UPPER TRIBUNAL (LANDS CHAMBER)

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RATING – HEREDITAMENT – multi-floored office building – proposal to merge contiguous and interconnected hereditaments – Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 - appeal dismissed

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

AN APPEAL AGAINST A DECISION OF

THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

STORMHILL PROPERTIES LIMITED

Appellant

-and-

RICHIE ROBERTS (VALUATION OFFICER)

Respondent

Re: Alpha House

Rowlandsway

Manchester

M22 5RG

P D McCREA FRICS FCIArb

DECISION ON WRITTEN REPRESENTATIONS

Mr John Fifield FRICS, for the appellant

Mr Admas Habteslasie, instructed by HMRC solicitor, for the respondent.

The following cases are referred to in this decision:

Woolway (VO) v Mazars [2015] UKSC 53

Libra Textiles Limited T/A Boundary Mills Stores, Centric Assets Limited v Ritchie Roberts and David Alford (Valuation Officers) [2020] UKUT 237 (LC)

Roberts (VO) v Backhouse Jones Limited [2020] UKUT 38 (LC)

1. This short decision concerns an appeal by the ratepayer, Stormhill Properties Limited, against a decision of the Valuation Tribunal for England ("the VTE") dated 16 February 2021 in which the VTE found to be invalid the appellant's proposal to alter the rating list in respect of a nine-storey office building - Alpha House, Rowlandsway, Manchester, M22 5RG.

2. The VTE's decision records that the ratepayer's proposal was made on 7 November 2019, on the ground that "since the early 1990's the building has had 14 separate assessments totalling £202,450. In fact, the building has been vacant since 2009 and should have a single assessment with effect from 1 April 2010." The proposal relied on ground 4(1)(k) of the Non-Domestic Rating (Alterations of Lists and Appeals)(England) Regulations 2009 ("the 2009 regulations") – that property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments.

3. The window within which a proposal to alter the 2010 rating list could be made closed on 31 March 2017, except in respect of proposals that satisfied the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 ("the PICO Act"), which, together with enabling secondary legislation, extended that window in certain circumstances. The VTE found that the proposal did not satisfy the requirements of the PICO legislation and was therefore invalid.

4. The parties agreed that the question of whether the proposal was valid should be determined by the Tribunal as a preliminary issue on the parties' written representations, with the matter of valuation being remitted to the VTE if necessary.

5. By way of an Order dated 27 July 2021, the Deputy President directed that the Tribunal would determine as a preliminary issue whether the appellant's merger proposal satisfied the conditions in section 64(3ZB)(b) and (c), Local Government Act 1988.

6. In addition to making such submissions of law upon which the appellant relied in support of the appeal, the Order directed the appellant to address specific points by way of a witness statement: evidence of facts upon which the appellant relied concerning the appellant's interest in the appeal hereditaments, the relevant occupation of each of the appeal hereditaments prior to 31 March 2010 (that being the date on which the appellant stated that the building became entirely vacant), and the date on which each of the appeal hereditaments ceased to be occupied.

7. In addition to his Statement of Case dated 13 July 2021, Mr Fifield submitted a witness statement dated 30 September 2021. On behalf of the Valuation Officer, written submissions in reply were made by Mr Admas Habteslasie of counsel. While the Order afforded the appellant the opportunity to respond with further submissions of law, none were made.

8. As the Tribunal recounted in Libra Textiles Limited T/A Boundary Mills Stores, Centric Assets Limited v Ritchie Roberts and David Alford (Valuation Officers) [2020] UKUT 237 (LC):

"44. ….as those who are familiar with this area of the law will know, what follows is the story of the decision in Woolway (VO) v Mazars LLP [2015] UKSC 53 ("Mazars") and its aftermath.

45. The Supreme Court in Mazars held that properties in common occupation that are contiguous, but are not interconnected – meaning that they can only be accessed one from another by passing through other property such as the street or the common parts of a building – were to be rated as two or more hereditaments.

46. That represented a departure from the practice of the Valuation Office before that decision.

47. The Deputy President in Roberts (VO) v Backhouse Jones Limited [2020] UKUT 38 (LC), paragraphs 11 – 12, explained what happened next:

'…the practice of treating contiguous floors in single occupation as single hereditaments was convenient and had previously been thought unobjectionable. In the 2017 Autumn Budget the Chancellor of the Exchequer therefore announced that the government would legislate to reinstate the practice. A public consultation followed in December 2017 entitled "Business rates in multi-occupied properties: reinstating the practice of the Valuation Officer Agency prior to the decision of the Supreme Court in Woolway (VO) v Mazars."

