



VALUATION TRIBUNAL FOR ENGLAND

CT Valuation appeal: Local Government Finance Act 1992; House in Multiple Occupation; Hereditament test; Woolway (VO) v Mazars [2015] UKSC 53; Stanuszek v Bunyan [2015] EWHC 3275 (admin); Cardtronics UK Ltd and Others v Sykes (VO) and Others [2020] UKSC 21; appeal dismissed.

APPEAL NUMBER: VT00012402, VT00012403, VT00012404, VT00012405, VT00012407 and VT00012408

RE: Flats 1 to 6 at 6 Twyford Abbey Road, Park Royal, London NW10 7HG
(the “subject property”)

BETWEEN:	Michael Stanuszek	Appellant
	and	
	Dawn Bunyan (Listing Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 20 May 2024

BEFORE: Frazer Stuart (Vice President)

CLERK: David Slater (Registrar and Chief Clerk)

APPEARANCES: Michael Stanuszek (Appellant)
Andrew Carter of 42 Bedford Row Chambers (Appellant’s Counsel)
Luke Wilcox from Landmark Chambers (Respondent’s Counsel)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed as the six new dwellings, that were identified by the Listing Officer were clearly putative hereditaments and I found that the Appellant’s tenants were in rateable occupation of same.

Introduction

2. This appeal arose from a proposal served on the Listing Officer on 11 January 2022. The proposal sought the deletion of six list entries from the Valuation List and in their stead a single entry of band C with effect from 1 April 2020.
3. Having considered the merits of the Appellant's proposal, the Listing Officer determined that it was not well founded and a decision notice to that effect was issued on 10 March 2022. The Appellant subsequently appealed against the Listing Officer's decision to the tribunal on 8 April 2022.
4. Although this was a single appeal, as the proposed alteration sought the deletion of six entries from the Valuation List, it was allocated six appeal reference numbers, one for each flat.
5. The six disputed entries related to six single rooms within the appeal property which the Listing Officer had assessed as separate dwellings for council tax purposes. Each room was ascribed a band A entry, following the Listing Officer's alteration(s) of the list on 17 June 2021. The effective date for each of the disputed entries was originally 1 April 2020. However, the effective date for each entry was later altered to 17 June 2021, after the first hearing of this appeal. Following an enquiry by the tribunal to clarify the relevant and effective date, the Listing Officer conceded that the later alteration was erroneous and it was accepted that the relevant date was 1 April 2020, for the purpose of this appeal. The Listing Officer also stated that the erroneous list alteration would be reversed and that the original effective date of 1 April 2020 would be reinstated, subject to the outcome of this appeal.
6. This appeal was previously heard and dismissed by a VTE panel, following a hearing held on 17 March 2023, the panel's decision being released on 14 April 2023. The Appellant later appealed the panel's decision to the High Court on a point of law. The Appellant's appeal was successful and the case was remitted back to this tribunal by Mr Justice Henshaw with an Order that it be reconsidered by a different panel. In his judgment in *Stanuszek v Bunyan* [2023] EWHC 3275 (admin), Mr Justice Henshaw upheld the Appellant's argument that the VTE panel had failed to apply the correct legal test in determining the correct number of hereditaments that existed. In paragraphs 41 and 42, he stated;

41. Equally, it is clear in my view that the VTE in the present case, in paragraphs 11-12 and 26 of its decision, conflated the test for rateable occupation and the question of whether each unit was a separate hereditament. Further, it drew support in paragraph 28 from a case, *James v Williams*, where the question of whether separate hereditaments *prima facie* existed (subject to the exercise of the statutory discretion) appears not to have been in dispute. In declining to apply *Mazars*, the VTE in my view overlooked the fact that *Mazars* was, at least in part, setting out or restating principles of general application.
42. Accordingly I consider the Appellant to be correct in his central contention under Ground 1 that the VTE did not address itself to the correct test.
7. In accordance with the tribunal's business arrangements, as a Vice President, I am authorised to conduct and rehear this appeal alone.

8. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Factual background

9. Although I was not presented by the parties with a joint statement of agreed facts, the following facts have been admitted or proved;
- a) The Appellant became the owner of the appeal property on 9 October 2017.
 - b) The appeal property was a six bedroom semi-detached house.
 - c) Physical alterations to convert the appeal property into a house in multiple occupation were completed in August 2018.
 - d) The local authority, the London Borough of Ealing, issued a licence to the Appellant on 9 January 2019 under 64 of the Housing Act 2004, to enable him to use the appeal property as a house in multiple occupation for up to 6 persons. This licence was in force until 8 January 2024.
 - e) Each room had an en-suite bathroom containing a shower and water closet. The rooms were large enough to accommodate a table, a queen sized bed and a limited number of personal items. None of the rooms had either kitchen or laundry facilities but all had lockable doors.
 - f) Each room was let out to separate tenants on an Assured Shorthold Tenancy basis with a fixed term of twelve months with the rent payable monthly.
 - g) Each tenant had the exclusive use of their own room together with a licence to use and share, with other tenants, the facilities within the common parts which housed the communal living, dining room and kitchen areas.
 - h) Prior to the Listing Officer altering the list entry, the appeal property was assessed as a single hereditament in band E with effect from 1 April 1993.
 - i) The billing authority notified the Listing Officer that the appeal property was a house in multiple occupation and it requested that the valuation list be altered to reflect that fact.
 - j) The Listing Officer acted on the billing authority's report and altered the valuation list on 17 June 2021 by deleting the band E entry and inserting six new band A entries, one for each room. The effective date of those alterations was 1 April 2020.
 - k) The effective date of 1 April 2020 was adopted because it was convenient for the billing authority as it coincided with the start date of the previous financial year.
 - l) When the appeal was previously heard by a VTE panel, the tribunal was provided with copies of the tenancy agreements that were in place for the resident tenants who were occupying the respective rooms at that time. The commencement dates for their respective tenancies ranged from 1 November 2020 to 30 June 2021.
 - m) The Appellant was not in a position to provide me with any details relating to his previous tenants or their tenancy documents, as I was told he no longer retained this information due to GDPR concerns. However, it was accepted that there were tenants in occupation of the rooms on 1 April 2020.
 - n) The Listing Officer has decided that it was not appropriate to exercise her discretion and aggregate the dwellings, in accordance with Article 4 of the Council Tax (Chargeable Dwellings) Order 1992.

Issue(s) in dispute

10. The main issue in dispute was the correct number of hereditaments that existed at the appeal property at the relevant date. If I found for the Appellant that only one hereditament

existed, I would then have needed to give consideration to the correct valuation band that should apply.

Relevant Law

11. The relevant law was set out by Mr Justice Henshaw in paragraphs 11 and 14 of his High Court judgment together with the following helpful narrative which I have reproduced below;

The law relating to council tax is set out in the 1992 Act and secondary legislation made under it. Council tax was introduced on 1 April 1993 to replace the community charge (commonly known as the ‘poll tax’), and the community charge had itself replaced domestic rates as the primary local government tax on residential property. Some of the key concepts used in the 1992 Act are derived from rating law.

12. The unit of property in respect of which council tax is payable is the “*dwelling*”, which is defined by section 3 of the 1992 Act:
“(1) This section has effect for determining what is a dwelling for the purposes of this Part.
(2) Subject to the following provisions of this section, a dwelling is any property which—
(a) by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act if that Act remained in force; and
(b) is not for the time being shown or required to be shown in a local or a central non-domestic rating list in force at that time; and
(c) is not for the time being exempt from local non-domestic rating for the purposes of Part III of the Local Government Finance Act 1988 (“the 1988 Act”); and in applying paragraphs (b) and (c) above no account shall be taken of any rules as to Crown exemption.”

