THE VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating appeal; 2017 rating list; workshop and premises; whether property should be shown as more than one assessment and valuation of first floor offices in dispute; two separate businesses; rateable occupation of the whole; appeal dismissed.

RE: Contract House, 5 Daleside Road, Nottingham, NG2 4DH

APPEAL NUMBER:	CHG100555811	
BETWEEN	Michael Smith T/A South Notts Joinery	Appellant
	and	
	Ms J Moore, Valuation Officer	Respondent
PANEL:	Mr M H Smith (Senior Member) and Mr M Nwosu	
CLERK:	Mrs L Horne	
ON:	Thursday 14 July 2022	
APPEARANCES:	Mr D Smith T/A Old English Doors, occupier of the appeal property Mr I Mitchell from FHP Property Consultants, representing the appellant Ms S Darcy, representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the entry of the appeal property in the list at £19,500 rateable value (RV) with effect from 1 April 2017.

Introduction

2 This appeal had been brought in respect of the following: Contract House, 5 Daleside Road, Nottingham, NG2 4DH, which was entered in the 2017 rating list as workshop and premises at £19,500 RV, effective from 1 April 2017.

3 The appellant's challenge to the Valuation Officer was made on 12 January 2021, on the grounds that the property should be shown as more than one assessment at £8,200 RV and £7,900 RV with effect from 1 April 2017. The appellant also sought a nil assessment for the first floor offices which were stated to be beyond economic repair.

4 The Valuation Officer issued a challenge case decision notice on 1 October 2021, which stated that the rating list entry was reasonable based upon the evidence and information available and would remain as one assessment. It was confirmed that there would be an allowance of 8.5% applied to the first floor offices (line entry 1.2) to reflect the poor state of repair which would be actioned on a Valuation Office Notice (VON).

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received on 11 January 2022.

6 As Mr Mitchell appeared on behalf of the appellant as both advocate and expert witness, he was asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

7 It was established that Mr Mitchell's company would receive a conditional fee or some other success related arrangement if the RV was reduced as a result of the panel's decision.

8 However, Mr Mitchell declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

9 The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations, and was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

10 The appeal property is a two-storey brick building of 646 m^2 constructed in the 1950s/1960s. It is located on the south side of Daleside Road on the fringes of a regeneration area in Nottingham. The property is owned by Nottingham City Council, and subject to a five year lease from 2014 at a rent of £9,000 per annum. The appellant (Michael Smith T/A South Notts Joinery) is the leaseholder. The property is also occupied by the appellant's son, Daniel Smith T/A Old English Doors.

11 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

12 The main issue in dispute is whether the appeal property should be split into two separate assessments.

13 The appellant also disputed the valuation of the first floor offices (line entry 1.2) which were stated to be beyond economic repair.

Evidence and submissions

14 The bundle comprised all of the documents exchanged between the parties as part of the challenge process.

15 In support of the appellant's case, Mr Mitchell provided a submission and supporting evidence which included: a layout plan; photographs of the first floor offices; copies of separate letterheads, invoices, cheque books, and bank statements for each business.

16 Mr Mitchell requested a split of the property as the landlord had agreed that separate leases could be drawn up for the two businesses; this had not been done so far due to the expense which would be incurred by the occupiers. The Valuation Officer had offered an end allowance of 8.5% to reflect the poor state of the first floor offices, but Mr Mitchell contended that was not reflective of the true situation. He argued that they were beyond economic repair having been left unused and unmaintained by the owners.

17 On behalf of the Valuation Officer, Mrs Darcy referred to the submission contained within the challenge decision notice and supporting evidence which included: a location plan and photographs of the appeal property; a copy of the lease; and the appellant's response to the corporate veil questionnaire.

18 Due to the terms of the lease and the lack of supporting evidence granting permission for the split to take place, the Valuation Officer was of the opinion that the property must remain as one entry in the list.

19 Mrs Darcy stated that she did not know how the 8.5% allowance had been arrived at, and as an alternative, proposed to remove the 10% uplift applied to the first floor offices. This resulted in a revised RV of £19,000, however, Mr Mitchell confirmed that was already the present situation, following the issue of the VON.

