THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Accuracy of the RV in the Rating List; Warehouse and Premises; Split assessment; Tenancy agreement; John Laing and Son Ltd v Kingswood Assessment Committee and others (1949); *Cardtronics UK Ltd and Others v Sykes 2020 UKSC 21*; *Holywell Union v Halkyn District Mines (1895) AC 117*; *Libra Textiles (Boundary Mills) v Roberts (VO) 2020 UKUT 0237*; *Appeal dismissed.*

RE: 1 Slater Court, Harrier Way, Yaxley, Peterborough PE7 3SE

APPEAL NUMBER: CHG100777112

BETWEEN: Shynar Zhylzhaxynova Appellant

and

Ms J Moore Respondent

(Valuation Officer)

PANEL: Mr A Jobanputra (Presiding Senior Member)

Mr M Smith (Senior Member)

CLERK: Mrs S Morgan

REMOTE HEARING: Wednesday 19 July 2023

PARTIES PRESENT: Mr R Dumare – Appellant

Mr C Lewell – Valuation Officer's representative

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a warehouse and premises at £16,250 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. 1 Slater Court, Harrier Way, Yaxley, Peterborough PE7 3SE (the 'appeal property') had been entered in the 2017 rating list as 'warehouse and premises' at a RV of £16,250 with effect from 1 April 2017.

3. The check submission was made on 8 January 2022 with the challenge submission being made on 18 February 2022. Mr Dumare, who was the partner of the owner and director of the business, Ms Zhylzhaxynova, was acting on behalf of Quality & Price Ltd and QNP Toys Ltd. The first-floor offices were occupied by Quality & Price Ltd, and the ground floor warehouse was occupied by QNP Toys Ltd. The respective areas each had their own entrances and toilet facilities. The occupation by the two companies had been in effect since the occupier took possession of the unit. The appellant sought a split assessment with the proposed RV provided in the challenge submission of £4,500 for the office space and £8,000 for the warehouse space with effect from 25th January 2021.

4. A preliminary issue arose as to whether the lease dated 21 January 2021 should be included as part of the evidence bundle. Mr Lewell stated that he was not aware of the head lease being available during the discussion period. He had recently received a copy of the lease and asked for this to be admitted as evidence. Mr Dumare stated that as far as he was aware the lease had been provided some time ago.

5. The panel adjourned to consider the matter. It found that although Mr Dumare initially objected to the lease being admitted, it was pointed out that if he believed that he had already submitted it earlier then there appeared to be no reason for it not to be accepted as part of the evidence. The panel found that it was not in the interests of justice to cause further unnecessary delays in the resolution of this appeal. The head lease was allowed to be admitted as evidence and the hearing continued.

6. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

7. The issue in dispute was whether the one assessment should be split into two separate assessments.

Evidence and submissions

8. The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, VO's challenge case decision notice, and appellant's challenge submission.

9. The appeal property was a modern portal framed unit built in 2020. It comprised a ground floor warehouse of 197.50m^2 and office space of 67m^2 at mezzanine level.

10. The case law cited were as follows:

    Woolway (VO) v Mazars (2015) (Supreme Court),
    John Laing and Son Ltd V Kingswood Assessment Committee and others (1949) Court of Appeal case,
    Westminster Council v Southern Railway Co [1936] AC 511,
    Cardtronics UK Ltd and Others v Sykes 2020 UKSC 21,
    Holywell Union v Halkyn District Mines (1895) AC 117.
    Libra Textiles (Boundary Mills) v Roberts (VO) 2020 UKUT 0237.

Decision and reasons

11. The issue in dispute concerned whether the appeal property could be split into two separate assessments.

12. The lease indicated that Quality & Price Ltd were the lessees of the appeal property, occupying the premises on a 10-year term, with 5 yearly rent reviews and the tenant being responsible for internal repairs and buildings insurance. The lease did not allow for any subletting nor was there any mention of transfer by law or licence.

