

Rateable occupation

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Rateable occupation



- Importance of rateable occupation
- Elements of rateable occupation

Importance of rateable occupation

43.— Occupied hereditaments: liability.

(1) A person (the ratepayer) shall as regards a hereditament be **subject to a non-domestic rate** in respect of a chargeable financial year if the following conditions are fulfilled in respect of any day in the year—

- (a) on the day the ratepayer is **in occupation of all or part of the hereditament**, and
- (b) the hereditament is shown for the day in a local non-domestic rating list in force for the year.

But see also

45.— Unoccupied hereditaments: liability.

(1) A person (the ratepayer) shall as regards a hereditament be **subject to a non-domestic rate** in respect of a chargeable financial year if the following conditions are fulfilled in respect of any day in the year—

- (a) on the day **none of the hereditament is occupied**,
- (b) on the day the ratepayer is the owner of the whole of the hereditament,
- (c) the hereditament is shown for the day in a local non-domestic rating list in force for the year, and
- (d) on the day the hereditament **falls within a class prescribed** by the Secretary of State by regulations.

Non-Domestic Property (Unoccupied Property) (England) Regulations 2008, r3:

The class of non-domestic hereditaments prescribed for the purposes of section 45(1)(d) of the Act consists of **all relevant non-domestic hereditaments** other than those described in regulation 4.

But still

- Determines who is liable for rates on occupied property
- 6 weeks of it will restart the exemption period for liability for unoccupied property
- May indicate a separate hereditament
- No hereditament unless rateable occupation is possible

Elements of rateable occupation

Four ingredients of rateable occupation:

- (1) **actual** occupation
- (2) **exclusive** for the particular purposes of the possessor
- (3) of some value or **benefit** to the possessor
- (4) not for too **transient** a period

John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area [1949] 1 KB 344 at p350 (per Tucker LJ)

Acts of occupation

- Must be use of property according to its nature: Arbuckle Smith v Greenock Corporation [1960] 2 WLR 435
- User, albeit slight, taken together with an intention to occupy: R (Makro Properties Ltd) v Nuneaton BC [2012] EWHC 2250 (Admin)
- Placing a bluetooth transmitter in a warehouse: Sunderland City Council v Sterling Investment Properties LLP [2013] EWHC 1413 (Admin)

Who is the actual occupier



John Laing at p351:

“Although at the outset this case was presented rather as one in which there were competing occupants, or there might be persons who could be regarded as competing occupants, and the question was whose was the paramount occupancy, I think the point is more accurately stated [as]: not whether there are competing occupants, but is there any real occupation by the appellants, or is not the true position that they are really in occupation on behalf of someone else...”

What if more than one actual occupier?



...There are many cases where two persons may, without impropriety, be said to occupy the same land, and the question has sometimes arisen which of them is rateable...

Holywell Union & Halkyn Parish v Halkyn Drainage Company [1895] AC 117 per Lord Herschell LC at p126

Two (or more) occupiers

- Grant of right of drainage through a tunnel and watercourse and right to place works in tunnel and watercourse, and build more tunnels (Holywell Union):
“land may be occupied for the purpose of and in connection with the enjoyment of an easement in such a manner as to make the person so occupying liable to be rated”
- Right to use area of station concourse for bookstall, kiosk, advertising showcase, etc (Westminster CC v Southern Railway) [1936] AC 511:
“whether the premises in question have been so carved out of the railway hereditament...as to be capable of a separate assessment, or whether they have, though let out, been so let out as still to leave them in the occupation of the Railway Company”

- Sports club in a power station – RWEnpower v Thompson (VO) RA/58/2005 – given right to use premises subject to infrequent user by power company
- Petrol station in a motorway service area – Esso Petroleum Company Ltd v Walker (VO) [2013] UKUT 052 (LC) – operated under an agency agreement

Which occupier is “exclusive”?



Lord Russell in Southern Railway at p530:

“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 parts, 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 in rateable occupation of those parts.”

How much control does it take?



Lord Russell in Southern Railway at p532:

“In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case; and in my opinion in each case the examination must be directed to the extent to which its exercise would interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons...”

What is (not) substantial interference?



- Nature and position subject to general manager's approval
- Employees under control of the general manager
- Requirement to conform to reasonable orders
- Control over who may be employed: *"no employee is to be retained, contrary to the decision of the general manager."*
- Control over what is sold: *"a restrictive provision which may well find its place in the lease of business premises to a bookseller as to whose rateable occupatoin no shadow of doubt could exist."*
- Control over time of access: *"a person may occupy part of a larger building, though he can only obtain access by permission of the general owner"*

Southern Railway (WHSmith kiosks – p536)

What is (not) substantial interference? (2)



- Control of user: *“a licence to use the land and premises described in the schedule as a depot for storing builders’ merchants’ material and no other purpose”*
- Control of operations: *“The licensees must not use the premises except for goods which have been or will be conveyed over the Company’s system”*
- Control of access: *“They and their servants are not to be on the premises or in the goods yard when the yard is not open for business save with the consent of the station-master or goods agent.”*

Southern Railway (Beckenham Junction – p547-548)

What might be substantial interference?



- Southern Railway: Reservation of “*free entrance and access to and over the said premises for all purposes and at all times*”
- Esso: detailed and comparatively strict control of supervision of petrol filling
- Requirement to stock some items and not others
- Requirement for staff to have specialist training
- Requirement for staff to wear badges
- Limited power to undertake alterations/ maintenance/repairs
- Reservation of power to come and go at will

Beneficial occupation



- Manisty J in Dewsbury and Heckmondwike Waterworks Board v Assessment Committee of the Penistone Union (1865) 16 QBD 585:

“if property is incapable, by reason of the prohibition placed upon it by statute, or by reason of its barrenness which cannot be cured, of yielding a profit in any one's occupation, then it is not rateable; but that if the property is not absolutely prohibited by statute from being occupied at a profit by any one, or is not the barren rock spoken of by Lord Cranworth in Jones v. Mersey Docks incapable of being occupied by any one at a profit, then it is rateable.”

Capable of beneficial occupation?



Porter (Valuation Officer) v Trustees of Gladman Sipps [2011]

UKUT 204 (LC) at para 66:

“A building is only a hereditament if it is ready for occupation, and whether it is ready for occupation is to be assessed in the light of the purpose for which it is designed to be occupied. If the building lacks features which will have to be provided before it can be occupied for that purpose and when provided will form part of the occupied hereditament and form the basis of its valuation it does not constitute a hereditament and so does not fall to be shown in the rating list.”

Transience



- Lord Radcliffe in London CC v Wilkins [1957] AC 362 at p382:
“If such an occupation in fact endures for a year or more I do not see why the occupier should not contribute to the current fund of the rating area for that period”
- Sir Alan Ward in Reeves v Northrop [2013] 1 WLR 2867 at para 27: the mooring of a boat in the same location for two years *“so overwhelming a factor”* that it must lead to the conclusion that a hereditament had been established