Case Name: *Richie Roberts (VO) v Backhouse Jones Limited* [2020] UKUT 0038 (LC) (4 February 2020)

Topic: Unit of assessment – property in common occupation separated by a fire corridor

Full case: click here

Summary: Two office suites on the same floor in a multi-occupied building were occupied by the same company, but were separated by a corridor running from the central common parts to a fire escape for the use of all tenants in the building (and not demised to any tenant). Applying the provisions of the Rating (Property in Common Occupation) etc Act 2018, the Tribunal held that the two office suites should not be merged as requested by the ratepayer and had been properly shown in the 2010 list as separate hereditaments. Accordingly, the quantum allowance afforded to large premises in the locality would not apply.

Commentary: This was a case where the ratepayer was not represented (although factual evidence was provided), which involved office premises in Clitheroe located in a former printworks building. The two suites were on the same floor (where there was also another tenant) and were contiguous save for a fire escape corridor passing between them (which remained within the ownership of the landlord as part of the common parts of the building).

The Rating (Property in Common Occupation) etc Act 2018 sought to restore the VOA's previous practice of valuing contiguous premises as one hereditament, where they were occupied as one for the same purpose, in reaction to the Supreme Court's decision in Woolway (VO) v Mazars LLP [2015] UKSC 53 which held that the second and sixth floors of an office building in occupation by the same firm of accountants should be separately assessed. The 2018 Act amended section 64 of LGFA 1988 by providing that if the "contiguity condition" is met two contiguous hereditaments occupied by the same person for purposes which are not "wholly different" will be treated as one. If any further premises in the same occupation and used for the same purpose are also contiguous, they too will be unified in the same hereditament.

The contiguity condition is key. Focusing on what has been referred to as the vertical limb of the condition, where hereditaments are on consecutive storeys of a building and some or all of the floor of one lies directly above all or part of the ceiling of the other the contiguity condition will be met. In response to comments made during the consultation process, the provision goes on to say that hereditaments occupied or owned by the same person are not prevented from being contiguous (as above) if there is "a space" between them that is not occupied or owned by that person. The remainder of section 64 (as amended) refers to some or all of a wall, fence or other means of enclosure of the other hereditament (this is the horizontal limb of the contiguity condition) and, again, a "space" between two hereditaments will not prevent them from being contiguous within the meaning of the section.

In a multi-occupied office building "space" will clearly include the void between floors (not demised to the tenant of the floors above or beneath) containing landlord's plant such as service media as well as tenant's plant such as small power and data cabling. But the choice of the word "space", applicable to not just the vertical contiguity found in office buildings but

also horizontal contiguity within the other limb of the amended section 64, permits a wider interpretation which is the domain of the tribunal. By using such a general word, Parliament left a degree of discretion that may not have been intended so this decision provides much-needed clarification.

As the ratepayer was not represented, the argument that the contiguity condition was met was not put fully to the Tribunal, but it is considered that the prospects of success were low in any event. The fire escape corridor in this case served the ratepayer of the two office suites in common with other tenants and led to a fire exit which was alarmed, from which can be deduced that it was not in regular use by that tenant or others as an alternative exit from the building (absent an emergency). There can, therefore, be no question of the reality principle referred to in Monk being engaged to demonstrate actual occupation (at will) by the tenant of the corridor.

The Tribunal was clear that the two office suites were separate hereditaments as they had no direct means of inter-communication and were not functionally inter-dependent. The respondent's statement of case referred to service pipes (which were said to link the two units) but their presence did not suffice to achieve this. The argument that the wall which enclosed the fire escape corridor also touched the wall enclosing each unit was also rejected by the Tribunal.

Having determined that the fire escape corridor did not fall within the meaning of "space" as intended by the legislature (as shown by comments made in the consultation response), the Tribunal commented that allowing the appeal would lead to unpredictable and wide-ranging consequences, going beyond the pre-Mazars practice regarding contiguous units. The decision to reject the ratepayer's proposal and restore the 2010 compiled list entries is unsurprising, but the clarification is helpful.

The reference to "space" in section 64 (3ZD) should now be construed (in the context of multi-storey buildings) as referring to the voids reserved by the landlord (and excluded from the demise) to accommodate common service media – not just below or above each floor but also service risers. The question arises as to whether it may also properly be construed as extending (for example) to stairwells used solely by a tenant of the top floors of a building even if originally designated for fire escape purposes, to lift shafts accommodating lifts for the sole use of the tenant and possibly also to an atrium where in reality the tenant has the right to use it and to exclude others from such use. There may be a temptation to run similar arguments as to the meaning of "space" in the horizontal context of the section, for example where two hereditaments in common occupation are close to each other on the ground, perhaps separated only by a public highway. Addressing this point, the Tribunal was clear that the requirement for a common means of enclosure will rule out many such arguments based on a broad definition of space without proper regard to the remainder of section 64.

Whilst helpful, this decision by no means draws a line under the interpretation of the amendments to section 64. More cases will no doubt follow in due course, once those in the 2017 list have navigated through the lengthy CCA process.

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