

Welcome to Landmark Chambers'
Annual Rating Conference 2024

Thursday 14 November

Introductory remarks



Lord Carnwath



Dan Kolinsky KC



Introductory remarks

A Short History of Rates Part 2 (2015-2024)



Dan Kolinsky KC



Unusual times

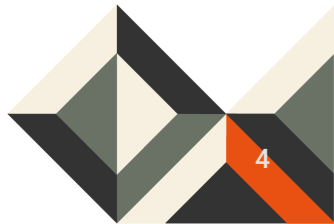
Supreme Court established 1 October 2009

Its first rating case was Woolway (VO) v Mazars (2015)

Before then the previous House of Lords rating case was Gallagher (VO) v Church of Jesus Christ of the Latter-Day Saints [2008] UKHL 56 and there was only one other 21st century House of Lords rating case Edison First Power in 2003)

2000-2014 – 2 rating cases in 14 years

2015-2024 – 8 rating cases in 9 years!



The rating world before 2015

Stability

- full time long serving President of Lands Tribunal (UTLC)
- Low level of billing authority activism (rates retention authorized from 2012)
- VOA objective to “get the right answer”

Few CA cases and even fewer HL cases

Gilbert (VO) v Hickenbottom – all things to all people

hereditament and rateable occupation treated as fact sensitive questions to which a settled legal framework applied



Causes of litigation boom (ideas for discussion)

More fluidity in the Upper Tribunal?

Bolder Court of Appeal decisions?

Change in litigation strategies at HMRC/variety of advice?

Increased burden of NDR on ratepayers?

Increased billing authority pressure?

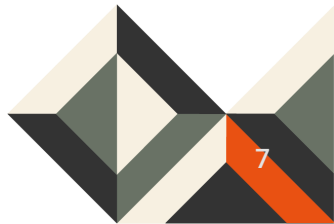
Increased interest in NDR by Supreme Court?

Feedback loop? Did Woolway and/or Monk set off chain reactions?



A decade of clarity?

1. Woolway [2015] – approach to hereditament as a unit of assessment
2. Monk [2017] – repair assumption for building undergoing refurbishment
3. Iceland [2018] – treatment of class 2 plant (used as part of a trade process)
4. UKI Kingsway [2018] – service of completion notice
5. Telereal Trillium [2019] – approach to demand in valuation hypothesis
6. Cardtronics [2020] – ATMs and rateable occupation (landlord control)
7. Rossendale [2021] – purposive approach to “person entitled to possession”
8. Nuffield [2023] – public benefit and charitable relief



Themes

Recurring reliance on historical analysis (Iceland, Nuffield Health)

Decisions usually unanimous except (Telereal Trillium and some differences of emphasis in Woolway)

The influence of Lord Carnwath (retired after Cardtronics)

Frequent reversals of the Court of Appeal (overturned in cases except Cardtronics, Nuffield Health)

Decisions lead to legislative responses

- PICO 2018 [Rating (Property in Common Occupation and Council Tax (Empty Dwellings) Act 2018]
- s.7 of the Non-Domestic Rating Act 2023 (expanded use of completion notices where no structural work)



Woolway

2nd and 6th floor of multi-storey office building

RP argues single hereditament (to gain a quantum discount)

VO litigation aim – conceptual certainty and rigour instead of Gilbert v Hickinbottom smorgasbord

Supreme Court judge – draws on Scottish caselaw to set out a principled approach to identification of the hereditament (primarily a geographical test)

Butnuances in approach of the Justices

The problem of adjoining floors..... leading to front page tabloid (“staircase tax”) headlines andPICO ‘18



Monk

Building undergoing refurbishment

VO testing interpretation argument which is discordant with accepted wisdom

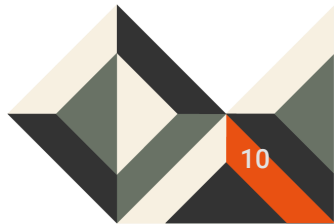
Court of Appeal judgment – draws on property law in unexpected way

Intervention from RSA and BPA

Judgment of Supreme Court

- Draws on parliamentary speech/legislative history
- Reinstates purpose of legislative reform
- Sets out principled analysis of the relationship of identification of the hereditament, the valuation hypothesis and the rebus principle

But...limited acceptance by VOA – rating manual and sequel litigation (Canary Wharf (UTLC) and ongoing cases). VO practice favours deletion to “unobjectionable practice” (problems result in s.7 of NDRA 2023).



Iceland Foods Ltd v Berry (VO)

Interpretation of “trade process” in proviso to service plant in P&M Regs 2000

Supreme Court reverses UTLC and CA (linguistic) interpretation

Analysis draws heavily on legislative purpose as derived from Wood Committee (1993) and earlier legislative process going back to 1925 (Shortt Committee and Neville Chamberlain’s speech)

SC draws the position together with clarity and links in with previous caselaw and valuation practice in England (and Scotland)



Cardtronics

Litigation aims – solve how ATMs should be identified in rating list ; VO treat Southern Railway case as supporting smallest unit approach (but atomisation?)

UTLC approach – workable in practice (internal/external) but lacking in conceptual certainty (challenged by both sides)

CA and Supreme Court – expand role of the landlord control principle (SC limits significance of Southern Railway) (context is everything)

SC answers ATM position but may open up issues as to the scope of the landlord control principle in other areas

Ludgate House – on the ground vs legal obligations
2017/2023 rating lists hereditament issues in areas such as offices [Jeopardy of the uncertainty + cliff edge)]
advertisement cases



Rossendale

Rates avoidance scheme – grant of short lease to SPV which is dissolved/put into liquidation (ratepayer relies on reg 4(k) of 2008 Regs)

SC – say claim should not be struck out

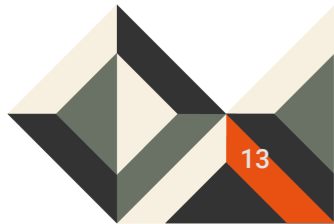
No business purpose and breaches of insolvency legislation

Ramsay = principle of statutory construction

person entitled to possession for s.45 of LGFA 1988 s the person with practical ability to decide whether the property is left unoccupied

SC seek coherence between language and purpose

Draws on statutory background for unoccupied rates



Rossendale (2)

Para 61 – value of legal certainty does not extend to construing legislation in a way which will guarantee the effectiveness of transactions undertaken solely to avoid liability which the legislation seeks to impose

Strong purposive approach (common in broader taxation context)

But:

Unclear (and unaddressed) how this relates to Makro caselaw

Reliance on Rossendale failed in argument in Nuffield Health (different legal, policy and factual context)

New radical approach or confined to (extreme) facts of case?



Nuffield Health

- approach to mandatory charitable relief
- Public benefit is considered across the activities of the charity as a whole not just at the hereditament
- Reasoning aligns rating with charity law
- Examination of legislative history (Pritchard Report (1959) is a key part of the reasoning)
- LBM's argument based on Rossendale rejected as different legislative history and purpose
- Supreme Court explains approach to s.43(6) of LGFA '88 which aligns with the statutory purpose of providing a generally simple, predictable and consistent answer to the question of whether the charity occupier should have rating relief (avoiding complicated and counter-factual enquiries – see para 55)



Where are we now

Some clarity...some new layers of legislation.....some things to work through.....

Landlord control principle – how does it apply in other contexts? How bumpy will the process of discovering this be?

Is Rossendale an unusual (extreme) case or a blueprint for a purposive approach to the construction of rating legislation?

Has Monk been accepted and implemented properly?

An understanding of history and precise policy has been the key to the decision in many of these cases (especially Monk, Iceland, Rossendale, Nuffield Health)

Is the era of an unusual number of Supreme Court cases over?



“Who then in law is my neighbour?": locality and material change of circumstances

