



Neutral Citation Number: [2026] EWHC 27 (Admin)

Case No: AC-2024-LDS-000258

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
LEEDS DISTRICT REGISTRY

**APPEAL BY WAY OF CASE STATED BY THE WEST YORKSHIRE
MAGISTRATES' COURT**
(sitting at Bradford and Keighly Magistrates' Court)

Date: 12th January 2026

Before :

Mrs Justice O'Farrell DBE

Between :

A&P68 LIMITED

Appellant

- and -

CITY OF BRADFORD METROPOLITAN
DISTRICT COUNCIL

Respondent

Nicholas Trompeter KC, (instructed by **Addleshaw Goddard LLP**) for the **Appellant**
Alex Worthington, (instructed by **Greenhalgh Kerr Solicitors**) for the **Respondent**

Hearing date: 25th November 2025

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on Monday 12th December 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice O'Farrell:

1. This is an appeal by way of case stated against the Judgment dated 5 September 2024 of District Judge (Magistrates' Courts) Alex Boyd ("the Judge"), upholding a complaint by the respondent council and making a liability order against the appellant company in respect of unpaid non-domestic rates in respect of property at 65/73 North Street, Keighley, West Yorkshire BD21 3RZ ("the hereditament").
2. The central issue raised by the appeal is the test to be applied to determine whether a person is the owner of a hereditament for the purposes of sections 45(1) and 65(1) of the Local Government Finance Act 1988 ("the 1988 Act").
3. In particular, a question has arisen as to whether the principles established by the Supreme Court in *Rosendale Borough Council v Hurstwood Properties (A) Ltd and Others* [2021] UKSC 16 give rise to a single, composite test or raise two separate questions.

Legislative framework

4. Non-domestic rates are charged by relevant authorities against: (a) the occupier of a property which is not a domestic property; or (b) the owner of the property if the property is unoccupied.
5. Under section 41(1) of the 1988 Act, the valuation officer (an official of HMRC in the Valuation Office Agency) is under an obligation to compile and maintain local non-domestic rating lists for billing authorities.
6. Section 42(1) prescribes that a local non-domestic rating list must show each "hereditament" which fulfils certain conditions on any particular day, including that at least some of it is neither domestic property nor exempt from local non-domestic rating.
7. Section 51 provides for exemptions from non-domestic rates as set out in Schedule 5 of the 1988 Act. These include an exemption in respect of places of religious worship at paragraph 11 of Schedule 5:

“(1) A hereditament is exempt to the extent that it consists of any of the following –

(a) a place of public religious worship which ... is for the time being certified as required by law as a place of religious worship ...”
8. The relevant certification of a place of religious worship is made, following an application, by the Registrar General under section 2 of the Places of Worship Registration Act 1855 (the "1855 Act").
9. Section 43 of the 1988 Act provides for liability for non-domestic rates in respect of occupied hereditaments:

“A person (the ratepayer) shall as regards a hereditament be subject to a non-domestic rate in respect of a chargeable

financial year if the following conditions are fulfilled in respect of any day in the year –

(a) on the day the ratepayer is in occupation of all or part of the hereditament, and

(b) the hereditament is shown for the day in a local non-domestic rating list in force for the year.”

10. Section 45 of the 1988 Act deals with liability for non-domestic rates in respect of unoccupied hereditaments:

“(1) A person (the ratepayer) shall as regards a hereditament be subject to a non-domestic rate in respect of a chargeable financial year if the following conditions are fulfilled in respect of any day in the year -

(a) on the day none of the hereditament is occupied,

(b) on the day the ratepayer is the owner of the whole of the hereditament,

(c) the hereditament is shown for the day in a local non-domestic rating list in force for the year, and

(d) on the day the hereditament falls within a class prescribed by the Secretary of State by regulations.”

11. Section 65(1) of the 1988 Act defines the owner of a hereditament for the purpose of section 45(1)(b):

“The owner of a hereditament or land is the person entitled to possession of it. ”

12. The relevant regulations for the purpose of section 45(1)(d) of the 1988 Act are the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008/386 (the “Regulations”). Regulation 3 provides that the class of non-domestic hereditaments prescribed for the purposes of s.45(1)(d) consist of “all relevant non-domestic hereditaments” (subject to exceptions that are not material in this case).

Factual Background

13. The appellant was registered as the proprietor of the freehold of the hereditament on 12 February 2021 and remained so until it was sold on 8 September 2023.
14. The hereditament has appeared in the rating list since 1 April 2017. At some point in 2022, the property, which had been used as a bank, became vacant.
15. The appellant instructed Verity Commercial Services Limited (“Verity”), a company specialising in business rates mitigation, as managing agents of the hereditament in an attempt to mitigate its liability for non-domestic rates.

