THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; accuracy of the rateable values in the 2010 Rating List; whether the three hereditaments were to be treated as contiguous and entered as a single hereditament; Section 64(3ZD); Local Government Finance Act 1988; Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; Woolway (VO) v Mazars LLP [2015] UKSC 53; Appeals dismissed.

Re: Land adj Unit 5 Cork Tree Way, Hall Lane, London E4 8JA, Rear pt Unit 5 Cork Tree, Hall Lane, London and Unit 6 Cork Tree Way, Hall Lane, London

APPEAL NUMBERS : 593025030410/538N10, 593026374500/053N10 and 593025030440/538N10

BETWEEN:	Group 1 Automotive	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mr M Heslop-Mullens (Senior Member)

CLERK: Mrs S Morgan

REMOTE HEARING: Thursday 25 February 2021

PARTIES PRESENT: Mr W Penfold – Appellant's representative

Mrs N Joshi – Valuation Officer's representative

Summary of decision(s)

1. The appeals were dismissed.

Introduction

2. These appeals arose following three proposals made on 5 February 2015, by Autohouse Associates on behalf of the appellant occupier, Group 1 Automotive. The grounds for the proposals were that the rateable values shown in the list by reason of an alteration made by the Valuation Officer on 9 December 2014 are incorrect. The assessments are both incorrect and excessive and the Valuation Officer Notice dated 9 December 2014 conflicts with and ignores The Valuation Tribunal for England (VTE) decisions made on 16 February 2010 and 9 December 2014. The split of previously merged assessments is both wrong in law and contrary to Regulations in that it seeks to overturn previous agreements made with the Valuation Office Agency (VOA) and to overturn decisions made by the VTE and backdate to 1/4/2010. The proper course of action is for the VOA to

appeal to the Upper Tribunal. These appeals seek a reinstatement of the merged assessment ref appeal no. 593024060317/053N10 at RV £225,000 determined by the VTE.

3. At the date of the proposals, the existing assessments were as follows:

   Car Park and Premises – Land adj Unit 5, Cork Tree Way, Hall Lane, London E4 8JA – Rateable Value £4,400 with effect from 1 April 2010.
   Workshop and Premises - Rear pt Unit 5, Cork Tree, Hall Lane, London – Rateable value £78,500 with effect from 1 April 2010 and
   Car Showroom and Premises - Unit 6, Cork Tree Way, Hall Lane, London – Rateable value £170,000 with effect from 1 April 2010.

4. The President of VTE is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

5. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

6. In accordance with the tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

7. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by me before coming to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

8. The issue in dispute is whether or not the three hereditaments should be merged to form one assessment.

Evidence and submissions

9. Both parties provided written and oral submissions in support of their respective cases. The appellant's representative submitted a bundle which included his statement of case, a site plan, a rebuttal statement, VOA summary valuations, the VTE decision dated 5 January 2015 and a copy of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018.

10. The respondent Valuation Officer submitted a bundle which contained his skeleton arguments, appeal history, agreed and disputed issues, details of the appeal properties, copies of the proposals, aerial images, location plans and grounds for resisting the appeals.

11. Land adj. Unit 5 Cork Tree Way, Hall Lane, London was a car park and premises occupied by Audi for additional parking and was approximately 150 – 180 metres away from the Audi showroom at Unit 6.

12. Rear pt Unit 5, Cork Tree Way, Hall Lane, London comprises the rear part of a purpose built 1989 industrial unit situated on this industrial estate and is used as a service centre by Audi. The front part of this unit is separately assessed and occupied by another company.

13. Unit 6 Cork Tree Way, Hall Lane, London which includes what was Unit 20 Chingford Industrial Centre, London is a showroom and premises occupied by Audi and is located close to the A406 North Circular Road. This assessment includes a 5% allowance for fragmentation.

14. All three hereditaments are situated at various locations in Cork Tree Way, a cul-de-sac off Hall Lane, and there is a service/public access road dividing each of the units.

Decision and reasons

15. There was no dispute regarding the tone of value or the survey details. The main issue was whether the three hereditaments should be re-merged to form one assessment.

16. I noted that there had been an earlier tribunal hearing on 9 December 2014 where “the Valuation Officer had failed to provide a statement of case within the time frame required by the Tribunal’s standard direction issued in accordance with Practice Statement A7-1. As he had not provided a statement of case by the due date, the Valuation Officer was automatically barred from taking part in the proceedings”.

17. The issues in dispute on that occasion concerned the level of value of the combined units in relation to the areas, relativities and an end allowance of 15% for fragmentation of the site and not whether there should be separate assessments for these hereditaments. The outcome was that as the disputed issues had been agreed on the previous 2005 list, and with the benefit of three joint inspections, it was reasonable to apply the same areas, relativities and end allowance for the 2010 list, which produced the revised valuation of £225,000 RV.

