

The Principles of Rateable Occupation

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A Brief History of Rates

- Poor Law Act 1601
- Paid for by levying rates on local ratepayers
- System of rates to fund local government & services evolved over the centuries
- General Rate Act 1967
- Local Government Finance Act 1988

The Legal Position

- **No statutory definition of rateable occupation**
- **Local Government Finance Act 1988 - Section 43**

the occupier will be liable for occupied rates for any day they are in occupation of all or part of the hereditament (for any day the hereditament appears in the rating list)

Rateable occupation

- S65(2) LGFA 1988 – rules are same as General Rate Act 1967
- Case law from as far back as 18th century still relevant today
- R v St Pancras Assessment Committee (1877)
- John Laing & Son Ltd v Kingswood Area Assessment Committee (1949)

John Laing & Son Ltd v Kingswood Area Assessment Committee [1949]

- Building contractors
- Erected offices, canteens and other structures on an airfield where they were undertaking a contract
- Deemed to be in rateable occupation of the huts despite the site being under the control of the Air Ministry (who occupied the airfield)

John Laing & Son Ltd v Kingswood Area Assessment Committee [1949]

Outcome:

Rateable occupation consists of four 'ingredients' all of which must be present to attract rate liability:

1. There must be actual occupation
2. The occupation must be exclusive to the occupier
3. The occupation must be of some benefit to the occupier, and
4. The occupation must not be for too transient a period

The principles were approved by the Supreme Court (formerly the Appellate Committee of the House of Lords) in London CC v Wilkins (VO) [1956]

Actual Occupation

- Concerns the physical use of land or property, no matter how slight that use may be.
- The mere intention to occupy is not sufficient
- Neither, in itself, is the ownership of a legal title to the land or property.

Plant, Machinery & Equipment

Section 65(5) Local Government Finance Act 1988

A hereditament not in use is to be treated as unoccupied if it would otherwise be treated as occupied only by reason of there being kept in or on it plant, machinery or equipment –

- which was used in/on the hereditament when it was last in use, or
- which is intended for use in or on the hereditament.

(e.g. warehouse containing large ‘fixed’ processing equipment, or an office containing a range of desks and filing cabinets)

Sheafbank Property Trust PLC v Sheffield Metropolitan District Council [1988]

- Company purchased a sports field, clubhouse and caretaker's flat, together with contents which included a snooker table, music facilities, tables, chairs, bar, freezer, dishwasher, tv, fridge, settee and grass cutting equipment.
- The rating authority conceded these items were **"plant, machinery or equipment"** but argued that the high level of maintenance being carried on, indicated that rateable occupation existed.
- **High Court held that the hereditament was to be treated as unoccupied**, and that the proper approach for the authority to employ was to consider whether, but for the presence of plant, machinery or equipment, it would have found the premises to have been in rateable occupation.

Warehouses / reserved for future occupation

R v Melladew [1907]

- Warehouse left empty & the water had been cut off (but could be reconnected at any time).
- Warehouse owner would have been prepared to let it or receive goods into it at any time providing half of the capacity was used.
- **Held** that the intention to occupy must be viewed in context with the nature of the business and that it was an occupational hazard of a warehouseman that the premises could be vacant for some time. Held liable for rates for the whole period.

Illegal Occupation

Tomlin v Westminster City Council [1989]

- Squatters illegally occupied Cambodian Embassy
- Held that actual occupation is irrespective of the title by which the property is occupied and the absence of title is immaterial.
- More important to look at what is **actually** happening than what **should be** happening.
- One of the squatters was found to have satisfied the test of actual occupation and was therefore rateable.

Ratford and Hayward (Receivers and Managers of Sabre Tooling Ltd) v Northavon District Council [1986]

- Court of Appeal found that although the receivers had power to take possession they had no obligation to do so and that they only acted as agent for the company.
- They are not liable for any rate liability whilst acting in their capacity as agent.

Actual Occupation – Additional Case Law

- Overseers of Bootle v Liverpool Warehousing Co. [1901]
- Calmain Properties Ltd v Rotherham MBC [1989]
- **Arbuckle Smith & Co. Ltd v Greenock Corporation [1960]**
- Hampson (t/a Abbey Self Storage) v Newcastle Upon Tyne CC [1996]
- Hampstead BC v Associated Cinema Properties Ltd [1944]
- English, Scottish and Australian Bank Ltd v Dyer [1958]
- Southwark LBC v Briant Colour Printing Co. Ltd [1977]
- Kent CC v Ashford BC and Others [1999]
- Magon v Barking and Dagenham LBC [1999]

Exclusive Occupation

- Each rateable occupier must be able to demonstrate exclusive occupation
- It must be clear that the occupier has a use of the premises which is not shared by another
- The occupier must be able to prevent another from using the premises for the same purpose.
- There can still be exclusive occupation when the interests of the occupiers are subject to terms and conditions and others have distinct and independent use of the premises.
- Paramount Control?
- Degree of Control?

