THE VALUATION TRIBUNAL FOR ENGLAND

2010 rating list; appeal against notice of invalidity; Local Government Finance Act 1988; offices and premises; deletion of hereditaments; reducing rateable value to nil; effective dates; Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; validity of proposal; appeal dismissed.

RE: 1st Floor Wynstay House, 148 Bradfield Road, Sheffield, S6 2BW and
2nd Floor Wynstay House, 148 Bradfield Road, Sheffield, S6 2BW ("the subject properties")

APPEAL NUMBER: 442034074152/285N10

BETWEEN:	JLL Investments Ltd (Represented by Fareview Management Ltd)	Appellant
	and Jo Moore (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 Reifer (of Fareview Management Ltd for the Appellant)
Mr S Horder (Respondent's representative)

Summary of decision

1. Appeal dismissed. The panel was satisfied that the proposal to alter the 2010 rating list was not validly made.

Introduction

2. Mr Reifer provided some background to the appeal. He explained that the appellant company had sold the subject properties on 3 October 2014 with the benefit of planning consent to convert the offices to residential use. Following a proposal by the new owner, the

rateable value (RV) was reduced to nil from 3 October 2014 and the entries were subsequently deleted from the list with effect from 12 February 2015.

3. It was Mr Reifer's contention that the works relating to the conversion to domestic use had begun prior to October 2014 but this date was used by the new owner as it was when they became liable for the properties. He therefore lodged a proposal, on behalf of the appellant company, seeking to alter the 2010 rating list with effect from June 2013. The appeal before the panel was to challenge the Valuation Officer's (VO) invalidity notice.

4. 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 issue

5. The appeal had previously been listed for hearing on 10 August 2021, but Mr Reifer contacted the tribunal the day before the hearing to advise no discussions had occurred between the parties. The appeal was postponed so that the parties could discuss the appeal and the appellant could understand why an invalidity notice had been issued.

6. On 16 March 2022, both parties were served with a Notice of Hearing relating to the hearing on 26 May 2022. This notice contained the Tribunal's standard directions regarding discussions and evidence exchange. Those directions require the appellant to provide a final evidence bundle containing submissions from both parties, no later than two weeks prior to the hearing date (5pm on 12 May). No consolidated bundle was received by the Tribunal, but Mr Reifer sent an email on 17 May indicating a hearing was still required. Over the following days, a number of email exchanges occurred and both parties provided late written submissions setting out their respective positions.

7. Neither party raised any objection at the hearing to the late submissions, so the panel decided to admit all evidence provided and hear the case.

Issue

8. The issue before the panel was to determine whether the proposal to alter the 2010 rating list was validly made or not.

Decision and reasons

9. From the submissions, the panel noted that two proposals to alter the 2010 rating list had been made by Mr Reifer. The first was made on 12 March 2019 and sought deletion of the entries for the subject properties with effect from 1 June 2013. The VO did not appear to have received this proposal, which was sent by post, so Mr Reifer made a further proposal on 24 February 2020. This later proposal sought a merger of two entries into one with effect from 24 June 2013 but also asked the VO to consider deletion, referencing *Newbigin (VO) v Monk* [2017] UKSC 14, and stated –
"See cover email note, the premises should in essence be deleted (zeroed) from the effective date as their change to residential was initiated, the revisiting must however be through a permitted event i.e., a Mazars Enquiry, being two floors."

In response to this proposal, the VO issued a notice of invalidity on 27 February 2020, which Mr Reifer appealed on 4 March 2020.

10. The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (hereafter referred to as the "PICO Act") was enacted to enable alterations to the 2010 list, after it had closed, to reverse the effects of *Woolway (VO) v Mazars LLP* [2015] UKSC 53. The *Mazars* case had resulted in many entries in the 2010 rating list being split into separate hereditaments, which were subsequently disputed. 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.

11. The PICO Act inserted new categories of hereditament into section 64 of the Local Government Finance Act 1988 as follows –

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.

12. As shown in paragraph 10 above, the ability to make proposals to alter the 2010 rating list after 31 March 2017 only applied to certain circumstances and those relevant proposals '*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'.* In the case of the two entries for Wynstay House, the panel understood that both offices were empty in 2013 and owned by the appellant but 3ZB required at paragraph C "*immediately before that day, the hereditaments were, or formed part of, a single hereditament by virtue of subsection (3ZA)".* There was no evidence that 1st Floor Wynstay House and 2nd Floor Wynstay House were contiguous and a single entry in the 2010 rating list prior to June 2013.

