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; Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 (the Act); Section 64 of the Local Government Finance Act 1988;The Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 SI 1193; The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations SI 2009 No. 2268;Libra Textiles Ltd (t/a Boundary Mill Stores) & Centric Assets Ltd v Roberts and Alford (VO) [2020] UKUT 237 (LC) (31 July 2020)*; Proposal invalid*

Re: Ryecroft Foods Ltd, Smith Street, Ashton under Lyne. Lancs OL7 0DB; and
3rd, 4th and 5th floors Ryecroft Mill, Smith Street, Ashton under Lyne. Lancs OL7 0DB

APPEAL NO: 4240333941975/285N10

BETWEEN	Weetabix Ltd	*(*Appellant)
	and	
	Mr R Roberts	(Respondent)
	(Valuation Officer)	

BEFORE: Ms L Dubow (Senior member) (Sitting Alone)

REMOTE HEARING ON: 26 April 2021

CLERK: Mr L Bertie

APPEARANCES:

Mr P Rabbette (Paul Rabbette Ltd - Representing the Appellant)

Mr M Pinnington (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 Rabbette 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 instructed under a conditional fee arrangement.

6. Mr Pinnington appeared as Advocate only but was an expert on valuation and legal matters.

7. 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.

8. The hearing resulted from a proposal dated 16 December 2019 made by the appellant's representative on the basis that '2/ more hereditaments should be shown as I/more different hereditament with an effective date of 1 April 2010'. The subject properties were: Ryecroft Foods Ltd, Smith Street, Ashton under Lyne. Lancs OL7 0DB which had an assessment of £18,250 with effect from 1 April 2010 and 3rd, 4th and 5th floors Ryecroft Mill, Smith Street, Ashton under Lyne. Lancs OL7 0DB which had an assessment of £18,000 effective from the same date.

9. The subject properties in this proposal were merged via agreement on a proposal received on 4 July 2017 at the requested effective date of 1 April 2015. The merged assessment was agreed as it was accepted as inter-connecting and therefore complied with the requirements following the decision of Woolway (VO) v Mazars [2015] RA 373. The effective date was date restricted to 1st April 2015 following the amendment to the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 made by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations SI 2015 No. 424. Proposals to merge received on or after 1 April 2015 were date limited to an effective date of 1 April 2015. No requests to merge had been recorded for the assessment as at 1 April 2010 until the latest PICO appeal was received in December 2019. The subject hereditaments are situated approximately 1 mile south west of Ashton-Under-Lyne town centre. They are set in a mixed industrial residential area, typical of the age. Junction 23 of the M60 is nearby, but this is a

limited access junction with access on to the motorway heading southbound only, and access off the motorway from the south only. Manchester city centre is approximately 6.7 miles away.

10. 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

11. The Valuation Officer (VO) contended that the proposal is 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. He contended that 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 if a valid proposal had been served.

12. The appellant's representative stated that the VO's argument was flawed because in his opinion the legislation allowed for the effective date of his proposal to be backdated to 1 April 2010.The parties were in agreement that the merged assessment would be £54,000 RV. The issue was the effective date.

Decision and reasons

13. I noted that the VO contended that the proposal is invalid as it does not meet the criteria of a 'relevant proposal' under the amendments to The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations SI 2009 No. 2268 made by the Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 SI 1193. The position of the VO was that the assessments in question do meet the criteria of a single hereditament under section 64 (3ZA) of the Local Government Finance Act 1988, following the Upper Tribunal decision in relation to Libra Textiles Ltd (T/A Boundary Mill Stores) & Centric Assets v Roberts And Alford (VOs) [2020] UKUT 237 (LC) (31 July 2020) as it appears there was interconnection between them. Therefore these properties would have been merged prior to the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018.

14. The effective date was date restricted to 1 April 2015 following the amendment to the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 made by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations SI 2015 No. 424. Proposals to merge received on or after 1 April 2015 were date limited to an effective date of 1 April 2015.

15. In his opinion, the request to merge could have been made before or after the Mazars decision whilst the 2010 list was open and prior to the amendments made to the Appeal regulations noted above. The properties have in fact already been merged as compliant with the earlier Mazars decision at the time. The proposal has therefore not been made as a result of the coming into force of Sections 64 (3ZA) or (3ZB) of the Act and has been deemed to be invalid.

16. The appellant's representative contended that the appeal is a "Merge" appeal submitted following the introduction of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (the "PICO Act"). It

was submitted under amended grounds for submitting a proposal under Regulation 4(1)(k) contained within the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (the "2009 Regulations"). The amendments were made to the 2009 Regulations by the Non-Domestic Rating (Alteration of Lists) and Business Rates Supplement (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 (the "2018 Regulations").

17. This appeal was made following the PICO Act 2018 and subsequent regulations. The PICO Act gave a time limited opportunity to re-open the 2010 rating list in specific circumstances. In order to achieve this the regulations brought in an additional definition of a hereditament by adding subsections 3ZA to 3ZD to section 64 of the Local Government Finance Act 1988.

18. The appellant's representative also referred to extracts from an email from Nick Cooper of the MHCLG, giving context of the change in legislation which in his opinion had given the VO the opportunity to correct an inaccuracy in the 2010 rating list by way of his proposal. In his view without the provisions of SI 2015/424, which limited the effective date to 1 April 2015, the effective date of the merger agreement would have been 1 April 2010.

19. 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.

20. 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).

21. 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.'

22. The appeal properties in this proposal were merged via agreement on a proposal received on 4 July 2017 at an effective date of 1 April 2015. The merged assessment was agreed as it was accepted as inter-connecting and therefore complied with the requirements following the decision of Woolway (VO) v Mazars [2015] RA 373.

23. The effective date was date restricted to 1st April 2015 following the amendment to the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 made by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations SI 2015 No. 424. 'Proposals to merge received on or after 1 April 2015 were date limited to an effective date of 1 April 2015'.

24. 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 the appeal properties. Furthermore, the submission from the VO was clear that, if a proposal had been made, the hereditaments could have been merged and assessed as one unit from earlier than 1 April 2015 ie 1 April 2010

25. In accepting this submission, the argument of the appellant's representative that the proposal dated 16 December 2019 with an agreed assessment of £54,000 should be backdated to 1 April 2010 is without foundation.
26. 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: 24 May 2021

Appeal number: 4240333941975/285N10