UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2022] UKUT 51(LC)

UTLC Case Number: LC-2021-198

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – HEREDITAMENT – whether a factory and a warehouse separated by an estate road but connected by a substantial conveyor bridge were one hereditament or two – valuation – quantum of split site allowance – appeal allowed – cross appeal dismissed

AN APPEAL AGAINST A DECISION OF

THE VALUATION TRIBUNAL FOR WALES

BETWEEN:

FC BROWN STEEL EQUIPMENT LTD

Appellant

-and-

KARL HOPKINS

(VALUATION OFFICER)

Respondent

Re: Bisley Office Equipment,

Caswell Way,

Reevesland Industrial Estate,

Newport NP19 4 PW

Martin Rodger QC, Deputy Chamber President and Mark Higgin FRICS

8 February 2022

Royal Courts of Justice

Luke Wilcox, instructed by Conneely Tribe, for the appellant

George Mackenzie, instructed by HMRC, for the respondent

The following cases are referred to in this decision:

Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board [2001] RA 110

Davidson Brothers (Shotts) Ltd v Lanarkshire Valuation Joint Board Assessor [2011] RA 360

Harding and Clements v The Secretary of State for Transport [2017] UKUT 135 (LC), [2017] RA 271

Rootes Motors (Scotland) Ltd v Assessor for Renfrewshire [1971] RA 21

Woolway (VO) v Mazars [2015] UKSC 53, [2015] AC 1862

Introduction

1.
The main issue in this appeal is whether the Valuation Tribunal for Wales was right to find that two industrial properties divided by a public road but connected by a substantial conveyor bridge are a single hereditament, rather than two separate hereditaments. If the properties should be entered in the Non-Domestic Rating List as a single hereditament, and should be valued as such, a subsidiary valuation issue will arise as to the quantum of an allowance to be applied in the assessment to reflect the fact that the hereditament occupies a split site.

2.
By a decision made on 26 February 2021 the Valuation Tribunal allowed an appeal by the ratepayer, FC Brown (Steel Equipment) Limited, against a refusal by the Valuation Officer to give effect to the ratepayer's proposal of 18 February 2015 to merge two hereditaments in the 2010 Rating List. In determining the rateable value of the newly merged hereditament to be £1,040,000 the Valuation Tribunal applied an end allowance of 4% for the split site, all other elements of the valuation having been agreed between the parties.

3.
The current appeal arises because of the ratepayer's dissatisfaction with the quantum of the end allowance. The Valuation Officer was also dissatisfied with the decision and, by way of cross appeal, now challenges the Valuation Tribunal's determination that the original units of assessments should be merged and replaced in the list by a single hereditament.

4.
At the hearing of the appeal the ratepayer was represented by Mr Luke Wilcox and evidence was given on its behalf by Mr Austin Marshall DipSurv MRICS IRRV(Hons). The Valuation Officer was represented by Mr George Mackenzie and expert evidence was given on his behalf by Mr Anthony Beadle BA(Hons) MRICS. The day before the hearing the Tribunal conducted an accompanied inspection of the appeal premises and the local comparable properties relied on by the parties.

5.
The expert witnesses prepared a joint statement. With the assistance of that document, and the benefit of our own inspection, we base our determination of the appeal on the following facts.

The facts

6.
The ratepayer trades as Bisley Office Equipment and is best known for its filing cabinets and office furniture. In 1988 it expanded its business from its original base in Surrey to the Reevesland Industrial Estate at Newport in South Wales. In 2012 it consolidated its UK production and warehousing on its Welsh site after acquiring a second building directly opposite its first. The premises are used for the manufacture, storage and despatch of its full product range of filing cabinets and other office furniture and include its own offices.

7.

The appeal premises are located on both sides of Caswell Way, an estate road on the Reevesland Estate approximately 3 miles from Junction 24 of the M4 motorway and 2 miles south east of Newport city centre. They comprise three elements:

(1)
The original factory and premises on the eastern side of Caswell Way which have a net internal area of about 41,000 sqm and contain the ratepayer's production facilities, offices, some warehousing, staff canteen and visitor reception areas, all of which were entered in the 2010 rating list under the title Bisley Office Equipment and described as Factory and Premises.

(2)
Part of the New Venture Building on the western side of Caswell Way, comprising warehousing with a net internal area of a little over 11,000 sqm which appeared in the 2010 rating list described as Factory and Premises, under an entry for Unit C – D, New Venture Buildings, Caswell Way.

(3)
A bridge spanning Caswell Way, which houses a fully mechanised conveyor for transporting finished goods between the two buildings.

8.
The land on the eastern side of Caswell Way was acquired by the ratepayer as a greenfield site and the main factory and office building was built in four phases between 1989 and 2004. It appeared in the 2010 list with a rateable value of £910,000 with effect from 1 April 2010. The building itself occupies about four fifths of the site and is separated from Caswell Way by a car parking area. At the southern end of the site there is an open yard and trailer park. Access to the car park is through a controlled barrier at its northern end and vehicles leave by a separate exit about halfway along the length of the car park. Only a wire fence and a few trees stand between the car park and the pavement running alongside Caswell Way so that the building is fully visible from the road and from the buildings opposite.

