VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal appeals: Local Government Finance Act 1988; Proposal seeking merger of two assessments; factory and premises; offices and premises; Woolway (VO) v Mazars [2015] UKSC 53; geographic test; functional test; held to be a single hereditament. Appeal allowed.

APPEAL NUMBERS: CHG101068682 and CHG101068694

RE: Stubbins Vale Mills, Stubbins Vale Road, Ramsbottom, Bury, Lancashire BL0 0NP and Offices at, Stubbins Vale Road, Ramsbottom, Bury, Lancashire BL0 0NP
(the "subject properties")

BETWEEN: MelbaSwintex Limited — Appellant

and

Ms A Hitchings
(Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 8 August 2024, 4 November 2024 and 18 November 2024

BEFORE: Mrs R Heald, Senior Member
Mr P Phelps, Member (only present at the first hearing)

CLERK: Mrs S Morgan

APPEARANCES: Mr A Fowke – Appellant's representative (Altus Group)
Mr A Macrury – Valuation Officer's representative.

DECISION AND STATEMENT OF REASONS

Decision

1. I determined that the factory and offices formed a single hereditament at £112,000 Rateable Value (RV) with effect from 15 February 2021.

Introduction

2. These are 2017 Rating List appeals. The subject properties were Stubbins Vale Mills, Stubbins Vale Road, Ramsbottom, Bury, Lancashire which had been entered in the 2017

Rating List as ‘factory and premises’ at a RV of £96,500 with effect from 10 May 2019. The other assessment was for offices at Stubbins Vale Mills, Stubbins Vale Road, Ramsbottom, Bury, Lancashire which had been entered in the Rating List at £51,500 RV with effect from 15 February 2021. However, it should be noted that only the factory and premises was listed at the first hearing. At the re-convened hearing, both assessments were listed.

3. At the first hearing, I was joined by Mr P Phelps, a Tribunal member. The decision to merge the assessments was taken by both Mr Phelps and me after that initial hearing. Unfortunately, he was unable to participate in the reconvened hearings and I decided to hear and determine the disputed RV for the single assessment alone, in accordance with the Tribunal Business Arrangements.

4. The appellant had made a challenge against the accuracy of the compiled list assessments in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO). The challenge requested a merger of the factory with the offices at Stubbins Vale Mills, Stubbins Vale Road, Ramsbottom, Bury Lancashire. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant and its representative then appealed the VO’s decision to the Tribunal on the grounds that the current valuations for the hereditaments were still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

5. The Material Date for the purposes of this appeal in accordance with The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended) is the 15 February 2021.

6. Mr Fowke appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Fowke’s’ declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

7. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

8. Mr Macrury appeared as advocate and expert witness on behalf of the Valuation Officer.

9. The hearing was held remotely via Microsoft Teams.

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

Background

11. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included comparable assessments, location plans, photographs of the subject property and their skeleton arguments.

12. The preliminary issue in this appeal was whether the industrial unit and the office premises divided by a public road but connected by a covered way/canopy which houses a sprinkler system is a single hereditament, rather than two separate hereditaments.

13. In addition to the merger due to the contiguous nature of the hereditaments, the appellant's representative contended that:

    i. The unadjusted rate is reduced to £9.00/m^2.

    ii. An appropriate end allowance of 10% is applied due to the split nature of the property and the 5% access allowance already applied to the Mill is carried forward.

    iii. The part of the property that is currently known as Offices at Stubbins Vale Road should be treated as uninsulated as the Mill. The same parts have the 5% uplift for 'Refurbished 1980' removed as the fit out has been removed.

14. The appellant's representative sought a revised assessment of £109,000 RV for the merged assessments with effect from 15 February 2021 when the appellant first occupied both properties. The valuation Officer's representative contended that the two assessments should not be merged and sought a dismissal of the appeal.

15. A joint inspection was carried out on 27 November 2023.

16. Both properties are owned and occupied by MelbaSwintex Limited since 15 February 2021.The appellant's representative contended that both properties were contiguous therefore they should be merged to create one assessment with effect from 15 February 2021. The two properties were connected by the canopy that sat over Stubbins Vale Road. The canopy contains service media including a sprinkler system, which benefits both buildings. A value for the canopy was included in the factory assessment.

17. The Valuation Officer's representative opposed the proposal to merge because there was a public road which separates the two units. He did not regard the space of the public highway as space as intended in section 64(3ZD) of the Local Government Finance Act 1988 (as amended).

