RA/34/2007

LANDS TRIBUNAL ACT 1949

RATING – composite hereditament – dwelling-house used wholly for living accommodation – dwelling-house together with its garden and other appurtenances constituting one hereditament and falling within one curtilage – whether some commercial use of the garden and appurtenances prevent them from being domestic property – appeal dismissed – Local Government Finance Act 1988 sections 42, 64 and 66

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE NORTH NORFOLK VALUATION TRIBUNAL

BETWEEN **GILLIAN LEVINSON** **Appellant**
(Valuation Officer)

and

GRAHAM JOHN ROBESON **Respondents**
ALAN EDWARD HERBERT GRAY

Re: East Ruston Old Vicarage, Happisburgh Road, East Ruston, Norwich NR12 9HN

Before: His Honour Judge Huskinson

Sitting at: Procession House, 110 New Bridge Street, London, EC4Y 6JL
on 9 July 2008

David Forsdick instructed by Her Majesty's Revenue and Customs on behalf of the Appellant
The First Respondent appeared in person on behalf of the Respondents.

The following cases are referred to in this decision:

Martin v Hewitt (Valuation Officer) [2003] RA 275
Bell v Rycroft (Valuation Officer) [2000] RA 103
Lewis v Christchurch Borough Council [1996] RA 229
Tully v Jorgenson (Valuation Officer) [2003] RA 233

DECISION

Introduction

1. The Appellant appeals to the Lands Tribunal from the decision of the North Norfolk Valuation Tribunal ("NNVT") dated 30 March 2007 whereby the NNVT decided that an entry which had been made by the Appellant in the local non-domestic rating list must be deleted.

2. The relevant entry in the local non-domestic rating list was made by the Appellant on 28 March 2003. The entry stated that the property address was Old Vicarage Gardens, Happisburgh Road, East Ruston, Norwich NR12 9HN. The actual entry in the list described the hereditament as "tea room garden and premises". A rateable value of £950 was shown as being applicable to this hereditament with effect from 1 April 2000. The Respondents made two proposals to alter the list namely a proposal wholly to delete the entry which the Appellant had made and, separately, a proposal that if the entry were to remain then the value of £950 was excessive. The NNVT's decision was to uphold the former proposal and accordingly it did not need to consider the question of valuation.

3. Originally the Appellant was minded for the purpose of the present appeal to argue that there existed two separate hereditaments, namely the Old Vicarage itself (a purely domestic dwelling house) and another hereditament being the tea room, garden and premises. This argument would, on the facts, have been without merit. However I was not asked to decide this point because at the opening of the appeal, despite the fact that this argument had appeared in the Appellant's statement of case and in the first version of Mr Forsdick's skeleton argument, Mr Forsdick expressly stated that that argument was no longer pursued and that it was accepted that the totality of the property, namely the Old Vicarage itself together with the entirety of the garden and outbuildings and premises (including the building used for the tea rooms) comprised one single hereditament. The argument which was advanced before me was that this single hereditament comprised a composite hereditament within section 64(8) of the Local Government Finance Act 1988 and that therefore the hereditament fell to be included as a non-domestic hereditament in the non-domestic rating list. A preliminary point emerged from the foregoing, namely that the entry in the list which is the subject of the present case is in the terms mentioned above, namely merely "tea room, garden and premises" at the stated address. The entry on its face does not refer to the Old Vicarage itself. I raised the question of whether the Appellant's argument that the entire property was a composite hereditament meant that the Appellant's own entry in the list was erroneous because it did not show a composite hereditament (i.e. including the Old Vicarage) but appeared to show something less than that. Mr Forsdick argued that this was a permissible way of showing the composite hereditament and it was acceptable wholly to omit reference to the domestic element of the hereditament and to mention only the parts which were said to have a non-domestic use. He added that the notation "Y" under a column headed "C" indicated to the reader that yes the hereditament was a composite hereditament and that this would have led the reader to look at the relevant council tax valuation list and to find the other portion of the hereditament described there, namely the Old Vicarage itself. I was surprised to hear that this method of entering a composite hereditament was said to be standard practice. It meant in effect that if a composite hereditament comprised Blackacre Castle and garden and shop where the Castle itself and the

