RA/27/2000

LANDS TRIBUNAL ACT 1949

RATING – cricket clubhouse on land exempt as a public park – whether proposal raised question of rateability – whether rateable – value – held jurisdiction to consider rateability – clubhouse in rateable occupation of cricket club – assessment reduced from £3,200 RV to £2,100 RV

IN THE MATTER of an APPEAL against a DECISION of the LANCAHIRE VALUATION TRIBUNAL

BETWEEN **GALGATE CRICKET CLUB** **Appellant**

and

MICHAEL DOYLE **Respondent**
(Valuation Officer)

Re: Clubhouse, Cricket Ground and Premises
Galgate Cricket Club
Main Road, Galgate
Lancaster

Before: The President

Sitting at Lancaster County Court,
Mitre House, Church Street, Lancaster
on 7 December 2000

The following cases are referred to in this decision:

Courtney Plc v Murphy (VO) [1998] RA 77
Lambeth Overseers v London County Council [1897] AC 625
Manchester City Council v Fogg (VO) [1990] RA 181

Andrew J Allan BSc ARICS IRRV of Allan Associates, chartered surveyors, for the appellant.
The valuation officer, Michael Doyle FRICS, in person.

DECISION

1. This is an appeal by the ratepayer, Galgate Cricket Club, an unincorporated members club, against the decision of the Lancashire Valuation Tribunal on 3 May 2000. There is no dispute on the relevant facts. The appeal relates to the clubhouse of a cricket ground at Galgate, a village 4½ miles to the south of Lancaster. The cricket ground is part of an open space known as Galgate Recreational Field. The field is about 10.95 acres in area and is bounded by the river Condor to the west, the Lancaster Canal to the south, and the A6 and the main west coast railway line to the east. To the north there are fields between the recreational field and the western part of Galgate village. The recreational field contains two football pitches, a bowling green, an all-weather pitch, the cricket ground, and a number of buildings: one containing changing room for the footballers, a bowls clubhouse and two small ancillary buildings, a tennis clubhouse that is no longer used, a cricket pavilion, stores for groundkeeping machinery, and the cricket clubhouse.

2. The appellant's proposal which led to the appeal to the valuation tribunal related to an entry in the list which was in these terms: "Clubhouse, Cricket Ground and Premises; Galgate Cricket Club, Main Road, Galgate, Lancaster LA2 ONH; Rateable Value £4,100." Following the proposal discussions between a Senior Valuer in the Valuation Office and Mr Allan on behalf of the club resulted in agreement that the entry should be deleted because the whole of the cricket ground, including the clubhouse, was exempt under paragraph 15 of Schedule 5 to the Local Government Act 1988. The billing authority refused to sign the agreement form, and the appeal therefore proceeded. At the valuation tribunal the valuation officer accepted that the cricket ground and the pavilion were exempt, but he argued that the clubhouse was rateable. The valuation tribunal accepted this contention. It reduced the rateable value from £4,100 to £3,200 to reflect the amounts attributable to the ground and the pavilion. The club now appeal. Mr Allan contends that the clubhouse is exempt, or alternatively, if it not, the rateable value should be reduced to £2,100.

3. At the outset of the hearing that I held under the simplified procedure Mr Doyle took a technical procedural point. Placing reliance on *Courtney Plc v Murphy (VO)* [1998] RA 77 for the proposition that the jurisdiction of a local valuation tribunal and this Tribunal on appeal is limited to the issues raised by the proposal giving rise to the appeal, he said that it was not open to the ratepayer to argue the question of rateability as the proposal form did not state this to be a ground of the proposal; and the Lands Tribunal had no power to order the alteration of the rating list on this ground. This was a surprising argument in view of the fact that before the valuation tribunal he had accepted that the list should be altered so as to reflect the non-rateability of the ground and the pavilion. Moreover, so far from contending that the valuation tribunal did not have jurisdiction to consider the question of the rateability of the clubhouse, he had presented his arguments on the question; and the valuation tribunal, for its part, produced a reasoned decision directed entirely to the issue.

4. The proposal, which was made on behalf of Galgate Cricket Club by its agents Harrison Willis & Moore, proposed that the list should be altered by reducing the rateable value to £1 with effect from 1 April 1995. Part C of the proposal form, "Grounds for your proposed alteration", requires the proposer to identify one ground out of 12 that are listed. They include: "A The Rateable Value(s) in the Rating List as at 1 April 1995 was/were inaccurate", and "F The property is now domestic or exempt from rating and is no longer rateable." The proposer is instructed in capitals to "Tick only one box," and told: "If more than one of the following statements apply, select the one you consider most appropriate." Harrison Willis and Moore, forced to choose, opted for A. I do not find this surprising or inconsistent with an intention to argue both that the entry should be deleted and, in the alternative, if it was not to be deleted, that it should be reduced in value.

