

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Conneely Tribe agent for F C Brown (Steel Equipment) Ltd

Appeal Addresses: Factory and Premises, Bisley Office Equipment, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW

Warehouse and Premises, Unit C-d New Venture Buildings, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW

Appeal number: 693525104002/541NV10/1

The Matter Appealed against: 2010 Rating List

Date of Hearing: 4th November 2020

Appearances: Mr A Marshall on behalf of Conneely Tribe and Mr A Beadle, the Valuation Officer

Date of Decision: 26th February 2021

Decision of Tribunal: Appeal Allowed

Members of the Tribunal: Mr J Higginson (Chair), Mr S Hennah and Mrs M Jones

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The subject appeal arises from a proposal dated 18th February 2015, served on the Valuation Office Agency (VOA) by Conneely Tribe challenging the entries of the assessments in the 2010 Rating List. The grounds, as contained within the subject appeal's Proposal form, received by the Valuation Office Agency (VOA) on the 18th February 2015, detailed the reasons for believing the rating list was inaccurate as *"The assessment is excessive, incorrect, bad in law and should be reduced to £1. The 2 properties shown should be re-assessed as 1 hereditament to reflect the correct occupation"*.
2. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the Tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.
3. In support of each of their cases, the parties referred to the following legislation and case law:

Legislation

- Local Government Finance Act 1988 (LGFA1988), as amended and Basis of Valuation.
- The Rating (Valuation) Act 1999.
- The Rating Lists (Valuation Date) (England) Order 2008 SI No: 2008/216.
- The Non-Domestic Rating (Material Day for List Alterations) (Amended) (England) Regulations 2005

- The Town and Country Planning (Use Classes Order) 1997 SI No: 764 (as amended).
- Non-Domestic Rating (Miscellaneous Provisions) (No: 2) Regulations 1989.
- Valuation for Rating (Plant and Machinery) (England) Regulations 2000.
- Rating (Property in Common Occupation) Act 2018
- Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018.

Case Law

- K Shoe Shops Ltd v Hardy (VO) and Westminster City Council [1983] RA 26 HoL (1983) RA 245.
- Lotus and Delta Limited v Culverwell (VO) [1976] RA 141.
- RF Williams (VO) v Scottish & Newcastle Retail Ltd & Allied Domecq Retailing Ltd RA 2005.
- Specialeyes Plc v Felgate (VO) (RA/387/1992).
- Garton v Hunter (VO) 1968 RA 11.
- Burroughs Machines Ltd v Mooney (VO 1977 RA 45).
- Ladies' Hosiery and Underwear Ltd v West Middlesex Assessment Committee (1932).
- Futures London Ltd V Stratford (VO) 2006 RA75LT.
- Newbign (VO) v SJ & J Monk [2017] UKSC 14.
- Woolway v Mazars (2015) UKSC 53 - Supreme Court.
- Harding and Clements v Secretary of State for Transport (2017) UKUT 0135 (LC).
- Roberts (VO) v Backhouse Jones Ltd [2020] UKUT 38 (LC.)
- Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board [2001] RA 110, 140.
- Tata Chemicals Europe Ltd v Hughes (VO).
- Roxburghe Estates v Assessor for Scottish Borders Council [2004] RA 15.
- Newbold v Bibby [1959] RRC 243.
- Cemex UK Operations Ltd v Thomas O'Dwyer (VO).
- Gilbert (Valuation Officer) v S. Hickinbottom & Sons LTD. (C.A.) 1956.
- Irving Brown & Daughter v Smith (Valuation Officer) (RA 421 1993) Lands Tribunal.

Summary of the Appellant's case

4. Mr Marshall stated his qualifications, experience and his dual role as a Surveyor-Advocate and as an Expert Witness.
5. With the use of photographs Mr Marshall explained that there were three elements to this appeal: The Main Site, Unit C-D New Venture Buildings, and the Connecting Bridge/Conveyor which he described as follows:
6. The Main Manufacturing Site was acquired as a greenfield site by Bisley Office Furniture in 1988. The first phase of the factory was built in 1989 of four bay widths with additional bays added in 1992, 1994 and a further addition in 2004 which included a high bay. The newer parts were of similar design and construction as the original 1989 specification, hence, on previous rateable value agreements a single base value was adopted with no need to reflect modernity.

The manufacturing facility was on a plot of land with a high-density site coverage. In previous rateable value agreements, an allowance of 5% for site coverage / layout, was agreed to reflect this. In the past manufacturing by Bisley Office Furniture took place at

two sites, one in Newport and the other in Bisley in Surrey. As demand for their products diminished all manufacturing was moved to the Newport site in 2013. Whilst overall production had decreased the site in Newport was still too small to cater for their combined manufacturing needs. With a high-density site coverage, it was not possible to extend the original site and accordingly the problem was resolved by purchasing New Venture Building, a 1930's warehouse property situated directly opposite their existing site, on the other side of a public highway.

7. New Venture Buildings comprises four units of which Units C and D were occupied by Bisley Office Furniture and used as their distribution warehouse. Units A and B were leased and were separate assessments. This was an old 1930's building with the original poor load-bearing capacity floors, which were not suitable for a manufacturing process with heavy machinery. However, it served its purpose as a product distribution warehouse. To move the finished product from the manufacturing site to the warehouse a bridge with a conveyor system was built across Caswell Way, the public highway which physically separated the two sites.
8. The conveyor bridge was installed over the bank holiday weekend, 24th -27th May 2013. It was completed in August 2013 and became operational on the 2nd September 2013. It consisted of an enclosed bridge, which pierces the buildings either side of the public highway. It stands just over 8m off the ground, 87m long and the enclosed area was approximately 4m high by 3 m wide. There are three towers supporting it, one located in the Main Site and two located in Unit C-D New Venture Buildings. The cost of constructing the bridge was circa £238,000 and a further £297,000 was spent on the lifts and conveying mechanisms. The bridge had pedestrian access, for maintenance purposes and product retrieval. From the main site there was an internal staircase leading up to the bridge and there was also an inspection point from the first tower in Unit C-D.
9. Mr Marshall stated that he had agreed with the VOA the 2010 compiled list RV of the main site, Bisley Office Equipment, at a RV of £910,000 and that there was no dispute for the 2010 RV of Unit C-D, New Venture Buildings at £165,000. The connecting bridge and an element of the plant and machinery were rateable. The cost of the connecting bridge/conveyor to be used for the purposes of decapitalisation was £332,613 at a decapitalisation rate of 4.5%.
10. The issues in dispute for the Tribunal to decide are:
 - Should the three components, namely, the Main Site, Unit C-D New Venture Buildings, and the connecting bridge/conveyor, be merged to produce a single assessment? and
 - If yes, the rateable value of the merged hereditament.
11. If found to be merged to become a single hereditament, Mr Marshall proposed the new entry to be namely, (Inc. Unit C-D New Venture Buildings & Connecting Bridge) Bisley Office Equipment, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW at a RV of £950,000 with effect from 2nd September 2013.
12. Mr Marshall explained that with the issue of a merged assessment being a matter of law, the ratepayer sought the opinion of a Mr Luke Wilcox, a barrister from Landmark Chambers (of which the Barristers from those Chambers participated in the leading

Supreme Court case of *Woolway v Mazars* [2015] UKSC 53), who had first-hand knowledge of the issues involved.

13. In stating his opinion, Mr Wilcox dealt with the position established by the current case law and how it fitted in with the facts of this appeal. He considered the lead case in this area to be the Supreme Court Judgement in *Woolway v Mazars*, in particular to the three tests set out by Lord Sumption to identify whether distinct spaces under common occupation formed a single hereditament. The primary test being geographical, then functionality and effective enjoyment.
14. Reference was then made to the case of “*Harding and Clements v SST* [2017] RA 271” where the *Woolway v Mazars* judgement had been applied – *“In this case the operation of the geographical and functional tests in practice were considered. It concerned two fields used together for the keeping of three horses. The fields were separated by a public highway, though the occupier owned the subsoil beneath the highway, so that “below surface” there was contiguity. In addition, the fields were connected by a duct running under the highway for the purpose of transporting water from one field to the other. The case arose in the context of a blight notice for compulsory purchase and compensation purposes, but the issue turned on whether the fields were one hereditament or two in rating law.*

The Tribunal held that the fields had not become one hereditament by virtue of the geographical test.

The contiguity of land ownership beneath the sub-soil of the highway did not, of itself, satisfy the geographical test. The Tribunal noted that Woolway v Mazars had proceeded on the basis that unity and contiguity are not the same thing, and that if they were, then many cases which fail the Mazars geographical test ought to have passed it. That would be the case, for example, for adjoining houses in a terrace. The Tribunal added that “in order to gain access between the two plots the claimants have to cross a public highway. By definition, they do not have exclusive possession of that area of land which separates the two plots”.

As to the relevance of the duct which ran below the highway, the Tribunal said this:

“the “direct communication” described in paragraph 12 of Woolway v Mazars was a doorway or a staircase inserted into a boundary wall, or in other words a passage which would have enabled humans to pass from one property to another. We are not persuaded that the examples given in that decision were necessarily intended to delimit the type of link which might satisfy the geographical test. They may have been influenced by the nature of the properties and the land use under consideration. But this point has not been fully argued before us and must await another case. For present purposes we need only say that we do not accept that the ducts and the water supply in this case amount to a sufficient connection for the 0.835 ha area of land on plot 1 to be treated as a single geographical unit with the 2.095 ha area of land on plot 2 from which it is separated by Yarlet Lane. Instead, the water supply is a factor to be considered when applying the functional test”.

