

THE VALUATION TRIBUNAL FOR ENGLAND



2017 rating list appeal; car parking spaces; whether spaces should be aggregated into one hereditament; contiguous units; paramount control; appeal dismissed.

APPEAL NUMBER: CHG100721256

BETWEEN:	Wexham Homes Limited	Appellant
and	Alexandra Morley (Valuation Officer)	Respondent
RE:	Car Parking Spaces 10-11, Discovery Quay Car Park, Campbeltown Way, Falmouth, Cornwall TR11 4AU	
PANEL:	Ms B Knight (Senior Member) Miss R Punia	
CLERK:	Mrs A Sloan	
SITTING ON:	30 May 2023 (remote hearing no.1)	
APPEARANCES:	Mr A Iftakhar (for the appellant company) Ms E Sanderson (Valuation Officer's representative)	

Summary of decision

1. Appeal dismissed. The panel made no change to the existing entry in the 2017 rating list.

Introduction

2. The appellant had made a challenge against the accuracy of the assessment in the 2017 Rating List, by way of a proposal served on the Valuation Officer (VO) on 23 August 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and refused to alter the existing assessment. A decision notice to that effect was served on the appellant on 8 February 2022 and this decision was appealed to the tribunal on 1 March 2022, on the grounds that the current entry in the list is inaccurate.

3. At the commencement of the hearing, the clerk invited the panel to correct the name of the appellant to the appeal. The clerk explained that the appeal had on registration with the Tribunal been incorrectly recorded as being brought by Mr A Iftakhar in his personal capacity. However, whilst Mr A Iftakhar had completed the appeal form, this was in his capacity as a director of the appellant company. Neither party had any objection to the correction of the record and the panel was satisfied that there was no prejudice to either party in doing so. Accordingly, pursuant to Regulation 11(1)(a) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (“the procedure regulations”), the panel formally directed that Wexham Homes Limited was substituted as the appellant in this appeal.
4. With the agreement of the parties, the panel decided to vary the Tribunal’s model procedure and invite the respondent to present her case first as it was felt that this would assist the unrepresented appellant and the panel.
5. The assessment under appeal was that of two car parking spaces, numbered 10 and 11, within the Discovery Quay car park. This car park contained thirty-nine spaces and was operated as a Pay and Display car park. Eighteen of the spaces had been allocated to residents of the nearby residential block, Maritime House. Ms Sanderson explained that all spaces were valued at £700 per space and some of the Pay and Display spaces had been grouped together to form single hereditaments. The subject spaces, 10-11, were valued at £1,400 rateable value (RV) from 1 April 2017.
6. The appellant’s proposal sought a merger of the subject spaces with other Pay and Display spaces in the car park on the basis that they were contiguous and in the same occupation. He stated that the appellant company had purchased the car park and any licences issued to the residents of Maritime House for assigned spaces had lapsed, reverting control of those spaces to the owner and the car park was no longer mixed use. The proposed valuation was £14,700 RV with effect from 13 August 2020. Ms Sanderson contended that the spaces could not be merged because they were not contiguous.
7. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all the parties’ evidence.

Issue

8. The issue in dispute before the panel was whether the VO had correctly maintained a separate entry in the rating list for spaces 10-11 in the Discovery Quay car park.

Evidence and submissions

9. The evidence bundle before the panel comprised the evidence disclosed and exchanged during the challenge stage of the appeal process. The appellant had included some documents within the appeal submission that had not been disclosed during the challenge discussions. The VO objected to the inclusion of these documents, but the objection was not lodged by the deadline set out in the Tribunal’s directions. The matter was therefore considered by a Senior Member of the Tribunal, who found that some of the documents were email exchanges with a third party which had not occurred before the VO’s final decision was issued. As these documents were considered relevant, some could not reasonably have been provided earlier and the VO’s objection was late, the appellant’s additional evidence was admitted. Ms Sanderson made an application to submit further

evidence of her own in response to the appellant's new evidence, which was also admitted under Regulation 17A of the procedure regulations.

Decision and reasons

10. The material date on which to consider the hereditament was 13 August 2020, the effective date from the appellant's proposal. The value must be considered as at the antecedent valuation date (AVD) of 1 April 2015.
11. The panel understood that the appellant accepted the valuation at £700 per space but sought a merger of twenty-one spaces into one assessment (namely spaces numbered 1 through to 17 plus spaces V, W, X and Y). All twenty-one spaces are in the rateable occupation of the appellant company as they are Pay and Display spaces.
12. Both parties referred to the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. This made alterations to the Local Government Finance Act 1988 in respect of properties in common occupation as follows:

“(1) In Part 3 of the Local Government Finance Act 1988 (non-domestic rating), in section 64 (hereditaments), after subsection (3) insert—

“(3ZA) In relation to England, where—

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

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

(c) none of the hereditaments is used for a purpose which is wholly different from the purpose for which any of the other hereditaments is used,

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.

