



RA/66/2004

LANDS TRIBUNAL ACT 1949

RATING – hereditament – alteration of rating list – office building extended floor by floor into new adjoining building – series of alterations to list to reflect each extension – whether each extension had effect of creating new hereditament – whether alterations valid – effective date of alterations – appeals allowed – Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 reg 3 – Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 reg 13A

**IN THE MATTER OF AN APPEAL FROM THE
LONDON (NORTH EAST) VALUATION TRIBUNAL**

BETWEEN

**DONALD MALCOLM BAKER
(Valuation Officer)**

Appellant

and

CITIBANK NA

Respondent

**Re: Offices and Premises,
25 and 33 Canada Square,
London E14 5AX**

Before: The President

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 5 December 2006**

Timothy Mould QC and James Maurici, instructed by Solicitor to HM Customs and Revenue for the appellant

Peter Village QC and Jenny Wigley instructed by Stephenson Harwood for the respondent

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The following cases are referred to in this decision:

Institute of Orthopaedics v Harrow Corporation [1962] 3 All ER 964

Gilbert (VO) v Hickinbottom [1956] 2 QB 40

British Railways Board v Hopkins (VO) [1981] RA 328

English, Scottish and Australian Bank v Dyer (VO) (1958) 4 RRC 27

Guest (VO) v Boughton [1981] RA 97

Moffatt (VO) v Venus Packaging Ltd [1977] 20 RRC 335

The following further cases were referred to in argument:

Scottish & Newcastle Retail Ltd v Williams (VO) [2001] 1 EGLR 157

Lamb and Shirley Ltd v Bliss (VO) [2001] RA 99

DECISION

Introduction

1. These consolidated appeals concern the rating of the respondent's office premises at Canary Wharf during a period in which additional accommodation was being added in stages to the premises which it already occupied. Early in 2000 the respondent entered into occupation of 33 Canada Square, an office building on ground and 17 upper floors, basement and service tower. Immediately alongside this building a second building, 25 Canada Square, was erected between 2000 and 2003. This second building consists of ground floor and 42 upper floors and contains basement parking. There is full interconnection between the two buildings up to the 14th floor. Individual floors in 25 Canada Square were brought into occupation by the respondent successively. The ultimate extent of its occupation comprised part of the basement, part of the ground floor and floors 3-14, 17-18 and 20.

2. The appellant valuation officer altered the rating list to enter as a hereditament 33 Canada Square, and shortly afterwards he made a succession of 14 alterations to reflect the increasing area of occupation, in each case replacing the previous entry with one containing an altered address (referring to the particular occupied floors), a higher rateable value and a later effective date. The respondent made proposals in respect of all these 14 alterations. The valuation tribunal determined the appeals by ordering the deletion of the all 14 alterations except the last. The basis for their doing so was that each of those entries was made in respect of land which did not constitute a hereditament. The VO now appeals. He contends that the 13 alterations correctly identified each successive hereditament as it existed at the material day. He also contends that the entry in each case should take effect at the date when the additional area of occupation that caused the alteration to be made came into occupation.

The facts

3. There was an agreed statement of facts with substantial supporting documentation. No evidence was called by either party. On 20 December 2006 I viewed the premises. On the basis of this I can state the essential facts, in addition to those set out above, as follows.

4. The respondent took an underlease of the whole of number 33 on 14 December 1999. On 27 February 1999 it had entered into an agreement for a lease of the entrance lobby and floors 1-14, 17-19 and 41-42 of the building that was to be erected as number 25. At that date no work had commenced on the construction of number 25 other than foundation piling. On 14 June 2002 the respondent took an underlease of floors 20-24 and 35-40; and on 19 December 2003 a structure underlease (for the ground floor and basement) and the underlease of the entrance lobby and floors 1-14, 17-19 and 41-42 were signed.