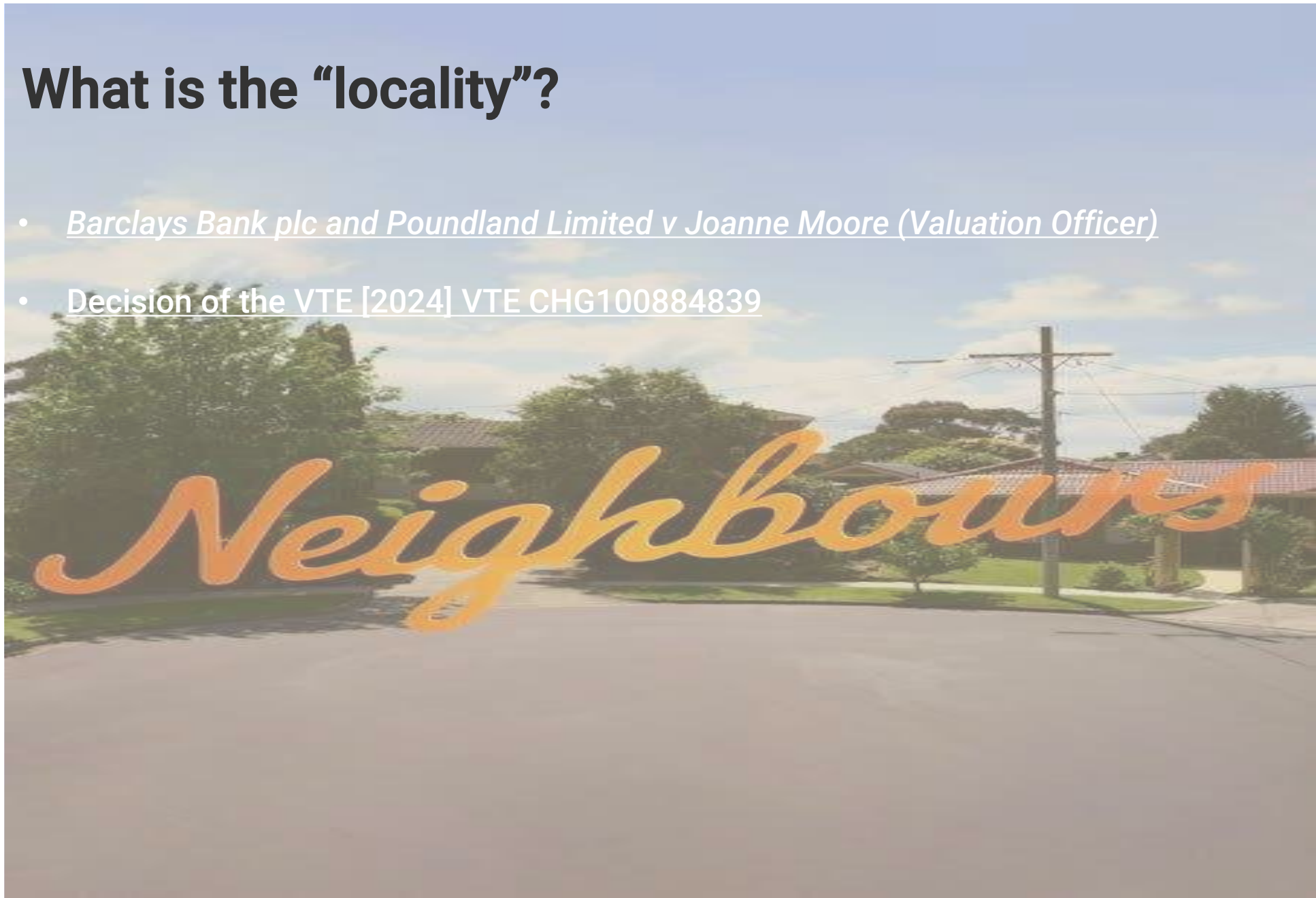


Evie Barden



What is the “locality”?

- *Barclays Bank plc and Poundland Limited v Joanne Moore (Valuation Officer)*
- Decision of the VTE [2024] VTE CHG100884839



Paragraph 2(1) of Schedule 6 to the 1988 Act

The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions—

(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

(b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;

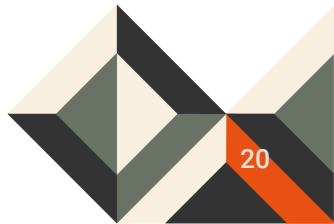
(c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.



Paragraph 2(7)

The matters are—

- (a) matters affecting the physical state of the hereditament,
- (aa) matters affecting the physical enjoyment of the hereditament,
- (b) the mode or category of occupation of the hereditament,
- (c) the quantity of minerals or other substances in or extracted from the hereditament,
- (cc) the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,
- (d) matters affecting **the physical state of the locality** in which the hereditament is situated,
- (da) matters which, though not affecting the physical state of the locality in which the hereditament is situated, are nonetheless physically manifest there, and
- (e) the use or occupation of other premises **situated in the locality** of the hereditament.



Previous decisions

- *K Shoe Shops Ltd v Hardy (VO) [1980] R.A. 333* (Lands Tribunal): “an area within which it was likely there would be sufficient rental evidence to produce a reasonably expected rent, and outside which the reasonably expected rent might be different. ”
- *Jafton Properties Ltd v Prisk (VO) [1997] R.A. 137* (Lands Tribunal): the locality was not bounded by a distinct line but was an area within which the physical factors may affect the value of a hereditament and where there were similar buildings to satisfy the demands of a potential occupier.



Valuation Office Agency Rating Manual

"14. Locality

14.1 Both sub-paragraphs (d) and (e) require the change to be within the locality of the hereditament. Locality is not defined in the 1988 Act or in earlier legislation. It is therefore necessary to rely on case law.

[...]

14.6 Thus the Lands Tribunal noted in several of the cases that 'locality' is an imprecise term and not something for which it would wish to provide a general definition. What is the locality for any case will depend on the facts of the case."



Market Place Kettering: The Ultimate Retail Space in Kettering – Where Your Dreams Can Come True!

🌟 **Location:** Kettering Town Centre – The Place to Be (or Be Seen)!

🌟 **Price:** Let's Talk – Because Who Doesn't Love a Bargain?

🌟 **Why You Need This Space:**

- **Prime Spot** – Right in the heart of Kettering, where the action is... or at least, where it could be if you bring your A-game.
- **Foot Traffic** – Let's be honest, the more foot traffic, the better. This unit sees enough feet to make a shoe store blush.

🌟 **Ideal for:**

- A quirky boutique with clothes nobody really needs but everyone wants.
- A pop-up business that's one cool Instagram post away from viral fame.
- An oddity shop filled with taxidermied squirrels and antique typewriters (we're not saying *you* should do that, but... we'd probably shop there).

🌟 **Bonus Features:**

- **Kettering Vibes** – The only place where you can get your morning coffee, shop for a used vinyl, and hear an impromptu street performance all within a 10-minute walk. What's not to love?
- **Flexible Lease Terms** – Whether you're here for a month or a decade, we'll make it work. We're cool like that.

🔥 **Warning:** This space is not for the faint of heart. If you're into plain, sterile retail boxes with zero character, this isn't for you. But if you're ready to take Kettering by storm (or at least get some decent foot traffic and a few likes on your Insta), we want to hear from you.

📞 **Call us today!** Let's make your retail dreams come true (or at least, make them *super* interesting).



TO LET: Prime Retail Unit at Rushden Lakes Shopping Centre



👁️ Looking to leave Kettering in the dust? Well, we've got just the place for you! Welcome to **Rushden Lakes Shopping Centre**—where even the birds have better shopping than Kettering. 🤪

🌳 **LOCATION:** Nestled in the heart of the stunning Rushden Lakes, this retail unit offers more than just foot traffic – it offers *traffic in style*. Take that, Kettering!

💡 **FEATURES:**

- Modern, spacious retail unit ready to house your next big idea – whether it's a trendy café, a clothing brand, or an inflatable unicorn store (we don't judge).
- Views that will make Kettering's town centre look... well, like Kettering's town centre. 🏠
- A crowd that's into more than just shopping—get ready for outdoor enthusiasts, leisure lovers, and people who just want to be seen in something vaguely fashionable.

🛒 **WHY RUSHDEN LAKES?:**

- Kettering is nice... but this is the future, baby. 🚀
- Surrounded by nature reserves, eateries, and a *seriously* large lake where you can pretend to be tranquil while secretly hoping to outdo your Kettering competitors. 🌿

⚡ **AMENITIES:**

- Parking? More spaces than Kettering has had retail openings in the last decade. 😊
- Air conditioning, WiFi, and a place where the only thing you'll sweat about is *how fast your sales will climb*.

📞 Call us today for a viewing! Don't wait, or the only thing you'll be *looking at* is Kettering's lack of retail options. 😊

VO's arguments

- Although custom and practice of VO had historically been to concede MCC allowances where physical changes related to developments some distance from the appeal property, “locality” was not defined in the statute and the question was free from authority.
- “Locality” meant the vicinity or the neighbourhood which was in a reasonable walking distance of the appeal properties.
- The proper construction of the word was in line with dictionary definitions, would satisfy a practical definition with which to apply the statutory provisions and be easy to apply.



VTE's decision

- “I was somewhat taken aback by the apparent disownment of several decades of custom and practice and guidance from the learned authors of the Valuation Office’s own Rating Manual”: para 37.
- “We are no longer living in the middle ages when towns and cities were much smaller”: para 41.
- “A more purposive approach as opposed to the narrow interpretation of what locality means had to be applied”: para 43.
- “Locality cannot legitimately be restricted to what constitutes a reasonable walking distance from the appeal properties”: para 50.



Where does that leave us?

1. “Impossible” to have hard and fast rules.
2. Commonsense / purposive approach.
3. Following will be relevant:
 - a) Nature of the retail hereditament – how will that property be affected by an out of town retail park?
 - b) What is the shop’s catchment area and from where is its regular clientele drawn?
 - c) Does the out of town retail park compete for the same customers?
 - d) How far are travelling distances to the retail park by car / other methods of transport?



