

Case Name: *London Borough of Southwark v (1) Ludgate House Limited and (2) Andrew Ricketts (VO)* [2020] EWCA Civ 1637 (4 December 2020)

Topic: Use of a "Guardian scheme" to mitigate liability for business rates

Full case: [Click Here](#)

Summary: This scheme depends for its efficacy on the occupation by "Guardians" being treated as displacing the building owner's rateable occupation of the whole building and the former being subject to council tax on a unit by unit (or floor by floor) basis. If the listing officer is willing to aggregate all the residential units on a particular floor, this gives rise to a substantial reduction in the amount payable by the owner, at a time when the redevelopment of the building is delayed for any reason (e.g. failure to obtain a suitable planning permission or to satisfy all necessary planning conditions). Ludgate House Limited ("LHL") had been unsuccessful in the VTE but won on appeal to the Upper Tribunal. That decision was reversed by the Court of Appeal.

The efficacy of such schemes is now in question and (at the time of writing) it is unclear whether the ratepayer will seek permission to appeal to the Supreme Court.

Commentary: LHL had entered into an agreement with VPS (UK) Limited, a company operating Guardian schemes, to reduce its rates liability pending redevelopment of the former Daily Express building at the southern end of Blackfriars Bridge in London. There were delays in obtaining the necessary agreement with Network Rail to bridge over the operational railway adjacent to Ludgate House, where another building was also to be demolished and would form part of the new development.

The agreement between LHL and VPS provided for the grant of licences to the individual Guardians, under which the Guardians would have no right to exclusive possession or occupation of any part of the building but would be assigned former office space to occupy for residential purposes, subject to being moved around within the building. At the peak of the operation, there were as many as 52 Guardians in occupation. Although some did not stay long, four individuals were living at the premises for around 22 months and remained in the same four rooms, each of which was capable of being locked.

The grant of licences by VPS, rather than leases or tenancy agreements, was of course to avoid the Guardians acquiring security of tenure, but the use of licences caused the Court of Appeal to grant Southwark's appeal.

Various proposals had been made following the VO's initial inspection of Ludgate House and the consequent removal of the building from the rating list (as it had been accepted by the VO at that time to be a residential building, subject to council tax). Southwark's proposals for restoration of the property to the rating list were followed by ratepayer's proposals, most significantly to include the property in the list as a single hereditament at a nominal £1.

The Upper Tribunal determined that the four rooms were separate hereditaments and that the individuals who had occupied those units for 22 months from 1 July 2015 enjoyed paramount occupation as against the "competing" occupier, being LHL as owner of the whole building (the agreement with VPS gave that company no rights to occupy save as a

licensee). The Tribunal based its decision on the requirement (for rateable occupation) that occupation must be “exclusive for the particular purposes of the possessor”. The primary purpose of occupation, from the perspective of each of the four Guardians, was to have somewhere to live, satisfied by the provision of a separate room for each licensee which could be locked by them. The Tribunal found no factual evidence of general control by LHL of the individual rooms and did not accept Southwark’s argument that LHL was in paramount occupation. The individuals were liable for council tax as the occupations were for residential purposes and as there was no single composite hereditament the Tribunal ordered that Ludgate House should be removed from the list with effect from 1 July 2015.

The Court of Appeal referred to *Cardtronics Europe Limited v Sykes (VO)* [2020] UKSC 21, which confirmed that there are two linked aspects to the question of identifying a hereditament – one geographic (or cartographic) and the other how it is occupied. The geographic/cartographic test involves a check for visual or cartographic unity, in simple terms “can you draw a continuous red line round the putative hereditament on a plan?”. The Upper Tribunal in Ludgate had decided that an individual room occupied by a Guardian was sufficiently identifiable to be a separate hereditament and there was no appeal to the Court in respect of that conclusion. However, the Court then turned to the second (linked) aspect, namely the manner of occupation.

The Court concluded that the terms of the contract governing the Guardians’ occupation were critical in establishing whether they were themselves in rateable occupation of the respective rooms. The reasoning was that where a contract contains terms which, were they to be exercised, would interfere with the occupant’s enjoyment of the premises then the existence of such terms indicates general control by the party entitled to so interfere.

The Court referred again to *Cardtronics* and the common purpose of the owner of the site on the one hand and the ATM operator on the other, where the retention by the owner of general control over the operations (this being physical or contractual control) was sufficient to make the controlling party the rateable occupier of the whole site, including the ATM site. The Court concluded that contractual control is enough to determine the question as to who is liable. The basis of the decision in the Ludgate case was the degree of control exercised by Ludgate House Limited over the Guardians, as identified by the Court from its interpretation of the contractual provisions, regardless of what happened in reality.

The Court of Appeal’s decision will inevitably lead to concern on the part of current and potential operators of Guardian schemes. The outcome of any appeal to the Supreme Court will be eagerly awaited.

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