5. The 15 alterations (including the original one relating to number 33 alone) that the VO made to the list are set out in the schedule appended to this decision. The respondent entered

into occupation of number 33 and parts of the basement and ground floor of number 25 before 1 April 2002. It occupied other parts of number 25 on dates between 17 May 2002 and 1 March 2003. The parts occupied are set out in column D of the appendix, and the date on which each extension of the area of occupation occurred is shown in column E. The assessment of number 33 was £12,100,000 RV and the ultimate alteration (in respect of which there is no appeal) showed an assessment of £23,746,000 RV for number 33 and the basement, part of the ground floor and floors 3-14, 17-18 and 20 of number 25. Each floor in number 25 is about 30,000 sq ft in area. The addition of a single floor to the occupied area produced only a small percentage increase in both the total area occupied and the rateable value. Thus the last floor to be added, floor 3, increased the total area occupied by only 3.30%. Similarly the increase in rateable value (£747,000 in the case of floor 3, other floors being little different) represented an increase of 3.29%.

6. The construction of number 25 was as a tower block, approximately square in area and with two service cores situated off-centre within it. A linking block between numbers 25 and 33 contains an atrium and on either side of this at each floor level up to floor 14 there are connecting passages or bridges. As each floor of number 25 became ready for occupation the interconnecting doors at the boundary of 33 and 25 were opened.

Valuation tribunal decision

7. In its decision the valuation tribunal said this:

“The issue for the Tribunal to decide is whether, as the Valuation Officer argues, each addition of a floor, or part of 25 Canada Square to the existing assessment is the coming into existence of a new hereditament or, as argued by Mr Craine, is a material change of circumstance affecting the value of the existing assessment.

The definition of a hereditament is crucial to the determination of this issue. The Tribunal finds as fact that the boundary of the hereditament was established when legally binding agreements to lease were entered into. This means that when the agreement to lease Bst-19th & 41st-42nd floors of number 25 was made on 27 February 1999, together with the agreement to lease number 33 made on 21 December 1999, the site boundary and hereditament were established. The additional agreements to lease the various parts of number 25 were completed by 17 May 2000 and serve to reinforce the view that the hereditament boundary upwards was also established at this date. It is recognised that at December 1999 no part of the building was completed or subject to rating but that each part would become so when occupied.

This view is supported by the understanding that these two contiguous buildings must have been planned and built to become inter-communicating. There was one major tenant-occupier with a major involvement in the design/construction of the property it was contracted to lease. This must be a single hereditament within the definition of a hereditament.”

The statutory provisions

8. Under section 42(1) of the Local Government Finance Act 1988 a local non-domestic rating list must show for each day each hereditament that is situated in the authority's area. Under section 64(1) a hereditament is anything which, by virtue of the definition of hereditament in section 115(1) of the General Rate Act 1967, would have been a hereditament for the purposes of that Act. Section 115(1) provided:

“... ‘hereditament’ means property which is or may become liable to a rate, being a unit of each property which is, or would fall to be, shown as a separate item in the valuation list...”

9. Schedule 6 of the 1988 Act provides:

“1. This Schedule has effect to determine the rateable value of non-domestic hereditaments...for the purposes of this Part.

2.

...

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

(6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.

(7) The matters are –

(a) matters affecting the physical state or physical enjoyment of the hereditament,

(b) the mode or category of occupation of the hereditament,

...

(d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and

(e) the use or occupation of other premises situated in the locality of the hereditament.”

10. The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (“the Material Day Regulations”) provide at reg. 3:

“3(4) Where the determination is with a view to making an alteration so as to show in, or delete from the list any hereditament which –

(a) has come into existence or ceased to exist;

...

the material day is...the day on which the circumstances giving rise to the alteration occurred.

...

(7) In any other case, the material day is the day on which the proposal for the alteration in respect of which a determination falls to be made is served on the valuation officer or, where there is no such proposal, the day on which the valuation officer alters the list

(8) The reference in paragraph (4) above to a hereditament coming into existence or ceasing to exist includes a reference to a hereditament which comes into existence or ceases to exist by virtue of –

(a) property previously rated as a single hereditament becoming liable to be rated in parts, or

(b) property previously liable to be rated in parts becoming liable to be rated as a single hereditament, or

(c) any part of a hereditament becoming part of a different hereditament”.

