THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal – should the rating assessment remain as one hereditament or should the assessment be split – four ingredients of rateable occupation – paramount control – appeal allowed.

Re: The Barn at Manor House Farm, Newsham, North Yorkshire, YO7 4DJ

APPEAL NUMBER: CHG100728471

BETWEEN:	Mr M Youmans	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

PANEL: Ms S Penni (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mr A Jolly

REMOTE HEARING: Tuesday 8 August 2023

APPEARANCES: Mr D Graham of FTB Chamber representing the appellant
Mr M Ifill representing the respondent

Summary of decision

1. Appeal allowed. The two barns within the assessment should be split into two assessments with effect from 1 April 2017 at rateable value (RV) £12,500 and £7,500.

Introduction

2. This appeal has been brought in respect of the following: An appeal was lodged by the appellant on 15 February 2023 against the Valuation Officer's Challenge Decision Notice of 20 October 2022.

3. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

4. The appeal had been placed before a panel on 10 March 2023. During that hearing it transpired that the appellant had joined the hearing from overseas. The current law can be found in the judgment of ***Agbabiaka (evidence from abroad; Nare guidance)*** [2021] UKUT 286 (IAC) which sets out that judicial bodies should not be administering or dispensing justice from within the territory of another country. Remote hearing protocols reflect that parties giving evidence, whilst based in a foreign state, must notify the Tribunal beforehand

to allow the Valuation Tribunal for England (VTE) to consider whether or not it is fair and reasonable to admit such evidence, in accordance with Regulation 3 of the VTE (Rating and Council Tax Appeals) (Procedure) Regulations 2009. Should the VTE be prepared to admit it, permission will then need to be sought from the Foreign and Commonwealth Development Office (FCDO). The hearing was adjourned to be re-listed before a new panel.

5. The appellant had been given the opportunity to apply for permission to give evidence from abroad or for the appeal to continue in his absence. It was confirmed by the appellant's solicitor that no application would be made to enable to the appellant to attend from overseas and that the appeal should proceed in the appellant's absence but with Counsel in attendance.

Preliminary Issue

6. The appellant submitted a statement of case on 28 June 2023 setting out the background to the appeal property and also to the reasons why he was unable to attend the hearing in person. The respondent had objected to the inclusion of this information. At the hearing the appellant's representative stated that the submission did not include any new evidence and that it just provided a background to the reasons for the appeal. The respondent accepted that it provided a background to the history of the appeal property.

7. The panel having considered the submission did not consider that it contained any evidence that was not previously known and therefore admitted the submission to the hearing. The Valuation Officer confirmed that he did not wish for the appeal to be adjourned and therefore the hearing proceeded.

8. During the hearing the respondent wished to submit new photographs, surveys and his findings taken from his recent inspection. Having explained the situation in relation to new evidence the respondent did not proceed with his request for new evidence to be admitted as he accepted that the information would have been available prior to the issuing of the challenge decision notice.

Issues

9. The issue before the panel concerned whether the two barns at Manor House Farm, Newsham, North Yorkshire should remain as one assessment or should each barn be a separate entry in the 2017 Rating List with effect from 1 April 2017.

10. The material date is 1 April 2017 and the antecedent valuation date (AVD) was 1 April 2015.

Evidence and submissions

11. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

12. Also included were the two statements of case, one of which had been provided prior to the first hearing and the second provided on 28 June 2023. The appellant's representative also provided details of case law to support his contention.

Decision and reasons

13. Mr Graham, who appeared as advocate, stated that the appeal hereditament comprised two barns. They had been purchased at different times with one purchased by the appellant and his wife and the second, smaller barn, was purchased by the appellant's wife. It was initially decided that the appellant and his wife would gift the smaller barn to their son but later it was decided that they would let the property to him instead, at a rent of 10% of the son's profit.

14. Mr Graham stated the two barns were separate from each other with no intercommunication between them. Whilst both barns were used for the storage of touring caravans they were run as separate companies with the appellant and his wife running their own business from the larger barn and the appellant's son running his own business from the second smaller barn. Each company had its own separate website, telephone numbers and also used different paperwork and were separate entities. He stated that the appellant had no control over his son's business and his son had no control over the appellant's business.