garden constituted domestic property and the only non-domestic property was the shop, then the appropriate entry in the non-domestic rating list for this composite hereditament would be "shop at Blackacre Castle", notwithstanding that in fact in these hypothetical circumstances the composite hereditament would be Blackacre Castle and garden and shop (this being the relevant hereditament). I am unable to agree, supposing purely for the purposes of the present point that the Appellant's argument is correct and that there is here a composite hereditament, that the entry made in the list was a correct entry. What must be shown in the list is the composite hereditament not merely some part of it. Thus on any basis the entry in fact made by the Appellant in the list is one which in my judgment, on the Appellant's own case, was a wrong entry as it wrongly described the composite hereditament (supposing there was a composite hereditament in the present case). This point might have had some relevance on the question of costs if the Appellant's present argument had succeeded. However the Respondents, through Mr Robeson, sensibly and helpfully accepted that he wished the Tribunal to decide the case on its merits, such that if I concluded that the Appellant's argument was correct I should amend the list so as to show the composite hereditament with an appropriate description. I accordingly proceed on this basis.

4. At the hearing before me the Appellant did not give evidence – it was accepted that there was no factual material she could helpfully lay before the Tribunal. Mr Robeson gave evidence and confirmed his detailed and helpful written witness statement. He was briefly cross-examined.

5. I am concerned with the facts as they existed on 1 April 2000.

6. On 10 July 2008 I viewed the appeal premises in the company of Mr Robeson and the Appellant.

Statutory provisions

7. Subsections (1) and (2) of Section 42 of the Local Government Finance Act 1988 provide as follows:-

> "(1) A local non-domestic rating list must show, for each chargeable financial year for which it is in force, each hereditament which fulfils the following conditions on the day concerned –
>
> (a) it is situated in the authority's area,
> (b) it is a relevant non-domestic hereditament,
> (c) at least some of it is neither domestic property nor exempt from local non-domestic rating, and
> (d) it is not a hereditament which must be shown for the day in a central non-domestic rating list.
>
> (2) For each day on which a hereditament is shown in the local list, it must also show whether the hereditament –

(a) consists entirely of property which is not domestic, or
(b) is a composite hereditament."

8. Section 64 deals with what is meant by the expression hereditament for the purposes of the Act. Section 64(8) and (9) provide as follows:-

"(8) A hereditament is non-domestic if either -

(a) it consists entirely of property which is not domestic, or
(b) it is a composite hereditament.

(9) A hereditament is composite if part only of it consists of domestic property."

9. Section 66(1) of the Act provides so far as presently relevant:-

"(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."

10. It may conveniently be noted here that in *Martin v Hewitt (Valuation Officer)* [2003] RA 275 the President of the Lands Tribunal considered section 66(1)(b) and reviewed various authorities on the meaning of the word "appurtenance" and concluded that in order to be an appurtenance within section 66(1)(b) the item in question must be within the curtilage of the relevant building (i.e. the building which falls within section 66(1)(a)).

Matters accepted between the parties

11. Certain matters were accepted by Mr Forsdick on behalf of the Appellant which it is convenient to summarise here namely:

(1) Despite the original statement of case and skeleton argument, it is accepted that the entire property with which this case is concerned, namely the Old Rectory itself and the whole of the garden including all the buildings within it, constitute a single hereditament.

(2) The Old Vicarage itself is used wholly for living accommodation and is a purely private residence which is not open to the public.

(3) Mr Forsdick confirmed that the Appellant took no "curtilage" point – i.e. it was accepted that the whole of the garden and all the buildings within it fell within the curtilage of the Old Vicarage.

(4) Mr Forsdick confirmed that in consequence of the foregoing it was also accepted by the Appellant that all of the garden and the buildings within it (including the area used for plant sales and for serving tea and for toilets and for the car park) fell within the curtilage of the Old Vicarage and accordingly could properly be described as falling within the words "a yard, garden, outhouse or other appurtenance belonging to or enjoyed with" the Old Vicarage. I should make clear that, even if Mr Forsdick had not accepted this, I would have so found as a matter of fact and degree having heard the evidence and having inspected the site.

12. Bearing in mind the forgoing acceptances by Mr Forsdick it might be wondered on what basis the Appellant could argue that the "tea room, garden and premises" which the Appellant had entered in the list fell outside section 66(1)(b) of the Act. Mr Forsdick accepted that looking at the literal words of section 66(1)(b) the garden and all the premises within it do fall within the words of this paragraph (b). However Mr Forsdick submitted that paragraph (b) cannot be read literally and that it is necessary to read into paragraph (b) the qualification that the items there mentioned are "wholly used for domestic purposes", see paragraph 27 of his skeleton argument. I come later to these arguments.

