

Case name: *Ludgate House Limited v A Ricketts (VO) and London Borough of Southwark* 2018 (VTE) (heard 28 February and 7 March 2018)

Topic: Rates Mitigation (Guardian Scheme)

Full case: [click here](#)

Summary: A scheme for mitigating rates liability by the placing of “guardians” in the property pending redevelopment is not effective to render the property residential in whole or in part, where general control over the guardians is retained by the property owner.

Commentary: This Valuation Tribunal for England (VTE) case considered whether occupation by “property guardians” of a vacant office building pending redevelopment was such as to give rise to assessment of the whole or part/s of the building for council tax, being domestic property within the meaning of section 66 of the Local Government Finance Act 1988. The tribunal decided against the appellant, ruling that the building was wholly non-domestic and that a disturbance allowance sought by the appellant was unjustified.

Judicial review proceedings had been commenced at the High Court but were stayed pending the outcome of the tribunal’s decision.

The building was known as Ludgate House and planning permission was granted for its redevelopment. Prior to redevelopment the owner, Ludgate House Limited (LHL), entered into an agreement with VPS (UK) Limited (VPS) to arrange for “guardians” to occupy parts of Ludgate House under individual licences.

Prior to 25 June 2015 Ludgate House had been shown in the rating list as two hereditaments. Following occupation by the guardians, LHL’s rating surveyors made a proposal to delete the entries from the list on the basis that the property was then domestic or exempt from rating. After an inspection on 25 November 2015, the VO agreed with the terms of the proposal and deleted the entries, on the basis that Ludgate House was occupied by guardians for residential use.

The billing authority (LB Southwark) inspected Ludgate House on 11 January 2016 and on 29 February 2016 it made two proposals, requesting both entries to be restored to the rating list as Ludgate House remained non-domestic property, or alternatively comprised a composite hereditament.

On 31 May 2017 (by which time demolition had commenced) the VO again altered the list, restoring Ludgate House to the rating list (excluding the first and second floors, which were notionally treated as “domestic”) with effect from 25 June 2015. On 16 August 2017 a further alteration was made by the VO, showing a single list entry for Ludgate House with effect from 25 June 2015.

LHL’s rating surveyors submitted two proposals on 24 August 2017. The first sought restoration of the deletion from the rating list or reduction of the RV to £1. The second related to the effective date of the VO’s May 2017 alteration, to 24 May 2017 rather than 25 June 2015.

The final proposal was made by LHL's rating surveyors on 27 September 2017, requesting that Ludgate House be shown in the list as more than one entry.

The tribunal member inspected the building prior to the hearing, but some time after the guardians had vacated in readiness for demolition and after completion of the soft strip and the commencement of demolition.

In its decision the VTE interpreted the primary purpose of the contract between LHL and VPS as the provision of security to Ludgate House and described VPS as a "security firm". The contract provided that control of the building would remain with LHL and stated that VPS was not LHL's agent.

VPS granted licences to the guardians entitling them to occupy parts of the building, imposing positive duties to report the presence of any person whom they suspected did not have permission to be in the building. The form of licence provided that VPS had no authority to grant, and did not grant, any right of possession or exclusive possession of Ludgate House or any part of it. It also stated that no tenancy was created.

Between July 2015 and May 2017 there were between 40 and 50 guardians at any one time present in Ludgate House. As no guardians attended the hearing to speak to their witness statements, the tribunal found itself unable to assess whether in reality the guardians occupied Ludgate House as their sole or main residence. The guardians had been spread out across the floors of the building and the tribunal commented that most floors were sparsely occupied. The VTE also noted that on two occasions guardians had moved within Ludgate House, indicating that LHL remained in control of where the guardians were located.

The tribunal referred to section 66 of the 1988 Act and noted that to be domestic the property would have to be used "wholly for the purposes of living accommodation" (emphasis added).

The conclusions of the tribunal were:

- LHL retained general control over the guardians, being in paramount occupation, and the contract with VPS did not disturb this. The tribunal concluded that LHL was in rateable occupation of the whole of Ludgate House as a single hereditament;
- The guardians were present to provide a security function and the licences granted by VPS were not ordinary residential licences. Their occupation of the areas for residential purposes was considered by the tribunal to be secondary to the security role;
- Ludgate House cannot be said to have been used "wholly for the purposes of living accommodation". The tribunal was not persuaded that the common areas of floor space were appurtenances of domestic accommodation, under section 66(1)(b) of the 1988 Act; and
- LHL had applied a guardianship scheme to Ludgate House "on a vast scale", which in the words of the tribunal "defied reality and logic". The scale of the

building and the nature of the occupational licences “tipped the scales far away from LHL” in the tribunal’s view.

As a consequence, the tribunal ordered that LHL’s appeal be dismissed.

The decision is being appealed to the Upper Tribunal and the case is expected to be heard in the summer of 2019.