

Case Name: *Andrew Ricketts (VO) v Cyxtera Technology UK Limited* [2021] UKUT 0265 (LC)
(28 October 2021)

Topic: Extent of hereditament – whether “white space” in a data centre is capable of beneficial occupation although not yet adapted for the use of specific customers.

Full case: [Click Here](#)

Summary: This case concerned a data centre in Slough, constructed for the use of customers requiring the use of IT equipment for data processing and storage, which they would occupy under a licence. “White space” refers to space in data halls not yet adapted to meet a customer’s specific requirements, whereupon it would become “customised white space”. White space is ready for the accommodation of the racks and equipment of various customers, under the colocation retail model operated by Cyxtera. There were two linked buildings, one which came into operation later and which reflected the increase in customer numbers over time. The main issue before the Tribunal was the proper treatment of white space for rating purposes. It decided that white space was ready for occupation for the intended purpose of the buildings, being under the overall control of Cyxtera, so the main issue in the appeal was decided in favour of the valuation officer. He was, however, unsuccessful on the second issue, namely the date on which the second building formed part of the hereditament. The VO sought to argue that the Tribunal should exercise its discretion to alter the list on 1 July 2013, although this point had not been pleaded (and was only being referred to at the hearing as being the VO’s preferred date, out of three possibilities), but the Tribunal was not persuaded.

Commentary: This is a helpful clarification of the correct approach to assessing the degree to which data premises are in rateable occupation, where (in whole or in part) these are not fully customised. The underlying basis of the decision is the ability for the owner to operate the buildings for the intended purpose, irrespective of the fluctuating level from time to time of space which has been customised for the specific requirements of the licensees. The premises overall were clearly capable of beneficial occupation for the purpose for which the data centre was intended.

White space is shorthand for a data hall ready for occupation by its users with the sole exception of adaptation to the specific requirements of a particular customer, so includes power and air-handling/conditioning, fully functioning lighting, security and fire protection as well as a telecoms connection room and the machine room for the essential UPS (uninterrupted power supply). More details are set out in paras 9 to 11 of the decision, with paras 13 to 16 explaining the process of customising the white space.

The ratepayer sought to argue that the white space was not capable of occupation, which had been accepted by the VTE. The Upper Tribunal’s decision was based on an analysis of whether the premises were “ready for occupation”. There was no dispute that customised white space was rateable. The Tribunal found assistance from the Court of Appeal’s decision in *Post Office v Nottingham City Council* [1974] 1 WLR 624,

which distinguished between the building itself and the furniture and equipment needed for immediate occupation. This earlier case characterised the issue as a matter of fact and degree, which led the Tribunal to determine that the racking and equipment required by a particular customer at the Cyxtera premises was not such as to prevent the overall premises being capable of beneficial occupation. The case ultimately turned on whether the customisation was to the building itself or was within the building and, on the facts, the Tribunal decided that the latter was the correct legal interpretation.

The well-known case of *Porter (VO) v Gladman SIPP* [2011] UKUT 204 (LC), by contrast, related to a building where the point at issue was whether the office units (designed for the tenants) were ready for those tenants themselves to take up occupation (it was decided that they were not ready). In this case the Upper Tribunal was clear that the Cyxtera buildings were for occupation by the freeholder itself, who exercised overall control by providing, maintaining and adapting the space as required from time to time. Such occupation was not affected by the arrival or departure of individual customers using customised white space.

Town Legal LLP