(3ZC) The hereditaments meet the contiguity condition if—

(a) at least two of the hereditaments are contiguous, and

(b) where not all of the hereditaments are contiguous with each other—

(i) one or more of the other hereditaments is contiguous with one or more of the hereditaments falling within paragraph (a), and

(ii) each of the remaining hereditaments (if any) is contiguous with at least one hereditament that falls within sub-paragraph (i) or this sub-paragraph.

(3ZD) For the purposes of subsection (3ZC) two hereditaments are contiguous if—

(a) some or all of a wall, fence, or other means of enclosure of one hereditament forms all or part of a wall, fence, or other means of enclosure of the other hereditament, or

(b) the hereditaments are on consecutive storeys of a building and some or all of the floor of one hereditament lies directly above all or part of the ceiling of the other hereditament,

and hereditaments occupied or owned by the same person are not prevented from being contiguous under paragraph (a) or (b) merely because there is a space between them that is not occupied or owned by that person.”

(2) The amendments made by subsection (1) have effect for financial years beginning on or after 1 April 2010.”

13. Although a full copy of the appellant's proposal was not supplied, the VO's decision referred to extracts. The appellant referred to 3ZD and the definition of 'contiguous' as follows:
“Of particular relevance, 3ZD(a) supports the fact, that all the car parking spaces are confined by a brick wall which makes it a means of enclosure for all the hereditaments, therefore, meaning that the car parking spaces can all be merged. In addition, 3ZD(b) states that merely because there is a space between them that is not occupied by us does not stop the spaces from being contiguous.”
14. This extract suggested all of the parking spaces should be merged but that was beyond the scope of this appeal. The panel noted that the appellant's submission had a cover page which referred to three Challenge decisions. However, only one appeal had been lodged, against decision CHG100721256. When this appeal was lodged, Mr Iftakhar sought guidance on whether he needed to lodge three appeals. He was advised on 27 May 2022 that, as the VO had issued three separate decisions, three appeals would need to be lodged for all the matters to be considered. Mr Iftakhar confirmed by return email on 6 June 2022 that he was content to have just one appeal heard. Therefore, the panel could only consider whether it was correct to maintain the existing separate hereditament for spaces 10-11 or whether they should be merged with the other Pay and Display spaces at a value of £14,700 RV with effect from 13 August 2020, as proposed by the appellant.
15. The spaces under consideration for aggregation in this appeal were numbers 1 through to 17 plus spaces V, W, X and Y. According to the plan of the car park supplied by the VO, these spaces had been consolidated where each space was contiguous with the space next to it in the same occupation. Spaces 10-11 were two Pay and Display spaces at the end of a row of six spaces assigned by licence to the residents of Maritime House. The Pay and Display spaces were grouped together into single hereditaments where they were contiguous i.e., spaces 1 to 3 and V to Y (7 spaces in the same row as one assessment), spaces 4 to 9 (6 spaces in the same row as one assessment), 10 and 11 (two neighbouring spaces in one assessment) and 12 to 17 (6 spaces in the middle of the car park in two rows of three, back

to back, as one assessment). The appellant contended that the licences for the other spaces that were all individually rated (assigned letters A - H, J - N, P, and R - U) had lapsed and therefore all spaces were now in the appellant's rateable occupation.

16. The plan supplied by the VO indicated the Pay and Display spaces in red and those licenced to residents of Maritime House in blue.



17. The appellant contended that, because the car park is surrounded by a brick wall and fencing, the car parking spaces are all contiguous. He also argued that land between the groups of car parking spaces, to provide vehicular access, should not prevent the car parking spaces being considered contiguous.
18. After examining the car park plan, the panel noted that there was considerable space surrounding spaces 12 to 17. This land provides access to all parking spaces and so would be considered common parts of the car park. The panel found that applying section 64(3ZD) (a) to two occupied hereditaments on the same floor for a building would be contiguous if some or all of a wall of one forms all or part of a wall of the other. The "space" proviso means that the basic requirement that the two units must at some point be on opposite sides of the same common wall will not be defeated merely because there is a space within the wall between the hereditaments which the occupier of the hereditaments does not occupy. An example of this would be air ducts or space for wiring within a party wall.
19. In the subject appeal, the contiguous test related to the markings on the ground, defining each car parking space. Where two spaces shared a boundary line, and were in the same occupation, they were considered contiguous. Spaces 10 and 11 shared a boundary line and were contiguous but the hereditament could not include the space on the other side of 10 (space H) as this was a space licenced to Maritime House and therefore not in the same occupation. The panel concluded that the access way within the car park separated spaces 10-11 from the other Pay and Display spaces to such a degree that they could not be contiguous. There was no shared boundary between 10-11 and, for example, the group of spaces in the middle of the car park (12-17) and therefore 3ZD was not fulfilled. The other two hereditaments for Pay and Display spaces were even further away from spaces 10-11.
20. Mr Iftakhar contended that the individual spaces let to the residents of Maritime House were no longer subject to those licences and all car parking spaces were now Pay and Display under the appellant's control. Although the proposal made in this appeal only sought the

aggregation of twenty-one spaces, the panel needed to determine the number of hereditaments.