General control and the boundaries of the hereditament



Jacqueline Lean



The hereditament

- “A hereditament is anything which, by virtue of the definition of hereditament in section 115(1) of the 1967 Act, would have been a hereditament for the purposes of that Act had this Act not been passed.” (S.64(1) Local Government Finance Act 1988)
- “ “Hereditament” means 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” (S.115(1) General Rate Act 1967)
- “Whether a hereditament or land is occupied, and who is the occupier, shall be determined by reference to the rules which would have applied for the purposes of the 1967 Act had this Act not been passed (ignoring any express statutory rules such as those in sections 24 and 46A of that Act).” (S.65(2) LGA 1988)





Exeter Cathedral Misericord
C. 13th

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“The hereditament” : ‘recent’ consideration by the higher courts

- *Woolway v Mazars* [2015] UKSC 53
- *Cardtronics UK Ltd v Sykes* [2020] UKSC 21
- *Ludgate House Ltd v Ricketts* [2021] 1 WLR 1750



Woolway v Mazars

- Sumption JSC at [4]: *“But notwithstanding more than four centuries of experience, the question how a hereditament is to be identified for rating purposes remains in important respects unclear”.*
- 3 broad principles (Sumption JSC at [12]):
- Primary test is geographical, based on virtual or cartographic unity
- Where two spaces are geographically distinct, functional test may 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” (Q: could the two reasonably be let separately?)
- Whether the use of one 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”



Cardtronics UK Ltd v Sykes

- Were the ATMs capable of identification as separate hereditaments?
- “[The retailers] submitted first that the boundaries of a hereditament could not be defined by reference only to the presence of a piece of machinery which was not itself liable to be rated. If the ATM was to be ignored, there was nothing to identify the area said to constitute the hereditament, as it was otherwise indistinguishable from any other part of the floor area of the host store. Secondly, it followed from the inability to define the area of the purported hereditament that the geographical test in *Woolway v Mazars* could not be satisfied.”
- UT considered that, in principle, an item of non-rateable machinery such as an ATM should not be ignored when determining whether a separate hereditament exists (statutory assumption applies only for valuation purposes). CA agreed. SCt agreed.
- Self-contained hereditament? Retailers argued no – not self-contained, and un-usable without extensive use of adjoining parts of host store
- UT disagreed: “Once a machine has been installed, there should... be no difficulty in defining the boundaries of a fixed ATM site with sufficient precision to satisfy the geographic test of self-containment”. CA agreed. SCt agreed.



Cardronics UK Ltd v Sykes

- Rateable occupation: paramount / general control
- Per Lord Carnwath JSCAt [14], citing *Holywell Union Assessment Committee v Halkyn District Mines Drainage Co* [1895] 117 at 126:
 - “... Where a person already in possession has given another possession of 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...”
- At [17] citing *Westminster Council v Southern Railway Co* [1936] AC 511:
 - “... The general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in occupation by himself or his servants) retains to himself general control over the occupied parties; the owner will be treated as being in rateable occupation; if he retains to himself no control, the occupiers of the various parts will be treated as being in rateable occupation of those parts”
- Retailers remained in occupation of both internal and external ATM sites (CA & Sct disagreeing with UT on external sites)



Ludgate House Ltd v Ricketts

- The (first) property guardians case
- Q: were the guardians in rateable occupation of their individual rooms, or was owner in paramount occupation of the whole?
- A: No
- Key factors in that case:
 - The terms of the contracts;
 - The purpose for which the property was occupied was “a common purpose which of direct benefit to [the owner] and VPS”
 - The owner/VPS retained “at least contractual control” over the building to realise that benefit
 - The fact some guardians had keys to individual rooms was not legally significant.



Consideration by VTE / UT (LC)

- *FC Brown Steel Equipment Ltd v Hopkins* [2022] UKUT 51 (LC)
- Two industrial properties separated by a road but connected by a substantial conveyer bridge were a single hereditament – applying *Woolway*
- *Harding v Secretary of State for Transport* [2017] UKUT 135 (LC)
- Two plots of land separated by a road treated as a single hereditament (in the context of a blight notice) on the application of the functional test – applying *Woolway*.
- *Wrexham Homes Ltd v Morley* [2024] RVR 31 (VTE)
- Two car parking spaces within a Pay and Display car park licensed to residents of a nearby building were not ‘contiguous’ with other spaces in the car park (for the purposes of s.64(3ZA)-(3ZD) LGFA 1988 where separated by an access way within the car park (and Appellant had not met burden of proof with regards to occupation)



Consideration by VTE / UT (LC)

- *Zhylzhaxynova v Moore* [2024] UKUT 204 (LC)
- Warehouse and mezzanine office let to one company (QPL) which used office with warehouse used by a second company (QNP Toys) both run by Appellant. Warehouse and office not self-contained but could be separated (so geographical test not conclusive). QPL (as lessee) was in occupation of the whole unit and remained in paramount control (QNP Toys did not have exclusive possession of warehouse: it was a licensee, could be required to leave at any time, and had no control over the warehouse).
- *Prosser v Ricketts* [2024] 264 (LC)
- Barristers' rooms within Chambers individual hereditaments or a single hereditament? Common ground that each of the rooms was capable of forming a separate hereditament. Key issue was who was in paramount control. UT held that MoC were in joint occupation of the whole of the Appeal Premises (so individual MoC were not in rateable occupation of separate rooms). If UT had had to consider paramount occupation, it would "have no difficulty" in treating the arrangement analogously to lodgers or ATMs.



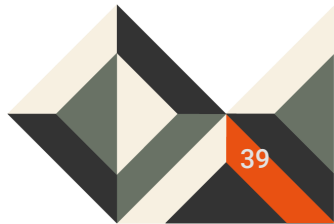
Advertising rights

- S.64(2) LGFA 1988:
- “In addition, a right is a hereditament if it is a right to use any land for the purpose of exhibiting advertisements and—
- (a) the right is let out or reserved to any person other than the occupier of the land, or
- (b) where the land is not occupied for any other purpose, the right is let out or reserved to any person other than the owner of the land.”
- S.64(11):
- “In subsection (2) above “land” includes a wall or other part of a building and a sign, hoarding, frame, post or other structure erected or to be erected on land”



Advertising rights

- S.65 LGFA 1988:
- “(8)A right which is a hereditament by virtue of section 64(2) above shall be treated as occupied by the person for the time being entitled to the right.
- (8A)In a case where—
- (a)land consisting of a hereditament is used (permanently or temporarily) for the exhibition of advertisements or for the erection of a structure used for the exhibition of advertisements,
- (b)section 64(2) above does not apply, and
- (c)apart from this subsection, the hereditament is not occupied,
- the hereditament shall be treated as occupied by the person permitting it to be so used or, if that person cannot be ascertained, its owner.”



Advertising rights: *Network Rail*

- *List v Network Rail Infrastructure Ltd* [2024] ULUT 351 (LC)
- Digital advertising rights in respect of a static box (approx. 6 x 1.6m) above the central concourse at Victoria Station and a digital “transvision” installation attached to upper level pedestrian walkway over the Broadgate Circus exit from Liverpool Street Station (approx. 4 x 2.3m)
- Sites made available by Network Rail to J.C. Decaux under the terms of a Rail Advertising Concession Agreement, which gave JCD (subject to other provisions of the Agreement) “the exclusive right to maintain, manage, promote and exploit the sale of Advertising Space”, being specified physical structures at 18 railway stations.
- Entered on the local lists as hereditaments in their own right with RVs of £83,000 and £77,500 respectively. NR made a proposal to alter the list so as to include them as part of its single hereditament on the central list.



Advertising rights: *Network Rail*

- The “essence” of the issue before the UT: did the same principles that had developed in respect of the definition in s.64(1) apply to rights under s.64(2) and (2A) LGFA 1988?
- Specifically:
 - “whether, for an advertising right to be “let out” within the meaning of s.64(2), the characteristics of the right and the way it is exercised must be comparable to the rateable occupation of other forms of hereditament”; and
 - “where an advertising right is exercised in respect of a site which is in the occupation of someone else, is it relevant to consider the “landlord control” principle and to determine whether the owner of the right or the occupier of the site is in paramount occupation?”
- VO: ss.64(2) and 65(8) create a specific statutory framework distinct from the general regime in s.64(1) and 65(2)
- NR: S.64(2) should be construed consistently with established principles of rating law and the normal approach to hereditaments occupied by more than one person



Advertising rights: *Network Rail*

- UT considered the VO's approach was correct:
- Supported by structure of ss.64(1) & (2), and s.65 ([42]-[43])
- UT did not consider that the metaphor of 'carving out' of advertising rights or 'separation from' the single hereditament in the central rating list was a helpful one (central list was an amalgamation of individual hereditaments treated as if they were a single hereditament) ([47] – [49])
- As to the term "let out", previous authorities were not particularly helpful ([52] – [55]),
- Ultimately, "let out" was not a term of art ([57]), and, by reference to *Southern Railways* "the crucial question must always be that in fact is the occupation in respect of which someone is alleged to be rateable and it is immaterial whether the title to occupy is attributable to a lease, a licence or an easement".



