THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating appeal; Validity issue; Non-Domestic (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; Roberts (Valuation Officer) v *Backhouse Jones Limited* [2020] UKUT 0038 (LC) RA/23/2019; *Dance Studio and Premises, together with associated Car Parking Spaces: Proposal valid/Appeal Dismissed.*

RE: Hazelwood Dance Studio, Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

Car Spaces 17-22 Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

Car Space 27 Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

Car Spaces 29 – 30 Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

APPEAL NUMBER: 354533329739/285N10

BETWEEN:	Miss Hazel Jackman	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mrs X Holt (Senior Member)
Mr S Hooberman

CLERK: Mrs Rachel James

REMOTE HEARING 1: Wednesday 13 October 2021

APPEARANCES: Miss H Jackman (Appellant)
Mr M Green (Valuation Officer's Representative)

Introduction

1. 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.

2. 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.

3. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. The panel was satisfied that the parties were able to fully participate in the hearing.

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

5. This appeal has been brought in respect of the following: a proposal submitted on 4 March 2019, was on the grounds that:

   > 'Legislation has now been passed in connection with the Mazars v Woolway case so I believe my parking spaces should now be included in my current rateable value. This is how I have always been assessed prior to Mazars.'

6. The proposal requested that the assessments placed on the dance studio and car parking spaces be merged into one, with effect from 1 April 2015.

7. The appeal property was a dance studio known as 'Hazelwood Dance Studio'. Within the lease for the appeal property were 9 dedicated parking spaces, which were located to the front of the appeal property within the business centre car park.

8. There were currently the following four entries in the Rating List:

   i) Hazelwood Dance Studio – Dance School and Premises at £8,700 Rateable Value, with effect from 1 April 2015;
   ii) Car Spaces 17-22 – Car Parking Spaces at £2,400 Rateable Value, with effect from 1 April 2015;
   iii) Car Space 27 – Car Parking Space at £400 Rateable Value, with effect from 1 April 2015; and
   iv) Car Spaces 29-30 – Car Parking Spaces at £800 Rateable Value, with effect from 1 April 2015.

9. At a previous tribunal hearing held on 10 September 2019, the Valuation Officer had challenged the validity of the proposal. An interim decision had been issued on

30 September 2019, in which the proposal was held valid (a copy of the interim decision is attached).

10. Prior to the current hearing, the clerk had emailed both parties a copy of the interim decision, together with a copy of the Upper Tribunal judgment in relation to *Roberts (Valuation Officer)* v *Backhouse Jones Limited* [2020] UKUT 0038 (LC) RA/23/2019.

Issue in dispute

11. The issue to be determined was whether or not the assessment for the dance studio should be merged with that of the nine car parking spaces, with effect from 1 April 2015.

Arguments and submissions

12. The panel had been provided with Statements of Case from both parties.

13. In presenting her case, Miss Jackman highlighted that there was one business in operation and therefore, there should just be one rating assessment. She was unable to separately let out the car parking spaces. She added that the local council had stipulated that, for the safety of the children attending the dance school, the dance school was required to have nine car parking spaces. She considered that the car parking spaces were essential for the functional use of the dance studio.

14. Miss Jackman accepted that she did not own the common land between the car parking spaces and the dance studio. However, the dance studio and the car parking spaces were very closely linked. One could not operate without the other. To conclude, Miss Jackman considered that the rate applied to the car parking spaces of £400/space was excessive. If the panel was unable to merge the four assessments into one, then she sought a reduction in the rate applied to £1/space.

15. Mr Green explained that the car parking spaces were not contiguous to the dance studio. He referred to the Upper Tribunal judgment in relation to *Backhouse Jones*, which defined the meaning of 'space' within section 64 (3ZD) of The Local Government Finance Act 1988, which had been inserted by The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. The definition of space was not as far reaching as to incorporate circumstances as the one before the panel. Mr Green considered that the car parking spaces could reasonably be let separately from the dance studio. He reminded the panel that the appeal property had to be valued 'vacant and to let'. Having regard to the evidence he had presented, Mr Green sought dismissal of the appeal.

Decision and reasons

16. The panel acknowledged that the effect of the Supreme Court's judgment of *Woolway* v *Mazars* [2015] UKSC 53 meant that Hazelwood Dance Studios and the car parking spaces would constitute separate hereditaments as they were not contiguous. The fact that the dance studio and car parking spaces were physically separated by a common pavement and shrubbery would have been fatal to the ratepayer's case for a merger prior to the *Mazars* reversal legislation. The Rating (Property in Common Occupation) and Council Tax Empty Dwellings Act 2018 (2018 Act) was intended to reverse the impact of the Supreme Court's decision, so that, where two or more properties are 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.

