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/11/2019

BETWEEN

EXCIP LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: Unit 12, 7a The Docks, Ringmackilroy, Warrenpoint, Newry

PART 2

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

Background

1. Excip Limited ("the appellant") had occupied property, which, in 2017, was recorded separately for rates purposes in the 2015 Rates Valuation List ("the 2015 List") as Unit 12, 7a The Docks, Ringmackilroy, Warrenpoint ("the reference property") and, which comprised a ground floor office consisting of two rooms in a 2 storey operational building ("the operational building"), located within the Warrenpoint dock undertaking. The operational building, including the reference property, have since been demolished.

2. It was a matter of fact that prior to 2017 the rates assessment for the reference property had always been included in the overall rates assessment for the dock undertaking and had been

included as such when the 2015 List was compiled, which is the relevant list for the subject appeal. It had never previously been given a separate rates assessment.

3. However, the District Valuer from Land & Property Services ("LPS") carried out a revision exercise at the operational building in 2017 which lead to the reference property and other properties being separately entered in the 2015 List. The reference property was entered on 10th May 2017 ("the revision date"). This is the date of the District Valuers Certificate which has resulted in the subject appeal and it is therefore the relevant date for the purposes of the appeal.

4. At the revision date there were some 17 separate entries in the 2015 List for other properties within the operational building and as a result of the District Valuer's revision exercise in 2017, some 8 properties had received separate entries in the 2015 List in that year.

5. The appellant has lodged an appeal with the Lands Tribunal stating that the reference property should remain within the rates assessment for the dock undertaking and the issue therefore to be decided by the Tribunal is whether the reference property should incur a separate rates assessment or whether it should be included in the rates assessment for the dock undertaking.

6. Warrenpoint Harbour Authority ("WHA") has operated Warrenpoint Dock ("the dock") since 1971 and the dock has been entered in various Valuation Lists since 1977 and described in those Lists as a "Dock Undertaking", comprising a working harbour, yards, sheds and operational buildings.

7. In April 2012 the Northern Ireland Executive commissioned LPS to carry out a rates revaluation of all non-domestic property in Northern Ireland to come into effect on 1st April 2015. The effective date of valuation to be applied to all of the non-domestic properties was 1st April 2013, known as "the antecedent valuation date".

8. When the 2015 List was published the reference property had not been included as a separate entry but was included within the overall rates assessment for the dock undertaking.

The Appellant's Occupation of the Reference Property

9. The appellant had occupied the reference property since 2011 on foot of a lease dated 1st September 2011 between WHA ("the lessor") and the appellant ("the lessee").

10. The lease was a standard commercial lease and within the lease the reference property is described as "Warrenpoint Harbour Authority's 'Operational Building' known as ground floor office No 8". The term of the lease was for 1 year certain, following which it was terminable by 3 months notice in writing. The monthly rent was £275 which included service charge, heating and electricity, with the rent to be renewed annually. The permitted use was as an office.

11. Schedule 5 of the lease was headed "Covenants of the Lessor" and paragraph 6 provided:

> "Quiet Enjoyment
>
> That the lessee paying the rents thereby reserved and observing and performing the several covenants and stipulations herein on his part contained shall peaceably hold and enjoy the demised premises throughout the term without any interruption by the lessor or any person right fully claiming under or in a trust of the lessor."

12. In addition to the terms of the lease a letter from WHA to the appellant, dated 23rd August 2011, advised that WHA would have access via the reference property to an adjoining office occupied by WHA, as there was no other means of access. In its letter WHA advised "It is not envisaged that access will be required frequently.".

13. The Commissioner of Valuation ("the respondent") has applied a 10% reduction to the rates valuation of the reference property to reflect the access through it to the adjoining property.

14. The appellant had occupied the reference property from September 2011 up until it was vacated in and around July 2019, pursuant to a Notice to Determine the appellant's tenancy, served by WHA on 17th August 2018.

Procedural Matters

15. The appellant was represented by Mr Gareth Maguire, a director of the appellant company. Ms Maria Mulholland BL, instructed by the Departmental Solicitor's Office, appeared on behalf of the respondent.

16. The Tribunal also received factual evidence from Mr Norman Douglas on behalf of the respondent. Mr Douglas is an experienced chartered surveyor employed by LPS. The Tribunal is grateful to the parties for their helpful submissions.