Advertising rights: *Network Rail*

- As far as advertising hereditaments were concerned, the issue of rateable occupation had been dealt with by Parliament in s.65(8) [59];
- It was not necessary to apply the landlord control or paramountcy principles to determine who was in occupation. If NR's arguments were correct, that would in effect seek to introduce those principles into the earlier stage (i.e. identifying whether a separate hereditament existed under s.64(2)). "If Parliament had intended the landlord-control principle to survive in relation to advertising hereditaments it need not have enacted s.65(8) at all" [59]
- As a matter of statutory interpretation, VO's argument was preferred [60]
- UT not convinced, in any event, that had it had to consider paramount control that NR had retained paramount control of the advertising rights, having regard to the Agreement [61]-[62]
- UT also not persuaded by the practicality arguments in terms of implications for other stations [65]



Advertising rights: *J C Decaux*

- *J C Decaux UK Ltd v Bunyan* [2024] RA 249 (VTE)
- Six-sheet digital freestanding advertising rights operated by JCD situated in car parks at Tesco Supermarkets. Single hereditaments or part of the Tesco Superstore hereditament? VTE held that they were separate hereditaments:
- Advertising rights were incorporeal, so would often be attached to land of another, so little weight attached to the fact they were located on Tesco's land;
- Normal rules of rateable occupation did not apply, and issues of paramountcy were not engaged because of the deeming provisions in s.65(8) LGFA 1988
- On the facts, the agreements in place clearly evidenced that the advertising rights were let out to JCD and control reserved to Tesco was not such as to negate any right to reservation or let out
- Even if the normal rules of rateability applied, the agreement did not indicate that Tesco was in paramount control



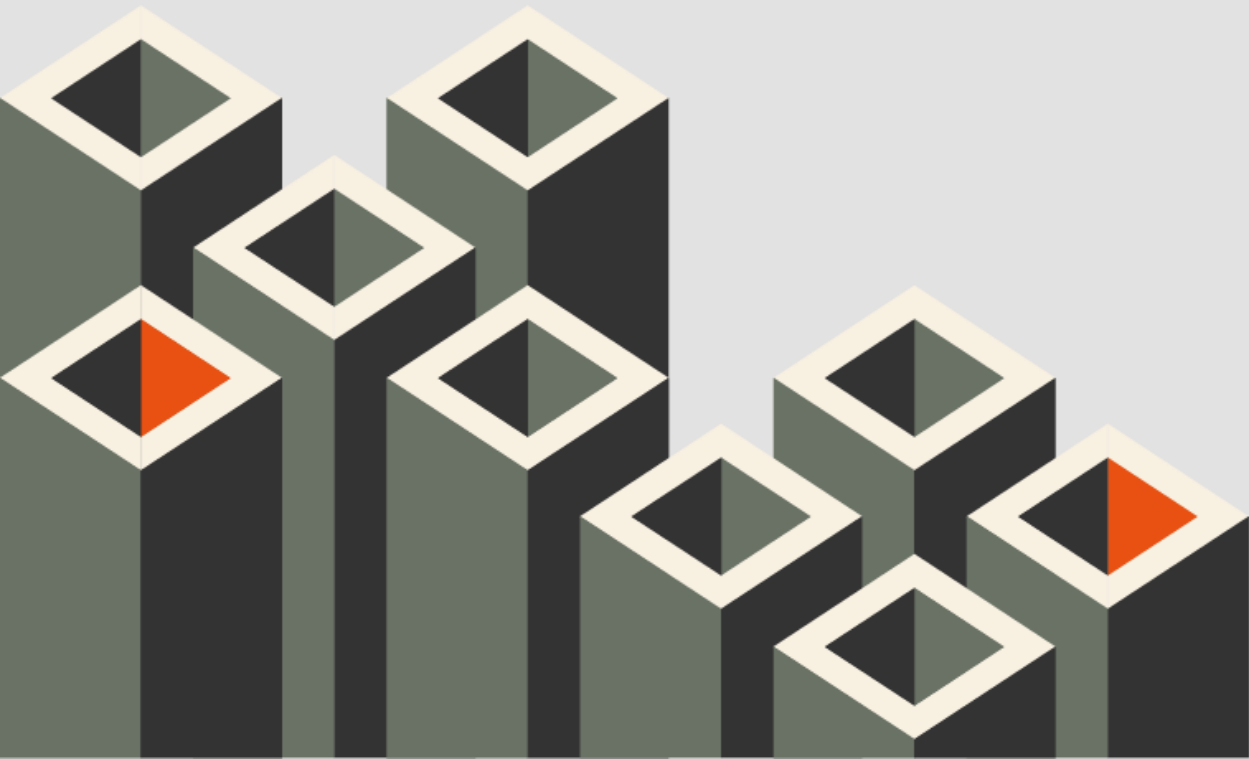




Q&A



Refreshments



The Agricultural Exemption



Julia Smyth



Kate Traynor



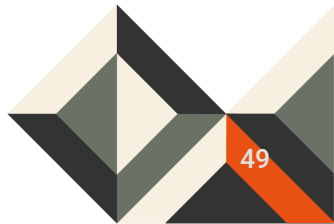
Section 51 and Schedule 5 of the LGFA 1988

Section 51 of the Local Government Finance Act 1988 (“LGFA 1988”) provides:

“51. Exemption.

Schedule 5 below shall have effect to determine the extent (if any) to which a hereditament is for the purposes of this Part exempt from local non-domestic rating.”

There are 15 exemptions from non-domestic rates contained in Schedule 5, with paragraphs 1-8 making provision for agricultural premises.



Paragraph 1, Schedule 5 to LGFA 1988

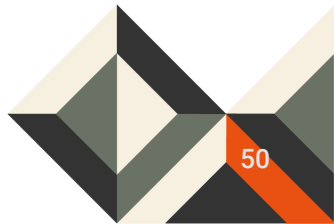
Paragraph 1 of Schedule 5 to the LGFA 1988 provides as follows:

1. A hereditament is exempt to the extent that it consists of any of the following-

(a) agricultural land;

(b) agricultural buildings.

It is possible that certain buildings or land benefit from the exemption and others do not: *Gallagher (Valuation Officer) v Church of Jesus Christ of LatterDay Saints* [2008] 1 WLR 1852 at [38].



Paragraph 2, Schedule 5 to LGFA 1988 – agricultural land

2. (1) Agricultural land is-

- (a) land used as arable, meadow or pasture ground only,
- (b) land used for a plantation or a wood or for the growth of saleable underwood,
- (c) land exceeding 0.10 hectare and used for the purposes of poultry farming,
- (d) anything which consists of a market garden, nursery ground, orchard or allotment (which here includes an allotment garden within the meaning of the Allotments Act 1922), or
- (e) land occupied with, and used solely in connection with the use of, a building which (or buildings each of which) is an agricultural building by virtue of paragraph 4, 5, 6 or 7 below.



Paragraph 2, Schedule 5 to LGFA 1988

(2) But agricultural land does not include-

(a) land occupied together with a house as a park,

(b) gardens (other than market gardens),

(c) pleasure grounds,

(d) land used mainly or exclusively for purposes of sport or recreation, or

(e) land used as a racecourse.



Agricultural land

- Question of fact whether “arable, meadow or pasture ground only” – insubstantial or de minimis use OK
- “Market gardens” – holding cultivated wholly or mainly for purpose of trade or business of market gardening; includes cultivation of ground for production of fruit, veg and flowers, but not keeping livestock or bees. Product must be grown for sale and regularly sold in market.
- *Tunnel Tech Ltd v Reeves (Valuation Officer)* [2015] EWCA Civ 718



Paragraph 3, Schedule 5 to LGFA 1988 – agricultural building

3. (1) A building is an agricultural building if it is not a dwelling and—

(a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land

(b) it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden, or

(c) it is or forms part of a nursery ground and is used solely in connection with agricultural operations at the nursery ground.



Paragraph 8, Schedule 5 to LGFA 1988

8. (1) In paragraphs 1 and 3 to 7 above “agricultural land” shall be construed in accordance with paragraph 2 above.

(2) In paragraphs 1 and 5(5)(b) above “agricultural building” shall be construed in accordance with paragraphs 3 to 7 above.

(3) In determining for the purposes of paragraphs 3 to 7 above whether a building used in any way is solely so used, no account shall be taken of any time during which it is used in any other way, if that time does not amount to a substantial part of the time during which the building is used.

(4) In paragraphs 2 to 7 above and sub-paragraph (2) above “building” includes a separate part of a building.

(5) In paragraphs 5 and 7 above “livestock” includes any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land.'



Examples

The following buildings have been held to be exempt from rates:

- Bottling room at a dairy farm: *Fife Assessor v Balfour's Marriage Contract Trustee* [1970] RA 612 (LVAC)
- Duck rearing farms: *Cartwright v Cherry Valley Farms Ltd* [2003] RA 21.
- Poultry Houses: *Denman (Valuation Officer) v Haylock* (1971) 16 RRC 291
- Bee-keeping building: *Firkins v Dyer (Valuation Officer)* (1972) 17 RRC 363
- The use of a retail warehouse for the storage of agricultural machinery, fertiliser and silage: *Wootton (t/a E F Wootton & Son) v Gill* [2015] UKUT (LC) 0548 RA 49 (Upper Tribunal)
- Egg packing centre, egg packing store and egg warehouse: *Friday Ltd v Bunyan* [2024] UKUT 149 (LC) - coming to this later ...