13. Accordingly a “*dwelling*” is a hereditament, as that term is understood in rating law, that is not required to be assessed for National Non-Domestic Rates (“**NNDR**”). Hereditaments are not required to be assessed for NNDR if they are “*domestic*” (a term defined as relating to property that is wholly used for the purposes of living accommodation). Thus a “*dwelling*” is a hereditament wholly used for the purposes of living accommodation.

14. “*Hereditament*” is defined in the 1992 Act by reference to the definition contained in section 115 of the former General Rate Act 1967, namely:
“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”

Analysis and discussion

12. Prior to the hearing the clerk contacted the parties, on my behalf, and it was agreed that the relevant date for the purposes of this appeal was 1 April 2020. That was also the original effective date for the insertion of the new list entries which the appellant sought to be deleted. However, for some inexplicable reason, after giving some consideration to whether the Listing Officer should exercise their discretion and aggregate some or all of the new list entries under Article 4 of the Council Tax (Chargeable Dwellings) Order 1992

and then determining not to exercise any discretion, the effective date was altered to 17 June 2021. This was to coincide with the date when the Valuation List was altered.

13. There was no rhyme or reason why the effective date needed to be altered because as the six rooms had been valued by the Listing Officer as new hereditaments, the effective date of the list entries was the date when the new hereditaments came into existence. Therefore the list alterations could be retrospective. I was unable to establish when the effective date was altered to 17 June 2021, however, it appeared to have been made after the earlier tribunal panel had heard this appeal. In the original hearing bundle, the Listing Officer had flagged up their intention to alter the list in this respect. Unfortunately, this matter was not picked up and addressed by the earlier panel.
14. Subject to the outcome of this appeal, the Listing Officer intended to reverse the erroneous alteration and reinstate the effective date of 1 April 2020, which would apply to all six entries.
15. Under Regulation 11(1) of the Council Tax (Alteration of Lists and Appeals) (England) Regulations 2009 an alteration that was made to show in the valuation list a dwelling that has come into existence shall have effect from the day on which the circumstances giving rise to the alteration occurred.
16. Having regard to the above, before the Listing Officer altered the Valuation List retrospectively on 17 June 2021, I would have expected that the Listing Officer would have made enquiries of the billing authority and the appellant to establish which persons were occupying the rooms, the dates when they had moved in and the periods for which they occupied. Instead of which, it would appear that little or no investigation was made into the facts by the Listing Officer, when they received the billing authority's report that the property was being used as a house in multiple occupation and had been for some time. The effective date did not reflect the date when the room(s) first became occupied, it was a date that was suggested by the billing authority for its administrative convenience, as it coincided with the beginning of a financial year.
17. Within the original hearing bundle, there were copies of six Assured Shorthold Tenancy agreements for the six rooms. All of the tenancy agreements had commenced post 1 April 2020. Unfortunately, neither the Listing Officer nor the earlier panel had established when the property was first used as a house in multiple occupation (HMO) or when the first tenants moved in. When the appellant was asked by the clerk, on my behalf prior to the hearing, it was admitted that the property was being used as a HMO on 1 April 2020 and was tenanted. However, the appellant said he no longer retained any records of his earlier tenants due to GDPR concerns. I found this answer somewhat surprising, as my understanding is that landlords were obliged to keep records of previous tenancies and rental income received as HMRC could ask to see them for taxation purposes.
18. On behalf of the Appellant, Mr Carter raised a query over the Listing Officer's entitlement to alter the effective date from 17 June 2021 to 1 April 2020. I can dispose of this very quickly. As the Appellant has confirmed that the property was in use as a HMO and tenanted on 1 April 2020, if the Listing Officer was correct that each room was a dwelling, it was open to them to alter the list with effect from that date. Given that the property had its HMO licence with effect from 9 January 2019, in all probability it was in use as a HMO and being occupied by tenants before 1 April 2020. Therefore having an effective date of 1 April 2020 caused no prejudice to the Appellant because in all probability, had the facts

been properly investigated before the list was altered on 17 June 2021, the list entries would have had an effective date prior to 1 April 2020.

