THE VALUATION TRIBUNAL FOR ENGLAND

2010 rating list appeal; Local Government Finance act 1988; merger of two hereditaments into one assessment; stables and premises; sand school and premises; Roberts (VO) v Backhouse Jones Limited [2020] UKUT 0038 (LC); Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; validity of proposal; appeal dismissed.

RE: Roborough Gate, Brendon Hill, Watchet, Somerset, TA23 0LJ and Sand School at Brendon Hill, Watchet, Somerset, TA23 0LJ ("the subject properties")

APPEAL NUMBER: 332033560941/285N10

BETWEEN:	Carol Pearce	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL:	Mr A N Backway (Senior Member) Dr P A R Thomson
CLERK:	Mrs A Sloan
HEARING:	Remote hearing No.1 on 26 May 2022
APPEARANCES:	Mr M Wear (representing the Appellant) Mr M Harrington (Respondent's representative - advocate) Ms J Marshall (Respondent's representative – expert witness)

Summary of decision

1. Appeal dismissed. The panel was satisfied that the originating proposal was not validly made.

Introduction

2. The subject properties had been brought into the 2010 rating list by Valuation Officer (VO) notice in February 2016. The entries were effective from 1 April 2010 with the rateable values (RV) shown as £1,525 for the stables (Roborough Gate) and £1,950 for the sand school.

3. The VO received a proposal on 31 May 2016 from a solicitors firm on behalf of the appellant seeking a merger of the two hereditaments. That appeal came before the Valuation Tribunal for England (VTE) in August 2017 [*appeal 332027192784/537N10*] but the appeal was dismissed because the appellant had failed to comply with the Tribunal's standard directions regarding evidence disclosure.

4. A further proposal was received on 20 June 2019, following the introduction of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 ("the PICO Act") seeking a merger of the two hereditaments for the period 1 April 2010 to 31 December 2017. The proposal was accepted by the VO and the matter was transmitted to the Tribunal in September 2019 as the dispute remained unresolved.

5. The hearing was conducted using Microsoft Teams. Mr Wear initially had some problems connecting to the hearing but, when dialled into the hearing platform by the clerk, he was able to connect by telephone. Mr Wear confirmed to the panel at the beginning of the hearing that he was content to proceed on an audio only basis. Although Ms Marshall was present at the hearing as an expert witness, she did not in fact provide any additional information to the panel. She explained that she was there as an expert on equestrian matters and could assist the panel if required. The panel did not call on Ms Marshall in this respect.
6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary issues

7. Prior to the hearing, in his written representations, Mr Wear raised a number of points and asked the panel to bar the VO from proceedings. He raised issue that the Tribunal had provided its standard directions regarding evidence disclosure with each different Notice of Hearing, but the parties had provided their submissions in relation to this appeal in 2019. He also highlighted that, following a letter sent by the VO in October 2019 inviting contact to discuss the appeal, the appellant had been unable to make contact with the relevant case worker and therefore discussions did not take place. Mr Wear contended that the VO's failure to engage in discussions was a breach in the Tribunal's standard directions and the respondent should be barred from participating in the hearing.

8. The panel was aware that standard directions are automatically contained with each system generated Notice of Hearing. It was of the opinion that, if the appellant contacted the Tribunal to query this, it would be made clear that there was no requirement to begin evidence disclosure again for each listing. This procedure is set out in the President's Practice Note regarding Postponements and Adjournments (VTE/PN/2017-1).

9. Mr Wear was asked to explain how his client was placed at any disadvantage by the lack of discussions in 2019, when subsequently statements of case had been exchanged and now, in 2022, the appeal was before the Tribunal. Mr Harrington confirmed that he had made contact with Mr Wear prior to this hearing to discuss the appeal and explain the VO's position.

10. Mr Wear appeared to believe that any breach in the directions would result in automatic barring of the respondent. The Chairman explained that this was not the case and the extent

and reasons for the breach would be considered by the panel at the hearing as a preliminary issue before deciding whether any sanctions should be applied.

11. In considering a breach of the Tribunal's directions, the panel must have regard to the three-stage test set out in *Denton v TH White Ltd* [2014] 1 WLR 3926 before applying sanctions. Stage one requires the Tribunal to determine the significance and seriousness of the breach: if the breach is neither, then relief should usually be granted. At stage two the Tribunal must consider the reasons why the failure and default occurred: if the defaulting party has good reasons to explain what happened, relief should usually be granted. Finally, at the third stage, the Tribunal must have regard to all of the circumstances of the case, the need for litigation to be conducted efficiently and at proportionate costs, that the failure to grant relief may leave an inaccurate entry in the rating list and the need to enforce compliance with the rules, directions and orders of the Tribunal.

12. Mr Wear then conceded that his client was not disadvantaged. The panel was of the opinion in any case that the breach was not serious as the parties had exchanged their written submissions and enough time had passed since the original listing that there could be no prejudice to the appellant.

