UPPER TRIBUNAL (LANDS CHAMBER)

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UTLC case no: RA/75/2016

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – hereditament – warehouse – whether chipboard decking supported by timber joists resting on non-rateable Dexion racking and steel staircases forms part of the hereditament or is non-rateable plant – appeal dismissed

BETWEEN:

ANDREW WILKINSON
(VALUATION OFFICER) **Appellant**

- and -

EDMUNDSON ELECTRICAL LIMITED
Respondent

Re: Unit 12A Dewsbury Road
Stoke on Trent
ST4 2TE

Martin Rodger QC, Deputy Chamber President and A J Trott FRICS

Royal Courts of Justice, London WC2A 2LL

26 September 2017

Mr John Jolliffe, instructed by HMRC Solicitor's Office, for the Appellant
Mr Alan Watson FRICS, of Rapleys LLP, for the Respondent

The following cases are referred to in this decision:

British Bakeries Ltd v Gudgion (VO) [1969] RA 465

Edmondson v Teeside Textiles Limited [1985] 1 EGLR 151

Field Place Caravan Park Ltd v Harding [1966] 2 QB 484

J. Lyons & Co. Ltd v Attorney General [1944] Ch 281

Jarrold (Inspector of Taxes) v John Good and Sons Ltd [1963] 1 All E.R 141

LCC v Wilkins (Valuation Officer) [1957] AC 362

Rogers (VO) v Evans [1985] 2 EGLR 217

St John's School (Mountford) v Ward (H M Inspector of Taxes) [1974] RA 49

Vincent Bach International Limited v Kubbinga (VO) [1994] RA 31

Yarmouth v France (1877) 19 QBD 647

Introduction

1. The Valuation Officer, Mr Andrew Wilkinson, appeals against a decision of the Valuation Tribunal for England dated 19 August 2016 amending the entry in the local non-domestic rating list for a warehouse and premises at Unit 12A, Dewsbury Road, Stoke-on-Trent ST4 2TE to a rateable value of £14,250 with effect from 1 April 2010. Mr Wilkinson seeks a rateable value of £15,500. Despite the small sum in dispute, the appeal gives rise to an important point of principle.

2. The respondent ratepayer is Edmundson Electrical Limited.

3. The sole issue in the appeal is whether chipboard decking which is supported by warehouse racking and reached by two staircases, is to be valued as part of the hereditament. The valuation officer regards the decking as part of the hereditament and therefore as rateable. The ratepayer says the decking is not part of the fabric of the building but is non-rateable plant.

4. The appeal was heard under the Tribunal's simplified procedure (at the request of the respondent, because of its low value and in order to avoid the risk of adverse costs consequences). The valuation officer nevertheless asked that it be treated as a test case because the same issue arises in respect of thousands of similar premises. For that reason, and unusually for a case under the simplified procedure, the Tribunal therefore comprises a Judge and a Member, rather than a Member sitting alone.

5. Mr John Jolliffe of counsel appeared for the appellant and called Mr Andrew Wilkinson DipSurv, MRICS, the duly authorised valuation officer, as an expert witness.

6. Mr Alan Watson FRICS, IRRV (Hons), a partner at Rapleys LLP, appeared for the respondent and also gave expert evidence.

Facts

7. The Tribunal did not conduct an inspection of the hereditament but we were supplied with a large number of photographs which the parties agreed provided a clear impression of the disputed structure. On the basis of those photographs, an agreed statement of facts and the remainder of the evidence we make the following findings.

8. The appeal hereditament, which is located on the Fenton Industrial Estate to the east of Stoke-on-Trent, is a heated warehouse of portal frame construction with brick/profile steel clad walls and a lined steel roof. It was built in 1990. The

chipboard decking with which the appeal is concerned was installed in 1992, before the respondent became the lessee.

9. The property is occupied under a 24 year FRI lease from 1990 with three-yearly upward only rent reviews. The passing rent at the time of the proposal was £17,500 per annum. That rent had remained unchanged since December 2005.