Discussion

18. The principal issue in these appeals was whether the industrial unit and the office premises divided by a public road but connected by a covered way/canopy which housed a sprinkler system is a single hereditament, rather than two separate hereditaments.

19. The appellant's representative contended that in the case of the subject property all parts were contiguous/physically touching and therefore they should be merged. He referred to The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act which became law on 1 November 2018. The Act allows properties that are "contiguous", and are in common occupation, to be treated as a single hereditament even if, under the *Mazars* ruling, they might otherwise not be. Under section 1 (3ZD) of the Act, it states that hereditaments

occupied or owned by the same person are not prevented from being contiguous merely because there is a space between them that is not occupied or owned by that person.

(3ZD) For the purposes of subsection (3ZC) two hereditaments are contiguous if-

(a) some or all of a wall, fence or other means of enclosure of one hereditament forms all or part of a wall, fence or other means of enclosure of the other hereditament, or

(b) the hereditaments are on consecutive storeys of a building and some or all of the floor of one hereditament lies directly above all or part of the ceiling of the other hereditament,

and hereditaments occupied or owned by the same person are not prevented from being contiguous under paragraph (a) or (b) merely because there is a space between them that is not occupied or owned by that person.

20. In looking at the aerial photograph of the site, the whole property can be ringfenced. The canopy linking the two properties houses the sprinkler system which benefits both properties as without this link there would be no fire protection.

21. In support of his case, the appellant's representative referred to the following.

Buoyant Upholstery Ltd, Hallam Road, Nelson, Lancashire, BB9 8AJ is in the same valuation scheme. There are two parts separated by a public road. There was an agreement on 2010 rating list to merge these assessments into one as they were connected by a conveyor belt which links the operational processes from one building to another. It is not a walkway for staff. This property has an area of 18857.12m^2 and is valued at an unadjusted rate of £9/m^2.

Kenroy Dispersions Ltd, Holt Mill, Bacup Road, Rossendale, Lancashire, BB4 7JJ, is valued as one assessment although it is split by a public right of way. The two parts of this site are connected by a canopy. The space between the two parts is a public right of way. This property has an area of 2583.44m^2 and is valued at an unadjusted rate of £17.37/m^2.

22. The appellant's representative contended that by merging the factory and the offices in this case, the total area was above 11,000m^2 which would suggest a revised base price of £9.00/m^2 should apply, based on scheme 333329.

23. In relation to allowances, the appellant's representative referred to four properties with allowances ranging from 5% for access, 7.5% for access/divided unit to 10% for divided or split unit. Taking these allowances into account in his valuation for the subject property, the appellant's representative had included the 5% end allowance for access and a further 10% for split site in arriving at his revised valuation of £109,000 RV.

24. The valuation officer's representative referred to various pieces of case law. He believed that this case did not meet the principles laid down in that of *Woolway v Mazars* (2015 KSC 53) and the properties should remain separately assessed. Reference was also made to *FC Brown v Hopkins* VO [2022] UKUT 51 (LC) and *Roberts (VO) v Backhouse Jones Ltd* where he outlined the details of each case and how it related to the subject property.

25. The case of *Woolway v Mazars* concerned Tower Bridge House, an eight-storey office block in St Katherine's Way, London. Mazars occupied the 2nd and 6th floors of the building under

separate leases. These floors were separated by common areas in the building and were entered in the 2005 rating list as separate hereditaments. The issue for the Supreme Court was to determine whether the two floors formed a single hereditament or two. At the time, it was custom and practice for 2 or more floors which were contiguous, and in the same rateable occupation, to be treated as a single assessment. However, in Mazars, there were 3 floors between the hereditaments that were occupied by a different tenant.

26. The Supreme Court held that the 2nd and 6th Floors could not be merged into a single hereditament. At the time, the Supreme Court's judgment in *Mazars* went further than anyone in the rating world expected. The Supreme Court decided that contiguous buildings or floors in the same building could not be merged unless there was intercommunication between the two and it looked at a number of Scottish cases like Burn Stewart and observed that whilst the Scottish courts were deciding these cases correctly, the English courts followed an unreliable Court of Appeal authority in *Gilbert v Hickinbottom*. The latter case was heavily criticised by the Supreme Court, it determined that it was flawed, and it said that it wasn't an authority for very much.