***Wootton (t/a E F Wootton & Son) v Gill* [2015] UKUT (LC) 0548 RA 49 (Upper Tribunal)**

“41. I am therefore satisfied that Mr Wootton’s motive in using his retail warehouse for the storage of silage and agricultural implements is irrelevant to the issue of whether the building was occupied together with the adjoining agricultural land. In any event I accept Mr Wootton’s evidence that, irrespective of any advantage he might achieve in reducing his liability for non-domestic rates, it was both convenient and beneficial for him to store silage in the building because of the risk of vandalism if it remained outdoors in that location and the distance over which it would eventually have to be transported. The use was temporary and it might fairly be described as opportunistic, while negotiations over the sale of the building to Waitrose continued. I have no doubt that Mr Wootton’s primary motivation was fiscal rather than agricultural, and that he could have carried on his business as he had previously done, but the use itself was substantial, exclusive, beneficial and prolonged and I see no reason to disregard it.”



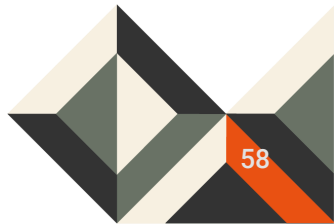
“Agricultural operations”

There is no definition of “agricultural operations’, but the phrase has been said to mean operations by way of cultivating the soil or rearing of livestock (*Gilmore (Valuation Officer) v Baker-Carr* [1962] 3 ALL ER 230 at [232], per Lord Denning MR)

The agricultural operations in connection with which the buildings are used must actually be carried out on the land, the mere intention to carry them out is not sufficient: *National Pig Progeny Testing Board v Greenall (Valuation Officer)* [1966] 3 ALL ER 556, 7 RRC 43.

See also:

- *Perrins v Draper* [1953] 1 WLR 1178
- *Corser (VO) v Gloucestershire Marketing Society Ltd* [1981] 1 EGLR 116



Agricultural building – legislative changes

Previous version, until changes made by LGA 2003 – w.e.f. 1 April 2004:

“A building is an agricultural building if it is not a dwelling and—

(a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on the land ...”

Amended by s.67(2) LGA 2003

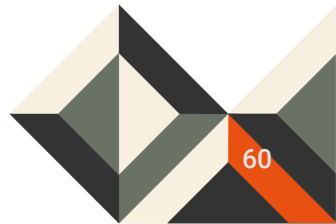


The Explanatory Notes to LGA 2003

The Explanatory Notes to the LGA 2003, as relevant, state:

“122. Schedule 5 to the Local Government Finance Act 1988 sets out the conditions that must be met if land and buildings are to be deemed to be agricultural and thereby entitled to exemption from rates. Section 67 amends the Schedule to reflect modern farming practices so that where farmers work on other agricultural land, perhaps on a share or contract basis, or through the pooling of resources or machinery, the exemption will apply.”

123. Section 67 also amends the Schedule with regard to premises used for ancillary activities such as food processing and packaging. At present, the exemption applies provided that the occupier of the premises is a company and any of the members of that company is an occupier of related agricultural land. The amendments will ensure that the exemption will only apply to such premises where the company is controlled by occupiers of related agricultural land.”



“Occupied together with”

The phrase “occupied together with” was considered by the House of Lords in *Farmer (Valuation Officer) and Hambleton DC v Buxted Poultry Ltd* [1993] AC 369, but before the LGA 2003 amendments. In his speech Lord Slynn of Hadley said:

‘I agree with Glidewell LJ⁶ that for one building to be “occupied together with” another for the purposes of this Act they must be in the same occupation and the activities carried on in both must be jointly controlled or managed. I also consider that the buildings must be so occupied and the activities so controlled and managed at the same time. These are necessary conditions to be satisfied but to satisfy each of them separately or together is not sufficient to establish that one building is “occupied together with” another for rating purposes. Nor is there any geographical test which gives a conclusive answer – though the distance between the buildings is a relevant consideration, as the Court of Appeal held.

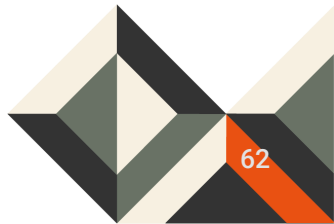
It is not, however, sufficient to ask generally whether the buildings or buildings and land in question are all part of the same business enterprise. What it is necessary to show is that the two buildings, or as the case may be the buildings and agricultural land, are occupied together so as to form in a real sense a single agricultural unit. Contiguity or propinquity may go far to show that they are. Thus farm buildings surrounded by land which is farmed with other land nearby though not contiguous or even land in another neighbouring village may well as a matter of fact be found to be “occupied together with” each other. On the other hand separation may indicate that they are not and the greater the distance the less likely they are to be one agricultural unit.”



“Solely in connection with”

Eastwood Ltd v Herrod (VO) [1971] AC 160, per Lord Morris:

- 378F to G: *“farm buildings surrounded by land which is farmed with other land nearby though not contiguous or even land in another neighbouring village may well as a matter of fact be found to be “occupied together with” each other. On the other hand separation may indicate that they are not and the greater the distance the less likely they are to be one agricultural unit.”*
- 378H, referring to the judgment of Viscount Dilhorne in *Eastwood*, where he said (see 377H): *“My impression on reading the definition of ‘agricultural buildings’ is that it was an attempt by the draftsman to define a farm in statutory language and that it was intended to include buildings used and occupied together with the land for the purpose of farming the land, not buildings far distant and not used in connection with an operation on the land, even though owned by the same person.”*



SO WHERE ARE WE NOW?



Friday Ltd v Bunyan [2024] UKUT 149 (LC)

48. On the basis that “or” is exclusive, and that the respondent’s construction of “or other land” is incorrect, “occupied together with” can no longer require a functional connection and cannot imply that the land and the building have to be a single agricultural unit. Occupation and use have been split up by the amendment; occupation can therefore no longer require a functional connection, let alone anything closer such as constituting or being part of a farm or unit. Nevertheless the word “together” is likely to have a meaning beyond occupation by the same person at the same time, and we take it to mean that the building and the land must be occupied as part of the same enterprise and must be geographically close if not contiguous.

49. Accordingly we have to distinguish *Farmer v Buxted*; it remains authoritative as to the meaning of “occupied together with” in paragraph 5 of Schedule 5 to the LGFA 1988 but is no longer relevant to the construction of those words in paragraph 3.



***Friday Ltd v Bunyan* [2024] UKUT 149 (LC)**

50. So we were wrong to say in *Senova* that the meaning of those words was unchanged by the 2003 amendment. That has no effect upon the result in *Senova* (where the point was not argued) for the reasons we gave above (paragraph 15). And what we have said here is consistent with the outcome in *Wootton v Gill (VO)* [2015] UKUT 548, where again the point was not argued because the building in question had a close functional connection with the agricultural land together with which it was occupied.



Fridays Ltd v Bunyan – part two ...

62. *The respondent argues that the three buildings are not ancillary or subsidiary to the land at Fridays Farms; their use is a “primary use” of land for packing and distribution purposes, and goes well beyond operations that can reasonably be said to be consequential to the agricultural operation of producing the eggs. Similarly, the three buildings are an independent packing hub for the independent farms.*

63. *We think that the respondent’s argument lays too much weight on the packing of the eggs, and overlooks the weighing and grading. Regulations and industry practice make it impossible to sell the eggs without this operation; and the packing of the eggs goes hand- in-hand with their grading, because the grade A eggs go into supermarket boxes for retail while the grade B eggs take a different journey in keyes trays, as we saw. The necessity for these processes to be done before the eggs can be sold gives the three buildings a close functional connection with the agricultural operation of producing eggs on the land at Fridays Farms, and therefore we take the view that the second requirement is met.*



But the CA awaits ...

Hearing Status: Float on 13-May-2025 or 14-May-2025 -
estimated length (in hours): 4:30



