) in respect of a building considered to be completed whereas the next sentence, in proposing a date six days later, implies a notice under para. 2(2) in respect of a building not completed but reasonably capable of completion within six days. This contradiction, he maintains, gives rise to ambiguity and uncertainty.

14. I see no merit in this argument. I do not think any recipient, or reader, of the notice would have any doubt as to its meaning.

15. Para. 1(3), which deals with buildings considered to be completed, says that "the authority shall propose as the completion day the day on which the notice is served". Para. 8(a) permits service by post. Section 7 of the Interpretation Act provides that "service is deemed . . . to have been effected at the time at which the letter would be delivered in the ordinary course of post".

16. The notice bears the date of January 7. The officer generating the notice cannot know for certain when it will be mailed out. It could be the 7th, the 8th or even later given that the weekend then ensued. How then can the officer know precisely when the notice will be delivered to the owner? It might be as early as the 8th or it might be several days later. There is no way of knowing. Is a completion notice to be struck down as invalid because the officer's prediction was out by a day or a few days? That would be absurd.

17. If no leeway were allowed, recipients would complain that their buildings were being entered into the list before the notice had been received; and if a few days' grace have been allowed, they will complain (as here) that either there has been a failure to comply with the statutory requirement or there is ambiguity.

18. To be fair to Mr Kolinsky, he does not rest his argument on the failure to comply, but on the ambiguity, as he puts it, of saying "this building is now complete" and then saying "is to be treated as complete" six days' later, creating (as he claims) doubt as to whether this is a notice in respect of a completed building or one requiring further work which can be completed within six days – at least one of which will have been lost while the notice was in the post and two of which are the weekend, leaving at most two days for any outstanding work to be identified, commissioned, undertaken and accomplished.

19. This interpretation is so unlikely that I merely restate the view expressed in para. 14 above that no recipient or reader of the notice would have been unclear or uncertain as to its purport.

20. I accept that a notice so ambiguous and uncertain that it does not inform the recipient of the basis upon which the power is being exercised will be regarded as a nullity: *Miller–Mead* v *Minister of Housing and Local Government* [1963] 2 QB 196 (CA); and also that a notice must "fairly convey to the recipient" its subject matter: *Henderson* v. *Liverpool MBC* [1980] RA 238, 242, *per* Woolf J. The notice here does not fall foul of either of these requirements or tests.

21. In my view, there is no contradiction, ambiguity or uncertainty; and there has been strict compliance with the statutory provisions. I do not believe any complaint can properly be made about the notice in respect of its wording or the dates, and it is significant that the owner at the time made no complaint. Moreover, the owner derived the modest (or perhaps nominal) benefit of not being entered into the list until January 13.

22. I would nevertheless advise billing authorities that disputes of this kind would be avoided if they used wording such as "The proposed completion date for this building, having regard to the likely date of receipt of this notice, is [5 working days following posting]" and if they included in the notice the precise statutory provision under which the notice was issued.

23. I would add this on the matter of dates. I would be very slow to strike down a notice because of minor discrepancies over dates even if it constituted an infringement of the statutory provisions, unless it could be shown that prejudice had been caused to the recipient. It is trite law that not every departure from a statutory procedural requirement will render the document a nullity. For example, a notice proposing a completion date slightly earlier than the notice itself is clearly not in accordance with the statutory provisions, but can be readily cured on appeal without resorting to the concept of invalidity, although a notice under para. 2(2) which proposed a completion date more than three months hence (unless out by just a few days, which can be treated as *de minimis*) would seem to me to be incurably flawed and incapable of being salvaged on an appeal to change the date.

(b) Illegality

24. Mr Kolinsky's second line of attack is that there was no proper or reasonable basis for the authority's view that the building was completed at the time it issued the notice and therefore it was not lawfully issued. It failed to ask itself the right question and take reasonable steps to acquaint itself with the relevant information: *Secretary of State for Education and Science* v. *Tameside BC* [1977] AC 1014, 1065, *per* Lord Diplock.

25. The statute imposes no particular duties or procedures on the authority before it issues a notice. The words it uses are as follows:

> "*If it comes to the notice of a billing authority* that a new building . . . has been completed" (para. 1(2)); and "Where at the time a completion notice is served *it appears to the authority* that the building . . . is completed" (para. 2(3)) [emphasis added].

26. Notices issued unlawfully because they infringe public law principles (as in *English Cities Fund (General Partners) Ltd and Standard Life Assurance Ltd* v. *Grace (VO) & Liverpool City Council* [2013] RA 215) will properly be struck down, but equally it cannot be right to impose on billing authorities specific duties of inquiry, investigation and inspection which Parliament has not seen fit to prescribe, especially where a straightforward and simple remedy is provided in the form of a timely appeal to this Tribunal.

27. I leave aside the situation where there is clear evidence of abuse or malice on the part of the authority or where it has acted capriciously or arbitrarily or where it has no honest belief which for some reason the appeal process could not repair – perhaps because the evidence only came to light much later – but it would not be desirable for this Tribunal whether on an appeal under para. 4 or following a proposal to pick over the precise steps taken by the authority and its officers before issuing the notice.

28. That is why I do not propose to rehearse the detailed evidence here. I accept that a definitive internal inspection of the property had not taken place immediately before the notice was served, as access was not possible, but I am nevertheless satisfied that the authority conducted itself with adequate diligence and propriety and reached an honest conclusion as to the condition of the property on proper grounds in the light of the information available to it. Any mistake on their part –

and it is not clear that, given the state of the law in 2010, any had been made – could have been resolved in this Tribunal, but the owners saw fit to mount no challenge and to accept the notice and its consequences.

