VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; London Borough of Southwark v Ludgate House Limited and Andrew Ricketts (Valuation Officer) [2020] EWCA Civ 1637; Westminster City Council v Southern Railway Co Ltd [1936] 2 All ER 322; Should the subject property be two separate assessments; Appeal dismissed.

APPEAL NUMBER:	CHG101184553
RE:	PT R/O 19 (Centre) South End, Croydon, CR0 1BE (the "subject property")
BETWEEN:	Eva International Media Ltd — Appellant and Lucy Dyer (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	31 January 2025
BEFORE:	Mrs F Rahman-Cook, Presiding Senior Member Mr M Nwosu, Member
CLERK:	Mrs S Hodgson IRRV(Dip)
APPEARANCES:	Mr J Sheridan for the appellant Mr J Short for the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel found that at the material day, the subject property was a single hereditament.

Introduction

3. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 Rating List as “Office and Premises” at an RV of £12,500 with effect from 1 April 2017. The material day was 1 August 2022 which is when the second floor of the property was licenced to a separate company.

4. The challenge proposal was submitted by Stratton Estates Ltd on behalf of EVA International Media Ltd and was received by the Valuation Officer (VO) on 16 February 2024.

5. The VO issued a challenge case decision notice on 10 April 2024. The VO’s decision was to treat the appellant’s challenge as not well-founded and proposed no change to the rating list.

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

Background

7. The subject property was an office building that consisted of three floors of office space with basement storage. It was located in South Croydon London and had a total are of 115.67m^2. The second floor of the property was licenced from 1 August 2022 and had a total area of 18.53m^2.

Relevant Law

Local Government Finance Act 1988

8. In order for there to be separate valuations for rating purposes, it had to be established that there were two hereditaments.

9. The definition of a hereditament was referred to in section 64 of the Act, 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.”

10. Establishing the hereditament is inextricably linked with rateable occupation. The leading case of *John Laing & Son Ltd v Kingswood Assessment Committee* [1949], identified four necessary ingredients for rateable occupation: actual occupation; beneficial occupation; exclusive occupation; the possession must be for not too transient a period.

11. If any of the four essential ingredients were missing, then the occupier cannot be in rateable occupation.

Non-Domestic Rating (Material Day for List Alterations) Regulations 1992

12. Towards the end of the hearing, Mr Sheridan questioned the material day as he thought it was 23 February 2023 which was the date the check was submitted.

13. The material day (the day by which physical factors have to be taken into account) is provided in the above regulations.

3 Material day for list alterations

(1) For the purposes of sub-paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.

…

(4) Where the determination is with a view to making an alteration so as to show in, or delete from the list any hereditament which –

(a) has come into existence or ceased to exist;
(b) has ceased to be, or become, domestic property exempt from non-domestic rating;
(c) has ceased to be, or become, required to be shown in the central non-domestic rating list, or
(d) has ceased to be, or come to form, part of the relevant authority's area by virtue of a change in that area,

the material day is, subject to paragraph (5), the day on which the circumstances giving rise to the alteration occurred.

…

(8) The reference in paragraph (4) above to a hereditament coming into existence or ceasing to exist includes a reference to a hereditament which comes into existence or ceases to exist by virtue of –

(a) property previously rated as a single hereditament becoming liable to be rated in parts, or
(b) property previously liable to be rated in parts becoming liable to be rated as a single hereditament, or
(c) any part of a hereditament becoming part of a different hereditament.

14. The circumstances giving rise to the proposed alteration are the licence of the second floor from 1 August 2022. This date was referred to by Mr Sheridan in his challenge to the VO and was queried prior to at the hearing.

15. The panel had regard to the above regulations and found that the material day for the appeal before it was 1 August 2022. However, it was worth noting that the evidence Mr Sheridan relied on was dated 27 March 2024 and therefore the panel's reasons below would have been the same for a material day of 23 February 2023.