Position of the Parties

17. The appellant's position was that the reference property, since its existence, has always been included in the overall rates assessment for the Warrenpoint docks and had, up until the revision date, never been valued as a separate entry. Indeed that was the case when the 2015 List came into effect and nothing had changed. Mr Maguire submitted, therefore, that the reference property should not have a separate entry in the 2015 List and should be included in the overall docks assessment, as it always had been.

18. The respondent's position was that, when the rates assessment of the reference property was revised in 2017, the state and circumstances were such that the reference property warranted a separate entry in the Valuation List.

The Statute

19. Article 39(1) of the Rates (Northern Ireland) Order 1977 ("the Order") advises:

> "For the purposes of this Order every hereditament shall, except as provided by paragraphs 1(A) to 1(C), be valued upon an estimate of its net annual value."

20. Article 2(2) of the Order defines hereditament:

> "'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 a valuation list."

21. A property which is capable of separate, beneficial occupation is a hereditament and as such is liable to a rate. This is a well established principle in the "rating world".

22. The appellant considered that for rating purposes, the occupier of the reference property was WHA who it considered had paramount control over the reference property.

23. It was the respondent's case that the appellant's occupation of the reference property satisfied the elements of rateable occupation and as such justified a separate entry in the 2015 List. Ms Mulholland BL asked the Tribunal to note that the reference property had been beneficially occupied by the appellant from 1st September 2011 until 30th July 2019, on foot of the lease agreed with WHA.

The Correct Identity of the Reference Property

24. Prior to hearing the appellant had raised an issue as to the correct identity of the reference property. It was described as "Office No 8" in the lease but had been entered as "Unit 12" in the 2015 List.

25. Mr Douglas met with Mr Maguire on site on 29th May 2018 for the purposes of inspection. Following inspection and discussion between the parties it was clear that "Office No 8" in the lease and "Unit 12" in the Valuation List were one and the same. This was confirmed by Mr Maguire at hearing and this was no longer an issue.

The Appellant's Submissions

26. On behalf of the appellant Mr Maguire made the following submissions:

(i) At the time of the District Valuer's revision of the property there was no inspection, no prior notification, no discussion, no explanation and the reference property had been entered in the Valuation List as unit 12, whereas it was recorded in the lease as "office No 8". The first time the appellant knew anything about the revision was when it received a rates bill.

(ii) The appellant was fully aware of the terms of the lease which referred to "quiet enjoyment" but this was not how it worked "on the ground". The appellant could not exclude WHA who required access to the adjoining office. In addition cleaners, port operators, sub-contractors etc. all regularly accessed the reference property on an informal basis.

(iii) The WHA controlled access to the entire docks. Visitors were now required to have Health & Safety training. The reference property was in a controlled area within a controlled port and the appellant had to abide by the bye-laws of the port.

(iv) The reference property had been included in the overall rates assessment for the docks for over 40 years and that was the situation since the appellant's occupation in 2011. In addition the reference property had not been given a separate assessment when the relevant 2015 List came into effect. Nothing had changed in 2017 when the reference property was revised.

27. In conclusion Mr Maguire submitted that the WHA maintained control over the reference property, they were the occupiers and as such a separate entry in the 2015 List was not warranted.

The Respondent's Submissions

28. Ms Mulholland BL referred the Tribunal to the decision in Westminster City Council v Southern Railway [1936] AC 511 which she considered to be one of the leading authorities on rateable occupation and was a decision of the House of Lords.

29. This case concerned shops and kiosk units within Victoria Station in London which were held under separate agreements in writing between Southern Railway Company (SRC) and the other parties, called in some cases as a tenant and in others a licensee. Under the agreements the parties were given the right or permission to use the units for the purposes of their business.

30. The agreements were all subject to standard lease/licence terms. The agreements also permitted SRC at all reasonable times to enter upon the premises to view the state and condition thereof. The lessees/licensees were required to obey the bye-laws and regulations of SRC with respect to the regulation and management of each unit. The agreements also contained a proviso for re-entry.

31. Ms Mulholland BL referred to para 532 of the decision where the House of Lords addressed the degree of control retained by SRC over the units:

> "In truth the effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case; and in my opinion in each case the degree of the control must be examined, and the examination must be directed to the extent to which its exercise would interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them, or would be inconsistent with his enjoyment of them to the substantial exclusion of all other persons."

32. And at para 533 the House of Lords also stated:

"In my opinion the crucial question must always be what in fact is the occupation in respect of which someone is alleged to be rateable, and it is immaterial whether the title to occupy is attributable to a lease, a licence or an easement."