15. As a result of the *Woolway v Mazars* judgement, Government introduced a new Act namely, Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. This Act sought to deal with several unwanted issues that arose from this judgement and was examined in *Roberts (VO) v Backhouse Jones Ltd* [2020] UKUT 38 (LC.) and while this legislation did not apply in Wales it may prove useful guidance to the tribunal.

16. In *Roberts (VO) v Backhouse Jones Ltd* [2020] UKUT 38 (LC), the Upper Tribunal considered and interpreted the provisions of the Rating (Property in Common Occupation) and Council Tax (Empty Properties) Act 2018, which introduced a “contiguity condition” for merging what would otherwise be multiple hereditaments under *Woolway v Mazars*. The reforms in question did not apply in Wales, so the Tribunal’s commentary on the 2018 Act itself was irrelevant. The Tribunal did however make some useful observations about the role of service pipes in otherwise non-contiguous properties (para 46):- *“The other feature relied on by the respondent was the presence of service pipes above the ceiling of the fire corridor, which were said to link the two units. There was no evidence that there are services above the corridor, but assuming that there are, I do not think they are of significance in this appeal. An office is no less self-contained because conduits run between it and other self-contained offices in the same building (it is quite likely that common service pipes and conduits connected consecutive floors of the building in Woolway v Mazars but neither Lord Neuberger, who specifically dealt with service voids, nor any other member of the Court, mentioned such interconnection as a matter of potential significance. In Harding v Clements v Secretary of State for Transport [2017] RA 271 the Tribunal (Sir David Holgate, President, and PD McCrea FRICS) did not accept that two fields separated by a road but connected by ducts running under the road, one of which contained a water pipe, formed a single geographic unit”*.

17. Mr Wilcox then considered the VOA’s Rating Manual and the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, which led on to whether the Connecting Bridge was rateable. The manual addressed the *Woolway v Mazars* in section 3, part 1 as to the geographical test which states:

“Connection by cables, wires, pipes and railway lines have generally not been held to create geographic unity. Therefore, premises separated by property in other occupations, including public highways, private roads (where the occupier does not have exclusive rights over the road), railway and canals are not geographically one merely because of such connections”.

18. At this point, Mr Marshall referred to a paragraph within Mr Wilcox’s statement regarding what the Rating Manual stated about the “*building or structure*” test; and read as follows:

“There is no legal definition of a structure although the Courts have looked at 4 tests, which form a useful guide. The tests:

- i) The way in which the item is constructed ii) Its size and weight iii) Its degree of attachment to the land or other building or structures iv) Its degree of permanence.*

These tests are interdependent and (i), (ii), or (iii) may be conclusive.

In most cases the item will be constructed out of basic materials i.e. brick, stone, concrete or steel and may be either constructed wholly on site or prefabricated off site in whole or part and brought onto site. The size and weight of the item is not specific ... The item must be attached to the land or building or other structures forming the hereditament. The item should have a degree of permanence in a specific location on site but relocation on site for exceptional circumstances does not invalidate the permanence argument”.

19. Mr Marshall also referred to a Cardiff Case in 1949 where Lord Denning stated “A structure is something which is constructed, but not everything which is constructed is a structure”.
20. In bringing all his points together, Mr Wilcox concluded that the bridge was present and, if the bridge was rateable (which has been agreed that it is), it must be considered as part of the hereditament.
21. In his written submission, Mr Wilcox analysed the geographical test as follows:

“The relevant issue for the purposes of the geographical test is whether the Properties are cartographically unified. Bare contiguity is insufficient if that contiguity does not result in the requisite unity (taken from Harding). One unresolved issue in the context of the geographical test is the kind of interconnection which is sufficient to create geographical unity. In Mazars itself, Lord Sumption gave an example the piercing of an interconnecting wall to create a doorway. Such a degree of connection evidently introduces cartographical unity where none might otherwise exist. At the other end of the spectrum, the existence of a culvert beneath a highway was insufficient to create unity between the two fields in Harding. Nor were the service pipes sufficient in Backhouse Jones. The Rating Manual adopts a similar approach to service pipes and cables. Whilst the law on this area is unclear, it seems to me that whether or not any particular form of interconnection is sufficient to create geographical unity will depend to a significant degree on the nature of the premises themselves, and the mode or category of occupation which exists for them. Where the hereditament in question is an office, for example, the primary means of occupation will be by the presence of employees. If the means of interconnection does not enable employees to pass and repass, then the mode of connection may not qualify. Conversely, if the mode of occupation is for the transport of oil, for instance, then a pipe which can transport oil may be sufficient despite it being too narrow for a person to pass through. Similarly, the fields in Harding were occupied by horses, and the culvert was not capable of allowing horse movements; an underground tunnel allowing the passage of horses might have resulted in geographical unity in that context. Such an approach seems to me to be consistent not only with principle, but also with the recognition in Harding that the Mazars examples may have been influenced by the nature of the building there under consideration. Turning to the Properties, it seems to me that, on these facts, there is a fairly good argument that the geographical test is satisfied. The Conveyor provides a link between the Factory and the Warehouse. That link is for the purpose of, and is in fact used for, transporting office furniture from the manufacturing building to the distribution building. The Conveyor thus creates an interconnection between the two properties for purpose of moving the very things which the properties exist to create and distribute: the office furniture. It is not in the character of a generic service linkage such as a water pipe; nor is it the link of connection which the hypothetical tenant would expect the hypothetical landlord to provide (unlike say utilities connections for an office building). Nor should it matter that a person cannot pass from the Factory to the Warehouse via the Conveyor: there is much less need for persons to be able to pass in the case of industrial premises like the Properties than is the case for an office, in my opinion. Whilst the point is open to argument either way, therefore, it seems to me that on balance the Conveyor is closer in character to the pierced wall in Mazars than to the culvert in Harding or the service pipes in Backhouse Jones. For that reason, in my opinion it is more likely than not that the geographical test is satisfied for the Properties, so that they represent a single geographically unified unit which can be ringed around on a plan. Further, it seems to me to be clear that the three rateable components of the Properties are all used for broadly the same purpose, so that there would be no

reason to split what would otherwise be a single hereditament. On that basis, I consider, on balance, that the geographical test shows that the Properties form one hereditament”.

Mr Wilcox submitted that “if he was right about the geographical test, then there was no need to consider the functionality test: it is only engaged for properties which are in common occupation, but which are not geographically unified. Since the role of the geographical test in this context is still developing, however, I will consider the functionality test anyway”.

22. Although Mr Wilcox had provided his analysis on the functionality test, Mr Marshall believed that there was no dispute between the parties or with Mr Wilcox that the functionality test from a rating perspective for the subject appeal would not be met, and therefore, he did not venture further into this point.
23. The next point Mr Wilcox referred to in his opinion was the conveyor where he stated *“As the rating manual observes, conveyors themselves are not listed in the Plant & Machinery Regulations, and so are probably non-rateable, unless on analysis the conveyor can better be described as an escalator or traveller (which seems unlikely). The conveyor itself is thus unlikely to be rateable; that is reflected in its current exclusion from the RV’s of both the Factory and the Warehouse.*

The bridge within which the conveyors are housed, however, appear to me to be likely to be rateable. Based on the photographs I have seen, the bridge is a substantial work of construction, and seems, on a straightforward, realistic approach, to be both a bridge and a structure. On that basis, my view is that the bridge element of the conveyor is likely to be rateable, so that it must be taken into account in deciding whether the Properties pass the geographical test”.

Mr Marshall stated that if it is correct that the bridge is rateable then it does not matter for the purposes of the geographical test that the conveyor system within it is not. The bridge is present and must be taken into account as part of the hereditament and physically links the factory and the warehouse, those facts in Mr Marshall’s view is sufficient to reach the conclusion of the geographical test.

24. To support his case further for a merger, Mr Marshall referred to the property of Vion Food UK Ltd, Little Wratting, Haver Hill, Suffolk, CB9 7TD. He considered this property was similar to the subject premises where two buildings either side of a public highway were connected by a bridge housing a conveyor and had been treated by the VOA as one hereditament. With the use of aerial photographs taken in 2009, 2011 and 2018, he described the location of the property and the construction of the bridge built over the A143. He explained that the abattoir was situated on the left side of the road and the meat processing building on the right side of the road. The conveyor was used to move products from the abattoir to the meat processing plant. An appeal with reference No 352523285795/036N10 was submitted to split the site into two assessments, one either side of the public highway while reconstruction works were being carried out. In the end the appeal was not pursued, and it was struck out without any alteration.
25. At some stage after the effective date of the appeal there was approximately, 36,600 m² of property within this assessment. There was an alteration made in December 2010 which reduced the m² to 32000 m². The reason there were two different property reports was due to the original occupier of Grampian Country Pork Suffolk having

changed to Vion Foods Ltd and via the address change one hereditament was deleted and the new one was brought in. In 2011, the property had been reduced to approx. 26,000 m² and in March 2016 the VO reduced the buildings on the site to 23,800 m².