The Non-Domestic Rating Act 2023



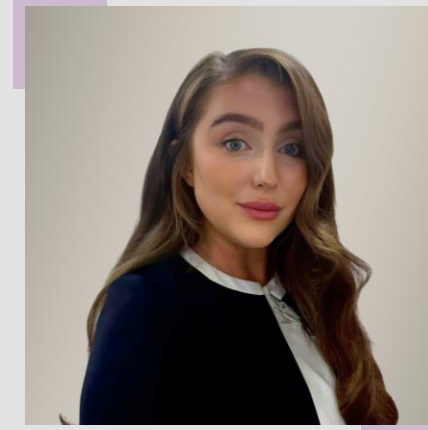
Luke Wilcox



Jacqueline Lean



Evie Barden



Kate Traynor

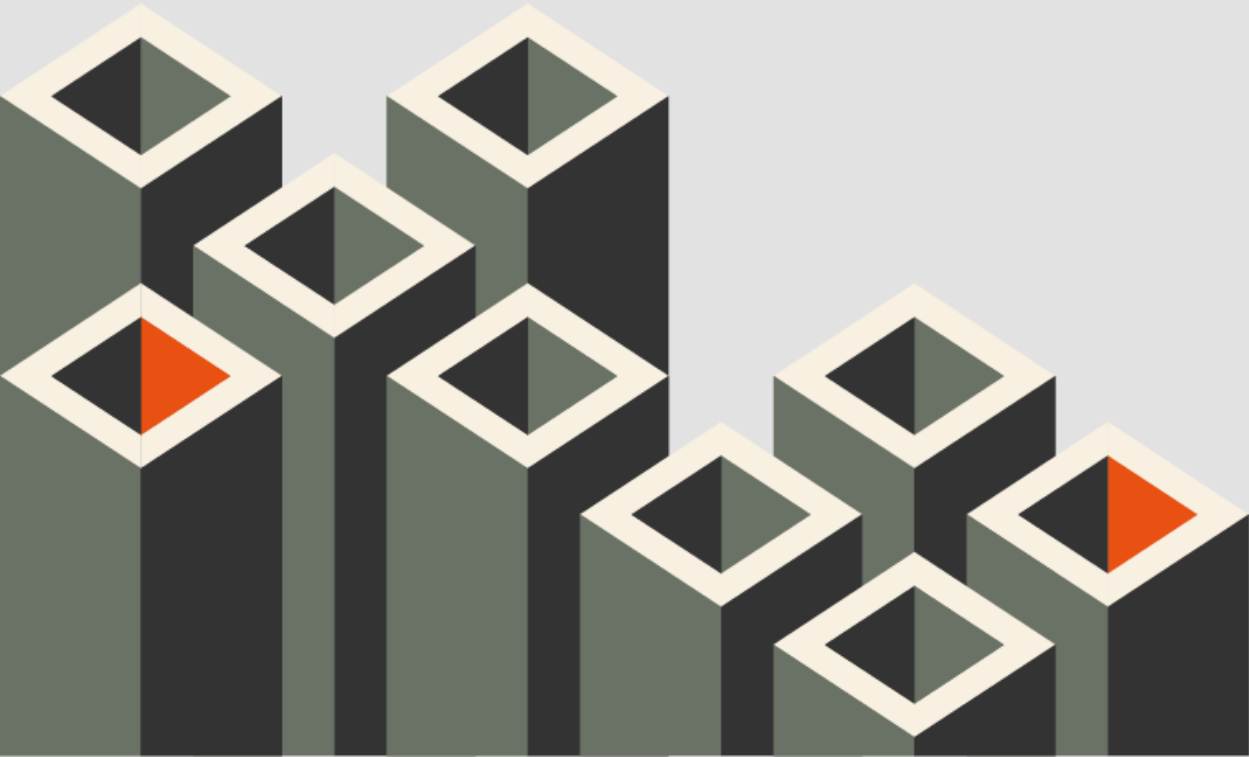




Q&A



Lunch



「
LANDMARK
CHAMBERS
」

Afternoon sessions Chaired by Dan Kolinsky KC



The valuation of tenant's fit out – where are we now?

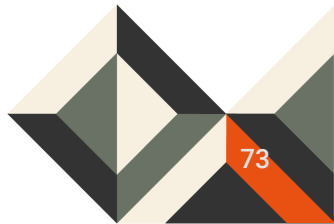


David Forsdick KC



The Issue

1. Premises let in “pre-tenant fit out” condition (Cat A) at rent £x
2. Tenant incurs cost of fit out to make fit for their purpose (Cat B)
3. RH requires valuation of those fitted out premises in their physical state vacant and to let
4. Two fundamental questions:
 - (1) do tenant fit out works make premises more valuable?
 - (2) If so, by how much? And how do you assess/calculate that?



Recent Case Law

Well-established principles established in 1970s and 1990s:

- *Edma (Jewellers) v Moore (VO)* [1975] RA 343 – value of T FO of shop front
- *Dorothy Perkins v Casey* [1994] RA 391 – value of air conditioning

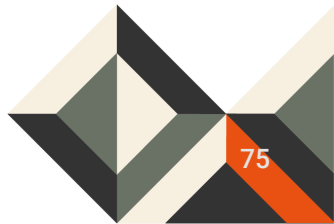
Two recent cases:

- *Bunyan v Acenden* [2023] UKUT 17 (LC) - offices in Maidenhead
- *Shoosmiths and Mando v Hutchings (VO: Aug 24)* – offices in Manchester and Liverpool



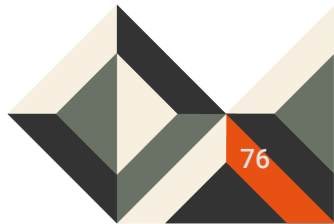
Standard Factual Scenario

1. Office premises let in category A - raised floors; suspended ceilings; all services with basic internal finishes
2. Tenant fits out to its specification to meet its requirements - cat B
3. Some of the expenditure will be specific to tenant - e.g. furniture, equipment, P&M – and not relevant in RH – ignore.
4. Rest is (at least potentially) capable of being utilized by any other occupier
5. So question is: Does the tenant fit out have “general market appeal” [16] such as to raise RV from Cat A?



The Standard Arguments for ratepayer

1. Fit out requirements of high-quality occupiers in high quality offices are very specific and unique to them
2. Vacant and to let, in that market, any new tenant would carry out their own fit out works.
3. That is why landlords build or strip out before marketing to Cat A (not Cat B) to appeal to widest possible market and achieve highest possible value/rent. Otherwise why would they do it?
4. The existing tenant fit out works are inconsistent with that, add no value and have countervailing downsides
5. Market evidence does not support uplift for tenant fit out and so rent agreed for Cat A is market value
6. Even if that is wrong, cost of relevant tenant fit out to be decapitalized at stat decap rate of just 4.4%



Legal Principles – A recap

RV = rent at which reasonably expected to let at AVD vacant and to let on the sch 6 assumptions and “with matters affecting the physical state or physical enjoyment of the hereditament” as they were on MD

The bargaining is “for that hereditament” in that state at that time

There is no question of T being reluctant to take the premises or requiring an inducement to do so – “willing” parties – *FR Evans v English Electric Co* (1977).

Have to assume “HT actively seeking premises to fulfil needs which these premises would fulfil”.

Reality principle requires H is to be valued in its actual condition on the MD.

No statutory exemption applies for tenant fit out – cp P&M



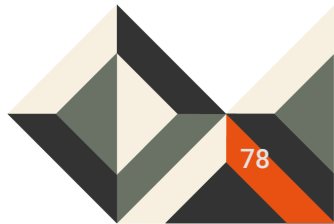
Established Principles – a recap

Cases do not tend to dispute the need to take into account tenant fit out - under the physical state and reality principles. But as to valuation, two competing factors:

(1) on the one hand reasonable to assume that, *if* a T is prepared to pay for benefits of occupation partly by way of rent and partly by way of fit out capital costs, he would be prepared to pay the same amount calculated in annual terms – *Edma Jewellers @ 350*. As we shall see that may be a big “if”

(2) On the other, not all capital expenditure on fit out works necessarily improves value vacant and to let. A tenant may not be prepared to pay for the actual FO in place unless specifically fit for purpose for them and a tenant willing to take the premises with that FO may be in a different “market” from the high end Cat A bidders

These competing considerations necessitate a focus on the facts, the fit out and the market for that sort of premises.



Old Case Law

In earlier cases, (*Edma* and *Dorothy Perkins*), LC had thought it “obvious” that the tenant fit out increased RV - and the only question was by how much and how to calculate it.

Shop front in Edma

Airconditioning in DP – difficult to conceive of a HT faced with the choice of 2 shop units (one with and one without AC) who would not pay more for the unit with AC

Although suggest that will always be subject to contrary evidence and not immediately obvious how a shop example translates to high quality offices.

The basic proposition that incurring major capital expenditure to meet a tenant’s requirements - taking premises from cat A to fit for use (cat B) – will tend to increase RV (at least at first blush) seems obvious.



Bunyan and Acerden – the facts and valuation evidence

- relatively modern, recently refurbished, high quality office building in Maidenhead
- £1.6m of relevant capital improvements from cat A to cat B – for specific needs of tenant
- £166 psf adjusted for rent free period Cat A value (dispute over period to adjust for – full lease term or to first break):
- Cat B lettings rare and normally partial underlets and so not comparable [67]. Evidence available if cast wide net - £200 - £230+. Whilst not really comparable market [69], no evidence to support Cat B at same or lower than Cat A

One premises (Arc) supported a differential Cat A/Cat B – by a long chain of inferential reasoning (which we now know to be based on a false premise)



Bunyan and Acerden – the Market Experts

RP expert

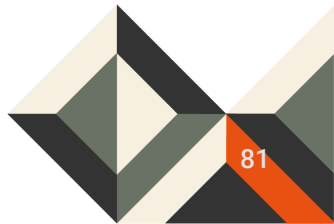
No evidence of uplift for cat B works. In fact, cat B works may devalue premises. Evidence rejected in entirety for reasons we will discuss in round table later.

Expert accepted that (applying FR Evans) a *tenant offered a building which suited its requirements which was fitted out to cat B would negotiate a rent which reflected that condition because it would not have to spend money on fit out of an alternative cat A building.*

It would appear to follow that, *if* the market players were the same for the Cat A as for the Cat B unit, there must be an uplift between the two.

