

Business Rates Seminar

Rateable Occupation

Robin Gibbons Tech IRRV
Business Rates Manager – Bolton Council
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History of Rates

- Poor Law Act 1601
- Paid for by levying rates on local ratepayers
- System of rates to fund local government & services evolved over the centuries
- General Rate Act 1967 – immediate predecessor to business rates
- Domestic & non-domestic – rental values
- Local Government Finance Act 1988

Rateable Occupation

- Section 43 Local Government Finance Act 1988
 - the occupier will be liable for occupied rates for any day they are in occupation of all or part of the hereditament (for any day the hereditament appears in the rating list)

Rateable Occupation

- No statutory definition of rateable occupation
- S65(2) LGFA 1988 – rules are same as General Rate Act 1967
- Case law from as far back as 18th century still relevant today
- R v St Pancras Assessment Committee (1877)
- John Laing & Son Ltd v Kingswood Area Assessment Committee (1949)

Rateable Occupation

- Laing case – provided the four elements of occupation that must all be present for occupation to exist:
- Actual Occupation
- Exclusive Occupation
- Beneficial Occupation
- Non-Transient Occupation
- Principles accepted by House of Lords in LCC v Wilkins (1956)

Actual Occupation

- Physical use of land/property irrespective of how slight use may be
- Intention to use must be considered, however a mere intention to occupy may not constitute occupation.
- **S65 LGFA 1988** provides that a hereditament not in use is to be treated as unoccupied if it would otherwise be treated as occupied only by reason of there being kept in or on it plant, machinery or equipment –
 - which was used in/on the hereditament when it was last in use, or
 - which is intended for use in or on the hereditament.

Actual Occupation

Sheafbank Property Trust PLC v Sheffield Metropolitan District Council (1988)

- A company purchased a sports field, clubhouse and caretaker's flat, together with contents which included a snooker table, music facilities, tables, chairs, the bar and equipment, a freezer, dishwasher, tv, fridge, settee and grass cutting equipment.
- The rating authority conceded these items were “plant, machinery or equipment”, but argued that the high level of maintenance being carried on, indicated that rateable occupation existed.
- High Court held that the hereditament was to be treated as unoccupied, and that the proper approach for the authority to employ was to consider whether, but for the presence of plant, machinery or equipment, it would have found the premises to have been in rateable occupation.

Actual Occupation

R v Melladew (1907)

- Warehouse left empty & the water had been cut off (but could be reconnected at any time).
- Warehouse owner would have been prepared to let it or receive goods into it at any time providing half of the capacity was used.
- Held that the intention to occupy must be viewed in context with the nature of the business and that it was an occupational hazard of a warehouseman that the premises could be vacant for some time. Therefore he was held as liable for rates for the whole period in question.

Actual Occupation

Bootle Overseers v Liverpool Warehousing Co (1901)

- Warehouses again - ratepayer owned a number of warehouses built in a block.
- No means of internal communication between the various units, except for some constructional shafting.
- Warehouses assessed as separate hereditaments
- The company informed the B.A. that the 3 warehouses were unoccupied and that all goods had been removed from them.
- It was held that there was no liability as the 3 warehouses had been withdrawn from use and were not being held available for use should the situation arise.

Actual Occupation

Associated Cinema Properties Ltd v Hampstead Borough Council (1944)

- Cinema Company rented two houses for use as office accommodation in the event of their existing offices being damaged through the war
- The houses could be used as offices without any alterations (although no furniture or equipment in them)
- Not used in any way by the Company but basically held in reserve.
- It was held that the intention to occupy was reliant upon the happening of a future event out of their control, therefore, there was no rateable occupation.