11. The Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, (“the Appeals Regulations”) provide at reg. 13A:

“13A(1) This regulation has effect in relation to alterations to a list compiled on or after April 1, 2000.

...

(3) an alteration made as a consequence of a hereditament coming into existence or ceasing to exist in the circumstances described in paragraph (4) shall have effect from the day on which the circumstances giving rise to the alteration occurred.

(4) The circumstances mentioned in paragraph (3) are those in which –

(a) property previously rated as a single hereditament becomes liable to be rated in parts, or

(b) property previously rated in parts becomes liable to be rated as a single hereditament,

(c) any part of a hereditament becomes part of a different hereditament.

.....

(5)

(b) where the alteration is made on the grounds of a material change of circumstances other than a change to which paragraph (3) applies, and is not made in pursuance of a proposal, the alteration shall have effect from the day on which the circumstances giving rise to the alteration arose or the first day of the financial year in which the alteration is made, whichever is the later.

(6) where an alteration is made so as –

(a) to show in the list a hereditament which, since the list was compiled –

(i) has come into existence

the alteration shall have effect from –

....

(bb) where it is not made in pursuance of a proposal, the day that would apply under paragraph (5)(b).”

Submissions

12. For the VO Mr Timothy Mould QC submitted that the VT's decision was contrary to basic principles of rating law. Hereditaments were units of occupation, not ownership, and a hereditament was properly to be identified by reference to the physical extent of the area occupied. The VT's decision contemplated that a hereditament came into existence in December 1999 which encompassed offices and premises at 25 (part) and 33 Canada Square notwithstanding that there was at that date no building there and no occupation. The assumption that a hereditament was defined in two dimensions only was plainly wrong and was inadequate as the basis for defining the extent of hereditaments in a multi-occupancy building.

13. Mr Mould said that the agreed starting point was that as from 1 April 2002 there existed a rateable hereditament at, and properly identified as, number 33 Canada Square, occupied by the respondent. The correct approach to the respondent's subsequent occupation of office and ancillary accommodation at 25 Canada Square was that on the date when each office floor or other part of that building became capable of occupation it constituted a new, separately identifiable, hereditament; and, on the date when the respondent began to occupy it, that hereditament was to be treated as merging with the existing hereditament then in the occupation of the respondent. It followed that the VO was correct to make the disputed alterations to the list by reference to regulations 3(4) and (8) of the Material Day Regulations 1992 and regulations 13A(3) and (4) of the Appeals Regulations.

14. If that analysis was not accepted, said Mr Mould, the respondent's alternative contention was that on each occasion upon which the occupation of the respondent extended into a previously unoccupied floor or other part of number 25 a new hereditament came into existence in place of that which embraced the extent of the respondent's previous rateable occupation at numbers 33 and 25. An alteration to show such new hereditament in the list fell within the scope of regulation 3(4)(a) of the Material Day Regulations and regulation 13A(6)(a)(i) of the Appeals Regulations.

15. For the respondent Mr Peter Village QC submitted as follows. The respondent took up occupation of number 33 following completion of the building in or around 2000; and from early 2002 it began to occupy gradually various floors of number 25. These extensions of occupation into number 25 constituted a series of changes in "matters affecting the physical state or physical enjoyment of the hereditament" within the meaning of paragraph 2(7)(a) of Schedule 6 to the 1988 Act. Each extension did not result in a hereditament "coming into existence or ceasing to exist" within the meaning of regulation 3(4) of the Material Day Regulations 1992, whether by virtue of it resulting in "property previously rated in parts becoming liable to be rated as a single hereditament" within regulation 3(8)(b) or otherwise. Accordingly the material day for each alteration made by the VO between 12 and 27 March 2003 was, under regulation 3(7), the date when each alteration was made. At each of those dates in March 2003, said Mr Village, the physical enjoyment of the hereditament was such that the entirety of number 33 and basement (part), ground floor (part), and floors 3 to 14, 17-18 and 20 of number 25 was in the occupation of the respondent. The VO was obliged to alter the list on that basis. It was only the final alteration, made on 27 March 2003 and reflecting the