10. The parties described the deck as a mezzanine in their statement of agreed facts. We have avoided that term because it is liable to create an inaccurate impression of the structure.

11. Along one side of the ground floor of the warehouse are offices. The remainder of the ground floor is used for storage on static painted steel Dexion racks. Some, but not all, of the 55mm x 26mm steel uprights are rag bolted to the concrete floor. The racks have 53mm x 35mm steel cross beams. Continuity of deck support between the ends of each racking bay is provided by timber cross members which are bolted to the tops of neighbouring bays.

12. The racking system supports rows of shelves which rise over most of the structure from floor to ceiling, providing seven levels capable of storing goods of different sizes. Above the fourth level of shelving 120mm x 50mm timber joists have been laid on top of the steel cross beams of the racking system; on top of the joists sheets of 18mm chipboard have been laid to form a continuous deck.

13. The chipboard deck is mainly supported by the timber joists laid across the cross beams of the Dexion racking rather than by any independent steel or timber framework. Additional support (and access) to the deck is provided by two steel staircases; these would be insufficient to support the deck if the racking system was removed and it would collapse. The staircases are formed from 80mm x 80mm painted steel upright supports rag bolted to the floor with 88mm x 150mm steel I-section girders forming the trimming joists to the opening. The stairs are made of steel with checker plate treads. Both staircases are 1.1m wide and 3.65m long.

14. Many of the racking uprights continue above the deck and support the shelving at a higher level. The chipboard floor has been cut to fit around these uprights. None of the racking, staircases, joists or chipboard is bonded to the portal frame of the building.

15. The working height below the deck is 2.41m. Strip lighting is attached to the underside of the deck along the ground floor aisles between the racks. The deck has a steel guard rail and mesh infill around its perimeter as a health and safety measure. The guard rail is attached to the chipboard flooring but not to the racking.

16. The chipboard deck is not an open space (except in a small area at the top of the staircases where there are no shelves). The ground floor aisles created by the racking uprights are repeated on the upper level and determine the use that can be made of the deck.

17. The deck is used primarily to provide access to the higher shelves, of which there are typically three rows above the level of the decking (which is itself used as a surface on which lighter goods are stored).

18. The parties agree that the area of the deck is 136.43m^2. The hereditament as a whole has a floor area of 309.81m^2, which increases to 446.24m^2 if the deck is included in the measurement. The value of the warehouse in terms of main space was agreed at £46 per m^2 and the relativities were agreed at 0.7 for the area under the deck and 1.1 for the office accommodation on the ground floor. If the deck forms part of the hereditament the appropriate relativity for that floor space is agreed to be 0.5. If the deck is excluded from the hereditament the whole of the ground floor warehouse (including the area under the deck) is to be valued at a relativity of 1.0.

19. The deck was not designed as an integral part of the racking. It was built around and supported by the racking, the primary purpose of which is storage.

20. Storage Equipment Manufacturers Association ("SEMA") pallet racking notices are displayed on the racking.

The relevant legal principles

21. The unit of property which is the subject of non-domestic rating is the "hereditament". By section 64(1) of the Local Government Finance Act 1988 ("the 1988 Act") a hereditament is anything which would have been a hereditament within the definition in section 115(1) of the General Rate Act 1967.

22. Section 115(1) of the General Rate Act 1967 provided that:

> " 'Hereditament' means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list."

Thus a hereditament is a unit of property which falls to be shown as a separate item in the valuation list.