9.
The main frontage of the building is on two floors. The façade facing Caswell Way comprises the windows of offices at ground floor level while on the upper storey long stretches of profiled metal cladding at the north end are followed by a mix of brickwork and further glazing. A double height loading bay entrance and the main visitors' reception are towards the southern end of the building opposite the exit from the car park. Along the whole of the façade the profiled metal cladding, window frames and entrances are painted in the ratepayer's signature light grey with dark blue trim and the Bisley trade name appears prominently at intervals along the building and above the reception.

10.
The New Venture Building is one of two buildings on the opposite side of Caswell Way from the main Bisley building. It was acquired by the ratepayer in 2012 at a time when Unit C-D was vacant, and the remainder was occupied by a tenant who is still in occupation. Unit C-D appeared in the 2010 list with a rateable value of £165,000 with effect from 1 April 2010. It is now used by the ratepayer for the storage and distribution of completed goods.

11.
Unit C-D comprises about 40% of the total floor area of the New Venture Building and is located at its northern end, directly opposite the visitor reception of the main building. The other end of the New Venture Building reaches to a little beyond the trailer yard at the southern end of the main building.

The whole building is arranged in bays running from north to south being four bays deep for about two thirds of its length from the southern end and three bays deep at the northern end. It has an eaves height of approximately 7 metres and the façade is comprised of unglazed, profiled metal sheeting interrupted only by a pair of goods entrances, a single door and a loading dock. The whole building has been decorated in the same light grey and blue Bisley colour scheme as the main building opposite.

12.
Unit C-D has its own concrete yard at the front of the building, providing access to the loading bays at its northern end. The yard is separated from Caswell Way by a 2-metre metal palisade fence and is divided from the yard serving the tenanted part of the building by a similar fence. Each of the yards has its own main entrance gate and a third gate adjacent to the loading dock allows vehicles to leave the ratepayer’s site.

13.
Having acquired the New Venture Building in 2012, the ratepayer proceeded to integrate it with its existing factory on the other side of the road. It applied for and obtained planning permission to erect the high-level conveyor bridge which now spans Caswell Way and which became fully operational on 2 September 2013. A licence obtained from the local authority under section 177, Highways Act 1980 allows the bridge to cross the public highway, which is land belonging to the authority.

14.
The bridge is a fully enclosed steel structure clad in the same profiled metal sheeting as is used on the façade of the main building. It is 87 metres long with a deck which stands just over 8 metres above ground level. Its enclosed area is approximately 4 metres tall by 3 metres wide. It over sails the single storey staff canteen at the southern end of the factory building and connects to the building itself on the other side. It is supported by three steel towers. One stands directly behind the canteen and is integrated into the original factory building, opening at the base onto the production floor. Apart from the opening this tower is fully enclosed. A very similar tower supports the opposite end of the bridge where it adjoins Unit C-D itself; this is also a fully enclosed structure which is connected to the warehouse by a short corridor at ground level leading on to the warehouse floor. The third tower is situated within the curtilage of Unit C-D about halfway along the length of the bridge; it is not enclosed but access to the bridge is available by means of a ladder leading to a hatch on the underside of the decking. Access to the bridge on foot is available from ground level at both ends of the structure by means of a staircase inside the supporting tower.

15.
The enclosed towers and the bridge itself are painted in the same corporate colours as the buildings they connect. someone driving along Caswell Way from the north would see the Bisley name prominently displayed on the main factory and office building to their left and emblazoned on the side of the bridge directly above the warehouse yard on their right.

16.
Enclosed within each of the towers at either end of the bridge is an elevator which connects to a conveyor stretching the length of the bridge which is used to transport palletised furniture from the production floor on the eastern side of Caswell Way to the warehouse floor on the western side.

17.
The process of moving goods from one side of the road to the other is entirely mechanised, but within the bridge structure itself a maintenance walkway provides ready access along the whole length of

the conveyor should it be required. It would be possible, without significant difficulty, for a person to ascend the tower at the factory end, walk across the bridge and descend the stairs at the warehouse end, but the structure is not used for pedestrian access other than for maintenance.

18.
The cost of constructing the bridge and supporting towers in 2013 was £238,000. The elevator and conveyor mechanism installed within it cost a further £297,000.

19.
The parties agree that on the material day the appellant was both the owner and the occupier of the factory premises and the warehouse premises on the opposite side of the road. It had exclusive occupation of the conveyor bridge although the freehold interest in Caswell Way itself lay with the highway authority.

Agreed valuations

20.
If the appeal premises are to remain in the rating list as two separate hereditaments it is agreed that the factory and office premises have a rateable value of £910,000 and the warehouse premises a rateable value of £165,000, in each case as at 1 April 2010. The only proposal to alter the list is the ratepayer's merger proposal, so if that proposal does not succeed there is no basis on which the rateable value of the separate hereditaments could be amended to take account of the construction of the conveyor bridge.

21.
If it is appropriate for the two assessments to be merged it is agreed that the material day would be 2 September 2013, but the rateable value of the new entry is in issue. On behalf of the appellant Mr Marshall contended that the rateable value of the merged hereditament should be £1m, which includes an end allowance of 7.5% to reflect the divided or split nature of the site. For the Valuation Officer Mr Beadle proposed a rateable value of £1.04m which reflects an allowance of 4% for the divided or split site and was the figure determined by the Valuation Tribunal.