27. The valuation officer's representative contended that the circumstances in *FC Brown v Hopkins VO* [2022] UKUT 51 (LC), were different. In this case, the Tribunal held that the factory, warehouse and bridge satisfied the cartographic test and are self- contained in the sense explained in *Mazars* decision, with each part of the site being capable of being reached from every other part of the site without leaving the premises in occupation of the ratepayer. He contended that this was not the case here as the ratepayer, to get from one building to another, must leave the building and cross a public road not in their occupation or control.

28. In *FC Brown v Hopkins VO*, the Upper Tribunal had to determine if two industrial buildings separated by a road but connected by a bridge, which manufactured goods could pass through, formed a single hereditament. In paragraphs 44 and 45 of its judgment it stated:

> 44.There is nothing in Mazars to suggest that the passage of people between different parts of the premises under consideration is necessary to satisfy the geographical test. That appears to have been the submission of the Valuation Officer to the Valuation Tribunal, but it was not adopted by Mr Mackenzie on the appeal. It so happens that the property in Mazars was an office building, and that many of the cases from which statements of principle were drawn by the Supreme Court concerned the relationship between bank premises and residential accommodation provided for staff, or between dispersed buildings on a university campus. In other words, as the Tribunal indicated in Harding and Clements, the nature of the hereditaments under consideration in those cases meant that the use of any physical means of communication between them would be enjoyed by employees or by university staff and students. None of the Justices in Mazars suggested that the geographic test could not be satisfied unless access was freely available on foot to all parts of the property, and in the context of industrial premises such a limitation would not make sense. Lord Sumption's broad principles are of general application, and it would be wrong to narrow them so as to exclude from consideration physical connections used only for the passage of manufactured goods, goods in the course of production or raw materials but which were inaccessible to people working on the site. Each case will depend on its own facts, but the approach should be based on an assessment of the particular physical characteristics of the premises as a whole, rather than on the application of prescriptive rules.

> 45. We agree with Mr Wilcox that the means and extent of intercommunication between different parts of a site are critical, but we are not attracted by his submission that special significance should be afforded in the context of industrial premises to any intercommunication which exists for the purpose of transferring the very thing which is manufactured on the site. That approach would appear to require greater weight to be given to a subterranean conduit through which a manufactured liquid passed than to one used to convey water, telecommunication fibres or other "generic service".

29. Later on, in paragraphs 50 and 51 it stated:

> 50. Mr Mackenzie's first point was that the factory and the warehouse are both individually self-contained and each includes all of the facilities required to function and operate without recourse to any facilities contained in the other. He suggested that not all parts of both buildings are physically accessible from the other property. The bridge is limited to the functional passage of manufactured goods, and it is not possible for anything other than finished products to be transported from the factory to the warehouse using the bridge structure. His second point was that the factory and the warehouse are capable of being separately let.
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> 51. The first of these points seems to us, in part, to be factually incorrect. It is of course true that the factory could function as a factory, and the warehouse as a warehouse, without either requiring occupation of the other. That was the situation before 2013 when the two parts of the site were occupied independently, and it is the reason why no reliance is placed by the ratepayer on the secondary functional test. But it is no longer the case that the factory and the warehouse are self-contained. On the contrary, it is possible to reach any part of the site from any other part without leaving premises which are agreed to be in the exclusive possession of the ratepayer. The fact that passage across the bridge is usually reserved only for manufactured goods does not mean that it can be ignored. In any event, the bridge can be used for pedestrian access, and as we observed on our site visit, it is used for that purpose by maintenance staff, one of whom we witnessed crossing from the factory side to the warehouse side to locate a fault with the conveyor. When considering the geographical test how the bridge is used in practice is less important than the substantial physical connection which it creates between the two parts of the site.

30. In conclusion, the valuation officer's representative believed that both properties should remain as separate assessments and therefore he sought a dismissal of the appeals.

31. After the hearing, it was brought to the attention of the clerk that there had been an interim decision on a similar case. This led to this hearing being adjourned to allow the parties time to consider the interim decision of *Marstons plc v Bunyan VO* (appeal no CHG100434646). Both parties provided written comments on how this interim decision applied to their case prior to the re-convened hearing on Monday 4 November 2024.

32. Both parties summarised their comments having read the interim decision sent to them after the hearing on 8 August 2024. In terms of their valuations, their original views remained unchanged.