33. Turning to the question of what was the occupation of the units in Victoria Station, which were subject to opening and closing hours of the station and the bye-laws and regulations as to the management of the station, Ms Mulholland BL again referred to para 533:

"I now turn to consider the premises in Victoria Station other than W H Smith & Sons bookstalls. These require separate consideration for reasons which will hereafter appear. One group consists of separate premises of a permanent character not forming part of a building used by the railway company for its own purposes. An instance of this is the National Provincial Bank. I feel no doubt that this is not a railway hereditament. Indeed the only argument of substance in favour of the contrary view was the fact that it was within the station precincts, and that therefore access thereto was cut off during the few hours at night when the station was closed. This, it was said, was the control which reduced the National Provincial Bank to the position of a lodger in their banking premises and demonstrated that their occupation thereof was merely subordinate to that of the Railway Company. A strange situation surely for a bank. Indeed this was the only argument of substance in regard to any of the premises of this class. But for this shutting off of access at night-time they would all be in substantially the same position as the two shops as to which the Railway Company abandoned their appeal before the Railway and Canal Commission and which the Railway Company has conceded are not railway hereditaments. I cannot, however, accede to the view that because the bank could not, without the consent of the Railway Company, get to the bank premises during a few hours in the middle of the night, in which no banker would normally desire to go to his bank, and throughout which hours the bank is in fact occupying the premises by means of his goods and furniture, therefore the paramount occupant of the bank premises is the Railway Company, and the occupancy of the bank is a merely sub-ordinate affair. Other features affecting the banks occupancy upon which some relevance was placed were (1) that the Railway Company may decide upon the time of approach to be used by the bank and their employees in gong to the premises; (2) that

the Railway Company reserve certain rights for the purpose of controlling pipes and cables which run through, under or over the premises; and (3) that the bank must observe the bye-laws and regulations as to the management of the station, and the requirements of the station-master for the management of the station business and traffic. I can find nothing in the provisions inconsistent with the bank having and enjoying the exclusive occupation and possession of the bank premises for the purposes for which they are occupied, namely, for the purposes of a bank. In my opinion the bank premises are so let out as to be capable of separate assessment; they are not a railway hereditament within the meaning of the Act of 1930, and they should not be included in the railway valuation roll.

My Lords, with the exception of the Beckenham premises, the show cases and W H Smith & Sons bookstalls, this view applies, in my opinion, also to all the other premises under consideration in these appeals. I can see no real ground for drawing any distinction in the case of any. Each of them is so let out as to be capable of separate assessment, and not being a 'railway hereditament' should be omitted from the roll."

34. The W H Smith bookstalls were held under licence to erect and continue in the stations such bookstalls as may be necessary, the number, nature and position being subject to the railway company's approval which could order the removal of any bookstall to any other site within the station. Even under those restrictive conditions Ms Mulholland BL advised the Tribunal that the House of Lords held that the sites of the bookstalls were so let out as to be capable of separate rateable assessment.

35. Ms Mulholland BL submitted, therefore, the appellant's argument that it was subject to the bye-laws and other restrictions of WHA, was on "all fours" with the "Westminster" case and when the decision of the House of Lords was followed in the subject reference the clear conclusion was that the reference property was occupied, for rating purposes, by the appellant for office purposes and was, therefore, correctly recorded as a separate entry in the 2015 List.

36. Ms Mulholland BL then referred the Tribunal to the Court of Appeal decision in J Laing & Son v Kingswood [1949] 1 KB 344 where the Court found that there were four elements to rateable occupation:

(i) actual occupation

(ii) exclusive occupation – for the particular purpose of the possessor

(iii) beneficial occupation – that the occupation must be of some value to the possessor

(iv) occupation for not too transient a period

37. She submitted that all four of these elements were present in respect of the appellant's occupation of the reference property. She cited other examples of properties held under a lease/licence, subject to restrictions on access, opening times and management which were given separate entries in the Valuation List:

(i) Shops and cafés within an airport

(ii) Shops and cafés within a shopping mall

(iii) cafés within leisure centres

38. Ms Mulholland BL concluded that, when the relevant authorities were applied to the facts in the subject reference, the inescapable conclusion was that the appellant was in rateable occupation of the reference property and it was properly recorded as a separate entry in the 2015 List.

39. Accordingly, she submitted that the subject appeal must fail.

The Tribunal

40. The Tribunal notes the findings established in the authorities submitted by Ms Mulholland BL. The Tribunal also derives assistance from a decision of the President of the Northern Ireland Lands Tribunal, Judge R T Rowland QC, in Coastal Container Holdings Limited v The

Commissioner of Valuation for Northern Ireland VR/9/1986 which was concerned with the rates assessment of a property in the Belfast Harbour estate.