29. I conclude that the notice was not tainted by illegality or unlawfulness and this challenge, too, must fail.

Result

30. The result of rejecting Mr Kolinsky's two lines of attack on the completion notice is that it escapes censure and emerges unscathed. That means that there is no need to rule on whether the appellant is able to challenge the validity of the notice in these proceedings.

31. Nevertheless,, I propose to offer my views. Mr Kolinsky may be asked to renew his efforts in the Upper Tribunal and a different view may be taken there of the validity of the notice. I do not flatter myself that the Upper Tribunal will be particularly interested in my thinking on this point but it might perhaps reinforce Ms Wigley's argument should she find herself cast in the same role she has performed here.

Locus standi

32. I have headed this section "*locus standi*" but it could also have been headed "capacity" or "jurisdiction" and I am not sure that any of these terms is entirely apt, but the issue is straightforward: can this appellant challenge the validity of the completion notice in these proceedings?

33. First, I wish to dispose of two matters that in my view are not relevant.

34. The fact that the appellant was not the owner on whom the notice was served is irrelevant. The new owner must, in my judgment, have precisely the same capacity or *locus* to challenge the notice as the original owner, but certainly no greater capacity to do so. If Standard Life could have brought these proceedings at this time had it remained the owner, so can the new owner. I cannot see how the change in ownerships can diminish the right to challenge, but equally there can be no question of the clock starting to run again from the time this appellant acquired the building. They cannot be put in any better position than the original owner.

35. The other matter that seems to me to be irrelevant is the power of the billing authority to withdraw a completion notice. Mr Kolinsky appears to place considerable weight on the argument that there is no limit in time on the authority's ability to withdraw a notice, thus (if I have understood him correctly) investing the Tribunal with a continuing jurisdiction.

36. Unfortunately for Mr Kolinsky, in the period between developing his thoughts (and drafting his skeleton argument) and the hearing, I issued my decision in *Derwent Holdings Ltd* v. *Whitehead (VO) & Preston City Council*, Appeal No. 234522321829/538N10, 20 January 2015.

37. I expressed there a different view about a billing authority's power to withdraw a completion notice. Mr Kolinsky sought to persuade me I was wrong in limiting the power as severely as I did, relying heavily on para. 7(2) of Sched. 4A to the 1988 Act.

38. Para. 7(2) requires the billing authority to inform the VO if it withdraws a completion notice. He says that, in view of sub-paras. (1) and (3), sub-para. (2) would be unnecessary if the power to withdraw were as limited as I held it to be in *Derwent Holdings*.

39. Para. 7(1) requires the authority to supply the VO with a copy of any completion notice and para. 7(3) requires it to inform the VO of any agreement with the owner to alter the completion date in a completion notice, which has the effect of withdrawing the notice (para. 3(2)).

40. I do not agree that on my reading of the legislation as enunciated in *Derwent Holdings* para. 7(2) serves no purpose. *Derwent Holdings* acknowledges that a completion notice may be withdrawn, other than by issuing a new notice or by written agreement, up until the completion day, even without a new notice or agreement. That is the eventuality for which, in my view, para. 7(2) caters.

41. I am not troubled by the limited circumstances in which withdrawal is permitted. In other circumstances, justice can prevail by way of an appeal to this Tribunal and, where appropriate, a consent order.

42. Fortunately for Mr Kolinsky, although I am not persuaded by his argument, I do not think it matters. Our jurisdiction in such a matter is, in my judgment, unrelated to the billing authority's power to withdraw a notice. I cannot see how it makes any difference or why it should.

43. Returning then to the question posed in para. 32 above, I am satisfied that the appellants moved with reasonable dispatch following their acquisition of the building, but by the time Standard Life transferred ownership it was already too late.

44. The *Prudential* decision – holding that invalidity could be raised before this Tribunal other than on an appeal under para. 4 - became widely available in October 2011, some four months before the transfer of ownership.

45. An appeal against a completion notice must be brought within 28 days: see para. 7 above. A challenge by way of a proposal must be brought as soon as possible: *Friends Life Co. Ltd* v. *Alexander (VO) and Huntingdonshire District Council* [2012] RA 263, 269, para. 20 (VTE). An application for judicial review must be brought promptly and in any event within three months. All these provisions point ineluctably to the need for certainty and finality in matters of this kind.

46. Mr Kolinsky says that in any clash between justice and finality, justice should triumph. I do not agree.

47. Not only is finality an essential attribute of justice and fairness – there are, after all, other interests involved apart from the appellants' – but the whole point of the principle of finality is that it trumps the interests of the party or the merits of its

case. It overrides those considerations in the service of other interests – public administration, clarity, the rating list, public revenue and so on.

48. This challenge was initiated over two years after the notice was issued and now falls to be determined five years after it was served.

49. I have no hesitation in expressing the view that it would be contrary to the interests of justice and the public interest to allow the appellants to mount this challenge. It is essential that completion notices and entries in the rating list consequent on such notices should be accorded finality subject only to the normal procedures. On the appellants' argument, the potential for calling completion notices into question long into the future would be great. Certainty and finality would be lost. That would entail most unfortunate consequences.

Decision

50. The appeal is dismissed.

Acknowledgments

51. This was doubtless Mr Kolinsky's last appearance in this Tribunal before joining the ranks of Her Majesty's Counsel, on which he is to be warmly congratulated. He argued with his customary verve and panache, though on this occasion none of his points prevailed. Ms Wigley proved a doughty opponent. I am greatly indebted to both counsel.

President

Registrar
25 February 2015