17. The panel noted that the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (The 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.

18 The panel had regard to the Upper Tribunal judgment in respect of *Backhouse Jones.* The issue in this appeal concerned the meaning of section 64 in its amended form. Specifically, the issue was whether two office suites, in the occupation of the same ratepayer, which would be contiguous but for a communal fire escape corridor which separated them, should be entered in the non-domestic rating list as a single hereditament.

19 The Valuation Tribunal panel hearing the *Backhouse Jones* appeal noted that the 'space' between Suite 10 and Suite 8 and 9 was a fire corridor; had there been no requirement for the fire corridor, then there would have been total interconnection between the two suites. That panel held that the fire corridor fell within the definition of the term 'space' which, in accordance with the 2018 Act, did not prevent the two suites from being contiguous. Accordingly, the Valuation Tribunal issued a decision merging the two separate entries into one. That decision was appealed to the Upper Tribunal by the Valuation Officer.

20 The panel in the current appeal paid close attention to the Upper Tribunal's judgment in respect of *Backhouse Jones*. The judgment considered what it called the 'space proviso' within s64(3ZD). At paragraph 37, it stated:

> '37. It is clear from the structure of the subsection that the space proviso is not intended to be an alternative to the conditions in paragraphs (a) or (b), but is provided to clarify or qualify their application. The direction that two spaces are "not prevented from being contiguous … merely because" they are separated by a space simply allows one difficulty to be overlooked in cases where the qualifying condition would otherwise be met. To be contiguous two hereditaments must therefore satisfy the requirements of either paragraph (a) or paragraph (b), but those requirements will not be prevented from being satisfied by the presence of a space between the hereditaments which is not in the same occupation. Once it is recognised that the requirement of separation by the same wall, or by a common floor and ceiling, remains an essential characteristic of contiguity, it becomes clear that the space to which the proviso refers is space within the wall or ceiling, forming part of the same enclosing structure which surrounds both hereditaments.'

21 Having considered the *Backhouse Jones* judgment, and in particular to paragraph 37, the panel did not consider that the common pathway and shrubbery that separated the dance studio from the car parking spaces fell within the definition of the space proviso. The space proviso was solely intended to cover a void or service compartment between two walls or ceilings and floors on adjacent levels.

22 Whilst the panel had determined that the dance studios and the car parking spaces had failed the contiguity test, Miss Jackman had referred the panel to the functional test, explaining that the dance studio could not operate without the nine car parking spaces. On this point, the panel had regard to paragraph 9 of the *Backhouse Jones* judgment, which referred back to the Supreme Court judgment in *Mazars*:

> ‘9. The question for the Supreme Court was whether a hereditament should be identified by purely geographical factors, depending simply on whether the premises said to be a hereditament constituted a single unit on a plan, or whether functional considerations should also come into play. Rating cases in Scotland established that the primary test was geographical, but that a functional test could be relevant in certain circumstances. Lord Sumption (with whom the other members of the Court all agreed) summarised the principles which emerged from the Scottish case at [12]. He endorsed and explained the use of a geographical test as the primary means of identifying a hereditament, subject to limited exceptions, as follows:
>
> > Firstly, the primary test is, as I have said geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second Bank of Scotland case illustrates. 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 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. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Third, the question 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 application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law. They are also rationally founded on the nature of a tax on individual properties”.

23 Having regard to the above, the panel acknowledged that two geographically distant hereditaments could be merged if they passed the ‘functional test’. This test involved considering if one part was necessary to the effectual enjoyment of the other; a question to be considered was could one part be separately let.

24 The local council had stipulated that there was a requirement for the Hazelwood Dance Studio to have nine car parking spaces for the safety of the children who use the premises. However, the panel upheld Mr Green’s point that the appeal property had to be valued ‘vacant and to let’ and not as a particular dance studio for children. The panel heard how the nearby doctor’s surgery had been interested in occupying a few of the dance studio’s car parking spaces whilst the Covid vaccination programme was underway. Having considered the functionality test, the panel determined that the car spaces and the studio could

potentially be separately let. Accordingly, the panel was not satisfied the functional test had been passed.