22.
The parties therefore agree that the rateable value of the premises, assessed as a single hereditament, is less than their aggregate rateable values assessed as two hereditaments. That is because it is agreed that an end allowance of 5% should be applied to the valuation of the merged unit to reflect high site coverage and layout, together with a further allowance of at least 4% to reflect a split site. When the premises were valued for the 2010 List as separate hereditaments the 5% allowance was applied to the larger of the two units, but not to the smaller, and no allowance was required for a split site.

Issue 1: The unit of assessment

23.
The modest difference between the rateable value of the merged hereditament and the rateable value of the same properties assessed as separate hereditaments gives rise to the issue in the cross-appeal. The Valuation Tribunal agreed with the ratepayer that the assessments should be merged, and it is that conclusion which the Valuation Officer challenges.

Applicable legal principles

24.
Non-domestic rates are a tax on a ratepayer's property. Section 41 of the Local Government Finance Act 1988 requires the valuation officer for a billing authority to compile and maintain a local non-domestic rating list for the authority's area. By section 42 the rating list must show each relevant non-domestic hereditament.

25.
The expression "hereditament" is defined by section 64(1) of the 1988 Act by reference to its meaning under section 115(1) of the General Rate Act 1967, namely:

"Hereditament means property which is or may be liable to a rate, being a unit of property which is, or would fall to be, shown as a separate item in the valuation list."

26.
The principles to be applied by Valuation Officers in identifying units of property which fall to be shown as separate items in the Rating List are judge-made principles. An authoritative statement of those principles has been provided by the Supreme Court in Woolway (VO) v Mazars [2015] UKSC 53.

27.
The issue in Mazars was whether the second and sixth floors of an office building, each of which was occupied by the ratepayer under a separate lease and which were used as offices for the purposes of its business, should be assessed as one hereditament or as two. The office premises on each floor were self-contained and someone wishing to go from the second to the sixth floors had to leave the ratepayer's premises and pass through the common parts of the building using the lifts or stairs to do so. The third, fourth and fifth floors of the building were occupied by a different ratepayer, and these were entered in the rating list as a single hereditament. But the Valuation Officer entered the second and sixth floors in the Rating List as separate hereditaments. The ratepayer appealed to the Valuation Tribunal for England which merged the two entries to form a single hereditament. This Tribunal and the Court of Appeal each dismissed the Valuation Officer's appeals but the Supreme Court ruled unanimously in favour of the Valuation Officer's approach.

28.
Lord Sumption JSC delivered the leading judgment. As he explained at [5]:

"If the law is to be rational and consistent, the circumstances in which a continuous territorial block is to be treated as several separate properties or in which geographically separate properties are to be treated as one for rating purposes, must be determined according to some ascertainable and defensible principle."

29.
Lord Sumption then reviewed a series of rating cases decided in Scotland from which, at [12], he identified three "broad principles" to be applied when considering whether distinct spaces under common occupation form a single hereditament:

"First, the primary test is, as I have said, geographical. It is based on visual or cartographic unity. Contiguous spaces will normally possess this characteristic, but unity is not simply a question of contiguity, as the second Bank of Scotland case 18 R 936 illustrates. If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be accessed only via other property (such as a public street or the common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate

hereditaments. If direct communication were to be established, by piercing a door or a staircase, the occupier would usually be said to create a new and larger hereditament in place of the two which previously existed. 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."

30.
Both Lord Sumption, and Lord Gill, who delivered a concurring judgment, emphasised the primacy of the geographical test and the importance of it not being diluted by reference to functional considerations. At [17], Lord Sumption described the two tests as "different and in some respects inconsistent", and as "incommensurate" (meaning inconsistent or lacking a basis of comparison), and explained that the relationship between the tests was not a matter of discretion but one of principle; they operate in parallel, rather than in combination, and their "respective spheres" are to be distinguished. It would not be principled to leave the Valuation Officer or Tribunal to evaluate geographical and functional considerations together as part of an overall assessment of whether property comprised a single hereditament. At [32], Lord Gill was equally disapproving of any attempt to combine the two tests:

"To modify the geographical test with considerations of functionality, in this sense of the word, is to add to a clear and objective test the uncertainty of a test that is dependent on whatever happens to be the ratepayer's choice of use."

31.
In discussing the primary, geographical test the Court used a variety of expressions to encapsulate the essence of the test. Lord Sumption referred to "visual or cartographic unity", to "whether the premises said to constitute a hereditament constitute a single unit on a plan", or "a continuous territorial block".

32.
At [41], Lord Gill referred to "properties that are discontiguous but nonetheless geographically linked" and rejected as "an extreme position" the suggestion that in the application of the geographical test the decisive criterion was contiguity. Nor would contiguity by itself be enough and offices which were contiguous on the vertical or horizontal plane would, in his view, remain separate hereditaments if the only access between them was through the common parts of the building ([43]). Lord Neuberger, who delivered the third substantive judgment, agreed and said at [47] that:

“a hereditament is a self-contained piece of property (ie 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.”

