VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; exemption under paragraph 16(1)(b) of Schedule 5 to the Local Government Finance Act 1988 (property used for disabled people). Pluss Organisation Ltd v Hockey (VO), Pluss Organisation v Gidman (VO), Appeal allowed.

RE: 1A Dunn Street, London, E8 2DG

APPEAL NUMBER: CHG100047539

BETWEEN:	Assistive Solutions	Appellant
	And	
	Mr D Jackson (Valuation Officer)	Respondent

PANEL: Ms L Moses (Senior Member)
Mr J Imperato

CLERK: Mrs A Keohane

REMOTE HEARING ON: Friday 23 October 2020

APPEARANCES: Mr D Baxter-Williams – the Appellant
Mr C Cates - the Respondent's Representative

Summary of Decision

1. The appeal was allowed. The appeal premises are exempt from rating with effect from 1 April 2017 under paragraph 16(1)(b) of Schedule 5 to the Local Government Finance Act 1988 (the 1988 Act).

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 the 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. This was a 2017 rating list appeal. 1A Dunn Street, London, E8 2DG (the 'appeal property'), was entered into the rating list as an office and premises, £33,000 rateable value (RV), with effect from 1 April 2017. The appellant submitted a Challenge to the Valuation Officer on 17 September 2018, seeking an exemption from rating for the appeal property, in accordance with paragraph 16(1)(b) of Schedule 5 to the 1988 Act. The Valuation Officer did not alter the rating list in accordance with the Challenge proposal and issued a Challenge Decision Notice to that effect on 12 December 2019. An appeal was made to the Valuation Tribunal against the Challenge Decision Notice on 16 February 2020.

5. The material day for this appeal is 1 April 2017.

6. To assist the appellant, an unrepresented ratepayer, the panel varied the model procedure outlined in PS8 Model Procedure and asked Mr Cates to present the Valuation Officer's evidence first.

7. This decision document is not intended to be a verbatim report of the proceedings and does not repeat all of the parties' evidence in full. 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 that it having been overlooked by the panel when reaching its decision.

Issue

8. The issue is whether the appeal hereditament qualifies for an exemption from non-domestic rating under paragraph 16(1)(b) of Schedule 5 to the 1988 Act.

Evidence and submissions

9. Mr Cates confirmed that the rating list had not been altered in the manner proposed by the appellant as none of the evidence exchanged confirmed that the appeal property qualified for exemption from rating. Referring to the legislation, he considered that for an exemption to apply, the appeal property had to be used wholly for the purposes of providing welfare for disabled people. Although the appellant was supplying equipment, support and training to disabled people all over the UK, he did not consider the premises were used wholly for providing services to the disabled but used mainly for a co-ordinating role.

10. Mr Cates argued that the connection between the appeal property and its provision of welfare services was indirect; given that it was not used directly by disabled people visiting the premises on a regular basis. Whilst it was clear that the appellant supplied equipment and support services to registered disabled people, these were provided on a distance basis. He believed the key question was whether the premises were "used wholly and physically by the disabled".

11. The appeal property had been inspected in July 2017 and from the record of the visit, it was noted there were about 5-6 people employed there, either monitoring new work, setting up suitable computer programmes and hardware, or sending out or dealing with returns. There were no sales direct to the public and interaction with students was by telephone or e-mail, with no face to face activity occurring on site. From the Assistive Solutions website, he had concluded that they offered very limited services.

12. Mr Cates explained that the welfare service provided must be within the meaning of the National Assistance Act (NAA) 1948 and in particular paragraph 29, which was now over 70 years old and designed around local authorities delivering locally. With regard to the appeal property, Mr Cates considered the provision of welfare services was not met, although the service provided therefrom may have been provided by a local authority, it was not one that would have been provided under Section 29 of the NNA 1948.

13. A Form of Return had been completed by the appellant indicating the appeal property was used by two companies, Assistive Solutions and Light Studio Ltd. Mr Cates believed this further supported the contention that the property was not wholly used for the provision of welfare services for disabled people. Also, part of the appeal property was used to manufacture and maintain equipment for disabled people in a workshop area and other areas were used for administrative purposes. This essentially fell within the use class of B1 – Offices, research and development of products and processes, light industry appropriate for residential areas. Mr Cates believed the appeal property had been correctly valued as an office and premises for the 2017 rating list.

14. In response to the case law referred to by the appellant, in particular, *Pluss Organisation Ltd v Hockey (VO), Appeal No: 011618390764/537N10,* Mr Cates expressed the view that it did not support the challenge being made by the appellant.

15. Mr Baxter-Williams believed there was a general lack of understating of the services provided by Assistive Solutions. To clarify matters, he explained the following:

16. Assistive Solutions was a social enterprise that worked solely with disabled people, at the present time these were students in higher education.

