RA/38/2007

LANDS TRIBUNAL ACT 1949

RATING – hereditament – oil pipeline from local supply point to combined heat and power station – whether a separate hereditament from power station and electricity and steam networks – held that it was not – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE BERKSHIRE VALUATION TRIBUNAL

BETWEEN **SLOUGH HEAT AND POWER LIMITED** **Appellant**

and

ANDY THOMPSON **Respondent**
(Valuation Officer)

Re: Power Station and Electricity and Steam Undertaking,
Slough Trading Estate Pipeline and Appurtenances,
Rail sidings to Slough Power Station Slough Trading Estate

Before: The President

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 24 October 2008

Richard Glover instructed by Ruddle Mez Ltd by direct access for the appellant
Timothy Morshead instructed by Solicitor to HM Revenue and Customs for the respondent

The following cases are referred to in this decision:

Gilbert (VO) v S Hickinbottom & Sons Ltd [1956] 2 QB 40
Coventry and Solihull Waste Disposal Co Ltd v Russell (VO) [1998] RA 427
Trafford Metropolitan Borough Council v Pollard (VO) [2007] RA 49
North Eastern Railway Co v Guardians of York Union [1900] 1 QB 733
Edwards (VO) v BP Refinery (Llandarcy) Ltd [1974] RA 1

The following further cases were referred to in argument:

English Clays Lovering Pochin & Co Ltd v Davis (VO) (1966) RRC 307
Russell VO v Shell Mex & BP Ltd [1972] RA 65
Petrofina (Gt Britain) Ltd v Harrington (VO) [1973] RA 65
Vtesse Networks Ltd v Bradford (VO) [2006] RA 427
Burton Latimer UDC v Weetabix Ltd (1958) 3 RRC 270

DECISION

1. This is an appeal against a decision of the Berkshire Valuation Tribunal given on 4 April 2007. It concerns the appellant's combined heat and power station on the Slough Trading Estate and an oil supply pipeline running to the power station from an offloading terminal adjacent to the main railway line. In the 2000 rating list the power station and the network of steam pipes and electricity supply lines emanating from it were entered as "Power Station and Electricity and Steam Undertaking" at £563,255 rateable value; and the oil pipeline was entered as "Pipeline and Appurtenances" at £15,900 RV. The appellant contended that the pipeline was not a separate hereditament but was part of the power station hereditament; and that the entry relating to it should accordingly be deleted. The rateable value of the power station, based as it is on a statutory formula contained in the Electricity Supply Industry (Rateable Values) (England) Order 2000, would not be affected. The valuation tribunal rejected the ratepayer's contention and confirmed the two entries.

2. No evidence was called before me, but there was an agreed statement of facts, on the basis of which Mr Richard Glover for the appellant and Mr Timothy Morshead for the respondent valuation officer made their submissions. The following factual summary is derived from the agreed statement.

3. The Slough Trading Estate extends to 196 hectares and is situated to the north west of Slough town centre. It comprises mainly industrial and warehouse units but also some retail and office accommodation. It is owned by Slough Estates plc. The estate is provided with electricity and some of the units on the estate are provided with steam from the Slough Heat and Power Ltd power station, which is situated in Edinburgh Avenue, Slough. The power station site contains buildings used as fuel stores, a boiler house, turbine and generator hall and various workshops and stores, a staff canteen and an office block. In addition there are two oil tanks and two cooling towers. The power station is multi-fuel and can use as its source of power natural gas, heavy fuel oil, biomass and coal. One of the fuels which was burned at the power station up to 1 January 2003 was heavy fuel oil. The oil was normally delivered in tankers to the end of the pipeline at the railway sidings at Slough. The railway sidings are situated to the east of Farnham Road (A355). The fuel oil was pumped from the tankers through the oil pipeline to the power station. The pipeline is approximately 1,327 metres long. It is shown on the plans as running for the whole of its length beside steam mains.