33.
The Supreme Court appreciated that there would be marginal cases. Lord Sumption explained, at [12], that the application of the governing principles is a matter of judgment involving a large measure of professional common sense. Lord Neuberger, at [50], anticipated that the application of principles intended to produce a clear and practical answer would leave room for debate:

“However, as is not unusual, clarity and practicality are to some extent in conflict, and, unsurprisingly in the complex and multi-faceted world of land and buildings, there cannot be complete certainty.”

34.
The Supreme Court in Mazars has authoritatively identified three broad principles by which the unit of assessment is to be determined, and we agree with Mr Mackenzie’s submission that it would be undesirable (to say the least) for this Tribunal to purport to lay down hard and fast rules to supplement those principles. This appeal is concerned only with the first of the three principles, the geographical test. On behalf of the ratepayer, Mr Wilcox placed no reliance on the secondary, functional test. Our task is therefore to apply the primary, geographical test to the premises in this case. It is also true, however, that the different parts of the premises in this case are arranged in a way which is relatively common in the industrial sphere and which is also sometimes encountered in other classes of property (including retail premises, schools, hospitals and motorway service areas) where land and buildings in single occupation but located on opposite sides of a public road are physically connected to each other by a substantial bridge or underpass.

35.
With one exception, the circumstances of this case are not very different from those of Burn Stewart Distillers plc v Lanarkshire Valuation Joint Board [2001] RA 110, a decision of the Lands Tribunal for Scotland which was considered by the Supreme Court in Mazars. The most relevant difference is that in Burn Stewart warehousing and head office premises on one side of a road were connected to a whisky bottling complex and distribution plant on the other side by no more than a duct, measuring 600 mm square, which ran under the road. The intercommunication between the premises separated by the road in this case is both much more substantial and in plain view, but it is nonetheless instructive to consider the application of the geographical test in Burn Stewart.

36.
Viewed from the road, the various premises in Burn Stewart were described by the Tribunal as “quite distinct in appearance”, being a substantial office block with a car park in front and a steel portal frame warehouse to the rear on one side of the road, and a portion of a much larger factory building on the opposite side. The road itself was described as a busy road with a regular flow of vehicles passing the appeal subjects. The movement of materials from the warehouse to the bottling plant involved the use of fork-lift trucks. The ratepayer had exclusive possession of a two-channel concrete conduit which it had installed to link the two subjects. The conduit was used for fibre optic communication links and computer and CCTV security systems.

37.
In Burn Stewart, at pp 141-142, the Tribunal emphasised the clear physical separation between the two buildings each with its own clear curtilage and separated from the other by a public road and pavements. It considered that the impression of separation was enhanced to some extent by the fact

that the land lying between the main building and the public road was not in the exclusive occupation of the ratepayer but provided access to other buildings. It also stressed the difference in their appearance. In that regard the Tribunal said that:

“A test based on appearance and impression may properly be treated as part of the geographical test. The two subjects have no unifying visual characteristics. There is nothing to indicate that they are operated together, far less that the physical presence of one is essential to the function of the other.”

38.
Reference was made in Burn Stewart to an earlier decision of the Lands Valuation Appeal Court in Rootes Motors (Scotland) Ltd v Assessor for Renfrewshire [1971] RA 21, in which the issue was whether a material change of circumstances had occurred when three separate industrial buildings, each used for the manufacture of motor vehicles, came into single occupancy and were physically integrated including by a conveyor installed to carry car shells from the north of a dual carriageway for completion within buildings situated on the south. By the time the appeal reached the Court it seems not to have been in dispute that the integrated car plant was properly to be treated as what in England would be referred to as a single hereditament but in Scots law is termed a “unum quid”. The Tribunal in Burn Stewart acknowledged that the earlier case supported the view that the mere presence of a public road between two buildings does not, by itself, prevent identification of a factory as a unum quid, but it considered it unsafe to take more from it than that. It was not suggested to us that any greater weight could be placed on the decision and we take it simply as confirmation of that proposition.

39.
As for the presence of the duct running beneath the road, the Tribunal in Burn Stewart observed that “awareness of this does not change the overall impression”. On the other hand, at p.143, it accepted that the duct was a factor which must be considered. In a passage on which Mr Wilcox particularly relied the Tribunal said this:

“Any physical link between two units would have an important part to play in proper application of a geographical test of separation. It might also help demonstrate a functional dependence between two units, such as parts of a factory. Indeed a physical link carrying units of work from one area to another might be regarded as important in relation to both the geographical and functional tests and to the issue of separate lettability. However we agree with the submission that the duct itself is, in the present case, only of significance insofar as it permits the passage of communication cables. We do not think that this is of any real significance in relation to the issue of physical separation.”

40.
The Tribunal concluded both that the geographical test pointed to separate entries, and that there was nothing to establish any essential functional connection between the buildings to justify treating them as one (in accordance with what became the second of Lord Sumption’s broad principles).

41.
We were referred to only one relevant authority decided since the Supreme Court’s decision in Mazars. The decision of this Tribunal (Sir David Holgate, President, and Mr P D McCrea FRICS) in Harding and Clements v The Secretary of State for Transport [2017] UKUT 135 (LC) was not concerned with rating, but with the validity of a blight notice served by the owner of two fields used together for the keeping of horses. The fields were separated by a public highway but a culvert ran under the highway in which there were three ducts; two of the ducts were empty but one carried a water pipe to supply one of the fields which would otherwise have had no source of water. The validity

of the blight notice depended on whether the two fields comprised a single hereditament within the meaning of section 115 of the General Rate Act 1967.

