VALUATION TRIBUNAL FOR ENGLAND

Non domestic rating appeal; 2010 rating list; Warehouse and Premises; Merger; Relevant Proposal; Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018*; Proposal invalid*

Re: 7 & 8 Cronin Courtyard, Weldon, Corby, Northants, NN18 8AG

APPEAL NO : 280533536137/285N10

BETWEEN Nursery Connections Ltd *(*Appellant)

and

Mr D Jackson (Respondent)

(Valuation Officer)

BEFORE: Dr J Johnson (Senior member)

REMOTE HEARING ON: Thursday 18 March 2021

CLERK: Mr J Hewitson

APPEARANCES:

Mr J Hart (Hart Commercial Surveyors - Representing the Appellant)

Ms S Paramasivam (Representing the Respondent)

Summary of decision

1. The proposal was not a relevant proposal under the regulations and had not been validly 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. In accordance with the Tribunal's Business Arrangements, I have been authorised to consider and determine this appeal alone.

5. Mr Hart appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was not instructed under a conditional fee arrangement.

6. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as an indication that the statement or item of evidence has been overlooked.

7. The hearing resulted from a proposal made by the appellant's representative on the basis that 'the assessment is incorrect and bad in law and should be reduced to £1. The properties are contiguous and in the same occupation and should be merged with effect from 01/04/14'. The subject properties were 7 Cronin Courtyard which had an assessment of £18,250 with effect from 4 July 2013 and 8 Cronin Courtyard which had an assessment of £43,750 effective from the same date.

8. The subject properties are two industrial units built in 1991, with the occupier trading as Nursery Connects Ltd. Cronin Courtyard is located on the South Weldon Industrial Estate, 1km east of Corby. The units are steel frame/breeze block inner elevations with brick and cladding exterior. The premises are contiguous with shared elevations between the units. At the material day of 1 April 2014 there was no access between the hereditaments.

9. Before considering the valuation issue, it was necessary for me to consider whether the proposal giving rise to the appeal had been validly made.

Issue

10. The Valuation Officer (VO) contended that the proposal was invalid as it had been submitted out of time and the proposed alteration did not require a change in the legislation to come into force. The properties could have been correctly merged prior to the passing of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. The appellant's representative stated that the VO's argument was flawed because changes after the material day for his proposal did not impact on this appeal. The fact that the assessments could have been merged after the material date for this appeal was not a relevant consideration.

Decision and reasons

11. In considering the appeal, I referred to the parties submissions regarding the definition of 'relevant proposal' contained in the Non-Domestic Rating (Alteration of

Lists) and Business Rate Supplements (Transfer to Revenue Accounts) (Amendment etc) (England) Regulations 2018, which amended the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

12. From the Upper Tribunal cases of *Libra Textiles Ltd (t/a Boundary Mill Stores) & Centric Assets Ltd v Roberts and Alford (VOs)* [2020] UKUT 237, the parties did not dispute that the two criteria to make a 'relevant proposal' are that the proposer must request a merger and the request to merge can only be made as a result of the coming into force of Section 64(3ZA) or (3ZB) of the Local Government Finance Act 1988 (the Act).

13. The opportunity to make a proposal to alter the 2010 rating list in limited circumstances has resulted from the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 which amended Section 64 of the Act and defined an additional type of hereditament established by subsection (3) [(3ZA) – (3ZD)]. I referred to the relevant section (3ZA) which reads as follows:

> '[(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.'

14. In the case of the subject property it existed as a merged assessment from August 2012 to September 2013 when the previous occupier vacated the premises. A wall was erected in September 2013 to market the two units as separate hereditaments. The current occupier, the appellant, took over these properties in April 2014 and sometime after this, but prior to the start of the 2017 rating list, the occupier demolished the wall and the access between the units was created.

15. In their submission the VO contended that the units existed as two contiguous units in the same curtilage from 1 April 2014 and were in exclusive occupation, with no shared accommodation or common parts. It was stated that interconnection existed between the units due to the shared courtyard 'that seems to be within the demise of the two units'.

16. Mr Hart challenged this assertion and stated that the demise is within the boundary of the unit and his client had confirmed that there was no shared entrance space between the two units. On this basis he submitted that there was no interconnection and thus the criteria was satisfied.

17. I noted that there was no determinative evidence provided in respect of any 'shared courtyard'. However, when questioned, Ms Paramasivam stated that

notwithstanding the absence of such a courtyard, the property could have been merged at April 2014. She submitted that the presence of such a courtyard would not have been the only determining factor.

18. Having considered the submissions from both parties I found the statement of the VO to be persuasive and accepted that a proposal could have been lodged, prior to and including, 31 March 2017 which would have resulted in the merger of 7-8 Cronin Courtyard. Furthermore, the submission from the VO was clear and, if a proposal had been made the hereditaments could have been merged and assessed as one unit from 1 April 2014.

19. In accepting this submission, the argument of the appellant's representative that the proposal could have only been made after the wall was demolished and that this would have established a material date later than 1 April 2014 was negated.

20. On this basis, I found that the current proposal does not meet the requirements of a relevant proposal as it did not need the change in law for the proposal to have been lodged. Accordingly, I found that the proposal giving rise to this appeal had not been validly made.

Date: 15 April 2021

Appeal number: 280533536137/285N10