THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; workshop; vehicle repair workshop; merger of three units into a single unit; appeal allowed.

RE: Unit 6, 7 and 8 Vennland Business Centre, Mart Road, Minehead, Somerset TA24 5BJ

APPEAL NUMBER: CHG100144879

BETWEEN:	Acare Leisure Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr J Rogers (Chairman)
Mrs A Fielder

CLERK: Mr D Mulgrew

HEARING: Remote hearing No.3 on 13 September 2021

APPEARANCES: Mr C Lambert (Whitestone Commercial Ltd) (Appellant's representative)
Mr T Payne (Acare Leisure Ltd) (Witness of fact)
Ms H Moffatt (Respondent's representative)
Mr D Cooke (Valuation Office Agency) (Witness of fact)

Decision and reasons

1. On 13 September 2021, the panel part heard the appeal and issued an interim decision which is shown in the appendix. The panel had decided to allow a merger of three units into a single unit.

2. In accordance with directions, the parties then engaged in further discussion and have reached agreement that the rateable value should be £45,000, effective from 1 January 2019.

3. The panel has consented to this and therefore the Valuation Tribunal for England makes the following order to amend the 2017 rating list.

Order

4. The Valuation Tribunal for England orders the Valuation Officer to merge the three entries in the rating list into a single entry as follows:

   Unit 6, 7 and 8 Vennland Business Centre,
   Mart Road, Minehead, Somerset TA24 5BJ

   Workshop and premises

   Rateable value £45,000 effective 1 January 2019

Refund of appeal fee

5. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: 27 October 2021

Appeal number: CHG100144879

APPENDIX – Interim decision issued on 11 October 2021

THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; interim decision to allow a merger of three units into a single unit.

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APPEARANCES:	Mr C Lambert (Whitestone Commercial Ltd) (Appellant's representative) Mr T Payne (Acare Leisure Ltd) (Witness of fact) Ms H Moffatt (Respondent's representative) Mr D Cooke (Valuation Office Agency) (Witness of fact)

Summary of decision

1. The panel made an interim decision to merge the three entries in the rating list.

Introduction

2. This appeal has been brought requesting a merger of Unit 6, 7 and 8 Vennland Business Centre, Mart Road, Minehead, Somerset (the "appeal property"), which were entered in the 2017 rating list as follows:

   - Unit 6 – workshop and premises – rateable value £11,000 from 1 January 2019.
   - Unit 7 – workshop and premises – rateable value £17,500 from 1 January 2019.
   - Unit 8 – vehicle repair workshop – rateable value £24,750 from 1 January 2019.

3. The appellant had made a proposal to the Valuation Officer (VO) seeking a merger of the three rating list entries into a single entry at rateable value £29,500 from 1 January 2019. The VO refused to alter the rating list.

4. In accordance with regulations [1] (see below), an appeal was made to the Valuation Tribunal for England (VTE) on the grounds that there was an inaccuracy in the list (other than valuation).

5. The President of the 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 relevant legislation [2] (see below). The VTE may determine the form of any hearing.

6. Therefore, in pursuance of the relevant regulation [3] (see below) 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.

7. The VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link. There were no technology problems and the parties were fully able to participate.

8. 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 its decision. Consequently, the absence of a

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[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

[2] 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).

[3] The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, regulation (6)(3)(g).

reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Preliminary matter

9. On 24 August 2021, the appellant's representative emailed the VO and VTE new evidence, namely the heads of terms to the lease which he stated confirmed that all three units were in one occupation.

10. Regulation 37A(2) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 states that when determining an appeal, the Tribunal must not take into account any matter unless it was included in:

    (a) the notice of appeal or any document accompanying the notice of appeal;

    (b) evidence or submissions provided in accordance with a direction under regulation 17(1);

    (c) information to which regulation 17(4) applies which is used in the proceedings by the Valuation Officer;

    (d) evidence admitted under regulation 17(6A); or,

    (e) new or further evidence admitted under regulation 17A.

11. Mr Lambert's application for new evidence to be admitted falls under paragraph (e) above.

12. Under regulation 17A(1), the Tribunal may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ('new evidence') if:

    (a) that evidence –

        (i) is provided by a party to the appeal;

        (ii) relates to the ground on which the proposal was made; and,

        (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or,

    (b) all the parties to the appeal agree in writing to the party providing the new evidence.

13. The VO objected to the new evidence because the lease had been requested on two occasions before the VO issued a decision notice on 29 December 2020. The VO also stated that the lease had been in the hands of the appellant since 8 November 2019, that the documentation provided was

incomplete and contradicted information provided by Mr Lambert on a form of return.

14. The panel appreciated that Mr Payne had found it difficult to get written documentation from the landlord after verbally agreeing terms. The panel noted that Maitland Walker LLP, solicitors, had hand delivered the lease to the appeal property on 8 November 2019. When asked, Mr Lambert could not provide any good reason to explain why the lease was not provided to the VO before the VO's decision of 29 December 2020.

15. After retiring to consider the matter, the panel decided to exclude the new evidence for the following reasons:

    (a) The parties were not in agreement that lease heads of terms should be included as evidence;

    (b) The new evidence was known to the appellant before the VO determined the proposal on 29 December 2020 and could have been provided before that date.

