THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; VO agreed merger to a single assessment in appellant's occupation but with addition of two new assessments not in appellant's occupation; Respondent seeks adjournment to notify occupant of two new assessments of proceedings; inclusion of two new assessments considered to be outside scope of proposal; RWE Generation v Cameron McIntosh (VO) [472530941245/285N10]; Appellant seeks ratification of RV and effective date of merged assessment occupied by the Appellant; appeal allowed.

RE: Unit 1 Front of Former MSP, Roman Way, Coleshill B46 1HG and Unit 1 Rear of Former MSP, Roman Way, Coleshill B46 1HG

APPEAL NUMBER: 370533909607/285N10

BETWEEN:	Oaklands Plastics Limited (Represented by Paul Rabbette Ltd)	Appellant
	And	
	Dal S Virk (Valuation Officer)	Respondent

PANEL:	Mr M Heslop-Mullens (Senior Member) Mr M Nwosu
CLERK:	Mr J Massey
REMOTE HEARING :	Friday, 9 December 2021
APPEARANCES:	Ms L Rabbette of Paul Rabbette Ltd for the Appellant Ms C Bower for the Valuation Officer - Respondent

Introduction

1. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as having been overlooked by the panel.

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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

4. In accordance with that Practice Statement, the panel conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link. For the avoidance of any doubt, the panel was satisfied that those present at the hearing were able to fully participate in the proceedings.

5. This appeal arose from a proposal served on the Valuation Officer (VO) on 29 November 2019. The proposal sought a merger of the two hereditaments detailed below with effect from 1 June 2015, the date the Appellant took occupation.

   Unit 1 Front of Former MSP, Roman Way, Coleshill B46 1HG
   Factory and Premises RV £30,500

   Unit 1 Rear of Former MSP, Roman Way, Coleshill B46 1HG
   Factory and Premises RV £44,750

6. The VO did not 'well found' the proposal which subsequently became an appeal to this tribunal. At the hearing, the VO's representative, Ms Bower informed the panel that an agreement had been reached to merge the two hereditaments with effect from 1 June 2015 to create the following new entry in the Rating List as follows:

   Unit 1 Former MSP, Roman Way, Coleshill B46 1HG
   Factory and Premises RV £56,500

7. The Appellant had signed an agreement form on 8 November 2021 to this effect and returned it to the Respondent. However on the return of this form, the Respondent identified that there were two areas within the two original assessments which were not in the Appellant's demise:

   Office at Front, Unit 1 Former MSP, Roman Way, Coleshill B46 1HG
   Office and Premises: RV £12,250

   Canopy at Unit 1 Former MSP, Roman Way, Coleshill B46 1HG
   Canopy: RV £750

8. An amended agreement form was sent to the Appellant on 24 November 2021 which included the merged entry in their demise (Unit 1 Front of Former MSP), as well as these two additional entries which were in occupation by a third party.

9. The Appellant's representative was not prepared to sign the amended agreement form as she argued that two of the new entries were not in her client's occupation.

10. The Respondent subsequently sought an adjournment in order for the occupant of the two additional entries to be contacted with a view to them signing the agreement forms or becoming party to this appeal.

11. The application for a postponement of this appeal was opposed by the Appellant's representative on the basis that the creation of three new entries in the Rating List from the existing two entries was outside the scope of the originating proposal and she sought ratification by the panel of the single merged entry in the Rating list agreed by the parties.

Preliminary Issue

12. This appeal had been listed under the directions contained in the VTE practice statement (CPS PS2). These directions required the Respondent to submit its statement of case to the Appellant four weeks before the hearing.

13. At the hearing, Ms Rabbette requested that Ms Bower be barred from taking part in proceedings as the Respondent had not complied with the Tribunal's directions in submitting a statement of case four weeks before the hearing. Ms Bower stated that a statement of case had not been submitted as it was considered that the appeal had been settled as agreed.

14. 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.

15. The Respondent had failed to comply with the standard directions for pre-2017 list NDR appeals, and the panel considered that there had been a significant and serious breach of the Tribunal's directions. The panel was required to consider whether relief from sanctions sought by the Respondent, in allowing the admission of the Respondent's submissions with regard to the scope of the proposal, was warranted. It considered that the reason put forward by the Respondent, that it considered the appeal to be settled, was a good reason for this breach and therefore decided to grant relief. However, it was also aware that the only submissions made by the Respondent in relation to this appeal related to the issue of the scope of proposal, which had arisen after the deadline for the submission of both parties' statements of case. It therefore considered that it was in the interest of justice to allow both parties' late submissions in respect of the scope of the proposal which resulted in this appeal.

Issue

16. The panel was required to consider whether the entry of three new assessments in the Rating List was within the scope of the Appellant's proposal.