13. On behalf of the Respondents Mr Robeson accepted certain matters. If for convenience one adopts the expression "commercial use" to refer to the use made of the garden and certain premises within it by the public when the garden is open to the public, then Mr Robeson accepted that this commercial use amounted to more than a de minimis use. Thus he did not seek to support the reasoning on this point of NNVT which had concluded that the non-domestic use of the garden and premises was de minimis. I should add that if this concession had not been made I would in any event have found that the commercial use was more than de minimis. The extent of such use is described further below.

14. I now turn to summarise the facts and describe the appeal property.

Facts

15. East Ruston Old Vicarage was constructed in 1913 and originally had about four acres of grounds. It is a substantial Arts and Crafts house which has been extended on three occasions by the Respondents. The property was purchased by the Respondents in 1973 and by various further purchases in 1988 and 1993 further adjoining land was acquired. In 1973 there was nothing that could be dignified by the word "garden" surrounding the house, merely some rough land. Both of the Respondents have always enjoyed gardening as their hobby and they wanted to create an extensive garden as part of their home. Mr Gray is very well known in horticultural circles and is a member of and a judge on a committee of the Royal Horticultural Society and writes on gardening and appears on radio and television. He has been president of the Norfolk and Norwich Horticultural Society. Mr Robeson is a past chairman of the Norfolk

Gardens Trust and has given lectures on behalf of the Royal Holticultural Society. Mr Robeson has throughout the last 35 years been employed in an important and well paid position (being wholly outside the horticultural world) and has earned a substantial salary. The Respondents, who are civil partners, point out that they have no children to educate and they have been able to devote their resources to their hobby of gardening. They are very keen gardeners who have out of choice spent their free time, weekends and holidays gardening and improving their home. All of the architectural and engineering features have been designed by them. The splendour of their garden became known in horticultural circles and was mentioned in magazines and on television. This resulted in horticultural clubs and garden groups requesting visits. The frequency of these visits, which were made by appointment, were such that in about 1998 the Respondents decided they would open the garden to visitors to enhance their private satisfaction (as they enjoy visitors being in the garden) and also to avoid being asked to open the gardens by appointment at inconvenient times.

16. So far as concerns the position as a matter of town and country planning, there have been certain disagreements with the local planning authority which in due course have led to the present planning situation which is that planning permission has been granted for the "continued use of land as residential garden open to visiting members of the public".

17. The opening hours are now Wednesday, Friday, Saturday and Sunday from 2pm-5.30pm from April to October. I was not told that this was significantly different as at 1 April 2000. The present level of visitors is in the order of 20,000 a year. The total receipts from the commercial activity including admission fees, sale of plants and refreshments is recorded for the years ending 31 March 2003, 2004 and 2005 on page 418 of the Bundle and it is not necessary to set it out exactly here beyond noticing that it is into six figures. This page also reveals that the expenditure on the garden (excluding all capital expenditure) for those years is substantially more than the gross income received with the loss being financed from the Respondents' personal resources.

18. As regards certain features of the garden to which attention was drawn in evidence I should record the following:-

(1) The garden is not adapted in any way for visiting members of the public and no structural or other alterations have been made for the benefit of visitors. There is very limited signage in the garden.

(2) The area used for car parking is not laid out as a car park. It is a grassed area between a plantation of trees which is also used for private purposes throughout the year as a parking area for private domestic use and for the housekeeper's and gardeners' parking and as a delivery point and storage area for heavy and bulk deliveries to the home. The area comprises 0.7 acres. It is fenced from the gardens so as to keep the dogs away from the area (because the area can be open to the road when the gates are open). Also the fencing prevents the Respondents' chickens and turkeys, which have use of this area, from wandering across the gardens and damaging the ornamental areas. It was used as a service area in this manner before the Respondents decided to open the garden to the public.