4. The fuel oil was burned to heat water in the boilers and produce steam. The steam drove the turbines, and electricity was produced in the generators. The electricity was supplied to the local distribution network, which served the Slough Trading Estate and some residential properties in Slough. When the amount of electricity generated was in excess of the requirements of the local network it was put into the National Grid network. After the steam had driven the turbines, it was, when required, put into the local steam network for use in the premises to which the steam network was connected. The steam undertaking included steam pipes which were available to heat up the oil in the tankers at the railway sidings at Slough. The oil was heated so that it could be effectively pumped from the tankers to the power station.

The steam network was also connected to the oil pipeline and for part of the oil pipeline's length steam trace heating pipes touched the oil pipeline and heated the oil pipeline enabling the heavy fuel oil to be transported more efficiently from the railway sidings to the power station.

5. In 1993, to enable the heavy fuel oil to be transported more efficiently from the railway sidings to the power station, an electric trace heating system was installed along the whole length of the oil pipeline internally within the pipe and fed with power from electricity supply cubicles situated at strategic points along the route of the oil pipeline. The cubicles contain facilities for power isolation, power supply protection and temperature control equipment for the trace heating system. The cubicles are supplied with power generated at the power station from substations on the local distribution electricity supply network. The trace heating was usually tested prior to the winter period or a known delivery of heavy fuel oil and then switched on locally. The electric heating system then regulated itself through its own control system. The trace heating was not left switched on unnecessarily.

6. The oil pipeline has only ever been used to transport heavy fuel oil from the railway sidings at Slough to the power station. The oil transported by the pipeline has only ever been used as a fuel and burned in the boilers at the power station. The last time oil was transported down the pipeline was in November 1996 but it was physically capable of being used for transporting oil from the railway sidings to the power station on 1 April 2000. At that date the pipe was not capable of any function other than that of transporting oil from the railway sidings to the power station. The last time heavy fuel oil was burned at the power station was in 2002. To operate the pipeline on 1 April 2000 it would have been necessary to switch on the electric trace heating wires to heat the oil pipeline so that the heavy fuel oil being pumped from the railway sidings to the power station oil tanks could be transported more effectively. It was also possible to put condensate through the trap return hot water trace heating pipes which touched the oil pipeline over part of its length. This would have heated the pipeline over part of its length and have made it possible to transport the heavy fuel oil more effectively.

7. In giving its reasons for its decision, the valuation tribunal said this:

> "The tribunal noted that without a physical change, the pipeline could only be used by the occupier of the power station. It could, in theory, feed material into the storage tank which would be used by another party for an entirely different purpose to the generation of power. To the tribunal's mind such circumstances would automatically mean a separate assessment. However, those were not the facts of this appeal.
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> Both parties had referred to much the same case law, but used different parts of the decision, rather than the actual decision reached, to substantiate their cases. Illustrations of both separate and included pipelines had been given and the tribunal noted that the dispute involved was based on interpretation of the principles established in Gilbert v Hickinbottom. Here the fundamental question was one of dependency of a bakery on its servicing depot the two were split by a highway. In the instant appeal the pipeline ran from a remote point to the Power Station, as did much of the output lines from the power station in the opposite direction, which were

deemed to be included in its assessment. Although the pipeline traversed over or under other properties, it was not geographically divided in the same sense as it led to a tank within the power station. The tribunal noted this difference"

8. The tribunal then referred to three pipeline cases, and it went on:

"So was the pipeline dependent on the power station and was the power station dependent on the pipeline? In its present form, the pipeline has no other purpose than to feed the tank to which it leads. It does, in the tribunal's view stand by itself in this. The power station has other forms of material to burn which is also stored on site, but is delivered by road. The power station is not dependent on the pipeline and can, and does, function perfectly well without it. The generation of the power and its delivery are a 'seamless' operation on this site, but the tribunal considered that the pipeline is not a necessary part of that operation and could not be considered to be so.

The tribunal thus considered that it had examined the points put forward and determined each one so that a fulsome decision could be made. It considered that the tests for a single assessment were not met in this case. It saw no reason or arguments put forward to disturb the present separate assessment for the pipeline and thus found for the respondent Valuation Officer in this appeal."

