VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: offices and premises; split into three assessments in dispute; identification of the hereditament; exclusive occupation; paramount control; Local Government Finance Act 1988; appeal dismissed.

APPEAL NUMBER:	CHG100818458	
RE:	Caledonian House, Reigate Road, Hookwood, RH6 0AP (the "appeal property")	
BETWEEN:	Surrey Injury Clinic Ltd	Appellant
	and	
	Ms L Dyer (Valuation Officer)	Respondent
SITTING:	Remotely using Microsoft Teams	
ON:	Friday 3 May 2024	
BEFORE:	Mr A Hussain, Presiding Senior Member Mr K Everett, Senior Member	
CLERK:	Mrs L Horne IRRV(Hons) BA (Hons)	
APPEARANCES:	Mr J Newhill and Mr S Brown, owners of the appellant company Mr C Lambert from Whitestone Commercial, representing the appellant Mr J Reene representing the Valuation Officer	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel upheld the Valuation Officer's decision not to split Caledonian House into three separate assessments with effect from 1 March 2022.

Introduction

2. This is a 2017 rating list appeal. Caledonian House, Reigate Road, Hookwood, RH6 0AP (the 'appeal property') had been entered in the 2017 rating list as 'offices and premises' at a rateable value (RV) of £19,500 with effect from 1 April 2017.

3. The challenge proposal was submitted by Whitestone Commercial on behalf of Surrey Injury Clinic and was received by the Valuation Officer on 16 June 2022. It had been made on the grounds that the subject property should be split into three assessments with effect from 1 March 2022.

4. The Valuation Officer issued a challenge case decision notice on 3 November 2022 which disagreed with the proposed split into three assessments and stated that the rating list entry was reasonable based on the evidence and information available.

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 rating list is inaccurate. The appeal was received by the Tribunal on 18 January 2023.

6. As Mr Lambert appeared on behalf of the appellant as both advocate and expert witness, the clerk 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. Mr Lambert declared that he was not instructed under any conditional fee arrangement. He confirmed that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

8. The appeal property is a detached former residential property converted to offices. The present valuation of £19,500 RV reflects a base price of £130 per m^2, a total area of 21.3.23m^2 and four car spaces at £500 per space.

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

Issue

10. Whether the appeal hereditament should be split into three separate assessments with effect from 1 March 2022.

Evidence and submissions

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

12. On behalf of the appellant, Mr Lambert submitted that there are three distinct hereditaments with three distinct occupiers. He stated that the head lessee, Surrey Injury Clinic is purely a room rental business, whose business model is to rent rooms out to professionals both on a short term and longer, more permanent basis.

13. Mr Lambert contended that Newhill Osteopathy and SB Physiotherapy should have their own assessments as they are different occupiers in different modes of use, subject to separate

leases of two years effective from 1 March 2022. He provided the following estimates of value for each occupation:

Newhill Osteopathy	£5,450 RV
SB Physiotherapy Ltd	£4,850 RV
Surrey Injury Clinic	£5,250 RV

14. On behalf of the Valuation Officer, Mr Reene disputed the proposed split on the basis that Surrey Injury Clinic, the head leaseholder, retains paramount control over all parts of Caledonian House. He submitted that the facts on the ground, in consideration with the details contained in the head lease and the individual tenancies, allied with existing case law on the subject of "identification of the hereditament", demonstrates that having one unit of assessment is the correct approach.

15. Mr Reene further stated that he had not undertaken a valuation on the offices if they were to be split, however, he questioned the appellant's valuation which did not take into account the appropriate quantum bands in the valuation scheme, or the value to be applied to car parking spaces.

16. The parties referred the panel to the following judgments:

John Laing & Son v Kingswood AC [1949] 1 KB 344
Gilbert (VO) v Hickinbottom (S) & Sons Ltd [1956] 2 QB 240
Cardtronics and Others v Sykes and Others (VOs) [2018]
Westminster Council v Southern Railway Co. The Railway Assessment Authority, and W H Smith & Son Ltd [1936] AC 511
North Eastern Railway Co v Guardians of York Union [1900] 1 QB 733
Woolway (Appellant) v Mazars (Respondent) [2015] UKSC 53
Hussain v Turner (Valuation Officer) [2017] UKUT 417

Decision and reasons

17. When arriving at its decision, the panel is governed by rating legislation laid down by Parliament. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988).

18. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

19. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 March 2022, the date when the circumstances giving rise to the event occurred.

20. In the subject appeal, the panel is asked to determine whether there should be three separate hereditaments.

21. The definition of a hereditament is referred to in section 64 of the Local Government Finance Act 1988, 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."

22. The case for the appellant is that there are three distinct hereditaments with three distinct occupiers. Surrey Injury Clinic Ltd hold the head lease and are responsible for the building and rooms occupied on an ad hoc basis. They have sub-let parts to Newhill Osteopathy (Julien Newhill) and SB Physiotherapy (Steve Brown). Mr Lambert argues that the occupiers are separate legal entities to the company holding the head lease and have put their parts of the property to different uses. Tenancy agreements refer to a plan which illustrates the parts let out in respect of each occupier.

23. Mr Lambert cited *John Laing & Son v Kingswood AC* as the leading case which had established four essential ingredients for determining whether an occupier was in rateable occupation. He contended that New Hill Osteopathy and SB Physiotherapy met all four ingredients as follows:

    Actual - New Hill Osteopathy and SB Physiotherapy were physically present as at 1 March 2022.

    Exclusive - Leases were in place and each occupier was in paramount control of their part.

    Beneficial - Each occupier paid a rent of £10,800 per annum.

    Not too transient - The tenancy agreement was for an initial term of two years.