full area of occupation, that was correct. All the other alterations were incorrect and invalid because at the time when each of them was made the hereditament was the full area of occupation and not the lesser area to which the alteration related. The effective date under regulation 13A(5)(b) of the Appeals Regulations was the “day on which the circumstances giving rise to the alteration arose or the first day of the financial year in which the alteration is made, whichever is the later”, and thus the effective date was 1 March 2003, when occupation of the full area had begun.

16. Both alternative approaches urged on behalf of the VO, said Mr Village, were flawed. The first was advanced on the basis of regulation 3(8)(b) of the 1992 Regulations and regulation 13A(4)(b) of the 1993 Regulations, which referred to “property previously rated in parts becoming liable to be rated as a single hereditament”. Such wording, said Mr Village, plainly referred to a situation where two or more separate hereditaments had been previously entered in the list and then came together to form a single hereditament. Here each floor or other part of number 25 was never entered in the list or rated as a separate hereditament. Indeed separate assessments of each of those floors or areas would have been inappropriate because it was always intended that they would be occupied together with number 33.

17. On the alternative contention of the VO – that on each occasion on which occupation of the respondent extended into a previously unoccupied floor or other part of number 25 a new hereditament came into existence – Mr Village put forward two alternative responses. Firstly he said that the individual changes were too small to change the identity of the hereditament. The individual additions that were made averaged 4.6% of the previously existing space and the largest addition was no more than 11.83%. These were minor additions only and they were not sufficient to change the identity of the hereditament. Anyone visiting the property before and after each change would have described it as the same property.

18. The alternative response advanced by Mr Village was to adopt the reasoning of the VT in its decision – that by the end of December 1999, or at the latest the end of February 2000, the boundaries and extent of the hereditament were defined by the lease documentation. The physical changes that took place within this hereditament constituted merely changes affecting the physical state or enjoyment of the hereditament and not changes to its identity or boundaries. Reliance was placed on *Institute of Orthopaedics v Harrow Corporation* [1962] 3 All ER 964.

Conclusions

19. The dispute in this case arises because, although the respondent entered into occupation of parts of number 25 on various dates from early 2002 onwards, if its contentions are right it would only be liable to pay rates on these parts from 1 March 2003. I do not think that its contentions are right.

20. The principal argument advanced by Mr Village is founded on the provisions of the Material Day Regulations. He says that in the case of each of the 15 alterations the material

day was the day on which the alteration was made, and that in each case the alteration was made on a date, in March 2003, when the hereditament consisted of the full area of occupation. As a consequence, he says, all alterations that do not relate to this hereditament, are invalid. This contention, however, in my judgment, misconstrues the purpose and effect of the Material Day Regulations. Their function relates purely to valuation. That is stated in paragraph 1 of Schedule 6 to the 1988 Act. The Regulations determine the date at which matters affecting the physical state of the hereditament or the mode or category of its occupation or matters affecting the state of the locality are to be taken for the purpose of valuing the hereditament. It is not their function to determine the identity of the hereditament that falls to be valued. Even if Mr Village were right and the material day in the case of each alteration was the date of which it was made, there would appear to be no difficulty in valuing the hereditament that was identified in the alteration in accordance with paragraph 2 of Schedule 6. Each hereditament as described would be valued in the light of the matters that existed at that date, including the state of completion of the building and the extent to which the various parts were occupied, whether by the respondent or by others.

