RA/3-7/2001

LANDS TRIBUNAL ACT 1949

RATING – rateable property – domestic premises – boathouses on Lake Windermere – occupiers living in houses some distance away – Local Government Finance Act 1988 s 66(1)(b) and (d) – held neither outhouses nor appurtenances nor used for storage of articles of domestic use, therefore rateable

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE CUMBRIA VALUATION TRIBUNAL

BETWEEN **MR & MRS R MARTIN AND OTHERS** **Appellants**

and

K HEWITT **Respondent**
(Valuation Officer)

Re: Boathouse & Premises
Wykefield,
Pull Woods, Ambleside
Cumbria
and other boathouses

Before: The President

Sitting at the Court House, Burneside Road, Kendal
on 24 July 2003

J P Scrafton solicitor for the appellants
Timothy Mould, instructed by Solicitor of Inland Revenue, for the respondent

The following cases are referred to in this decision:

Clymo (VO) v Shell-Mex & BP Ltd [1963] RA 85
Walker v Lothian Regional Assessor [1990] RA 283
Hamilton v Lothian Regional Assessor [1993] RA 133
Skerritts of Nottingham v Secretary of State for the Environment [2001] QB 59
Trim v Sturminster RDC [1938] 2 KB 508
Methuen-Campbell v Walters [1979] QB 525
Cadogan v McGirk [1996] 4 All ER 643
Andrews (VO) v Lumb [1993] RA 124

DECISION

1. These appeals relate to three boathouses on the shores of Lake Windermere. Each is entered in the rating list as a hereditament with the description "Boathouse and Premises". The ratepayers in each case have sought the deletion of the entries in the list on the ground that the boathouse was domestic property as defined in section 66 of the Local Government Finance Act 1988 and was thus not rateable. The Cumbria Valuation Tribunal, from whom these appeals are made, held that the boathouses were rateable.

2. The facts are agreed. They are contained in an agreed statement of facts, a witness statement of Barry Butler MRICS of Butler Thompson Associates on behalf of the appellants and a factual response on behalf of the respondent. I viewed the boathouses and the surrounding area, including the dwellings with which each is associated, after the hearing. The first boathouse, the subject of appeal RA/3/2001, was entered in the rating list as "Boathouse and Premises, Wykefield, Pull Woods, Ambleside". It has been occupied by the appellants Mr and Mrs Martin since 1998. Prior to that it was occupied by a Mr and Mrs Hampson, on whose behalf the proposal leading to this appeal was made. It is a detached stone built boathouse under a slated roof with a concrete and timber pier standing by itself on an inlet in the lake known as Pull Wyke. There are no services installed. It houses two boats. The boathouse measures 50 sq m. The pier is 9.15 m long. Mr and Mrs Martin also occupy a dwellinghouse, Wykefield, which stands in its own grounds of 1.2 acre a little over a quarter of a mile back from the lake shore. The house is a 4-bedroom house of stone construction under a slated pitched roof. It was built before 1900 and was converted to form the present dwelling in 1971. Outbuildings within the grounds include garages, a store and disused stables.

3. Mr and Mrs Martin have the freehold of the house and boathouse and Mr and Mrs Hampson did also. The conveyance to Mr and Mrs Martin (like every conveyance of Wykefield since at least 1895) conveyed both house and boathouses, together with a right of way down an unmade track to the boathouse from the public road that passes the house. The total distance between the house and the boathouse is about 600 yards, the track forming about 350 yards of this distance.

