UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – PROPOSAL – 2010 rating list - extended window for merger of contiguous but not interconnected hereditaments – ratepayer not in occupation of whole - whether proposal could also be used for a reconstitution which was otherwise out of time – appeal dismissed

AN APPEAL AGAINST A DECISION OF
THE VALUATION TRIBUNAL FOR ENGLAND

BY:

CATHERINE BOWER
(VALUATION OFFICER)

Re: Unit 1, Former MSP
Roman Way
Coleshill
Birmingham
B46 1HG

Mrs Diane Martin MRICS FAAV

DETERMINATION ON WRITTEN REPRESENTATIONS

Decision Date 19 October 2022

The following cases are referred to in this decision:

Libra Textiles Limited T/A Boundary Mills Stores, Centric Assets Limited v Ritchie Roberts and David Alford (Valuation Officers) [2020] UKUT 237 (LC)
RWE Generators v Cameron-McIntosh (VO) 2020 [4722530941245/285N10]
Woolway (VO) v Mazars LLP [2015] UKSC 53

Introduction

1. This is an unopposed appeal by the Valuation Officer ("the VO"), Catherine Bower, against a decision of the Valuation Tribunal for England ("the VTE") dated 10 January 2022 concerning the 2010 Rating List ("the 2010 list"). Before the VTE, the appellant ratepayer was Oaklands Plastics Limited ("the ratepayer"). The appeal concerned two hereditaments – Unit 1 Front and Unit 1 Rear, former MSP, Roman Way, Coleshill, B46 1HG, having rateable values of £30,500 and £44,750 respectively and which were entered in the 2010 list from an effective date of 29 May 2014.

2. The VTE ordered the merger of the two assessments at a combined rateable value of £56,500 with an effective date of 1 June 2015. The VO now appeals against that decision because parts of the two hereditaments are not in the occupation of the ratepayer and the decision leaves those parts excluded from the 2010 list from that date.

3. The agent for the ratepayer confirmed that it did not wish to respond to the VO's appeal and the Tribunal determined the appeal on the basis of the submissions and evidence received from the VO.

The Statutory Framework

4. The Local Government Finance Act 1988 ("the 1988 Act") requires the valuation officer for a billing authority to compile and maintain the non-domestic rating lists for the authority and states at section 41(7):

> "A list must be maintained for so long as is necessary for the purposes of this Part, so that the expiry of the period for which it is in force does not detract from the duty to maintain it."

5. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ("the 2009 Regulations") set out at paragraph 4 the grounds on which a proposal may be made to alter a rating list. The grounds include, at paragraph 4(1)(k):

> "(k) property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments; …"

6. The window for making a proposal to alter the 2010 list closed on 31 March 2017, but the Non-Domestic Rating (Alteration of Lists) and Business Rate Supplements (Transfers to Revenue Accounts) (Amendment etc.) (England) Regulations 2018 ("the 2018 Regulations") came into force on 17 December 2018 and opened up the opportunity for "a relevant proposal" to be made against the 2010 list by 1 January 2020.

7. The 2018 Regulations defined a relevant proposal as a proposal:

> "(a) made by a ratepayer on the ground in regulation 4(1)(k) of the 2009 Regulations'
>
> (b) which can only be made on that ground as a result of the coming into force of section 64(3ZA) or (3ZB) of the Local Government Finance Act 1988."

8. Section 64(3ZA) provides for two or more contiguous but not interconnected hereditaments in common occupation to be treated as one hereditament. This had been common practice until the Supreme Court decision in *Woolway (VO) v Mazars LLP* [2015] UKSC 53 ("Mazars"), published on 29 July 2015. The effect of that decision was reversed by the Rating (Common Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 ("the PICO Act"), which amended the 1988 Act, and enabling secondary legislation in the 2018 Regulations. The history of the decision and the resulting amending legislation is helpfully set out *Libra Textiles Limited T/A Boundary Mills Stores, Centric Assets Limited v Roberts and Alford (Valuation Officers)* [2020] UKUT 237 (LC) from paragraph [44].

9. For the purposes of this decision it is only necessary to note the timing of the decision and subsequent amending legislation.

Facts and timeline

10. From the undisputed factual evidence of the VO, Catherine Bower BA MPhil MRICS, I find the following facts.

11. The subject property is situated approximately 10 miles to the east of Birmingham city centre, in an industrial area of Coleshill just off Roman Way, on the Coleshill Industrial Estate. It is close to the A446 which provides access to Junction 9 of the M42 to the north and Junction 4 of the M6 to the south.