21. However, Mr Village is not right, in my view, in saying that the material date in each case is the day on which the alteration was made. His contention is that none of the hereditaments that the VO purported to have included in the list came into existence in any of the three ways listed in paragraph (8) of regulation 3, so that it was paragraph (7) that applied in each case (day on which the valuation officer alters the list) rather than paragraph (4) (day on which the circumstances giving rise to the alteration occurred). The principal way in which Mr Mould sought to answer this was by saying that each extension of occupation to a new floor fell within paragraph (8)(b) – property previously liable to be rated in parts becoming liable to be rated as a single hereditament. He said that there was a moment in time, after the completion of the new floor but before it became occupied, when it was itself a hereditament and thus liable to be rated, so that when it became occupied with the other, already occupied, part the circumstances were those of paragraph (8)(b). It does not seem to me, however, that there must have been such a moment. Each floor was being completed so as to form part, on completion, of the respondent's occupation, and there was no time at which it would have been appropriate to regard it as a separate hereditament.

22. The answer to Mr Village's contention on paragraph (8), in my judgment, is that paragraph (8) says that the reference in paragraph (4) to a hereditament which comes into existence "includes" a hereditament that which comes into existence in any of the three ways set out. So the list is not exclusive, and paragraph (4) can apply to a hereditament that comes into existence in a way that is not one of those listed. The result is that, if the VO is right and on each of the 14 occasions on which the occupation was extended a new hereditament came into existence, the material date in each case was the date when occupation was so extended. Similarly under the Appeals Regulations the alteration would have effect from that date under paragraph (6)(a)(i), (bb) and paragraph (5)(b) of regulation 13A (rather than paragraphs (3) and (4) of that regulation, which would apply if each extension did not have the effect of creating a new hereditament).

23. The remaining questions, therefore, are whether the VO was right to make the 13 disputed alterations to the list and whether, if he was, each extension that was reflected in an

alteration had the effect of creating a new hereditament. The extent and identity of a hereditament are a matter of fact and degree: see *Gilbert(VO) v Hickinbottom & Sons Ltd* [1956] QB 40 (and in particular Morris LJ at 51 and Parker LJ at 53-54). Normally they are to be determined by the extent of the occupier's occupation. Thus in *Vtesse Networks Ltd v Bradford (VO)* [2006] RA 427 the Court of Appeal upheld my decision ([2006] RA 57) that a telecommunications hereditament was appropriately defined by reference to those parts of it that were in the occupation of the appellant. And where a business is carried on on a defined and separate part of the land owned by the occupier, the remainder being unused, it will normally be appropriate to treat the hereditament as being confined to the occupied area: see the decision of this Tribunal (Erskine Simes QC) in *English, Scottish and Australian Bank v Dyer (VO)* (1958) 4 RRC 27. For a newly built office block, as in the present case, the appropriate treatment is that adopted by this Tribunal (J H Emlyn Jones FRICS) in *British Railways Board v Hopkins (VO)* [1981] RA 328.

24. That case concerned a newly built office block called Stanier House in Birmingham. It was on lower ground, ground and 10 upper floors. The building had been constructed by the British Railways Board for its own use, but when it was almost complete the Board decided not to occupy the whole building. The VO made proposals for the inclusion in the list, as separate hereditaments, of four unoccupied parts of the building. Subsequently he made proposals for the inclusion in the list, as separate hereditaments, of two parts of the building that had been separately let out. He also made a proposal to include in the list as a hereditament the parts of the building that were occupied by the Board. The Board contended that at the date of this proposal the parts of the building that it occupied did not constitute a separate hereditament but formed part of a larger hereditament comprising the whole of Stanier House less the part that was then let out. The Member held that the part of the building occupied by the Board constituted a separate hereditament.

25. At 340 he stated the material facts:

“The facts in the instant case are that at the relevant date the ratepayers were in actual physical occupation of those parts of the premises covered by the proposal. At the date of the proposal part of the second floor with which I am not concerned was let out and the rest of the building was empty. The upper portions not occupied were capable of being let out and separately occupied and agents had in fact been instructed to let them. These lettings have subsequently been made. The only material physical change has been the installation of separate electricity meters for the different occupiers.”

