

**Case name:** *The Queen (Principled Offsite Logistics Limited) v Trafford Council and Others* [2018] EWHC 1687 (Admin) (6 July 2018)

**Topic:** Rates Mitigation (Intermittent Occupation)

**Full case:** [click here](#)

**Summary:** Where a short-term tenancy has been granted for the purpose of triggering an exemption (of 3/6 months), it is sufficient in order to meet the beneficial occupation criterion for the tenant to have the intention to occupy with a view to achieving a share of the rates savings. However, no evidence was heard as to the nature of the occupation and no declaratory relief was granted, leaving the liability order made by the Magistrates Court undisturbed.

**Commentary:** This case concerns a classic rates mitigation scheme, namely the grant of a short-term tenancy (of at least 6 weeks) to a company whose sole purpose was to achieve a period of exemption from rates (of 3 months) for the landlord on expiry of the short term, in exchange for a payment by the landlord (being 20% of any savings). The occupier was Principled Offsite Logistics Limited (POLL) and the council (with two other billing authorities) challenged whether POLL's occupation as tenant was sufficient for the purpose of attracting liability for payment of rates during the short term. If the scheme failed POLL would have been responsible for payment of "empty rates" during the short term (being entitled to possession by virtue of the lease) and there would have been no period of exemption for the landlord's benefit following the expiry of the tenancy. POLL had entered into numerous other tenancies of a similar nature across the country.

POLL's argument was that the touchstone of occupation in this context is volition, being the exercise of the will to occupy the premises. The council's counter argument was that occupation for its own sake, without any separate purpose other than to occupy, is not occupation in law and fact and some additional purpose is required to meet all the criteria for occupation, and therefore attract relief for the landlord on expiry of the tenancy.

The case was a rolled-up hearing of POLL's application for permission to bring a judicial review challenge to Trafford's decision to issue a summons seeking a liability order from the magistrates' court, combined with a substantive hearing if permission was granted. A number of similar cases were stayed pending the outcome of the case.

POLL's business is well-known in the market. In the words of the council, it "markets its services in mitigating business rates by offering property owners to manage their empty space as effectively as possible by using those premises for short-term storage". The council's complaint was that, as guardian of the public purse, it needs to ensure that there is actual occupation in such case which is actual, beneficial, exclusive and not transient. These are the four criteria established in the landmark case of *John Laing & Son Ltd v Kingswood Assessment Committee* [1949] 1 All ER 224, CA.

In practice, it is apparent that very little was stored in the premises and what was there had low value, which in Trafford's view demonstrated that there was no benefit to POLL of the "occupation".

There was a disagreement between the parties as to whether the administrative court was the appropriate forum for deciding the issue and, in the event, no evidence was taken from the POLL representative, the court proceeding instead on the basis that his evidence was contested.

The court reviewed the historic cases, focusing on what constitutes beneficial occupation. It referred to *R v Melladew* [1907] 1 KB 192, where the Court of Appeal established that an occupier of a potentially-profitable commercial property did not cease to occupy it by absenting himself from the property leaving it in a state suitable for resumed profitable use should he return. The intention of the occupier was key.

The court also referred to *John Laing* (see above) and later cases. A key case is *Makro Properties Ltd v Nuneaton & Bedworth BC* [2012] EWHC 2250 (Admin), where it was found by the district judge that there was no rateable occupation where leased premises were used only to store certain documents that for regulatory reasons needed to be kept for several years. However, on appeal (by case stated) this decision was overturned and it was said that an inferred intention to occupy, together with a relatively minor use of the premises, "may be sufficient to amount to occupation as determined in *Melladew*." There was a clear intention to occupy in *Makro*. There was also a benefit of such occupation, which was that the documents stored were of consequence and had to be retained for legal reasons.

The judge granted permission to POLL to pursue the judicial review and considered the request for declaratory relief (without hearing evidence from POLL's representative). He noted that the motive for possession of the premises by POLL was rates avoidance for the landlord, but that the morality of such action is neither here nor there. His view was that the thing of value to the possessor is the occupancy itself. He found no concept within the meaning of the word "occupation" requiring a purpose or motive beyond that of the occupation itself. The motive of a rates saving is sufficient to meet the third criterion in *John Laing*, namely that the occupation be of benefit.

However, this decision did not achieve the quashing of the magistrates' decision. No declaratory relief was granted, with the result that although POLL succeeded on the point of law it is liable to pay rates for the period of the tenancy and the landlord does not obtain relief after the tenancy ends.