

Recent Developments in Charitable Relief

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A reminder of the statutory framework

Test for mandatory 80% relief from occupied rates:

“the ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)” (s.43(6)(a), LGFA 1988)

(also remember possibility of further discretionary relief under s.47)

Test for zero rating when unoccupied:

“the ratepayer is a charity or trustees for a charity and it appears that when next in use the hereditament will be wholly or mainly used for charitable purposes (whether of that charity or of that and other charities).” (s.45A, LGFA 1988)

Recent Cases

- Nuffield Heath v. London Borough of Merton [2021] EWCA Civ 826
- R (oao Preservation and Promotion of the Arts Ltd [2020] EWHC 2435 (Admin)
- Derby Teaching Hospitals NHS Foundation Trust v. Derby City Council [2019] EWHC 3436 (Ch)

Nuffield Health (1)

- Fitness and wellbeing centre (including a gym, spin class area, swimming pool, reception area and creche);
- Charitable purposes of Nuffield: ‘advancing, maintaining and promoting health and preventing ill health’;
- There was an issue as to whether or not the activities and use of the hereditament delivered a ‘public benefit’;
- And issue as to the relevance or otherwise of ‘public benefit’ to whether or not Nuffield was entitled to 80% mandatory occupied rates relief for its fitness and wellbeing centre.

Nuffield Health (2)

- CA decided use of the hereditament not for the public benefit – because of its high-end membership fees it could not be demonstrated that the activities met the minimum threshold of providing benefit to those of modest means;
- But how did this affect whether or not Nuffield could demonstrate that the premises were being ‘used wholly or mainly for charitable purposes’?

Nuffield Health (3)

- The public benefit requirement applies only to the purposes of the charity, not to the activities carried on at the individual hereditament;
- That requirement that is shown to be met by the charity's registration under the Charities Act 2011 (see ss 37(1), 1, 2 and 3);
- In the case of a registered charity, s.37(1) provides that an institution is conclusively presumed to be a charity as defined under s.1;
- Under s.1, “an institution established for charitable purposes only...”
- Under s.2, a charitable purpose is a purpose falling within s.3(1) and “that is for the public benefit” (as interpreted under s.4 of the Act).

Nuffield Health (4)

- Accordingly in determining whether mandatory charitable relief applies to premises occupied by a registered charity, what does a rating authority (and, by extension a court determining rates relief) need to consider?
 - no need to consider the issue of public benefit;
 - only need to ascertain what the charity's objects are (by reference to its constitution)
 - and then determine whether the hereditament is being used directly for those purposes (*Nuffield*, para 149)

Nuffield Health (5)

- So, Nuffield Health was entitled to charitable relief from rating on the hereditament under consideration notwithstanding that the activities at the premises were unanimously considered by the CA not to deliver a public benefit (c.f Sales J in *Public Safety Charitable Trust v. Milton Keynes Council* [2013] EWHC 1237 (Admin))
- The Charities Commission, as regulator of charities, is better placed and more experienced at making assessments of this kind.
- Local authorities “*have many varied functions to fulfil, but regulating charities is not one of them...*”

Nuffield Health (6)

- BUT warning from Lord Justice Peter Jackson:

“I would only add this. Nuffield Health may have succeeded under the rating legislation, but its failure, on our unanimous view, on Ground 3 may not be without consequences in the context of charity law. Its trustees are obliged to satisfy themselves in good faith that its provision is for the public benefit. If the situation at the Premises is replicated across its several hundred fitness centres and gyms, the organisation may face scrutiny through the Charity Commission and ultimately through the courts, as occurred in the ISC case.”

Preservation and Promotion of the Arts Ltd (1)

- High Court upheld a Magistrates' Court decision determining that mandatory charitable relief was not applicable in circumstances where charity had not persuaded court of the public benefit of the use of the hereditament;
- Court considered that the use must be 'extensive and for the public benefit';
- It had not been demonstrated that the events held were of sufficient artistic quality to be for the public benefit, so held legitimate to withhold charitable rates relief;
- Does not sit easily with the Court of Appeal decision in Nuffield Health

Preservation and Promotion of the Arts Ltd (2)

BUT:

- Did not concern a registered charity so not regulated in the same way;
- So less scope for arguing that the issue of public benefit was an issue for scrutiny by others such as the Charity Commission rather than being appropriate for consideration by rating authorities;
- *Nuffield Health* not cited (albeit at only HC stage at that time);
- On the issue of public benefit, High Court decision in *PoPA* likely to be superseded by Court of Appeal decision in *Nuffield Health*.

Derby Teaching Hospitals NHS Foundation Trust

- Concerned whether an NHS Foundation Trust was entitled to rates relief under s.43(6) LGFA 1988;
- NHS Foundation Trusts are not registered charities, but arguably fall within the statutory definition of a charity in the 2011 Act and LGFA 1988;
- Held that foundations trusts not ‘established for charitable purposes’ only under s.67(1) LGFA 1988;
- An institution which was established for other purposes besides charitable ones was not a charity even if, in practice, it pursued only its charitable purposes.

Thank you for listening

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