THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; workshop and premises; industrial unit used to store domestic goods; section 66 (1)(d) of the Local Government Finance Act 1988; definition of domestic use; Decision: appeal allowed.

RE: 4 Bard Road, London, W10 6TP

APPEAL NUMBER: CHG100146351

BETWEEN:	Princesse D'Isenbourg Et Cie Ltd	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL:	Ms A Ursprung (Presiding Senior Member) Prof. P Catterall
CLERK:	Mrs A Sloan
HEARING:	Remote hearing No.2 on 12 January 2022
APPEARANCES:	Mr C Lambert of Whitestone Commercial (for the Appellant) Mr K List (for the Respondent)

Summary of decision

1. Appeal allowed. The appeal property was found to be domestic and deleted from the rating list with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of 4 Bard Road, London, W10 6TP (the "appeal property"), which was entered in the 2017 rating list as 'workshop and premises' at rateable value £15,750, effective from 1 April 2017.

3. The challenge process began when the Appellant made a proposal to the Valuation Officer (VO) on the grounds that the entry shown in the rating list on 1 April 2017 should be deleted

as the property is exempt from rating as a domestic property. The VO decided that the proposal was not well founded and issued a decision maintaining the existing entry in the rating list, on 29 April 2021. The Appellant then lodged an appeal with this Tribunal to dispute that decision on 23 August 2021.

4. 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. 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.

5. 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.

6. This hearing was conducted via video conference using Microsoft Teams. There was an issue with sound on the call at the beginning of the hearing, but the source of the feedback was identified and the issue resolved. There were no further technical problems with the connection and the panel was satisfied that both parties were fully able to participate in the hearing.

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

Preliminary Issue

8. The panel asked the parties to clarify the name of the Appellant before hearing the substantive case. The Clerk explained that the appeal had, on registration with the Tribunal, been recorded as being brought by Ms Pari Moore in her personal capacity but the VO's decision notice under appeal showed the Appellant as Princesse D'Isenbourg Et Cie Ltd. Mr Lambert confirmed that Ms Moore is director of the Appellant company and that the company is the registered ratepayer. Mr List confirmed that the appeal property had been 'claimed' during the Check stage of the appeal process by the company.

9. Neither party had any objection to the correction of the record and the panel was satisfied that there was no prejudice to either party in doing so. Accordingly, pursuant to Regulation 11(1)(a) of the Tribunal Procedure Regulations, the panel formally directed that the Appellant, Princesse D'Isenbourg Et Cie Ltd, was substituted as the Appellant in this appeal.

Issue

10. The dispute concerned whether the appeal property should remain in the 2017 rating list as a workshop and premises or be considered exempt as domestic property and deleted from the list.

Evidence and submissions

11. The appeal to the Tribunal included the Challenge decision notice under appeal, correspondence between both parties and the evidence which they had exchanged. It also included internal photographs showing the items stored within the appeal property and the parties referred to relevant legislation and case law.

12. Mr Lambert's case was that the appeal property is used for the sole purpose of storing domestic items belonging to Ms Moore and it was comparable to a lock up garage. He referred to section 66 (1)(d) of the Local Government Finance Act 1988 ("the 1988 Act") and sought deletion of the entry in the rating list with effect from 1 April 2017.

13. Mr List had not prepared the Challenge decision document and was acting as Advocate in presenting this case. He confirmed he had not inspected the appeal property, but he was familiar with the issue in dispute. He stated that valuation was not in dispute in this appeal but rather the question of whether the appeal property fell to be considered domestic and should be deleted or should it remain in the rating list as a workshop? Mr List confirmed that the VO's position was that the articles stored in the appeal property were not 'of domestic use' because they did not appear to be in regular use by Ms Moore but were instead stored for long periods of time.

Decision and reasons

14. The appeal property is one of four units located off Freston Road in the London Borough of Kensington and Chelsea. The Appellant company trades in luxury goods such as champagne and caviar and occupies units 2 and 3 Bard Road. The panel understood that unit 1 was let out and possibly empty. Unit 4, the appeal property, contains a variety of domestic items belonging to Ms Moore. The panel was satisfied from the parties' submissions that there was no dispute that the items stored in the appeal property were domestic in nature and belonged to Ms Moore rather than the Appellant company. The parties indicated they were in agreement that Ms Moore was in rateable occupation of the appeal property. Mr List confirmed that he was not concerned with the prior use of the appeal property but rather its current use and whether this could be considered sufficient for exemption.