33. Having examined the evidence presented by the parties, I was satisfied that the geographic test was met in this case. The factory and the offices are contiguous and there is intercommunication between them via the canopy. The canopy at present forms part of the factory hereditament which makes the point that it's situation above a public highway, does

not mean it is not rateable. It already forms part of one hereditament, the factory. Therefore, the primary geographic test in *Mazars* is met. Intercommunication can be achieved without humans being able to pass through the canopy. Intercommunication is achieved by the pipes providing a water supply to enable the fire protection system (sprinklers) to function in both the factory and the office buildings. Therefore, the appellant's case that the two existing entries constituted a single hereditament was upheld.

34. In view of the foregoing, the appellant's case was successful on the preliminary issue. The two existing assessments constituted a single hereditament with effect from 15 February 2021. Having determined the preliminary issue, I then had to determine a single valuation.

35. As the valuation officer's representative had not prepared a single valuation, he was given further time to provide one. To this end, the valuation officer's representative provided an assessment of £129,817 RV (say £129,000 RV). As a result of his single valuation, the appellant's representative adjusted his valuation to include a figure for surfaced open spaces which had been omitted in his original valuation. His amended valuation was £110,996 RV (say £110,000 RV) with effect from 15 February 2021. At this stage, the differences in the two assessments related to unsurfaced open space and an end allowance for split/divide site. The parties were invited to address their differences at a reconvened hearing on 18 November 2024 when both parties attended. However, after discussions prior to the hearing, the parties had agreed the single valuation at £112,000 RV with effect from 15 February 2021.

36. The following had been agreed.

i. The unadjusted rate was reduced to £9.00/m^2.

ii. An end allowance of 10% was applied due to the split nature of the property and the 5% access allowance already applied to the Mill was carried forward.

iii. The open surfaced space of 25 spaces was agreed.

37. The revised valuation was as follows.

Line	Floor	Description	Area(m²)	Relativity	Price(£/m²)	Value(£)
1	Basement	Workshop	319.86	0.499	£4.49	£1,436
2	Ground	Canopy	261.8	0.1497	£1.35	£353
3	Ground	Workshop	704.32	0.999	£8.99	£6,333
4	Ground	Workshop	270.04	0.999	£8.99	£2,428
5	Ground	Office	413.43	1.198	£10.78	£4,458
6	Ground	Internal Storage	35.89	0.999	£8.99	£323
7	Ground	Workshop	171.88	0.999	£8.99	£1,545
8	Ground	Workshop	2855.97	0.999	£8.99	£25,678
9	Ground	Workshop	106.13	0.999	£8.99	£954
10	Ground	Workshop	615.3	0.999	£8.99	£5,532
11	Ground	Workshop	620.49		£25.20	£15,636
12	Ground	Workshop	2673.39	0.999	£8.99	£24,036
13	Ground	External Storage	64.67	0.749	£6.74	£436
14	Ground	Workshop	91	0.999	£8.99	£818

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15	Ground	Workshop	85.87	0.999	£8.99	£772
16	First	Workshop	89.58	0.649	£5.84	£523
17	Ground	External Storage	29.48	0.7486	£6.74	£199
18	Ground	Workshop	1718.76	0.998	£8.98	£15,438
19	Ground	Workshop	516.87	0.998	£8.98	£4,643
20	Ground	Workshop	460.48	0.998	£8.98	£4,136
21	Ground	Workshop	1222.22	0.998	£8.98	£10,978
22	First	Office	85.41	1.2	£10.80	£922
23	First	Internal Storage	91.84	0.649	£5.84	£536
24	First	Internal Storage	42.44	0.649	£5.84	£248
					TOTAL	£128,361
Additional Items		**Description**	**Size(m^2)**		**Price(£/m^2)**	**Value(£)**
		Containers		28	10	£280
		Car Parking		25	60	£1,500
Plant & Machinery						Value(£)
						£2,006
				Total before allowances		£132,147
End Allowance Description						
		Split Site				-10%
		Access				-5%
						-£19,822
					Total Value	**£112,325**
					RV	**£112,000**

21. In view of the foregoing, I am satisfied that the subject property should be reduced to £112,000 RV with effect from 15 February 2021, as a single assessment. Consequently, the appeal was allowed.

Disposal

22. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the Rating List to £112,000 RV with effect from 15 February 2021.

23. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

24. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended). The refund will take around six weeks to process.

Date issued to parties: 2 December 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.