Westminster City Council v Southern Railway Co, Railway Assessment Authority and W H Smith & Sons Ltd [1936]

- Should kiosks and shops on Victoria Station be included in the railway station assessment or be rated separately?
- Held that they were **capable of separate assessment**
- Decision focused on who had paramount control of the kiosks themselves rather than the station they were situated in.
- If paramount control over the use of the property rests with either party this may lead to occupation. Control over access only would be insufficient to effect occupation.
- Immaterial that right to occupy is by tenancy/lease/licence
- **Examine what is actually happening - not what should be**

Blake v Hendon Corporation [1965]

- Bowling green within the grounds of a local public park
- Let out to a private bowls club
- Restricted access to the general public
- Held that the bowling green had exclusive occupation and was therefore liable.

Exclusive Occupation – Additional Case Law

- Holywell Union v Halkyn District Mines Drainage Company [1895]
- William Press and Son Ltd v Cayford [1973]
- Cory and Others v Bristow [1977]
- Birmingham CC v Hughes and Knighton & Rhayader Rural DC [1957]
- Soldiers, Sailors & Airmen's Families Assoc. v Merton Corporation [1966]
- Thomas (VO) v Witney Aquatic Co. Ltd [1972]
- Bartlett (VO) v Reservoir Aggregates Ltd [1985]
- Brook v National Coal Board [1975]
- Pennard Golf Club v Richards [1976]
- Greater Manchester PTE v Carter [1981]
- Thurrock BC v S. Walsh and Son Ltd [1999]

Beneficial Occupation

- Doesn't refer merely to benefit of a financial nature.
- Occupier can derive benefit from the use of a hereditament even though the occupation may, in itself, be a financial liability
- Public bodies - occupation will be considered to be beneficial if it enables them to carry out a statutory function.

The test of **beneficial occupation** is not whether occupation would produce a profit but whether it is of value to the occupiers in terms of their willingness to pay a rent so as to enable the occupation to exist.

Public Use

Land held by a local authority only as a custodian for the public at large does not give rise rateable occupation – no benefit can be obtained

- **Hare v Putney Overseers [1881]** – Related to a bridge
- **Lambeth Overseers v London CC [1897]** – Parks
- **Newham LBC v Hampsher [1970]** – Street market

Willingness to Pay a Rent to Enable Occupation to Exist

- Rent paid = beneficial occupation satisfied
- **Monkcom v Adams [1988]** – Children's trampoline site used for part of a year (every year). Lands Tribunal found beneficial occupation existed as a licence fee was paid in order to trade

What about:

- Tenancies where no rent is payable?
- 6 week occupations enable a further period of empty exemption

Test of beneficial occupation has to be satisfied for rateable occupation to exist

Makro Properties Ltd v Nuneaton BC [2012]

- Makro Properties Ltd (MPL) and Makro Self Storage Wholesalers Ltd (MSSWL) v Nuneaton & Bedworth BC [2012]
- MSSWL leased premises & occupied as a cash and carry until 1 June 2009. Lease surrendered 31 December 2009
- Between 25 November 2009 and 12 January 2010 some 16 pallets of MSSWL paperwork (which it was bound by law to retain) was stored there – no written agreement.
- The pallets occupied approx 0.2% of the floor space which exceeded 140,000 sqft.
- Between 12 January 2010 and 23 July 2010 the premises were empty.



Makro Properties Ltd v Nuneaton BC [2012] cont

- On 23 July 2010 some further 40 pallets of MSSWL paperwork were delivered and stored there
- Following the issue of a Magistrates Court summons the District Judge had ruled in favour of billing authority (granting a liability order for empty rates).
- *“the chattels were placed in the Coventry store by MSSWL with a view to incurring rateable liability for a short period (certainly not beneficial) so that it or MPL could avoid liability for a longer period. The potential avoidance of liability is the only 'benefit’”*
- MSSWL appealed to **High Court**

Makro Properties Ltd v Nuneaton BC [2012]

In his **High Court** ruling Judge Jarman stated:

- *“it cannot properly be said that the storage was of no practical benefit”*. The documents were tax records they were bound by law to retain
- “The fact that this storage could have been continued at other venues does not render storage at the warehouse of no practical benefit”.
- Use as a warehouse wasn’t required for occupation to exist
- The records must have been of some value to the occupier (legally required to be kept)



Effect of Makro Ruling

- High Court Ruling stated the District Judge had accepted there was **actual occupation** albeit miniscule - the question was whether there was occupation of part of the premises or none of it
- Proper approach - consider the use of the premises and intention behind it. Evidence of intention together with slight use could lead to inference of occupation
- Minimal storage was actual occupation – rateable occupation exists
- High Court rulings legally binding over all lower courts. Where a case comes before a Magistrates Court on the same facts they are legally bound to follow this ruling.