9. Mr Glover submitted, on the basis of *Gilbert (VO) v S Hickinbottom & Sons Ltd* [1956] 2 QB 40 and *Coventry and Solihull Waste Disposal Co Ltd v Russell (VO)* [1998] RA 427, that whether property in the same occupation constituted one or more than one hereditament was a question of fact and degree that depended on two main considerations, location and function. If two elements of occupation were contiguous they would prima facie constitute a single hereditament, and only if the functions of the two elements were so different that they should not be seen as one would they properly be treated as separate hereditaments. On the facts, said Mr Glover, the oil pipeline was connected into the tank in the power station compound, it ran parallel with steam lines throughout its length and touched them for parts of its length. Its function, and its sole function, was to provide fuel for the power station, so that its use was not entirely different from that of the power station but it was as much a part of the commercial process as the steam mains.

10. Mr Morshead submitted that, although in the same occupation as the power station, the pipeline would appear to be capable of separate letting. There was no evidence that this would be impeded by the limited extent to which the pipeline came within the curtilage of the power station before it reached the tank or by the means of controlling it operationally or in any other way. Although there was degree of contiguity with the power station hereditament in that it passed through a short stretch of the curtilage and connected to a tank, the connection at the power station end was the minimum necessary to effect the connection; and although it ran parallel with steam pipes throughout its length, the agreed facts did not show at what points it touched the steam lines, except that it was clear that the points at which it did touch were remote from the power station itself. In any event contiguity was, on the authorities, only one of the matters that required to be considered by reference to the facts as a whole. It was no part of the statutory definition.

11. As far as the question of different uses was concerned, Mr Morshead said that the purpose of the power station was to generate electricity and steam. The distribution of the electricity and steam so generated might readily be seen to form part and parcel of the purpose of the power station (as distribution pipelines had been held to be in *Coventry and Solihull*). Supplying oil to the power station was, however, different. It was not the purpose of the power station to receive oil or store it or use it, so that transportation of the oil to the power station was a materially distinct function from any purpose or process within the power station.

12. Mr Morshead went on to address the question whether the pipeline and power station were dependent on each other, as the bakery and repair depot had been found to be in *Gilbert v Hickinbottom*. It was of course true that the pipeline was substantially pointless without the power station. But the power station was not at all pointless without the pipeline. Indeed it functioned perfectly well without oil received through the pipeline.

13. Overall Mr Morshead submitted that, applying what Morris LJ in *Gilbert v Hickinbottom* called "a common-sense assessment of the features of the case", the valuation tribunal's decision represented a correct overall appreciation of the facts. Denning LJ's categories should not be treated as universal catch-all, but, if they were applied, the case for separate assessment was established. As far as the first category was concerned, the pipeline and power station were not within the same curtilage and were only contiguous to the minimum extent necessary to enable the pipeline to supply oil to the tank, and on this basis the first test was not met. Even if it were met, however, the pipeline fell within an exception because it was used "for an entirely different purpose" from the power station. The facts of the case were far closer to Denning LJ's second category in that the power station and pipeline were not with the same curtilage or contiguous, and as they were not mutually dependent they fell to be assessed separately.

14. In a recent case, *Trafford Metropolitan Borough Council v Pollard (VO)* [2007] RA 49 at paragraphs 18 to 26 I discussed the principles on which hereditaments are properly to be identified in considering the two leading cases on this, *Gilbert v Hickinbottom* and *Coventry and Solihull*. It is unnecessary to repeat that discussion here. The question is one of fact and degree, but it has to be determined by reference to the factors that the authorities identify as being material and in accordance with the approach that they lay down. For present purposes, in view of the contentions advanced by the parties, it is important to have in mind the familiar passages from the judgment of Denning LJ in *Gilbert v Hickinbottom* ([1956] QB 40 at 48):

> "First, take the case where two or more properties are within the same curtilage or contiguous to one another, and are in the same occupation. In that case they are, as a general rule, to be treated for rating purposes as if they formed parts of a single hereditament. There are, however, exceptional cases where for some special reason they may be treated as two or more hereditaments. That may happen, for instance, when they are situate in different rating areas, or because they were valued at different times (see section 3 (3) of the 1928 Act): or because they were at one time in different occupations (see *Spillers Ltd. v. Cardiff Assessment Committee* [1931] 2 KB 21, 47, per Avory J; or because one part is used for an entirely different purpose (see *North Eastern Railway Co. v. Guardians of York Union* [1900] 1 QB 733.