5. In paragraph 14 of the of the form, after the words "My detailed reasons for believing that the Rating List is inaccurate", Harrison Willis Moore inserted the following:

> "(i) That the assessment(s) of the hereditament(s) is/are bad in law.
> (ii) That the rateable value(s) is/are excessive, incorrect and should be reduced.
> (iii) That the assessment(s) should be altered in a manner as shown in Section 11 of this proposal."

Of course, those reasons were neither detailed nor explicit. They probably followed a standard form used by those agents, and they were no doubt expressed in wide terms for this reason. One would expect a valuation officer, confronted with a proposal in these terms, to seek to establish with the proposer, either in the course of negotiations or more formally by letter, what were the particular matters that he was seeking to raise. That indeed is what happened in the present case.

6. Mr Doyle accepts that to say, as the proposal does in paragraph 14(i), that "the assessment(s) of the hereditament(s) is/are bad in law" is wide enough to encompass the question of rateability, but he says that this should be construed in the context of other parts of the proposal which suggest that the ground of the proposal was value and not rateability. I disagree. The words quoted are indeed wide enough to encompass the question of rateability, and I can see no reason to limit their scope so as to prevent the ratepayer from advancing a legitimate argument and this Tribunal from ordering the list to be corrected if it finds it to be inaccurate in this respect. Indeed, since it is desirable that inaccuracies in the list should be corrected and since the valuation officer has had sufficient notice of the point, there are strong reasons against adopting such a restrictive approach. The valuation officer certainly understood that rateability was raised by the proposal. He conducted his case in the valuation tribunal on this basis, and invited it to amend the entry to take account of the non-rateability of the cricket ground and the pavilion. I have no doubt at all that this Tribunal has jurisdiction to consider whether the clubhouse also is exempt, and I turn, therefore, to this first substantive issue.

7. Paragraph 15(1) of Schedule 13 to the Local Government Act 1988 provides:

> "A hereditament is exempt to the extent that it consists of a park which –
>
> (a) has been provided by, or is under the management of, a relevant authority or two or more relevant authorities in combination, and
> (b) is available for free and unrestricted use by members of the public."

It appears that this provision only applies to a public park that is not dedicated in perpetuity for that purpose. One that is so dedicated not only has no occupier (see *Lambeth Overseers v London County Council* [1897] AC 625) but never will have an occupier: so that it is not, and never will be, the subject of any rate, and accordingly is not a hereditament within the definition in section 119 of the General Rate Act 1967 (which applies for the purposes of the 1988 Act, by virtue of section 64(1)). In the present case it is not clear whether the recreational field has been dedicated in perpetuity for public use, but this does not matter since it is agreed that it is a park within the terms of paragraph 15 and is under the management of a relevant authority (in the present case the Galgate Parish Council, through its Recreational Field Committee). Whether or not it is dedicated in perpetuity it will not be rateable, provided that it is available for free and unrestricted use by members of the public. The parties agree that the cricket ground and the pavilion are not rateable, but the valuation officer says that the clubhouse is rateable because it is not available for free and unrestricted use by members of the public. This is the first substantive issue in the case.

8. There is no disagreement about the tests that apply for the purposes of determining this issue. They are summarised succinctly in four propositions in *Manchester City Council v Fogg (VO)* [1990] RA 181 at 191. They are these:

> (1) The exemption from rateability extends to a park or public open space which is available for free and unrestricted use in perpetuity by members of the public.
>
> (2) The exemption will not be lost merely because the public's use of the park is reasonably restricted or controlled in the interests of public order or the protection of the park's amenities.
>
> (3) The exemption extends to premises within the park which are occupied for purposes necessarily ancillary to the use of the park by the public, and to premises or installations which are used for a purpose which is solely to enhance the attractiveness of the park as a park to the public.
>
> (4) The exemption does not apply to premises within the park which have been so carved out as to acquire a distinct and separate status; whether or not there has been such a 'carving-out' is a question of fact and degree in each case.

9. The clubhouse is a second-hand pre-fabricated timber building with a bitumen felt roof. It is 208.81 square metres in area. It was brought to the ground by the club something over 10 years ago and is owned by the club. This type of structure was designed to have a short life span and the building is in poor condition. Windows are installed that overlook the

ground. The accommodation, which is all on one floor, comprises lounge, games room, function room with dance floor, bar area with, behind it, a beer cellar, kitchen and committee room. It is used to view the cricket, as a shelter and as toilet facilities, of which there is a lack on the recreation ground.

10. The club maintains and repairs the clubhouse as it sees fit. The club is the key holder and it keeps it locked when not in use. There is a club licence for the sale of alcoholic drinks in the bar. The clubhouse, including the bar, is open on match days between late April and early September. There are a total of 21 match days. The clubhouse is also opened at practice sessions, which take place once a week during the season. On match days members of the club and spectators are able to purchase refreshments, including tea, coffee and soft drinks.