13. The panel found that the earlier proposal dated March 2019 could not be considered valid, even if the VO had received it. The appellant had the opportunity to make a proposal to delete the subject properties from the 2010 rating list before it closed on 31 March 2017. However, a proposal made after 1 April 2015 would have limited the effective date of any changes to 1 April 2015 in line with The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015. The proposal lodged in March 2019 did not seek a merger of the entries in the list as a result of an alteration following *Mazars*. It sought a deletion of the entries from June 2013, so this was not a relevant proposal for the purposes of the PICO Act and the extended window in which to make such proposals.

14. The ALA Regulations set out when proposals can be made to alter the rating list. Part 2 concerns alteration of local lists and Regulation 5 set out the periods in which proposals may be made for the 2005 and 2010 rating lists as follows –

    (1) *Subject to paragraph (2), a proposal to alter a list compiled on or after 1st April 2005 may be served on the VO at any time before the day on which the next list is compiled*.
    (2) *A proposal on the ground set out in -*
        (a) Regulation 4(1)(d) or (f) may only be served on the VO before the day on which the next list is compiled or within six months of the date of the alteration, whichever is the later;
        (b) Regulation 4(1)(e) may be served on the VO no later than six months after the day on which the next list is compiled.

15. Following the PICO Act, Regulation 5 of the ALA Regulations was modified to provide a window in which relevant proposals could be made as follows –

    (1) Subject to paragraph (2), (3) and (5), a proposal to alter a list compiled on or after 1st April 2005 may be served on the VO at any time before the day on which the next list is compiled.
    (2) A proposal on the ground set out in -
        (a) Regulation 4(1)(d) or (f) may only be served on the VO before the day on which the next list is compiled or within six months of the date of the alteration, whichever is the later;
        (b)Regulation 4(1)(e) may be served on the VO no later than six months after the day on which the next list is compiled.
    (3) Subject to paragraph (5), a relevant proposal may only be served on the VO before 1st January 2020.
    (4) Paragraph (5) applies where some or all of a hereditament ("hereditament A") was comprised in a hereditament ("hereditament B") in respect of which an alteration is made to a 2010 list in order to give effect to a relevant proposal.
    (5) Where this paragraph applies, a relevant proposal in respect of hereditament A may only be served on the VO before 1st January 2020 or within six months of the date on which the alteration is made to the 2010 list in respect of hereditament B, whichever is the later".

16. The panel found that 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*". Any proposals made on these grounds must be lodged between 17 December 2018 and 31 December 2019.

17. In the subject appeal, although the proposal made in February 2020 indicated it sought a merger of the subject properties, the panel concluded from the detailed reasons and covering email that Mr Reifer was actually still seeking an alteration to the effective date for the deletion or reduction to nil RV. The subject properties were already separate hereditaments prior to the decision in *Mazars* and were not the result of a split hereditament following that case. The material dates on the proposals lodged by Mr Reifer were 1 June 2013 or 24 June 2013. It was the panel's understanding that the subject properties were empty and under the control of the appellant at that time and therefore any proposal to merge, delete or reduce the RV to nil from June 2013 could have been made at the time or certainly before 31 March 2015, after which effective dates were restricted.

18. Prior to the hearing, the clerk had provided both parties with a copy of the recently decided Upper Tribunal case of *Stormhill Properties Limited v Roberts (VO)* [2022] UKUT 109 (LC). In this case, the Upper Tribunal upheld the VTE decision that the extended window to make proposals to alter the 2010 rating list were specific to particular circumstances and not open to all ratepayers for any alteration which could have been addressed during the life of the list.

19. After considering all of the evidence presented, the panel was satisfied that –
    - The proposal dated March 2019 was not received by the VO, but it did not meet the criteria for a proposal lodged under the PICO Act in any case as it sought a change to the effective date of the earlier alterations. It was therefore out of time and invalid.
    - The later proposal dated February 2020 was still seeking an alteration to the effective date of earlier alterations as no evidence was provided to show that it was seeking the reconstitution of an earlier entry on contiguous offices, split following Mazars.
    - In any case, the February 2020 proposal was lodged after the deadline prescribed for such PICO Act related proposals, 1 January 2020, and was out of time.

20. The panel therefore concluded that the proposal made on 24 February 2020 was invalid and the appeal was dismissed.

Date: 21 June 2022
Appeal number: 442034074152/285N10

Appeal Rights

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.