IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG100886217

Sitting remotely using Microsoft Teams

Date: 16 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

Non-domestic rating appeal; 2017 rating list; request to split hereditament into two hereditaments; more hereditaments identified in accordance with Woolway (VO) v Mazars (respondent) [2015] UKSC 53; proposal made under different grounds; panel found the matter fell outside of the scope of proposal; appeal dismissed

Before:
MRS LR MCDERMOTT
MR M NWOSU

Between:

ADENA PROPERTY INVESTMENTS INC **Appellant**

- and –

ANDREW RICKETTS (VALUATION OFFICER) **Respondent**

Regarding:
BST & PT GRD FLR 1 NICHOLAS ROAD, LONDON W11 4AN
(the "subject property")

Mr Steve Hile of Newmark (formerly Gerald Eve) for the Appellant accompanied by Mr Rob Cliffe who was an interested party (agent to the tenant)

Mr Guljar Singh for the Respondent

Hearing date: 24 April 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The panel found that a split into two (or more) hereditaments was outside of the scope of proposal.

Introduction

2. This appeal has been brought in respect of the following: BST & PT GRD FLR 1 Nicholas Road, London W11 4AN which entered the 2017 Rating List as ‘offices and premises’ at £615,000 rateable value with effect from 1 April 2017. It was altered to £595,000 rateable value with effect from 1 February 2019.

3. A challenge was submitted in December 2022. The proposal was neither well founded by the respondent nor agreed within the regulatory time period. Consequently, an appeal was made under Regulation 13A of the Non-Domestic Rating (Alteration of Lists) (England) Regulations 2009 which allows a proposer to make an appeal if there has been no decision within a period of eighteen months.

4. As there was no challenge decision and in the absence of any application from the respondent for late evidence to be admitted, the only evidence before the panel was the appellant’s submission. The respondent therefore could not make oral submissions at the hearing but was able to ask questions in respect of the evidence submitted and answer questions. At the end of the hearing, to assist the panel with its deliberations, the parties were asked to send a copy of the proposal. Both parties agreed to this but it’s worth noting that this should have been included in the appeal documents.

5. Prior to the hearing, the respondent’s representative informed the Clerk to the Tribunal that the challenge had not been accepted by the respondent but no further information surrounding the reason for this was provided. There had been no notice provided refusing the proposal and Mr Singh seemed unclear as to what the issue was. Both interested parties were present and ready to proceed with the hearing. When asked if he wished to raise a preliminary matter before the panel, and if so, what specifically he wanted to raise, Mr Singh confirmed that he was content to proceed to hear the matter.

6. Mr Hile appeared in a dual role of advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), he declared that he was instructed under a conditional fee and declared that he accepted and understood that his overriding duty was to the Tribunal.

7. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals’ rules concerning 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.

8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

Relevant Law

9. Section 64(1) of the Local Government Finance Act 1988 defines a hereditament as anything which would before the passing of the Act have been a hereditament for the purposes of section 115(1) of the General Rate Act 1967. A hereditament was defined in section 115 (1) of the General Rate Act 1967 as being:

> “property which is or may become 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.”

10. Regulation 4 Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) provided circumstances in which a proposal can be made.

Discussion

11. The appellant’s case was that due to an occupational change, the subject property had been split and therefore the assessment should be split into two separate entries, one for the tenant areas and one for the landlord areas. The appellant disagreed with the respondent’s valuation which was for one single hereditament which valued the communal area as an art gallery.

12. In making its findings, the panel noted that a copy of the lease agreement was provided and confirmed that the tenant (Adena Property Investments Inc) had agreed a three year term which commenced on 24 June 2020, this being the effective date for the requested split. The panel had regard to the floor plan and photographs provided. The communal area, which appeared to be typical to an office building lobby and had various art work placed in it, was highlighted in pink and it essentially separated all of the tenant areas. The floor plan highlighted the tenant’s areas in blue. There were five separate areas which were not contiguous to each other. The panel found that you would have to pass through the communal area to get to each space. Similarly, there were three landlord areas, shown in red, which were also each separated by the communal area.

13. The panel had regard to the binding Supreme Court judgment, *Woolway (VO) v Mazars (respondent)* [2015] UKSC 53, as amended by the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. In this judgement, Lord Sumption, who having reviewed earlier case law, derived three broad principles relevant to cases where the question is whether distinct spaces under common occupation form a single hereditament:

> ‘First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second Bank of Scotland case illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately. Thirdly, the question whether the use of one section is necessary to the effectual enjoyment

of the other depends not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects. The application of these principles cannot be a mere mechanical exercise. They will commonly call for a factual judgment on the part of the valuer and the exercise of a large measure of professional common sense. But in my opinion they correctly summarise the relevant law. They are also rationally founded on the nature of a tax on individual properties. If the functional test were to be applied in any other than the limited category of cases envisaged in the second and third principles, a subject (or in English terms a hereditament) would fall to be identified not by reference to the physical characteristics of the property, but by reference to the business needs of a particular occupier and the use which, for his own purposes, he chose to make of it.'

14. The appellant's representative was asked if he had considered the *Mazars* judgment. Both parties, being professional representatives, were aware of this judgment. Mr Hile confirmed that it had been a consideration but ultimately as the assessment amount would be the same, for ease, a split into two assessments was requested, especially as there was one single lease for the tenant areas. Mr Singh also commented that he was familiar with the case and would have questioned whether this should be more assessments. Although the request was to split into two, during the hearing, it was accepted that in line with *Mazars,* there should be eight entries.

15. As the appellant had requested a split into two hereditaments, the panel found it necessary to consider the scope of the proposal as the jurisdiction was potentially limited to determining if there was one or two hereditaments. When a copy of the proposal was received, the panel found that it was made under regulation 4 (1) (b) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) which states :

    '(b) the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled [(but this is subject to paragraph 2ZA of Schedule 6 to the Act)];'

16. Therefore the proposal was made on the basis of a material change in circumstance (MCC) yet the supporting information which forms part of the proposal sought a split which would fall under regulation 4 (1) (l) not 4 (1) (b).

17. If the panel was to accept a proposal made on the basis of a MCC, which incidentally would carry a different material date, it questioned what was the MCC which had occurred? A changed in occupation itself is not a MCC and there was no evidence of works or evidence to consider the value. The only information provided was that it was now in two separate occupations.

18. The panel therefore found that a split into more than one hereditament was outside of the scope of proposal. In any case, the panel would not have split the subject property into two hereditaments as for the reasons stated within, there are eight putative hereditaments.

Determination

19. In view of the above findings the panel determined that the matter was outside of the scope of proposal and accordingly, the appeal was dismissed.

Right of further appeal

20. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

21. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mrs LR McDermott, Senior Member

Mr M Nwosu, Member

16 May 2025

Mrs C McAvoy
Clerk to the Tribunal
Date issued to the parties: 16 May 2025