THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating appeal; Validity issue; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2268; Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 SI 2018/1193; Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; Offices and Premises; units already merged and were found not to be affected by the Supreme Court's judgment of Woolway v *Mazars* [2015] UKSC; *Proposal held invalid.*

RE: Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands DY1 1EY

Russell House, 1 The Inhedge, Dudley, West Midlands DY1 1RR

APPEAL NUMBER: 461533274218/285N10

BETWEEN:	Talbots Law Ltd	Appellant
	and	
	Mr D Virk	
	(Valuation Officer)	Respondent

PANEL:	Mr W Read (Senior Member)
CLERK:	Mrs Rachel James IRRV (Hons)
REMOTE HEARING 3:	Friday 26 February 2021
APPEARANCES:	Mr K Rabbette of Paul Rabbette Ltd (on behalf of the Appellant) Mrs C Bower (Valuation Officer's Representative)

Summary of decision

1. The proposal was found to have been invalidly made.

Introduction

2. The President of the Valuation Tribunal for England (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.

3. 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.

4. This appeal has been brought in respect of the following: The proposal, submitted on 4 February 2019 stated the following grounds, details and reasons:

   'The existing number of entries merged together with effect from 16 January 2013.

   The properties should be shown as one or more different assessments.

   The above two hereditaments were occupied by the ratepayer on 16 January 2013. They are used for the same purpose and they meet the contiguity condition as defined in the Rating (Property in Common Occupation) and Council Tax (Exempt Dwellings) Act 2018. As such they should be merged to form one hereditament with effect from 16 January 2013.'

5. The proposal requested that the assessments placed on the two offices be merged into one with effect from 16 January 2013. An earlier proposal had been lodged on 30 March 2017, requesting a merger of the two hereditaments. The merger had been granted. However, due to backdating limitations contained within the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015, the merged assessment of £45,750 RV was restricted to 1 April 2015.

6. This appeal related to office premises occupied by Talbots Law Ltd in two adjoining buildings, Russell House and Inhedge House, with the appellant occupying both hereditaments in their entirety from 16 January 2013. The buildings were of a reinforced concrete frame construction with red brick facades, extending from ground to third floors beneath a pitched tiled roof. There was a difference in the floor levels between the buildings of approximately half a storey across the ground floor level through to the roof levels. There was no internal communication between the two hereditaments. To the front of the hereditaments was a landscaped area that was subject to a line of mature trees.

7. There were currently the following two entries in the Rating List:

   i) Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands DY1 1EY – Office and Premises at £28,000 Rateable Value, with effect from 1 April 2010; and
   ii) Russell House, 1 The Inhedge, Dudley, West Midlands DY1 1RR – Office and Premises at £27,500 Rateable Value, with effect from 1 April 2010.

8. As permitted within the Tribunal's Business Arrangements, due to unforeseen circumstances, I heard this appeal alone.

9. As Mr Rabbette was appearing on behalf of the appellant, as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

10. It was established that Mr Rabbette was instructed under a retained fee arrangement. He also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

11. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the arguments and submissions were fully considered by myself when coming to a decision. Consequently, the absence of a reference to any statement, argument or submission, should not be construed as it having been overlooked.

Preliminary issue

12. The preliminary issue in dispute was the validity of the proposal.

Arguments and submissions

13. Mr Rabbette had provided a bundle of evidence, which comprised his written statement, a photograph, details and layout plans of the appealed properties, an extract from the lease, his proposed valuation for the merged properties and a copy of an email from the Civil Servant responsible for drafting the 2018 regulations.

14. Mr Rabbette considered that the proposal before me was a 'relevant proposal' under regulation 4(1)(k) of the 2009 regulation; and that the two hereditaments should not have been merged into one hereditament prior to the enactment of the PICO Act. This proved that both limbs of the Valuation Officer's argument were inaccurate and the subject appeal was valid.

15. Mr Rabbette also referred me to the Upper Tribunal judgment of *Libra Texiles Limited T/A Boundary Mills and Centric Assets Limited* v *(Valuation Officers)* [2020] UKUT 0237 (LC).

16. Mrs Bower provided a copy of the Valuation Officer's evidence bundle, which comprised a written statement, layout plans, appeal history, the current valuations, a copy of the proposal, a location plan, assessment evidence and a copy of Appendix 6 to the Rating Manual Section 7: challenges.

17. Mrs Bower considered that the subject proposal was not a 'relevant proposal'. Having regard to the wording of the 2018 Act. Had the appellant lodged a valid proposal before the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015, the Valuation Officer would have agreed to 'merge' the two list entries from the earlier effective date. Accordingly, she asked me to hold the proposal invalid.

Decision and reasons

18. The proposal before me had been lodged on the basis of regulation 4(1)(k) of the 2009 regulations, namely that:

    > ‘property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments.”

19. I acknowledge that Talbots Law Ltd had occupied both Inhedge House and Russell House since 16 January 2013. An earlier proposal dated 30 March 2017 had sought the merger of the two units. The merger was granted; however, due to effective date restrictions in accordance with the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015, the merger could only be backdated to 1 April 2015. The proposal before me sought that the offices be merged with effect from the earlier date of 16 January 2013.

20. The Valuation Officer’s stance is that the proposal is invalid, the proposal was served too late, the 2010 Rating List is now closed and that the proposal was not a ‘relevant proposal’ within the meaning of the 2018 Regulations. The appellant’s case was that the proposal was a ‘relevant proposal’ as the two office units had been incorrectly merged on the earlier proposal.

