Landmark CHAMBERS

Annual Rating Conference

The aftermath of *Woolway:* repeal of the 'staircase tax'

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Previous VOA practice

"Following the general rules set out in [Gilbert (VO) v S Hickinbottom & Sons Ltd [1956] 2 Q.B. 40], it has been the practice of the Valuation Office Agency to treat contiguous properties as a single hereditament when occupied by the same person. The Valuation Office Agency's approach to the meaning of contiguous was to treat two units of property as being contiguous where they were separated by a wall or floor/ceiling. For example, a floor/ceiling between two otherwise contiguous offices may contain services in a void occupied by the landlord but such space in walls and floors/ceiling were not considered by the Valuation Office Agency to prevent the units of property being contiguous"

'Business Rates in multi-occupied properties'

Consultation on reinstating the practice of the Valuation Office Agency prior to the decision of the Supreme Court in Woolway (VO) v Mazars [2015] UKSC 53

Para 6

Previous VOA practice

"*There were some exceptions to the general rules:*

a. two contiguous properties in the same occupation would still be treated as separate hereditaments where the two parts were used for wholly different purposes. An example might be where one part was capable of separate letting and was not in use, and

b. two non-contiguous properties separated by a public highway or common area (such as a common corridor) would still be assessed as a single hereditament where a sufficiently strong functional connection could be shown to exist between the two parts. An example would be 2 parts of a golf course separated by a road."

'Business Rates in multi-occupied properties'

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Para 9

The Issue

***Woolway (VO) v Mazars LLP* [2015] UKSC 53**

"43 It was suggested in the discussion in this case that if the two parts of the office had been on adjacent floors they could have been treated as one hereditament on the view that they were contiguous in the vertical rather than the horizontal plane. That, in my view, is a contrived argument. The disjunction of the two parts of the ratepayer's offices lies in the fact that the only access between them is through the public part of the building. The same disjunction would apply even if they were on adjacent floors. In that event, I would have taken the view that they remained separate hereditaments."

"56 In my opinion, two separate self-contained floors in the same office building, whether or not they are contiguous, cannot be said to satisfy such a test, at least in the absence of very unusual facts. Once they cease to be self-contained, because, say, an internal means of access (eg an internal staircase) is constructed, so that each floor is accessible from the other without going onto other property—eg the common parts of the building—then the two hereditaments will normally be treated as have been converted into one larger hereditament. Unless there is such a means of access, each floor is self-contained from the other, and each can be occupied and let independently of the other. Accordingly, I can see no good reason why they should be treated as a single hereditament merely because they happen to be let to and occupied by the same tenant. ….."

The Problem

- **Some instances of amendments to the 2010 List (following receipt of a BAR) , with loss of 'quantum discount' and demands for backdated rates;**
- **Potential for principles in *Woolway* to be applied to appeals outstanding at date of SCt decision – with risk of changes to hereditament/rates liability;**
- **Leases negotiated against backdrop of previous VOA practice – limited scope for amending to take account of new approach post *Woolway***
- **Application to vertically adjoining (though not interconnected) properties: when is an occupier in "exclusive possession" of common parts?**
- **(From 1 April 2017) potential ineligibility for Small Business Rate Relief**

The Government's response

Autumn Budget 2017:

"I've also listened to businesses affected by the so-called 'staircase tax'.

We will change the law to ensure that where a business has been impacted by the Supreme Court ruling it can have its original bill reinstated if it chooses, and backdated."

The Government's response

'Business Rates in multi-occupied properties'

Consultation on reinstating the practice of the Valuation Office Agency prior to the decision of the Supreme Court in Woolway (VO) v Mazars [2015] UKSC 53

- *"… the Government will legislate to reinstate the relevant elements of the Valuation Office Agency's practice prior to the Supreme Court decision"* (para 22)

- *"… some alterations as a result of the Mazars decision may have been backdated to 1 April 2010. To allow the Valuation Office Agency to reapply its previous practice to affected properties, the change in legislation will be retrospective to 1 April 2010…" (para 32)*

- *"The government wants to ensure that those ratepayers who have been affected by the Mazars decision in the 2010 rating list have the opportunity to request a reassessed rateable value on the basis of the reinstated previous practice of the Valuation Office Agency. Therefore, once the Bill receives Royal Assent, the government will provide a right to make a proposal to amend the 2010 rating list" (para 37)*

The Bill

- **Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill lodged 23 March 2018 (2R 23 April 2018)**

- "A Bill to Make provision, where two or more hereditaments occupied or owned by the same person meet certain conditions as to contiguity, for those hereditaments to be treated for the purposes of non-domestic rating as one hereditament; and to increase the percentage by which the billing authority in England may increase the council tax payable in respect of a long-term empty dwelling"

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- In respect of non-domestic rating, would insert new subsections (3ZA)-(33ZD) after subsection (3) in section 64 of the **Local Government Finance Act 1988** (Clause 1(1))

- Clause 1(2) provides that changes are to have effect from 1 April 2010

The Bill

SS(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

The Bill

SS(3ZC)

The hereditaments meet the contiguity condition if-

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

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

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

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

The Bill

SS(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 one consecutive stories 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 occupier 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 preson

The Bill

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and hereditaments occupier 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

Effect of the Bill

- *""… the Government will legislate to reinstate the relevant elements of the Valuation Office Agency's practice prior to the Supreme Court decision"* (Consultation doc para 22)
  - Offices on adjoining floors - ✓
  - Adjoining offices on the same side of a corridor - ✓
  - Premises (including a parcel of land) separated by a wall / fence / other means of enclosure - ✓
  - Land / premises separated by a public highway or common area eg golf course (see para 9b of consultation document) - ??

Effect of the Bill

- Does it go too far?
  - *Trunkfield (V0) v Camden LBC* [2011] RA 1 (LC)
    - "*Contiguity is, in most cases, a good starting-point for determining whether property in the same occupation constitutes one or more than one hereditament, and it may well provide the obvious answer on the facts of a particular case: see Slough Heat and Power Ltd v Thompson (VO) [2009] RA 1. Whether it does or not, however, may depend on the type of hereditament under consideration…*"
    - What is required is a "common-sense assessment of the features of the case" (citing Morris LJ in *Gilbert v Hickinbottom)*

Effect of the Bill

- Bill would seem to ‘deem’ horizontally adjoining industrial units/ warehouses in the same ownership/occupation and not used for “wholly different” purposes.

  - Merely reinstating VOA previous practice?
  - Risk of unintended consequences?

Unoccupied properties

SS(3ZA)

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) Cease to be occupied on the same day, and

(ii) Have 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

Yet to come…

- *"The government wants to ensure that those ratepayers who have been affected by the Mazars decision in the 2010 rating list have the opportunity to request a reassessed rateable value on the basis of the reinstated previous practice of the Valuation Office Agency. Therefore, once the Bill receives Royal Assent, the government will provide a right to make a proposal to amend the 2010 rating list" (Consultation doc para 37)*

- No further indication in Explanatory Notes / 2R debate as to implementation of this commitment (other than post R/A)
- Strong preference expressed by consultees for former appeals structure (not Check Challenge and Appeal system).
- Government's position appears to be that that will be adopted (see para 12 Summary of Responses and Government Response) and that it *"will consider the regulations in draft with rating practitioners before proceeding"*

In the meantime…

- Rates demanded on basis of amendments to 2010 List / current List due and owing

- Query whether / to what extent the draft Bill / Government consultation document & responses will – or can – be relied upon to resist payment