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**Church of Scientology Succeeds in Guideline Non-Domestic Rates Appeal**

Few will be surprised to hear that statutory tax exemptions are narrowly interpreted. However, the Church of Scientology's educational arm successfully argued in a guideline case that most of its London HQ is exempt from business rates.

The Church of Scientology Religious Education College Inc., an Australian-registered charity, occupies the imposing London Church of Scientology in the City of London. The building incorporates a chapel, rooms used for counselling and training in the faith and a number of office spaces. As a mark of respect for Scientology's revered founder, L. Ron Hubbard, a prominent and comfortably equipped corner office is designated as 'Mr Hubbard's office'.

The charity argued that the building falls within exemptions contained in the Local Government Finance Act 1988 which apply to places of public religious worship and certain other premises used in connection with them. Given that the premises were entered in the 2010 rating list as having a rateable value of £810,000, a great deal of money was at stake. Its arguments, however, failed to convince a local authority valuation officer or the Valuation Tribunal for England.

In partially upholding the charity's appeal against that outcome, the Upper Tribunal (UT) noted that Scientology is an outward-looking and evangelising faith. It is open to outsiders and strangers are not only welcomed but actively invited to participate in Sunday services in the chapel. On that basis, the UT was entirely satisfied that the chapel is exempt from business rates as a place of public religious worship.

The exemption, the UT found, extends to those parts of the building used as offices or for office purposes, although not to Mr Hubbard's office. Roped off against entry and used in the same manner as a shrine or memorial to the life and work of L. Ron Hubbard, it was clearly not a workspace. The exemption was also available in respect of the refectory and large spaces used for group counselling, classes and seminars, the use of which was no different from that of any church hall.

However, the exemption was not available in respect of the building's open-plan library, information hall, two film rooms, a classroom and certain other spaces that could not be viewed as offices connected to the use of the chapel. The UT also found that no exemption attached to a separate information centre which serves as a display window for the worldwide religion. Those premises lacked any real connection to a place of public worship.

We can advise you on any aspect of commercial property law, including business rates. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*The Church of Scientology Religious Education College Inc. v Rickets (Valuation Officer) [2023] UKUT 1 (LC)*

**Council Planning Committee Fends Off 'Closed Minds' Allegation**

Official decision-makers are often accused of acting with closed minds. However, as a Court of Appeal ruling in a planning case made plain, there is a great difference between unlawful predetermination and a legitimate pause for thought.

The case concerned an application for planning permission to build 55 new homes. A local authority planning officer's report recommended refusal of the application on grounds that it would involve the loss of an allocated rural employment site, contrary to local planning policy. The report also highlighted the impact the development would have on the countryside and its unsustainable location.

Despite that advice, the council's planning committee stated following a meeting that it was 'minded' to approve the development. A final decision was deferred, however, and a second meeting took place about two months later at which the committee decided to refuse the application.

A local resident who had spoken in support of the proposal mounted a judicial review challenge to the allegedly inconsistent decision, asserting that committee members had acted with closed minds. His complaints were, however, rejected by a judge.

Dismissing his appeal against that outcome, the Court observed that the fact that several members of the committee had second thoughts between the two meetings might be viewed as evidence of open, rather than closed, minds. The procedure followed was in accordance with the council's constitution, which ordinarily required committee members to defer decisions that would be contrary to officers' recommendations to a second meeting.

The purpose of such deferrals was plainly to give decision-makers an opportunity to stand back and think again about the implications of going behind a planning officer's advice. Given that no final decision was reached at the first meeting, the principle of consistency was not engaged. All options remained open at the second meeting and councillors were, on further reflection, entitled to change their positions, giving cogent reasons for doing so.

We can advise you on any matters relating to planning law. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*R on the Application of Blacker v Chelmsford City Council [2023] EWCA Civ 25*

**Proposed Crematorium Will Not Contravene Edwardian Public Health Statute**

Objectors' hopes of blocking development of a new crematorium on a Green Belt site have been turned to ashes after the High Court rejected arguments that the proposal was precluded by the terms of an Edwardian public health statute.

Planning consent for the development was initially refused by the local authority on grounds that it would be inappropriate in the Green Belt and would not respect the protected local landscape. However, following a public inquiry, a planning inspector upheld the developer's appeal and granted conditional consent. In finding that very special circumstances justified the Green Belt development, he underlined the existing and growing community need for cremation facilities.