(3) There is a small plant holding/nursery area of about 150 square metres which provides storage for plants which are propagated within the garden or supplied to the garden. The plants are used in the garden and also are sold to visitors. Mr Robeson pointed out that it is as easy to take thirty cuttings as fifteen and that when ordering plants it is always necessary to over-order as they use a large number of bedding plants and wish to have too many rather than too few. The excess can be made available for sale to the public. Also having plants available for sale avoids the risk that visitors might help themselves to plants from the garden.

(4) As regards the building used to serve teas, this building was erected in 1991, well before any contemplated opening of the garden, for the Respondents to enjoy in the summer for their private entertainment and to use in the winter for storage of the more valuable garden furniture. It remains so used when the public are not in the garden. However teas are available there when the garden is open. The building contains twelve tables each capable of seating four persons and there is a similar amount of seating outside.

(5) There is also a party and function room which is open to visitors for shelter in inclement weather. This was built by the Respondents as a building within which to hold a joint 50th birthday party and is used for their personal entertainment and for storage of large items of furniture. It is also occasionally used as a room in which to give talks for the Royal Horticultural Society.

(6) There is a toilet block comprising a gentlemen's and a ladies' and also a disabled toilet. These were constructed well before the garden was open to the public for the purpose of ensuring that the Respondents' employees had suitable facilities available.

(7) There are no brown tourist signs on the local highways directing persons to the garden.

(8) As regards staff, the Respondents employ three full time and two part time gardeners. Beyond that the entry kiosk when the garden is open is staffed by their housekeeper. In the tea rooms they have two part time adults and these are assisted at busy times by students doing occasional work.

19. The garden has received much highly favourable publicity and comment. It has been rated by the Independent Newspaper at number 27 of the top 50 gardens in Europe. It has recently been voted by readers of the Daily Telegraph as the fourth most favourite garden in Great Britain, despite its isolated location and the relatively low number of visitors. Having viewed the site myself I can entirely understand why the garden has been so acclaimed. It should also be noted that, quite apart from its outstanding quality, the garden is also exceptional in that this garden is not one which is an historic garden attached to a stately home which has passed with such a property. Instead it is a garden created out of bare agricultural land by two talented enthusiasts within the last 35 years for their own enjoyment.

20. The Respondents occupy and enjoy the entirety of the property. The Old Vicarage is their home and is used wholly for the purpose of living accommodation. The garden has been

designed and made so as to enhance their home. The Respondents enjoy the domestic use of all of the garden and outbuildings as residents of the Old Vicarage. Their domestic use of the garden continually pervades the entirety of the garden including all outbuildings. However overlying this fundamental use there is the commercial use for about fourteen hours a week for seven months of the year. This commercial use extends to parts of the garden (certain parts are not open to the public) and to some limited buildings within the garden (e.g. the toilets and the tea room), but there is no access whatsoever for the public to the Old Vicarage itself.

21. In case anything in this case turns upon the question of what is the principal use of the garden and outbuildings, I unhesitatingly conclude that the principal use is as a private garden used for domestic purposes ancillary to the occupation of the Old Vicarage as a private home. The commercial use is a secondary and subsidiary use limited in both extent and time. The Respondents get much pleasure from enabling the public to see their garden, but they do not make a profit from the garden. The garden does not have a commercial appearance, although there are discreet signs making it clear that refreshment can be obtained in the tea room and that plants can be purchased in the plant sale area.

Appellant's submissions

22. On behalf of the Appellant Mr Forsdick accepted that section 66 is central to the present case. I have already recorded that Mr Forsdick accepted (and I would in any event have found as a matter of fact and degree) that the whole of the garden including all of the outbuildings therein fall within the curtilage of the Old Vicarage and can properly be said to fall within the expression "a yard, garden, outhouse or other appurtenance belonging to or enjoyed with" the Old Vicarage. Mr Forsdick accepts that the Old Vicarage is used wholly for purposes of living accommodation and accordingly the Old Vicarage falls within section 66(1)(a) of the Act.

