

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VR/3/2014

BETWEEN

ROBERT MAYERS – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 2A Corporation Street, Enniskillen

Lands Tribunal – Henry M Spence MRICS Dip Rating IRRV (Hons)

Background

1. The property at 2A Corporation Street (“the reference property”) comprises a traditional shop unit within a block of three similar units located in Corporation Street, Enniskillen. It had a valuation list entry of “£13,900 OTHER” for rates purposes at the date of the District Valuers Certificate which gave rise to this reference.
2. The appeal to the Tribunal concerns the rates liability of the reference property during the period 9th August 2013 to 14th December 2014 (“the relevant period”) and in particular the occupation and use of the property during that period.
3. During the relevant period it was not disputed that the reference property was used on regular occasions by a religious group for the purposes of holding religious meetings.

Procedural Matters

4. Mr Mayers (“the appellant”) appeared as a litigant in person to represent the registered owners of the reference property, of which he was one. At the outset of the hearing the appellant made it clear that he had no authority to speak on behalf of the religious group and no one appeared before the Tribunal to give evidence on their behalf.

5. Mr Donal Lunny BL instructed by the Departmental Solicitor’s Office appeared for the Commissioner of Valuation (“the respondent”).

Position of the Parties

6. In his Statement of Case to the Tribunal the appellant submitted that the reference property was being used as a place of public religious worships during the relevant period and on that basis it should be exempt from rates for this period.

7. The respondent’s position was that the appellant had failed to establish that the reference property should be exempt from rates during the relevant period.

8. The rateable value of the reference property was not in dispute.

Statute

9. The provisions governing rates liability are contained in the Rates (Northern Ireland) Order 1977 (“the Order”). The Tribunal finds the following extracts from the Order to be of particular relevance in this reference.

10. Article 18 deals with the liability to be rated in respect of hereditaments:

“18.-(1) Subject to the provisions of this Order, every occupier of a hereditament which is included in the valuation lists shall be charged rates in respect of the hereditament according to its rateable values.”

11. Article 54 makes provision for appeal to the Lands Tribunal

“54.-(1) Any person ... who is aggrieved by the decision of the Commissioner on appeal under Article 51 or by an alteration made by him in the valuation list in consequence of such a decision may appeal to the Lands Tribunal, and the Lands Tribunal may make any decision that the Commissioner might have made and, if any alteration in the valuation list is necessary to give effect to the decision, may direct that the valuation list be altered accordingly.”

12. Article 54 also provides:

“54.-(2) On appeal under this Article, the valuation shown in the valuation list with respect to a hereditament shall be deemed to be correct until the contrary is shown.”

The burden of proof therefore lay with the appellant to show that the existing list entry for the reference property was incorrect.

Authorities

13. The Tribunal was referred to the following authorities:

- Places of Worship Registration Act 1855
- Rates (Northern Ireland) Order 1977
- Charities Act (Northern Ireland) 2008
- Broxtowe BC v Birch [1983] All ER 641
- Cecil Walker v The Commissioner of Valuation VR/47/1985
- Ryde on Rating and the Council Tax

Discussion

14. Much debate in the submitted documentation and at hearing centred around the religious groups potential entitlement to exemption from rates under Article 41(2)(b)(i) (Places of Public Religious Worship) or 41(2)(c) (Occupation by a Charity) of the Order. The Tribunal considers, however, that the first issue to be decided is who was in rateable occupation of the reference property during the relevant period, prior to any consideration of exemption?

15. What constitutes rateable occupation was considered in the case of Laing (J) & Son v Kingswood Area Assessment Committee [1949] 1KB 344. In this case the Court set out the four ingredients for determining whether an occupier was in rateable occupation. There must be:

- Actual Occupation (which involves actual as opposed to intended use of the property)
- Exclusive Occupation (that is the occupier should be able to exclude all other persons from using the property in the way which he does)
- Occupation which is of some benefit to the occupier
- Occupation or possession which has a sufficient degree of permanence

If any of these four ingredients were missing then the court decided that an occupier could not be in rateable occupation. In the subject reference it was accepted that, with regard to the religious groups occupation of the reference property, three of the ingredients were present but the respondent did not consider that the religious group had exclusive occupation of the reference property at any time during the relevant period. Mr Lunny BL submitted that this element of rateable occupation was missing.