21. The Supreme Court’s judgment of *Woolway* v *Mazars* [2015] UKSC 53 was a leading case. In *Woolway* v *Mazars*, it was held that contiguous property in common occupation would not be constitute a single hereditament unless they had direct intercommunication. Mr Rabbette contended that to access Russell House from Inhedge House one had to cross a public pavement and this fact should have been fatal to the ratepayer’s earlier proposal that sought a merger.

22. The Rating (Property in Common Occupation) and Council Tax Empty Dwellings Act 2018 (PICO Act) was intended to reverse the impact of the Supreme Court’s decision, so that where two properties were occupied by the same person, or company, and are contiguous, provided they are not used for entirely different purposes, they should now be valued as a single assessment. The PICO Act amended Section 64 of the Local Government Finance Act 1988 to define an additional type of hereditament established by subsection (3) 3ZA-3ZD as follows:-

    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.

(3ZB) In relation to England, where—

(a) two or more hereditaments (whether in the same building or otherwise) are—
  (i) owned by the same person, and
  (ii) unoccupied,

(b) the hereditaments—
  (i) ceased to be occupied on the same day, and
  (ii) have each remained unoccupied since that day,

(c) immediately before that day, the hereditaments were, or formed part of, a single hereditament by virtue of subsection (3ZA), and

(d) the hereditaments meet the contiguity condition (see subsection (3ZC)),

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—
  (i) one or more of the other hereditaments is contiguous with one or more of the hereditaments falling within paragraph (a), and
  (ii) each of the remaining hereditaments (if any) is contiguous with at least one hereditament that falls within sub-paragraph (i) 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.

23. I had regard to the following amendments introduced by The Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfer to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 SI No 2018/1193. These regulations allowed the making of 2010 Rating List proposals on the grounds of regulation 4(1)(k) of the 2009 regulations in very limited circumstances:

4. Regulation 4 (circumstances in which proposals may be made) has effect as if—

(a) in paragraph (2) after "a proposal" there were inserted "(other than a relevant proposal)";

(b) after paragraph (2) there were inserted—

"(2A) A relevant proposal may be made by a person who—

(a) has reason to believe that the ground set out in paragraph (1)(k) exists; and

(b) has reason to believe that the ground relates to any time during which the person was a ratepayer in relation to that hereditament."; and

(c) after paragraph (3)(a) there were inserted—

(aa) by reference to more than one ground where the ground set out in paragraph (1)(k) is being relied on;".

"relevant proposal" means a proposal—
made by a ratepayer on the ground in regulation 4(1)(k) of the 2009 Regulations; which can only be made on that ground as a result of the coming into force of section 64(3ZA) or (3ZB) of the Local Government Finance Act 1988.

24. I considered the appellant's argument that the earlier merger with effect from 1 April 2015 had been made in error. Mr Rabbette contended that Inhedge House and Russell House should not have been merged under *Mazars* as to access one unit from the other you had to use a public pavement, there being no direct interconnection between the two office units.

25. However, I find that this contradicted the earlier statement made by Paul Rabbette Ltd when agreeing the merger on the earlier proposal, when it was stated in an email dated 2 January 2017:

> 'regardless of whether there is interconnection within the properties, the offices and car park are geographically and cartographically contiguous with each other. My client is also in exclusive possession of the land in-between each building and the car park. They do not have to cross into common parts to access the other parts of their property. The demise includes the land surrounding the office, therefore, you can access the offices without stepping out of the demised premises.'

26. When questioned on this email, Mr Rabbette explained that the earlier merger had been agreed by one of his former colleagues, who he believed had been mistaken on the facts.

27. Having studied the layout plans and photographs, I note that there is a landscaped area to the front of the premises that is in the appellant's demise. Furthermore, there is a footpath in the demised land that runs to the side of the buildings and enables access from one building to the other without going outside of the demised area. This was evidenced by the lease plans. I find that the whole assessment could have been ringfenced since 16 January 2013 and had been one geographic unit since that date.

28. Mr Rabbette referred to an air conditioning unit attached to the outside of Alexandra House, which was an adjoining building to the rear of Inhedge House. He considered the presence of the air conditioning unit created a common area

under the paramount control of a third party. This meant that when you accessed one office unit from the other at the rear, you had to cross the area under paramount control of the third party. Accordingly, the earlier merger had been made in error as there had been no intercommunication within the demised space. Mrs Bower disputed this and referred to the lease plan which had not identified the area in question to be under separate control. She added that the air conditioning unit was situated 1.5 metres from the ground and could be accessed for maintenance purposes by way of an agreement or where necessary by Court Order under the Access to Neighbouring Land Act 1992. After having regard to the lease plan, I am not convinced that the area in question was in the paramount control of a third party.

29. Having regard to the above conclusions, I am content that the two office units had been correctly merged with effect from 1 April 2015. I find that the two offices are one hereditament and had been since they had been in common occupation from 16 January 2013. There was intercommunication between the two units within the demised space. I find that the situation here was not affected by *Mazars*, as such, the new provisions enacted post-*Mazars* in order to reverse the effects of *Mazars* have no effect in case before me. The new provisions allowed certain ratepayers that had been affected by *Mazars* to make late proposals to alter their 2010 Rating List assessments, not for those unaffected to have a second bite of the cherry.

30. A proposal had been successfully made before the new provisions were enacted. As such the proposal before me is not one that can only be made as a result of the coming into force of Section 64(3ZA)(2) or (3ZB) and could not be considered to be a 'relevant proposal'.

31. Consequently, I find the proposal before me invalid, as other than for a proposal directly affected by the PICO Act, any proposals made on the grounds of regulation 4(1)(k) were required to have been lodged prior to 1 April 2017 and prior to 1 April 2015 for the earlier effective date.

Date: 17 March 2021
Appeal Number: 461533274218/285N10