16. The scheme devised by Verity, as part of its rates mitigation strategy, involved the following steps:
 - i) Verity set up two companies, namely, Room for Faith Limited (“RFFL”), incorporated on 4 March 2022 in England and Wales, and Local Faith Limited (“LFL”), incorporated on 14 July 2022 in Hong Kong.
 - ii) On 7 October 2022 a lease was granted by the appellant to RFFL for a period of 5 years with an annual rent of £1.
 - iii) On the same date a sub-lease was granted by RFFL to LFL, incorporating most of the terms of the lease (but excluding any right to sub-let the property).
 - iv) The intention was that LFL would use the hereditament for the purpose of religious worship so as to engage the exemption from non-domestic rates in paragraph 11 of Schedule 5 to the 1988 Act.
17. It is common ground that the lease and sub-lease were valid. The lease contains the following terms:
 - i) Under clause 2.1, the landlord lets the property to the tenant for a contractual term of five years.
 - ii) Under clause 8.1, the tenant must pay all rates, including non-domestic property business rates.
 - iii) Under clause 12.1, the tenant may underlet the whole of the property without the consent of the landlord.
 - iv) Under clause 18.1, the tenant must not use the property for any purpose other than other than the permitted use. The permitted use includes any use for, or in connection with, public worship or religious instruction.
 - v) Clause 25 contains a landlord’s covenant for quiet enjoyment.
 - vi) Under paragraph 1 of Schedule 1, the landlord grants to the tenant all the necessary rights required in order to occupy the property for the permitted use.
18. It is common ground that no certificate under section 2 of the Places of Worship Act 1855 was obtained in relation to the hereditament.
19. As a result, the exemption in paragraph 11 of Schedule 5 of the 1988 Act did not apply and a liability arose for non-domestic rating.

The Judge’s decision

20. The respondent instituted a complaint, seeking a liability order against the appellant for non-domestic rates in respect of the hereditament between 24 June 2022 and 7 September 2023, in the sum of £14,348.90.

21. The final hearing took place before the Judge on 1 and 2 May 2024. The appellant's primary case was that for the relevant period, between 7 October 2022 and 7 September 2023, LFL was in rateable occupation of the hereditament; alternatively, if the court found that the property was unoccupied, LFL was the owner of the hereditament, as the person entitled to possession of it within the meaning of section 65(1) of the 1988 Act.
22. The Judge found that LFL was not in rateable occupation of the hereditament. There is no appeal against that finding.
23. Further, the Judge found that the appellant, as opposed to LFL, was the owner of the hereditament for the purpose of section 45(1)(b) of the 1988 Act and made a liability order for the non-domestic rates in favour of the respondent against the appellant. That is the subject of this appeal.
24. The Judge decided that *Rossendale v Hurstwood* (above) requires a purposive approach to be taken when considering who is "entitled to possession":

"[42] I consider that the decision in *Hurstwood* means that in all cases a purposive approach must be taken in considering who is "entitled to possession". That in many cases this will require only a cursory examination. It will, in those cases, be clear that the person who as a matter of the law of real property has the legal right to actual physical possession, will also have a real and practical ability either to occupy the property or put someone else in occupation. If that is not clear, then further examination would be required.

[43] If I am wrong about this, and in fact the court must first distinguish between 'normal' and 'unusual' cases, I am satisfied for the reasons set out below that this is an 'unusual' case...

...

[47] It was accepted in this case that the Appellant engaged the services of Verity in order to avoid liability for NNDR. That for the purpose of rates mitigation, Verity had incorporated RFFL and LFL. That as agent for both the Respondent, RFFL and LFL, Verity had arranged a lease and sub-lease for the Hereditament.

[48] I am satisfied that these facts are exactly the sort of circumstances described as an 'unusual' case that requires a more detailed examination.

[49] I consider that insofar as the disputed matter for me to decide is concerned I must ask myself whether during the relevant period LFL had the real and practical ability either to occupy the property, or to put someone else into occupation of it."