12. The MSP premises originally appeared in the 2010 list as a single entry at a combined rateable value of £151,000 with effect from 1 April 2010. That entry was reconstituted with effect from 1 May 2010 into three, with the following descriptions and values:

    UNIT 1 FORMER MSP, ROMAN WAY, RV £69,500

    Unit 2 UNIT 1 FORMER MSP, ROMAN WAY, RV £38,250

    Unit 3 UNIT 1 FORMER MSP, ROMAN WAY, RV £40,750

13. A further reconstitution was carried out with effect from 20 May 2014, resulting in UNIT 1 being reconstituted into two hereditaments which are the subject of this appeal – Unit 1 Front (RV £30,500), and Unit 1 Rear (RV 44,750). The hereditaments were contiguous but not interconnected, so the occupier had to exit one and cross a shared access way to enter the other.

14. Unit 1 Front included attached offices at that date and was valued as shown below:

Description	**Area sq m**	**£/ sq m**	**Value**
Workshop	399.72	47.00	£18,787
Office	196.34	56.40	£11,074
Plant and machinery			£703
Valuation before rounding			**£30,564**

15. Unit 1 Rear included a canopy at that date and was valued as shown below:

Description	**Area sq m**	**£/ sq m**	**Value**
Workshop	768.29	45.00	£34,573
Area under supported floor	143.99	31.50	£4,536
Mezzanine storage	143.99	22.50	£3,240
Canopy	70.20	6.75	£474
Fenced hard surface	193.94	5.25	£1,108
Plant and machinery			£358
Surfaced open spaces	15.0	50	£750
Valuation before rounding			**£44,949**

16. On 1 June 2015 the ratepayer took occupation of Unit 1 Front, excluding the offices, and Unit 1 Rear, excluding the canopy. On 1 October 2018 the office and canopy were demolished.

17. On 20 November 2019, the agent for the ratepayer made a proposal ("the proposal") under regulation 4(1)(k) of the 2009 Regulations, requesting the VO to alter the 2010 rating list to merge Unit 1 Front and Unit 1 Rear into one hereditament with effect from 1 June 2015 at RV £1. The VO did not find the proposal well founded and the ratepayer appealed to the VTE.

18. Discussions took place between the parties, and the VO accepted that the proposal was a relevant proposal under the 2018 Regulations; i.e. the hereditaments were in common occupation and were contiguous but not interconnected. Agreement was reached at RV £56,500 for the merged hereditament. During discussions, the VO had become aware that the offices and canopy had not been occupied by the ratepayer and therefore proposed that the original two assessments should be reconstituted into three assessments from 1 June 2015 as follows:

> Unit 1 Former MSP, Roman Way, Factory & Premises, RV £56,500
>
> Canopy at Unit 1, Former MSP, Roman way, Canopy RV £750
>
> Office at Front Unit 1, Former MSP, Roman Way, Offices & Premises RV £12,250

19. The agent for the ratepayer was not prepared to agree to the proposed reconstitution, since other ratepayers were party to the amendment, so the VO sought signatures from the other parties.

20. A hearing of the ratepayer's appeal concerning the original proposal had been listed for 9 December 2021 but on 3 December 2021 the VO notified the Clerk to the VTE that they would be requesting a postponement or adjournment to pursue the signatures of the other parties or, if adjournment was refused, the panel would be asked to ratify the three assessments.

21. On 7 December 2021 the Clerk advised the parties that he would not postpone the case, stating regarding the proposal: "*This appears to indicate that the proposal is seeking the merger of 2 assessments into a single assessment, and as such I will be advising the panel that the introduction of the two additional assessments is outside the scope of the proposal. I will also be referring the VTE panel to the attached VTE decision*."

22. The decision referred to was *RWE Generators v Cameron-McIntosh (VO)* 2020 [4722530941245/285N10].

23. The VO subsequently requested that the scope of the proposal be considered as a preliminary issue, so that they could put forward their case. The hearing took place on 9 December 2021 to consider that issue and the ratepayer's appeal.

The *RWE* decision

24. Prior to the hearing on 9 December 2021, the clerk had sent the parties a copy of the *RWE* decision and invited them to make submissions on its application to their own appeal. I therefore summarise the salient points from that decision.

25. The *RWE* appeal was heard by the Vice President of the VTE, Mr Alfred V Clark on 13 January 2020. The proposal that gave rise to the appeal was made as a challenge to a VO notice of alteration (effectively a new entry to the list at £520,000 RV) under regulation 4(1)(d) of the 1988 Regulations, that: "the rateable value shown in the list for a hereditament by reason of an alteration made by a VO is or has been inaccurate".