16. Further, the Tribunal's standard directions provide time limits for exchanging new evidence. New evidence under regulation 17A(1) had to be provided no later than four weeks before the hearing.

Issue

17. The issue in dispute was whether the rating list entries for Units 6, 7 and 8 should be merged into a single rating list entry, and if so, what should be the rateable value.

Evidence and submissions

18. The panel considered the correspondence exchanged between the parties including the challenge proposal and the VO's decision.

19. At the hearing, the appellant's representative stated that he had reviewed the VO's areas and accepted them, except for an area of the first-floor offices which he stated the VO had double counted. He had revised his valuation to rateable value £32,500.

20. The panel found it difficult to conduct this hearing in line with its model procedure as Mr Payne, Mr Lambert and Ms Moffatt interrupted the process on numerous occasions by making either statements of their own or by asking questions at inappropriate places in the hearing, or by answering direct questions with questions of their own. This hindered the panel in discharging its duty.

Decision and reasons

21. The panel was concerned that during the hearing itself Mr Lambert had revised his valuation to accept the VO's areas, but had not provided any breakdown of his valuation at rateable value £32,500. While it is frustrating for changes to be made this late without prior notice, the panel allowed Mr Lambert to revise his valuation because he had conceded the areas, this being one of the matters previously in disagreement. However, the panel wanted Mr Lambert to provide it to the VO to enable it to be scrutinised and to enable the VO to comment on it.

22. The panel preferred therefore to make an initial decision on whether Units 6, 7 and 8 were one hereditament or three.

23. Unit 6 and Unit 7 are in one building. Unit 6 is on the first floor and Unit 7 is on the ground floor. This building was constructed between 1940 and 1955, but had been refurbished. Unit 8 was constructed in 2018 and is connected to the older building. The door to Unit 8 could only be opened from the inside. There is a fire door between the two buildings but it is not lockable. A person can walk between all three units internally without having to be outside.

24. Mr Cooke, a property inspector with the Valuation Office Agency, had inspected Units 6, 7 and 8 on 13 June 2019. He confirmed that there was interconnection between the three units.

25. The panel found that Units 6, 7 and 8 could be ringfenced; all three units were contiguous. The panel also noted that the billing authority sent all three rate bills to the appellant, Acare Leisure Ltd.

26. The VO contended that there were three companies with exclusive occupation of a specific unit, except for the first-floor offices which were in shared occupation. The VO argued that there were three rateable occupiers and complained because a questionnaire in respect of connected companies had not been returned. The failure of the appellant and its representative to return the questionnaire had resulted in the VO resisting the proposed merger.

27. However, the panel found that the VO had never informed the appellant of the names of the three companies the VO claimed were in separate occupation.

28. The VO stated that the back part of the first floor was occupied by an upholstery company and on the ground floor there was Autohaus and Minehead Van and Car Hire. The inspector had seen two logos in the first-floor reception. The VO argued that vehicle hire and the manufacturing of camper vans were separate.

29. The panel's chairman asked Mr Cooke directly why he had formed the opinion that there were three different occupiers. Mr Cooke said after measuring the units he was in conversation with a gentleman who had showed him around. The gentleman had written on a piece of paper that the occupier of Unit 8 was Autohaus / Minehead Van and Car Hire, the occupier of Unit 7 was ESAL and

that the occupier of Unit 6 was Phantom Works, and that two offices were shared between Units 6 and 7. The gentleman's name had not been recorded.

30. The panel's chairman asked Mr Cooke if they were limited companies and he did not know. Neither did he know if they were trading names. The panel did not find these answers to be satisfactory.

31. Mr Payne stated that Autohaus is the product that the appellant manufactures and is owned by the appellant. He said that Minehead Van and Car Hire is a brand owned by the appellant. When asked, he said that the name Phantom Works did not mean anything to him. Mr Payne stated that the premises were used for the same purpose; namely the appellant converted Volkswagen vans into camper vans. He stated that the appellant had been in occupation of all three units since 1 January 2019.

32. As there was insufficient evidence to show separate legal persons occupying the units and in view of Mr Payne's testimony, the panel made a finding of fact that there was a single hereditament as the appellant was the sole rateable occupier.

33. The panel therefore made an interim decision that the three rating list entries are to be merged into a single rating list entry from 1 January 2019.

34. The panel adjourned the proceedings and direct the parties as follows:

    (a) The appellant's representative is to provide his revised valuation to the VO within two weeks (by 5pm on 26 October 2021), copying in the VTE.

    (b) The respondent's representative is to be allowed two weeks to comment on the revised valuation (by 5pm 9 November 2021), copying in the VTE.

35. The hearing will be reconvened as soon as possible. The representatives of both parties are encouraged to discuss the outstanding issues ahead of this hearing.

36. While the panel allowed Mr Lambert to amend his valuation evidence, this was done to accept the VO's areas in an attempt to remove some of the disagreement between the parties. However, no further new evidence will be entertained unless there is agreement by both parties.

37. At the reconvened hearing, the panel will hear evidence and argument from the VO in respect of the appellant's proposed valuation. All parties should observe the Tribunal's model hearing procedure.

Date: 11 October 2021

Appeal number: CHG100144879