

**TRITRIBIWNLYS PRISIO CYMRU
VALUATION TRIBUNAL FOR WALES**

NON-DOMESTIC RATING DECISION

Appellant: Mr G Childs

Appeal Property: 37 Springvale Industrial Estate, Cwmbran, NP44 5BB.
Warehouse & Premises
RV - £17,500.

Appeal Number: **694533867387/285NV17/85**

Date of Hearing: 25th March 2021

Appearances: Mr Davies representing the Valuation Officer.

Decision of Tribunal: Appeal Dismissed

Members: Mr. Curry (Chair), Ms Griffith, Mrs M Jones.

Clerk: Mrs J Blizzard-Phillips

Introduction:

1. The appeal before the Tribunal arose from a proposal to alter an entry in the Non-Domestic Rating List. In making the proposal, Mr Childs requested that:

“The existing entry divided into 3 with effect from 1st August 2019. There are three businesses working from this property and it should be split equally into three.”
2. The Clerk introduced the case and informed the Tribunal that VTW’s administrative office had received a written submission from Mr Childs which he wished to be considered in his absence.
3. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

The Appellant’s Case:

1. We moved into Unit 37 on the 1st August 2019, as soon as we moved in, I contacted Richard Bradshaw from Torfaen Council to inform him that two separate businesses were working out of the unit and we would need to split the business rates, he gave me the number to the Valuation Office to get the rateable value amended.

TRITRIBIWNLYS PRISIO CYMRU VALUATION TRIBUNAL FOR WALES

2. I then proceeded to contact David Jones, based in Wrexham. I continued emailing back and forth sending plans of how the building was split and rental agreements between the companies over the next few months until Covid struck.
3. I have now been dealing with five different people to get this sorted out over the last eighteen months. We have split the building in two pretty much equal areas. The two companies are owned and run by two different people. Both companies would have been eligible for the government small business grants, but because we have not got the rateable value agreed, we have missed out on this much needed help.
4. All we are asking is to split the rateable value in two so each business can pay their own bill and each company may apply for the small business rate relief. In these very difficult times, I think councils and governments should be doing all they can to help small businesses stay afloat and continue to build the economy and not keep putting up hurdles.
5. We have been in contact regarding this issue from day one and we have not been trying to ignore this problem, we simply want to pay our way but also take advantage of the rate relief that we are entitled to.

The Valuation Officer's Case:

6. Mr Davies; representing the Valuation Officer, provided copies of written documentation to the Tribunal. The following is a summary of its contents:
7. The appeal arises from a proposal made on 14th November 2019, proposing that the current rating list entry for 37 Springvale Industrial Estate should be altered and divided into three from 1st August 2019.
8. Following initial discussions with the VOA, the Appellant has since revised the contention that the appeal hereditament should be divided into two separate hereditaments, not three.
9. All areas of the appeal hereditament and valuation principles are agreed. The only contention forwarded by the Appellant is whether the appeal hereditament should be divided into two separate hereditaments effective from the material day 1st August 2019.
10. Reference was made to the assumptions for Non-Domestic Rating as contained within Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988, and the Rating Lists (Valuation Date)(Wales) Order 2014.
11. New procedures were introduced for the 2010 Rating List, with the presumption that it is for the Appellant to prove their case with the assumption that an appeal has been made because the Appellant has the evidence to suggest the assessment is incorrect. This is not enshrined in the regulations

TRITRIBIWNLYS PRISIO CYMRU VALUATION TRIBUNAL FOR WALES

but the authority for this general legal principle is found in *Vines Ltd v De Mauny (VO)* 2010.

12. The appeal hereditament is located on a purpose-built industrial estate on the north western peripheries of the town of Cwmbran. Plans showing the location of the appeal hereditament were included.
13. The property is a purpose-built industrial unit formed from a larger unit, partitioned into four in a side to side and back-to-back partition, dating from approximately 1970s. It consists of a portal frame, a combination of brick and profiled metal sheet walls, and profiled metal sheet roof.
14. There is a single strip of UPVC double glazing to the front elevation with a single UPVC door entrance to the right side as you face the front elevation and a large roller shutter entrance to the opposite side of the front elevation.
15. Mr Davies referred the Tribunal to both Mr Childs' plan and the survey plan held by the VOA. Both plans demonstrate an entrance vestibule area separated from a larger open space with no physical partition in the larger warehouse/workshop space.
16. The VOA has inspected the property on 30th January 2020 and on the 9th November 2020. On both occasions, the details of the VOA plan have been confirmed as correct, which has not been questioned by the Appellant. The VOA and the Appellant are therefore in agreement on the physical arrangement of the appeal hereditament at the material date of 1st August 2019.
17. The Appellant has provided a lease between Duct Flange UK Ltd of Unit 37 Springvale Ind Est, Torfaen NP44 5BD (the landlord) and DF International of Unit 37b Springvale Ind Est, Torfaen NP44 5BD (the tenant) commencing on 1st August 2019 for a term certain of three years with a rent of £4,200 per annum.
18. Duct Flange UK Ltd and DF International shared the same principal person in control on the material day. Mr Childs: the Appellant was both Director of Duct Flange UK Ltd and the principal of the sole trader DF International.
19. Photographs taken during the VOA inspections (included in Mr Davies' presentation) demonstrate the use of the appeal hereditament as being warehouse and storage throughout. Tape on the floor of the property had been used to attempt to indicate the different areas of occupation of Duct Flange UK Ltd and DF International.
20. The VOA does not dispute that there are two entities occupying the appeal hereditament.
21. The notion of two distinct occupiers does not however necessitate the existence of two distinct hereditaments. The principle purpose of rateability is