18. I also note from that decision that an officer from the VOA was present at the hearing, but he was not allowed to participate. However, it appears that on the same day that the appeal was being heard by the VTE, the VOA split the single assessment into three separate assessments on 9 December 2014 with effect from 1 April 2010 and in doing so, failed to alter the list to give effect to the VTE orders dated 5 January 2015. The appellant’s representative believed that the three hereditaments should be merged at £225,000 RV, as determined by the VTE on 9 December 2014 with effect from 1 April 2010.

19. Following a later list alteration and adopting the same effective date, the Valuation Office Agency deleted the assessments and created the three new separate assessments.

20. It does cause me some concern that the VOA has disregarded an Order made by the VTE. However, in relation to the appeals before me, there does not appear to be an earlier VTE decision that held that the three properties should be jointly assessed. The previous VTE decision only looked at the level of value. Therefore, the only issue for me to determine was whether the appellant's property currently being shown in the rating list as 3 hereditaments, should be shown as one property.

21. The appellant's representative explained that originally the hereditaments comprised four separate units of accommodation on four separate leases dated September 2006 for a term of 10 years. The combined rents added up to £228,530 per annum. Two of the hereditaments were treated as being contiguous and it was agreed that those two hereditaments Unit 6 Cork Tree Way and Unit 20 Chingford Industrial Centre should be treated as one. This left the three hereditaments which form the appeals before the Tribunal.

22. In looking at the plan of the industrial estate, it was accepted by the appellant's representative that there was a gated service road into the compound of Unit 5. However, he contended that the car spaces at the side of this building were used by the appellant company linking all the hereditaments together. It was also established that the occupiers of the front part of Unit 5 had car spaces around their part of the site.

23. The appellant's representative relied on sections covered by Chapter 25 of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. He believed that the subject properties met the conditions of contiguity as they had a strong functional connection and were dependant on each other to provide all the services expected from a franchised car dealership. He contended that the business would not operate properly without each of the hereditaments playing their part.

1. Hereditaments occupied or owned by the same person

(1) In part 3 of the Local Government Finance Act 1988 (non-domestic rating), in section 64 (hereditaments), after subsection (3) insert -

"(3ZA) In relation to England, where –
(a) Two or more hereditaments (whether in the same building or otherwise) are occupied by the same person,
(b) The hereditaments meet the contiguity condition (see subsection(3ZC), and
(c) None of the hereditaments is used for a purpose which is wholly different from the purpose for which any of the other hereditaments is used,
the hereditaments shall be treated as one hereditament…..

(3ZC) The hereditaments meet the contiguity condition if –
(a) at least two of the hereditaments are contiguous, and
(b) where not all of the hereditaments are contiguous with each other –
(1) one or more of the hereditaments is contiguous with one or more of the hereditaments falling within paragraph (a), and
(2) each of the remaining hereditaments (if any) is contiguous with at least one hereditament that falls within sub-paragraph (1) or this sub-paragraph.

(3ZD) For the purposes of subsection (3ZC) two hereditaments are contiguous if –

(a) some or all of a wall, fence or other means of enclosure of one hereditament forms all or part of a wall, fence or other means of enclosure of the other hereditament, or

(b) the hereditaments are on consecutive storeys of a building and some or all of the floor of one hereditament lies directly above all or part of the ceiling of the other hereditament,

and hereditaments occupied or owned by the same person are not prevented from being contiguous under paragraph (a) or (b) merely because there is a space between them that is not occupied or owned by that person".

24. The appellants representative stated that the above Act went someway in overturning the Supreme Court Decision in *Woolway (VO) v Mazars LLP* [2015] UKSC 53 and makes provision, where two or more hereditaments occupied or owned by the same person must meet certain conditions as to contiguity, for those hereditaments to be treated as one hereditament. He argued, that with reference to 3ZD of the above Act, that hereditaments occupied or owned by the same person are not prevented from being contiguous under paragraph (a) or (b) merely because there is a space between them that is not occupied or owned by that person. On that basis, he contended that the three hereditaments formed one assessment and that the previous assessment of £225,000 RV with effect from 1 April 2010, as determined by a previous VTE panel on 9 December 2014, should be reinstated.

25. The respondent contended that the identification of the hereditaments had been incorrect for some time and that the correct identification of the properties must be established before the valuation can be examined. Hence, the assessment being deleted following the hearing in 2014, to form the three separate entries.