26. As shown in his Detailed Assessment Reports, Mr Marshall explained that this assessment had gradually decreased by circa 13,000 m². The aerial image taken in 2009 of the buildings highlighted to the left of the highway calculate to be circa 13,000 m² and the buildings to the right are circa 5,200 m². The recent aerial photograph of the demolished buildings were the ones to the left and where the 13,000 m² reduction in area came from, not by separating the site on either side of the road. It was evident that the assessment had always been valued with sites either side of the highway and that the more recent changes to the assessment was the removal of buildings from the valuation on the left-hand side of the highway but with the bridge linking buildings either side remaining in place.
27. Mr Marshall stated that the reason he referred to this property as above was to demonstrate that when the VOA revisited the site in 2011, prior to the *Woolway v Mazars* case, the conveyor belt had been truncated. In his opinion, if the property had been merged under a functional test prior to *Woolway v Mazars* then following the publishing of the *Woolway v Mazars*, Mr Marshall believed that it could not be assumed there is any functionality test that can be applied to that truncated bridge and yet if this had been reassessed correctly by the VOA in 2016 it has to be assumed that the abattoir on the right was not separated from the main site because there was a geographical link between the two properties. Mr Marshall stressed that in 2016 the functional test would not have been passed but the geographical test was. On this occasion, the VOA considered that the correct approach from *Woolway v Mazars* had been applied.
28. With having finalised his evidence regarding whether the property should be merged, Mr Marshall proceeded with his evidence of aerial photographs and summaries of valuation and detailed assessment reports to support an allowance for a “split site” and referred to the following properties:
- Hasbro UK Ltd, Caswell Way, Reevesland Industrial Estate, Newport, NP19 4YH - 5% allowance for a split site - this assessment has had buildings added over the years. Warehouse A, dating from 1979, was combined with Warehouse B in 1981 and Warehouse C was added in 1994. This assessment was on a self-contained site and all three buildings were standalone properties. The two smaller buildings were connected to the larger building by linking structures. The allowance for a split site in this case was 5%.
29. Tri-Wall Europe, Wonastow Road, Monmouth, NP25 4DQ -10% allowance for a split site across a public highway – No site connection - Originally there were two separately assessed factory buildings either side of a public highway. On 1st January 2003 they were merged. There was no physical connection between the two sides of the road. The allowance for a split site was 10%.
30. In respect of his valuation evidence for the bridge/conveyor structure Mr Marshall referred to the following case law where a 4.2% decapitalisation rate was used to value the conveyor structure:

Cemex UK Operations Ltd v Thomas O'Dwyer (VO) RA/85/2017 - This was an LT case where the unit of assessment had been brought into the list by the VOA, comprised

three elements: the Quarry, the Works and the Conveyor. As the valuation of this hereditament was via the Contractor's Basis, the primary focus was on the Modern Equivalent Replacement of the whole assessment.

The Appellant was contending that the value of the conveyor be subsumed into the value of the Works. Neither party sought to split the unit of assessment into its component parts. The appeal was dismissed.

As part of the Statement of Agreed Facts within this case, the parties agreed that if the conveyor structure was to be included then a value of £42,000, being 4.2% of the estimated replacement cost of £1,000,000. The Upper Tribunal accepted the VO's argument, and the value of the conveyor structure was included.

31. Mr Marshall stated that it was evident from this case that the Upper Tribunal considered this conveyor a structure and therefore rateable. Mr Marshall contended that the subject bridge/conveyor structure should be valued likewise. He explained that the decapitalisation figure for Wales was set at 4.5% and it has been agreed between the parties that this was the correct percentage to use on the total cost of the connecting bridge and the rateable plant of £332,613. This attributes a RV to the connecting bridge plus rateable plant of £14,968. It was also worth noting that *Woolway v Mazars* was not referenced in this case, but Mr Marshall contended that if it were, the three elements of this hereditament would have met the geographic test.
32. In support of his valuation evidence for the tone of the list, Mr Marshall referred to the following case law and his subsequent evidence to show that the tone in this location for this type of property has been established:

Futures London Ltd V Stratford (VO) RA/75/2006 – This was a case where the ratepayer appealed a Valuation Tribunal (VT) decision and sought a reduced RV from the Upper Tribunal (UT) of £25,275 on the basis of a market rent on the appeal property, which had been agreed four months prior to the antecedent valuation date (AVD). The Valuation Office argued that a tone of the list had been established at a higher figure, producing a Rateable Value of £29,000 and thus he asked the Upper Tribunal to confirm the VT's decision. The valuer member, P H Clarke dismissed the ratepayers appeal stating at para 25:

"25. There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, assessments will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by a VT or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled: rents will be largely subsumed into assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding the tone of the list is a question of fact. When an assessment is challenged before a tribunal the correct time for deciding whether the tone of the list has been established is immediately before the hearing. The weight to be given to comparable assessments as evidence of value will depend on the circumstances in each case. These may indicate that little or no weight should be given to comparable assessments, e.g. where acceptance of value is more acceptance of rate liability or where a body of settlement evidence rests on a single agreed assessment."

Mr Marshall contended that as far as the subject buildings, Units A, B and C-D New Venture Buildings, Caswell Way were concerned, the value for these units have been accepted and a tone of the list as set out above in *Futures London Ltd V Stratford (VO)*, has been established.

Bisley Office Equipment, Caswell Way, Reevesland, Industrial Estate, Newport, NP19 4PW Assessment Recently Agreed with a 5% Allowance for Layout - This assessment had been recently agreed between the parties and the prime rate has been established.

Units A, B and Unit C-D New Venture Buildings, Caswell Way, Reevesland Industrial Estate, Newport, NP19 4PW - Units A and B, the two other assessments with New Ventures Building were both appealed on the 2010 Rating List and were subsequently withdrawn. In line with the Judgement in *Futures London*, the prime rate applied to Unit C-D is established.

33. In his valuation evidence for an allowance for quantum, Mr Marshall referred to the following properties:

Quantum in NP19 - Units A, B and C-D New Venture Buildings, Caswell Way, Reevesland Industrial Estate, Newport - Units A and B were valued under a VOA valuation Scheme reference 96887, which was applicable to industrial Units situated on the Reevesland Industrial Estate that were built before 1970. It excluded any units larger than 10,000m².

Unit C-D were valued under a different Scheme reference of 97827 which was applicable to large industrial premises situated within Newport. This unit has been placed in a different scheme due to its size and was valued at a lower rate per square metre.

Essentially one is considering a number of assessments within a building where all factors are equal except for the size. The unadjusted rate for the smaller unit of circa 6,000 m² is valued £16/m² and the larger unit of circa 11,000 m² is valued at £15/m². There is 6.25% reduction in value for the larger unit.

Quantum in NP10 - Former Quinn Radiators, Imperial Park, Newport and Rettig Part of Quinn Radiators, Imperial Park, Newport – These two assessments have recently been split and have been placed into different schemes that primarily reflect their size. The rate per square metre on the smaller unit has been increased accordingly. As this split took place in the 2017 Rating List, there was no 2010 Rating List values available but from the detailed analysis reports provided, the small assessment of circa 9,000 m² was increased by 16% compared with the larger unit of 90,000 m².

Quantum in NP26 - Wilkinson Depot, Euro Park, Llandavenny, Magor, Caldicot, Tesco Distribution Centre, Barelands Street, Magor, Caldicot And Magor Trunking Station, Barelands Street, Magor, Caldicot - All three of these assessments were valued in the same VOA valuation scheme, 126235, where the value was applicable to large purpose-built distribution warehouses in Wales generally over 8000 m². The most commonly adopted rate within this valuation scheme was £49/m² and this has been applied throughout as the unadjusted rate to the three units. On this occasion the 'unadjusted rate' within the VOA scheme of £49/m², has been adjusted to account for the different size units. There was a 4.2% differential in the 'adjusted rate'

used for the 84,000m² unit to 'adjusted rate' used for 60,000m² unit and a further 8.25% differential between the unit of 60,000 m² and the unit of 24,500 m².

34. Having regard to his evidence, Mr Marshall based his proposed valuation on a single hereditament as follows:

- Adjustment to the tone of both units by 5% to reflect the increased quantum and applied an end allowance of 7.5% to reflect the split site.
- The assessment evidence establishes that rental values are influenced by the size of a property.
- Demonstrated that quantum does exist within this location and based on a reduction in tone of 6.25% within New Venture Buildings and a 4.2% reduction on the distribution warehouses in Caldicot, therefore have applied a figure of 5% to the merged hereditament.
- Evidence provided of a split site allowances where three separate buildings, within the same curtilage, next door to one of the assessments subject to the merge, that has a 5% split site allowance and three buildings, on two sites, across a public highway, that have a 10% split site allowance.
- To reflect the greater inconvenience to the site not across a public highway and the advantage over the site where there is no connecting bridge over the public highway, Mr Marshall applied a split site allowance of 7.5%.
- With no evidence of rental value for the bridge connecting the two properties looked to a decapitalisation of the cost to install the bridge and the rateable plant within. In line with the agreed approach taken in the Cemex case, used a decapitalised figure of 4.5%.