Actual Occupation - Makro

Makro Properties Ltd v Nuneaton BC (2012)

- Makro vacated warehouse in June 2009 & surrendered lease
- Landlord liable for empty rates from December 2009
- Entered into agreement whereby Makro were allowed to store pallets of documents for 6 weeks between November 2009 and January 2010
- Created further 6 month empty exemption
- Documents took up only 0.2% of the floor space
- District judge held no rateable occupation – de minimis
- Appeal made to High Court who ruled rateable occupation did exist – High Court rulings legally binding

Actual Occupation - Makro

- High Court Ruling stated the District Judge had accepted there was actual occupation albeit miniscule
- Occupation not to be disregarded as de minimis: Wirral BC v Lane (1979)
- The question was whether there was occupation of part of the premises or none of it
- Proper approach - consider the use of the premises & intention behind it. Evidence of intention together with slight use could lead to inference of occupation
- Minimal storage was actual occupation – rateable occupation did exist
- High Court rulings legally binding

Legality of Occupation

Southwark LBC v Briant Colour Printing Co Ltd (1977)

- Company begun liquidation proceedings & employees were dismissed on the day prior to the liquidator being called in
- A number of its ex-employees seized the building and equipment. They staged a “work in” continuing to trade completing orders already started.
- Liquidator paid them 25% of the value of the contracts.
- Occupation by the “work in” was not a concurrent occupation by the company, it was clearly a different body.
- Liquidator was not in occupation - indeed he was excluded from it.
- Held that the most likely persons to be in occupation and therefore liable were the employees involved in the “work in” or more specifically the members of the committee organising the “work in”.

Legality of Occupation

Ratford and Hayward (Receivers and Managers of Sabre Tooling Ltd) v Northavon District Council (1986)

- Court of Appeal found that although the receivers had power to take possession they had no obligation to do so and that they only acted as agent for the company.

Tomlin v Westminster City Council (1989)

- People illegally occupied Cambodian Embassy as squatters.
- Held that actual occupation is irrespective of the title by which the property is occupied and the absence of title is immaterial.
- More important to look at what is actually happening than what should be happening.
- One of the squatters was found to have satisfied the test of actual occupation and was therefore rateable.

Beneficial Occupation

- Of value to occupier in terms of their willingness to pay a rent so as to enable the occupation to exist.
- Not merely benefit of a financial nature and can exist even though occupation may result in financial liability
- Occupation by public bodies is of benefit if carrying out a statutory function
- **R v School Board for London (1886)**, a school claimed they obtained no beneficial interest from the tenancy. The Court of Appeal held that they had a duty that would require them to become a tenant.
- **London County Council v Erith and West Ham (1893)**, the House of Lords reaffirmed the principles of rateability without there being pecuniary profit.

Beneficial Occupation

Land held by a local authority only as a custodian for the public at large does not give rise rateable occupation – no benefit can be obtained

- **Hare v Putney Overseers (1881)** – Related to a bridge
- **Newham LBC v Hampsher (1970)** – Street market
- **Lambeth Overseers v London CC (1897)** – Parks

Beneficial Occupation

Land held by the local authority with no dedication in perpetuity for use by the public would make the land rateable:

- **Kingston-upon-Hull v Clayton (VO) (1961)** – authority was in occupation of an art gallery built on land it had been conveyed. Land capable of obtaining a rent.

Distinction between rateability & non rateability can be fine:

- **Redbridge LBC v Wand (1970)** – open air swimming pool within a public park was ancillary to the park
- **Smith v St Albans City & DC (1977)** – indoor pool on edge of a park not ancillary and so was rateable

Beneficial Occupation

- Willingness of the occupier to pay a rent so as to enable the occupation to exist
- Rent paid = beneficial occupation satisfied
- **Monkcom v Adams (1988)** – Children's trampoline site used for part of a year (every year). Lands Tribunal found it to be in beneficial occupation as a licence fee was paid in order to trade.
- Tenancies where no rent is payable?
- 6 week occupations enable a further period of empty exemption
- Test of beneficial occupation has to be satisfied for rateable occupation to exist

Makro Case

- Makro Properties Ltd (MPL) and Makro Self Storage Wholesalers Ltd (MSSWL) v Nuneaton & Bedworth BC (2012)
- MSSWL leased premises & occupied as a cash and carry until 1 June 2009. Lease surrendered 31/12/09.
- Between 25 November 2009 and 12 January 2010 some 16 pallets of MSSWL paperwork (which it was bound by law to retain) was stored there – no written agreement.
- The pallets occupied approx 0.2% of the floor space which exceeded 13,000²m.
- Between 12 January 2010 and 23 July 2010 the premises were empty.

