

Collection and Enforcement

Some recent cases on liability

Tim Mould QC

The Cases



R(Makro Properties Ltd) v Nuneaton and Bedworth BC

[2012] EWHC 2250 (Admin)

Sunderland City Council v Stirling Investment Properties LLP

[2013] EWHC 1413 (Admin)

Kenya Aid Programme v Sheffield City Council

[2013] EWHC 54 (Admin)

Public Safety Charitable Trust v Milton Keynes Council

[2013] EWHC 1237 (Admin)

Empty property rates – liability



- Owner liable when hereditament falls within class prescribed in unoccupied property regulations
- Prescribed class excludes warehouses unoccupied for a continuous period not exceeding 6 months
- For that purpose, any period of occupation less than 6 weeks in extent from last period of vacancy is to be disregarded
- Local Government Finance Act 1988 s.45(1)(d)
- NDR (Unoccupied Property)(England) Regulations 2008 regs. 2, 3, 4(a)(b) & 5

Makro Properties Ltd – Facts



- Warehouse hereditament was vacated and cleared in June 2009
- For 6 week period a Makro group company stored 16 pallets of paperwork in warehouse. Pallets occupied c.0.2% of floor space
- Company obliged to retain paperwork by law
- For subsequent 6 months warehouse was empty
- Question for High Court: was storage of pallets ‘occupation’ of hereditament which triggered 6 months’ empty rates holiday?

Makro Properties Ltd – Court’s Approach



- Actual occupation: if there is clear evidence/inference of an intention to occupy, such an intention taken together with slight user may be sufficient to amount to actual occupation [43]
- Company intended to occupy [27]
- Use of warehouse to store documents required by law to be stored was not trifling (i.e. not *de minimis*) [44]
- Beneficial occupation: storage of documents that company obliged by law to retain was of practical benefit to company [46]
- Storage of pallets for 6 weeks was ‘rateable occupation’

Sunderland City Council – Facts



- Vacant warehouse hereditament
- For 6 week period electronic marketing company used window sill in warehouse to site bluetooth transmitter
- Company building national network of transmitters to secure advertising revenue. 1789 messages delivered to bluetooth receivers
- For subsequent 6 months warehouse was empty
- Question for High Court: was location and operation of transmitting device 'occupation' of hereditament which triggered 6 months' empty rates holiday?

Sunderland City Council – Court’s Approach



- The warehouse provided the optimum location for the company’s electronic marketing operation
- The company’s use of only a minute fraction of the space within the warehouse was a function of its operation
- Its occupation was beneficial as it was able to achieve its intended purpose of demonstrating the viability of its marketing mechanism
- In the circumstances, albeit very slight, its physical presence was more than *de minimis* [66] [72]-[73]
- Irrelevant that use differed in nature from the description of the hereditament in rating list [74]

Summary – empty property cases



- Very slight physical presence may suffice to constitute 6 weeks' rateable occupation and so trigger empty rates holiday
- Must be clear evidence of benefit to the occupier if *de minimis* threshold is to be overcome
- Risk that Valuation Officer will rely on temporary user to split area of temporary occupation from host warehouse/industrial hereditament: Sunderland at [74]
- Irrelevant that tax avoidance scheme: Makro at [56]

Charities – basis for relief from rates



- Charity or trustees of charity enjoy mandatory relief from rates in case where hereditament is wholly or mainly used for charitable purposes
- In case of empty property, relief from rates is given where it appears that when next in use, hereditament will be so used
- Whether the hereditament is used for charitable purposes is to be considered from the viewpoint of the charity occupying (or next occupying) the premises
- Local Government Finance Act 1988 ss.43(5)(6), 45A(1)(2), 67(10)
- Glasgow Corporation v Johnstone [1965] AC 609

Kenya Aid Programme - Facts



- Commercial units rateably occupied by registered charity
- Premises used as store for office furniture to be shipped to Kenya for charitable purposes
- Level of use of premises well below 50% coverage and inefficient use of space
- Question for High Court: what factors may be considered in determining whether the properties were being “wholly or mainly used for charitable purposes”?

Kenya Aid Programme – Court's Approach



- In considering whether premises are wholly or mainly used for charitable purposes, the Court
 - is not limited to examining only the purpose of the use
 - may also consider the extent or amount of actual use
 - may not take account of the efficiency of use or the need for the charity to occupy the premises
 - may not take account of the mutual advantages to landlord and charitable tenant (including the former's avoidance of liability to pay empty rates)

See [35]-[40]

Public Safety Charitable Trust - Facts



- Office premises rateably occupied by registered charity
- Premises used as location for bluetooth transmitters broadcasting charitable messages
- Very limited physical presence (cf. Sunderland)
- Part of a nationwide scheme to secure charitable rates relief for the occupier and avoid empty rates liability for the owner of the hereditament
- Question for High Court: is the question whether premises are being “wholly or mainly used” for charitable purposes to be answered only by reference to the purpose of the use of the premises? [19]

Public Safety Charitable Trust – Court's Approach $\frac{L}{C}$

- It is reasonable to infer legislative intention that mandatory relief from rates should depend upon a charity actually making extensive use of the premises for charitable purposes [34]
- There should therefore be evidence of use of the premises that is substantial and of public benefit in real terms, rather than exiguous use that might otherwise qualify for rateable occupation [34],[38]
- The Court's approach in Kenya Aid was correct and should be followed [32]-[34]
- PSCT were not entitled to mandatory charitable relief

Summary – charitable relief cases



- Recent High Court decisions establish a broad approach to question whether premises are “wholly or mainly used for charitable purposes”
- Former assumption that inquiry limited to the purpose of the use has been rejected as too narrow and contrary to legislative intention in creating mandatory charitable relief
- Reflects judicial distaste for attempt to deploy charitable relief as part of empty rates avoidance scheme?
- Implications for ‘genuine’ charitable occupiers – will billing authorities under financial pressure take tougher stance on ‘underused’ premises occupied by charities?

Appeal systems – Kenya Aid



- High Court re-affirmed that appeal by way of case stated is the appropriate procedure for challenging decisions relating to rates liability orders [53]
- In such cases, the High Court acts as the court of final appeal [54]
- Ordinarily, an attempt to mount a challenge to a liability order decision by way of an application for judicial review, in order to found a possible second appeal to the Court of Appeal, will be rejected as an abuse of process [56]-[57]
- A case for examination by the Law Commission?