25 Finally, the panel addressed Miss Jackman's request to reduce the rate applied to the car parking spaces from £400/space to a nominal value, should it be decided that the assessments could not be merged. When considering the proposal before it, the only jurisdiction the panel had was to consider the merger of the assessments. The panel could not go onto address the correct rate to be applied to the car parking spaces, which was an issue that should have been raised on a separate proposal.

26 Whilst the panel had empathy for Miss Jackman's case, after having regard to the above findings, the panel confirmed the current four separate entries in the 2010 Rating List. Accordingly, the appeal was dismissed.

Date: 1 November 2021
Appeal Number: 354533329739/285N10

Appendix 1 – Interim decision

VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating appeal; Validity issue; Non-Domestic (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 Dance Studio and Premises, together with associated Car Parking Spaces: Proposal valid.

RE: Hazelwood Dance Studio, Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

Car Spaces 17-22 Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

Car Spaces 29 – 30 Northgate Business Centre, Northgate Street, Bury St Edmunds IP33 1HP

APPEAL NUMBER: 352533329739/285N10

BETWEEN: Miss Hazel Jackman — Appellant

and

Christopher Sykes (Valuation Officer) — Respondent

PANEL: Mr K Everett (Chairman)
Mr S Hooberman

SITTING AT: VTS Offices, Leman Street, London

ON: Tuesday 10 September 2019

APPEARANCES: Miss H Jackman (Appellant)
Mr G Bolger (Valuation Officer's Representative)

Summary of decision

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

Introduction

2. This appeal has been brought in respect of the following: The proposal, submitted on 4 March 2019 was on the grounds that:

> 'Legislation has now been passed in connection with the Mazars v Woolway case so I believe my parking spaces should now be included in my current rateable value. This is how I have always been assessed prior to Mazars.'

3. The proposal requested that the assessments placed on the dance studio and car parking spaces be merged into one. Whilst no effective date was visible on the proposal form, the panel noted that not all the text within 'box 15' was visible. Miss Jackman explained that within box 15, she had requested an effective date of 1 April 2015 (which was the date the former assessment had been split into three). The panel accepted this as the effective date.

4. The appeal property was a dance studio known as 'Hazelwood Dance Studio'. Within the lease for the appeal property were 9 dedicated parking spaces, which were located to the front of the appeal property.

5. There were currently the following three entries in the Rating List:

   i) Hazelwood Dance Studio – Dance School and Premises at £8,700 Rateable Value, with effect from 1 April 2015;
   ii) Car Spaces 17-22 – Car Parking Spaces at £2,400 Rateable Value, with effect from 1 April 2015; and
   iii) Car Spaces 29-30 – Car Parking Spaces at £800 Rateable Value, with effect from 1 April 2015.

6. As the Valuation Officer (VO) was challenging the validity of the proposal, Mr Bolger was invited to present his arguments and submissions first.

7. Mr Bolger pointed out that Miss Jackman's bundle of evidence had not been served in accordance with the requirements of the Standard Directions; it had been received on 19 August 2019, when it should have been received no later than 31 July 2019. However, he accepted that Miss Jackman was an unrepresented ratepayer and leniency should be applied.

8. Miss Jackman explained that the delay in submitting her bundle to the Valuation Officer was due to the fact that she had been waiting for them to serve her with Regulation 17 evidence as stipulated on the Standard Directions. She was later advised that the Valuation Office would not be submitting any Regulation 17 evidence for this appeal.

9. As there were clearly issues regarding failures to comply with the requirements of the Standard Directions, the panel had regard to *Simpsons Malt & Others v Craig Jones*

(VO) & Others [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to tribunal panels was that the three stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction.

> Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).
>
> Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).
>
> Stage 3 - The panel must consider all the circumstances of the case including:
>
> I. The need for litigation to be conducted efficiently and at a proportionate cost;
> II. A failure to grant a sanction may leave an inaccuracy being uncorrected;
> III. The need to enforce compliance with rules, directions and orders (para. 55). However, such matters are the handmaids and not the mistress of justice and must never be allowed to assume a greater importance than doing justice (para. 56).

10. In this case, it was clear that there had been a breach as Miss Jackman had served her bundle on the Valuation Officer late. However, the panel acknowledged that she was an unrepresented ratepayer who was unfamiliar with the appeals process. Furthermore, Mr Bolger had stated that leniency should be applied. As such, the panel applied no sanctions and proceeded to hear the appeal having regard to all the evidence presented.