23. Section 41(1) and (2) of the 1988 Act require the valuation officer for a billing authority to compile and maintain a local valuation list. The list must show each "relevant non-domestic hereditament". Section 64(4) of the 1988 Act provides that:

"A hereditament is a relevant hereditament if it consists of property of any of the following descriptions –

(a) lands …"

23. Since the Poor Rate Exemption Act 1840 the liability of the ratepayer has been limited to hereditaments in the nature of land, and personal property or chattels are not rateable in their own right. Nevertheless, chattels may become rateable together with land, as was made clear by the House of Lords in *LCC v Wilkins (Valuation Officer)* [1957] AC 362. The issue was whether four builders' huts, erected as temporary structures on a site for 18 months, and only one of which was moved from one part of the site to the other during that period, were chattels and therefore not rateable. The House of Lords held that the test of rateability was whether the structures were enjoyed with the land and enhanced its value. Lord Denning MR subsequently stated in *Field Place Caravan Park Ltd v Harding* [1966] 2 QB 484, that:

"The correct proposition today is that, although a chattel is not a rateable hereditament by itself, nevertheless it may become rateable together with land, if it is placed on a piece of land and enjoyed with it in such circumstances and with such a degree of permanence so that the chattel with the land can together be regarded as one unit of occupation."

24. Importantly, however, the principle that a chattel which is enjoyed with land and enhances its value may nevertheless be rateable together with the land, is qualified in the case of plant and machinery.

25. The word "plant" is not defined in the 1988 Act, but it has a recognised meaning. In *Yarmouth v France* (1877) 19 QBD 647, Lindley LJ described plant as including whatever apparatus is used for carrying on a business; not stock in trade, but all goods and chattels, fixed or movable, live or dead, which are kept for permanent employment in the business.

26. In *J. Lyons & Co. Ltd v Attorney General* [1944] Ch 281, Uthwatt J suggested a further distinction, elaborating on Lindley LJ's definition by adding that:

"The term does not include stock-in-trade, nor does it include the place in which the business is carried on.

He added that whether any particular article more properly falls within "plant", or in some other category, depends on all the circumstances of the case. Both Lindley LJ's original explanation and Uthwatt J's extension of it to distinguish clearly between plant and the ratepayer's place of business, were cited with approval by the Court of Appeal in *Jarrold (Inspector of Taxes) v John Good and Sons Ltd* [1963] 1 All E.R 141.

27. Schedule 6 to 1988 Act determines the rateable value of non-domestic hereditaments. Paragraph 2(1) of Schedule 6 provides that the rateable value shall be taken to be an amount equal to the amount at which it is estimated the hereditament might reasonably be expected to let from year to year on certain assumptions. The Valuation for Rating (Plant and Machinery) (England) Regulations 2000 (the "2000 Regulations") made under paragraph 2(8) of Schedule 6 provide for some of those assumptions, as follows:-

> "2. For the purpose of determining the rateable value of a hereditament for any day on or after 1 April 2000 in applying the provisions of sub-paragraphs (1) to (7) of paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 -
>
> (a) In relation to a hereditament in or on which there is plant or machinery which belongs to any of the classes set out in the Schedule to these Regulations, the prescribed assumptions are that:
>
> (i) any such plant or machinery is part of the hereditament; and
>
> (ii) the value of any other plant and machinery has no effect on the rent to be estimated as required by paragraph 2(1); and
>
> (b) in relation to any other hereditament, the prescribed assumption is that the value of any plant or machinery has no effect on the rent to be so estimated".

28. The Schedule to the 2000 Regulations categorises certain plant and machinery into four classes, all of which are to be assumed to be part of the hereditament by reason of paragraph 2(a)(i). The effect of assuming an item of plant or machinery is part of the hereditament is that it will be taken into account in determining the value of the hereditament as a whole. Paragraphs 2(a)(ii) and 2(b) require that plant and machinery which is not included in one of the classes in the Schedule is to be assumed to have no effect on the value of the hereditament.

29. The parties agree that the Dexion storage racking which supports the chipboard deck in this appeal is not within any of the classes in the Schedule to the 2000 Regulations. Thus, for the purpose of determining rateable value the racking is assumed to have no effect on the rent at which the hereditament might reasonably be expected to let. This important consensus is, we understand, based on a change in the treatment of racking which occurred in 1994. Under the Valuation for Rating (Plant and Machinery) (England) Regulations 1989 the items specified in Table 3 of Class 4 included “racks”. When the Regulations were replaced in 1994 the reference to “racks” was omitted and that omission continues in the 2000 Regulations.