12. The proposal in the draft Bill which accompanied the consultation was to revert to the practice of treating contiguous units as single hereditaments. It was favourably received…'

48. Accordingly [the PICO Act] was enacted. It introduced an additional definition of a hereditament by adding subsections 3ZA to 3ZD to section 64 of the Local Government Finance Act 1988…

…

52. The … Act came into force on 1 November 2018. By then it was too late to make a proposal to alter the 2010 rating list; but it was Parliament's intention that it should be possible to propose the alteration of the 2010 list on the basis of the reversal of Mazars. That was achieved by section 1(2), giving retrospective effect to the 2018 PICO Act from 1 April 2010, and by the snappily-titled Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 ("the 2018 regulations") which came into force on 17 December 2018."

9. As far as relevant to this preliminary issue, the subsections introduced into section 64 were:

"(3ZA) In relation to England, where-

(a) two or more hereditaments (whether in the same building or otherwise) are occupied by the same person,

…

the hereditaments shall be treated as one hereditament.

(3ZB) In relation to England, where-

(a) two or more hereditaments (whether in the same building or otherwise) are-

(i) owned by the same person, and

(ii) unoccupied,

(b) the hereditaments-

(i) ceased to be occupied on the same day, and

(ii) have each remained unoccupied since that day,

(c) immediately before that day, the hereditaments were, or formed part of, a single hereditament by virtue of subsection (3ZA), and

(d) the hereditaments meet the contiguity condition (see subsection (3ZC)),

the hereditaments shall be treated as one hereditament."

10. The VTE's decision recounted that:

"11. Mr Fifield provided rental schedules for the whole building covering the period 25 March 2010 to 29 September 2010 which showed that the whole building was vacant at the material date of 1 April 2010, apart from the Ground Floor. The ratepayer in respect of these vacant premises was Fleetguild Ltd (now Stormhill Properties Ltd), and that as they were all in the same "ownership" they met the criteria of subsection 3ZB…"

(my emphasis)

11. The VTE explained its decision as follows:

"22. In essence, the amended regulations removed the requirement for properties in common occupation which were contiguous to be interconnected in order to form a single entry in the List. The additional types of Hereditament created by the new regulations are defined by 3ZA and 3ZB detailed above, and Mr Fifield argues that the current separate assessments in Alpha House met the criteria of 3ZB and should therefore form a single entry in the List. He contended that all of the Hereditaments, apart from the Ground Floor, had been unoccupied since at least 1 April 2010, and were in the same ownership. He contended that it could not have been the intention of the amended regulations that all of the separate assessments must have become unoccupied on the same date in order to fit the criteria, as this would exclude any multi-occupied building such as Alpha house from becoming a single entry in the List.

23. I can see why the Appellant would query the intention of the regulations in effectively excluding such multi-occupied properties from being able to make a late proposal. However the regulations are clear and unambiguous in stating the criteria for unoccupied properties to be merged further to the reversal of Mazars. In my view, although Mr Fifield offered an alternative interpretation of the regulations in that the date in question refers to the effective date sought for the merger, I could see no indication in the drafting of the regulation that this was the intention. Even if this was to be the case, further on in the regulation (3ZB(c)), it is a requirement that all the properties to be merged were previously in the same occupation prior to being unoccupied and would have been considered ripe for merging under (3ZA). It is clear to me that this was also not the case and even if all the properties had become unoccupied on the same date, they would fail the further criteria set out in (3ZB(c)). I therefore find that the proposal to merge the appeal properties is invalid and dismiss the appeal.

24. Were it not for this failure to meet the criteria of 3ZB, I would be obliged to consider the findings of the [Upper Tribunal] in the [Libra Textiles] decision in relation to this appeal. At the material day all of the appeal hereditaments, apart possibly from part of the ground floor, were unoccupied and in the same ownership. They were contiguous and they were interconnected by common areas. Mr Fifield has stated in response to the [Libra Textiles] decision that there was no interconnection between the properties which would have prevented them from being merged subsequent to Mazars.

25. If as contended by the Respondent, as at the material day, 1 April 2010, the ground floor was still occupied then not all twelve hereditaments shown in the list were unoccupied and the proposal is invalid, because there would remain two hereditaments in different ownership/occupation which cannot be merged.