23. However Mr Forsdick argues that paragraphs (a) and (b) of section 66(1) must be read together and that on a proper construction of the provisions anything falling within paragraph (b) must be ancillary to the living accommodation or must be part and parcel of the living accommodation and (subject to the de minimis principle) must be solely that and nothing else. Accordingly he submits that, subject to de minimis, paragraph (b) of section 66(1) must be read as if the words "wholly used for domestic purposes" were present in paragraph (b) and qualified "a yard, garden, outhouse or other appurtenance". He submitted that such a reading followed from the Lands Tribunal decision in *Bell v Rycroft (Valuation Officer)* [2000] RA 103 where it was held that the use for a day nursery for children of a garage and extension which apparently was situated within the garden of a semi-detached dwelling, resulted in the property being a composite hereditament notwithstanding that outside nursery hours the ratepayer and his family used the whole premises including the nursery premises at their discretion for domestic purposes. In that case the Tribunal concluded that the extent of nursery use of the main house could be regarded as de minimis but that as regards the nursery space in the garage the use thereof for nursery purposes was more than de minimis and the nursery premises could not be said to be used for the purposes of living accommodation. In the result the altered and extended garage building (i.e. the nursery space) was non-domestic and the entire hereditament was a composite hereditament. Mr Forsdick contended that the present case was similar in that here there was a main building (the Old Vicarage) which was wholly used for living accommodation but there was within the curtilage property which was used partly (indeed

mainly) for residential purposes but which was also used to a more than de minimis extent for commercial purposes. Mr Forsdick accepted that the present point regarding the proper construction of paragraph (b) of section 66(1) was not apparently argued or considered in the *Bell* case.

24. Mr Forsdick accepted that paragraphs (c) and (d) of section 66(1) are dealing (respectively) with a private garage and with private storage which are "off curtilage" in the sense that they are not within the curtilage of living accommodation referred to in paragraph (a). He accepted that for a garage or a storage building which could be said to be "on curtilage" (i.e. within the curtilage of the property referred to in paragraph (a)) then it is paragraph (b) which is relevant rather than (c) or (d). Mr Forsdick argued that the difference in wording between (c) and (d) on the one hand and (b) on the other hand helped rather than hindered his argument. Paragraph (c) contemplates that a private garage is domestic property if it is used "wholly or mainly" for the accommodation of a private motor vehicle and private storage is domestic property if it is used "wholly or mainly" for the storage of articles of domestic use. Thus under paragraph (c) and (d) Parliament had decided that it was proper to allow an element (being more than de minimis but less than 50%) of what might be commercial use. The absence of any such allowance in paragraph (b) and the natural linkage between paragraph (b) and paragraph (a), which requires property to be used wholly for the purposes of living accommodation, justifies the conclusion that any yard or garden or outhouse or other appurtenance, if it is to fall within (b), must be used wholly for domestic purposes.

25. Mr Forsdick drew attention to what he submitted would be a substantial and unintended problem which would arise if the Respondents' construction of section 66(1)(b) was correct and if no words were read into paragraph (b). He drew attention to the use of, for instance, an outbuilding which could be described, as he put it, as "middle ground". In other words the outbuilding is not used wholly for domestic purposes (or wholly subject only to de minimis for domestic purposes) on the one hand but nor is it used solely for commercial use on the other, but is instead used partly for domestic use and partly for non-domestic use. He submitted that where there is a substantial non-domestic use the intention of Parliament must have been that such property constituted a composite hereditament rather than being a domestic hereditament. He drew attention by way of example to a building in the grounds of a house used part-time for a doctor's surgery. In summary he submitted that it could not be the intention of Parliament to treat as domestic a hereditament which, to a more than de minimis extent, was used for non-domestic purposes.

Respondents' submissions

26. On behalf of the Respondents Mr Robeson accepted that the proper construction of paragraph (b) of section 66(1) was central. He drew attention to the contrast in language between paragraph (b), which contains no words limiting the use of the items there mentioned, on the one hand and, on the other hand, to paragraphs (a) and (c) and (d) which all of them contain some expression limiting the relevant use, namely "used wholly" in paragraph (a) and "used wholly or mainly" in paragraphs (c) and (d).

27. Mr Robeson submitted it would not be appropriate to read words into an Act, see for example the decision of Jowitt J in *Lewis v Christchurch Borough Council* [1996] RA 229.

28. As regards *Bell v Rycroft* he submitted that the present argument and the importance of paragraph (b) of section 66(1) was not considered in that case.