The issue

30. In its decision of 19 August 2016 the VTE acknowledged that mezzanine floors were generally rateable, but found that the chipboard decking was not part of the fabric of the building and did not constitute a mezzanine floor. It therefore accepted the argument of the ratepayer that the decking was not rateable.

31. The sole issue in the appeal is whether the deck which rests on the non-rateable racking and provides access to its upper levels falls to be treated in the same way as the racking itself by having no value attributed to it, as the VTE accepted, or is to be valued as part of the hereditament, as the valuation officer argues.

The case for the appellant

32. On behalf of the appellant Mr Jolliffe submitted that the "mezzanine" (as he termed it) was part of the premises, or the "setting", in which the respondent carried on its business, rather than part of the apparatus or plant with which it did so. Alternatively, the deck was a walkway or platform within Table 3 of Class 4 of the 2000 Regulations and was to be assumed to be part of the hereditament.

32. The racking itself was said to serve a dual purpose: (i) storage and (ii) to support the deck above. Mr Jolliffe invited us to assume the racking added nothing to the value of the premises as storage racking. But that did not mean the racking should be assumed not to exist; it was present and served a separate function as a support structure and as such was rateable, together with the deck, as part of the premises in which the business was carried on.

33. The racking and the deck it supports were part of the setting because of its substantial construction and considerable weight (estimated by Mr Wilkinson to be 34 tonnes). It had been in place since 1992 and had not been moved. It was accessed by substantial staircases and had integral electrical services beneath the deck. The deck was substantially annexed to the hereditament via rag bolts connecting the staircase stanchions and some of the racking uprights to the concrete ground floor.

34. Mr Jolliffe referred to a group of cases concerning office partitioning which he said illustrated principles which had been applied to mezzanine floors.

35. *Jarrold (Inspector of Taxes) v John Good and Sons Ltd* [1963] 1 All E.R 141 was a decision of the Court of Appeal concerning demountable partitions which could be arranged in different configurations within an office building depending on the needs of the taxpayer's business. If the partitions were "plant" for the purpose of section 279(1), Income Tax Act 1951, capital allowances would have been available to the occupier in respect of them. Pearson LJ said the short question in the case was whether the partitioning was part of the premises in which the business was carried on, or part of the plant with which the business was carried on. At p.146 E he suggested that "the dividing line between what is "plant" and what is not is a narrow one" and that "each case does depend largely on its own circumstances", but he was satisfied on the facts of that case that the partitioning was properly regarded as plant.

36. *British Bakeries Ltd v Gudgion (VO)* [1969] RA 465 also concerned the rateability of demountable partitioning in office premises. The partitioning was of two types: full-height partitioning used to create individual rooms, on the one hand, and half-height partitioning which was used to sub-divide open-plan areas. The

Lands Tribunal (Sir Michael Rowe QC, President) found that the full-height partitioning constituted the internal walls of the building and was rateable as part of the hereditament, while the lower, more flexible partitioning was in the nature of furniture and was part of the occupier's plant.

37. The treatment of mezzanine, or supported, floors was considered by the Lands Tribunal (W H Rees FRICS) in *Rogers (Valuation Officer) v Evans* [1985] 2 EGLR 217. A substantial mezzanine floor used as a design office had been constructed by the occupier of a light industrial unit. The area of the ground floor of the unit was 80m^2 and that of the mezzanine 43m^2. The mezzanine was described as "a substantial structure, considerably more so than "Dexion" racks" and it was supported by steel joists and stanchions bolted to the floor. The unit was divided by a concrete block wall through which two doorways had been created, one at ground floor and one at mezzanine level. Taking these features into account the Tribunal found that the mezzanine structure was not plant, but was an additional floor comprising part of the premises themselves.

