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Business rates: Empty Rates Relief

Sunderland City Council v. Stirling Investment Properties LLP [2013] EWCH

This case follows on from ***Makro Properties Ltd v Nuneaton and Bedworth Borough Council [2012] EWHC 2250***, where the High Court held that occupation of a very small percentage of a warehouse was rateable occupation which allowed the claimant to claim empty rates relief when the occupation ceased (*see Business Rates: Court ruling on empty rates relief avoidance schemes attached*)

In ***Sunderland City Council v Stirling Investment Properties LLP***, the High Court held that a tenant, which had taken a lease for 43 days for a nominal rent for the purposes of installing Bluetooth apparatus, had occupied the premises for business rates purposes. Following the tenant's vacation of the premises, the landlord was able to claim relief from its liability to pay empty rates for six months.

This was in spite of the tenant's Bluetooth apparatus occupying a relatively small space, and the local rating list describing the premises as "warehouse and premises". The tenant installed a Bluetooth server measuring 95 x 65 x 30mm with a battery measuring 350 x 240mm and a wire aerial draped out of a window in the premises. Whilst the server was on the premises, it delivered 1789 messages to Bluetooth enabled devices within a transmitting range of around 20

metres. The premises were described in the local rating list as "warehouse and premises" with a rateable value of £41,250.

The local authority tried to argue that the tenant had not occupied the premises because they were not used as a warehouse, and in the alternative, that the tenant's occupation was so minimal as not to amount to actual occupation.

Decision

The High Court dismissed the local authority's appeal. It agreed with the District Judge's findings and found in favour of the freeholder concluding that the judge:

1. Did not err in law in finding that the presence of the Bluetooth apparatus constituted occupation of the premises.
2. Was correct on the facts to conclude that the tenant occupied the premises in circumstances which amounted to rateable occupation for the duration of the lease. This was because:
 - The tenant exclusively occupied the premises for the purpose of the permitted user;
 - The tenant intended to use the premises for the permitted user as set out in the lease and, as a result, the premises were beneficial to them;
 - Its occupation was not prevented from being rateable occupation despite the fact that the tenant only used a minute fraction of the area encompassed within the premises because the nature of the tenant's undertaking was such that it had identified the optimum location for its equipment;
 - Although the tenant paid a nominal rent, the tenant had agreed in the lease to pay and indemnify the landlord for rates pursuant to the terms of the lease. This reflected the value, or potential value, to the tenant of the lease and its occupation of the premises; and

- The intended use, though slight in terms of the extent of the space occupied, amounted to actual occupation and surmounted the *de minimis* hurdle.

The District Judge did not err in law in finding that the presence of the apparatus amounted to rateable occupation of the premises notwithstanding that it had been placed there for the purposes of advertising and not for warehousing. It was not relevant that the tenant used the premises for a use which was different to that which was described in the rating list. The tenant's occupation of the premises meant that it was liable to pay non-domestic rates for as long as the lease continued. There was nothing in the legislation which prevented a local authority levying rates where the purpose for which the premises were occupied was not identical to the description in the rating list. The issue of any apparent disconnect between the nature of the occupation and its description in the rating list was a matter for the Valuation Officer to address if it thought that a new, or additional, "wifi hereditament" may have been brought into existence comprising the wifi connection.

Property Litigation

Lee is head of the Property Litigation department at Ellisons and acts for a wide range of clients including property investment companies, portfolio owners, property owners, occupiers and individuals.

He has extensive experience in all forms of commercial and residential property and landlord and tenant disputes, including lease renewals, disrepair claims, possession claims, covenant breaches, and insolvency related issues.

Lee has a wealth of experience of higher court and county court litigation, tribunals, adjudications, and alternative dispute resolution including mediation.

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Lee Pearce heads the property litigation team. Sources comment that he has an *"authority and gravitas which in combination with his ability makes him a strong ally and a feared opponent."* (Chambers and Partners 2013)