Floor	Description	Area m ²	£/m ²	Value
Ground	Production Area	7172.1	£23.75	£170,337
Ground	Canteen	122.4	£26.13	£3,198
Ground	Office	795.1	£28.50	£22,660
First	Office	240.2	£28.50	£6,846
Ground	Office	245.4	£29.93	£7,345
First	Office	336.8	£28.50	£9,599
Ground	Plant Room	102.9	£20.83	£2,143
First	Plant Room	11.4	£13.54	£154
Ground	External Storage	62.4	£17.45	£1,089
Ground	Canteen	182	£28.50	£5,187
Ground	Kitchen	114.6	£28.50	£3,266
Ground	Production Area	7286.7	£23.75	£173,059
Ground	Production Area	3454.7	£23.75	£82,049
Mezzanine	Production Area	2319.6	£11.88	£27,557
Ground	Area Under Supported Floor	2319.6	£16.63	£38,575
Ground	Area Under Supported Floor	1512.4	£16.63	£25,151
Mezzanine	Production Area	1512.4	£11.88	£17,967
Ground	Plant Room	98	£23.75	£2,328
Ground	Production Area	6014.4	£23.75	£142,842
Ground	Canopy	71.8	£3.47	£249
Ground	Warehouse	2291.2	£23.75	£54,416
Ground	External Storage	170.7	£17.45	£2,979

Ground	Canopy	358	£3.47	£1242
Ground	Warehouse	3948.5	£24.97	£98594
Ground	Works Office	59.2	£23.75	£1406
First	Works Office	59.2	£15.44	£914
Ground	Canopy	160	£3.47	£555
Ground	Gatehouse	10.1	£23.75	£240
Ground	Gatehouse	10.1	£23.75	£240
Ground	Production Area	11338.3	£13.89	£157489
Total	Subtotal area per m²	52380.2		£1,059,677
Plant and Machinery				
Description		Value		
Plant and machinery		£9425		£9,425
Conveyor Belt Structure and Rateable Plant	£322,612 @ 4.5% Decap	£14968		£14,968
				£1,084,070
Adjustments made to property				
Description	Adjustment			
	Layout	-5%	-£54,132.62	£1,029,937.70
	Split site	-7.5%	-£77,138.98	£952,798.72
Total	Adjustments sub total value			
Valuation				
Total value:				£952,799
Rateable value (rounded down)				£950,000

35. Mr Marshall drew attention to his values stated within the above valuation, stating that the value of £9425 shown in the value column for Plant and Machinery should be amended to £7721 and the total figure before any adjustments were made be amended from £1,084,070 to £1,082,366. Total value to be amended from £952,799 to £951,129.

36. To conclude, Mr Marshall stated that in any valuation, the unit of assessment first needs to be identified. It was clear that the leading case, *Woolway v Mazars*, did not “sit on all fours” with the facts of the current case or the mode or category of occupation in this case.

37. The appellant has sought a legal opinion as to the correct interpretation of current case law and regulations. That opinion has identified the three tests set out in *Woolway v Mazars*. Lord Sumption sets out that the first and primary one being the Geographical test. It is only if this test is not satisfied that you move on to the ‘functionality’ and the ‘effective enjoyment’ tests.

38. The legal opinion has identified that the decided cases are not only predicated by the mode or category of occupation but also the nature of the building under consideration. His Lordships only mention the link to be 'a door' or 'a staircase' as the most like 'movement' in an office will be people. It stands to reason that within a different environment, the 'movement' would be germane to that particular environment.
39. The legal opinion has set out from Lord Denning and the Plant and Machinery Regulation the guidance on a) whether the conveyor bridge is a structure and b) whether it is, or parts of it are, rateable.
40. He has identified a hereditament, a factory split over two sites, either side of a main road and linked by a bridge containing a conveyor. The assessment was altered in March 2016, some eight months after *Woolway v Mazars* was published and the site has not been split. Mr Marshall suggested this hereditament was not split because the truncated bridge made the two sites contiguous.
41. Both parties have agreed that under the Plant and Machinery Regulations and Lord Denning's judgement in the Cardiff case, the conveyor bridge was a structure and therefore was rateable. In Mr Marshall's opinion there was only one question for the Tribunal to answer: -

Given the Mode or Category of Occupation and the nature of the buildings, does the Conveyor Bridge meet the Geographic test i.e., are all three assessments contiguous?

42. Mr Marshall suggested that if the answer to that question was yes, the only conclusion to arrive at is the properties should be merged to form one hereditament. Having taken a legal opinion from Counsel he was in no doubt that this was the correct course of action and respectfully requested that the properties be merged and a RV of £950,000 be applied to the new assessment.
43. During cross questioning, Mr Marshall responded as follows:
- Regarding the appeal properties being merged, Mr Marshall agreed with Mr Beadle that the properties should not be merged under the functional test as set in *Woolway v Mazars* case.
 - Mr Marshall did not entirely agree with Mr Beadle that the *Cemex* case did not have any bearing on the subject appeal. He believed that had the unit of assessment been considered in the *Cemex* case it would have passed the functional and geographical test. In his opinion the conveyor was deemed to be rateable and therefore deemed to be a structure, the conveyor itself was routed in both properties. He accepted in that valuation there was a functional aspect of the conveyor, with problems on the chalk site which required the conveyor to extract it. Therefore, he considered that it was a structure, it was rateable and was geographically in each site and would have passed the geographical test if brought to court. He agreed with Mr Beadle that in terms of the unit of assessment this was not a point of discussion.
 - Regarding the *Harding v Clements* case Mr Marshall did not totally agree that the determining factor was the functional test rather than geographical despite the two parcels of land being contiguous under the road. He agreed that the case was decided on a functional basis but believes the reason it failed the geographical test was because the subsoil that linked the two properties did not have exclusive beneficial occupation. He agreed that the decision failed on the geographical test.

- Mr Marshall explained that the conveyor bridge of the subject properties was not a walkway for staff but to enable the transport of office furniture from the main site building to Units C & D. Its use is to access the conveyor bridge for maintenance purposes.
- In relation to the *Burns Stewart* case, Mr Marshall explained that he had not really considered this case as it deals with Scottish case law which is not binding to the subject appeal and to be used as guidance. He just took the opinion that the Supreme Court came up with the three tests which should be considered in our jurisdiction. His understanding of the *Burns Stewart* case is that it was a distillery linked by a concrete conduit of a certain size which dealt with communications between the two sites. Given the case law he suggested that the *Burns Stewart* case failed on the geographical test as the pipes or service it provided was no different to that given in the *Harding v Clements* case and *Woolway v Mazars*.
- With the *Tatar* case, Mr Marshall explained that he was not aware of this case until he saw Mr Beadle's case. Having considered this case, he assumed that the Panel did not find the size of the pipeline (believes 18 ins diameter and 450 mil, and 150 mil condense steam), to be significant to have passed the geographical and functional tests.
- In respect of a merger Mr Marshall did not concede to Mr Beadles' point that in the case of Vion Food UK Ltd, Suffolk and Tri-Wall Europe, Monmouth the issue of merging was not addressed. It has to be assumed given the current case law that the VO that dealt with those particular re-assessments must have been aware of the *Woolway v Mazars* and must have taken it into consideration, whether he did or not, it should be assumed that he did.
- About the content with Regulation 31 and the rent of £390,000 for units C-D, Mr Marshall accepted that the rent took place but was clearly ignored. He was not aware of the details behind that rent other than it was short-term letting.
- Mr Marshall brought the information on the tone of the list was in the event Mr Beadle raised the rent of £390,000. He agreed with Mr Beadle that the three large distribution warehouses he mentioned for end allowance had no relevance to the rate per m² applied to the merged unit, as they were of different mode and category, locality, and age. Those properties were referred to demonstrate that there was an allowance granted for the size of the unit, regardless of the base value and location, it is a fundamental valuation principle that he believed was accepted. Where he had quoted 2017 lists and values it is the percentage allowance which are reflective on the difference in size of the properties, Mr Marshall did not wish to apply a 2017 value to a 2010 valuation, just suggesting that there is a percentage allowance that are there in 2017 list and would be there in the 2010 list as it has been with the other properties.
- Regarding the *Quinn Radiator* case, Mr Marshall believed that property to be a better property than the subject property being 10 years younger, having superior links to motorway and location.

Summary of the Valuation Officer's case

44. Mr Beadle stated his qualifications, experience and his dual role as a Surveyor-Advocate and as an Expert Witness.
45. He referred to the basis of valuation as defined under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 and legislative framework as –

“2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from non-domestic rating] shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions-

- (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
- (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;*
- (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above”.*

46. In accordance with the Rating Lists (Valuation Date) (Wales) Order 2007 the Antecedent Valuation Date (AVD) specified for Wales is 1st April 2008.

47. 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, which means a:

“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”.

48. The issue as to the correct unit of assessment was to be determined applying the principles set out by the Supreme Court in *Woolway v Mazars [2015] UKSC 53*.

49. Mr Beadle stated that the areas of both properties were not in dispute. The issues in dispute were:

- Whether the two properties should be merged.
- The main space £/m² to be applied to each property.
- The end allowance to be applied to the valuation.
- The overall addition for Plant & Machinery.

50. With the use of ordnance survey maps and photographs, Mr Beadle explained the location of the properties and described the properties as follows:

- Bisley Office Equipment, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW – a Factory & Premises built in the late 1980s and refurbished in 1994. It has an eaves height of 7.6 metres and a total significant area of 36620.1 m². The owner and occupiers, F C Brown (Steel Equipment) Ltd, first occupied this property on 1st August 1988. Mr Beale understood that it also operated under the trading name Bisley Office Equipment.
- Unit C-D New Venture Buildings, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW - a Factory & Premises built in the 1940s. It has an eaves height of 6 metres and a total significant area of 11338.3 m². Mr Beadle understood F C Brown (Steel Equipment) Ltd were the owner and occupiers of this property.

51. The two properties were separated by Caswell Way but joined by a bridge housing a conveyor. It was Mr Beadle's understanding that F C Brown (Steel Equipment) Limited manufacture office furniture in the Bisley Office Equipment property and then transport it via lifts and the conveyor belt housed in the bridge structure to Unit C-D Venture

Buildings where it is stored prior to dispatch to clients. The conveyor bridge was not designed and was not used as a walkway for employees. He provided a plan of the Conveyor Bridge and build costs.

