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; Offices and Premises; Proposal Invalid.*

RE: Alpha House, Rowlandsway, Manchester, M22 5RG (See Schedule at foot of decision)

APPEAL NUMBER: 4215338612521/285N10

BETWEEN:	Stormhill Properties Ltd	Appellant
	and	
	Mr C Sykes (Valuation Officer)	Respondent

BEFORE:	Mr W Read (Chairman)
REMOTE HEARING:	20 January 2021
CLERK:	James Massey
APPEARANCES:	Mr J H Fifield of Fifield Glyn Ltd representing Stormhill Properties (Appellant) Mr M Pinnington (Valuation Officer's Representative)

Summary of decision

1. The proposal was found to be invalid.

Introduction

2. My fellow member was not in attendance and we had not been able to arrange for a replacement at short notice. However, the tribunal's business arrangements permitted me to hear this appeal alone.

3. This appeal has been brought in respect of the following: The proposal, submitted on 7 November 2019 was on the grounds that "*Since the Early 1990's the building has had 14 separate assessments totalling £202,450. In fact the*

building has been vacant since 2009 and should have a single assessment with effect from 1 April 2010".

The proposal requested that the appeal hereditaments be merged to form a single assessment with effect from 1 April 2010.

4. The appeal property “Alpha House” was a Nine-storey (ground floor, Mezzanine and levels 1 to 7) purpose-built office building located in Wythenshawe, Manchester.

5. 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.

6. 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. This hearing was conducted via video conference using Microsoft Teams and I was satisfied that both parties were fully able to participate in the hearing.

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

Issue

8. Whilst the proposal was referred to the VTE as an appeal against his refusal to alter the list, the Valuation Officer (VO) has raised the validity of that proposal as a preliminary issue. The substantive issues raised in the appeal can only be dealt with should I find that the proposal was valid.

Evidence and submissions

9. Mr Fifield in his proposal had sought the merger of 12 entries in the Rating List (detailed at the foot of this decision) into a single entry. He also requested that a further four entries, listed below, which had not been included in his proposal should be merged into the aforementioned single assessment.

Property Address	Rateable Value (RV)
Part 7th Floor, Alpha House	£16000
IFA Lead Portal Ltd, Pt Ground Floor, Alpha House	£3650
New Start Trust, Pt Ground Floor Alpha House	£10250
Treadstone Law Solicitors, Pt Ground Floor, Alpha House	£7300

Unfortunately as these entries had not been detailed in the originating proposal, they cannot be considered as part of this appeal.

10. It was Mr Fifield's contention that the opportunity to make his proposal to alter the 2010 Rating List has resulted from the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. He believed that the appeal hereditaments met the criteria of one of the additional types of hereditament defined by this amendment to Section 64 of the Local Government Finance Act 1988.

11. Mr Fifield provided rental schedules for the whole building covering the period 25 March 2010 to 29 September 2010 which showed that the whole building was vacant at the material date of 1 April 2010, apart from the Ground Floor. The ratepayer in respect of these vacant premises was Fleetguild Ltd (now Stormhill Properties Ltd), and that as they were all in the same "ownership" they met the criteria of subsection 3ZB, inserted in Section 64 of the Local Government Finance Act 1988 ("LGFA1988 (as amended)") by the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (the "PICO Act").

12. The Respondent, Mr Pinnington had provided his statement of case to the Appellant and Tribunal, which contained a copy of the proposal which led to this appeal, and his submissions as to why he considers the proposal to be invalid. Mr Pinnington contended that the assessments in question did not meet the criteria of a single hereditament under section 64 (3ZB) of the LGFA 1988 (as amended) as set out below:

(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.

13. Mr Pinnington stated that he had not been provided with any evidence that the subject premises became unoccupied on the same day as required and so it could not be established that they met criteria *b(i)* of the above, particularly as it had been stated in the appellant's evidence that the Ground Floor premises had been occupied as at 1 April 2010.

