



15 May 2019

PRESS SUMMARY

Telereal Trillium (Respondent) v Hewitt (Valuation Officer) (Appellant) [2019] UKSC 23
On appeal from: [2018] EWCA Civ 26

JUSTICES: Lord Reed (Deputy President), Lord Carnwath, Lady Black, Lord Lloyd-Jones, Lord Briggs

BACKGROUND TO THE APPEAL

Mexford House is a substantial three-storey block of offices in the North Shore area of Blackpool. It was purpose-built in 1971 and was occupied continuously as Government offices from 1972. The property was vacant, however, by 1 April 2010, the date on which the non-domestic rating list for the area of Blackpool Borough Council first came into force by virtue of section 41(2) of the Local Government Finance Act 1988 (‘the 1988 Act’).

A valuation was made for the purposes of the new rating list. The rateable value had to be determined by reference to the ‘antecedent valuation date’ two years earlier. The rateable value initially entered by the valuation officer with effect from 1 April 2010 was £490,000. This reflected his view that there were other office buildings in the area of similar age and quality, occupied by public sector tenants at rent of the same order. However, the Valuation Tribunal for England reduced the rateable value of Mexford House to £1.

The valuation officer appealed to the Upper Tribunal, before which the matter was dealt with by way of a full-rehearing on fact and law. In cross-examination, the valuation officer accepted that as at the antecedent valuation date he could not identify any person in the real world who would bid for the tenancy of Mexford House, although he noted that there was demand for other (occupied) properties that were comparable. In light of the comparable properties he gave a final assessment of the rateable value as £370,000.

After the valuation officer’s evidence, counsel for both parties informed the Upper Tribunal that the issue between them could be decided ‘as a matter of law upon an agreed basis of fact’. No other evidence was heard. The parties lodged before the Upper Tribunal a ‘Joint Position Paper’, in which they agreed that at the time of the antecedent valuation date nobody in the real world would have been prepared to occupy the property and pay a positive price. They agreed that the ‘rating hypothesis’ requires the existence of a hypothetical tenant to be assumed, but the question was whether the same hypothesis requires the rateable value to be assessed by reference to the ‘general demand’ as evidenced by the occupation of other office properties with similar characteristics. It was agreed that, if the answer is yes, the correct rateable value was £370,000; if no, £1.

The Upper Tribunal answered ‘yes’, so it allowed the valuation officer’s appeal and fixed the rateable value at £370,000. The Court of Appeal allowed Telereal Trillium’s appeal and restored the Valuation Tribunal for England’s assessment of the value at £1, on the basis that there was no demand in the market for occupation of Mexford House. The valuation officer appeals to the Supreme Court, which considers the same question as the Upper Tribunal and the Court of Appeal.

JUDGMENT

The Supreme Court allows the appeal by a majority of three to two. Lord Carnwath gives the judgment of the majority, with which Lord Reed and Lord Lloyd-Jones agree. Lord Briggs gives a dissenting judgment, with which Lady Black agrees.

REASONS FOR THE JUDGMENT

Lord Carnwath notes that the court must take the Joint Position Paper as it stands. It cannot look beyond it to evidence which was not referred to by the tribunal, nor attempt to resolve issues which were left unresolved by agreement. However, in so far as there are differences as to its interpretation, the court is entitled to look at the context in which it was arrived at, and the state of the evidence as recorded by the tribunal at that time [31].

He approves of the Upper Tribunal's reliance on *London County Council v Church Wardens and Overseers of the Poor of the Parish of Erith in the County of Kent* [1893] AC 562, from which it extracted the proposition that "the true test is whether the occupation is of value", contrasted with land that was "struck with sterility in any and everybody's hands [36-42]. Cases such as *Hoare v National Trust* [1998] RA 391 and *Tomlinson v Plymouth Argyle Football Co Ltd* (1960) 31 DRA 788, referred to by the Court of Appeal, do not assist the respondent as in those cases the absence of alternative tenants was due to the inherently burdensome nature of the properties, rather than the state of the market [46-48].

Lord Carnwath endorses the distinction drawn in previous Land Tribunal cases between a property which is unoccupied merely because of a surplus between supply and demand in the market, and a property which has "reached the end of its economic life" [55]. The Valuation Office Agency's guidance on whether a property is obsolete lists several relevant considerations, including whether the property was occupied at the antecedent valuation date, and whether there are other similar properties in the locality that are occupied [56]. This highlights the issues of fact which may become relevant in drawing the distinction in particular cases, but which, by agreement, the tribunal in the present case was not required to resolve [57].

Whether the building is occupied or unoccupied, or an actual tenant has been identified, at the relevant date is not critical. Even in a "saturated" market the rating hypothesis assumes a willing tenant, and by implication one who is sufficiently interested to enter negotiations to agree a rent on the statutory basis. There is no reason why, in the absence of other material evidence, the level of that rent should not be assessed by reference to "general demand" derived from "occupation of other office properties with similar characteristics" [58]. The majority therefore allows the appeal and restores the decision of the Upper Tribunal [61].

Lord Briggs, dissenting, comes to a different conclusion about the meaning and consequences of the Joint Position Paper. In the real world the existence of comparable properties at substantial rents would ordinarily have compelled an examination of whether one or more of the tenants in those properties would have been prepared to relocate to the subject property at a lower, but still more than nominal, rent [62]. It will be very rare that the evidence really does show that there is no demand at all for the subject property where there are comparable properties in the locality let at substantial rents. But if that is what the evidence shows (or what the parties have agreed), the rating hypothesis does not require a departure from that real-world conclusion, merely because the subject property is in theory capable of beneficial occupation [83].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>