42.
The Tribunal applied the geographical test and concluded that the fields did not comprise one hereditament. The two fields appeared as separate areas of land on either side of the highway and in visual terms they were quite distinct. The Tribunal accepted that there was a degree of contiguity because the landowner owned the sub-soil beneath the highway, but it did not consider that that was sufficient to satisfy the geographical test because there was no intercommunication between the two fields. As to whether the duct which ran below the highway sufficed to provide direct communication between the two plots so as to satisfy the geographical test, the Tribunal said this, at [76]:

“The “direct communication” described at p 382 [para 12] of Mazars was a doorway or a staircase inserted into a boundary wall, or in other words a passage which would have enabled humans to pass from one property to another. We are not persuaded that the examples given in that decision were necessarily intended to delimit the type of link which might satisfy the geographical test. They may have been influenced by the nature of the properties and the land use under consideration. But this point has not been fully argued before us and must await another case. For present purposes we need only say that we do not accept that the ducts and the water supply in this case amount to a sufficient connection for the 0.835 ha area of land on plot 1 to be treated as a single geographical unit with the 2.095 ha area of land on plot 2 from 7 which it is separated by Yarlet Lane. Instead, the water supply is a factor to be considered when applying the functional test.”

The parties’ submissions and our conclusion on issue 1

43.
On behalf of the ratepayer Mr Wilcox submitted that the installation of the conveyor bridge had created a physical connection between the original factory building and the warehouse for the purpose of moving the very things which the properties existed to create and distribute. The bridge was different from the sort of generic service link such as a water pipe or a computer cable which had been considered in Harding and Clements and in Burn Stewart. Rather, it was as Mr Wilcox put it “intimately connected with the actual physical activities for which the buildings are primarily designed”. It was therefore analogous to the car parts conveyor in Rootes Motors, or the (hypothetical) whisky bottle conveyor in Burn Stewart and was sufficient to create contiguity that satisfied the geographical test even though the connection was not suitable for the movement of people.

44.
There is nothing in Mazars to suggest that the passage of people between different parts of the premises under consideration is necessary to satisfy the geographical test. That appears to have been the submission of the Valuation Officer to the Valuation Tribunal, but it was not adopted by Mr Mackenzie on the appeal. It so happens that the property in Mazars was an office building, and that many of the cases from which statements of principle were drawn by the Supreme Court concerned the relationship between bank premises and residential accommodation provided for staff, or between dispersed buildings on a university campus. In other words, as the Tribunal indicated in Harding and Clements, the nature of the hereditaments under consideration in those cases meant that the use of any physical means of communication between them would be enjoyed by employees or by university staff and students. None of the Justices in Mazars suggested that the geographic test could not be satisfied unless access was freely available on foot to all parts of the property, and in the context of

industrial premises such a limitation would not make sense. Lord Sumption's broad principles are of general application and it would be wrong to narrow them so as to exclude from consideration physical connections used only for the passage of manufactured goods, goods in the course of production or raw materials but which were inaccessible to people working on the site. Each case will depend on its own facts, but the approach should be based on an assessment of the particular physical characteristics of the premises as a whole, rather than on the application of prescriptive rules.

45.
We agree with Mr Wilcox that the means and extent of intercommunication between different parts of a site are critical, but we are not attracted by his submission that special significance should be afforded in the context of industrial premises to any intercommunication which exists for the purpose of transferring the very thing which is manufactured on the site. That approach would appear to require greater weight to be given to a subterranean conduit through which a manufactured liquid passed than to one used to convey water, telecommunication fibres or other "generic service".

46.
Mr Wilcox suggested that what would amount to a sufficient connection in a particular case could not be divorced from consideration of the functional aspects of the use of the site, and he sought support for that submission from Harding and Clements at [58] and [60]. We do not think the passages referred to provide the suggested support. The Tribunal's statement at [58] that "The geographical test is based on visual or cartographic unity or direct communication between the premises under consideration" does not expand the first of Lord Sumption's principles; it simply reflects the fact that in certain situations (adjacent floors in an office building or attached buildings with no intercommunication) mere contiguity will not be enough. The remainder of the passage is concerned with the functional test.

47.
Mr Wilcox urged that his submission was not inconsistent with Mazars, but if the use to which a connection is put is afforded special significance, rather than simply being a consequence of a particular mode or category of occupation, it seems to us to involve exactly the risk against which Lord Sumption and Lord Gill warned, that of diluting the primary geographic test by focussing on irrelevant functional considerations. Different modes of occupation will obviously give rise to all sorts of differences in the way in which different premises intercommunicate but focussing on the purpose for which a link of one sort or another is used is unlikely to be of any real significance. When answering the geographical question, it is important to focus on the physical premises themselves and not on the use made of them by a particular occupier.