38. Mr Jolliffe acknowledged that where a mezzanine floor structure was less substantial than the one considered in *Rogers*, it might not form part of the fabric of the building. He drew our attention to *Vincent Bach International Ltd v Kubbinga (VO)* [1994] RA 31. There a structure which appears to have been rather similar to the structure in this case was held by the Lands Tribunal (A P Musto FRICS) not to form part of the fabric of the building and thus not to be rateable. A warehouse included two mezzanine floors; one of these, which was erected above office space, was agreed to be part of the structure and was valued as additional floor space. The other consisted of chipboard sheeting laid on timber joists which were supported by demountable and adjustable shelving; it had an area of 70.2 m^2, was not attached to the walls or floor of the building and access was by a timber staircase. *Rogers* was distinguished on the grounds that the structure in that case had had a larger usable floor area and was of more substantial construction, whereas the use of this structure was limited to light storage. It was not annexed to the building and could be (and was) dismantled and re-erected by the ratepayer.

39. Finally Mr Jolliffe referred to decisions of the VTE and of local valuation tribunals in which similar issues had arisen. These illustrate cases on either side of the line but turn on their own facts and establish no precedent. In *Toys R Us v Penny*, a decision of the London North West Valuation Tribunal in 1999, a racking system on top of which a timber floor had been laid which was used to support further racking, the whole system being enclosed within a full height block wall, and fitted with its own power and sprinkler system, was found to be part of the hereditament. In contrast, in *Edmundson Electrical v Sykes*, a decision of the VTE in 2015, a racking system, and the floor resting on top of it, were held not to be part of the premises, the racking because it was plant which was assumed to have been removed for the purpose of valuation, and the supported floor because it could not exist independently of the racking.

40. Mr Jolliffe invited us to find that while racking used simply as racking was not rateable and should be attributed no value, it was nevertheless rateable when it acted as a support, either because it was part of the hereditament or was plant within under Table 3 of Class 4 of the Schedule to the 2000 Regulations. Considering its size, its permanence or longevity, its secure attachment by bolts to the concrete floor, and its general substantiality, the deck and its supports should be recognised as part of the hereditament in which the ratepayer carried on business, rather than as part of the chattels or plant with which it did so.

41. Mr Wilkinson valued the decking as a storage floor using relativities derived from comparables and applied to the agreed main space rate. The stairs facilitated access to the deck which was treated as a storage floor without racking for the purpose of the valuation. At the upper level the racking did not serve any support function and for valuation purposes was treated as though it was not there.

42. Mr Wilkinson also treated the staircases providing access to the decking as rateable on the grounds that they were either part of the hereditament or they were "stairways" and thus specified items in Table 3 of Class 4. There was said to be no inconsistency in the valuation officer's approach because he had not valued the stairs as a facility to access the upper level racking but only to access the decking as a storage floor.

The case for the respondent

43. For the ratepayer, Mr Watson said the decking was used to gain access to the upper levels of the racking and was not used for storage in its own right. It was not a floor as such; rather it was a series of passageways to provide access to the higher level shelving. The decking had been installed as a cheap and rudimentary method of releasing extra temporary storage space by a previous occupier. The steel guard rail attached to it would not withstand more than a nominal lateral load. Only back stock was kept at the deck level, which was only accessed sporadically. Staff were advised not to go up there as it had not been tested in accordance with SEMA guidelines for personnel use. The Dexion racking was used solely for storage and the SEMA notices referred only to that use and were not concerned with the loading of the chipboard decking.

44. In Mr Watson's submission the fact that the decking covered a large area and had been in place for many years was irrelevant. There was no evidence about how much the racking weighed and Mr Wilkinson's figure was an unexplained estimate. The racking was not designed to take large pallets served by fork lift trucks (despite the SEMA notices referring to pallets). It was better described as shelving used for the storage of relatively small, lightweight goods put there by hand. It would be easy to remove it. Mr Watson did not consider the lighting cables fixed underneath the decking could properly be described as integral because, absent the shelving, the roof lights would illuminate the warehouse area adequately.