29. Mr Robeson drew attention to the fact that there was a site visit to the property by a predecessor of the Appellant in 2001 as a result of which he was informed that a decision had been taken that the property was exempt from rating and should not be entered in the list. He also drew attention to entries in the Rating Manual prepared for the use of valuation officers and rate payers at page 891 of the bundle which states:

> "7.2 Statements about the degree of non-domestic use that might be permissible before rateability is triggered were made during the Parliamentary and consultative processes and these guidelines are to be used. During the House of Lords Report Stage of the Local Government Finance Bill, on 4 July 1988, Lord Caithness said:-
>
> *"Where the use of domestic property for a non-domestic purpose does not materially detract from the domestic use, that should not result in that property being rated".*
>
> In the Consultation Paper "Proposed Amendments to the Boundary between Domestic and Non-Domestic Property", issued in December 1988 the issue of Minor Non-Domestic Use was considered in paragraph 4.2. In considering the point at which the level of non-domestic use would become material and therefore liable to be rated, the suggested guidelines were:-
>
> *"The question of whether the use of a domestic property for non-domestic purposes is material is to be decided having regard in each case to:*
>
> - The effect of the extent and frequency of the non-domestic use, and
> - Any modifications made to the property to accommodate that use".
>
> 7.3 Combining those statements, non-domestic use of part of a dwelling should only be considered to be rateable when it occurs within the curtilage of, or when it belongs to or is enjoyed with, a domestic property, when that use materially affects the enjoyment of the residence as a residence, having regard to the extent and amount of use, and taking account of any structural changes that have been made to the property to facilitate that use."

30. Mr Robeson also drew attention to a further entry in the Rating Manual in relation to historic properties which states at 4.6 to 4.8:-

> "4.6 There are a number of instances where the house is not open to the public but the gardens are; these range in character from the relatively small suburban garden to the formal and extensive garden surrounding a Country House or Stately Home.
>
> 4.7 In view of the fact that the enjoyment of the house is less disturbed by affording the public access to merely the garden, it is likely there would have to be very

considerable use of the garden for non-domestic purposes before the total hereditament could be considered composite, therefore rateable.

4.8 Furthermore, the gardens within the curtilage of a property, being otherwise appurtenant to property used for living purposes, will comprise domestic property by virtue of section 66(1)(b) of the Local Government Finance Act 1988."

31. Mr Robeson drew attention to a large number of other properties with substantial gardens and grounds which were open to the public and where these properties had not been entered in the non-domestic rating list.

32. Mr Robeson also drew attention to section 67(5) of the Act which provides:-

"For the purpose of deciding the extent (if any) to which a hereditament consists of domestic property on a particular day,… the state of affairs existing immediately before the day ends shall be treated as having existed throughout the day."

Mr Robeson argued that even on days when the garden is open to the public, the public leave at 5.30pm and the position immediately before the day ends is that the totality of the garden is back in purely residential use.

Appellant's response

33. As regards the "end of day" argument Mr Forsdick submitted that this was misconceived and referred to the analysis of the President of the Lands Tribunal in *Tully v Jorgenson (Valuation Officer)* [2003] RA 233 at paragraph 19. I can conveniently record here that I agree with Mr Forsdick on this point. So far as concerns the Rating Manual he submitted that as regards paragraph 4.8 relating to historic properties (see above) this was simply wrong. As regards paragraph 4.7 he submitted that the test was de minimis and that this passage was also wrong if it suggested anything else. As regards the passage at paragraph 7.2 and 7.3 (see paragraph 29 above) he submitted once again that if a "use materially affects the enjoyment of the residence as a residence" this means that the use cannot be said not materially to affect the enjoyment of the residence as a residence and is just another way of saying that the use is more than de minimis.

Conclusions

34. I have already summarised above the facts and my findings as to the extent of the domestic use as compared with the commercial use, see paragraphs 20 and 21 above. I have recorded that Mr Robeson accepts (and I find) that the commercial use is more than de minimis.

35. It is an unpromising starting position for the Appellant to have to argue that, in order to succeed in the present appeal, the Rating Manual is wrong and that it is necessary to read into a taxing Act wording which is adverse to the taxpayer.

36. I was much pressed in argument by Mr Forsdick as to problems which could arise in relation to other cases on other facts where there is an element of commercial use within the boundary of a dwelling house and its grounds. The response to that is that each case will depend upon its own facts. On the facts of the present case we have a single hereditament and a single curtilage. The curtilage of the Old Vicarage (which is used wholly for living accommodation) includes the totality of the garden and all the premises with which I am concerned. That much is not disputed. Mr Forsdick also accepts on the facts, and I would in any event have decided as a matter of fact and degree, that the whole of the garden and all the premises with which I am concerned can properly be described as a "yard, garden, outhouse or other appurtenance belonging to or enjoyed with" the Old Rectory. It follows that it is indeed necessary for words to be read in paragraph (b) of section 66(1) if the Appellant is to avoid the conclusion that the garden and premises with which I am concerned constitute domestic property.