Discussion

16. The issue before the panel related solely to whether there was exclusive occupation of the second floor of the subject property from 1 August 2022. Whether or not occupation was exclusive was the only issue in contention between the parties.

17. The subject property was in the sole occupation of the appellant, EVA International Media Ltd, until 31 July 2022. From 1 August 2022 the second floor of the subject property was let by EVA International Media Ltd to Osprey Wealth Management Ltd on a licence to occupy commercial

premises. The licence period was for one year until 31 July 2023 when it became a month-to-month licence.

18. The panel heard from Mr Sheridan that as the second floor was in separate occupation, it should be separately assessed in the rating list. He had provided a letter from the landlord that was dated 27 March 2024 which stated that the landlord had not made use of the boardroom since the start of the licence agreement on 1 August 2022. It further stated that due to the lack of use of the boardroom by the landlord the clauses had been nullified and removed from the licence agreement with retroactive effect from 1 August 2022.

19. Mr Sheridan stated that the licence expired in July 2023 and any future arrangements would specifically state that the appellant landlord had no entitlement to use the boardroom on the second floor of the premises. The panel noted that the expiry of the licence agreement was 31 July 2023 and therefore any changes from the expiry of the licence agreement fell within the 2023 rating list and were outside of this appeal.

20. Mr Short contended that at the material day, Osprey Wealth Management Ltd did not have exclusive occupation of the second floor of the subject property and therefore was not in rateable occupation. He referred to the John Laing & Son Ltd decision which set out the ingredients of rateable occupation as listed in paragraph 10 above.

21. The panel reviewed the licence for the second floor of the subject premises and noted paragraph 3.1, paragraph 3 of schedule 3, and paragraph 4 of schedule 5, which clearly stated that the licence was non-exclusive and that the appellant retained the rights to use the boardroom on the second floor. The panel further noted that the second floor only consisted of two rooms, of which the appellant retained the right to utilise one of them, effectively 50% of the second floor.

22. Mr Short had referred the panel to *Westminster City Council v Southern Railway Co Ltd* [1936] 2 All ER 322. In the decision it was stated that where a person occupies part of a larger hereditament and the owner of the hereditament, also in occupation, retains control over the occupied parts, then the owner will remain in rateable occupation.

23. Mr Sheridan challenged the reliance on Southern Railway by referring to the following quote:

    "In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case; and in my opinion in each case the degree of control must be examined, and the examination must be directed to the extent in which its exercise would interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons."

    He contended that Osprey Wealth Management Ltd successfully excluded the appellant from the second floor and therefore a split was justified.

24. It was the panel's opinion that on the basis of the quote above, if the appellant had exercised its right within the licence to utilise the boardroom on the second floor, this would most definitely interfere with the enjoyment of the occupier as the boardroom was 50% of the floor.

25. Mr Sheridan invited the panel to place the most weight on the letter from the appellant dated 27 March 2024 which retroactively removed the clauses within the licence that retained the appellants right to use of part of the second floor.

26. The panel considered all of the evidence before it, the legislation, and the case law. The panel attributed the least weight to the March 2024 letter as whilst it stated it was removing rights retroactively, at the material day and indeed anytime until the end of the lease, the appellant could have exercised its usage rights. The fact that it may not have utilised any of the second floor during the term of the licence, was not the same as whether or not it had the right to.

27. The panel found that the most relevant evidence was the licence agreement which was dated 1 August 2022 and signed by the appellant and Osprey Wealth Management. The licence was clear that it was non-exclusive and that the appellant retained rights of part of the second floor.

28. *John Laing & Son Ltd* set out the four ingredients for rateable occupation and the panel found that the occupier of the second floor did not have exclusive occupation at the material day. For that reason, it could not be in rateable occupation, which is supported by the *Southern Railway* decision where if the owner retained control, then the owner remained in rateable occupation.

Disposal

29. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the subject property was a single hereditament at the material day. Therefor the appeal was dismissed.

Date issued to parties: 28 February 2025

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.