VO Market Expert/

Cat B of general appeal; HT would pay a premium [44] Premium would reflect how well fit out met its needs and what further works required to make it fit for its purposes.



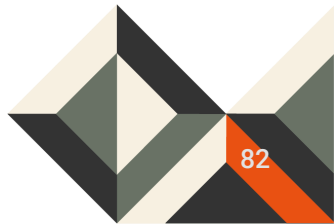
Conclusions on Fit Out

All evidence and basic principle pointed to market being willing to pay more for Cat B [83] – how a “rational market would behave”; consistent with *Edma* and *DP*; consistent with RH.

Then looking at the Fit Out details – “sufficiently generic and unexceptional that it would have had general market appeal”.

In any event must make *FR Evans assumption*

All pretty straightforward....



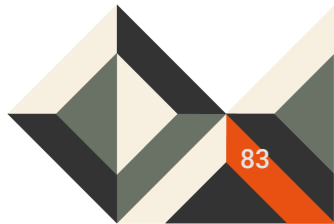
Evidence to support adjustment to rent to reflect fit out (1)

On above logic, need an uplift to cat A rent to reflect fit out.

Major evidential gaps in deciding appropriate uplift - comparables not true comparables; no defined way of adjusting; no evidence to justify any specific adjustment; decap rate not an obviously appropriate proxy

Parties adopted different decap rates to £1.6m costs. RP assumed law required stat decap rate to be used.

That was rejected – stat decap rate only applied where RV being ascertained using the CB. Does not mean CB has to be applied to whole heredit. But has to be a CB valuation. That was not this case [103]



Adjustment to rent to reflect fit out (2)

Could use a decap rate if supported by evidence and could choose stat decap rate if nothing better but had to sense check from both directions.

VO's decap rate meant 20% pa cost of fit out - so fully paid for in just 5 years. Not realistic.

Stat decap rate resulted in far too low – by reference to comparable rents

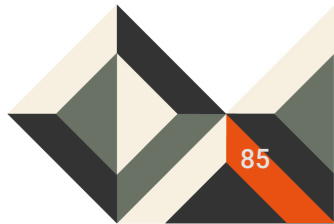
Use of decap rate did not give you the answer – cost does not equal value and decapitalized cost does not equal annualized value.

So left with poor evidential base and no basis for any particular decap rate – valuer judgment centre stage.



Lessons from Acenden

1. Evidence of uplift or absence of it very difficult to obtain
2. Absent good comparable evidence of no uplift, logic dictates an uplift as does *FR Evans*. The contrary proposition was “firmly rejected” [109].
3. Adjust passing rent to take account of RFP to next rent review
4. Given 1. above, may have to adopt long lines of logic to pull in appropriate “comparables”
5. Uplift has to make sense by reference to comparables and real-world output. Just looking at decap rate not appropriate because cost does not equal value. Not bound to adopt stat decap.
6. Case led to situation where standard(ish) approach of 25% cat B uplift (London)



Shoosmiths and Mando

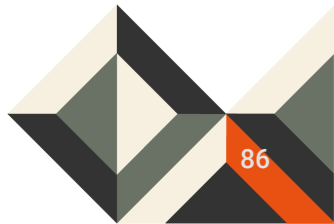
Issue remained a “hot topic”. Position may have been considered settled in London but elsewhere.....

Shoosmiths, Manchester: 2 floors of modern office. Let as shell with cat A works allowance. Tenant spent £2.8m on Cat B fit out.

Lots of issues in case but key one was whether £2.8m Cat B increased RV on RH [18g].

Paucity of relevant comparable evidence.

RP re-ran *Acenden* claiming that on the facts of Manchester and Liverpool office markets Cat B was worth no more than Cat A [97]. There was “no evidence” of a differential and LL was in weaker position with Cat B than Cat A because market wanted Cat A [99].



Logic

The evidence was accepted to show little or no discernible difference between cat A and cat B [146].

However the Cat B comparables were not considered reliable because they were “second-hand deals” – the fit out had not been for that tenant and the “bespoke suit” example was given [147] – no wonder the tenant did not agree to pay more.

But query – that may prove the opposite of what the President concluded.

Arguably by definition, vacant and to let with HT, the fit out would not be bespoke for the tenant and would be “second hand” - if tenant paid only cat A value in those circumstances why is that not good evidence of RV? And that is what new Arc facts showed



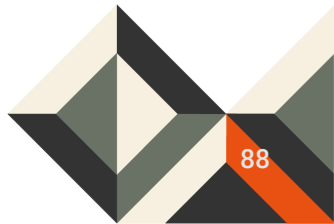
Who pays for fit out

Further, in Shoosmith, the landlord had paid for full fit out [148] as part of the rental deal.

But if that is so, it follows that the rent already included the Fit Out. That rent had been a key evidential step in reaching the Cat A rent.

Isn't it double counting to then add an uplift to rent to reflect cat B when the agreed rent reflected cat B being provided by LL?

Not overly convincing rationale in my view.



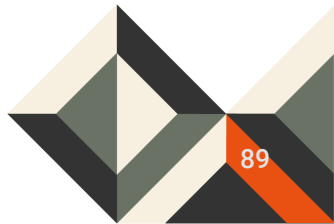
Continued “hot potato” or settled law?

Starting point that Cat B is worth more than Cat A seems “obvious” because T does not have to incur costs of Cat B and would, otherwise, get benefit of Cat B at no cost to it. Logic would suggest, T would pay for that and that fitted out is worth more than not fitted out.

All cases have proceeded on the “obvious” inference.

Further, evidence in some cases appears to show some uplift.

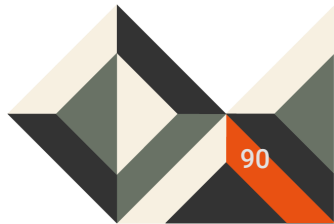
BUT.....



Continued “hot potato”? Displace the inference?

Conceptually:

- (1) in RH, cat B will always be “second hand” and not bespoke. T will be getting a fit out they would not have chosen, which they may have to upgrade/amend; and which may have physical or functional obsolescence to T. T will be getting something less valuable to them than bespoke fit out for them. T compromise.
- (2) If cat B more valuable, why do LL strip out to cat A before marketing high quality offices? Why is that not very good evidence that cat A maximises value? Why not good evidence that market for cat A may be stronger and better for LL than market for Cat B? Arc evidence showed no uplift.
- (3) Necessary inference from that market practice that top end market demand is focused in cat A - stronger market for Cat A and correspondingly weaker market for Cat B. Tenants prepared to accept compromises may be in a different “market”
- (4) T would be saving LL costs and void period by not requiring strip out – again strengthening their negotiating hand in real world



Continued “hot potato” or settled law? - Evidence

- (1) All a question of evidence – what does the market show?
- (2) Evidence to date has been (understandably) weak.
- (3) In Arc we now know that the rent was same in Cat A and Cat B [Shoosmith [100]] – unknown to LC in Bunyan – that short point seems to partially undermine the logic of LC in Bunyan
- (4) Need to focus on whether the Cat A market and the Cat B market are the same – is the Cat A rent in its market the correct baseline for uplift to Cat B rent in its (perhaps) different market. If not the logic of the cases may not be correct
- (5) VO has appealed Shoosmiths

Still a hot potato....



The collection and enforcement of rates: 'Hot Topics'



Katharine Elliot



'Hot Topics'

- The glamorous Mags Court
- The civil route alternative
- Do I have to just sit and wait?
- Not s.55 LGFA 1988 or completion notices



The Magistrates' Court (aka 'business as usual') (1)

– Getting started

- Service of demand notice (reg.4, Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regs 1989).
- ASAP after 1 April or when conditions for liability are met (reg 5).
- If delay, Mags Court will have to decide whether or not to allow having regard to length of delay + prejudice caused to ratepayer: *Honda Motor EU Ltd v North Somerset Council* [2010] EWHC (QB) 1505.
- But see *Secerno Ltd v Oxford Mags Court* [2011] EWHC 1009 (Admin) for retrospective rates situation.
- Then: reminder notice (reg.11); complaint & summons (regs.12 and 13). Six-year limitation period (reg.12(3)).



The Magistrates' Court (aka 'business as usual') (2) – Who has to prove what? The swinging burden!

- Mags Court must be satisfied sum payable by ratepayer and is unpaid (reg.12(5)).
- One BA has satisfied that: rates duly made and published; demand notice served; and, money unpaid, burden shifts to ratepayer to make out defence.
- E.g., not in rateable occupation, hereditament unoccupied so owner liable, occupation prohibited by law so exempt from liability under the Non-Domestic Rating (Unoccupied Property)(England) Regs 2008)...
- If made out, burden swings back to the BA to show liability.
- See: *Pall Mall Investments Ltd v Camden LBC* [2013] EWHC 459 (Admin); *Atos IT Services v Fylde BC* [2020] EWHC 647 (QB).
- NB Cannot challenge the rating list (directly) in Mags Court (reg.23).



The Magistrates' Court (aka 'business as usual') (3)

– What next?