Makro Case

- On 23 July 2010 some further 40 pallets of MSSWL paperwork were delivered and stored there
- District Judge had ruled in favour of billing authority (granting a liability order for empty rates).
- “the chattels were placed in the Coventry store by MSSWL with a view to incurring rateable liability for a short period (certainly not beneficial) so that it or MPL could avoid liability for a longer period. The potential avoidance of liability is the only 'benefit’”
- Appealed to High Court

Makro Case

In his High Court ruling Judge Jarman stated

- “it cannot properly be said that the storage was of no practical benefit”. The documents were tax records they were bound by law to retain
- “The fact that this storage could have been continued at other venues does not render storage at the warehouse of no practical benefit”.
- Use as a warehouse wasn’t required for occupation to exist
- The records must have been of some value to the occupier (legally required to be kept)

Value of Occupation

- **LCC v Hackney (1928)** – Abandoned goods (a mangle & some cupboards left in an industrial school) do not meet the test of beneficial occupation
- **Appleton v Westminster (1910)** – Goods of small value (£5) to the ratepayer does amount to beneficial occupation (rate liability was £60 for half a year).

Sunderland Case

- Sunderland City Council v Stirling Investment Properties LLP (2013)
- 1500 sq m unit constructed for industrial warehousing with office accommodation – split into 2 hereditaments
- Vacant hereditament – Warehouse and Premises
- Used by Complete Mobile Marketing Ltd from 20 May 2011 – 1 July 2011 inclusive (43 days) to locate a “blue tooth box” in. Lease for this period.
- The box, approx 100 x 100 x 50mm, was placed in the corner of the premises to perform marketing and advertising functions.
- 6 months empty exemption once box was removed?

Sunderland Case

- 1789 messages were delivered to blue tooth enabled devices within a transmitting range of around 20 metres. The messages were from Crimestoppers and CMML and did not generate revenue.
- In his evidence the Director of CMML said he was building a national network at which point the company would have revenue from national companies using the network to transmit advertisements.
- District Judge held that the occupation was potentially of benefit to CMML (even though the occupation was not that of a warehouse) and that they were in rateable occupation.

Sunderland Case

- In the High Court it was claimed the occupation could not be beneficial as it was not occupied as a warehouse
- High Court ruled CMMML were in rateable occupation
- There is “nothing in the legislation which limits the ability of a local authority to levy rates to occupation for a purpose which is identical to the description of the hereditament in the rating list” - mirrors Makro
- “Although the rent paid by them was nominal, the outgoings, in terms of their accepting liability for rates, were not. This reflects the value, or potential value, to them of the lease and their occupation of the premises”.
- Seems to go against the definition in Laing?

Exclusive Occupation

- Each rateable occupier must be able to demonstrate exclusive occupation and it must be clear that the occupier has a use of the premises which is not shared by another.
- Furthermore the occupier must be able to prevent another from using the premises for the same purpose.
- There can still be exclusive occupation when the interests of the occupiers are subject to terms and conditions and others have distinct and independent use of the premises.
- Paramount Control
- Degree of Control

Westminster City Council v Southern Railway Co, Railway Assessment Authority and W H Smith & Sons Ltd (1936)

- Should kiosks and shops on Victoria Station be included in the railway station assessment or be rated separately?
- Held that they were **capable of separate assessment**
- Decision focused on not who had paramount control over the station or the control exercised by the station over the kiosks, but **who had paramount control of the kiosks themselves.**
- What control does landlord exercise over the property?
- If paramount control over the use of the property rests with either party this may lead to occupation. However control over access only would be insufficient to effect occupation.
- Immaterial that right to occupy is by tenancy/lease/licence
- Examine what is actually happening not what should be

Exclusive Occupation

- **William Press & Sons Ltd v Cayford (1973)**
- Construction buildings within the perimeter of Holder Gas Station to be used during refurbishment.
- Gas Board was in rateable occupation because it had control of the building & the occupation of it.
- **Soldier, Sailors and Airmen's Families Association v Merton Corporation (1966)**
- Charity owned a block of flats and used by the widows & unmarried daughters of deceased officers of the armed forces. Men were not allowed on the premises and if a woman married they had to leave. It was found that the degree of control exercised by the charity was greater than that expected from a commercial landlord and that since the occupation of each resident was subordinate to the Association, the Association was held to be in rateable occupation.

