VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating appeal; accuracy of the list; offices and car park; merger of assessments; Woolway (VO) v Mazars [2015] UKSC 53; Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018; appeal dismissed.

Re: NCI Technologies, Waterside House, Falmouth Road, Penryn, Cornwall TR10 8BE and Car Parking Spaces 58-67, Waterside House, Falmouth Road, Penryn, Cornwall TR10 8BE.

APPEAL NUMBER: CHG100065811

BETWEEN:	Mr A Trish	Appellant
	and	
	Mr D Kirk (Valuation Officer)	Respondent

PANEL: Mr SP Wood (Senior Member)
Prof I Solanke

CLERK: Miss F Willson

REMOTE HEARING: 30 October 2020

APPEARANCES: Mr A Trish (appellant)
Mr K Davidson (on behalf of the Valuation Officer)

Summary of decision

1. Appeal dismissed. The current entries in the Rating List are to remain as NCI Technologies, Waterside House, Falmouth Road, Penryn, Cornwall TR10 8BE and Car Parking Spaces 58-67, Waterside House, Falmouth Road, Penryn, Cornwall TR10 8BE. With effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant on 3 January 2019, in his capacity as the ratepayer in respect of both properties NCI Technologies and Car Parking Spaces 58-67 (the appeal properties). The challenge was in respect of the entry in the rating list at £17,500 rateable value RV and £4,000 RV respectively, effective from 1 April 2017. The appellant sought a merger of the rating list entries into a single revised assessment with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and a decision notice to this effect was issued on 18 December 2019. The appellant made an appeal to this tribunal which was received on 21 April 2020.

3. 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.

4. 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.

5. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to their decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

6. The issue is whether or not the rating list entries should be merged.

Evidence and submissions

7. Mr Trish's bundle of evidence included details of the appeal properties, photographs and plans of the appeal properties and a copy of his lease.

8. The appellant did not dispute the price per m^2, the value placed on each parking space or the size of the office property.

9. With reference to the location of the appeal properties he disputed that they should appear as separate entries in the rating list.

10. On behalf of the Valuation Officer, Mr Davidson's bundle comprised a copy of the proposal; photographs, layout plan and details of the appeal properties and a map.

11. With reference to *Woolway (VO) v Mazars [2015] UKSC 53* the respondent submitted that the appeal properties should remain as separate entries in the rating list as they were not contiguous and therefore failed the geographical test set out in the *Mazars'* judgment.

Decision and reasons

12. The leading authority on this issue was now the Supreme Court's judgment in *Mazars*. The Supreme Court's judgment was clearly binding in appeals of this nature.

13. In paragraph 12 of the Supreme Court decision, Lord Sumpton outlined the correct test(s) to be applied;

> I derive from these decisions three broad principles relevant to cases like this one where the question is whether distinct spaces under common occupation form a single hereditament. First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second *Bank of Scotland* case illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Third, the question whether the use of one section is necessary to the effectual enjoyment of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects. The application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law. They are also rationally founded on the nature of a tax on individual properties. If the functional test were to be applied in any other than the limited category of cases envisaged in the second and third principles, a subject (or in English terms a hereditament) would fall to be identified not by reference to the physical characteristics of the property, but by reference to the business needs of a particular occupier and the use which, for his own purposes, he chose to make of it.

14. The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 (The Act) 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:

    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.

15. Mr Trish explained that he had let an office in Waterside House for more than 14 years and had used whichever car parking spaces were free to park when at the office. Three years ago his landlord had asked him to sign a new lease which included ten car parking spaces but had not increased his rent.

16. He then received a rates demand from the billing authority for "Car Parking Spaces 58-67, Waterside House, Falmouth Road, Penryn, Cornwall TR10 8BE" which was backdated two years. This was the first time he had been aware that under the terms of the new lease he would be responsible for non domestic rates on the car park spaces. Until then he had believed they had been included in the assessment for the office.

17. The panel was aware that car parking spaces have a commercial value and therefore are included in the rating list and the liability would depend on who had rateable occupation of them.

18. Mr Trish submitted that the parking spaces marked as allocated to him on the plan were not the ones that he parked in. Neither were they the ones marked as being for his company's use. With the aid of the plan Mr Trish was able to confirm to the panel which were the spaces marked as being for his company and which were the spaces included in the assessment being 'spaces 58-67'.

19. He had had no contact prior to the bill arriving with anyone on behalf of the valuation officer. If he had he would have been able to confirm which were the car parking spaces he had rateable occupation of.

20. He described the parking spaces he used. They were marked with his company's name were contiguous with the office premises his company occupied. He referred the panel to the photographs provided which showed that at least two of the spaces had only the outside wall between his office and the car parking spaces. He therefore submitted that based on the *Mazars* judgment there should only be one entry in the list.The car parking spaces he referred to were not however car parking spaces contained in the appeal properties.

21. The panel determined that Mr Trish appeared not to be using any of the spaces to which the assessment referred. This is a dispute over liability but that is not a matter for this tribunal. Mr Trish would need to contact the billing authority to raise this issue.

22. Mr Davidson referred the panel to the plan on which the designated car parking spaces and the offices which make up the appeal were marked. The car parking spaces 58-67 were a distance from the office with other parking spaces and the shared access road for all traffic laying between the two assessments It was his submission therefore that the geographical test laid out in the *Mazars* judgement was not satisfied and the appeal properties could not be merged.

23. Mr Davidson submitted that The Act amended the *Mazars* judgment to a certain extent. He drew the panel's attention to the fact that a merger of two assessments could be carried out under The Act where the properties were either vertically or horizontally contiguous except for a ceiling or wall and any space lying therein. This is not the case with the appeal properties.

24. In the light of the authoritative guidance contained within the *Mazars* judgement and the fact that The Act did not apply, the panel found that the appeal properties could not be included in the same assessment. The panel accepted Mr Davidson's argument. The appeal properties did not satisfy the geographical test in *Mazars* and they were not contiguous within the definition provided by The Act. There were no arguments raised by either the appellant or the respondent in connection with the functionality test in the *Mazars* judgment. There were two hereditaments separated by parking spaces occupied by another person or persons, and an access road.

25. In appeals of this nature, the burden of proof rests on the appellant to show that the rating list entries should be merged. In the appeal the panel had not been provided with sufficient evidence to demonstrate that the two entries in the rating list should be merged and found in favour of the respondent.

26. The appeal is therefore dismissed.

Date: 24 November 2020

Appeal number: CHG100065811