48.
We therefore agree with Mr Mackenzie that in this context there should be no rigid tests or qualifying conditions which will always cause properties to be regarded as a single hereditament. Rather, a broad analysis of the premises is required and a judgment whether they can sensibly be said to comprise a single unit of property. Resolving the issue involves an exercise of judgment, but it is a judgment largely dependent on the impression which the subject matter makes on the decision maker and we do not think the exercise is one which only an expert rating surveyor or specialist tribunal can perform. Although Mr Mackenzie criticised the ratepayer's expert, Mr Marshall, for expressing no view of his own and leaving it to counsel to make submissions on the merger issue, we are in good company in expressing no such disapproval. In the case of Davidson Brothers (Shotts) Ltd v Lanarkshire Valuation Joint Board Assessor [2011] RA 360, the Lands Tribunal for Scotland was

untroubled by the fact that the ratepayer's expert had offered no opinion on whether property comprised one unit of assessment or two, saying, at [54]:

"The tribunal quite often listens to, and derives assistance from, opinions, which are in effect opinions on the correct application of the law to the facts of the case, from experienced valuers, but it was in our view perfectly proper for Mr McKaig not to do so in this case."

Mr Wilcox also pointed out that in Harding and Clements the Secretary of State's expert had expressed no view on the primary geographical test of whether the two fields were a single hereditament.

49.
We had the benefit of the carefully considered views of Mr Beadle, the Valuation Officer's expert witness, who concluded that the factory and warehouse were separate properties which failed the geographical test and should remain as separate hereditaments in the rating list. Mr Mackenzie summarised the factors which were said either as a matter of submission or expert assessment to require the conclusion that the two properties (and the bridge) comprise separate, and objectively ascertainable, geographical entities rather than one unified entity.

50.
Mr Mackenzie's first point was that the factory and the warehouse are both individually self-contained and each includes all of the facilities required to function and operate without recourse to any facilities contained in the other. He suggested that not all parts of both buildings are physically accessible from the other property. The bridge is limited to the functional passage of manufactured goods and it is not possible for anything other than finished products to be transported from the factory to the warehouse using the bridge structure. His second point was that the factory and the warehouse are capable of being separately let.

51.
The first of these points seems to us, in part, to be factually incorrect. It is of course true that the factory could function as a factory, and the warehouse as a warehouse, without either requiring occupation of the other. That was the situation before 2013 when the two parts of the site were occupied independently, and it is the reason why no reliance is placed by the ratepayer on the secondary functional test. But it is no longer the case that the factory and the warehouse are self-contained. On the contrary, it is possible to reach any part of the site from any other part without leaving premises which are agreed to be in the exclusive possession of the ratepayer. The fact that passage across the bridge is usually reserved only for manufactured goods does not mean that it can be ignored. In any event, the bridge can be used for pedestrian access, and as we observed on our site visit, it is used for that purpose by maintenance staff, one of whom we witnessed crossing from the factory side to the warehouse side to locate a fault with the conveyor. When considering the geographical test how the bridge is used in practice is less important than the substantial physical connection which it creates between the two parts of the site.

52.
Next, Mr Mackenzie pointed out that the factory and the warehouse are both contained within their own separate curtilages which are fenced off from surrounding land. They are not contiguous but are separated by a significant distance of some 87 metres which comprises public highway and fencing. These points concern the physical relationship between the different parts of the site and are therefore much more relevant to the geographic test than Mr Mackenzie's first point. But again, they omit consideration of the bridge itself, which is the most prominent feature of the landscape when one

is standing within the curtilage of either the factory or the warehouse. The suggested distance is in fact the full length of the bridge, rather than the distance between the ratepayer's land on either side of the road (we note in this regard that the location plan included with the experts' joint statement does not depict the bridge as constructed); at their closest point the buildings themselves are about 60 metres apart, and the distance between the two road-side fences is less than 20 metres. The road is a single carriageway in each direction and, while we were at the site, appeared not at all busy.

53.
Focussing on visual and physical factors, Mr Mackenzie submitted that no reasonable person would say that the factory and the warehouse comprised the same geographical unit. There are clearly two separate units connected by the conveyor bridge. The length of the bridge, its height above ground level and its appearance and location in the airspace above the highway mean, in the assessment of Mr Beadle and Mr Mackenzie, that it did not create a visual or cartographic unit.

54.
The suggestion that this is a clear and obvious case about which no reasonable person could be in doubt is, we feel, a bold one. It gives insufficient weight (indeed, it appeared, hardly any weight at all) to the striking visual impact which the bridge structure makes, and which in our judgment clearly and very definitely connects the two parts of the site. Anyone standing on the factory side of the road and facing the warehouse could not fail to notice that the two buildings were connected by a massive steel structure spanning the road. Far from minimising the connection, the fact that the bridge is supported high above ground level serves to emphasise the unity of the two sites, reaching across from one side of the road to the other and overcoming the obstacle represented by the road. The impression which the structure created on Mr Beadle and Mr Mackenzie was not one which we shared.

55.
We do not consider the fact the airspace which the bridge oversails is not in the same ownership and exclusive occupation as the factory and the warehouse, or that the highway is publicly accessible, are points of substance. We accept that the mere fact that the bridge creates a link between the warehouse and the factory is not determinative of the geographical test, but in our judgment the connection which it makes in this case is both of a wholly different scale, and has an entirely different visual impact, to the connections considered in cases about pipes and cabling running between non-contiguous properties to which Mr Mackenzie suggested it was analogous.