17. Assistive Solutions provided computer equipment and support to students all over the UK and its services were co-ordinated from the appeal property. These services included the setting up of tutoring sessions in a student's home or arranging delivery and setup of specialist equipment within their home.

18. Assistive Solutions facilitated access to higher education for disabled people in line with the Equalities Act, applying multiple reasonable adjustments, usually in people's homes. As the company responded to a full range of disabilities, interventions ranged from providing ergonomic equipment, aiding people with physical disabilities finding suitable ways of working, one to one mentoring for persons diagnosed with mental health issues and overcoming barriers that affected a person's studies. Mr Baxter-Williams did not consider Assistive Solutions was a manufacturer.

19. Assistive Solutions did not choose what interventions were needed in each case; this was done by an independent needs assessor and approved and disseminated by agents of the Government. The services provided were part of a Government

scheme to make reasonable adjustments in line with the Equalities Act and Disability Discrimination Act. This scheme was called the Disabled Students Allowance (DSA).

20. DSA was a type of service that a local authority would provide and therefore fell within the remit of the NAA 1948. In the main, local authorities still administered, oversaw and paid for DSA services, although in recent years, the payment and processing had been centralised in England for reasons of economy.

21. In response to Mr Cates' argument that disabled persons did not attend the appeal property, Mr Baxter-Williams confirmed that disabled people did actually visit the appeal property to receive advice and assistance as and when required and waiting and meeting areas were provided for this.

22. Reference was made to Section 29 of the NAA 1948 and Appendix 2 to the Local Authority Circular LAC (93) 10, issued by the Department of Health to local authorities in England. Paragraph 2 of Appendix 2 detailed the powers and duties to make welfare arrangements. These included "to provide a social work service and such advice and support as may be needed for people in their own homes or elsewhere".

23. Mr Baxter-Williams believed there was precedence for granting rating exemption to companies such as Assistive Solutions. He referred to *Mackintosh Law v Ricketts (VO)* (584025571384/144N10) in which it was accepted that the services provided by the law firm were exclusively concerned with the welfare of disabled people. In this case, the legal services assisted people with benefit claims. It was argued that Assistive Solutions provided services to disabled people which allowed them fair access to higher education in the form of reasonable adjustments in line with the Equalities Act and such services, overseen by Government, were a more classical form of 'welfare' than a legal advice service.

24. Mr Baxter-Williams referred to a decision of the VTE in *Pluss Organisation Ltd v Hockey (VO),* (011618390764/537N10) where it was successfully argued that services provided at or from the subject premises were welfare services provided for disabled persons; the exemption was allowed. Mr Baxter-Williams likened the services provided by the Pluss Organisation Ltd to those of Assistive Solutions.

25. In response to Mr Cates' contention that the appeal property was occupied by two companies, Mr Baxter-Williams believed he had completed the Form of Return incorrectly. Light Studio Ltd were the owners of the building and not the occupiers. With regard to Mr Cates' comments about the limited services advertised on the company website; Mr Baxter-Williams explained that the company provided more services than those shown on the home page; full services were outlined on a resources page, which he believed Mr Cates had not accessed.

26. In conclusion, Mr Baxter-Williams stressed that disabled graduates assisted by DSA entered a workplace with greater employability. Data from the Higher Education Statistics Agency had shown that disabled people that had taken DSA did not drop out of higher education as frequently as others and achieved higher results. He had no doubt that Assistive Solutions was engaged in welfare services that gave disabled people access to further education and enhanced levels of employment, and that these services were similar to those considered in the case of *Pluss Organisation Ltd.*

Decision and reasons

27. The panel carefully considered all of the evidence submitted by the parties in this appeal. It had regard to the cases quoted by the appellant, paying particular attention to the VTE decision in the *Pluss Organisation Ltd v Hockey (VO),* (011618390764/537N10,). This decision was found to be relevant as, amongst other things, it gave guidance on the construction of the legislation in relation to Schedule 5 exemptions.

28. As neither party had raised a dispute over whether the clients of Assistive Solutions were disabled persons within the requirements of the relevant legislation, the panel accepted they were and did not consider this point further when determining the appeal.

29. The panel paid attention to the provisions of paragraph 16(1)(b) of Schedule 5 to the 1988 Act, which stated the following:

> "A hereditament is exempt to the extent that it consists of property used wholly for any of the following purposes—
>
> a. ….
>
> b. the provision of welfare services for disabled persons.

30. Paragraph 16 goes on to provide the following definitions for the purposes of paragraph 16(1), as amended:

> "(2) A person is disabled if he is blind, deaf or dumb or suffers from mental disorder of any description or is substantially and permanently handicapped by illness, injury, congenital deformity or any other disability for the time being prescribed for the purposes of section 29(1) of the National Assistance Act 1948.
>
> (3) "Illness" has the meaning given by section 275 of the National Health Service Act 2006.
>
> (4) "Welfare services for disabled persons" means services or facilities (by whomsoever provided) of a kind which a local authority has power to provide under section 29 of the National Assistance Act 1948."