25. Against that test, the Judge's findings of fact and/or matters of common ground set out in his Judgment were:
- i) The registered use of the hereditament for planning purposes remained a bank (its previous use).
 - ii) An inspection of the hereditament revealed no signs of occupation (for example, there was no electric lighting) and no evidence that it was used as a place of worship.
 - iii) The appellant produced no evidence from any officer of LFL or anyone authorised to give evidence on their behalf. There was no direct evidence from anyone who had any knowledge or experience of the hereditament.
 - iv) The hereditament had never appeared on LFL's website and had not been made available as a place of worship by LFL.
 - v) The contention of Mr Dresdner, of Verity, that LFL had a real and practical ability to occupy the hereditament or bring it into occupation was rejected as an unsupported assertion.
 - vi) Mr Dresdner's evidence that Verity provided some financial support for LFL was insufficient to infer that LFL has a real and practical ability to occupy the hereditament or put someone into occupation of it.
 - vii) Photographs and a prayer schedule were relied upon by the appellant in support of its case that there was actual occupation of the hereditament by LFL but it provided no evidence of who took the photographs, when they were taken, or where the prayer schedule had come from. Therefore, they were of no probative weight.
 - viii) During the relevant period the Judge found that LFL was a company upon which a legal right to occupy was conferred for no other purpose than the avoidance of liability to rates.
26. The Judge concluded that LFL did not have a real and practical ability to occupy the hereditament or put someone into occupation of it. The real and practical ability to occupy the hereditament or put someone into occupation of it remained with the appellant throughout the relevant period. Therefore, the appellant remained the owner.

Case stated

27. The questions stated by the Judge for determination are:
- i) For the purposes of s.45(1)(b) and s.65(1) of the Local Government Finance Act 1988: (i) is there a single (purposive) test for identifying who is the owner of a hereditament; or (ii) does the test depend on whether the case ought properly to be categorised as "normal" or "unusual" (in the sense described in *Rossendale BC v Hurstwood Properties Limited* [2022] AC 690)?
 - ii) If the test depends on whether the case is a 'normal', or 'unusual' one, was I correct to categorise this as an 'unusual' case?

- iii) Depending to the answers to (a) and (b) above, in relation to the disputed issue in this case, did I apply to correct test?
- iv) Was I entitled to conclude that during the relevant period and as it related to the hereditament: (i) LFL was a company upon which a legal right to occupy was conferred for no other purpose than the avoidance of liability to rates; and (ii) LFL did not have a real and practical ability to occupy the hereditament or put someone into occupation of it?

Ground 1 – the Rossendale test

- 28. The schemes considered in *Rossendale* (above) involved setting up a special purpose vehicle (“SPV”) in the form of a company without any assets or business. The registered owner would grant a short lease of the unoccupied property to the SPV. The premise of the scheme was that the SPV would become the owner of the property for the purpose of the liability for non-domestic rates. The SPV would either immediately be put into members’ voluntary liquidation or be left to be dissolved. If placed into liquidation, the SPV could take advantage of an exemption which applies where the owner of the property is being wound up. If dissolved, the lease and associated liability for rates would automatically be transferred by law as bona vacantia to the Crown.
- 29. In *Rossendale* it was common ground that the test case schemes had no business or other real world purpose and that their sole purpose was to avoid liability to pay business rates. The schemes were found to be an abuse of process but it was common ground that the leases granted to the SPVs were not shams so that, as a matter of the law of real property, they conferred an entitlement to possession upon the SPVs.
- 30. The Supreme Court adopted a purposive approach to the interpretation of the material provisions in the 1988 Act. Although the leases granted to the SPVs in question were not shams and created genuine legal obligations, the SPVs had no real or practical control over whether the relevant properties were occupied or not; such control remained at all times with the registered owners, who were persons entitled to possession within the meaning of section 65(1). It followed that they were the owners of the hereditaments for the purpose of section 45(1)(b) of the 1988 Act.
- 31. Lord Briggs and Lord Leggatt JJSC (with whom Lord Reed PSC, Lord Hodge DPSC and Lord Kitchin JSC agreed) handed down the judgment of the Court.
- 32. The Supreme Court confirmed that the purposive approach to the interpretation of legislation as laid down in *WT Ramsay Ltd v Inland Revenue Comrs* [1982] AC 300 was of general application.
- 33. At [21] the Supreme Court stated that the rules to determine who is an occupier for rating purposes were set out by Tucker LJ in *John Laing & Son Ltd v Assessment Committee for Kingswood Assessment Area* [1949] 1 KB 344 at p.350, as affirmed in *Cardtronics UK Ltd v Sykes (Valuation Officers)* [2020] 1WLR 2184 at para. 13:
 - “there are four necessary ingredients in rateable occupation . . .
 - First, there must be actual occupation; secondly, that it must be exclusive for the particular purposes of the possessor; thirdly,

that the possession must be of some value or benefit to the possessor; and, fourthly, the possession must not be for too transient a period.”