4. The second boathouse, which is the subject of appeals RA/4/2001 (relating to the 1995 list) and RA/5/2001 (relating to the 1990 list), is number 9 boathouse, Windermere Marina, Windermere. The appellant Mr Collins has occupied the boathouse since October 1991 under 99 year lease. He has also occupied caravan pitches on Fallbarrow Caravan Park for the last 21 years under yearly occupational licences which allow residential occupation only from March to October in each year. His caravan has occupied his present pitch for the last 16 years. Mr Collins's main residence is 7 Rusholme Road, Cheadle Hulme, Stockport, Cheshire. The boathouse is a mid-terrace boathouse, one of 21 in this part of Windermere Marina. It houses an open motor boat and other equipment. It was built in 1976 of block party walls with a timber rear wall under an asbestos roof. The boathouse measures 48.6 sq m and there is a single-sided timber pier 1 m long. The boathouse, the caravan and the house are the subject of separate title deeds. The boathouse is a little less than a mile from the caravan and over 50 miles from the house.

5. The third boathouse, the subject of appeal RA/6/2001, is described in the 1995 rating list as "Boathouse and premises adjoining Holme Mead, Storrs Park, Windermere, Cumbria LA23 3LT." It is a detached boathouse rebuilt in 1963 in roughcast block walls under a slated roof. It houses a sailing dinghy. It is 36.3 sq m in area and has a double-sided pier 6.1 m long. It is owned and occupied by the appellants, Mr and Mrs Revell, and they also own and occupy a dwellinghouse, Brackenthwaite House, Black Beck Wood, Storrs Park, a detached 4-bedroom house built in 1988 of brick and block construction under a slated roof with a double garage. Mr and Mrs Revell own the freehold of both house and boathouse, but under separate deeds. The house is a little over 500 yards from the boathouse, which is reached along residential roads and the A592 and a stepped path down from the main road.

6. Under the 1988 Act property is not rateable if it is domestic property. Sections 43(1) and 45(1) make liability to the non-domestic rate dependent on the hereditament being shown in the non-domestic rating list. Under section 42(1) only a hereditament that is a non-domestic hereditament falls to be included in the list. Under section 64(8)(a) a hereditament is non-domestic if it consists entirely of property which is not domestic. "Domestic property" is defined in section 66. Subsection (1) of that section (as amended) provides:

> "(1) Subject to subsections (2), (2B) and (2E) below, property is domestic if –
>
> (a) it is used wholly for the purposes of living accommodation,
>
> (b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above.
>
> (c) it is a private garage which either has a floor area of 25 square metres or less or is used wholly or mainly for the accommodation of a private motor vehicle, or
>
> (d) it is private storage premises used wholly or mainly for the storage of articles of domestic use."

Subsection (3) should also be noted. It provides:

> "(3) Subsection (1) above does not apply in the case of a pitch occupied by a caravan, but if in such a case the caravan is the sole or main residence of an individual, the pitch and the caravan, together with any garden, yard, outhouse or other appurtenance belonging to or enjoyed with them, are domestic property."

7. In each case the contention on behalf of the appellants is that the boathouse falls either within (b), as an outhouse or other appurtenance belonging to or enjoyed with property used wholly for the purposes of living accommodation, or within (d), as private storage premises used wholly or mainly for the storage of articles of domestic use. Mr J P Scrafton, who appears for the appellants, submits that the boathouses can be regarded as outhouses within the meaning of the provision, and the test of whether a particular structure constitutes an outhouse is connected with function rather than capability of separate assessment. There is, he says, no contextual requirement for an outhouse to be within the curtilage of the dwelling that it serves. He says that both the DETR practice note "The Boundary Between Community Charge, Council Tax and NNDR" at para 1.11(a) and the rating manual of the Valuation Office Agency say that it is not necessary that a structure or parcel of land should

be within curtilage of the dwelling concerned in order to come within the ambit of section 66 (1)(a). (He is I think, right about the first but not about the second; but he recognises that these expressions of view cannot affect the proper construction of the provision). He refers to *Clymo (VO) v Shell-Mex & BP Ltd* [1963] RA 85, in which the Court of Appeal said that whether land was or was not to be described as an appurtenance to one or more buildings must depend very much on the particular facts and circumstances of each case. He submits that "appurtenance" has an extended meaning in the context of rating, and he refers to *Russell v Rock (VO)*, a case under the General Rate Act 1967, where 950 acres of the Woburn Estate were held by the Lands Tribunal to be appurtenant to Woburn Abbey. For his contentions on paragraph (d), Mr Scrafton relies in particular on *Walker v Lothian Regional Assessor* [1990] RA 283 and *Hamilton v Lothian Regional Assessor* [1993] RA 133. In *Walker* the presence of two dinghies in storage premises some distance from the appellant's flat had not been regarded under the equivalent Scottish provisions as detrimental to his case. In *Hamilton*, no point had been raised against the ratepayer that the store was situated four miles away from where he lived.