26. Having referred to *Gilbert v Hickinbottom*, *English, Scottish and Australian Bank v Dyer (VO)* and decisions of his own in *Guest (VO) v Boughton* [1981] RA 97 and *Moffatt (VO) v Venus Packaging Ltd* [1977] 20 RRC 335, the Member went on (at 341):

“It follows from this line of authority that in my judgment applying what I would call the normal rules the part occupied by the ratepayers can properly be described as a hereditament being occupied by a single occupier for a single purpose. No one suggests in the present case that the fifth to tenth floors should be separately assessed

from the lower ground, ground and first floors on the grounds that they are not contiguous. With that possible qualification the occupied premises satisfy the definition of hereditament contained in s 115 of the Act which, in the alternative form, means property which may become liable to a rate being a unit of such property which would fall to be shown as a separate item in the valuation list. The whole building cannot in my opinion be said to satisfy this definition and not only because at the date of the proposal part of the second floor had been let out. The unoccupied part of the building being capable of separate occupation cannot in my judgment be said to be part of a hereditament of the occupied part since it cannot be said that it was occupied for the same purpose as the rest nor was it in fact occupied at all.”

27. I am quite satisfied in the present case, on the basis of these authorities and the general principles that can be seen to apply, that the VO was correct in making alterations to the list so as to include entries that encompassed, and were confined to, the parts of numbers 33 and 25 that were in the occupation of the respondent. I can see no justification for treating the hereditament as including parts of the building that were incomplete or unoccupied. That is a conclusion of fact and degree, although I think it could well have been wrong in law to include in the hereditament incomplete parts of number 25 that were not occupied by the respondent and were not capable of occupation. In my judgment also, the inclusion within the respondent’s occupation of each additional part of number 25 as it was completed was properly to be regarded as the creation of a new hereditament, replacing the one defined by the previous area of occupation. The contention that each extension did not result in the creation of a new hereditament because it represented a relatively small percentage increase is not in my view sustainable. Each additional floor was large in area (about 30,000 sq ft) and represented about £750,000 of rateable value. Moreover, if it were right that the hereditament remained the same after each individual extension as it was before, the logical conclusion would appear to be that the hereditament the subject of entry 15 (number 33 and the basement and part ground floors and floors 3-14, 17-18 and 20 of number 25) would be the same hereditament as that in entry 1 (number 33 alone), and that, on any view, would be nonsense.

28. For the purposes of the Appeals Regulations, each alteration to the list to include the new hereditament in place of the old was, in my judgment, an alteration made so as to show in the list a hereditament that had come into existence since the list was compiled, within paragraph (6) of regulation 13A. Thus, under paragraph (5), the alteration is to have effect from the day when the new hereditament came into existence or, if later, the first day of the financial year in which the alteration was made. In the case of alterations 3 to 15 the effective date is the day when the new hereditament came into existence. In the case of alteration 2, which was made on 12 March 2003, the new hereditament had come into existence prior to 1 April 2002, so that the effective date is 1 April 2002.

29. The basis on which the VT determined the appeals in the ratepayer’s favour, and which Mr Village advanced as his alternative approach, is not in my view tenable. The contention is that from 2000 the hereditament consisted of number 33 and the air spaces that were in due course to be filled by those parts of number 25 which the ratepayer had agreed to take on lease (The contention was additionally put on the basis that the hereditament included the whole of the site of number 25, but this seems to me to be equally untenable). Mr Village relied on