34. The Supreme Court stated at [25] that the purpose for which rates are charged in respect of unoccupied properties is to deter owners from leaving property unoccupied for their own financial advantage and to encourage them to bring empty properties back into use for the benefit of the community at large.

35. The Supreme Court considered the question of entitlement to possession as follows:

“[28] ... The person entitled to possession of real property is the person who, as a matter of title, against the rest of the world (including any other person interested in the property such as a landlord) has the legal right to enjoy the property for the time being, whether by personal occupation or exercising the right to put others into possession or occupation, as tenants or licensees or otherwise. Such a person also, of course, has the right to decide to keep the property unoccupied.

...

[30] A central question in the present appeals is: why in the case of unoccupied property does the legislation impose the liability to pay rates on the person entitled to possession of the property? To the extent that the charge merely raises funds to help pay for local services the answer may not be obvious. Parliament may choose to levy a form of property tax on any class of persons interested in property. But in relation to the central purpose of providing an incentive to bring unoccupied property back into use, the intention is clear. It focuses the burden of the rate precisely on the person who has the ability, in the real world, to achieve that objective.”

36. In considering the application of section 65(1) of the 1988 Act to the facts of the case before it, the Supreme Court stated:

“[47] There can be no doubt that the definition of the owner of a hereditament in section 65(1) of the 1988 Act as “the person entitled to possession of it” is to be interpreted as denoting in a normal case the person who as a matter of the law of real property has the immediate legal right to actual physical possession of the relevant property. Arden J so held in *Brown v City of London Corpn* [1996] 1 WLR 1070 as a reason for concluding that the right of a receiver under a debenture to exercise a power to displace the possession of the company which was the tenant of an unoccupied property did not make the receiver the “owner” of the property or the purposes of section 65(1) and thereby liable for business rates. It has not been suggested that that conclusion was wrong. Furthermore, such an interpretation generally accords with the legislative

purpose of imposing the liability for business rates on the person who controls whether the property is left unoccupied and on whom the legislation is intended to place an incentive to bring the property back into use for the benefit of the community.

[48] In the unusual circumstances of this case, however, identifying “the person entitled to possession” in section 65(1) of the 1988 Act as the person with the immediate legal right to possession of the property would defeat the purpose of the legislation. As we have explained, the schemes were designed in such a way as to ensure that the SPV to whom a lease was granted had no real or practical control over whether the property was occupied or not and that such control remained at all times with the landlord.”

[49] In our view, Parliament cannot sensibly be taken to have intended that “the person entitled to possession” of an unoccupied property on whom the liability for rates is imposed should encompass a company which has no real or practical ability to exercise its legal right to possession and on which that legal right has been conferred for no purpose other than the avoidance of liability for rates. Still less can Parliament rationally be taken to have intended that an entitlement created with the aim of acting unlawfully and abusing procedures provided by company and insolvency law should fall within the statutory description.

...

[59] ... we consider that the words “entitled to possession” in section 65(1) of the 1988 Act as the badge of ownership triggering liability for business rates are properly construed as being concerned with a real and practical entitlement which carries with it in particular the ability either to occupy the property in question, or to confer a right to its occupation on someone else, and thereby to decide whether or not to bring it back into occupation. The fact that the property is by definition unoccupied means, as Henderson LJ said, that there is no scope for identifying as the owner anyone in actual occupation. But it does not preclude asking the question whether a lease granted as part of a scheme for tax avoidance having the characteristics set out in para 46 above confers an entitlement to possession in the relevant real and practical sense, so as to identify the lessee as the owner for the purposes of the liability for business rates. If it does not do so, in particular because, under the scheme, there is no question of the SPV being able to exercise any of the attributes of a person with an entitlement to possession, and in particular to bring the premises back into occupation by itself or by anyone else, then the lessee under that lease will not be the owner. The landlord, as grantor of the lease, will be the

owner, because the landlord will not by the grant of the lease have transferred to the lessee a real entitlement to possession.”

37. At [61] the Supreme Court made the following comment:

“It may be that other factual situations may demonstrate that this test needs some further adjustment. For example the letting of unoccupied business property by a parent company to a wholly owned and controlled subsidiary would not of itself cause the subsidiary to fail to satisfy the ownership test merely because the management of the affairs of the subsidiary (including whether to bring the premises back into occupation) rested with the parent’s board. We would, however, reject the criticism that the test is insufficiently certain. In any ordinary case the test will easily be satisfied by identifying the person who is entitled to possession as matter of the law of real property. The fact that the law of real property may not prove a reliable guide in an unusual case of the present kind is not in our view an objection to our preferred interpretation. The value of legal certainty does not extend to construing legislation in a way which will guarantee the effectiveness of transactions undertaken solely to avoid the liability which the legislation seeks to impose.””