52. Reference was made to the Valuation Office valuations of the subject properties:

Bisley Office Equipment

Floor	Description	Area m ²	£/m ²	Value
Ground	Production Area Bay 1	7172.1	£25.00	£179,303
Ground	Canteen	122.4	£27.50	£3,366
Ground	Office	795.1	£30.00	£23,853
First	Office	240.2	£30.00	£7,206
Ground	Office	245.4	£31.50	£7,730
First	Office	336.8	£30.00	£10,104
Ground	Plant Room	102.9	£21.94	£2,258
First	Plant Room	11.4	£14.26	£163
Ground	External Storage	62.4	£18.28	£1,141
Ground	Canteen	182	£30.00	£5,460
Ground	Kitchen (Ref NO Has A Small A)	114.6	£30.00	£3,438
Ground	Production Area (Bay 2)	7286.7	£25.00	£182,168
Ground	Production Area (Bay 3)	3454.7	£25.00	£86,368
Ground	Area Under Supported Floor	2319.6	£17.50	£40,593
Mezzanine	Ref NO Is A Small A	2319.6	£12.50	£28,995
Mezzanine	Ref NO Is A Small A	1512.4	£12.50	£18,905
Ground	Area Under Supported Floor	1512.4	£17.50	£26,467
Ground	Plant Room & Paint Store	98	£25.00	£2,450
Ground	Production Area (Bay 4)	6014.4	£25.00	£150,360
Ground	Covered Walway	71.8	£3.66	£263
Ground	External Storage	170.7	£18.28	£3,120
Ground	Warehouse	2291.2	£25.00	£57,280
Ground	Canopy	358	£3.66	£1,310
Ground	Warehouse	3948.5	£27.30	£107,794
Ground	Works Office	59.2	£25.00	£1,480
First	Works Office	59.2	£16.25	£962
Ground	Canopy	160	£3.66	£586
Ground	Gatehouse	10.1	£25.00	£253
Ground	Gatehouse	10.1	£25.00	£253
Plant and Machinery				
Description		Value		
	Plant and Machinery			£7,712
			Sub Total	£961,341
Adjustments made to property				
Description	Adjustment			
	High Site coverage and layout	-5.00%		

				-£48,067

The above valuation totals £913,274 which was rounded down to £910,000 with effect from 1st April 2010. The main space price is £25/m². The assessment of £910,000 was agreed with Mr Marshall following a proposal submitted on the 18th February 2015 (IPP 25109635) against the compiled list assessment of £950,000 with effect from 1st April 2010. The Rating List was updated on the 30th March 2020.

Unit C-D New Venture Buildings

Floor	Description	Area m ²	£/m ²	Value
Ground	Production Area	11338.3	£14.63	£165,879

The above valuation totals £165,879 which was rounded down to £165,000 with effect from 1st April 2010. The main space price is £15/m² which has been adjusted by 2.5% to £14.63/m² to reflect a lack of heating in the property. With the exception of the appeal before the Tribunal today, Mr Beadle mentioned that this assessment had not been subject to any additional proposals during the course of the 2010 Rating List.

53. In response to the Appellant's case, Mr Beadle disagreed with Mr Marshall for the properties to be merged, on the premise that with effect from 2nd September 2013 the two buildings were connected by a conveyor bridge, since neither the 'geographical' nor the 'functional' test explained in *Woolway v Mazars* were met, because:

- The two hereditaments were readily capable of being outlined on a plan as separate geographic units of property.
- Although in common occupation, the two hereditaments do not become one as a result of applying the Rating (Property in common occupation) Act 2018 since that Act does not apply in Wales, and even if it did, the conditions set out in paragraph (3ZD) (a) are not met. The conveyor bridge spanning across the road that separates the two hereditaments was not 'a wall, fence or other means of enclosure'.
- The two hereditaments cannot be considered as functionally connected as is to be properly understood from *Woolway v Mazars*, since they were clearly capable of being separately let.

54. As of 2nd September 2013, both properties were owner occupied by F C Brown (Steel Equipment) Limited. Mr Beadle understood F C Brown (Steel Equipment) Limited have owner occupied Bisley Office Equipment since 1st August 1988. In respect of Unit C-D New Venture Buildings the situation was more complicated as his records confirm that as at 21st September 2007 Norbert Dentressangle Holdings Ltd occupied the property under a year and a half lease. The Landlord at that time was Nai Erinaceous.

His records also confirmed that after the departure of Norbert Dentressangle Holdings Ltd the property stood vacant until F C Brown (Steel Equipment) Limited took up occupation on a freehold basis from 2nd September 2013.

55. Mr Marshall referred to a legal opinion supplied by Mr. Luke Wilcox. In his narrative Mr. Wilcox made the following points concerning both the 'functional and geographical' tests:

“54. For those reasons, I consider that the Properties are unlikely to pass the functional test. As I have explained above, however, that is ultimately irrelevant, if the geographical test is passed.

61. If it is correct that the bridge is rateable, then it does not matter, for the purposes of the geographical test, that the conveyer systems within it are not. The bridge is present, must be taken into account as part of the hereditament, and physically links the Factory and the Warehouse; those facts are in my view sufficient to reach a conclusion on the geographical test”.

56. In Mr Beadle’s opinion neither the functional nor geographical tests are passed following the relevant principles summarised in *Woolway v Mazars* per Lord Sumption:

“12 I derive from these decisions three broad principles relevant to cases like this one 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 18 R 936 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.”

57. Mr Beadle drew from this general statement of principles the following points:

- The ultimate decision of the Valuation Tribunal Wales should be exercised using a large measure of common sense.
- The context is that rating is intended to levy a tax on an individual property, not a business or a particular occupier of the property.
- The Geographical test is the primary test.
- Unity is not simply a question of contiguity. If there is not direct communication between contiguous spaces this is a strong indication of separate hereditaments.

- The Functional test operates as a discretionary and exceptional test to create a single hereditament where that is necessary in the circumstances of the individual, objectively ascertainable characteristics of the properties.

58. To be a single hereditament the two properties for the subject appeal would have to be a self-contained piece of property: as per Lord Neuberger, at paragraph 47 of *Woolway v Mazars*:

“Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (ie property all parts of which are physically accessible from all other parts, without having to go onto other property), and a self-contained piece of property is a single hereditament. As the Scottish Lands Tribunal said in Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board [2001] RA 110, 140, “the emphasis on the geographical test is an aspect of recognition that lands and heritages are separate subjects”. Thus, two separate self-contained buildings, even if sharing a common wall, would not be expected to be a single hereditament but two hereditaments. And a building no part of which was self-contained would be expected to be a single hereditament.”

59. *Woolway v Mazars* was applied by the Upper Tribunal in *Harding and Clements v Secretary of State for Transport* [2017] UKUT 0135. This did not establish any new principle. It was helpful in clarifying that contiguity between units of property was a matter of degree, and a degree of contiguity was not sufficient by itself to meet the geographical test, what was required is direct communication (paragraph 74 and 75). It is highly relevant that the occupier does not have exclusive possession of the area of land that separates the plots (paragraph 74). What constitutes sufficient direct communication to meet the geographical test is fact-sensitive (paragraph 76).

60. For the subject appeal, Mr Beasley explained that the bridge was constructed in a course of three days over a bank holiday weekend in 2013, although it could be argued that it looks a significant structure. He also pointed out that in a hypothetical world a landlord might request that the occupier remove the structure at the end of its tenancy. Alternatively, Unit C & D demonstrated back in 2007 that its premises it could be separately let and in Mr Beasley’s opinion just because there is a link between the two properties does not necessarily mean that they must be merged.

61. As Mr Marshall had conceded that the subject properties did not meet the functional test, Mr Beadle referred mainly to the geographical test.

62. Analysis of the above case law emphasises the need to apply common sense and rational judgment to ascertain whether geographically one is looking at one unit of property (*Unum quid*) or two. An inspection of the two sites leads inevitably to the conclusion that these are two separate sites, each with their own entrances. Contrast this with the conclusion of *Woolway v Mazars* that two floors of offices one above the other with services in between failed the geographical test.

63. The case law also contains numerous examples whereby sites that are in very close proximity and with a means of connection are assessed as separate. For example, where a distillery and its warehousing spans a road with a concrete communications conduit linking the sites underneath the road (*Burns Stewart*), and most recently on the application of *Woolway v Mazars* in *Harding and Clements* where the two land parcels were occupied for the same equestrian use, either side of a country lane with ducts connecting the two beneath the road (and where the ownership was such that the

ownership continued beneath the road so the whole subsoil was in the same ownership).