Decision and reasons

20 When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999, defines the Rateable Value of a non-domestic property as the amount equal to the rent at which it is estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
(b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
(c) the third assumption is that the tenant undertakes to pay all the usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

21 For the consideration of the valuation of the first floor offices (line entry 1.2), the relevant assumption is part (b). Essentially, if it can be shown that the cost of the repairs are uneconomic to undertake, then a property is not assumed to be in a reasonable state of repair, and can be valued accordingly.

22 Mr Mitchell contended that the first floor offices (line entry 1.2) should be removed from the valuation as they were derelict. The photographs he provided illustrated damage caused by water ingress from the roof. It was confirmed that the appellant had undertaken some of the works required and had paid £2,000 for scaffolding. There had been no costings provided for the necessary remedial work which was estimated by the appellant to be in the region of £30,000.

23 In order for the area to be removed completely, it needed to be demonstrated that it was uneconomic to repair. As outlined in the challenge decision, the panel held that in the absence of full costings, the appellant had not demonstrated that the repairs were uneconomic to undertake. Consequently they were assumed to be in a state of reasonable repair. The panel noted that the Valuation Officer had recognised that the area was in a state of disrepair and had applied an 8.5% allowance.

24 The panel then turned to the main issue, whether the appeal property should be split into two separate assessments.

25 The case for the appellant is that there are two businesses operating at the appeal property, each of which occupy a separate and distinct area: South Notts Joinery at the rear of the building and Old English Doors at the front. It had been raised by the Valuation Officer that both websites have father and son working as a partnership. However, Mr Mitchell confirmed that the

websites were old and had not been updated for some time; any reference to a partnership did not mean a legal partnership but the fact that clients are referred from one to the other, and advice sought from each other etc.

26 It was also acknowledged that both businesses shared the same email address, but this had now changed. Mr Mitchell explained that Daniel Smith agreed to receive emails on behalf of his “technophobe” father and it therefore did not demonstrate that they were the same business. In order to show that they were separate, cheque books and headed paper for each business, together with bank statements and invoices had been provided.

27 Mr Mitchell argued that the lease was immaterial as someone could be in rateable occupation without a lease. He also submitted that if the landlord had recognised that there are separate businesses then this should be reflected in the rating list.

28 The case for the Valuation Officer is that the current lease states that the property cannot be sublet or shared. A letter from the landlord, Nottingham City Council (NCC) confirmed:

> “NCC are not willing to separate the existing tenancy or split the unit into two parts. However, NCC may be willing to consider a Deed of Variation of the existing lease in order to grant a sub-tenancy as requested.”

29 Mr Mitchell explained that this would involve considerable expense for the ratepayer, which is why it had not been done.

30 In order for there to be separate valuations for rating purposes, it has to be established that there are two hereditaments.

31 The definition of a hereditament is referred to in section 64 of the Local Government Finance Act, as anything which, by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act:

> “property which is, or may be liable to a rate, being a unit of such property which is, or would fall to be shown as a separate item in the Valuation List.”

32 Establishing the hereditament is inextricably linked with rateable occupation. The leading case of *Laing & Sons v Kingswood Assessment Committee* [1949], identified four necessary ingredients for rateable occupation:

> “First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly, that the possession must be of some value or benefit to the possessor; and fourthly, the possession must be for not too transient a period.”

33 If any of the four essential ingredients are missing, then the occupier cannot be in rateable occupation.

34 Mr Mitchell submitted that each business had exclusive use of their respective workshops and each held their own keys. While the presence of two occupiers was acknowledged by the Valuation Officer, the absence of a lease for Old English Doors which defined the area of occupation and exclusive use had led to the conclusion that the appellant (South Notts Joinery) had paramount control of the whole property.

35 In arriving at the decision that the appeal property could not be split into two assessments, the panel attached most weight to the subject lease and rejected Mr Mitchell's argument that the lease was immaterial. While there may be some instances where there can be rateable occupation without a lease, it was clear to the panel in this case that there was a lease which had been agreed with the appellant for the whole property. Until there was a Deed of Variation executed, as recommended by the landlord, the area occupied by Daniel Smith T/A Old English Doors was not exclusive for his purposes and therefore could not be shown as a separate assessment.

36 The panel concluded that the Valuation Officer had correctly refused to split the assessment. Having also determined that the first floor offices (line entry 2) should remain in the assessment the panel confirmed the RV under challenge of £19,500 with effect from 1 April 2017 and dismissed the appeal.

Date: 4 August 2022

Appeal Number: CHG100555811

Right of appeal

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.