38. Contrary to the appellant’s submission in this case, for the purposes of sections 45(1) (b) and 65(1) of the 1988 Act, there is a single, purposive test to determine the person entitled to possession and therefore the owner of the hereditament. It was made clear by the Supreme Court at [49] and [59] that when considering this question, the issue was whether the person in question had a *real and practical* entitlement to possession. It was in that context that the Supreme Court gave illustrations as to the ‘usual’ case, where the answer would be obvious, and ‘unusual’ circumstances, where further investigation was required. But the central question remained, as a matter of purposive construction of the provisions, who was entitled to possession.

39. I note that this accords with the conclusion reached by HHJ Cadwallader (sitting as a Judge of the High Court) in *Wigan Council & Ors v Property Alliance Group Limited* [2025] EWHC 2336 (Ch).

40. Shortly after the hearing of this appeal, the Court of Appeal handed down Judgment in another case, properly drawn to the Court’s attention by the appellant, *The King (on the application of Emeraldshaw Limited) v Sheffield Magistrates’ Court* [2025] EWCA Civ 1601, in which Holgate LJ dismissed the legal arguments raised in this appeal at [44]-[47], clarifying the ratio in *Rossendale* at [43]:

“Thus, the ratio of *Rossendale* is that the “owner” of a hereditament for the purposes of s.65(1) of the LGFA 1988 is the person who has the immediate legal right to actual physical possession of that property, unless, in the circumstances of the case, he or she has no real or practical ability to exercise that right, so as to bring the property back into use, and has only

been granted that right for the purpose of avoiding liability for NDR (see also [60] and [61]).”

41. Despite the valiant attempt by the appellant to distinguish the decision in *Emeraldshaw* on the facts, the applicable statutory test is set out clearly in the Court of Appeal Judgment.
42. It follows that the test identified by the Judge in this case was correct.

Question 2 – usual or unusual case

43. Regardless of whether the purposive test set out above could be categorised as a two-stage test, or separated into ‘normal’ and ‘unusual’ cases, the answer arrived at in this case would be the same.
44. The appellant contended that this was a ‘normal’ case and that the scheme could be distinguished from those in *Rosendale*. In *Rosendale* the schemes involved an abuse of the legal process, in that the leases were not granted with the intention of allowing the SPV to make any use of the property, or giving the SPV any role in bringing it back into use. In contrast, it is said that in this case, as a matter of the law of real property, the lease and sub-lease created an immediate legal right to actual physical possession of the hereditament, the purpose of LFL in taking the lease was to further its business activities and LFL are therefore the owners.
45. I reject the appellant’s arguments. There is no challenge to the Judge’s finding that the property was unoccupied by LFL. It was common ground that RFFL and LFL were incorporated by Verity, and the lease and sub-lease of the property were granted, with the sole purpose of avoiding business rates. On the facts of the case, as found by the Judge and explained in his Judgment, there was no evidence that LFL had any business activities that were connected with the sub-lease of the property. In those circumstances, the Judge was entitled to conclude that LFL did not have any real or practical entitlement to possession.

Question 3 – findings of fact

46. As set out above, the Judge identified the correct test and applied it correctly to the facts of the case as found by him on the evidence. It follows that the Judge was entitled to conclude that LFL did not have any real or practical entitlement to possession of the hereditament and therefore was not the owner of the same for the purpose of sections 45(1) and 65(1) of the 1988 Act.

Question 4 – RFFL

47. The appellant submits that, if the Judge was entitled to find that LFL did not have any real or practical entitlement to possession of the hereditament and therefore was not the owner of the same for the purpose of sections 45(1) and 65(1) of the 1988 Act, he should have held that RFFL was entitled to possession and therefore the owner.
48. It is fairly accepted by the appellant that this alternative case was not advanced at the hearing of the complaint. No evidence was put before the Judge on this question, it would require new evidence on the issue of whether RFFL had a real and practical

ability to occupy the property, and there is no application to adduce fresh evidence. In any event, it is too late for this to be raised.

49. For the reasons set out above, the Judge was entitled to conclude that LFL did not have a real and practical entitlement to possession of the hereditament so as to fall within the definition of owner for the purpose of sections 65(1) and 45(1) of the 1988 Act.
50. Further, the Judge was entitled to find that the appellant remained the owner of the hereditament. The liability order made against the appellant, as owner of the hereditament, in respect of unpaid non-domestic rates was valid.
51. The appeal is dismissed.