> Secondly, take the case where the two properties are in the same occupation but are not within the same curtilage nor contiguous to one another. In that case each of the properties must, as a general rule, be treated as a separate hereditament for rating purposes: and this is the case even though they are used by the occupier for the purposes of his one whole business…
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> Thirdly, take the case where two properties are separated by a public highway, the surface of which is vested in the highway authority and the soil is vested in the highway authority and the soil is vested in the occupier of the two properties. In that case the position in general seems to me to be the same as if the two properties were separated by a canal, a railway or a dwelling-house occupied by somebody else. They are normally to be treated as two separate hereditaments for rating purposes…
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> …But this third rule is not inflexible. There are exceptional cases where two properties, separated by a road, may be treated as one single hereditament for rating purposes. That may happen when a nobleman's park, or a farm (when agricultural land was rated), or a golf course, is bisected by a public road. In such cases the two properties on either side of the road are so essentially one whole - by which I mean, so essential in use the one to another - that they should be regarded as one single hereditament."

15. The rules there stated are consistent with the approaches adopted by Morris LJ (at 51) and Parker LJ (at 53) in the same case. The first rule was followed by the Court of Appeal (upholding this Tribunal (Judge Marder QC, President)) in *Coventry and Solihull*. That case concerned the rating of an electricity generating waste incinerator, and one issue was whether a pipeline leading from the premises to supply a nearby factory with heated water as a byproduct of the incineration and generation operations was to be treated as part of the same hereditament as the remainder of the premises or as a separate hereditament. The President had said in his decision that there was no reason on the facts to depart from Denning LJ's general rule and that in his judgment the pipeline formed part of a single hereditament comprising incinerator plant, generating plant and pipeline. In the Court of Appeal ([1998] RA 427) Robert Walker LJ said (at 437) that this conclusion was unassailable in law. Waller LJ (at 441) expressed agreement with Robert Walker LJ and also with Hobhouse LJ, who (at 444) said this:

> "In the present case there is no indication whatsoever that the Lands Tribunal applied the wrong criterion. Judge Marder expressly directed himself by reference to what had been said by the Court of Appeal in *Gilbert v Hickinbottom*. The two parcels of land adjoined one another. Therefore it was necessary for the [valuation officer] to show that the pipeline was used for an entirely different purpose to that for which the remainder of the ratepayer company's land was used. On the evidence and upon the facts found it was clear that the pipeline was not used for an entirely different purpose. It was used as part of the operation being carried on at this waste disposal plant."

16. In his submissions Mr Morshead relied on a number of pipeline decisions under the Plant and Machinery Orders. With one exception these are in my view of no assistance. The rateability of such pipelines depended, under the terms of the Orders, on whether the pipeline was wholly situated within a factory and formed part of the equipment of the factory. Those

are different questions from that of whether a pipeline forms part of a larger hereditament, and the curtilage of a factory may not coincide with the boundary of the hereditament. In one case, however, *Edwards (VO) v BP Refinery (Llandarcy) Ltd* [1974] RA 1, the question did arise as to whether certain pipelines should be considered to be separate heditaments. The pipelines in issue, all associated with the ratepayer's oil refinery at Swansea, were the Queen's Dock pipeline, which ran between two enclosures, the Queen's Dock site and the Transit Site, that were separated by a dock road but were treated as a single hereditament; the main pipe track running from the boundary of the refinery for a mile and a half to the Transit Site; and another pipe track known as the spirit depot pipetrack. Reference in the decision was also made to the Angle Bay pipeline, a cross-country pipeline 59 miles in length running to the refinery from the ocean terminal at Angle Bay in Pembrokeshire, which was not a subject of the proceedings. The Tribunal (J Stuart Daniel QC and J H Emlyn Jones FRICS), having referred to *Gilbert v Hickinbottom* and another Court of Appeal case, *Butterley Co Ltd v Tasker (VO)* (1961) 7 RRC 213, said this (at 37-38):

