Landmark Chambers

What is in the Rating List? Occupation, possession, domesticity and self-containment

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Topics to be covered

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- The statutory tests
- Paramountcy and the hereditament – where have we got to?
- The role of possession in identifying the occupier and the hereditament
- Domestic hereditaments and the Council Tax

The statute

- What goes in a rating list?

- S. 42(1) LGFA 1988:

  - In the local area
  - Relevant non-domestic hereditament
  - At least some of it is neither domestic nor exempt
  - Not a central list hereditament

The statute

- A relevant hereditament (s. 64(4):
  - Lands
  - (some) Mines
  - (some) Rights

- Non-domestic (s. 64(8)):
  - Wholly non-domestic; or
  - Composite (i.e. a part of the hereditament is wholly domestic: s. 64(9))

Occupation and the hereditament

- Primary tests for identifying a hereditament: geographical and functional
- But occupation/ownership relevant too:
- *Mazars* per Lord Neuberger PSC at para 49:

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“the occupation of premises can in some circumstances serve to control their status as one or more hereditaments. An office building let to and occupied by a single occupier would be a single hereditament, but if the freeholder let each floor of the building to a different occupying tenant, retaining the common parts for their common use, then each floor would be a separate hereditament.”

Paramountcy – where are we now

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- Case law where occupation controls the hereditament is focused on paramountcy
- Multiple occupiers = multiple hereditaments
- Two recent high authorities on the point

Cardtronics

- UKSC decision (Lord Carnwath JSC)
- Restoration of *Holywell v Halkyn* approach
  - Host must have parted with occupation, exclusively, for guest to be rateable
- Mutuality of purpose
- Effect – host more likely to be occupier than previously thought

Ludgate House

- Court of Appeal (Lewison LJ)
- Affirmation and application of the lodger principle (*Halkyn*)
- Primacy of contractual terms and exercisable (rather than exercised) rights

Possession after *Ludgate House*

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- *Ludgate House* introduces confusion over role of “possession” in rating law
- What does “possession” mean?
- Two candidates:
  - “actual” possession, i.e. physical presence on the land – actual occupation
  - “legal” possession, i.e. right to exclude the whole world - tenancy

- *Ludgate House* suggests “exclusive possession”, i.e. legal possession, is a necessary ingredient of rateability: para 73:

“If, as Blackburn J held, the test is whether a guardian would be entitled to maintain an action for trespass, it seems to me to be clear that the terms of the licence did not give them exclusive possession, which is the necessary foundation for an action in trespass.”

- But …

(1) No need for exclusive possession to bring a claim in trespass: *Manchester Airport v Dutton* [2000] QB 133 – "*the rattle of medieval chains*" …

(2) Licensees do not have exclusive possession by definition, yet many cases where a licensee is in rateable occupation (e.g. *Brook v Greggs, Re Heilbuth, Southern Railway*)

Council Tax – what's in the valuation list?

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Why does this matter to rating practitioners???

Council Tax – what's in the valuation list?

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- LGFA 1992, s. 23(1):
  - "dwellings" in the area
- What is a "dwelling"? S. 3:
  - A hereditament
  - Not exempt from NNDR
  - And not required to be shown in a NNDR rating list

Council Tax – what's in the valuation list?

- i.e a dwelling is a purely domestic hereditament

- But, s. 3(5) LGFA 1992:

(5) The Secretary of State may by order provide that in such cases as may be prescribed by or determined under the order—

> *(a) anything which would (apart from the order) be one dwelling shall be treated as two or more dwellings; and*
>
> *(b) anything which would (apart from the order) be two or more dwellings shall be treated as one dwelling.*

The Chargeable Dwellings Order 1992

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- Introduces key concepts – art 2:

"multiple property" means property which would, apart from this Order, be two or more dwellings within the meaning of section 3 of the Act;

"single property" means property which would, apart from this Order, be one dwelling within the meaning of section 3 of the Act;

"self-contained unit" means a building or a part of a building which has been constructed or adapted for use as separate living accommodation.

Disaggregation

- Art 3 CDO 1992
- If a single property contains multiple SCUs, each SCU must be treated as a dwelling
- i.e. can never have a hereditament for CT purposes that contains more than one SCU

Self-contained units

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- What is a SCU?
- Very extensive body of case law
- Key summary – Popplewell J in *Clement v Bryant*, para 5
- Six principles

The *Corkish* principles (1)

The question is whether the effect of the construction or adaptation is such as to make the relevant building or part of a building reasonably suitable for use as separate living accommodation.