19. Having considered the effective date issue, I quickly moved on to determine how many putative hereditaments were in existence at the relevant date. To this end, Mr Carter drew my attention to paragraph 43 of Mr Justice Hendshaw’s judgment in which he stated;

43. I do not, on the other hand, consider the Appellant’s summary of the correct test (see paragraph 38.iii) above to be entirely accurate.

i) *Mazars* and *Cardtronics* (particularly the decision of the Court of Appeal) make clear that the primary, geographical, test is whether the putative hereditament can be represented as a single unit on a plan and has the quality of visual or cartographic unity, typically apparent in physical differentiation with a sharply defined boundary on the ground between one hereditament and another.

ii) The significance of intercommunication between two adjoining spaces depends on its nature, as the discussion in paragraph 12 of *Mazars* illustrates. If a door or staircase leads directly from one living space to another, they are likely to be part of a single hereditament. If, on the other hand, it is necessary to go through a common part or a public area, then they are likely to be separate hereditaments.

iii) The functional aspect of the test may enable two geographically distinct spaces to be treated as a single hereditament, where the use of one is necessary to the effectual enjoyment of the other (*Mazars* paragraph 12). That may commonly be tested by asking whether the two sections can reasonably be let separately. However, the latter point does not, in my view, introduce into the concept of hereditament the requirement that it must have all the elements of a self-contained unit: as noted earlier, the legislation assumes that not to be the case;

iv) The way in which premises are occupied can be relevant when determining how many hereditaments they comprise: see, e.g., *Mazars* paragraph 49 and *Cardtronics* paragraph 15. Although exclusive possession is not determinative of the existence of a separate hereditament, it may be relevant to it.

v) The application of these principles, as was stated in *Mazars*, cannot be a mere mechanical exercise; it will commonly call for factual judgment on the part of the valuer and the exercise of a large measure of professional commonsense.
20. Both Mr Carter and Mr Wilcox were in agreement that the correct starting point was to identify the putative hereditament(s). However, both parties approached it from different standpoints. As far as the Appellant was concerned the putative hereditament was the house as a whole which would mean that Class C of the Council Tax (Liability for Owners) Regulations 1992 would become engaged. However, Mr Wilcox argued that the putative hereditaments were the individual rooms which had been let out and identified by the Listing Officer as separate dwellings.
21. There was no dispute that the putative hereditaments satisfied the geographic test as set out by the Supreme Court in *Mazars*. The property as a whole clearly did. As for the individual rooms, each could be ringed on a plan and access to each and every one was via common parts. Mr Carter, as I said, did not dispute this but his argument was that my starting point should be to look at the whole of the house instead as it was up to the tribunal to decide for itself what the putative hereditament was.
22. I could not uphold Mr Carter’s argument on this point. The correct starting point, in fact the only logical starting point, was to have regard to the six rooms that the Listing Officer had

identified as separate dwellings. I had to determine if these rooms were capable of being hereditaments in their own right. If the rooms were incapable of meeting the putative hereditament test, I would have allowed the appeal and ordered the deletion of the disputed entries. This was the approach taken by the Supreme Court in relation to cash points located on supermarket premises. In *Cardtronics UK Ltd and Others v Sykes (VO) and Others* [2020] UKSC 21, the Supreme Court looked at whether or not the Automated Teller Machines (ATMs) were capable of being putative hereditaments, in their own right. In applying this initial test, it did not have regard to the supermarket/store as a whole. As it happened, the ATMs qualified as putative hereditaments but ultimately, having regard to the facts, it was held that the supermarket/store occupier was in paramount occupation of the ATM sites and therefore separate hereditaments for the ATMs could not exist.

23. In the case before me, despite Mr Carter doing his level best for his client and trying to draw me off the scent, the individual rooms were clearly putative hereditaments. They each met the geographic test. In the event that the geographic test was not met, then regard could be had to the secondary functional test.
24. In paragraph 12 of the Supreme Court's judgment in *Woolway (VO) v Mazars* [2015] Lord Sumption referred to the secondary functional test as follows;

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.