14. Having reviewed the case prior to the hearing, the Tribunal Clerk considered that the leading authority regarding the validity of appeals made under the above regulations was relevant to this appeal. A copy of the Upper Tribunal's judgment in *Libra Textiles Ltd T/A Boundary Mills Stores and Centric Assets Ltd v Ritchie Roberts and David Alford (Valuation Officers)* RA/47-48/2019 and RA50/2019 (the "Boundary Mills decision") was sent to the parties by email on 14 January 2021 and comments from the parties as to its relevance to the instant appeal were invited by 5.00 pm on 19 January 2021.

15. Mr Fifield responded by asserting that all the hereditaments in Alpha House complied with Paragraph 45 of the Boundary Mills decision, namely:-

    45. The Supreme Court in Mazars held that the property in common occupation that are contiguous, but are not interconnected – meaning they can only be accessed one from another by passing through other property such as the street or common parts of the building – were to be rated as two or more hereditaments.

    He argued that following the 2018 PICO Act it was permitted that properties in common occupation or ownership and contiguous but not interconnected may be treated as one hereditament, and therefore Alpha House is precisely the sort of situation that the 2018 PICO Act was designed to permit a retrospective Appeal to the 2010 List.

16. In response to this case law, Mr Pinnington summarised its relevance as follows:

    "The subject proposal has been submitted under Reg 4(1)(k) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 - property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments.

    As per Para 43 of the Boundary Mills decision, with the 2010 List closed to fresh proposals, the only available route was via sections 64 (3ZA) to 64 (3ZD) of the LGFA 1988, which were inserted retrospectively by the PICO Act 2018.

    Para 52 clearly states "it was Parliament's intention that it should be possible to propose the alteration of the 2010 list on the basis of the reversal of Mazars". Para 54 then goes on to outline that a relevant proposal can be defined as 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)(2) or (3ZB) of the Local Government Finance Act 1988.

The Appellant contends that subsection 3ZB is relevant in the subject proposal, with the assessments in question being unoccupied. The respondent Valuation Officer statement of case clearly sets out that the properties do not meet the criteria of a single hereditament under section 3ZB and therefore the proposal has not been validly made.

As per the Boundary Mill decision (Para 99) we deem the proposal to have been made out of time and cannot benefit from the extended window offered by the 2009 regulations. The proposal has correctly been made on grounds 4(1)(k), however, as the properties do not meet the criteria under section 64 (3ZB) a proposal cannot be made as a result of the coming into force of that section and should be deemed invalid"..

17. The responses provided by the parties were provided to me, along with the hearing bundle prior to the hearing.

Decision and reasons

18. From the submissions it was clear to me that the proposal was made on grounds that the subject hereditaments should be merged to form a single hereditament, and this would have been made on ground 4(1)(k) had the proposal been made before 1 April 2017.

19. My understanding of the effect of the final ruling by the Supreme Court in *Mazars* is that unless the vacant properties in common ownership were contiguous and interconnected, they would remain as separate entries in the Rating List.

20. To counter this effect the Non Domestic (Alteration of Lists and Appeals) (England) Regulations 2009 SI 2009/2268 had been amended by The Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 (SI 2018/1193) to allow those affected by the Act to make a proposal to seek a merger of properties that are contiguous but not interconnecting and are in the same occupation or if empty, are all owned by the same owner;

4.Regulation 4 (circumstances in which proposals may be made) has effect as if—in paragraph (2) after "a proposal" there were inserted "(other than a relevant proposal)";

after paragraph (2) there were inserted—

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

has reason to believe that the ground set out in paragraph (1)(k) exists; and has reason to believe that the ground relates to any time during which the person was a ratepayer in relation to that hereditament."; and

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

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

21. Amendments were made to the regulations by the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 which 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."

(2) The amendments made by subsection (1) have effect for financial years beginning on or after 1 April 2010.