8. For the respondent valuation officer Mr Timothy Mould says that under section 66(1)(b) for a yard, garden or outhouse belonging to or enjoyed with property leased wholly for the purpose of living accommodation it must be in the nature of an appurtenance. The leading case on the meaning of "appurtenance" in the law of rating, he says, is *Clymo (VO) v Shell-Mex BP Ltd*. That case established that the word "appurtenance" must be given its normal meaning, as though it appeared in a lease or conveyance; and that at common law the word "appurtenance" is apt to pass also the yard, gardens, orchard and curtilage, but not land beyond the curtilage. He says that the extent of the curtilage of a dwellinghouse is a matter of fact and degree, and he refers to *Skerritts of Nottingham v Secretary of State for the Environment* [2001] QB 59. In none of the present cases, he says, is the boathouse an appurtenance within the established meaning of the word, since each is separated from the dwellinghouse of the ratepayers by intervening parcels of land in different ownership and by the public highway.

9. Mr Mould says that, while it is common ground that both Wykefield and Brackenthwaite House are domestic property within section 66(1)(a), Mr Collins's caravan is not domestic property by reason of the provisions of subsection (3). On Mr Scrafton's contentions on paragraph (d), Mr Mould submits that the boats stored in the boathouses are not articles of domestic use as that phrase is ordinarily understood. They are articles of recreational and leisure use.

10. Mr Scrafton's case on paragraph (b) of section 66(1) is that each boathouse is an outhouse, or alternatively an other appurtenance. It is clearly not an outhouse, in my view, since an outhouse must have a close physical relationship to the dwelling in question. But, whether an outhouse or not, it would still have to be an appurtenance to fall within the provision. It thus becomes necessary to consider the authorities dealing with what is and is not an appurtenance in order to decide whether paragraph (b) applies.

11. In *Trim v Sturminster RDC* [1938] 2 KB 508 the question arose, in relation to a demolition order made under the Housing Act 1936, whether, in determining if the house was of a type suitable for the occupation of the working classes, ten acres of land and certain

buildings in the same occupation could be treated as included in the house. Section 188(1) of the Act provided that "House" –

> "includes any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith."

12. The county court judge had held that the land and buildings were included in the house by force of this definition. The Court of Appeal held that he was wrong. Slesser LJ, with whom MacKinnon LJ agreed, said this (at 515-6):

> "In the definition to which I have referred certain specific matters are mentioned, that is to say, any yard, garden and outhouses, and then follows the word 'appurtenances.' That word has had applied to it, through a long series of cases mostly dealing with the meaning of the word in demises, a certain limited meaning, and it is now beyond question that, broadly speaking, nothing will pass, under a demise, by the word 'appurtenances' which would not equally pass under a conveyance of the principal subject-matter without the addition of that word, that is to say, as pointed out in the early case of *Bryan v Wetherhead* that the word 'appurtenances' will pass with the house, the orchard, yard, curtilage and gardens, but not the land. That view, as far as I understand the authorities, has never been departed from, except that in certain cases it has been held that the word 'appurtenances' may also be competent to pass incorporeal hereditaments. Certainly no case has been cited to us in which the word 'appurtenance' has ever been extended to include land, as meaning a corporeal hereditament, which does not fall within the curtilage of the yard of the house itself, that is, not within the parcel of the demise of the house."

