

BUSINESS RATES

The Principled Decision

In this note we discuss the recent case of *Principled Offsite Logistics Limited –v- Trafford Council and Others* [2018] EWHC 1687 (Admin) which concerned a well-known business rates mitigation process utilising short term storage.

The case was slightly unusual in that Principled sought judicial review and declaratory relief essentially as to the validity of their mitigation process. However, the decision is of interest to all on one critical element namely whether Principled were in rateable occupation.

In basic terms the Principled process is simple. Principled take a lease of vacant commercial property from a land owner at a peppercorn rent. Principled store "goods" (it is not known precisely what is stored) within the property for a period of at least six weeks before vacating and terminating the lease. The land owner then seeks to claim a period of empty property relief. Principled charge a fee for their service which, in the documents referred to in Court, was 20% of the saving achieved. If the property remains vacant the process is commenced again following the expiry of the relief period.

The principal (pardon the pun!) question decided in this case is whether the process of storing unknown and unspecified goods which may or may not have an intrinsic value constituted rateable occupation.

The test of rateable occupation is well known and was set in the case of *John Laing & Sons Ltd –v- Kingswood AAC* [1948] 1 KB 344, CA. In that case the Court determined four necessary ingredients of rateable occupation namely (i) actual occupation; (ii) exclusive for the particular purposes of the possessor; (iii) of some value or benefit to the possessor; and (iv) not for too transient a period.

In the Principled case the Council sought to argue that Principled's presence (they were careful not to call it occupation) at the property was a semblance of occupation and not occupation in fact and law. The Council argued that if Principled's motive (i.e. the generation of fees from rates mitigation) was ignored there was no purpose to depositing the goods and therefore nothing of value to Principled.

After determining a number of technical challenges to the validity of the proceedings the Court determined in favour of Principled. The Judge stating "*I cannot see any good reason why, if ethics and morality are excluded from the discussion, the thing of value to the possessor should not be the occupancy itself. The verb "occupy" and the nouns "occupation", "occupancy" and "occupier" are, in the end, ordinary English words. Their meaning has developed in case law to give them a sensible construction, but they have not been given technical statutory definitions*".

Turning to the four stage test from John Laing the Court held that the only real challenge to Principled's model was the third test but the Court held that this was "*sufficiently present where the intention is to occupy for reward, without any further commercial or other purpose*".

In the circumstances Principled succeeded in their primary contention of law. However, they will still need to demonstrate the four stage test for each and every lease/property as the Court was keen to point out that each case is fact sensitive and that the Council had an obligation to investigate matters generally.

Business Rates – Things to watch out for...

Business rates are never far away from the news. Most recently they were discussed in respect of the administration of House of Fraser. In documents referred to HoF had a business rates liability of just over £30m arising from their 59 locations against total sales of £787m. By comparison Amazon had UK sales of nearly £9bn but paid only £33m in business rates primarily because it operates from warehouse property rather than prime high street locations.

In answer to this the Chancellor, Philip Hammond hinted that changes could be afoot when he stated that the Government were looking "to make sure that taxation is fair between businesses doing business the traditional way, and those doing business online". Retailers will watch this with interest and we will update you as soon as we hear anything.

Another eagerly awaited decision in respect of business rates will be the Court of Appeal's decision in *Sainsbury's Supermarkets and Others –v- Sykes* (Valuation Officer) and Others relating to the treatment of ATM's within larger stores. The judgment is expected imminently and again we will update you on the outcome in due course.

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