26. The Appellant had stated that at the material date, all twelve were unoccupied. This is at odds with his submission, but if this was the case, I find that the common areas which provided the interconnection between the hereditaments were in the demise of the owner of the appeal hereditaments. They could therefore have been merged had the appellant made a proposal at any time under regulation 4(1)k whilst the list was in force if the whole building was unoccupied and in the same ownership. As no proposal was made before 31 March 2017, the PICO legislation to make a proposal under reg 4(1)(k) after this date does not, in accordance with the [Libra Textiles] decision allow such a proposal. Therefore the assessments for which a merger was proposed, were unaffected by the Mazars judgment because the whole building was in the same occupation/ownership and the reversal of Mazars reversal (PICO legislation) does not help the appellant.

12. Mr Fifield has been involved with Alpha House since about 1990. He said that the headlease of the building was acquired by the appellant 'in or around 2017', at which time it was subject to a number of occupational subleases. In contrast to his evidence before the VTE, Mr Fifield now says that all of the tenancies, including that of the ground floor, were terminated 'on or before 31 March 2010'.

13. Before the VTE, Mr Fifield provided rental schedules for the period 25 March 2010 to 29 September 2010, split per floor. This showed the property being vacant, apart from the ground floor, which is shown to be occupied by the 'Department of Environment'. His evidence is that this is a typographical error – the schedule shows no rent due, or paid, from the DoE. The appellant had no record of a lease, nor has it had any dealings with the Department. Perhaps forgetting that the onus is on the appellant, he says that there is no independent evidence that Alpha House was occupied at any material time; the respondent did not suggest that the DoE or any tenant had been registered for rate liability.

14. However, Mr Fifield fails to grapple with the points which the Order directed him towards - the relevant occupation of each of the appeal hereditaments prior to 31 March 2010 (that being the date on which he says that the building became entirely vacant), and the date on which each of the appeal hereditaments ceased to be occupied. He simply reiterates that all floors became vacant on or before that date.

15. There is a glimmer of further information in his statement of case, where he says that the appellant 'yielded up' vacant possession on 31 March 2010

'so the whole of Alpha House became vacant on that date. For the avoidance of doubt, whilst the termination of the subleases might have yielded up possession on different dates to the Appellant, vacant possession of the whole of Alpha House was yielded up on a single date, being 31 March 2010.'

16. It is not clear what Mr Fifield means by 'yielded up'. There is an implication that the whole building was demised to the appellant who yielded it up to the freeholder on 31 March 2010. But the evidence suggests not – elsewhere Mr Fifield says that the appellant held Alpha House on a long lease from Manchester City Council expiring on 21 December 2071, and that the appellant intends to redevelop it in the future. I think Mr Fifield simply means that the building was wholly vacant on 31 March 2010.

17. If for the moment I accept Mr Fifield's evidence that the reference to the DoE is, as he puts it, a 'ghost entry', then what appears to have happened is that the various occupational tenants that the appellant inherited on acquisition subsequently vacated the building at different times, so that by 31 March 2010 the whole building was vacant and in hand to the appellant.

18. However, Mr Fifield mistakenly conflates two separate concepts – the right to occupation under leases, and rateable occupation. To satisfy the requirements of s.64(3ZB), separate hereditaments shall be treated as one hereditament if, among other things, they 'ceased to be occupied on the same day'. The question of whether that means that all hereditaments ceased to be occupied, in a rateable sense, on the same day, or whether they had all ceased to be occupied by the same day, must await a future appeal. For the purposes of this decision I do not need to decide that, and in any event would be reluctant to do so in an appeal conducted under the Tribunal's written representations procedure where the appellant is not legally represented.

19. I return to the start of this decision. The window for proposals against the 2010 list closed on 31 March 2017. The appellant's proposal was made on 7 November 2019. It was therefore out of time, and invalid, unless it satisfied the requirements of the PICO legislation.

20. On 31 March 2017, even on Mr Fifield's evidence, the building was vacant and was in hand to the appellant, who had rateable occupation of each floor, and of the common parts. The various hereditaments were therefore both contiguous and interconnected. As the Tribunal explained in Libra Textiles at [51], the law relating to hereditaments that are both contiguous and interconnected was not changed by the 2018 PICO Act. Mr Fifield submitted that the VTE misdirected itself as to the meaning and effect of the Tribunal's decision in Libra Textiles. It seems to me that it did no such thing. The VTE correctly assessed the position in paragraph 26 of its decision, when it observed that the Supreme Court's decision in Mazars did not affect the appeal property.

21. Accordingly, the proposal is invalid, and the appeal against the VTE's decision is dismissed.

P D McCrea FRICS FCIArb

22 April 2022

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.