13. It should also be noted that both parties had made additional submissions to the Tribunal in relation to this hearing date. Mr Harrington notified the clerk and Mr Wear that he intended to introduce some case law, namely *Roberts (VO) v Backhouse Jones Limited* [2020] UKUT 0038 (LC), which he felt was relevant to this appeal and was not available to the parties in 2019. Mr Wear provided a new bundle of documents the day before the hearing, much of which the Tribunal already had on file from previous listings. However, he raised a number of additional points, some of which have been addressed above. The other points included a lack of response to letters sent to the Tribunal in 2021 and issues surrounding the remote hearing.

14. The Tribunal was not able to locate both of the letters referred to by Mr Wear in his written submission but understood the issues concerned the aforementioned opinion that the VO should be barred. As this would be a judicial decision for the panel rather than an administrative function, and the appeal had only reached a hearing on this occasion, the panel found that the issue of the breach in directions could not have been decided any earlier.

15. Mr Wear had also stated that the Tribunal had written to the appellant in January 2022 setting out details regarding online hearings despite being told in a letter of 19 August 2021 that the appellant had no internet connection. The panel was aware that the Tribunal had moved to remote hearings in September 2020, in response to the restrictions in place regarding the COVID-19 pandemic. As time moved on, the Tribunal's practice statement was revised and remote hearings are now the default position. However, subject to agreement by the President of the Tribunal, face to face hearings can be accommodated. The clerk had advised the panel prior to the hearing that no application had been received for a face to face hearing and Mr Wear, the appellant's representative, had confirmed he was content to receive a link to access the remote hearing by email. The panel was therefore of the opinion that the appellant was not placed at any disadvantage by the hearing being conducted remotely and an internet connection was not necessary in all cases as the option to dial into the hearing by phone was also available.

16. The panel decided to accept the case law from Mr Harrington, along with Mr Wear's late submission and email exchanges between the two parties in the period leading to the hearing date. The emails were provided by Mr Harrington as the clerk was unable to open the file provided by Mr Wear. The panel was therefore satisfied that it was in possession of all submissions from both parties.

Issue

17. The issue before the panel was to determine whether the entries for the stables and the sand school should be merged into one hereditament or not.

Evidence and submissions

18. The subject properties are located at the edge of Exmoor National Park in a rural area. Both were occupied by the same owner, Miss Pearce, along with a bungalow on the same site, which was entered in the council tax valuation list. It was common ground between the parties that Miss Pearce was the ratepayer and had paramount control of the two hereditaments when they were entered in the rating list from 1 April 2010. However, the sand school was leased to the local Pony Club from 1 January 2018. The stables and the sand school are divided by a track that is a private right of way and the appellant contended that this did not prevent the two hereditaments from being considered one assessment when Miss Pearce owned and occupied the entire site.

19. The panel understood that there are fields on both sides of the track and Miss Pearce grazes both horses and sheep on the land. The track has gates at either end, which can be closed when livestock are crossing from one field to the other on the opposite side of the track. Mr Wear explained that, on occasion, Miss Pearce grazes sheep on the track, with both gates closed, overnight to control the vegetation. The surface of the track is gravel and is maintained by Miss Pearce because it belongs to her.

20. Mr Wear set out his case that the track dividing the stables and the sand school did not prevent the assessments being merged. He referred the panel to maps and plans of the site highlighting the track between the two hereditaments. He contended that the stables and the sand school are contiguous within the PICO Act. He stated that the appellant is the sole registered proprietor of the freehold land, buildings, fields, sand school and bungalow since 9 February 2015, following the death of her partner. He argued that the two subject properties should be merged into one hereditament from 1 April 2010 to 31 December 2017, as the sand school was leased to the local Pony Club from 1 January 2018.

21. Mr Harrington provided the email exchanges between himself and Mr Wear on the subject of the PICO Act and why the VO considered the subject properties could not be merged. The panel noted that the VO's original submission, prepared by a different case worker for the hearing scheduled on 21 January 2020, raised an issue with validity of the proposal. It was argued that the PICO Act permitted proposals to be made to address situations where hereditaments had been split following the decision in *Woolway (VO) v Mazars* [2015] UKSC 53. In this case, the VO contended that the subject properties were entered in the rating list as new assessments and not as the result of splitting a hereditament after *Mazars*. The issue of the proposal's validity was not raised specifically by Mr Harrington at the hearing and both parties' presentations focused on the issue of contiguity. Mr Harrington contended that the track between the two subject properties was not a hereditament itself but prevented the subject properties being considered contiguous because the appellant was not in rateable occupation.