Institute of Orthopaedics v Harrow Corporation. In that case the ratepayer, a charitable organisation, occupied two pieces of land that were entered in the valuation list as a single hereditament, described as “laboratories, animal house and premises”. On one of the two pieces of land there was a building used as an animal house and on the other, during the year 1955-56, there was a recently-built laboratory and the rest of the land was unused except that several rabbit hutches were placed on part of it. During 1957 and 1958 three further laboratories were built, and in 1959 the entry in the list was altered to take account of this, the rateable value being almost quadrupled. The description in the list, however, remained the same. The ratepayer was a charity and the issue in the case was the relief from rates to which it was entitled under the Rating and Valuation (Miscellaneous Provisions) Act 1955 following the erection of the three new laboratories. For this purpose it was necessary to decide whether the hereditament had throughout retained its identity or whether the construction of the additional laboratories had the effect of creating a new hereditament in place of the original one.

30. In an action for a declaration Goulding J determined that there had never been any change in the boundaries of the hereditament and that the ratepayers were accordingly entitled to relief from rates. At 969 B-E he said:

“The hereditaments included in any valuation list are, as I understand the matter, units of assessment, that is to say, in the case of corporeal hereditaments (with which alone I am concerned), pieces of land which are treated separately for the purpose of charging their occupiers to rates in respect of their occupation of them. The physical character, the appearance and the user of a corporeal hereditament may change enormously though its boundaries remain the same. Buildings may be erected where there was none before; buildings may be pulled down and not replaced; what was agricultural land may become a factory or a house; and what was a factory or a house may become agricultural land. The changes may result in an increase or a decrease in the rateable value of the hereditament or in a change in its description; but I can see no reason why, so long as the same piece of land appears in the list as a unit of assessment, it should not remain the same ‘hereditament’ notwithstanding any such changes. If the boundaries of the unit change, if part of the unit is sold and becomes itself a new hereditament, as would, for example, happen here if the ratepayers assigned its leasehold interest in the animal house to another person, or if the unit becomes larger by the addition of further land to it, then the question whether the ‘hereditament’ has preserved its identity may become acute. I can conceive of several different answers being given. It might be said that any and every change in size, however trifling, resulted in a new hereditament. Again, it might be said that the substance of this matter should be looked at and that if the piece of land which was now the unit was substantially the same piece of land as formed the old unit, the small addition or subtraction which had occurred should be neglected.”

31. Goulding J also rejected an alternative argument of the rating authority in these terms (at 969 G-H):

“It was indeed submitted by the defendant corporation as an alternative to its main argument that what was originally brought into rating, apart from the animal house, was

simply the site of the one laboratory and the service section and that it was only when the other three laboratories had been built that the rest of the larger of the two demised plots appeared in the valuation list. In my judgment the facts do not justify this contention. There never was any physical boundary on the larger plot separating the part on which there were no buildings from the part which was built on, and even if one neglects the evidence as to the placing of hutches on part of the vacant land and treats it as all being in fact unused between 1952 and 1958, there would still be no justification for treating it as not forming part of the hereditament in the valuation list until 1959.”

32. Mr Village relied on this decision as authority for the proposition that the extent of a hereditament is defined by the boundary of the occupier’s ownership and that physical changes within that boundary do not constitute the creation of a new hereditament. What has to be borne in mind, however, is that what Goulding J had to decide was whether the hereditament entered in the list as “laboratories, animal house and premises” remained the same hereditament after development had been carried out and the rateable value had been increased to reflect this. He found as a fact that the entry in the valuation list throughout related to the whole of the ratepayer’s land. He did not have to decide what the extent of the hereditament should be treated as being for the purposes of making an entry in the valuation list. His judgment is not authority for the proposition that, for the purposes of making an entry in the list, the boundaries of a hereditament must, as a matter of law, be treated as determined by the boundaries of the ratepayer’s ownership (or even that they are relevant for this purpose: cf *Vtesse* at paragraph 25, where Lloyd LJ said that it was clear that ownership was not a relevant factor). Such a proposition would clearly be contrary to the Court of Appeal decision, cited of course in argument before the judge, in *Gilbert v Hickinbottom*, which makes clear that the extent of a hereditament for the purposes of making an entry in the list is a question of fact and degree and that the extent of the occupier’s occupation is the prime determinant.