Sunderland City Council v Stirling Investment Properties LLP [2013]

- 1500 sq m unit constructed for industrial warehousing with office accommodation – split into 2 hereditaments
- Used by Complete Mobile Marketing Ltd from 20 May 2011 – 1 July 2011 inclusive (43 days) to locate a “blue tooth box” in. Lease for this period
- The box, approx 100 x 100 x 50mm, was placed in the corner of the premises to perform “marketing and advertising” functions
- 6 months empty exemption once box was removed
- District Judge **held** that the occupation was potentially of benefit to CMML (even though the occupation was not that of a warehouse) and that they were in rateable occupation

Sunderland City Council v Stirling Investment Properties LLP [2013]

- In **High Court** - claimed occupation not beneficial as it was not occupied as a warehouse
- High Court ruled CMMML were in rateable occupation: There is “nothing in the legislation which limits the ability of a local authority to levy rates to occupation for a purpose which is identical to the description of the hereditament in the rating list” - mirrors **Makro**

“Although the rent paid by them was nominal, the outgoings, in terms of their accepting liability for rates, were not.

This reflects the value to them of the lease & their occupation of the premises” – goes against **Laing?**



R. (on the application of Principled Offsite Logistics Ltd) v Trafford Council [2018]

- Whether 'occupancy for its own sake, in furtherance of a rates avoidance scheme' could satisfy beneficial occupation test
- Trafford's case - occupation for its own sake, without any separate purpose than to occupy, is not occupation in law and fact. There must be some additional purpose to use the premises for something
- Goods were present (rather than stored) – little or no value
- POLL - purpose of occupying a property need not be commercial to constitute rateable occupation

POLL Case cont

- Not a Court of morals - “I must resist any temptation to find that the occupation has to be of “the right kind” to qualify as beneficial. But the occupation still has to be beneficial, in law and in fact, applying a morally neutral analysis” Kerr J
- Must be occupation not just an impression of occupation
- Consideration - Is beneficial occupation present where the value or benefit is the occupancy itself?
- Kerr J stated “cannot see any good reason why, if ethics and morality are excluded from the discussion, the thing of value to the possessor should not be the occupancy itself”

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE on behalf of PUBLIC HEALTH ENGLAND) v HARLOW DC (2021)

- Moved archive boxes into the property for two separate 6 week periods and had claimed subsequent three month empty rates exemptions in respect of each period.
- Harlow - boxes contained redundant items; storage of no benefit to PHE
- Present intention to occupy coupled with slight occupation is sufficient to constitute rateable occupation. It does not matter if the storage is for whimsical or eccentric purposes, for example storage of a collector's items or of redundant items.
- The boxes were removed after each 6 week period.

Beneficial Occupation – Additional Case Law

- R v School Board for London [1886]
- London CC v Erith and West Ham [1893]
- London CC v Hackney BCC [1928]
- Appleton v Westminster Corporation [1963]
- Hare v Putney Overseers [1881]
- Newham London BC v Hampshire [1970]
- Lambeth Overseers v London CC [1897]
- Kingston-Upon-Hull Corporation v Clayton (VO) [1961]
- Redbridge London BC v Wand [1970]
- Smith v St Albans City & DC [1977]

Rateable occupation? 1



Rateable occupation? 2

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Rear building
Former mechanics workshop



Rateable occupation? 3

3rd floor



Transient Occupation

Transience of occupation does not relate to short occupations, which generate liability on a daily basis, but to the time for which a hereditament exists

Sir Robert McAlpine & Sons Ltd v Payne [1969]

- Building huts on site for six or seven months were found not to be rateable as it was deemed not long enough to satisfy the requirement of “permanence”

London County Council v Wilkins [1956]

- Builders huts that remained on site for over 12 months were held to be rateable

months were held



Case Law

Hall v Darwen Corporation and Silcock Bros. (Amusements) Ltd [1957]

- Had the right to hold a fair at any time on a piece of land. Only used it for this purpose for a week twice a year but were held to be in rateable occupation - sufficiently permanent.

Hayes v Loyd [1985]

- Supreme Court **held** that 2 fields which were part of a farm were not exempt from rating, since they were used for a point to point horse race meeting on Easter Monday each year

Miscellaneous

- **Agency** – Kent Count Council v Ashford BC (1999)
- **Charities and their Trading Subsidiaries** – entitled to relief if they remain in paramount occupation
- **Seasonal** – Southend on Sea Corp v White (1900)
- **Clubs and Associations** – Proprietor liable in case of proprietary clubs. For incorporated clubs the corporate body is liable. Verrall v Hackney LBC (1982)
- **ATM Sites** – Sainsbury's and Others v Sykes (VO) and Others (2017)
- **Advertising Rights**

Advertising Rights

- **S64(4) LGFA 1988** – rateable where 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
 - 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
- **S65(8) LGFA 1988** – Person entitled to the right is the rateable occupier
- **S65(8a) LGFA 1988** – Land used for exhibition of adverts, the person permitting it to be so used is the rateable occupier.

Any Questions?