15. Mr Graham accepted that the lease provided was not a valid lease but it set out an agreement between the appellant's wife and the appellant's son.

16. He considered that each barn was in separate rateable occupation and therefore should be assessed separately within the 2017 Rating List. In support of this he provided a plethora of case law including *R(Curzon Berkeley Ltd) v S P Bliss (Valuation Officer)* [2001] EWHC 1130 (Admin); *Atos IT Services Ltd v Fylde Borough Council* [2020] EWHC 647 (QB), [2020] QB 909; *City of Westminster v Southern Railway* [1936] AC 511, H.L; *John Laing & Son Ltd v Kingswood Area Assessment Committee* [1949] 1 KB 344, C.A. and *Glenwright (Valuation Officer) v St Nicholas Parochial Church Council* [1988] RA 1.

17. Mr Ifill, on behalf of the respondent, stated that he had inspected the property on 20 April 2023 and that he was appearing as both expert witness and advocate.

18. Mr Ifill stated that in the decision of *John Laing & Son Ltd v Kingswood Area Assessment Committee* introduced the four ingredients of rateable occupation which were actual occupation, beneficial occupation, exclusive occupation and that the occupation was not too transient. He stated that he was not satisfied that the four ingredients had been met for each barn to be separately assessed and both should be included within the one assessment. He stated that both barns operated the same business of caravan storage and that there was no signage to differentiate between the two companies. He believed that the appellant had control over the second barn as it had been stated in a document that the use of the barn had to be agreed with the appellant.

19. In support of his contention that the two barns should remain as a single hereditament Mr Ifill referred to case las including *John Laing & Son* v *Kingswood Area Assessment Committee* and *Cardtronics Uk Ltd and Others (Respondents) v Sykes and others (Valuation Officers)(Appellants) [2020] UKSC 21.*

20. The panel had to considered whether each barn was in separate rateable occupation. In considering who was in rateable occupation of each barn the panel was mindful of the case law cited and the four ingredients of rateable occupation.

21. The panel was satisfied that the appellant was in rateable occupation of the larger barn and therefore it had to consider whether the appellant was in rateable occupation of the smaller barn or if it was in rateable occupation of another person.

22. The panel noted that whilst it was originally considered to gift the smaller barn to the appellant's son a transfer was never actioned and that an agreement had then been arranged for the son to lease the property from the appellant. It noted that there was not a valid tenancy agreement, but the panel was satisfied that a legal agreement between the appellant and his son had been agreed.

23. The panel noted that both barns operated the same caravan storage but with the larger barn provided storage to both single and double axle caravans and the smaller one provided storage for single axle caravans. The panel considered that operating storage for caravans from both barns did not mean that the barns were within the same rateable occupation.

24. The panel noted the respondent's argument that the appellant had control as he had the right to say how the smaller barn was used. However, the panel did not consider this amounted to the appellant having paramount control of the smaller barn as each business was a separate entity.

25. The panel was satisfied that the smaller barn was occupied by a different company to that of the larger barn. It had been provided with evidence of different telephone numbers for each company, each company had its own website and separate paperwork for each company.

26. The panel considered the there was a separate rateable occupier for the smaller barn as the occupier of that barn had actual occupation as he was in occupation, he derived a benefit from his occupation and he had exclusive occupation of the barn and that his occupation was not too transient.

27. The panel therefore considered that each barn should be separate assessments for rating purposes. No actual alternative valuation had been given but the panel noted that the respondent, when valuing the two barns, had identified each barn as a separate line entry in the rating assessment. In the absence of an alternative valuation the panel confirmed the entries as follows:

    Manor Storage, The Barn at Manor House Farm, Newsham, North Yorkshire at RV £12,750 and Caravan Storage North Yorkshire, The Barn at Manor House Farm, Newsham, North Yorkshire at RV £7,500.

28. The appeal is therefore allowed.

Order

29. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the Valuation Tribunal for England orders the Valuation Officer to alter the rating list within two weeks of the date of this order to show the entry as:

    Manor Storage, The Barn at Manor House Farm, Newsham, North Yorkshire at RV £12,750
    Caravan Storage North Yorkshire, The Barn at Manor House Farm, Newsham, North Yorkshire at RV £7,500

Refund of appeal fee

The appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: Thursday 7 September 2023

Appeal number: CHG100728471

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.