TRITRIBIWNLYS PRISIO CYMRU VALUATION TRIBUNAL FOR WALES

to facilitate a tax on property and not a tax on occupations, this fact being recognised in the case of *Burn Stewart Distillers PLC v Lanarkshire Valuation Joint Board* (2001) and referenced in the Supreme Court judgement of *Woolway vs Mazars* (2015). Whilst *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co* (1985) provides: “*where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so. A familiar illustration of this occurs in the case of a landlord and his lodger. Both are, in a sense, in occupation, but the occupation of the landlord is paramount, that of the lodger subordinate.*”

22. Considering the above, and the facts of the present case, Mr Davies submitted that the Valuation Officer does not need to divide the appeal hereditament simply because of the existence of two occupations.
23. With the relationship between Duct Flange UK Ltd as landlord, Mr Davies submitted that this company enjoys paramount control of the appeal hereditament and would satisfy the parameters of the established principle.
24. For the present appeal, it is far more pertinent to establish whether two separate hereditaments have been evidenced to exist on the material day.
25. The General Rate Act 1967 115(1) provides: “hereditament means any 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.” Whilst the Supreme Court judgement of *Mazars v Woolway* found “a hereditament is a self-contained piece of property (i.e. property all parts of which are physically accessible from all other parts, without having to go onto other property) and a self-contained piece of property is a single hereditament.”
26. On the material day, the appeal hereditament was not physically partitioned in any way, so two separate hereditaments cannot be tangibly evidenced on the ground.
27. The lease provided does not clearly define any areas exclusive to either occupier, rather, it names the appeal hereditament in totality as the property and subject of the lease.
28. The division of the property to satisfy the areas of occupation put forward by the Appellant could not provide two self-contained hereditaments on the material day. With reference to the Appellant's plan, in order to access the area demarcated for Duct Flange International, it is necessary to pass directly over the area demarcated as occupied by Duct Flange UK Ltd. This therefore fails the notions of exclusivity and independence, and in fact make the areas occupied by Duct Flange UK Ltd and DF International interdependent.
29. To further assert that there is not evidence of two separate hereditaments, reference was made to the four fundamental principles of rateability

TRITRIBIWNLYS PRISIO CYMRU VALUATION TRIBUNAL FOR WALES

established in *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area (1949)* “*there are four necessary ingredients in rateable occupation, firstly there must be actual occupation, secondly, that it must be exclusive for the particular purposes of the possessor, thirdly, that the possession must be some value or benefit to the possessor, and fourthly, the possession must not be for too transient a period.*”

30. Neither Duct Flange UK Ltd nor DF International enjoy exclusive use of the appeal hereditament for their particular purposes with both using the property for the same usage: Warehouse and Storage.
31. To conclude, Mr Davies submitted that Mr Childs: the Appellant had not provided sufficient evidence to support the argument that the appeal hereditament should be divided to form two hereditaments with effect from 1st August 2019. Mr Davies therefore respectfully requested the Tribunal to dismiss the appeal and confirm the current entry of the appeal hereditament in the 2017 Rating List.

Decision of the Tribunal

32. When making its decision, the Tribunal had regard to all the evidence presented, whilst considering the relevant legislation and caselaw.
33. Although both parties agree that two entities occupy the property, following established case law, this does not necessitate the existence of two separate hereditaments.
34. The case of *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co (1985)* provides:

“where a person already in possession has given to another possession of a part of his premises, if that possession be not exclusive he does not cease to be liable to the rate, nor does the other become so.”

In the present case, Duct Flange UK Ltd has given possession of part of its premises (which is not exclusive possession) to DF International. Following the established case law, Duct Flange UK Ltd does not cease to be liable for non-domestic rates, whilst DF International does not become liable.

35. The Tribunal therefore considered whether there were two separate hereditaments in existence at the material day.
36. The Supreme Court judgement of *Mazars v Woolway* found:

“a hereditament is a self-contained piece of property (i.e. property all parts of which are physically accessible from all other parts, without having to go onto other property) and a self-contained piece of property is a single hereditament.”

TRITRIBIWNLYS PRISIO CYMRU
VALUATION TRIBUNAL FOR WALES

On the material day, the appeal hereditament was not physically partitioned in any way.

37. The Appellant had provided a plan detailing the areas each of the entities occupy. To access the area demarcated for Duct Flange International, it is necessary to pass directly over the area demarcated as occupied by Duct Flange UK Ltd. The Tribunal therefore found that the areas used by each of the entities are interdependent on each other, and do not form self-contained hereditaments.

Appeal Dismissed.

Certified a True Copy on 1st April 2021.