37. It is clearly established that a court should be cautious about reading words into a statute, especially a taxing statute where the wording would be adverse to the taxpayer. For present purposes I am content to take the principle from *Lewis v Christchurch* where Jowitt J said:-

> "A court should always be wary of reading into an Act of Parliament words which are not there. The justification for doing so is if those words are necessary to give meaning to the provision or if the implication of those words is obvious from the words which are set out in the statutory provisions."

In the present case the wording of paragraph (b) of section 66(1) makes perfectly good sense without reading any words into it. Also to read in the words which Mr Forsdick invites me to read in would in my judgement give rise to problems with the sense of the section rather than remove problems. I consider the difference in the wording between paragraph (b) on the one hand and paragraphs (a), (c) and (d) on the other hand to be significant. There is no qualification in paragraph (b) as to the nature of the use of the items there described whereas there is such qualification, namely "used wholly" or "used wholly or mainly" in the other paragraphs. Further if I read in the words suggested by Mr Forsdick the following remarkable result is reached. Take for example a building used for private storage premises. If this building is off-curtilage and therefore falls to be considered within section 66(1)(d) these premises will constitute domestic property provided they are used "wholly **or mainly** for the storage of articles of domestic use" (emphasis added). Thus for example a 40% use for storage of articles not for domestic use, which could be commercial storage, would not prevent these premises being domestic property provided it could still be said to be private storage premises and provided it was used as regards the remaining 60% for the storage of articles of domestic use. However if such storage premises were in an outhouse within the curtilage of a dwelling used wholly for the purposes of living accommodation, then the premises would fall to be considered under paragraph (b). In these circumstances anything more than de minimis commercial use would, if the relevant words are read into paragraph (b), prevent the storage premises being domestic property and would result in the entire hereditament being a composite hereditament. It would be remarkable if a level of commercial use which did not prevent off curtilage storage premises from being domestic property was sufficient to prevent on curtilage storage premises from being domestic property.

38. As regards the decision in *Bell v Rycroft* I am not bound by this decision and in any event the point with which I am at present concerned was not argued or decided.

39. I conclude that no words should be read into paragraph (b) of section 66(1) and that the garden and tea room and all premises with which I am concerned in the present case fall within paragraph (b). They are not prevented from doing so by reason of having some element of commercial use.

40. In case it be a relevant test (see paragraph 7.3 of the Rating Manual) I do not consider that the level of commercial use (by which I mean non domestic use) of the garden and premises in the present case is such as materially to affect the enjoyment of the Old Vicarage as a residence or is such as materially to affect the enjoyment of the garden (including the whole of the garden and premises) as a domestic garden ancillary to the Respondents' home. I reach that conclusion as a matter of fact and degree in the light of all the evidence including my site inspection.

41. As regards the Appellant's anxiety as to other premises where there is some partial non-domestic use, e.g. a doctor's surgery, the answer is that every case will need to be decided on its own facts. It may be in some other case that the facts are such that two hereditaments can be identified or that, although there is only one hereditament, it cannot be said that the premises within which the non-domestic use is carried on is within the curtilage of the relevant dwelling house. However in the present case there is just one hereditament and a single curtilage embracing the whole of the property with which this appeal is concerned. The Old Vicarage itself falls squarely within paragraph (a) of section 66(1). All the remainder of the property falls within paragraph (b) of section 66(1) and is not prevented from doing so by reason of there being some non-domestic use during some hours of certain days each year.

42. In the result therefore I dismiss the Appellant's appeal.

43. The foregoing concludes my determination of the substantive issues in this case. It will take effect as a decision when the question of costs is decided and at that point, but not before, the provisions relating to the rights of appeal in section 3(4) of the Lands Tribunal Act, 1949 and in the Civil Procedure Rules will come into operation. Any submissions on costs should be made in writing no later than 21 days after the date of this decision.

Dated 11 August 2008

His Honour Judge Huskinson