Decision and reasons

22. The panel heard from both parties on the relationship between the two subject properties and the track between them. Mr Harrington explained that the VO was not contending that the track was a hereditament but, because the appellant did not have exclusive occupation of the track, it could not be considered part of either of the existing entries for the sand school or the stables and therefore a merger could not occur. He referred to the leading authority on what constitutes rateable occupation, *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area* [1949] 1 KB 344. In that judgment Tucker LJ held –

    > *"First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period."*

23. Mr Harrington explained that, although Miss Pearce owns the track between the stables and the sand school, it is a private road over which others have rights of access. It was the panel's understanding that two other properties are accessed from the track and therefore parties other than Miss Pearce use the track on a regular basis to access their homes. It therefore concluded that the four ingredients of rateable occupation could not be met, and the track could not be a hereditament or form part of one. Mr Harrington referred the panel to the aforementioned 2020 decision in *Roberts (VO) v Backhouse Jones Limited.* This case examined the situation where a ratepayer occupied offices separated by a corridor used by other occupants of the building. Although this was a different situation to the appeal before the panel concerning stables and a sand school in rural Exmoor, the panel found that the same principle applied here. The track physically separated the two hereditaments and was not in the exclusive occupation of the appellant. It therefore concluded that the stables and the sand school were not contiguous, and the assessments could not be merged.

24. The panel was also conscious of the representations contained in the VO's written submissions from 2019 regarding validity of the proposal. Although not specifically raised at the hearing, the panel found that this matter was so fundamental to the appeal, it must be considered.

25. From the history of the hereditaments, the panel understood that the stables and sand school entered the 2010 rating list from 1 April 2010 as new assessments, not as a split of an existing entry in the list. The properties were entered in the list in February 2016 and the appellant had a right to appeal those entries, which she did. The appeal came before the Tribunal in 2017 and was dismissed.

26. The later proposal, from which this appeal originated, sought a merger of the hereditaments from 1 April 2010 to 31 December 2017. However, this proposal was made in June 2019, after the 2010 rating list had closed. The PICO Act created new sections in the Local Government Finance Act 1988, sections 64 (3ZA) and (3ZB), and the period in which certain proposals could be made to alter the 2010 rating list was extended in specific circumstances.

27. The Supreme Court in *Mazars* held that properties in common occupation that are contiguous but are not interconnected were to be rated as two or more hereditaments. This resulted in many hereditaments in the 2010 rating list being split into separate assessments, which were subsequently disputed.

28. The PICO Act provided a limited opportunity for those entries in the list to be challenged. As a result, the Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendments etc) (England) Regulations 2018 (SI 2018/1193) came into force on 17 December 2018. These regulations amended the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) (hereafter referred to as the "ALA Regulations") to allow certain proposals to be made after the 2010 list had closed. The type of proposal permitted was set out in the definition of 'relevant proposal' in Regulation 1 as follows –

(2) In these regulations –

"the 2009 Regulations" means the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009;

"relevant proposal" means a proposal –

(a) Made by a ratepayer on the ground in regulation 4(1)(k) of the 2009 Regulations;

(b) 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.

29. The PICO Act was enacted in 2018 to enable alterations to the 2010 list, after it had closed, to reverse the effects of *Mazars*. Therefore, proposals accepted after the closure of the 2010 rating list on the grounds of merging two or more hereditaments into one must be "*as a result of the coming into force of section 64(3ZA) or (3ZB) of the Local Government Finance Act 1988*".

30. Mr Wear stated that he was relying on 3ZD of section 64 and referred to the issues contained in that paragraph regarding contiguous properties and spaces between them. Although the panel heard from the parties on this subject, it must have regard to the legislation regarding proposals to merge assessments before considering the substantive issue. In this case, a proposal made in 2019 could only be considered if it was made under section 64 (3ZA) or (3ZB).

31. The VO's written submission from 2019 included the VTE decision on *Libra Textiles Limited v Roberts (VO)* from the same year. This case concerned the validity of a proposal made under the PICO Act and was further appealed to a higher court. In 2020, the Upper Tribunal dismissed the appeal by Libra Textiles Limited*, Libra Textiles Limited T/A Boundary Mills Stores v Roberts (VO)* [2020] UKUT 0237 (LC) and found the proposal invalid because the properties in question in that case were not affected by the *Mazars* decision. Paragraph 93 of that case stated –

"….*What we take from the Explanatory Memorandum is not that the amended 2009 regulations, allowing late proposals, are available in all situations that fall within the scope of the new provisions; the Memorandum states very clearly that only ratepayers who were affected by the change in the law can re-open the 2010 list. The ratepayers in the conjoined appeals were not so affected. The intention in allowing certain ratepayers to make late proposals to alter the 2010 rating list was to reverse, for the 2010 list, the change effected by Mazars. It was not to give a second bite at the 2010 cherry to those who had not been affected by Mazars*."

32. In the case of Roborough Gate and the sand school, the panel found that the entries were made in the list, effective from 1 April 2010, after the Mazars decision but did not alter a previous entry in the list to do so. The Mazars decision had no impact on the new entries in

the list for the stables and sand school and the appellant had a right to appeal those entries before the 2010 list was closed. A proposal was made in 2016 and the subsequent appeal in 2017 was unsuccessful. The panel found that this did not mean that a further attempt could be made to alter the list under the PICO Act. The proposal was therefore considered invalid and the appeal dismissed.

Date: 21 June 2022
Appeal number: 332033560941/285N10