56.
In summary, therefore, following our inspection we are satisfied that the three components in the ratepayers' occupation, the factory, the warehouse and the bridge, can realistically be regarded as a single unit of property. They satisfy the cartographic test, in that they can be ringed round on a plan. They are visually connected by the bridge and by the shared colour scheme and branding which immediately makes it obvious that they comprise a single unit of occupation. They are self-contained, in the sense explained by Lord Neuberger in Mazars with each part of the site being capable of being reached from every other part of the site without leaving premises in the occupation of the ratepayer. The connection between them is not hidden from view or insubstantial; on the contrary, it forms a massive and highly visible link between the two parts of the site.

57.
For these reasons we are satisfied that the Valuation Tribunal reached the correct conclusion on the merger issue and that the Valuation officer's cross-appeal should be dismissed.

Issue 2: The split site allowance

58.
Mr Marshall is a surveyor with Conneely Tribe and has 23 years rating experience. His firm has represented the appellant on the last five Rating Lists. Mr Beadle has been employed by the Valuation Office Agency since 1989 and has experience of valuing a wide range of commercial properties for rating purposes.

59.
The experts took quite different approaches to the scope of their evidence, Mr Marshall eschewing any analysis of the factual position at the property or the decision in Mazars, instead preferring to accept the decision of the Valuation Tribunal for Wales and concentrating wholly on the allowance for the split site that he considered appropriate.

60.
Mr Beadle, in contrast, provided a detailed examination of the decision in Mazars and many of the preceding judgments and applied it to the circumstances on the ground in Caswell Way. He concluded that the two properties occupied discrete sites and should be separate hereditaments. Consequently, there was no need to consider other hereditaments occupying split sites and his first report contained no other evidence.

61.
In response to Mr Marshall's report, Mr Beadle's second report addressed the valuation issues and it is these that we now turn our attention to.

62.
The only contentious issue was in relation to the valuation for the merged site, specifically the end adjustment to be applied for its split nature. Mr Marshall had adopted 7.5% and Mr Beadle used 4%. Mr Beadle additionally linked the size of the allowance to the capital spend on the conveyor bridge.

63.
The experts had narrowed down their list of agreed comparables to just three properties.

Hasbro UK Limited, Caswell Way, Newport, NP19 4YH

64.
This property is situated immediately adjacent to and to the north of Unit C-D. It comprises three buildings dating from 1979, 1981 and 1994. We were not able to gain access, but we looked at it from the estate roads and the experts had provided aerial photographs in their reports. All three buildings occupy a single site, and each is connected to the others by means of at least one enclosed corridor. Neither expert was able to confirm whether conveyors were present in the connections, but we noted that they were not built to the same height as the buildings they joined. It appeared likely that they could accommodate either a conveyor or a forklift truck, but we have no way of knowing how they are used. The 2010 List assessment includes a 5% allowance for the split nature of the property. Mr Marshall took the view that this property was less disadvantaged than the appeal property being three interconnected buildings on a single site. Mr Beadle concluded that the 5% end allowance looked reasonable but was not definitive given that the site configuration did not wholly align with the appeal properties. We acknowledge that the layout is different and that all of the buildings are situated within the same curtilage, but we nevertheless regard it as a useful starting point. The layout of the appeal property is more compromised and involves a greater degree of mechanisation to overcome the presence of the road separating the two halves of the site.

Tri-Wall Europe, Wonastow Road, Monmouth, NP25 4DQ

65.
The second property is located on the southern periphery of Monmouth, about 25 miles north east of Newport. It comprises three buildings, a factory producing cardboard, stores and a warehouse. The factory is on the southern side of Wonastow Road while the other two buildings are situated within a shared curtilage to the north. Wonastow Road itself links the village of Wonastow to Monmouth but also provides access to other industrial premises and a large, recently constructed housing development. We were able to inspect the site and it was explained that the operation at Tri-Wall involves finished products being transported from the factory to the warehouse on forklift trucks. This involves negotiating two public roads and consequently movements take place when traffic is quietest. It is sometimes necessary to protect the finished goods from the Welsh weather whilst they are being moved. For the duration of the 2010 Rating List the property was assessed as Factory and Premises at Rateable Value £420,000, a figure which included a 10% allowance for the split site.

66.
The Tri-Wall property was viewed by Mr Marshall as having a higher degree of disadvantage than the appeal property. He noted the similarity of the production and storage functions on opposite sides of the road but thought that the lack of a conveyor bridge justified the end allowance of 10%. Mr Beadle concurred with the quantum of the allowance but again said that the absence of the bridge meant that the configuration did not align with the appeal property. We note that the Valuation Office Agency have recently reviewed the assessment and split it in to two hereditaments with effect from 1 April 2017. In our view this property has a great deal in common with the appeal property. The dislocation of the functions is identical as is the physical degree of separation. The absence of a conveyor bridge is the obvious difference. We find this property useful in defining the upper limit of any allowance for the split site.