13. In *Clymo (VO) v Shell-Mex & BP Ltd* the question was whether two depots occupied by the ratepayers should be assessed to gross value under section 22 (1)(a) of the Rating and Valuation Act 1925 or to net annual value under section 22 (1)(b). In each case the depot contained buildings and plant and also some open land. Under section 22(1)(a), a hereditament was to be assessed to gross value –

> "If the hereditament consists of one or more houses or other non-industrial buildings with or without any garden, yard, court, forecourt, outhouse or other appurtenance belonging thereto, but without other land …"

The issue, therefore, was whether the open land was properly to be regarded as an appurtenance or as "other land". At [1993] RA 93-4, Upjohn LJ, giving the judgment of the court, said:

> "The word 'appurtenance' is one of the oldest words in use in the history of English law, and we would not attempt to define it in any way; whether land is properly described as an appurtenance to one or more buildings must depend very much on the particular facts and circumstances of each case, and it does not seem possible to try to lay down any tests to determine whether land ought to be regarded as an appurtenance to one or more buildings or as 'other land' for the purpose of the section. Each case must be decided entirely on its own facts, and no doubt there

> may in practice be a number of difficult and borderline cases, but the Lands Tribunal is very experienced in these matters and is very well qualified by its experience to deal with such cases. A court ought to be very chary of reversing the Tribunal when in a borderline case it determines that in fact a particular piece of land falls on one side of the line or the other. …."

14. Later on, in the course of rejecting the appellant's arguments and upholding the decision of the Tribunal, he said (at 97):

> "…As has already been stated, the question really is one of fact and degree; looking at this hereditament, are these two small open spaces properly described as appurtenances to one or more of the buildings thereon? The answer would seem to us to be quite plain; *prima facie* they are and would pass on a conveyance, devise or demise of the buildings in this area without further mention. That is the *prima facie* view, but when considering all the facts it becomes relevant to consider the purpose for which the relevant buildings are occupied and the use to which the apparent appurtenance is put. If you find that the owner has in fact put these open spaces to such uses that they cannot properly be described any longer as appurtenances then that conclusion of fact is reached…."

15. *Methuen-Campbell v Walters* [1979] QB 525 concerned an enfranchisement under the Leasehold Reform Act 1967. The provisions entitled the tenant to a grant of "the house and premises" (section 8(1)) and section 2(3) provided that, subject to certain other provisions references to "premises" in this context was to be taken –

> "…as referring to any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to him with the house and are occupied with and used for the purposes of the house or any part of it by him or by another occupant."

16. The issue in the case was whether a paddock that was included in the lease was part of the "premises". The court held that it was not since it was not an appurtenance. Goff LJ reviewed the authorities on the meaning of appurtenance, and he quoted with approval the passage from Slesser LJ's judgment in *Trim v Sturminster RDC* that I have set out above. It did, he said, confine "appurtenances" to the curtilage of a house. At 537 he said this:

> "So in the end, in my judgment, the crux of the problem becomes: Is this within the curtilage?
> The word 'curtilage' is defined in the *Shorter Oxford English Dictionary*, 3rd ed (1973) as 'A small court, yard, or piece of ground attached to a dwelling house and forming one enclosure with it.' Note 7 in *Stroud's Judicial Dictionary*, 4th ed. (1971), p 663 suggests that it may be wider than that. We have looked at some of the cases cited in *Stroud*, but I do not think they afford us any assistance. What is within the curtilage is a question of fact in each case, and for myself I cannot feel that this comparatively extensive piece of pasture ought to be so regarded, particularly where, as here, it was clearly divided off physically from the house and garden right from the start and certainly at all material times."