Exclusive Occupation

- **Stringer (VO) v J Sainsbury and Others (1991)**
- Use of cash machines within a supermarket complex. It was held that the room containing the cash machines should be included within the supermarket assessment. The reasoning being that the room was under the direct control of the supermarket and not the banks.
- **Blake v Hendon Corporation (1965)**
- A bowling green within the grounds of a local public park was let out to a private bowls club which restricted access to the general public. It was held that the bowling green had exclusive occupation and was therefore liable.

Non Transient Occupation

- Transience of occupation does not relate to short occupations which generate liability on a daily basis, but to the time for which a hereditament exists.
- **Sir Robert McAlpine & Sons Ltd v Payne (1969)**, building huts on site for six or seven months were found not to be rateable as it was deemed not long enough to satisfy the requirement of “permanence”. However in **London County Council v Wilkins (1956)**, builders huts that remained on site for over twelve months were held to be rateable.

Non Transient Occupation

- Regularity of Occupation:
- **Hall v Darwen Corporation and Silcock Bros. (Amusements) Ltd (1957)**
- Had the right to hold a fair at any time on a piece of land. Only used it for this purpose for a week twice a year but were held to be in rateable occupation - sufficiently permanent.
- **Hayes v Loyd (1985)**
- House of Lords held that 2 fields which were part of a farm were not exempt from rating, since they were used for a point to point horse race meeting on Easter Monday each year

Non Transient Occupation

- Impact of Occupation:
- **Dick Hampton (Earth Moving) Ltd v Lewis (1975)**
- Quarrying operations lasting for six months, involving the extraction of gravel for motorways were held to be in rateable occupation.
- Lord Denning stated that the borrow pits were as permanent as anything could be and the matter could not depend on whether or not the operations carried on for less than twelve months.

Seasonal Occupation

- **Gage v Wren 1903**
- Lodging house not used during the winter period, all furniture was removed but some fixtures and fittings remained. The tenant did not reside there for the whole period in question but was still found to be in occupation and therefore rateable.
- **Southend-on-Sea Corporation v White 1900**
- A shop which only traded during the summer season. During the winter all stock was removed although certain fixtures remained, it was held that there was occupation for the full year.

Servants, Agents & Caretakers

- Employer provides accommodation for their staff so the employee can carry out their job. If the accommodation is occupied by the employee on behalf of the employer the employer is rateable.
- **R v Field (1794)** - a private room within a school building provided for use by a matron was held not to be in rateable occupation.
- If accommodation is provided by the employer merely for the employees benefit the employee is liable:
- **R v Catt (1795)** a schoolmaster was held to be the rateable occupier of a house provided as part of his remuneration.
- **Kent CC v Ashford Borough Council & other (1999)** determined that locally managed schools remained for all purposes local education authority schools.

Clubs

- **Proprietary Club** - the proprietor is liable.
- **Incorporated Members Club** - the corporate body is liable.
- **Club Registered under The Friendly Societies Acts** - the club is liable and liability rests with either a Trustee of the Club or any Officer of the club.
- **Un-incorporated Members Club** - the responsible person should be a member of the club and should be billed in his/her own name as an occupier or joint occupier
- **Verrall v Hackney LBC 1982** - it was held that the mere fact of membership of a club did not give rise to liability base on occupation, therefore the common practice of billing in the name of a committee member became questionable.

Advertisement Rights

- A right is considered to be a hereditament if it is a right to use any land for the purpose of exhibiting advertisements and
- the right is let out or reserved to any person other than the occupier of the land, or
- where the land is not occupied for any other purpose, the right is let out or reserved to any other person.
- The hereditament is to be treated as occupied by the person entitled to the right.

Advertising Rights

- **O'Brien v Secker (VO) (LT) 1995**
- An advertising right let out on agreement to a ratepayer who was not the occupier of the flank wall on which it was placed **was rateable** despite the fact that planning permission had not been given to use the wall for that purpose requiring its removal.