26. The respondent was of the opinion that the assessments should not be merged and that the three existing assessments were correct. Having viewed their own plans and inspected the site, the respondent contended that there should be three separate entries in the rating list. Furthermore, following the *Mazars* route, the three hereditaments that had been identified on the plans, did not have a strong functional connection and that geographically these units could be located anywhere. Furthermore, they were not contiguous to one another, as there was a communal access surrounding each of the hereditaments. As such, the three hereditaments could not be ringfenced as one site with one assessment. Section 64(3ZD) was not met. The respondent sought a dismissal of the appeals.

27. In support of her argument, the respondent referred to *J Evans (VO) v RLM Packaging Ltd* [2003], where it was held that two separate hereditaments divided by a public highway should be assessed separately.

28. Having examined the evidence presented by the parties, I turned to the *Mazars* judgment first.

Lord Sumption identified the test to follow in respect of whether more than one hereditament existed at paragraph 12 of his reasoned decision in *Mazars.* He states "I derive from these decisions (reviewing earlier case law) three broad principles relevant to cases like this one where the question is whether distinct spaces under common occupation form a single hereditament.

a. The primary test is a geographical one. It is based on a visual or cartographic (map) test. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed.

b. Where the two principle spaces are geographically distinct a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of one is necessary to the effectual enjoyment of the other. This point may commonly be tested by asking whether the two sections could reasonably be let separately.

c. The test of whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects (the necessary independence of the separate parts). An example given is the interdependence found between a tourist attraction in a castle and the associated gift shop in the castle grounds.

Lord Neuberger expressed the view that "Where premises consist of two self-contained pieces of property, it would, in my view require relatively exceptional facts before they could be treated as a single hereditament."

If there was any doubt that it would be a rare occurrence that two separate hereditaments would be merged in to one the Supreme Court observed:

" *Furthermore, closer consideration suggests that, particularly in modern buildings, two consecutive floors are not actually contiguous to each other: there will often be a void between them, which contains servicing equipment and is in the possession and occupation of the landlord of the building. Absent a communicating internal staircase or lift, passing through the void, two consecutive floors in the same building would be physically separated in much the same way as two non-consecutive floors."*

29. In applying the Supreme Court's judgement in *Mazars* to the facts in the appeals before me, I find that there are three separate hereditaments, which are not capable of being merged as they are not contiguous and are separated by public spaces. They therefore fail the geographic primary test. Ordinarily that would have been the beginning and the end of these appeals. However, the appellant's representative argued that the legislation that was enacted to reverse some of the effects of *Mazars* supported their case for a merger.

30. I therefore examined the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 to see if, as contended by the appellant's representative, this legislation did assist them. The Act provides, in relation to hereditaments which are occupied, that two or more (whether in the same building or otherwise) are to be treated as one hereditament where three

conditions are satisfied; the hereditaments must be occupied by the same person; they must meet the contiguity condition in section 64(3ZC); and none of the hereditaments must be used for a purpose which is wholly different from the purpose for which any other hereditaments are used. Section 64(3ZD) defines contiguity as two occupied hereditaments will be contiguous if some or all of a wall, fence or other means of enclosure forms all or part of the other hereditament.

31. Looking at the definition of contiguity in section 64(3ZD), I found that the three units were not contiguous as each hereditament is surrounded by a service/public access road. There is no internal access between the rear part of Unit 5 and that of Unit 6 or to the land adj Unit 5. For them to be contiguous some or all of a wall fence or other means of enclosure would need to form all or part of the other hereditament but that is not the case here. The three hereditaments are located at various points in Cork Tree Way and are in the same occupation. Access to each hereditament is via a service/public road. Although the land adj Unit 5 and the rear part of Unit 5 form part of the compound in which Unit 5 is situated, the access to Unit 5 is shared with the occupiers of the front part of the Unit. In other words, the appellant is not in rateable occupation of this land. This land did not constitute ‘space’ for the purposes of section 64(3ZC).

32. Furthermore, it was unclear from the plans which car spaces abutting Unit 5 were occupied by the appellant company and which were occupied by the occupiers of the front part of Unit 5. Therefore, it was difficult for me to determine which car spaces alongside Unit 5 were in the demise of the appellant company. In any event, there was a communal access road surrounding the two hereditaments occupied by the appellant company within the compound of Unit 5. In relation to Unit 6, this sat outside the compound of Unit 5 nearer to the entrance of Cork Tree Way.

33. In view of the foregoing, the statutory provisions in the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 do not assist the appellant and therefore I must dismiss the appeals as the *Mazars* judgment is binding and must be followed.

Date: Wednesday 24 March 2021

Appeal numbers: 593025030410/538N10, 593026374500/053N10 and

593025030440/538N10