17. Roskill LJ concurred. He said this at 540:

> "It seems to be clear that the cases show that the courts have never yet, even when treating 'appurtenance' as apt to cover a corporeal hereditament, gone as far as construing the word as including land which does not itself fall within the curtilage of the house in question; and, like Goff LJ, I think it would be almost impossible to decide this case in favour of the tenant without ignoring the decision of this court in *Trim v. Sturminster Rural District Council* [1938] 2 KB 508. Goff LJ has read the relevant passage from the judgment of Slesser LJ at pp 515-516 and I shall not repeat it; but I would draw attention to the fact that that passage was expressly approved by Upjohn LJ giving the judgment of the court in the *Clymo* case, to which reference has already been made. Both decisions are binding on this court. They can only be departed from or distinguished, if in the particular context the word 'appurtenances' can be given an even wider meaning than that which those cases show may be given to it. It seems to me that in the context of section 2 (3) of the Act of 1967 it is impossible to give any wider meaning to the word than to treat it, as Slesser LJ did, as in effect synonymous with the curtilage of the house."

18. Buckley LJ also agreed. At 541-2 he said:

> "In the absence of some contrary indication the word 'appurtenances,' in a context which shows that it is used in a sense capable of extending to corporeal hereditaments, will not be understood to extend to any land which would not pass under a conveyance of the principal subject matter without being specifically mentioned; that is to say, to extend only to land or buildings within the curtilage of the principal subject matter."

Later (at 542-3) he went on:

> "What then is meant by the curtilage of a property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand, it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or

> parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole. The conveyance of that messuage or parcel by general description without reference to metes or bounds, or to the several component parts of it, will pass all those component parts sub silentio. Thus a conveyance of The Gables without more, will pass everything within the curtilage to which that description applies, because every component part falls within the description. The converse proposition, that because an item of property will pass sub silentio under such a conveyance of The Gables, it is therefore within the curtilage of The Gables, cannot in my opinion be maintained, for that confuses cause with effect."

19. *Cadogan v McGirk* [1996] 4 All ER 643 was another enfranchisement case. It concerned a flat and the provisions of the Leasehold Reform, Housing and Urban Development Act 1993. The question that arose was whether an attic box storeroom on the sixth floor of a mansion block of flats formed part of the second floor flat to which it had been allocated. The right to acquire a new lease was given in respect of a flat, which was defined for that purpose under section 62(2) to include "any garage, outhouse, garden, yard and appurtenances belonging to, or usually enjoyed with, the flat and let to the tenant on the relevant date. Millett LJ, with whom Waite and Thorpe LJJ agreed, rejected the contention that the storeroom was an "outhouse" (at 649f-650a). He accepted, however, that it was an "appurtenance". While the authorities established that appurtenances must be within the curtilage of the land (at 650 e-g), in the particular statutory context the relevant curtilage was not that of the flat but the premises of which the flat formed part (at 651g to 652d).

20. In all the statutory contexts that fell to be considered in these cases, therefore, "appurtenance" was held to be confined to the curtilage of the building in question. I can see no reason for treating it as not so confined in section 66(1)(b) of the 1988 Act. Mr Scrafton, as I have noted, places reliance on *Russell v Rock (VO)*, a decision of this Tribunal (Mr J H Emlyn Jones FRICS) under the General Rate Act 1967. It arose under essentially the same provision relating to gross and net annual value that had arisen for consideration in *Clymo (VO) v Shell-Mex*, although by then section 22(1)(a) of the 1925 Act, after subsequent statutory amendment, had become section 19(2) of the consolidating Act of 1967. The Member held that the whole of the Woburn Estate extending to 950 acres and including the whole of the park was within the curtilage of the mansion house, since the park was used for a conjoint purpose with the buildings and it formed a small proportion of the total value (see [1983] RA 113 at 129-130). I do not see that this case assists Mr Scrafton. It was decided on its own particular facts, and the Member approached the matter by addressing the question whether the whole of the estate was within the curtilage of the mansion house and concluding that it was.

21. It is to be noted that section 19(6) of the 1967 Act contained the following provisions:

> "'appurtenance' in relation to a dwelling, or to a school, college or other educational establishment, includes all land occupied therewith and used for the purposes thereof."