25. Despite conceding that the rooms met the geographic test, he argued that I should take into account the fact the common parts were necessary for the effectual enjoyment of the rooms. He submitted that the rooms were not self contained, in the sense that they did not have all of the necessary facilities to cater for independent living and therefore the occupiers of the rooms required access to the common parts. These common parts were unable to be let to a third party and therefore could not form a separate hereditament, so the functional test was not met.
26. It appeared to me that Mr Carter was trying to use the functional test in reverse to persuade me that the rooms were incapable of being separate hereditaments as only the house as a whole was capable of passing the test. However, my understanding of the relevant tests was that the primary test was geographic and if the putative hereditament passed that test, the secondary test was unnecessary. It was only necessary to consider the functional test, if a merger of assessment was sought and it was not possible to unify

them under the geographic test. This being the case, regard could be made to the secondary functional test.

27. In the case under consideration, the common parts were disregarded for valuation purposes and had no separate band entry. Each of the six rooms, that were let to tenants, met the geographic test. Therefore, Mr Carter's argument that I should apply the functional test was a distraction and a complete red herring. In *Mazars*, Lord Sumption stated that whether the functional test was met could be tested by asking if the two sections could reasonably be let separately. In the case under consideration, the rooms had been separately let. The common parts had not been let but the occupiers of the rooms had access and the right to use the common parts.
28. I accepted Mr Carter's point that the occupiers of the rooms had to have access and to be able to use the facilities in the common parts as the rooms, although described by the Listing Officer as Flats, were considerably smaller than one bedroom studio flats. However, there were numerous examples, as enunciated by Mr Wilcox in his submissions, where occupiers of other property types needed access of common parts, in order to make use of essential facilities which were not contained within their hereditament. For instances, shops within a shopping mall or office suites within an office building.
29. Having determined that the individual rooms that had been let to tenants were putative hereditaments, I then focussed on who was in rateable occupation. There were two potential candidates, the individual tenant(s) or the Appellant landlord. All of the rooms had been let out on an Assured Shorthold Tenancy basis with a fixed term of twelve months. I was satisfied that, whilst their respective tenancies endured, each tenant was in rateable occupation of their room. They were in actual occupation, that occupation was beneficial to them as they needed somewhere to reside, they had the exclusive use of the room and given the term of the agreement, which was twelve months, it could not be said that their occupation was for too transient a period. I also read the terms of the agreements and there was nothing in them which suggested to me that the landlord exercised any paramount control over how the rooms could be used. Moreover, Mr Carter acknowledged that the tenants had exclusive use of their room. He did, however, draw my attention to clause 11.1 in the tenancy agreement(s) which was headed Quiet Enjoyment. Under this heading, Clause 11.1 stated that;

To allow the Tenant to quietly hold and enjoy the Designated Room and Shared parts during the tenancy without any unlawful interruption by the Landlord or any person rightfully claiming on behalf of the landlord.
30. Mr Carter referred to the above, in a new line of argument, to try to persuade me that as the tenants all benefited from the quiet enjoyment of their rooms and the shared parts, all six tenants sharing the shared space, it followed that his client, as the landlord with the reversionary interest, was the rateable occupier and therefore the geographic test was satisfied for the house as a whole.
31. I was not persuaded by Mr Carter's new line of attack. I found Mr Wilcox's argument that the clause was inadequately drafted far more convincing. In my opinion, he was absolutely correct in submitting that the Appellant was unable to stipulate that any of his tenants had the right of quiet enjoyment over the common parts as these areas formed no part of their demise under their tenancy.