45. Mr Watson pointed out that the appellant's approach in this appeal was contrary to that taken by valuation officers in other appeals where it had been argued that a hereditament should be valued on the basis that plant and machinery had been removed as part of the assumption that the hereditament was vacant and to let. In *Edmondson v Teeside Textiles Limited* [1985] 1 EGLR 151 the Court of Appeal had held (by a majority) that the presence of non-rateable plant and machinery could not be allowed either to increase or reduce the rateable value; Oliver LJ explained, at 154, that the predecessor of paragraph 2 of the 2000 Regulations:

> "… does involve an assumption, in valuing for rating purposes, that process plant and machinery is to be ignored and treated as if it were not there, whether the actual effect of its presence in the hereditament is that a tenant would pay more or less."

The valuation officer was trying to have it both ways by arguing that the Dexion racking served two purposes, one of which (storage) fell to be disregarded but the other of which (support) meant the racking was properly described as part of the hereditament and should not be ignored. But the racking could not be both rateable and non-rateable plant at the same time and the parties had agreed that it was non-rateable plant for the purposes of the Regulations.

46. On the assumption that the property would be vacant and to let Mr Watson said that the non-rateable racking and associated deck would be assumed to be absent and of no value. The facts were similar to those in *Vincent Bach International*.

47. Mr Watson also took issue with the valuation officer's approach of valuing the decking as though it was clear space, by treating the racking at the upper level as non-rateable plant which was assumed not to be there. Mr Watson said this approach ignored the reality that the racking was an integrated structure and extended through the deck. It was wrong to treat just part of the racking as having a dual function; if the racking was to be treated as a rateable support at all (which he denied) then it must be considered as it actually existed and not be assumed to be truncated at deck level. The decking could not be treated as clear storage space.

48. Mr Watson said the stairs would have no value in the presumed absence of the deck.

Discussion

49. The decisions on partitions and mezzanine floors helpfully drawn to our attention by Mr Jolliffe illustrate the point made by Pearson LJ in *Jarrold* that whether a particular structure is part of the premises or hereditament in which a business is carried on, or is part of the plant with which it is carried on, is sometimes difficult to decide, and that each case depends largely on its own circumstances.

50. We were asked by the appellant to provide general guidance on the proper approach to the rating of mezzanine or supported floors, but there is a limit to what we can usefully say on an issue which depends on the facts of specific cases.

51. The exercise to be undertaken begins by identifying the hereditament to be valued and by deciding whether any structure in question, in this case the chipboard decking, is part of the hereditament itself or part of the non-rateable plant employed in the business.

52. Factors which are relevant to that enquiry will obviously include the nature of the item, whether it could readily be removed and re-assembled elsewhere, and the extent and purpose of any fixings which secure it to the main structure of the premises. Fixings which can easily be loosened to enable the item to be relocated, or whose purpose is to stop it from being knocked out of position while in use, might indicate that the item was not part of the premises. Fixings which support the item on the walls or other structural parts of the building might have the opposite effect. The size of the item relative to the area of the premises as a whole may be relevant, as may be its bulk or substantiality, but we are less inclined to consider the mere passage of time since the item was installed to be significant. If the premises have been adapted to accommodate the item, as by the creation of a doorway in the dividing wall at mezzanine level in *Rogers v Evans*, or the construction of a blockwork wall to surround the racking system in *Toys R Us v Penny*, that will tend to support the case that the structure has become an integral part of the premises themselves. We emphasise that these are factors to be taken into account, rather than features which will necessarily be decisive one way or the other.

53. Despite its provenance we did not find helpful Mr Jolliffe's re-framing of the issue by asking whether the structure in question is part of the "setting" in which the business is carried on. To pose the question in that way might be taken to suggest that something may be rateable which is not part of the hereditament, either in fact or by operation of the assumption required by paragraph 2(a)(i) of the 2000 Regulations. Nor is it helpful when the possibility exists that an item may both be plant and part of the setting in which a business is conducted, as was recognised by Ormerod LJ in *Jarrold* at 145 H.