13. The respondent stated that the warehouse agreement included in the evidence bundle was only signed by one party and was not a lease. It provided no legal right of exclusive occupation of the ground floor to QNP Toys Ltd. Furthermore, he stated that it should not be confused with the actual lease between P. J. Slater Scaffolding Services and Quality & Price Ltd dated 21 January 2021.

14. The respondent contended that the lease showed that Quality & Price Ltd was the host, being in paramount rateable occupation of the whole, having granted a separate let-out which grant rights for QNP Toys Ltd to occupy a part of the premises. He likened it to a lodging style arrangement as Quality & Price Ltd received some contribution of overheads whilst the other business was being built up.

15. The panel examined **t**he four ingredients of rateable occupation as set out in the *John Laing and Son Ltd V Kingswood Assessment Committee and others* (1949) Court of Appeal case:

    Actual occupation or possession that is of
    Benefit to the occupier and
    Exclusive for the particular purposes of the possessor; and
    the occupation must not be too Transient.

16. In addition, the panel considered the reference made by the respondent to the Supreme Court of *Cardtronics & others v Sykes (VO)* 2020 UKSC21, and the principles applied in the Upper Tribunal case of *Libra Textiles (Boundary Mills) v Roberts(VO)* 2020 UKUT 0237. The

Supreme Court put weight on the rating principles set out in *Holywell Union v Halkyn District Mines* (1895) AC 117.

17. In *Cardtronics,* the Supreme Court compared such an occupation to the example of a landlord and lodger. The respondent highlighted that in paragraph 44 of Cardtronics, the underlying principle remains that stated by Lord Herschell in Halkyn: "Where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive, he does not cease to be liable to the rate, nor does the other become so …" He added that in *Libra Textiles* the Upper Tribunal were considering a fish and chip operation in a wider retail offering. In paragraph 33 it was explained that "BMS does not itself operate the fish and chip restaurant, which is run by Banny's Limited, but on terms that severely limit its autonomy. BMS controls the opening hours and all the publicity, as well as setting the broad outlines of pricing and the menu. BMS provides training and mentoring and provides accounts and HR services." The respondent contended that many of the interferences mentioned in the *Libra Textiles* case were similar to Quality & Price Ltd and QNP Toys Ltd's occupation at the appeal property, that of shared company's and on-site personnel, shared signage, and no indication of separate service provisions. Therefore, bearing in mind the *Libra Textiles* decision, Quality & Price Ltd were in paramount rateable occupation and the property should remain as one assessment.

18. The appellant's representative contended that appeal property should be split into two separate assessments as by their very nature the four ingredients of rateable occupation were present in each of the proposed assessments. Although the respondent had argued that there was no exclusive occupation, the appellant's representative believed that exclusivity was not an issue as the premises was operated as two separate units by two independently registered businesses with their own operations. He contended that the wording of the lease had no bearing on whether there were two separate units or not.

19. The appellant's representative also disagreed with the respondent's contention that shared on site personnel, shared signage and no indication of separate services would be seen as factors affecting the split. He confirmed that QNP Toys Ltd paid 50% of the rent in a warehouse agreement and all electricity bills associated with the business. Each business had its own phone number and access to its own space. He believed that the appeal property could be split into two separate assessments.

20. Having examined the evidence presented by both parties, the panel found that the lease was a key factor. It gave Quality & Price Ltd paramount and above all, exclusive occupation of the whole premises. There was no subletting or transfer by law or licence to QNP Toys Ltd.

21. Bearing in mind the underlying principle in *Halkyn*, as stated above, the panel determined that QNP Toys Ltd did not have all the necessary ingredients of rateable occupation for the ground floor area, in particular, exclusive occupation. Those rights remained with Quality and Price Ltd and therefore the panel determined that the whole property should remain as one hereditament.

22. Ultimately, in appeals of this nature the burden of proof is with the appellant to demonstrate that the appeal property should be assessed as two separate assessments rather than one. After consideration of all the evidence placed before it, the relevant legislation and case law, the panel was not so persuaded to split the assessment. The appeal property was to remain as one hereditament and consequently the appeal was dismissed.

Date: Tuesday 15 August 2023

Appeal number: CHG100777112

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.