32. In any event, I had already decided that my focus should be on the rooms as they were clearly putative hereditaments and I had to decide who was the rateable occupier of the individual rooms as opposed to the house as a whole. Mr Wilcox referred me to paragraphs 18 and 29 of Mr Justice Henshaw's judgment where he referred to two authorities;

18. In *re Briant Colour Printing Co. Ltd.* [1977] 1 W.L.R. 942 the question was, again, whether a party was in rateable occupation of the hereditament in question. The Court of Appeal indicated that the four ingredients set out in *John Laing* did not have the same authority as would have been the case had they resolved a contested point in that case. Nonetheless, in substance the court applied those factors, save that (as counsel had in fact submitted in *John Laing*) the first ingredient, actual occupation, was held to mean actual occupation by the person sought to be made liable for rates (p.951). Buckley LJ (with whom the other members of the court agreed) confirmed that there can be only one rateable occupier of a single hereditament:

"Both the fact of occupation and the identity of the occupier are questions of fact, to be answered on the evidence and the circumstances of the particular case. There cannot, I think, be two occupiers for rating purposes at one time of one hereditament. If a state of affairs arises in which two persons are in occupation of what is listed as one hereditament for rating purposes, each entitled to exclusive use for a particular purpose, the list must be amended to show two hereditaments in order to enable the rating authority to assess both occupiers. But if there are two persons, each of whom makes some use of an immovable property concurrently, there may either be two co-existing hereditaments, the occupier of each one of which may be rateable; or there may be two concurrent uses of one hereditament, in which event it may be necessary to discover which of them has the paramount position so as to be rateable as the occupier." (pp. 952-953)

29. *R (Curzon Berkeley Ltd) v Bliss (VO)* [2001] EWHC Admin 1130 concerned a slightly complex situation where there was an error or ambiguity in the valuation list as regards buildings comprising flats let on long lease and also some non-domestic service apartments retained by the claimant building owner. The relevant point for present purposes is that the High Court again confirmed that there can be only one rateable occupier of a hereditament:

"In my judgment any hereditament, including a composite hereditament, must be in single rateable occupation or ownership; and cannot be described so as to embrace parts of the building which are in different ownership or occupation, whether non-domestic or domestic." (paragraph 54)

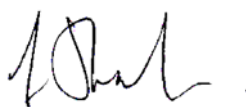
(A composite hereditament is one that includes both residential parts and non - residential parts.)

33. Mr Wilcox contended that, if Mr Carter was right it would mean that in this case there would be a single hereditament with different areas of it within separate rateable occupation. This would be contrary to and invalidate the ruling in *Briant*. As the authorities were binding, I had no difficulty in upholding Mr Wilcox's argument.
34. This was not a landlord and lodger type scenario, where the landlord could be held to be in rateable occupation. The landlord was not present on the premises and the house was let in parts, on a room basis to tenants. The Appellant would only become liable for council tax on any of the rooms, if the room was unoccupied and the tenancy was at an end. I

therefore had no difficulty in rejecting Mr Carter's argument that, as the landlord who held the reversionary interest, the Appellant was the rateable occupier. This was not the case here.

Conclusion

35. Despite the best endeavours of his learned Counsel to persuade me otherwise, I found that the six rooms were separate hereditaments and that whilst the tenancies existed, the tenants were in rateable occupation of their respective rooms.
36. In so doing I have arrived at the same conclusion as the panel whose decision was set aside and remitted back to the tribunal for re-determination. It was a pity that the earlier panel failed to apply the correct tests, to identify the hereditaments, as set out by the Supreme Court in *Mazars*. However, in my opinion, Mr Wilcox made a valid observation, that the reason why the panel failed to apply the correct test(s) was because the answer was obvious as the rooms were clearly capable of qualifying as putative hereditaments and it was quite clear that the tenants were in rateable occupation of same,
37. In view of the foregoing, the appeal was dismissed.
38. As the High Court judgment, showing the Appellant's full name, has been widely publicised and is in the public domain, I direct that there is no need for my decision to be redacted in accordance with the tribunal's normal policy when its decisions are published. Therefore, the Appellant's name will appear in full as opposed to just his initials when the decision is published on the tribunal's website.



VICE PRESIDENT

Date issued to parties: 4 June 2024

Right of further appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice.