In mounting a judicial review challenge to the inspector's decision, a local resident asserted that the inspector had failed properly to consider whether the project would contravene Section 5 of the Cremation Act 1902. With a view to protecting public health, the Act forbids construction of crematoria within 200 yards of any dwelling house without the written consent of occupiers.

The objector pointed out that the crematorium's car park, access roads and memorial gardens would fall within the forbidden radius and asserted that, if the facility's doors and windows were opened, they would also cross the 200-yard line.

Dismissing her challenge, however, the Court found that the Act's definition of 'crematorium' did not extend to the proposed parking area, roads or gardens. The inspector was thus correct in law to find that the location of those elements of the proposed development would not contravene the statute.

There was no evidence that the opening of doors and windows would in any way materially affect the process of burning human remains. The developer had also provided an assurance that the scattering of ashes would not be permitted in the memorial gardens. The Court concluded that the Act presented no impediment to the delivery of the proposed development.

**Partner Note**

*Wathen-Fayed v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 92 (Admin)*

**Supreme Court Lays Down the Law on Commercial Property Service Charges**

Many commercial leases appear to confer on landlords a wide and unilateral power to calculate and demand payment of service charges. An important Supreme Court ruling, however, indicates that they may not enjoy quite such a whip hand in future.

A substantial commercial tenant was served with certified service charge demands totalling over £400,000. In refusing to pay, it asserted that they were excessive and included items and expenses that were not properly due under the terms of its leases. The landlord, however, pointed to a clause in the leases which stated that the certified bills were 'conclusive' subject only to the defences that there had been a manifest error, a mathematical error or fraud.

The tenant argued that the true meaning of the certification clause was that the bills were conclusive as to the amount of costs incurred by the landlord, but not as to the tenant's liability for service charges. The Court of Appeal, however, preferred the landlord's more natural interpretation of the clause and it was awarded summary judgment in the full amount of the disputed service charges.

By a majority, the Supreme Court dismissed the tenant's appeal against that ruling. Crucially, however, it found that the tenant was not precluded from pursuing a counterclaim in relation to its underlying liability for the disputed service charges.

The Court found neither side's interpretation of the certification clause satisfactory. The landlord's argument that the certified bills were, subject to the listed defences, conclusive as to the extent of the tenant's liability fitted well with the wording of the clause. However, that reading was inconsistent with other provisions of the leases which, amongst other things, conferred a right on the tenant to inspect receipts, invoices and other documents on which the demands were based.

It would also, the Court noted, be surprising if the landlord were unilaterally entitled to conclusively resolve issues in relation to liability for service charges without the tenant having any opportunity to make representations. That would amount to a 'pay now, argue never' regime. On the other hand, the tenant's interpretation of the certification clause conflicted with its natural and ordinary meaning.

The Court found that an alternative interpretation of the clause was possible which would avoid such difficulties. It accepted that the certified bills were conclusive and that the tenant was required to pay them, subject to the permitted defences. That reading of the certification clause would enable the landlord to recover service charges without protracted delay or dispute, thus protecting its cashflow.

However, the Court went on to find that, on a true reading of the certification clause, the tenant was not precluded from later disputing liability for any service charge payments made. Such an interpretation gave full effect to the tenant's inspection rights and entitled it to pursue arguable claims in respect of service charge liability. The Court noted that its reading of the certification clause gave rise to the type of 'pay now, argue later' regime that is commonly found in commercial contracts.

Our expert team can assist you in any matters relating to commercial leases.

**Partner Note**

*Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd [2023] UKSC 2*

**Tenacious Hotel Owner Achieves 70 Per Cent Cut in Rateable Value**

Business owners who feel that their non-domestic rates bills are unfairly high should seek professional advice without delay. The point was powerfully made by the case of a determined hotel owner who successfully argued that the valuation of his premises for rating purposes should be reduced by more than 70 per cent.

The owner objected after the 15-bedroom hotel was entered into the 2017 rating list at a rateable value of £59,000. A local authority valuation officer took heed of his complaint and reduced that figure, first to £56,000, then to £54,000 and finally to £31,000. The owner, however, remained convinced that the premises had been overvalued and took his case before the Upper Tribunal (UT).

Upholding his challenge and reducing the premises' rateable value to £16,250, the UT employed a valuation method that was primarily based on the level of annual receipts that a reasonably efficient operator of the hotel could fairly be expected to maintain. The UT noted that the case demonstrated what could be achieved by a tenacious and persistent business owner.

It is advisable to source expert legal advice prior to entering into valuation disputes. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Arma Hotels Ltd v Bunyan (Valuation Officer) [2023] UKUT 3 (LC)*

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