Vion Food UK Ltd, Little Wratting, Haverhill, Suffolk, CB9 7TD

67.
The final comparable is located near the village of Little Wratting, about 2.5 miles north east of Haverhill and 210 miles by road from Newport. This extensive property occupies sites on opposite sides of the A143 road which links Haverhill to Bury St Edmunds. During the currency of the 2010 Rating List the site comprised, amongst other buildings, an abattoir linked by means of an enclosed conveyor bridge to a production facility on the other side of the A143. Much of the site has now been demolished and we have not carried out an inspection. The most recent 2010 List assessment was Rateable Value £380,000 which took effect from 1 August 2015 and includes an allowance of 4% against the value of the entire hereditament for the split or divided nature of the site.

68.
The experts disagreed about the utility of this assessment. It was originally advanced by Mr Marshall as being supportive of the merged appeal property and was embraced by Mr Beadle as the best comparable in the context of a merged property as it comprised two sites split by a public road but linked by a conveyor bridge. Mr Marshall subsequently said that he preferred to use the two comparables that were closest to the appeal property and had undertaken research and analysis to prove that the branch of the Valuation Office Agency that dealt with the Haverhill area routinely applied lower allowances to split or divided sites than the branch in Newport. We did not find this information helpful. To fully understand whether this line of enquiry really stood up to scrutiny we would need to examine the circumstances at each site and that information was missing. Regardless

of the outcome of Mr Marshall's endeavours we disagree with him that Vion Foods should be disregarded as a comparable on the basis that it was too distant from Newport. It is useful as a measure of the degree to which a valuation should be adjusted for specific physical circumstances. So long as those circumstances bear comparison the location of the properties should not be a material factor.

69.
We take a more nuanced view of Vion Foods than that of the experts. We understand that the conveyor bridge connected the abattoir and the meat processing facility. The site appeared to contain many other buildings and facilities, but we have no information about whether these were associated with the two interconnected parts or whether they functioned independently. Similarly, we have no information about whether the bridge served as a means of facilitating pedestrian traffic from one part of the site to another. It is impossible to judge whether the application of a 4% allowance across the whole site was simply done for convenience or whether it was representative of a higher allowance solely on the parts of the site that were dependent on one another. Neither expert could shed any light on this question which was not surprising since neither of them had been to the site nor, it appeared, made any enquiries of the occupier or their agent. We conclude, notwithstanding the obvious similarity between this property and the appeal property, that we should treat this comparable with a degree of caution and we accordingly attach less weight to it.

70.
The expert valuers in this case took divergent approaches, Mr Marshall selected comparables by location and Mr Beadle applied greatest weight to the property he considered to most closely align with the configuration of the appeal property. We prefer Mr Marshall's selection but not his reason for choosing them. When considering a comparison for the purposes of applying an allowance there is no reason to exclude potential candidates simply on the basis of distance. He is correct however, that the Hasbro and Tri-Wall properties set the boundaries for the end allowance. Mr Beadle predicated his allowance, in part at least, on the amount the conveyor bridge cost but did not adequately explain how he deduced an allowance from a capital sum. It may be the case that the problems inherent in operating a split site can be overcome by spending a relatively modest sum on a bridge, but that does not alleviate the ongoing inconvenience and costs, and their effect on the rent an occupier would be prepared to pay. His reliance on the Vion Foods allowance lead him to the conclusion that a site with a conveyor bridge was less disadvantaged than one such as Hasbro where all three buildings were on the same site. This approach does not, to us, seem to make much sense.

71.
We heard no evidence from the appellant themselves or Mr Marshall about the impact of the split site on their operations. On our site visit we observed the conveyor in use and additionally both a minor malfunction and the time spent rectifying the fault. We conclude that the obstacles to the efficient operation of the appeal property as a factory and premises are worse than those at Hasbro but not as bad as at Tri-Wall. The allowance therefore lies between 5 and 10%. Mr Marshall adopted 7.5% but provided no explanation as to how he arrived at that figure. That is not a criticism in itself, since this is a matter of judgment based on limited evidence. We prefer Mr Marshall's approach to that of Mr Beadle and, in agreement with him, we determine the allowance at 7.5%.

Disposal

72.

For the reasons we have given we allow the ratepayer's appeal and dismiss the Valuation Officer's cross-appeal. We direct that the rateable value of the merged hereditament be entered in the rating list in the sum of £1 million with effect from 2 September 2013.

73.
We add one final point which we raised with Mr Beadle and with counsel in the course of argument. A consequence of the factory and the warehouse being entered in the list as separate hereditaments and being valued separately would have been that no value could be attributed to the structure which connected them and which the ratepayer had invested £535,000 to create. Mr Beadle had initially suggested that the bridge and conveyor could be valued together with the factory as an item of plant. On reflection he agreed that on the required hypothesis that the factory be assumed to be vacant and to let while the warehouse remained in the occupation of the ratepayer no prospective tenant of the factory would pay an additional rent for the conveyor bridge. On that hypothesis the structure would be a bridge to nowhere. Mr Mackenzie submitted that that was simply a consequence of the rating hypothesis and had no relevance to the identification of the unit of assessment. That may be so, but while we have attributed no significance to the point in determining the cross-appeal, it does seem to us to reflect the common sense of the solution we have preferred that it allows all parts of the hereditament to be properly valued.

Martin Rodger QC, Mark Higgin FRICS

Deputy Chamber President Member

21 February 2022

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.