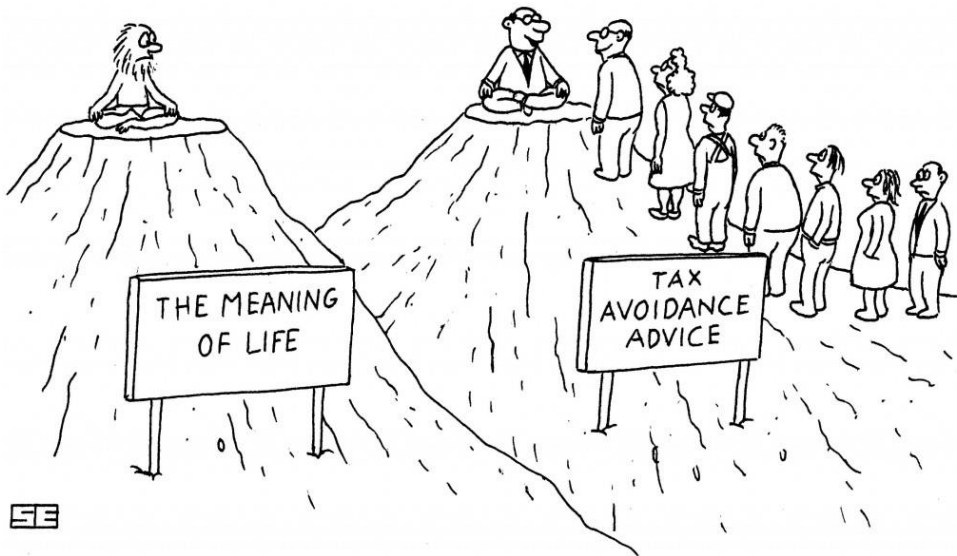


GREENHALGH KERR

Business Rates Avoidance

....challenges in enforcement



Richard Kerr

Drivers for avoidance:

- Commercial property market
- Loopholes in relief schemes
- Fees to be made
- *Perception* that councils are a soft touch
- It's here the foreseeable

Preliminary Considerations

- New occupier checklist?
 - Full name and contact details
 - Copy lease/licence
 - ID?
- Burden of proof
 - Ratford v North Haven Council
 - Not the council's role to prove the landlord liable
- Make sure the correct process is followed – service
 - Brighton v Handon
 - Very difficult to set aside NDR liability orders
- Costs
 - Bradford v Booth – reasonable steps in execution of statutory duty

Makro schemes

- Principled JR application – issue of summonses
- Attempt to broaden the definition of beneficial occupation
- Beneficial occupation “*sufficiently present where the intention is to occupy for reward, without any further commercial or other purpose*”.

Makro schemes

“The purpose of the occupation is not to store goods; it is, so to speak, to plant the occupier’s flag; to populate the premises to whatever extent is required to occupy it in law and fact. The reason why that is done – the motive, if you prefer – is rates avoidance for the landlord, but the morality of that is neither here nor there.”

“Is the third element – that possession is of some value or benefit to the possessor - present where the value or benefit is the occupancy itself? That is the question to be decided. Having reflected on this, I cannot see any good reason why, if ethics and morality are excluded from the discussion, the thing of value to the possessor should not be the occupancy itself.”

Makro schemes

- Appeal? Permission been granted
- DCLG involvement
- Legislative intervention?
- The end of Makro! Anyone can run mitigation now?
- Welsh government review

MVLs

- New and improved versions!
- States on front of lease purpose of mitigating rates (re sham argument)
- Occupy for 2-3 weeks before going into MVL
- Challenged by insolvency service BIS v PAG Management Services [2015] EWHC 2404
- Appeal abandoned

MVLs

- Potential alternative challenge
- Seek removal of liquidator S.108 IA 1986
- Argument that scheme is an abuse of insolvency legislation
- Expert evidence on value of lease
- Council as an interested party to the liquidation
- Quick and relatively straightforward

Charitable occupation

- Most schemes now using empty relief
- Recently considered in *South Kesteven v Digital Pipeline* [2016] EWHC 101 (Admin)
 - Broad brush approach required when considering wholly or mainly – no point in calculating % - Use *not* purpose
- *Preston CC v Oyston Angel Charity* [2012] EWHC 2005 (Admin)
 - Charitable purposes of any secondary charity must include the charitable object of the currently owning charity
- Very hard to allege sham (to pursue Landlord – involves finding of dishonesty) and so becomes a damage limitation exercise

Charitable occupation

- Evidence to look for:
 - Inspections of any occupation
 - Marketing of events
 - Fundraising (why raise awareness if not to lead to donations?)
 - Business plan for intended occupation
 - Funding available for any plans
- If the charity is an un-incorporated trust, the trustees are personally liable for the debts

Empty Property Review

Common signs to look for:

- Property empty (supported by inspection reports)
- One or a number of limited companies put forward as tenants
- Tenant companies filing little or no documents at Companies House / dormant accounts / dissolved
- No payment received and enforcement agents unsuccessful

Empty Property Review

What can be done?

- Initial enquiries with the landlord
 - Signed lease
 - Pre-contract correspondence
 - Rent/utilities/insurance
- Interview neighbouring properties
- Review evidence and consider re-billing
- No argument on delay / existing LOs no barrier
- Keep under review if evidence disclosed during proceedings



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