41. Commenting on the "Westminster" case Judge Rowland QC found:

"(a) The occupier, not the land, is rateable, but the occupier is rateable in respect of the land which he occupies. Occupation, is not synonymous with legal possession. Rateable occupation, however, must include actual possession and it must have a degree of permanence

(b) Where there is a no rival claimant to the occupancy, no difficulty can arise, the simplest example is where a landlord grants a tenancy to a tenant under an agreement which confers exclusive occupation upon the tenant. But in some cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case is one of fact – namely whose occupation is paramount and whose position in relation to occupation is sub-ordinate?

(c) For the control of the landlord to be paramount the control must be over the use of the premises appropriated. In this respect Young v Liverpool Assessment Committee is an example of a landlord parting with exclusive possession and occupation of a bonded warehouse which lay within the dock area. Similarly in the present case BHC had demised the office block and car park into the exclusive occupation and possession of Coastal.

(d) The effect of the alleged control upon the question of rateable occupation must depend upon the facts in every case. In each case the degree of control must be examined to ascertain the extent to which its exercise would interfere with the enjoyment by the occupant of the premises for the purposes for which he occupies them or would be consistent with this enjoyment of them to the substantial exclusion of all other persons.

(e) The crucial question is what in fact is the occupation in respect of which someone is alleged to be rateable, and it is immaterial whether the title to occupy is attributable to a lease, licence or easement. This rule was established formally to

dispose of the old fallacy in Smith v Lambeth Assessment Committee 10 QBD 327 that a demise was necessary and a mere licence was insufficient to create rateable occupation. This case was overruled by the Westminster decision. But the title may be looked at in order to discover the quality of the occupation and the intention of the parties, whether, in fact, the occupation is exclusive. Lord Wright emphasised the need to read the relevant contractual document as a whole. It is not the words only that are to be regarded but rather their effect which must not be to destroy the grant. What is material is not necessarily the terms of the grant but the de facto occupation.

(f) Here control of access without control over the user of the premises is not sufficient to negative occupation.

(g) Bye-laws, regulations and covenants restrictive of the tenants use of the premises will not of themselves prevent the tenant or licensee being rateable."

42. The relevant date in the subject reference is the date of the District Valuer's Certificate which gave rise to the appeal to the respondent and further appeal to the Lands Tribunal. The respondent has advised the Tribunal that date is 10th May 2017.

43. It is the state and circumstances pertaining to the reference property at that date which are relevant to the subject proceedings. Any previous inclusion of the reference property in the overall rates assessment for the WHA docks is irrelevant.

44. At the relevant date, the appellant held the reference property under a lease for one year which commenced in September 2011 and on which he was holding over at the revision date, as the lease had not been terminated by WHA.

45. Paragraph 6 of Schedule 5 to the lease entitled the appellant to "quiet enjoyment" of the reference property.

46. The appellant had submitted that WHA was the occupier of the reference property due to:

(i) The granting of access through the reference property to an adjoining office which would be used "occasionally".

(ii) The fact that the appellant was at all times subject to the regulations and bye-laws of the WHA.

(iii) Cleaners and operational staff employed by WHA regularly accessed the reference property on an informal basis.

(iv) The reference property was in a "controlled area within a controlled port".

47. With regard to whose occupation was paramount the Tribunal in Coastal Containers found the questions to be:

> "Whose occupation is paramount and whose position in relation to occupation is sub-ordinate"

And

> "for the control of the landlord to be paramount his control must be over the use of the premises."

And

> "mere control of access without control over the use of the premises is not sufficient to negative occupation."

And

> "Bye-laws, regulations and covenants restrictive of the tenants use of the premises will not of themselves prevent the tenant or licensee being rateable."

48. The appellant occupied the reference property for office purposes and throughout its period of occupation it was able to carry out those office purposes without interference from the WHA or any other party.

49. Clearly, therefore, WHA were not in paramount control of the reference property as they "did not interfere with the enjoyment by the occupant of the premises in his possession for the purposes for which he occupies them". [House of Lords in "Westminster"]

50. It is also worth noting that, at the revision date there were some 17 separate entries in the 2015 List for properties located within the operational building.

51. The Tribunal agrees with Ms Mulholland BL, when the relevant authorities are applied to the facts in the subject reference, the clear conclusion is that the appellant was in rateable occupation of the reference property and it was correctly entered as a separate entry in the 2015 List.

52. The appeal therefore fails.

25th March 2022

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