33. I do not think, on this analysis, that *Institute of Orthopaedics* assists the ratepayer in the present case. It seems to me unreal in the present case to treat as part of the ratepayer’s hereditament those three-dimensional spaces which, when filled out as parts of a building and made capable of occupation, would become part of the occupation of the ratepayer, simply because, in advance of its occupation of those areas, it had acquired rights in respect of them. Not only were they not occupied but they were incapable of occupation, and as such they ought not in principle to be treated as included in any hereditament.

34. The VO’s appeals must be allowed and the entries restored to the list in accordance with the schedule appended to this decision. The parties are now invited to make submissions as to costs, and a letter relating to this accompanies this decision, which will become final once the question of costs has been determined.

Dated 7 February 2007

George Bartlett QC, President

SCHEDULE

A	B	C	D	E	F
	VT Appeal Reference	Date of alteration	Address of hereditament	Effective Date	Rateable Value
1		11.03.03	33 Canada Sq, London E14 5AX	01.04.02	£12,100,000
2	59006153802/ 058N00/1	12.03.03	(Incl 196 Car Spaces Pt Bsmt & Grnd Flr 25 Canada Sq) 33 Canada Sq, London E14 5AX	01.04.02	£12,492,000
3	59006153828/ 058N00/2	13.03.03	(Incl 196 Car Spaces Pt Bsmt, Grnd Flr Pt, 7& 8 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	17.05.02	£13,963,000
4	59006153883/ 058N00/3	14.03.03	(Incl 196 Car Spaces Pt Bsmt, Grnd Flr Pt, 7-9 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	14.06.02	£14,689,000
5	59006153858/ 058N00/4	15.03.03	(Incl 196 Car Spaces Pt Bsmt, Grnd Flr Pt, 7-9 & 14 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	28.06.02	£15,438,500
6	59006153782/ 058N00/5	17.03.03	(Inc 196 Car Spaces Pt Bsmt, Grnd Flr Pt, 7-9, 11-12 & 14 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	12.07.02	£16,915,000
7	59006153742/ 058N00/6	18.03.03	(Inc 196 Car Spaces Bsmt Pt, Grnd Flr Pt, 7-12 Flrs & 14 Flr 25 Canada Sq) 33 Canada Sq, London E14 5AX	02.08.02	£17,633,000
8	5900615390/ 058N00/7	19.03.03	(Incl 196 Car Spaces Bsmt Pt, Grnd Flr Pt & 7-14 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	20.08.02	£18,383,000
9	59006153609/ 058N00/8	20.03.03	(Inc 196 Car Spaces Bsmt Pt, Grnd Flr Pt, 7-14 & 17 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	30.08.02	£19,084,500
10	59006153563/ 058N00/9	21.03.03	(Inc Bsmt, Grnd Flr Pt, 7-14 & 17-18 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	06.09.02	£19,833,000
11	59006153577/ 058N00/10	22.03.03	(Inc Bsmt, Grnd Flr Pt, 4, 7-14 & 17-18 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	20.09.02	£20,568,000
12	59006153491/ 058N00/11	24.03.03	(Inc Bsmt, Grnd Flr Pt, 4, 6, 7-14 & 17-18 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	30.09.02	£21,303,000
13	59006153540/ 058N0012	25.03.03	(Inc Bsmt, Grnd Flr Pt, 4 & 17-18 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	11.10.02	£22,038,000
14	59006153949/ 058N00/13	26.03.03	(Inc Bsmt, Grnd Flr Pt, 4-14 & 17-18 & 20 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	10.01.03	£22,729,000
15	59006153923/ 058N00/14	27.03.03	(Inc Bsmt, Grnd Flr Pt, 3-14, 17-18 & 20 Flrs 25 Canada Sq) 33 Canada Sq, London E14 5AX	01.03.03	£23,476,000