- Enforcement under 1989 Regs (e.g., distress, insolvency...).
- Appeal by way of case stated to High Court: s.111 MCA 1980.
- Application to set aside liability order (*Liverpool CC v Pleroma Distribution Ltd* [2002] EWHC 2467 (Admin)).
- Set aside only where: genuine and arguable defence; some substantial procedural error in the way liability order made; and, acted promptly to apply for set aside.
- See also *R (Brighton and Hove Council) v Brighton and Hove Justices* [2004] EWHC 1800 (Admin) (days and weeks, not months and years).



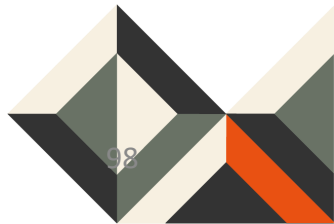
The civil route alternative

- Civil debt claim in County Court or High Court (reg.20).
- Six-year limitation period applies.
- What is the difference?
 - Routes of appeal: s.18 and 28A SCA 1981; *Kenya Aid Programme v Sheffield CC* [2013] EWHC 54 (Admin).
 - Costs, costs, costs! S.64 MCA 1980; *Patel v Camden LBC* [2013] RA 439.



Do I have to just sit and wait? – Options for the ratepayer

- Statutory right to repayment (reg.22).
- Common law restitution (*R (Barking & Dagenham LBC) v Newham LBC* [1994] RA 13; *Atos*).
- Pt 8 Claim for declaration of entitlement to mandatory relief (*LB Merton v Nuffield Health* [2023] UKSC 18).
- Judicial review of exercise of discretion (*R (Public Health England) v Harlow DC* [2021] EWHC 909 (Admin); *Cava Bien Ltd v Milton Keynes Council* [2021] EWHC 3003 (Admin)).



CCA – an adequate and efficient alternative to JR?

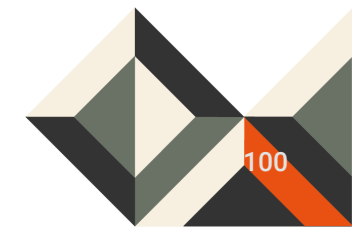


Luke Wilcox



Topics to be covered

- The nature of judicial review
- Examples of JRs against the VOA
- CCA: when is it effective?
- CCA: when might it not be effective?



Judicial review – what is it?

- The supervisory jurisdiction of the Court over the decisions and processes of public bodies
- A key part of the checks and balances built into the constitution
- Meant to be a (relatively) “speedy and simple” process (*Re McAleenon* [2024] UKSC 31).
- Exercised by Administrative Court (a branch of the KBD)
- Usually no evidence – not the forum for resolving disputes of fact



Grounds of JR

- Illegality
 - Breach of statutory duty/exceedance of statutory power
 - Power based on unlawful secondary legislation
 - Material/immaterial considerations
 - Improper purpose

- Substantive review
 - Irrationality/perversity/ *Wednesbury* unreasonableness



Grounds of JR (continued)

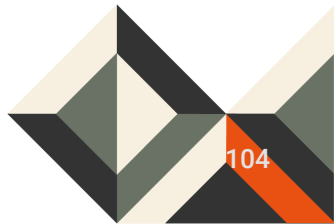
- Procedural fairness/natural justice
 - Notice
 - Consultation
 - Fair hearings
 - Reasons
 - Legitimate expectations
 - Bias/apparent bias/predetermination

- Human rights
 - fair hearing (art 6); right to property (A1P1)



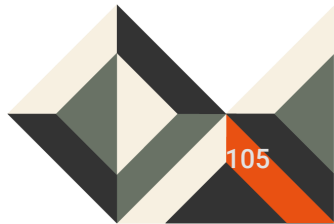
Remedies available from the Court

- Quashing order (usually results in remittal)
- Declaration
- Injunctive relief (prohibitory or mandatory)
- Key point – remedies are DISCRETIONARY



Suitable alternative legal remedy

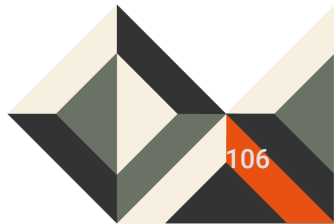
- JR is the “method of last resort”
- If there is a suitable ALR, can result in the Court refusing to exercise discretion in favour of a JR application
- Applies at both permission and substantive stages



Re McAleenon

General principle (para 51):

“Where Parliament has enacted a statutory scheme for appeals in respect of certain decisions, an appeal will in ordinary circumstances be regarded as a suitable alternative remedy in relation to such decisions which ought to be pursued rather than having resort to judicial review ... Otherwise, use of judicial review would undermine the regime for challenging decisions which Parliament considers to be appropriate in that class of case”



Re McAleenon

But, where there are different legal routes to the same legal objective, involving different forms of challenge and/or different defendants, with different risk and cost profiles, it is up to the claimant to decide which kind of challenge to bring.

Para 55:

“The question of whether a claimant has a suitable alternative remedy available to them falls to be addressed by reference to the type of claim the claimant has chosen to bring and what relief they have sought against the particular defendant.”



Judicial reviews against VOs – some examples

- *R (Corus) v VOA* [2002] RA 1
 - JR to a delayed list alteration affecting transitional relief
 - JR failed – but no suggestion the VO’s decision was not amenable to JR

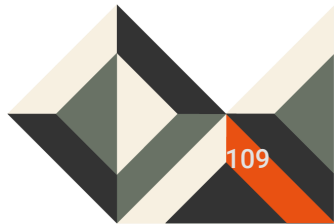
- *R (Curzon Berkeley) v Bliss (VO)* [2002] RA 45
 - Admin Court the appropriate venue for a challenge involving the implication of words into a taxing statute (para 72)

- Stayed “longstop” JRs behind UT hearings, where (e.g.) challenge to nature of legislation may be needed



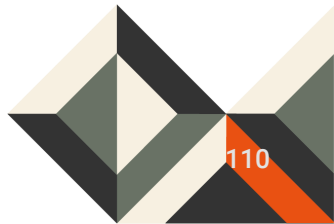
CCA – key features for present purposes

- Limited jurisdiction of the Tribunals – confined by scope of proposal
- Time limits – very generous for the VO (12 months for check, 18 months for challenge – compare to JR, where public body has 21 days to respond!)
- Limitations on IPs
- Limitation on available remedies
- Costs position



When is CCA an effective remedy?

- Ratepayer's challenge to substance of a list
- Disputes of fact/opinion
- Indirect attacks on lawfulness/validity of documents, legislation etc
 - *Foster v Chief Adjudication Officer* [1993] AC 754 ...



Foster

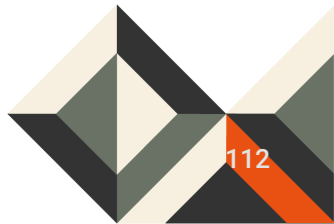
“It is said that, if the commissioner were intended to have power to hold a provision in a regulation to be ultra vires and to determine whether or not it was severable, one would expect to find that he was also empowered to make a declaration to that effect, which he is not. This, again, I find quite unconvincing. The commissioner has no power and no authority to decide anything but the issue which arises in the case before him, typically, as in this case, whether in particular circumstances a claimant is or is not entitled to the benefit claimed. If the success of the claim depends, as here, on whether a particular provision in a regulation is both ultra vires and severable, the commissioner’s decision of that question is merely incidental to his decision as to whether the claim should be upheld or rejected. If not appealed, his opinion on the question may be followed by other commissioners, but it has, per se, no binding force in law. To my mind it would be very surprising if the commissioners were empowered to make declarations of any kind and the absence of such a power does not, in my opinion, throw any light on the question presently in issue.”



Implications of *Foster*

Delph Property Group Ltd v Alexander (VO) [2018] RA 343

- VTE is able to delete an entry made in reliance on an invalid completion notice
- VTE can, and should, enquire and rule on the validity of the notice, even though it is not empowered to quash the notice or declare it invalid
- Might apply to other forms of public law unlawfulness ...



When might CCA not be an effective remedy?

- Time considerations
 - Years for CCA vs months for JR
 - “justice delayed is justice denied”
 - Accrued liabilities and no defence to demands

- Cost considerations
 - No prospect of costs recovery in VTE
 - Expense of evidence etc



When might CCA not be an effective remedy?

- Systemic complaints
 - E.g. list correction for one ratepayer but not for competitors, creating economic/commercial distortions

- Decision-making processes
 - Improper purposes
 - Breaches of legitimate expectations
 - Failure to consider relevant factors
 - Interaction with s. 31(3D) SCA 1981?



When might CCA not be an effective remedy?

- The billing authority
- Clear financial interest in decisions (including extensive retrospective refunds if RP challenge well-founded)
- But no right to make a proposal – no longer an “IP” under the ALA Regs
- Only route to challenge is by JR



Parliamentary Ombudsman?

- Available as a (free) route to challenge (some) VO decisions
- Maladministration causing injustice
- Can't direct list alteration – but can recommend compensatory payments, and/or make reports to Parliament
- HMRC Adjudicator
- *McAleenon* confirms availability of Ombudsman does not count as suitable ALR for JR purposes



Agents' standards and the evolving role of an expert



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