22. In essence, the amended regulations removed the requirement for properties in common occupation which were contiguous to be interconnected in order to form a single entry in the List. The additional types of Hereditament created by the new regulations are defined by 3ZA and 3ZB detailed above, and Mr Fifield argues that the current separate assessments in Alpha House met the criteria of 3ZB and should therefore form a single entry in the List. He contended that all of the Hereditaments, apart from the Ground Floor, had been unoccupied since at least 1 April 2010, and were in the same ownership. He contended that it could not have been the intention of the amended regulations that all of the separate assessments must have become unoccupied on the same date in order to fit the criteria, as this would exclude any multi-occupied building such as Alpha house from becoming a single entry in the List.

23. I can see why the Appellant would query the intention of the regulations in effectively excluding such multi-occupied properties from being able to make a late proposal. However the regulations are clear and unambiguous in stating the criteria for unoccupied properties to be merged further to the reversal of *Mazars*. In my view, although Mr Fifield offered an alternative interpretation of the regulations in that the date in question refers to the effective date sought for the merger, I could see no indication in the drafting of the regulation that this was the intention. Even if this was to be the case, further on in the regulation (3ZB(c)), it

is a requirement that all the properties to be merged were previously in the same occupation prior to being unoccupied and would have been considered ripe for merging under 3(Z)(A). It is clear to me that this was also not the case and even if all the properties had become unoccupied on the same date, they would fail the further criteria set out in 3(Z)(B)(c). I therefore find that the proposal to merge the appeal properties is invalid and dismiss the appeal.

24. Were it not for this failure to meet the criteria of 3(Z)(B), I would be obliged to consider the findings of the UT in the Boundary Mills decision in relation to this appeal. At the material day all of the appeal hereditaments, apart possibly from part of the ground floor, were unoccupied and in the same ownership. They were contiguous and they were interconnected by common areas. Mr Fifield has stated in response to the Boundary Mills decision that there was no interconnection between the properties which would have prevented them from being merged subsequent to *Mazars*.

25. If as contended by the Respondent, as at the material day, 1 April 2010, the ground floor was still occupied then not all twelve hereditaments shown in the list were unoccupied and the proposal is invalid, because there would remain two hereditaments in different ownership/occupation which cannot be merged.

26. The Appellant had stated that at the material date, all twelve were unoccupied. This is at odds with his submission, but if this was the case, I find that the common areas which provided the interconnection between the hereditaments were in the demise of the owner of the appeal hereditaments. They could therefore have been merged had the appellant made a proposal at any time under regulation 4 (1)k whilst the list was in force if the whole building was unoccupied and in the same ownership. As no proposal was made before 31 March 2017, the PICO legislation to make a proposal under reg 4(1) (k) after this date does not, in accordance with the Boundary Mills decision allow such a proposal. Therefore the assessments for which a merger was proposed, were unaffected by the *Mazars* judgment because the whole building was in the same occupation/ownership and the reversal of *Mazars* reversal (PICO legislation) does not help the appellant.

Date: 16 February 2021

Appeal Number: 4215338612521/285N10

Property Address	Rateable Value (RV)
2Nd Flr Alpha House	£39500
3Rd Flr Alpha House	£39500
Abercorn Ltd Pt 7th Flr Alpha House	£17750
Factory Estates Ltd (O) Pt 6th Flr Alpha House	£16500
Montedison Uk Ltd Pt 5th Flr Alpha House	£24750
Ness Ltd Pt 5th Flr Alpha House	£8900
Pansofic Systems Pt 6th Flr Alpha House	£13250
Pt 5th Flr Alpha House Properties Ltd	£5600
Pt 6th Flr Alpha House	£4700
Stormhill Properties Ltd (O) Pt Gnd Flr Alpha	£13250

House	
Trend Communications Pt 6th Flr Alpha House	£3650
Wire & Wire Rope Employers Assoc Pt Properties Ltd 4th Flr Alpha House	£9200