11. The club allows the clubhouse to be used for other local community purposes. A boating club that uses the canal was once allowed to hold a meeting there. Functions for children from Chernobyl staying locally have been held on two occasions. A car-boot sale was once held on the ground and the toilet facilities were made available. A gala with a bonfire is held once a year on the ground by the Children's Treat Committee and there is also an annual event on the canal. At each of these the clubhouse is opened. The football club, who are users of other parts of the recreation ground, holds meetings in the clubhouse.

12. The pavilion is a traditional style cricket pavilion, constructed in timber, with a veranda. It has two changing rooms, which are used by the club, a bar which is no longer used, and storage space which is now used by the football club. It is in need of repair. It is less than half the size of the clubhouse. It forms part of the facilities controlled by the Recreational Field Committee.

13. In my judgment the clubhouse is not necessary for the purpose of enabling the cricket ground to be used as a public recreational facility. The wooden pavilion, although in a poor state of repair, is in use as changing rooms, and it contains other areas normally to be found in a cricket pavilion. It was evidently designed to meet the needs of those playing and watching cricket on the ground. While it is relatively small, it does not seem to me to be so small as to make additional space a necessity in order to enable cricket to be played. The clubhouse, it seems to me, is properly to be viewed as a facility of the cricket club rather than as an amenity of the park. It was provided and is maintained by the club, which has full control over it under the licence granted by the Recreational Field Committee. The bar with its club licence enables alcoholic drinks to be sold, but such drinks could only lawfully be sold to club members and their guests. The function room and dance floor go well beyond what is needed by way of ancillary facilities.

14. Although the clubhouse is used from time to time for local community purposes it is only, in my view, its use for the provision of facilities during the children's bonfire evening that could be said to assist in the enjoyment of the recreation ground. The right view, in my judgment, is that the clubhouse is a separate hereditament in the occupation of the cricket club and does not form part of the recreation ground as a public park.

15. The remaining issue is that of value. In his Reply Mr Doyle had identified seven comparable assessments which, he said, supported his valuation of the clubhouse at £15 per square metre for the principal area and £10 per square metre for the store. To these prices he added 5% because the clubhouse was centrally heated. His valuation was as follows:

	Area ($m^{2)}$	**£/m^2**	**RV(£)**
Clubhouse	195.51	15.75	3079
Beer Store	13.3	10.50	140
			£3219
		Rateable Value say	£3200

16. Mr Doyle produced devaluations of his comparable assessments, and concentration focussed on the price per square metre for the principal areas. Mr Alan, basing himself upon Mr Doyle's comparables, applied a single price, £10 per square metre, to the total floor area of 208.81 square metres, to produce a rateable value of £2,088.10, which he rounded up to £2,100.

17. I inspected the recreation ground, the clubhouse and the pavilion both inside and outside, and I viewed from the outside the seven comparables. Of these, two were football pavilions (Galgate and Slyne with Hest), both of which are assessed at £10 per square metre overall. I find them to be of little assistance, since the different requirements of football and cricket clubs may well give rise to different values. The cricket clubhouses were those of the Torrisholme, Warton, Westgate, Caton and Bare cricket clubs. I discount Torrisholme, which, at £22.5 per square metre, Mr Doyle frankly said he could not explain. This leaves Warton at £13, Westgate at £15, and Caton and Bare each at £10. Contrary to Mr Doyle's contention I can see nothing superior in the location of Galgate that would justify a premium over any of the other comparables, and indeed I note that the grounds of Westgate and Bare are assessed at £80 per acre, whereas Galgate had been assessed (before exemption was agreed) at £40. The locations seem to me to be very comparable. Inspected from the outside, the clubhouse at Warton, constructed of timber/concrete block, appears to be a substantially higher quality than Galgate. Its price includes central heating. Caton , a timber building, also appears to me to be superior. In terms of construction Bare, a portakabin type, is the most comparable. In the light of these consideration it seems to me that Galgate, which is described in the agreed statement as being in poor condition, is properly to be assessed at £10 per square metre, including heating, the figure contended for by Mr Allan.

18. The appeal is accordingly allowed. It is evident also that the description in the list "Cricket ground, clubhouse and premises" is wrong, now that it has been agreed that the cricket ground is exempt. Mr Doyle accepted that the entry should be corrected and he said that he could see no reason why I should not order that it should be. Despite the fact that the proposal did not contend that the description of the hereditament was wrong (regulation 4A(1)(m)), I am satisfied that I have power to order the correction under regulation 44(1). The entry must be amended to "Clubhouse; Galgate Cricket Club, Main Road, Galgate, Lancaster LA2 ONH; Rateable Value £2,100."

19. There will be no order as to costs. The appeal, at the appellant's request, was dealt with under the simplified procedure, and Mr Allan, quite rightly in my view, did not seek to suggest there was anything exceptional that would justify an award of costs in his clients' favour in the event that the appeal succeeded on value.

Dated: 12 December 2000

(Signed) George Bartlett QC