64. The appellant's argument is directly contrary to the clear principle of *Woolway v Mazars* that the application of the geographical test is a common-sense exercise to be applied on an objective, geographic basis capable of identification on inspection and the identification of a single unit of property.
65. The question of the degree of intercommunication is a secondary and qualitative question which requires consideration of the nature and quality of the communication in the context of the putative hereditaments.
66. The addition of the conveyor bridge in 2013, although consisting in part of rateable elements, does not create a means of intercommunication as envisaged in *Woolway v Mazars*.
67. Here the degree of intercommunication was minimal in the context of the wider hereditaments. It relates to a single high-level conveyor bridge. There was no means of communication for anything other than the goods which passed from one property to the other. As Lord Gill said in *Woolway v Mazars*, at point 35 in relation to Bank of Scotland: the absence of an internal connection between the residential unit and the bank premises meant that to reach the bank the occupier of the dwelling house had to leave the building and go by the street to the public entrance of the bank. That applies equally here.
68. Conveyors and pipelines (for example) regularly provide connections between separate hereditaments even though each hereditament was reliant to a degree on the conveyor or pipeline. An example of this was the case of *Tata Chemicals Europe Ltd v Hughes (VO)*, where the President of the Valuation Tribunal for England found that two specialised chemical works, linked by a steam pipe and a condensate return pipe, along with a high-tension electrical cabling, was properly two separate hereditaments. This case was particularly interesting as it was the first 'merger' case to be considered since the *Woolway v Mazars* Supreme Court judgement. Although appealed to the Upper Tribunal (Lands Chamber), the appellant ratepayer subsequently withdrew.
69. No doubt there were connections, by cables and pipes, between the floors of the office building considered in *Woolway v Mazars*. Just as in *Harding and Clements* there were connections through culverts and pipes. In *Burn Stewart* the sites were separated by a road, with a concrete communications conduit linking the sites underneath the road, and the geographical test was not satisfied. Many buildings are connected by pipelines and cables. However, in order to be a self-contained unit of property as described by Lord Neuberger (i.e. property all parts of which are physically accessible from all other parts, without having to go onto other property), it is necessary that there is communication by much more than simply the passing of goods over a high level conveyor.
70. As Lord Gill said in *Woolway v Mazars*: "the identification of the valuation unit, or the Unum quid, rests on a geographical test". In this case the geographical test was not met. The respondent contended that the clear conclusion to the assessment in this case was that there were two separate units of assessment that cannot be viewed as a single unit on a plan.

- As a final point in his draft Statement of Case Mr Marshall made a number of references to *Cemex UK Operations Ltd v Thomas O'Dwyer (VO)*, although not specifically used by him to support his contention that the two properties should be merged. Mr Beadle thought it would be useful to briefly explain the nature of this case.

71. The Cemex Upper Tribunal case concerned a cement works and the quarry that exclusively supplied chalk and clay to it for the manufacture of cement. The quarry having a 'field' conveyor of some 1,000m length that transported chalk and clay to the cement works. The case did not, at any time, raise the unit of assessment question. If the unit of assessment question had been raised, then it is possible that the conclusion would have been that a single unit of assessment was correct taking account of *Woolway v Mazars*, because it is impossible to envisage the quarry being let separately from the cement works. The cement works would be 'useless' without the quarry that exclusively supplied it, and the quarry would be similarly 'useless' without the cement works that takes 100% of its output of chalk and clay. It cannot be ruled out, however, that close examination of the facts, with a focus on the unit of assessment following the *Woolway v Mazars* case, could lead to a different conclusion. The historic treatment of properties (including quarries) linked by pipeline (or conveyor), does depend very strongly on case law developed from the contiguity concepts analysed in the Gilbert case, now expressly disavowed in *Woolway v Mazars*.

72. To conclude on whether the property should be merged, Mr Beadle referred to his following key points:

- The 'old' law following Gilbert was disavowed in *Woolway v Mazars*. Accordingly, properties that have been historically merged may need to be reviewed.
- The 'contiguity' test was now of secondary importance.
- The 'functional' test relates to the functional relationship between the two properties, not the business or economic relationship.
- The 'geographical' test was now of primary importance.
- 'Intercommunication' between properties could cause 2 to become 1, but only where that involves the movement of people.
- The connection of properties by pipes, wires and conduits has never been seen as justification in itself to merge properties e.g., *Burn Stewart Distillers, Newbold v Bibby*. As regards the latter, a common-sense approach was adopted, and the Tribunal found that connection by three pipes providing electricity and steam under the road from one site to the other could not sensibly be considered to amount to sufficient connection: 'a mere connection by wires or pipes might result in premises a mile apart being treated as contiguous, which Mr Beadle seemed to be ridiculous'.
- An 'objectively ascertainable' functional connection may defeat geographic separation, but only exceptionally e.g., golf courses.
- Functional connection will normally be displaced if the two properties were capable of being separately let, even where that capability was 'difficult'.

Given the above and with specific reference to this case:

- The two properties occupy separate sites and should be separate hereditaments.
- The geographical test is not met. This is a common-sense test, and the two properties are, given they are separated by a road, evidently not one unit of property, or one visual or cartographic whole. As regards the conveyor bridge, this represents only a small degree of contiguity (and this was only a slight consideration following *Woolway v Mazars*).

- The failure of the geographical test in this case was sufficient to resolve the matter. As Lord Gill noted the identification of the valuation unit rests on the geographical test.
- The functional test is not the equal or alternative to the geographical test. It is an exception to it, to catch rare cases. There is nothing exceptional in the instant case. There are two separate sites that should be rated separately.
- Even if the functional test is considered, in physical functional terms the connection is the supply of goods from one site as an input to another. The conveyor bridge is but only one means of multiple such movements, by a variety of methods, it does not create a functional connection so as to create a single hereditament from what is, in common sense terms, separate units of rateable property. Indeed, it seems hard to argue that Unit C-D New Venture Buildings, which is used to store finished goods, was anything more than a convenience. The two properties seem readily able to be separately let, defeating any concept of functional connection, indeed at one point in time Unit C-D New Venture Buildings was separately let.
- The connection by the conveyor bridge does not constitute 'intercommunication' and is no different in principle to a connection by conduit, pipes or wires,

73. Accordingly, for the above reasons and applying *Woolway v Mazars*, Mr Beadle contended that the two properties should not be merged.

74. With the use of aerial photographs, summaries of valuation and detailed assessment reports of comparable properties, Mr Beadle provided the following information:

75. Evidence used by Mr Marshall in support of the merger request: – With regard to the property of Newmarket Foods Ltd, Little Wrattling, Haverhill, Suffolk, Mr Beadle explained that the earliest entry he could identify was a 1990 List assessment of £581,500 with effect from 31st August 1993. Subsequently, the property became Grampian Country Pork Suffolk with a RV of £600,000 with effect from 22nd October 2009 and then Vion Food UK Ltd with a RV of £410,000 with effect from 4th October 2010. This property was split by a road and linked by a bridge that appears to connect the Abattoir with a Bacon Plant and a Meat Plant. Mr Beadle assumed that the historic decision to have one assessment, rather than two, was because it was decided the two parts of the property had a functional connection.

In Mr Marshall's reference to a proposal submitted by Hartnell Taylor Cook against the assessment of Vion Food UK Ltd, he considered this proposal was submitted in order to split the site into two assessments. Mr Beadle explained that having examined his records, whilst he could confirm a 2010 Rating List proposal was submitted on 1st November 2013 by Hartnell Taylor Cook LLP against the assessment of £410,000 with effect from 4th October 2010, the grounds of the proposal made no mention of splitting the site and instead stated: "*The Valuation Officers Notice dated 10/1/2011 is incorrect, unfair and bad in law*". Subsequently the proposal, having been pursued, was struck out by the Valuation Tribunal on 19th August 2014.

Mr Beadle emphasised the historic decision to have one assessment for this property and the submission date for the Hartnell Taylor Cook LLP proposal predated the 2015 decision in *Woolway v Mazars*". Given this decision effectively disavowed the 'old' law that followed *Gilbert (Valuation Officer) v S. Hickinbottom & Sons Ltd (C.A.) 1956*, in his opinion this assessment has no relevance when considering whether Bisley Office Equipment & Unit C-D should be merged.

76. Evidence used by Mr Marshall in support of the main space £/m² to be adopted in the event of a merger, Mr Beadle provided:

- Bisley Office Equipment adopted main space was agreed at £25/m² with Mr Marshall after Conneely Tribe had submitted a proposal on 18th February 2015 against the compiled list assessment of £950,000 with effect from 1st April 2010. The Rating List was updated on 30th March 2020.
- Unit C-D New Venture Buildings – was agreed at an adopted main space of £15/m² which had been adjusted by 2.5% to £14.63/m² to reflect a lack of heating.
- Unit A New Venture Buildings – based on an adopted main space of £19/m², the valuation rounded down to £33,500 with effect from 1st April 2010. The property was a Factory & Premises built in the 1940s and refurbished in 2006. The assessment was subject to a proposal submitted on 12th February 2012 by CVS (Commercial Valuers and Surveyors) Ltd and was subsequently withdrawn.
- Unit B New Venture Buildings - based on an adopted main space of £16/m², the valuation rounded down to £109,000 with effect from 1st April 2010. The property was a Warehouse & Premises built in the 1940s. As a consequence of a proposal submitted on 16th May 2011 by CVS (Commercial Valuers and Surveyors) Ltd the compiled list assessment of £110,000 was reduced to £109,000 with effect from 1st April 2010. The Rating List was updated on 17th April 2012.

77. Evidence used by Mr Marshall in support of an allowance for split site:

- Hasbro UK Ltd, Caswell Way, Reevesland Industrial Estate, Newport – Mr Beadle provided that based on the main space of £28.84/m² the valuation rounded down to £690,000 with effect from 15th July 2013. The property was a large Distribution Warehouse. The first warehouse was built in 1979 and additional warehouses were added in 1981 and 1994. This property was previously known as Hasbro Bradley UK Ltd. The 2010 List assessment for this property (for either address) was not subject to a proposal during the 2010 Rating List.
- Tri-Wall Europe, Wonastow Road, Monmouth – Mr Beadle explained that this assessment was first created on 1st January 2003 after the merger of three separate assessments:
 - Tillotsons, Wonastow Road, Monmouth
 - Unit 1, Wonastow Road Industrial Estate, Monmouth
 - Tri-Wall Europe, Wonastow Road, Monmouth

From the site plan submitted it comprises a number of buildings separated by a main road. The decision to merge the assessments is historic and predated the 2015 decision in *Woolway v Mazars*.