When the 1988 Act came to be enacted, it did not, in section 66(1)(b), adopt the wording of section 19(2) of the 1967 Act and it did not incorporate the particular extension of the word "appurtenance" in relation to a dwelling contained in section 19(6). It used instead the form of words that had appeared in section 188(1) of the Housing Act 1936 and had been the subject of consideration in *Trim v Sturminster RDC*. That, in my view, is a clear indication that "appurtenance" in section 66(1)(b) was not intended to encompass land or buildings lying outside the curtilage of the property referred to in section 66(1)(a).

22. This conclusion is fatal to the appellants' contention on section 66(1)(b). In each case the boathouse in question lies a substantial distance from the house (or, in Mr Collins's case, his caravan) and is separated by land in other ownerships and by the public highway. The fact that in the case of the house known as Wykefield, the house and grounds, the boathouse and the private access to it, have for a long time all been conveyed together does not, on this analysis, assist the ratepayers. Nor does the fact, which can be readily assumed, that Mr and Mr Martin, and the other ratepayers choose to live where they do because of the proximity of the lake and its availability for boating. The boathouse is not within the curtilage of the house, and that, in my judgment, is conclusive. I would add that in the case of Mr Collins there is an additional reason why his boathouse does not fall within paragraph (b). Under subsection (3) a caravan is only domestic property if it is the sole or main residence of an individual. Mr Collins uses his caravan on a seasonal basis only, and his main residence is not the caravan but his house in Cheadle Hulme. Mr Scrafton concedes that it would be going too far, even if he was right about the construction of paragraph (b), to say that Mr Collins's boathouse was an appurtenance of his house in Cheadle Hulme, 50 miles away.

23. Mr Scrafton's alternative argument is based on section 66(1)(d), which brings within the definition of domestic property "private storage premises used wholly or mainly for the storage of articles of domestic use." It is to be noted that neither this paragraph nor paragraph (c), which covers private garages, imposes any requirement that the garage or store should belong to or be enjoyed with or have any particular physical relationship to a paragraph (a) property (see on this *Andrews (VO) v Lumb* [1993] RA 124 at 130). Mr Scrafton relies on certain dicta in *Walker v Lothian Region Assessor* [1990] RA 283, a decision of the Lands Valuation Appeal Court. In that case the appellant claimed that storage premises occupied by him but situated some distance away from his flat in Edinburgh were domestic subjects within regulation 3(1)(b) of the Abolition of Domestic Rates etc (Scotland) Regulations 1988, which provided:

> "3(1)(b) Private storage premises, being lands and heritages – (i) whose use is ancillary to, and which are used wholly in connection with, other domestic subjects or the residential use made of part residential subjects, and (ii) which are used wholly or mainly for the storage of articles of domestic use (including cycles and other similar vehicles)."

24. The premises in question contained certain tools and equipment which had previously been used by the appellant in a commercial venture and certain work benches which had been used in another business which had closed down, two dinghies, a lot of timber and some model railways. At 285-6, Lord Clyde, with whom Lord Milligan and Lord Prosser agreed, said:

> "It seems to me appropriate to construe the regulation in a reasonably broad way. Things which could be used for recreation or amusement in the house but are stored in the subjects should qualify as articles of domestic use and the use of the subjects as a store for such things should be a use ancillary to and in connection with the house. Thus the storage of some model railways in the present case should satisfy each subparagraph of the regulation. Further than that the inclusion of 'cycles and other similar vehicles' in the second sub-paragraph indicates that articles of domestic use include articles which would not be expected to be used within the confines of the dwelling house. Articles which members of the household may use for outdoor sporting activities appear to be included. If that is correct then it may be that the present of the two dinghies in the subjects here in issue should not be fatal to the appellant's case. It was explained that they are owned respectively by the appellant and his son and even although the son does not presently reside in the appellant's house the storage of such recreational facility should be within the scope of the regulation. It may be regarded as a use ancillary to and wholly in connection with domestic subjects. As I have just indicated it seems likely that things of this kind should be able to qualify as articles of domestic use within the meaning of the regulation. The Committee appear to have regarded the presence of the two dinghies as a point adverse to the appellant. If so it may be that in that respect they were in error. …."