16. There are numerous authorities on exclusive occupation but the Tribunal finds Lord Denning's quote in the case of Field Place Caravan Park Ltd v Harding (VO) [1965] RA 521 to be of particular relevance – "... you have to look at the enjoyment by the occupier of the premises for which he occupies, and the **extent to which the site operator can interfere with that enjoyment**" [Tribunal emphasis]. For example in Andrews v Hereford Rural District Council [1963] RVR 168 it was held that a company occupying a gravel pit was not in rateable occupation of the pit as it did not have a substantially exclusive licence.

17. The question of whether a person is an occupier or not within rating law is a question of fact and does not depend upon legal title, as outlined in the case of Hollywell Union v Halkyn District Drainage Co [1895] AC 117, but title may be relevant to show the element of exclusive occupation where the facts do not speak for themselves. In such cases there is a presumption

that the owner of the land is the occupier until it is shown that he has parted with the occupation to someone else (see Ryde on Rating 13th Edition page 52).

18. Mr Lunny BL submitted that for the religious group to have been in exclusive occupation of the reference property no other person should have had simultaneous right to occupy the property. In the subject reference he considered that, in the absence of any lease, licence or other agreement between the registered owners and the religious group, the registered owners would have at all times enjoyed a right to occupy, thereby depriving the religious group occupation of the necessary degree of exclusivity. Mr Lunny BL referred the Tribunal to the following extract from Ryde on Rating:

“[109]

Occupation for rating purposes must be exclusive. Notwithstanding the numerous cases in which exclusive occupation has been in issue before the courts, there have been few judicial explanations of the general concept. In *Corry v Bristow* Lord Hatherley said:

‘The courts have not meant by the term “exclusively” that the interest may not be determined on certain terms and conditions, but merely that the person so occupying should have the right unattended by a simultaneous right of any other person in respect of the same subject matter.’

A person using land under an exclusive title to possession will normally be the rateable occupier of it, because he can by virtue of his title exclude all others from using the land in the same way. It has often been said that an owner in possession is *prima facie* the occupier. Such a person is the occupier notwithstanding that it may be physically possible for some other person to use the land in the same way, and he will remain the occupier even though he does in fact allow some other person to use the land in the same way so long as his occupation remains paramount.

[110]

A person using land without an exclusive title to possession will be in rateable occupation of the land if the character is such that it does in fact exclude others from using the land in the same way.”

19. The appellant gave evidence to the Tribunal that there was no agreement, written or otherwise, between the registered owners and the religious group, as to the groups use and occupation of the reference property. He conceded that they had no legal entitlement to be there. They paid no rent and the appellant facilitated their use and occupation of the building as he was a member of the group. During questioning the appellant also conceded that if the owner would have received a bona fide offer to lease the reference property during the relevant period it would have been accepted and the owner could have gained possession for that purpose at any time.

Conclusion

20. The Tribunal agrees with Mr Lunny BL, the religious group could not have excluded the registered owners from occupying the reference property at any time. As they did not have exclusive occupation they could not therefore be the rateable occupiers of the reference property during the relevant period. The Tribunal considers that at all times the registered owners were in paramount control of the premises and the presumption was therefore, as outlined in Hollywell Union, they were the rateable occupiers. It had not been shown by the appellant that they had parted with the occupation to someone else. As the Tribunal finds the registered owners to be the rateable occupiers no question as to “Exemption” under Article 41(2)(b) or 41(2)(c) therefore arises.
21. The Tribunal finds that the appellant has not shown the valuation list entry for the reference property to be incorrect, as required under Article 54(2) of the Order. The Tribunal therefore dismisses the appeal.

ORDERS ACCORDINGLY

6th October 2015

**Henry M Spence MRICS Dip.Rating IRRV (Hons)
Lands Tribunal for Northern Ireland**

Appearances:

Appellant – Mr Robert Mayers, litigant in person.

Respondent – Mr Donal Lunny BL instructed by the Departmental Solicitor's Office.