15. Mr Lambert explained that Ms Moore owns and occupies a two-bedroom flat nearby which does not have sufficient space to house all of her personal items. As a result, she has been using the appeal property as storage for these belongings for many years. He argued the established rating principle of '*rebus sic stantibus'* and stated that the appeal property must be considered not as a workshop but as it is currently used. He referred the panel to Schedule 6 paragraph 2(7) of the 1988 Act, with particular emphasis on part (b). This paragraph sets out the matters to be considered on the material date as follows –

> *"(7) The matters are—*
>
> *(a) matters affecting the physical state or physical enjoyment of the hereditament,*
>
> *(b) the mode or category of occupation of the hereditament,*
>
> *(c) the quantity of minerals or other substances in or extracted from the hereditament,*

[(cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,]

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

(e) the use or occupation of other premises situated in the locality of the hereditament."

16. As this was a challenge to the compiled list entry and the Appellant sought deletion from the beginning of the rating list, the material date on which the panel must consider the appeal property was 1 April 2017. Mr List contended that this legislation was only relevant once the property concerned had been considered non-domestic and must be valued. In the appeal before the panel, value was not in dispute and therefore the mode or category of occupation on which to value was not relevant.

17. The panel agreed with Mr List, that mode and category of occupation was only relevant if the appeal property is non-domestic and the first issue to determine was whether it is in fact domestic and therefore exempt from rating.

18. Mr Lambert had also referred to section 66(1) of the 1988 Act, which sets out the definition of domestic property. Mr Lambert relied upon part (d) as follows –

"66 Domestic property

(1) Subject to subsections (2), (2B)[, (2BB)] and (2E) below,] property is domestic if—

(a) it is used wholly for the purposes of living accommodation,

(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,

(c) it is a private garage [which either has a floor area of 25 square metres or less or is] used wholly or mainly for the accommodation of a private motor vehicle, or

(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use".

19. Mr Lambert referred the panel to the photographs taken inside the appeal property on his inspection. They showed that a range of items were stored, including clothing, large pieces of furniture and paintings. In response to questioning from the Respondent's original case worker during the Challenge discussions, he had asked Ms Moore how often the items in storage were rotated into use in her home. Mr Lambert stated that Ms Moore had been unable to confirm how often items were removed from storage but likened it to the same situation as storing items in a lock up garage or the loft of a dwelling. The panel noted that some of the larger items of furniture, such as wardrobes and dining tables could not be easily moved. Mr List contended that, whilst he did not dispute that the items stored are domestic in nature, he did not consider them to be of domestic use as they were not actually being used by the Appellant with any frequency.

20. Case law had been cited by the parties, *Andrews v Lumb* [1993] RA 124, *Alfred v Thompson* (VO) 2001 and *Martin and Others v Hewitt* (VO) [2003] RA275, which were of some use, but

the panel noted that the items in storage in these cases were boats, vehicles and recreational goods, which were determined to be not 'of domestic use'. In the case before it, the panel was satisfied that, unlike the items stored in the aforementioned cases, the belongings stored in the appeal property were such that would usually be used within the dwelling. The panel noted that *Andrews v Lumb*, from the extracts cited by the parties, established that private storage premises are not required to belong to or be enjoyed with a dwelling in order to qualify as domestic property, but in that case the items in storage were not considered to be domestic. The VO's Challenge decision notice states "These cases highlight that articles must be used on a domestic property to be satisfactorily be described as articles of domestic use". However, as neither party provided full copies of the cases cited, the panel was unable to establish where the case law finds that regular use within the dwelling is a requirement.

21. The panel considered that this case turned on the wording of section 66(1)(d) of the 1988 Act. It concluded that there was no legal definition provided for 'private storage premises' or 'articles of domestic use'. Whilst the panel could appreciate the VO's questions on the frequency of Ms Moore's use of the property stored, it found there was no such legal test to be fulfilled in this case. The appeal property is a large space of around $120m^2$ but most of the floor space was filled with Ms Moore's belongings and little floor space appeared to be visible. The panel was therefore satisfied that the appeal property was 'wholly or mainly' used for storage. No argument was presented against the appeal property being considered 'private storage premises' at the material day. Mr List had confirmed that he accepted the goods were clearly domestic in nature and did not dispute that they belonged to Ms Moore. The panel therefore considered the wording '*of domestic use'*.

22. The items stored within the appeal property included tables, chairs, wardrobes, sofas, works of art and clothing. The panel was satisfied that these were all items that would usually be found in a dwelling and were clearly domestic. For there to be a test to demonstrate relatively frequent use of the items within Ms Moore's flat, the wording would need to be 'in domestic use' rather than 'of domestic use' and therefore the panel concluded that there was no such requirement.

23. After considering the parties submissions, the panel found that the appeal property met the definition in section 66(1)(d) of the 1988 Act and was domestic. The appeal was therefore allowed.

Order

24. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to delete the entry in the rating list for 4 Bard Road, London, W10 6TP effect from 1 April 2017.

25. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fee

26. 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 January 2022 **Appeal number:** CHG100146351