78. Evidence used by Mr Marshall in support of quantum allowance which referred to the following 2017 Rating List Factory & Premises assessments:

- Former Quinn Radiators, Imperial Park, Newport – RV of £2,070,000 with effect from 16th July 2019 – Main space £25/m².
- Rettig Part of Quinn Radiators, Imperial Park, Newport – RV of £270,000 with effect from 16th July 2019 – Main space £29/m².

Given the above comparable properties were 2017 Rating List assessments, Mr Beadle was unable to see their relevance when valuing Bisley Office Equipment and Unit C-D Venture Buildings as a merged Factory and Premises assessment in the 2010 Rating List.

In relation to the following comparable properties supplied by Mr Marshall, Mr Beadle explained that each property is a large Distribution Warehouse valued at a main space of £/m² far in excess of that applied to the appeal properties in the 2010 Rating List.

- Wilkinson Depot, Euro Park, Llandavenny, Magor, Caldicot – RV of £3,780,000 with effect from 1st April 2010 – Main space £45.68/m² (included a 3% addition to reflect the presence of sprinklers).
- Tesco Distribution Centre, Barelands Street, Magor, Caldicot – RV of £2,650,000 with effect from 1st April 2010 – Main space £47.69/m² (included a 3% addition to reflect the presence of sprinklers).
- Tesco, Magor Trunking Station, Barelands Street, Magor, Caldicot – RV of £1,260,000 with effect from 1st April 2010 – Main space £50.47/m² (included a 3% addition to reflect the presence of sprinklers).

With the above properties being large Distribution Warehouses, Mr Beadle was unable to see their relevance when valuing the appeal properties as a merged Factory and Premises assessment in the 2010 Rating List.

79. For his comparable properties, Mr Beadle referred to the following:

- Quinn Radiators, Imperial Park, Newport – This property was built in 1998. Its assessment of £2,400,000 with effect from 1st April 2010 was agreed with CB Richard Ellis, who had submitted a proposal against the compiled list figure of £2,650,000, based on main space of £25/m².
- Panasonic, Pencarn Way, Coedkernew, Newport – This property was built in 1988 and refurbished in 1999. Its assessment of £645,000 with effect from 1st April 2010 was agreed with Cooke & Arkwright, who had submitted a proposal against the compiled list figure of £655,000, based on main space of £31.50/m².

Mr Beadle explained that both his comparable properties were valued on Scheme 90773 and was the scheme adopted when Bisley Office Equipment was valued for the 2010 Rating List.

80. Mr Beadle stated that he was satisfied that he has covered all the issues presently in dispute. As per the principles established in *Irving Brown & Daughter v Smith (Valuation Officer) (RA 421 1993)* Lands Tribunal, in his opinion, the appellant has not put forward any arguments that would substantiate his claim Bisley Office Equipment and Unit C-D New Venture Buildings should be merged with effect from 2nd September 2013.

81. Given his evidence, Mr Beadle requested that the Tribunal dismiss the appeal. However, he provided his proposed valuation should the Tribunal find that the property be merged based on an adopted £25/m² for the main space of Bisley Office Equipment and £14.63/ m² for the main space of Unit C - D New Venture Buildings:

Floor	Description	Area m ²	£/m ²	Value
Ground	Production Area	7172.1	£25.00	£179,303
Ground	Canteen	122.4	£27.50	£3,366

Ground	Office	795.1	£30.00	£23,853
First	Office	240.2	£30.00	£7,206
Ground	Office	245.4	£31.50	£7,730
First	Office	336.8	£30.00	£10,104
Ground	Plant Room	102.9	£21.94	£2,258
First	Plant Room	11.4	£14.26	£163
Ground	External Storage	62.4	£18.28	£1,141
Ground	Canteen	182	£30.00	£5,460
Ground	Kitchen (Ref NO Has A Small A)	114.6	£30.00	£3,438
Ground	Production Area (Bay 2)	7286.7	£25.00	£182,168
Ground	Production Area (Bay 3)	3454.7	£25.00	£86,368
Ground	Area Under Supported Floor	2319.6	£17.50	£40,593
Mezzanine	Ref NO Is A Small A	2319.6	£12.50	£28,995
Mezzanine	Ref NO Is A Small A	1512.4	£12.50	£18,905
Ground	Area Under Supported Floor	1512.4	£17.50	£26,467
Ground	Plant Room & Paint Store	98	£25.00	£2,450
Ground	Production Area (Bay 4)	6014.4	£25.00	£150,360
Ground	Covered Walway	71.8	£3.66	£263
Ground	Warehouse	2291.2	£25.00	£57,280
Ground	External Storage	170.7	£18.28	£3,120
Ground	Canopy	358	£3.66	£1,310
Ground	Warehouse	3948.5	£27.30	£107,794
Ground	Works Office	59.2	£25.00	£1480
First	Works Office	59.2	£16.25	£962
Ground	Canopy	160	£3.66	£586
Ground	Gatehouse	10.1	£25.00	£253
Ground	Gatehouse	10.1	£25.00	£253
Ground	Production Area	11338.3	£14.63	£165,879
Plant and Machinery				
Description		Value		
	Plant and Machinery			£21,579
Adjustments made to property				
Description	Adjustment			
	High Site coverage and layout	-5.00%		
	Split site	-4.00%		
Total	Adjustments sub total value			-£100,416
Total value:				£1,040,671
Rateable value (rounded down)				£1,040,000

Mr Beadle drew attention to the figure of the Plant and Machinery to be altered from £20,241 to £21,579, in line with Mr Marshall correction of the figures in stating his case and using the decapitalisation rate of 4.5%. The above valuation totals £1,040,671 which rounded down to £1,040,000 with effect from 2nd September 2013.

82. During cross questioning, Mr Beadle responded as follows:

- Regarding Plant & Machinery, Mr Beadle accepted that there were certain elements in the bridge that were rateable; the structure that covers the conveyor and the supporting structure for the conveyor, but not the conveyor itself. For the purposes of this appeal, he was happy to accept that the lifts were rateable.
- In placing the rateable parts of the conveyor into the RV assessment, Mr Beadle explained that, although this was more of an administrative question, in principle someone must have occupation of it. In considering vacant and to let, it would depend on who had paramount control. In the case of Tata chemicals, it was decided on the basis that the site who had the control of the heat and electricity to the plant had paramount control of the pipeline. In relation to this appeal the appeal properties were in occupation by the same occupier, therefore the rateable parts of the conveyor could easily be added to the Bisley Office Equipment. If there were different occupiers, it could easily be split between the properties. In his opinion, just because something is rateable it does not mean that it passes the geographical test.
- In respect of the Tata case the assessment was based on Plant & Machinery, however when asked if it was based on a contractor's basis of valuation Mr Beadle stated that he did not have the details.
- With attention drawn to the difference in m² of 36,000 m² to 41,000 m² in the valuation, Mr Beadle explained that his and Mr Marshall's valuations do match. The figure of 36,620.1 m² is in relation to in terms of Main Space (ITMS) and the figure of 41,041.9 m² relates to the total area. His valuation is the published valuation and agreed with Mr Marshall.
- In relation to the subject properties and the moving of the office furniture, the product that is produced by the factory from one site to the other which does not have exclusive occupation of the ratepayer, Mr Beadle gave a supposition that unless there were additional items of office furniture that were too big to fit in the conveyor system those would be moved by truck, for those products that fit in the conveyor system they would have no requirement to go on the highway.
- A public road cannot be exclusively occupied, however, an occupier can own the land underneath the public road, as was established in the case of Harding.
- Mr Beadle agreed that the appeal properties have the exclusive occupation of the bridge and structure over the public highway.
- Regarding the geographical test via the point of pipes and conduits, Mr Beadle explained that in the case of Harding the conduit use was for water; in Burns Stewart case the conduit and cable pipe was for telecommunications and CCTV and in the Tata case there were pylons that carried the electric system plus the cables; a massive steam pipe and private high powered electricity voltage and wires. Therefore, not all of his evidence cited were connected by cables, pipes and conduits either concrete or otherwise as shown with pylons in the Tata case.
- On the use of mode and category, Mr Beadle stated in the Burns Stewart Case he was sure that there was a warehouse on one side of the road and an office on the other side, in the Tata case the use was chemical works and in Woolway V Mazars it was offices.
- On the point of 'is there a legal requirement for people to pass through the properties, Mr Beadle referred to the case of Woolway v Mazars where Lord

Sumption of cases mentioned in that decision derived at 'need pedestrian access'. The Woolway v Mazars case established the principle that the property had to be pierced by a doorway or staircase for the geographical test to pass. Therefore, Mr Beadle believed there required pedestrian access and not a bridge.