25. Lord Milligan added the following (at 288):

> "I also agree the reg 3(1)(b) should be construed reasonably broadly. So far as reg 3(1)(b)(ii) is concerned, it seems to me to be that 'articles of domestic use' should ordinarily include, amongst others, (1) articles used by a member of the household of the 'other domestic subjects' for sporting, hobby or other recreational purposes (subject to implied exclusion of, at least, mechanically propelled vehicles, although reg 3 (1)(a) makes provisions concerning private motor vehicles) and (2) articles used in connection with cleaning, maintenance and repair of articles which are themselves articles of domestic use or of the house itself. Extraordinary nature and/or extent of such uses could, I envisage, take the articles outwith the category of 'domestic use'. Each of the actual individual articles involved in the present case could, in suitable circumstances vouched by appropriate explanation, come within the specification mentioned. …."

26. The court upheld the decision of the valuation appeal panel that the tools and equipment, the work benches and the timber disqualified the store from the operation of regulation 3. What Mr Scrafton relies on, however, is the indication given by both Lord Clyde and Lord Milligan that the dinghies were, or were capable of being, articles of domestic use. I have no difficulty in accepting that use of a house for the recreational purposes of the occupier is likely to fall within the concept of the use of the house as living accommodation. Furthermore the storage of personal articles in the house would not prevent the storerooms from constituting part of the living accommodation. In consequence the storage elsewhere of things that could be used for recreation at the house would, in my judgment, be the storage of articles of domestic use. It also seems to me that in general the storage at the house of articles used for recreation away from the house would be within the concept. That would not be, however, because they were themselves articles of domestic use but because the

storage of them as a normal incident to the use of the house as domestic premises would not deprive the house of its nature as living accommodation under paragraph (a), while their storage in an outhouse would not mean that the outhouse was not enjoyed with the house itself under paragraph (b). I do, however, have difficulty in seeing that the storage in premises quite separate from the house of things to be used for recreation away from the house could constitute the storage of articles of domestic use. It is possible that the different wording of the legislation in Scotland justifies a wider meaning being given to "articles of domestic use" than in section 66(1)(d), but I doubt whether this is the case. I do not, however, feel constrained to apply the dicta in *Walker v Lothian* on which Mr Scrafton relies. In my judgment the boats in the boathouses in the present cases, as articles stored for use on the lake and not in or about the dwellinghouses, are not articles of domestic use, and paragraph (d) is accordingly not satisfied.

27. The appellants have thus failed to establish that the boathouses are not rateable property. Values in each case are agreed at the figures determined by the VT. These appeals are therefore dismissed. An appeal relating to a fourth boathouse, adjoining Calgarth, Old Hall Road, Troutbeck Bridge, Windermere (RA/7/2001) is also before me, but the parties have reached agreement that since the boathouse in this case is adjacent to the dwellinghouse it falls within section 66(1)(b). That appeal is therefore allowed, and the entry in the list must be deleted.

28. The parties are invited to make submissions on costs and a letter accompanying this decision sets out the procedure for this. The decision will take effect only when the question of costs has been determined.

31 July 2003

George Bartlett QC, President

ADDENDUM ON COSTS

29. I received submissions on costs from both parties. They were in agreement that the respondent should have his costs of the appeals, with the exception of appeal RA/7/2001, which was allowed, and in respect of which the appellants should have their costs. Both sets

of submissions appeared to be made on the basis that the appeals remained separate, whereas they had been consolidated. In these circumstances the parties were told the order that I had it in mind to make, on the basis that the appeals were consolidated, and were invited to make any further representations that they might wish to make. No further representations have been received. The appellants will pay the respondent his costs of the appeals, with the exception of those that are attributable to appeal RA/7/2001. The respondent will pay the appellants such of their costs of the appeals as are attributable to appeal RA/7/2001. In each case costs if not agreed are to be the subject of detailed assessment by the Registrar on the standard basis.

10 November 2003

George Bartlett QC, President