21. By their very nature, car parking spaces are designated spaces available for parking a vehicle and so remain in a constant state of change between occupied and unoccupied. Therefore, rateable occupation must be established by determining who has paramount control of the space. Ms Sanderson had provided a brochure for the car park when it was marketed for auction in July 2020. This document confirmed there were thirty-nine spaces but eighteen were '*subject to 999-year leases to residents within Maritime House*'.
22. Mr Iftakhar contended that what had been assigned were in fact licences, not leases, and that a licence cannot be transferred when one party ceases to be the owner. He therefore argued that the licences had lapsed from the date the appellant purchased the car park. The appellant's evidence included an example of a contract issued in April 2007 for one of the spaces, titled 'Parking Space Licence'. The panel noted that the licence assigned a particular space in the accompanying schedule. Clause 3.1 confirmed that, providing no terms are contravened, the owner permits the Licensee to use the parking space for the purpose of which the licence was granted (parking of one fully taxed and roadworthy private motor vehicle), in return for the payment of a licence fee.
23. Mr Iftakhar contended that the licences are not transferable, and they lapsed when the previous owner sold the car park. He stated that the appellant had written to the licensees and made them aware that they should not be using the parking spaces as they no longer have a right to do so.
24. Clause 1.4 of the licence provided in evidence stated, "*This licence is granted for the benefit of the Licensee and the Licensee's successors in title to the Lease and on a transfer of the Lease, the Licensee and the Licensee's successors in title shall be entitled to assign this Licence to the transferee who is to become the registered proprietor of the Lease.*"
25. Included in the appellant's submissions were some email exchanges between the appellant and a firm of solicitors acting for one of the residents of Maritime House in respect of this matter in December 2021. The solicitor stated that there had never been a problem before with transferring the licences when the lease on the residential property was sold and they believed the definition of 'owner' in the licence to include the owner's successors in title, so there was no requirement for a new licence agreement. Mr Iftakhar confirmed at the hearing that, following his response to the solicitor in April 2022, an enquiry was made regarding the arrangements for entering into a new licence agreement, but no further contact was made.
26. Although Mr Iftakhar referred to having received legal advice about transferring licences, no evidence of this was provided in his submissions. Neither had any evidence been provided of the notice given to the residents of Maritime House that the licences had ended or when they were notified.
27. Ms Sanderson contended that rateable occupation is determined by the facts on the ground, regardless of the legal position with the licences. She confirmed that an onsite inspection of the car park had been conducted by the VOA in November 2022. The VOA referred to photographs taken on that visit, she pointed out that plaques clearly seen remained affixed to the fence in front of each space stating '*No Parking – Private Space*' and citing the apartment number relating to the allocated space.

28. When questioned, Mr Iftakhar contended that the plaques should have been removed and that the car park is operated on behalf of the appellant by a third party. He stated that he had been advised some of the residents were still using the spaces, but they had no legal right to do so. He understood from the car park operator that all spaces were in use for public parking. Mr Iftakhar stated that the plaques on each space were installed by the licensees not the appellant.
29. The burden of proof in appeals of this nature lies with the appellant to persuade the panel that the appeal should be allowed. After considering all the evidence presented, both documentary and oral, the panel did not find that the entry in the 2017 rating list should be altered.
30. The appellant had provided no evidence that the licence had been terminated for each assigned space or that the licensees had been given notice by the material date of 13 August 2020. The sample licence provided demonstrated that the licence was tied to the lease on the residential dwelling, and it was not clear to the panel why the licence could not be transferred when the ownership of the car park changed.
31. Mr Iftakhar accepted that some residents from Maritime House continued to use their originally allocated parking spaces. The panel noted that in November 2022, over two years after the material date, the signage discouraging the public from parking in the designated spaces remained in place. While the panel accepted that the car park is managed on behalf of the appellant, it found greater credibility with the VO's evidence of the recent inspection. It held that, if the appellant considered the licences to be void from the date of purchase, the signage would have been removed to make clear to members of the public that all spaces were available for use and maximise income.
32. On the balance of probabilities, the panel was not persuaded that the situation at the car park had changed on the material date proposed by Mr Iftakhar. There was no evidence before it that the licences for the private spaces had ended or that the rateable occupation of those spaces had changed by 13 August 2020.
33. The panel found that the thirty-nine car parking spaces remained of mixed use and were not all in the same rateable occupation on the material date. The VO had combined Pay and Display spaces into single hereditaments where the spaces were contiguous but spaces 10-11 were not contiguous with any other Pay and Display parking spaces. The panel therefore concluded that the VO had correctly identified four hereditaments for the 21 Pay and Display parking spaces. Those licenced to residents of Maritime House remained in separate rateable occupation, so could not be considered contiguous with each other, or the subject parking spaces at 10-11. The appeal was therefore dismissed.

Date: 28 June 2023

Appeal number: CHG100721256

Right of further appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.