> "Consideration of these two cases leads us to the conclusion that two separate properties which are not directly and physically contiguous could not properly be regarded as a single hereditament for rating purposes unless firstly, there is an essential functional link between the two parts and secondly, that there is also a substantial degree of propinquity. One might perhaps consider the analogy of a sparking plug where the gap between the two parts is so small that it can physically be traversed in the course of the functioning of the whole. It might also be true to say that the stronger the spark the greater the gap which can be traversed.
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> It is in adopting this approach that we incline to the view as we have indicated that the pipe lines connecting the Queen's Dock and the Transit Site though not within the 'factory', in the terms of class 5 of the 1960 order, are nevertheless properly regarded as part of a single hereditament with the 'factory'. As to the main pipe track and the aviation fuel reserve depôt pipe track, it is true that at either end they are immediately contiguous to the installations which they serve, but they have a similarity to the road with buildings at each end of it, referred to by Harman LJ in his judgment in the *Butterley* case. The Angle Bay pipe line is also contiguous at either end to the installations which it serves but no one suggests that it forms part of the same hereditament as the refinery. In the words of Morris LJ in *Gilbert v S Hickinbottom Sons Ltd*, we think it better to employ a common sense assessment of the features of the case and for this reason have indicated that these pipe lines should be separately assessed. As we have indicated, however, these conclusions are in no way necessary to the findings which we have made on the substantive issue of rateability."

17. In a case such as the present it is in my view a good working rule for a tribunal to start off by seeking to apply to the facts of the case Denning LJ's general rules. Often the result, where the first rule applies, will be obvious. If it is not, a judgment will have to be formed on what is a question of fact and degree having regard to the particular features of the case that appear to be significant. Here, applying Denning LJ's first general rule, since both pipeline and power station are in the same occupation, the first question is whether the pipeline is contiguous to the property comprising the power station and the network of electricity and steam lines that emanate from it. It obviously is. Not only does this pipeline enter the curtilage of the power station itself and connect to the oil storage tank but for the whole of its

length it runs alongside steam pipelines that are part of the power station hereditament and it is in contact with them for part of its length; and there is also an electric trace heating system inside the oil pipeline for the whole of its length which is fed with power from electricity supply cubicles situated along its route. Mr Morshead suggested that it was relevant to consider the degree of contiguity. I accept that in some cases it may be, and the *BP Llandarcy* case shows its potential relevance in relation to pipelines. Here, however, it is plain that the degree of contiguity is considerable, and the contention on behalf of the valuation officer that the pipeline is not contiguous or should not be treated as being contiguous is in my judgment simply unarguable.

18. Since the pipeline is contiguous, it next becomes necessary to consider whether it falls within any of the exceptions that would justify its being treated as a separate hereditament. The contention on behalf of the VO is that it was used for "an entirely different purpose" from the power station. This proposition only has to be stated for it to be seen as erroneous. Unlike, for instance, the hotel in *North Eastern Railway Co v Guardians of York Union* [1900] 1 QB 733, the use of which was clearly quite different from the use of the railway station, the sole function of the pipeline was to serve the electricity and heat generating processes of the power station. There is accordingly no justification for treating the pipeline as a separate hereditament.

19. In some cases the considerations determining whether property in a single occupation should be treated as one hereditament or two may be finely balanced. *Trafford Metropolitan Borough Council v Pollard (VO)* was such a case. The present case, by contrast, is in my view quite clear; and, although the question, where the authorities are properly applied, is one of fact and degree, I do not think that the VO and the valuation tribunal could, in the light of the authorities, reasonably have treated the pipeline as a separate hereditament. The valuation tribunal fell into error in my judgment in applying a test of mutual dependency. It concluded that, although the pipeline had no function other than to feed the tank at the power station, the power station itself was not dependent on the pipeline and could operate without it; and therefore that it should be treated as a separate hereditament. The question of mutual dependency may well be relevant where the two parcels under consideration are not contiguous, so that Denning LJ's second and third rules fall to be applied. But to treat this question as not only material but decisive where the two parcels are contiguous is wrong as a matter of law. The appeal is accordingly allowed, and the entry relating to the pipeline must be deleted from the list.

20. The parties are now invited to make submissions on costs, and a letter relating to this accompanies this decision, which will become final when the question of costs has been determined.

Dated 31 October 2008

George Bartlett QC, President