54. We therefore prefer to ask whether the chipboard decking is part of the hereditament in which the ratepayer carries on its business, or part of the plant with which it does so.

55. In this case we are satisfied that the answer to that question is obvious, and is that the chipboard decking forms part of the ratepayer's plant, and not part of the hereditament. In our judgment that conclusion is the inevitable consequence of the parties' agreement that the Dexion racking on which the chipboard is laid is itself plant.

56. In the course of the hearing we asked the parties to consider two questions concerning the rateability of the decking. The first was what assumptions should be made about the presence of the racking which supported the deck? The second was whether there was any inconsistency in attributing no value to the racking, but attributing value to the deck that it supports, the main purpose of which is to facilitate access to the racking?

57. Mr Jolliffe's answer to these questions was, as we have explained, that the racking served a dual purpose which required that it be assumed to add nothing to the value of the premises for storage, but should nonetheless be assumed to be present and to perform the separate function of supporting the deck. We do not accept that submission.

58. It is common ground that the racking itself is non-rateable plant which contributes nothing to the value of the premises. It follows that it cannot, at the same time, be part of the hereditament itself. If it was part of the hereditament, it would not be plant; because it is plant, it is not part of the hereditament. As Uthwatt J said in *J. Lyons*, and the Court of Appeal agreed in *Jarrold*:

> "The term [plant] does not include stock-in-trade, nor does it include the place in which the business is carried on."

By agreeing that the racking is plant, the parties have agreed that it is not part of the place, or hereditament, in which the business is carried on.

59. Because the racking is plant, its value "has no effect on the rent to be estimated" as required by paragraph 2(a)(ii) and 2(b) of the 2000 Regulations. The most convenient way of giving effect to that requirement is to assume that the racking is not present for the purpose of valuing the hereditament. If the racking is assumed not to be present, the decking which is supported on the racking, and which could not exist without it, must also be assumed not to be present. An alternative way of expressing the same conclusion would be to say that for the deck to have a value as part of the hereditament would require that the racking which supports it have an effect on value. That would be impermissible, as it would be contrary to paragraph 2(a)(ii) or 2(b) of the 2000 Regulations.

60. To resolve the appeal in this way does not require consideration of the substantiality, durability, mode of fixing, purpose or function of the deck itself. It follows instead from the parties' agreement that the racking is non-rateable plant; that agreement left the appellant's argument entirely unsupported. By whatever route it is reached, however, the conclusion is consistent with the reality that the decking is part of the racking system itself. It is supported substantially on the racking, its main purpose is to facilitate the convenient use of the racking, and it could not exist without the racking.

61. The appellant's fallback suggestion that the decking was a walkway, stage or platform within the meaning of Table 3 in Class 4 of the 2000 Regulations fails both

on the facts and by reason of the assumption required by the 2000 Regulations. On the facts, the decking is an adaptation of the racking system, rather than an independent item of plant, and the agreement that the racking is non-rateable requires that the decking itself be treated in the same way. Alternatively, the requirement to attribute no value to the racking prevents value being attributed to the decking supported on it.

62. Our conclusion is also consistent with the treatment of similar structures in previous cases, which seem to us to follow a common sense pattern. The supported floors in *Vincent Bach* and in *Edmundson v Sykes* rested on non-rateable racking, and were themselves found to be non-rateable. In contrast, the rateable mezzanine in *Rogers* was a substantial self-supporting structure which the hereditament had been adapted to accommodate. The racking and the floor resting on it in *Toys R Us* were treated by the local valuation tribunal as a single structure, the whole of which was rateable.

63. For these reasons we dismiss the appeal and confirm the decision of the VTE that the rateable value of the hereditament is £14,250 with effect from 1 April 2010.

Martin Rodger QC

Deputy Chamber President

A J Trot FRICS

Member

13 November 2017