- Mr Beadle agreed that the mode and category of use for the appeal properties is different to that of the cases provided. However, in the case of Woolway v Mazars a set of principles were established that can be universally applied when looking at merging of properties. In his opinion, he considered a conveyor bridge did not provide a link.
- In the Cemex case, Mr Beadle agreed that the mode and category of the unit of assessment was not addressed within the judgement.
- On the facts of the Harding case, Mr Beadle stated that he was not going to disagree with the judgement, however, he drew attention to the fact that the properties were not merged based on geographical but based on functionality.
- Mr Beadle agreed that the Lord Justice as per the Harding case on the pedestrian access was not a definitive point but nevertheless illustrated the point in general terms in the Woolway v Mazars which provides a guide on what can and cannot be merged.
- On the point of Mr Marshall stating that he was not persuaded by the examples given in the decision of Woolway v Mazars were necessarily intended to delimit the type of link that might satisfy the geographical test; Mr Beadle stated that he could not disagree on said point.
- Mr Beadle accepted that all parts of the appeal properties were only accessible in transporting the product around the perimeter of the factory via the conveyor bridge.
- Regarding the assessment of Vion Food Suffolk, Mr Beadle explained that he has not inspected this property neither has he reviewed its assessment. His understanding is the assessment was only reviewed based on the removal of buildings that had been demolished. Therefore, he did not accept that the geographical test has been taken into consideration and as it stands it is an historic decision. With reference having been made to the photographs of no product being able to pass over the bridge, Mr Beadle stated that appeared to be the case.
- On the point of quantum should the properties be merged; Mr Beadle did not agree that quantum would be appropriate to take into account considering the sizes of the comparable properties of Quinn Radiators and Panasonic. In his opinion, the size of Bisley Office Equipment with the addition of Unit C-D (52000m²), only totals half the size of Quinn Radiators (99824.7m²).
- Mr Beadle agreed that size, age, and locality can be factors of value significant. Having considered these factors, he found that the subject properties should be valued on the same £/m² as Quinn Radiators.
- On the point raised that valuing a unit as a whole is not just purely adding the subject properties assessments together, Mr Beadle explained that this can be the case where the tone of the list has been established by both properties and apply an allowance to reflect that it is a split site. Based on the £/m² of £25/ m² for Quinn Radiators and £31.50/m² for Panasonic, he believes that the £25/m² sits very well with these two comparable properties.
- With the property Tri Wall, Mr Beadle stated that it did not appear to be a physical link between the two sites, however, he has not inspected this property and as he has stated in his statement of case that the properties appear to still be merged and a 10% allowance applied for split site.
- Mr Beadle agreed that a 5% site allowance had been agreed on the property of Hasbro, a large distribution warehouse situated within 100 miles of the subject property, and a 4% allowance had been agreed on the property of Vion Food, a

warehouse situated some 200 miles from the subject property. He explained that in his proposed valuation should the property be merged, he had adopted a 4% split site allowance based on the comparable property of Vion Food, Suffolk brought by Mr Marshall, who had stated it mirror imaged the subject property.

83. At the conclusion of the Hearing, the Tribunal decided to reserve its decision.

84. Following the Hearing, Mr Beadle confirmed that his proposed valuation reflected his adoption of Mr Marshall's figure of £322,613 for the conveyor bridge structure and lifts (as detailed in Mr Marshall's proposed valuation at appendix 1), giving his proposed valuation a total cost of £1,040,671, rounded down to £1,040,000. Mr Marshall confirmed his use of the decapitalisation figure for Wales of 4.5% which accounted for his figure of £14,968 in his valuation and carrying over the original Plant & Machinery figure of £7,712 for the 2010 Rating List. Therefore, he attributed £22,680 within his proposed valuation, he was not sure that the exact figure was agreed between him and Mr Beadle.

The Reasons for Decision

85. Having considered all the evidence placed before it the tribunal decided as follows: -

86. The issue to be determined by the Tribunal was the accuracy of the appeal properties entries within the 2010 Non-Domestic Rating List with effect from 2nd September 2013, the date the parties agreed that the properties were owner occupied by F C Brown (Steel Equipment) Ltd.

87. The parties requested that the Tribunal consider:

- Whether the appeal properties should either remain as separate entries in the Rating List or merged as one property due to the connection of a conveyor bridge.
- The main space £/m² to be applied.
- The allowances to be applied to the valuation.
- The overall addition for Plant & Machinery.

88. In relation to the issue of whether the property should be merged, the Tribunal first looked at the information surrounding the structure of the conveyor bridge and its use.

89. In considering the structure of the conveyor bridge, the Tribunal noted that both parties had agreed certain parts within that structure was rateable and had provided a breakdown of the costing of those rateable parts. Photographs provided showed the full extent on which the conveyor bridge was connected within each of the appeal properties. The conveyor bridge was installed to necessitate the moving of the final product of furniture from one unit to the other.

90. To ascertain whether Bisley Office Equipment, Unit C-D and the Conveyor bridge fell to be one hereditament and therefore, pass the geographical test as set out in the principles derived from the case in *Woolway v Mazars*, the Tribunal took guidance from the case law provided and the VOA's guidance manual that was referred to.

91. With regard to Mr Wilcox opinion on the analysis of the geographical test set out in the case of *Woolway v Mazars*, Mr Wilcox referred to *"The relevant issue for the purposes of the geographical test is whether the Properties are cartographically unified. Bare contiguity is insufficient if that contiguity does not result in the requisite unity (taken from Harding). One unresolved issue in the context of the geographical test is the kind of*

interconnection which is sufficient to create geographical unity. In Mazars itself, Lord Sumption gave an example the piercing of an interconnecting wall to create a doorway. Such a degree of connection evidently introduces cartographical unity where none might otherwise exist.

92. In the case of *Harding and Clements* where the above judgement in the *Woolway v Mazars* had been applied the Tribunal for that case stated the following:

“the “direct communication” described in paragraph 12 of Woolway v Mazars was a doorway or a staircase inserted into a boundary wall, or in other words a passage which would have enabled humans to pass from one property to another. We are not persuaded that the examples given in that decision were necessarily intended to delimit the type of link which might satisfy the geographical test. They may have been influenced by the nature of the properties and the land use under consideration. But this point has not been fully argued before us and must await another case”.

93. In considering the guidance provided by the VOA’s guidance manual and the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, which should be noted mirror images the Wales regulations, on to whether the Connecting Bridge was rateable. The manual addressed the *Woolway v Mazars* in section 3, part 1 as to the geographical test which stated:

“Connection by cables, wires, pipes and railway lines have generally not been held to create geographic unity. Therefore, premises separated by property in other occupations, including public highways, private roads (where the occupier does not have exclusive rights over the road), railway and canals are not geographically one merely because of such connections”.

94. Having considered the information provided, the Tribunal found that the structure of the conveyor bridge had pierced each of the appeal properties to such an extent to have created a doorway/passageway and access to all areas within the properties. The owner and occupier held exclusive occupation over the appeal properties and the conveyor bridge. The mode and category were factory and warehouse for the movement of office furniture. Unit C-D had only been separately let in 2007 prior to the occupancy of the current owner/occupier to the appeal properties and the placement of the conveyor bridge.

95. On the point of mode and category in relation to a merger, the Tribunal found that the case law provided mainly referred to pipes, cables, and conduits for the use of water, heat, and electricity, none referred to a ‘finished product’ with the exception of the case of *Woolway v Mazars*, where it referred to offices situated on different levels within the building which involved the movement of people. In the case of *Cemex UK Operations Ltd v Thomas O’Dwyer (VO)*, it was noted that this case did not raise the question of unit of assessment.

96. During the hearing, the Tribunal noted that Mr Beadle believed that ‘intercommunication’ between properties could cause two properties to become one but only where that involves the movement of people. However, during cross questioning it was noted that Mr Marshall and Mr Beadle agreed that the examples given in the decision of *Woolway v Mazars* were not necessarily intended to delimit the type of link that might satisfy the geographical test.

97. Based on the above, the Tribunal concluded that the conveyor bridge did create a link, 'an interconnection link', between the property of Bisley Office Equipment and Unit C-D New Venture Buildings. It was found that the conveyor did fall closer in character to the pierced wall in the *Woolway v Mazars* case than the culvert in the *Harding and Clements* or the service of pipes. As these three components were rateable and broadly used for the same purpose there would be no reason to split what would otherwise be a single hereditament, as referred to in Mr Wilcox's opinion. The Tribunal determined that the appeal properties and the conveyor bridge did form a single hereditament and could be ringed on a map.
98. In considering the allowances to be applied as a merged assessment, the following was noted:
99. In relation to the main space £/m² and having considered the case law of *Futures London Ltd v Stratford (VO) RA/75/2006*, the Tribunal noted that the parties had agreed the £/m² for the compiled list entries, based on the established 'tone of the list'; £25/m² for what would be the assessment area for Bisley office equipment and £14.63/m², for the lack of heating, for the area of Unit C-D New Venture Buildings.
100. In considering whether quantum should be applied, the Tribunal found that quantum was not warranted having regard to its mode and category, age, size, and locality in comparison to the comparable properties supplied. It was found that the £25/m² and £14.63/m² applied to the merged assessment to be fair and reasonable and for an allowance for a split site to be applied.
101. Having considered the allowance for a split site, the Tribunal found the best comparable property was that of Vion Food UK, Suffolk where a 4% allowance had been applied.
102. In relation to high site coverage and layout, the Tribunal noted that both parties had agreed an allowance of 5%.
103. For the Plant & Machinery, the Tribunal noted that the parties had agreed to adopt the decapitalised rate used for Wales of 4.5% and had adopted the figure of £322,613 for the Conveyor Bridge Structure and Lifts. Therefore, the Tribunal determined the overall addition for the Plant and Machinery was £21,579 in accordance with Mr Beadle's proposed valuation.
104. In view of the above, the Tribunal determined that the appeal properties entries in the 2010 Rating List should be amended to show one hereditament with the address as Bisley Office Equipment, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW, as requested by Mr Marshall which was found not to be contested by Mr Beadle.
105. The hereditament of Bisley Office Equipment, Caswell Way, Reevesland Industrial Estate, Newport NP19 4PW should be entered into the 2010 Rating List with a RV of £1,040,000 in accordance with the valuation proposed by Mr Beadle in Point 81 above, with effect from 2nd September 2013.

Certified a true copy on 26th February 2021.