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 the panel when coming to its 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 Bolger presented the panel with a copy of his bundle, which comprised his statement, a location plan, the current valuations, extracts from relevant regulations, the appeal history, a copy of the proposal and a schedule of assessment evidence. Mr Bolger referred to an additional limited window in which proposals could be made after a rating list was closed as contained within The Non-Domestic Rating (Alterations of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc) (England) Regulations 2018 SI No 2018/1193. However, in

accordance with that regulation, he considered that proposals seeking a merger could only be lodged if the properties in question were contiguous. He stated that the car parking spaces were not contiguous to the dance studio, as such the proposal was invalid.

14. Miss Jackman presented the panel with a copy of her bundle, which comprised her statement, a photograph of the premises, a location plan, a letter from Suffolk County Council dated 19 August 2019, in which it confirmed that 9 car parking spaces were required by the dance studio, planning permission confirmation, rates demands, an extract from a letter to Miss Jackman from Merrifield Chartered Surveyors, together with copies of correspondence that had passed between the parties.

15. Miss Jackman explained that the dance studio and car parking spaces appeared in the rating list as one assessment prior to the Mazars judgment. Following the Mazars judgment being reversed, she had submitted a proposal for the three assessments to be merged. She referred to the letter from Suffolk County Council who insisted that 9 car parking spaces were provided for use by the dance studio; therefore she considered that there was a strong functional connection between the dance studio and the car parking spaces. With this in mind, Miss Jackman asked the panel to hold the proposal as having been validly made.

Decision and reasons

16. The panel acknowledged that the effect of the Supreme Court's judgment of *Woolway* v *Mazars* [2015] UKSC 53 meant that Hazelwood Dance Studios and the Car Parking spaces would constitute separate hereditaments as they were not contiguous. The fact that the dance studio and car spaces were physically separated by a pavement would have been fatal to the ratepayer's case for a merger prior to the *Mazars* reversal legislation. The Rating (Property in Common Occupation) and Council Tax Empty Dwellings Act 2018 (2018 Act) was intended to reverse the impact of the Supreme Court's decision, so that where two properties are 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.

17. The panel noted that the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (The 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:-

> **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.

18. The panel then 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:

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.

19. The panel had no doubt that Miss Jackman had made her proposal under regulation 4(1)(k) of SI 2009/2268.

Circumstances in which proposals may be made

4.—(1) The grounds for making a proposal are—

...

(k) property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments.

20. The panel found that the former assessment had been split with effect from 1 April 2015. Miss Jackman had believed that it had been split following the Mazars judgment. Mr Bolger explained that, following the Mazars judgment, a review of the appeal property’s assessment had been carried out, when it was discovered that the assessment should have always been split. Therefore, whilst the appeal property’s assessment had been split as part of the Mazars exercise, Mr Bolger considered that it should have been split regardless of Mazars.

21. Mr Bolger referred to (3ZA) and contended that for a valid proposal to be lodged the assessments in question had to be contiguous to each other. However, the panel paid particular regard to the following legislative wording within the definition of contiguous under (3ZD) –

> ‘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’.

22. The clerk advised the panel that a previous Valuation Tribunal decision in relation to various office suites at The Printworks, Ribble Valley Enterprise Park, Hey Road, Barrow, Clitheroe BB7 9WA (Appeal No 235024372901/539N10, dated 25 April 2019) which had considered the issue of ‘space’ had been appealed to the Upper Tribunal – (RA/23/2019).

23. The panel found that the dance studio and the car parking spaces were in the same occupation and under the same ownership. The panel therefore determined that the appellant was entitled to make a proposal if she believed that the three rating assessments should be merged.

24. Mr Bolger had erred, by effectively jumping the gun, by suggesting that the appellant’s case had no merit because the assessments were not contiguous and were not capable of being merged. That may well be the case, but the panel was not concerned with the substantive valuation considerations arising from the proposal, merely the question of validity at this stage.

25. The question of whether or not the pavement and shrubbery that separated the dance studio from its associated car parking spaces met the statutory definition of space would need to be determined by another panel at a later date.

26. Accordingly, the panel made the interim decision that the proposal had been validly made.

27. The relisting of this appeal, for the substantive valuation issue to be determined, is to be stayed pending the Upper Tribunal’s judgment on The Printworks.

Date: 30 September 2019
Appeal Number: 352533329739/285N10