26. Between the making of the proposal and the date of the hearing it had become apparent that the appellant only occupied part of the appeal hereditament shown in the rating list, which therefore comprised two or more hereditaments. The VO sought a reconstitution of the hereditament and considered that this fell within the scope of the appellant's proposal, which included the words "… and the hereditament is incorrectly identified." The appellant's primary aim was to achieve a reduction in rateable value to reflect the actual area it occupied. However, it was prepared to agree that the proposal could be read as a request to reconstitute the hereditament, without prejudice to its primary position that reconstitution was not necessary to achieve the correct valuation of its own hereditament.

27. The Vice President heard submissions from counsel for each party on relevant authorities and his decision of 20 January 2020 included an extensive review of decisions from this Tribunal on the jurisdiction of both tribunals in regard to the scope of a proposal. He concluded as follows:

> "83. In view of the foregoing, the proposal that gave rise to the appeal clearly allows me to correct the assessment of RWE's assessment and I determine the valuation at £317,500 RV, the valuation agreed by the parties. However, the scope of the proposal does not permit me to do anything else.

84. I accept from the Valuation Officer's position there is a large rateable value that has been lost from the rating list. However, this is not a problem of the Tribunal's making. It arose from the Valuation Officer's failure to correctly assess the extent of the Appellant's rateable occupation when the list was altered on 29 March 2018. The mistake cannot now be rectified given that there is no vehicle to use to rectify it. In any event, the facts as they stood relating to the rest of the appeal site which were not in the Appellant's rateable occupation were unknown. The appeal is therefore allowed and the Respondent's arguments for a split or reconstitution are rejected."

The VTE decision of 10 January 2022

28. The VTE decision under appeal, dated 10 January 2022, ratified the agreement to merge the two original entries into one entry as Unit 1, Former MSP, Roman Way at RV £56,500 with effect from 1 June 2015. Regarding the reconstitution sought by the VO it said:

> "23.The panel considered that the proposal specifically identified that the existing two hereditaments should be merged into one hereditament and had been made under para 4(1)(k) of The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. The proposal was an electronic form which gave the list of grounds in a drop-down menu. The only ground in part C of the form (question 14) which would allow for the merging of two hereditaments was *"property which is shown in the list as more than one hereditament ought to be shown as one or more different hereditaments".*
>
> 24. The panel considered that from the additional detail of the change sought by the Appellant provided on the proposal, it was clear what the Appellant sought, and this is the two existing hereditaments to be merged from 1 June 2015 to form a single hereditament.
>
> 25.The panel understands the parties have identified two additional hereditaments on the appeal site which are either unoccupied or occupied by a different occupier. As the potential ratepayer for these new potential hereditaments are not party to the appeal and these new hereditaments were not identified in the proposal, the panel considered that the Tribunal does not have jurisdiction to ratify the entry of these hereditaments in the Rating List. Had the proposal expressly said that the two existing hereditaments be reconstituted into three, this would have been covered by ground 4(1)(l) "*property which is shown in the list as one hereditament ought to be shown as more than one hereditament*" and the panel could postpone the hearing to enable the potential ratepayers for the other two potential hereditaments to be added as parties.
>
> 26.As the Rating List was closed to further alterations, it appears the VO wished to extend the Tribunal's jurisdiction so that there was a vehicle to insert two new hereditaments for a new ratepayer into the list. In the panel's opinion, it was not open to him to do so. Whilst the VO was of the opinion that the scope of the proposal was wide enough to enter two additional hereditaments in the Rating List, in the panel's opinion, any determination by the Tribunal can only reflect

the buildings and land occupied by the Appellant on the material day of 1 June 2015.

27.The panel was therefore minded to determine the appeal in the manner sought by the Appellant, and decided to ratify the agreement made to merge the two existing entries to a single entry. It had held that a reconstitution was not within the scope of the proposal and therefore it could only order that the list should be altered to reflect the Appellant's part of the original hereditaments, as the remaining parts of the original hereditament cannot be entered into the 2010 list as it was closed."

29. The rating list was amended as ordered by the VTE on 25 January 2022.

The VO's appeal and submissions

30. The VO asks the Tribunal to overrule the VTE decision and decide that the proposed reconstitution from two hereditaments to three is within the scope of the ratepayer's proposal under ground 4(1)(k). She asks that the case be remitted back to the VTE to allow the other party/ies to be added to the appeal and the hereditaments to be correctly identified in the 2010 list.