31. Section 29(1) of the 1948 Act, set out the following:

> "a local authority may, with the approval of the Secretary of State, and to such extent as he may direct in relation to persons ordinarily resident in the area of the local authority shall make arrangements for promoting the welfare of persons to whom this section applies, that is to say persons aged eighteen or over who are blind, deaf or dumb or who suffer from mental disorder of any description, and other persons aged eighteen or over who are substantially and permanently handicapped by illness, injury, or congenital deformity or such other disabilities as may be prescribed by the Minister".

32. Having regard to the above, “Welfare services for disabled persons” for the purposes of the exemption under paragraph 16(1)(b) were limited by paragraph 16(4) to the services or facilities which a local authority had the power to provide. In the panel’s view this limb of the exemption could only apply where such services were provided to disabled persons, who were aged 18 years or over. Section 29(4) of the 1948 Act went on to provide specific examples of the arrangements which could be made, namely:

> “Without prejudice to the generality of the provisions of subsection (1) of this section, arrangements may be made thereunder—
>
> (a) for informing persons to whom arrangements under that subsection relate of the services available for them thereunder;
>
> (b) for giving such persons instruction in their own homes or elsewhere in methods of overcoming the effects of their disabilities;
>
> (c) for providing workshops where such persons may be engaged (whether under a contract of service or otherwise) in suitable work, and hostels where persons engaged in the workshops, and other persons to whom arrangements under subsection (1) of this section relate and for whom work or training is being provided in pursuance of the Disabled Persons (Employment) Act 1944 or the Employment and Training Act 1973 may live;
>
> (d) for providing persons to whom arrangements under subsection (1) of this section relate with suitable work (whether under a contract of service or otherwise) in their own homes or elsewhere;
>
> (e) for helping such persons in disposing of the produce of their work;
>
> (f) for providing such persons with recreational facilities in their own homes or elsewhere.

33. Having regard to the evidence, the panel was satisfied that the over-reaching aim of Assistive Solutions was the administration, provision and facilitation of welfare services which helped disabled people to cope with and undertake study in higher education and to break down any barriers to education they may face because of their disability. This assisted students with disabilities to manage their education having regard to their mental and physical condition.

34. The panel was persuaded that the service provided by the appellant was of a kind that could be provided by a local authority. Paragraph 16(4) does not require the services or facilities to be provided “under” or “by virtue” of section 29 but only that it be “of a kind” which a local authority had power to provide “(by whomsoever provided”). In the panel’s view, the services and facilities provided by Assistive Solutions, fell within 29(4)(b). Mr Baxter-Williams had indicated that Assistive Solutions aided disabled persons by arranging one to one mentoring in their homes, in the appeal property if required and by providing tools to help them continue in higher education. The panel accepted that this was support of a specialised nature, aiding students to overcome, and in other cases dealing with in the best way possible, the effects of their disability.

35. Mr Cates considered that whilst the service provided from the appeal property may have been a service provided by a local authority, it would not be one provided under Section 29 of the NNA 1948. In the panel's view and for the reasons outlined above, it was satisfied that the service provided by Assistive Solutions, could fall under 29(4)(b).

36. The panel accepted that the wording of the legislation required a property to be used 'wholly for the purpose of the provision of welfare services'. It appeared therefore, that it was not just the property's purpose that was important but how the property was actually used. Mr Cates had indicated that the property was used for administrative purposes and the manufacture and maintenance of equipment for disabled people. The panel considered this point but concluded that the elements raised by Mr Cates were an intrinsic part of the welfare services provided from the appeal property, in that they helped Assistive Solutions to facilitate the provision of its service and provide equipment to meet the specific needs of the disabled people it assisted.

37. In response to Mr Cates comments in relation to whether or not disabled people attended the appeal property, nothwithstanding Mr Baxter-Williams confirmation that they did and areas were provided for this facility, the panel was not convinced that the legislation required a disabled person to be physically present at the premises for them to have the benefit of services planned, organised and administered from those premises.

38. Having regard to the above, the panel found the appeal hereditament was exempt from rating under paragraph 16(1)(b) of Schedule 5 to the 1988 Act. The appeal was therefore allowed.

Order

39. Under the provisions of regulation 38(4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) regulations 2009, the VTE orders the Valuation Officer to delete the rating list entry in respect of the appeal property with effect from 1 April 2017, to reflect that it is exempt in accordance with 16(1)(b) of Schedule 5 to the Local Government Finance Act 1988. This list alteration should be done within two weeks of the date of this order.

40. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 20 November 2020

Appeal number: CHG100047539