- i.e. higher test than mere “capability”
- What matters is how it is constructed/adapted, not how it could be – *Coll v Mooney*
- Relevance of contemporary standards of living

The *Corkish* principles (2)

The question is to be answered by reference to the physical characteristics of the building. This is sometimes referred to as a "bricks and mortar test", but the epithet does not accurately capture the wide range of physical characteristics which may be of relevance including services and fixtures.

- Includes, e.g., electrics and plumbing to enable installation of a washing machine: *Mooney*
- But doesn't extend to furnishings or other indicia of occupation: *Salisbury v Bunyan*
- Analogous to NNDR treatment of rateable vs non-rateable plant

The *Corkish* principles (3)

This is an objective test. The test is not concerned with when, how or why those characteristics were achieved. The purpose of the construction or adaptation is irrelevant. The test is addressed to the result of the building work, not the circumstances in which it was carried out. Intention is irrelevant.

- Largely driven by practical considerations:
  - Difficulty of investigating builder's intentions long after the event.
  - Plus avoiding encouragement to taxpayers to make challenges based on subjective intentions

An aside – planning status

- Planning status of a property is irrelevant to SCU – *Batty v Burfoot*
- Not clear why this is so – can it be said something was constructed or adapted for a certain use, if the permission for the construction renders that use unlawful???
- The premises of irrelevance of intentions are inapplicable here – planning controls objectively ascertainable and run with the land
- Wrong turn in the law?

The *Corkish* principles (4)

Whether the test is met is a matter of fact and degree for the tribunal.

- Courts take a very light-touch approach to supervision of VTE decisions in this area

- Need to show a patent error of law before Court will consider intervening: *Rahmdun v VTE*

The *Corkish* principles (5)

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actual use may in some cases be of some relevance. If, for example, the part of the property has in fact been used, or is being used, for occupation by persons who do not form part of a single household with those who occupy the remainder of the property, that may be a factor which supports a conclusion that its physical characteristics make it suitable for such occupation. However actual use is not the test, and even in cases where it may be of some relevance it will not usually be a factor of significant weight. At most it may reinforce a decision reached by reference to the physical characteristics of the building.

- Actual use can be, but is not necessarily, a material consideration – materiality for the VTE, and VTE doesn't need to give any reasoning for rejecting relevance (*Salisbury*)

The *Corkish* principles (6)

If what is being considered is part of a building, the physical characteristics to be considered include those of the remainder of the building as well as the part being considered. Access is one aspect of such characteristics. Separate public access may be a pointer to the part being separate living accommodation; whereas if access is through the remainder of the building this may tell against the part being separate living accommodation. In the latter case different weight may be attached where access is through the living areas of the remainder of the building from the weight to be attached where it is through a hallway. But access is not a factor which can be determinative without considering the other physical aspects of the building. The weight to be attached to it is a matter for the tribunal.

The *Corkish* principles (6)

- Access not only characteristic of wider property to be relevant
- Communal facilities can be relevant:
  - *Mooney*, utility room
  - *England Kerr v Thomas* (VTE): security system for the house
- But <u>fact</u> of communal living irrelevant

What does a space require to be a SCU?

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- Essentials of living:
  - Eating
  - Sleeping
  - Toileting/washing
  - Privacy
- But absence of some essential facilities need not prevent SCU status: see e.g. *Clement v Bryant* where SCUs identified despite having no baths or showers

Aggregation

- Art 4 of the CDO 1992
- If a SCU contains multiple dwellings, LO has a discretion to merge them into a single dwelling
- Policy rationale – enable efficient collection of CT in contexts where class of taxpayers is highly mobile

Aggregation

- Considerations relevant to aggregation: *James v Williams* [1973] RA 305
  - Extent of shared/communal facilities
  - Degree of adaptation of the individual dwellings
  - Capability of accurate identification of the boundaries of the dwellings
  - Degree of transience of occupation

Aggregation – the role of the VTE

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- Art 4 gives LO a discretion

- No definitive ruling, but seems that the VTE doesn't get to exercise the discretion on appeal – limited to reviewing LO's exercise of the discretion on public law grounds.

Thank you for listening

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