31. It is the VO's case that that she has a duty to maintain the list and that the VTE should have ordered a reconstitution from the original two hereditaments to the required three hereditaments as an outcome of the ratepayer's proposal under ground 4(1)(k). The VTE decision has resulted in the offices and canopy disappearing from the 2010 list. In the normal maintenance of the rating list the VO would have served a notice of alteration to effect the change. In this instance it only came to the VO's attention that a reconstitution was required after the 2010 list was closed.

32. There is no other ground in regulation 4 of the 2009 Regulations which would allow the required reconstitution. She maintains that the VTE was in error in paragraph 25 of its decision where it said that a proposal under ground 4(1)(l) would have been required to give effect to a reconstitution from two assessments to three. As evidenced by the VTE's quote in paragraph 25, that ground has a starting point of property shown in the list as <u>one</u> hereditament, not as <u>two</u> as in this case, and is used to give effect to a split of a single assessment.

33. Regulation 4(1)(k) is mostly used for mergers of two hereditaments into one, but the wording "… ought to be shown as one or more hereditaments;" permits a merge and re-divide or reconstitution into more than one hereditament.

34. The *RWE* case can be distinguished from this one because the proposal had been made under a different ground and the VO had relied on the ratepayer stating on the proposal that the hereditament had been wrongly identified. Although in this case the proposal did not make reference to the offices or the canopy, the facts were inconsistent with the proposal, which should not be interpreted rigidly.

Discussion

35. The ratepayer in this appeal took occupation of the two hereditaments in June 2015, shortly before publication of the Supreme Court decision in Mazars on 29 July 2015. That decision precluded any proposal under ground 4(1)(k) for merging the two hereditaments since, although they were contiguous, they were not interconnected and were therefore to be considered geographically separate.

36. The VO was not made aware at the time the ratepayer took occupation that their occupation did not extend to all parts of the two hereditaments. By the time the ratepayer's proposal was made in November 2019, which drew the attention of the VO to their partial occupation of the original hereditaments, the time for making alterations to the 2010 list had expired, with the exception of the extension provided in the 2018 Regulations for relevant proposals under ground 4(1)(k). I understand that the VO had a duty to maintain the 2010 list and that this appeal is an attempt to fulfil that duty.

37. The comment in paragraph [25] of the VTE decision that a proposal under ground 4(1)(l) would have been required to give effect to the proposed reconstitution was therefore of no relevance in these circumstances.

38. The facts and the outcome in the *RWE* decision have some similarity with those in this case and the decision provided a useful review of decisions which have considered the scope of a proposal. But that appeal arose from a proposal made under a different ground and the decision provides no direct assistance to me.

39. The question I must consider is whether the proposal made by the ratepayer under the limited scope of the 2018 Regulations can be used to order a reconstitution which was otherwise out of time.

40. In *Libra Textiles* the Tribunal considered two proposals to alter the 2010 list which had been made under ground 4(1)(k) during the extension of time provided for by the 2018 Regulations. The proposals concerned properties which were both contiguous and interconnected. Valid proposals could therefore have been made without the PICO Act amendments, and the Tribunal held that the proposals could not benefit from the extended window, so were out of time and invalid. In rejecting the arguments of the appellants the Tribunal said, at [98]:

> "...it flies in the face of the clear intention of Parliament in enacting the regulation – and we think that that intention would be plain from the context, even if it had not been spelled out in the Explanatory Memorandum. Only those whose legal position is changed by the new provisions may make use of the as-if-amended 2009 regulations. … There is no need to open the gateway wide enough to let in what are, as the respondent says, serendipitous applications that were not intended to benefit."

41. *Libra Textiles* provides clear guidance which I adopt in this case. The VTE, in refusing to order a reconstitution as well as a merger, focused on the scope of their jurisdiction and the basis of the proposal as worded by the ratepayer. I consider that the answer is simpler than that. The 2018 Regulations provided an extension of time in which proposals for alteration of the 2010 list could be made by ratepayers whose legal position had been changed by the

PICO Act. The ratepayer in this case met the criteria provided for by the amending legislation and made their proposal accordingly. The VTE correctly ordered that the 2010 list should be amended to ratify the agreed assessment for the merged hereditament. The reconstitution sought by the VO was not provided for by the amending legislation so could never have been included within the scope of the ratepayer's proposal. It was out of time and could not have been ratified by the VTE.

Disposal

42. The appeal is dismissed.

Diane Martin MRICS FAAV

Member, Upper Tribunal
(Lands Chamber)

19 October 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.