24. With regards to the identification of the hereditament, Mr Lambert referred to *Gilbert (VO) v Hickinbottom (S) & Sons Ltd*. He contended that New Hill Osteopathy and SB Physiotherapy each qualified as a single hereditament, as they are:
    - a single rateable occupier;
    - capable of separate occupation;
    - a single geographical unit;
    - put to a single use;
    - with a single definable position.

25. The Valuation Officer's approach was to first identify the hereditament to be valued. Mr Reene stated that this is a fundamental principle of rating valuation and there are a number of leading cases which have influenced how this is to be approached. He cited *Woolway (Appellant) v Mazars (Respondent)* which had set out three principles for establishing the hereditament. Briefly, these comprised tests of geography, function and use.

26. In respect of the geographical test, Mr Reene stated that it is possible that the building can demonstrate one cartographic unit. Access to the upper floors is via communal staircases and requires crossing communal parts to gain access. The existence of two tenancy agreements may, on the face of things, demonstrate the ability of the space to be let separately. Mr Reene acknowledged that there is a clear way that this theoretically could happen to satisfy the second test. However, he did not consider the existence of the tenancy agreements to be sufficient to prove separate assessments were required. This is because of

the relationships that exist between the parties concerned in these agreements, and the inconsistencies that have been presented in evidence alludes to this being a way to organise affairs to legally minimise tax liabilities.

27. Mr Reene highlighted that the owner/directors of Surrey Injury Clinic are the same people who have signed tenancy agreements for SB Physiotherapy Ltd and Newhill Osteopathy. He therefore considered that it would be difficult to accept that Surrey Injury Clinic does not have control of the spaces let to their own respective directors.

28. Following the third test, and based upon the facts of the tenancy agreements and who holds them, Mr Reene considered SB Physiotherapy Ltd and Newhill Osteopathy as being in the position of lodgers, not in paramount occupation of their areas. On this point he cited *Westminster Council v Southern Railway*, and the more recent case of *Cardtronics and Others v Sykes and Others (VOs)*.

29. In consideration of information contained on Surrey Injury Clinic's website, Mr Reene submitted that Surrey Injury Clinic Ltd appeared to be in rateable occupation of the whole:
    - Julian Newhill is a director of Surrey Injury Clinic and Newhill Osteopathy and is a clinician for both.
    - Stephen Brown and Celia Brown are directors of Surrey Injury Clinic and SB Physiotherapy and Stephen Brown is also a clinician for both. Celia Brown is the contact name for physiotherapy at Surrey Injury Clinic.
    - Helen Duggan is the Clinical Administrator for Surrey Injury Clinic and SB Physiotherapy.
    - Julian Newhill and Charley James are shown as osteopathy clinicians on Surrey Injury Clinic's and Newhill Osteopathy's websites.
    - On the room booking page there are seven different treatment rooms available for booking, yet the plan only shows four. One of those rooms is also shown on SB Physiotherapy's website.
    - Under its massage section, SB Physiotherapy's website indicates that it is not taking any new patients and instead refers to the massage specialist at the Surrey Injury Clinic.

30. In further support of his case, Mr Reene referred to paragraphs 78-81 of the decision in *Hussain v Turner*, with particular attention drawn to the opening of paragraph 78:

    > "Of course, the existence of a legal estate in land is not essential to the recognition of a hereditament. What is required is a "unit of property" which is clearly defined, and the precise legal basis of its occupation is of secondary significance."

31. He contended that the facts at the subject property were very similar to those in *Hussain v Turner*, which supported his opinion that the one assessment of rateable occupation should remain.

32. In summarising his position, Mr Reene commented that Mr Lambert was relying on the basic principle of rating which requires actual, beneficial, exclusive and not too transient occupation in order to create a unit of assessment for rating purposes. However, he submitted that Mr Lambert's evidence does not sufficiently examine the relationship of the parties involved in creating this occupation and does not sufficiently reflect case law which can help to determine unit of occupation in a much more nuanced way.

33. Mr Reene submitted that there was an intertwined relationship between the directors of Surrey Injury Clinic, SB Physiotherapy Ltd and Newhill Osteopathy. Those relationships and the day to day operations at Caledonian House supported the Valuation Officer's opinion that Surrey Injury Clinic, the head lease holder retained paramount control over all parts of the hereditament.

34. In full consideration of the parties' evidence and submissions, the panel decided that the Valuation Officer's identification of the hereditament was the correct approach. Mr Lambert submitted that SB Physiotherapy Ltd and Newhill Osteopathy each fulfilled the four ingredients of rateable occupation, however, the panel held that they each lacked the element of exclusive occupation. The panel upheld the Valuation Officer's contention that Surrey Injury Clinic, the head lessee, remained in paramount occupation.

35. While the facts of *Hussain v Turner* were not on all fours with the subject appeal, the panel found a similarity in that both concerned connected parties. There was nothing to prevent Surry Injury Clinic drawing up tenancy agreements for its associated businesses, however, it did not necessarily follow that this constituted separate rateable occupiers.

36. There were a number of inconsistencies in the appellant's evidence which further supported the panel's decision. For example, Mr Lambert requested a split of the assessments with effect from 1 March 2022, however the tenancy agreements did not commence until 1 April 2022, which was after the material date. It was also significant that the tenancy agreements did not meet the terms of clause 14 of the headlease with regards to underletting. In practical terms, however, this had no impact as the tenancy agreements involved the same people.

37. The panel concluded that the Valuation Officer had correctly identified that there is one hereditament at the appeal property. The appeal for three separate hereditaments is therefore unsuccessful and the appeal dismissed.

Date issued to parties: 24 May 2024

Right of further 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.