Decision and Reasons

17. Prior to the hearing, the hearing clerk had sent to the parties a decision handed down by a Vice President of the VTE regarding the 'scope of proposal', *RWE Generation v Cameron McIntosh (VO)* [472530941245/285N10]. Submissions were invited from the parties with regard to the application of this authority to the instant appeal.

18. Ms Rabbette had stated in her submissions that the Respondent does not have a legal right to create new hereditaments as a result of the subject proposal. She considered that this was supported by the decision in *RWE* where it was stated in para 60 that

> "It has been well established by the authorities that the remit of the Tribunal's jurisdiction is restricted to the issues raised in the proposal and cannot be extended further".

18. She referred to the wording of the originating proposal:

> "The two hereditaments above are occupied by the ratepayer and are used for the same purpose. They meet the contiguity condition as defined in the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. As such they should be merged to form one hereditament with effect from 01/06/2015.
>
> The assessment is excessive, wrong and bad in law. It should be altered to £1 with effect from 01/06/2015."

19. Ms Rabbette stated that the wording of the originating proposal is clear; with the intention being to merge two assessments into one, being the part under the rateable occupation of Oaklands Plastics, whilst correcting the rateable value; it does not seek anything else.

20. She considered that it was not correct to refer only to the 'grounds' of the proposal as argued by the Respondent, rather than the full basis of the proposal as set out in the form and stated above. She went on to say that the proposal should only reflect the buildings occupied by the Appellant on the material day on the basis that that is the alteration to the Rating List that the proposal sought in the first place.

21. Ms Bower submitted that the grounds stated in the proposal are "*property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments*" in accord with para 4(1)(k) of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI2009/2268). She considered that this allows consideration by the tribunal of the correct assessment and number of hereditaments, which it could determine to be more than one.

22. Although the proposal form went on to provide additional detail of the change sought by the Appellant, Ms Bower argued that the Tribunal was not limited by this additional detail, and to do so would be to ignore the grounds of appeal set out in the Statutory Instrument, and to be directed by the proposer's opinion as to the correct assessment.

23. The panel considered that the proposal specifically identified that the existing two hereditaments should be merged into one hereditament and had been made under para 4(1)(k) of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. The proposal was an electronic form which gave the list of grounds in a drop-down menu. The only ground in part C of the form (question 14) which would allow for the merging of two hereditaments was

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

24. The panel considered that from the additional detail of the change sought by the Appellant provided on the proposal, it was clear what the Appellant sought, and this is the two existing hereditaments to be merged from 1 June 2015 to form a single hereditament.

25. The panel understands the parties have identified two additional hereditaments on the appeal site which are either unoccupied or occupied by a different occupier. As the potential ratepayer for these new potential hereditaments are not party to the appeal and these new hereditaments were not identified in the proposal, the panel considered that the Tribunal does not have jurisdiction to ratify the entry of these hereditaments in the Rating List. Had the proposal expressly said that the two existing hereditaments be reconstituted into three, this would have been covered by ground 4(1)(l) "*property which is shown in the list as one hereditament ought to be shown as more than one hereditament*" and the panel could postpone the hearing to enable the potential ratepayers for the other two potential hereditaments to be added as parties.

26. As the Rating List was closed to further alterations, it appears the VO wished to extend the Tribunal's jurisdiction so that there was a vehicle to insert two new hereditaments for a new ratepayer into the list. In the panel's opinion, it was not open to him to do so. Whilst the VO was of the opinion that the scope of the proposal was wide enough to enter two additional hereditaments in the Rating List, in the panel's opinion, any determination by the Tribunal can only reflect the buildings and land occupied by the Appellant on the material day of 1 June 2015.

27. The panel was therefore minded to determine the appeal in the manner sought by the Appellant, and decided to ratify the agreement made to merge the two existing entries to a single entry. It had held that a reconstitution was not within the scope of the proposal and therefore it could only order that the list should be altered to reflect the Appellant's part of the original hereditaments, as the remaining parts of the original hereditament cannot be entered into the 2010 list as it was closed. The appeal is therefore allowed.

Order

28. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the VO to amend the Rating List in accordance with the schedule below.

29. Under regulation 38(9), the VO must comply with this order within two weeks of the date of its making.

Date: 10 January 2022

Appeal number: 370533909607/285N10		
Appeal properties:	RV	Effective Date
Unit 1 Front of Former MSP, Roman Way, Coleshill B46 1HG	£30,500	29 May 2014
Unit 1 Rear of Former MSP, Roman Way, Coleshill B46 1HG	£44,750	29 May 2014
Merged Assessment address		
Unit 1 Former MSP, Roman Way, Coleshill B46 1HG	£56,500	1 June 2015