UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – exemption – sewer – screening and de-gritting plant at installation 2 km from treatment works – sewage pumped through tunnel – whether installation an accessory belonging to a sewer – where treatment commenced – held that treatment screening and de-gritting were part of treatment – held not exempt – appeal dismissed – Local Government Finance Act 1988 Sch 5 para 13(1)

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE NORTH YORKSHIRE VALUATION TRIBUNAL

BETWEEN	**BRIAN WEBSTER (Valuation Officer)**	**Appellant**
	and	
	YORKSHIRE WATER SERVICES LIMITED	**Respondents**

**Re: Sewage Treatment Works and Premises,
Scarborough WWTW,
Burniston Road, Scarborough,
North Yorkshire, YO13 0DA**

Before: The President and N J Rose FRICS

**Sitting at 45 Bedford Square, London WC1B 3DN
on 29 June 2009**

Timothy Morshead instructed by Solicitor to HM Revenue and Customs for the appellant
Jennifer Wigley instructed by Charles Russell for the respondent

The following cases are referred to in this decision:

Gudgion (VO) v Erith Borough Council (1960) 7 RRC 9; (1961) 1 RVR 492
Fife County Council v Fife Assessor [1965] RA 373
Hoggett (VO) v Cheltenham Corpn [1964] RA 1
Northumberland Water Authority v Little (VO) [1986] RA 61
Jones (VO) v East Valleys (Monmouthshire) Joint Sewerage Board (No.2) (1960) 6 RRC 387

The following further cases were cited in argument:

Russell (VO) v Shell Mex & BP Ltd [1972] RA 65
Petrofina (Gt Britain) Ltd v Harrington (VO) [1973] RA 65
Edwards (VO) v BP Refinery (Llandarcy) Ltd [1974] RA 1
Re Evans (VO)'s Appeal [2003] RA 173

DECISION

Introduction

1. Under paragraph 13(1) of Schedule 5 to the Local Government Finance Act 1988 a hereditament is exempt to the extent that it consists of a sewer or an accessory belonging to a sewer. In this case the valuation officer appeals against a decision of the North Yorkshire Valuation Tribunal that an installation at Scalby Mills just north of Scarborough at which raw sewage is screened and de-gritted before being pumped through a tunnel to a sewage treatment works at Burniston Road about two kilometres away was exempt from rating as an accessory belonging to a sewer. The issue, which is essentially one of fact, is whether, as the VO contends, the processes to which the sewage is subjected at Scalby Mills are to be regarded as the first stage in its treatment, so that the pipeline between Scalby Mills and Burniston Road not a sewer or whether, as the ratepayer contends, they are to be regarded as being carried out for the purpose of pumping the sewage onwards, so that the pipeline beyond Scalby Mills is a sewer and the plant there constitutes an accessory belonging to it.

The statutory provisions

2. Paragraph 13(1) of Schedule 5 to the 1988 Act provides as follows:

> "13(1) A hereditament is exempt to the extent that it consists of any of the following –
>
> (a) a sewer;
>
> (b) an accessory belonging to a sewer.
>
> (2) 'Sewer' has the meaning given by section 343 of the Public Health Act 1936.
>
> (3) 'Accessory' means a manhole, ventilating shaft, pumping station , pump or other accessory …"

3. Section 343(1) of the Public Health Act 1936 gives the following meaning to "sewer":

> "'sewer' does not include a drain as defined by this section but, save as aforesaid, includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings …"

"Drain" is defined by the section as "a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage."

4. The rateability of plant is determined by the Valuation for Rating (Plant and Machinery) (England) Regulations 2000, which provides by regulation 2:

> "2. For the purpose of determining the rateable value of a hereditament for any day on or after 1st April 2000, in applying the provisions of sub-paragraphs (1) to (7) of paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 –

(a) In relation to a hereditament in or on which there is plant or machinery which belongs to any of the classes set out in the Schedule to these Regulations, the prescribed assumptions are that:

(i) any such plant or machinery is part of the hereditament..."

5. Class 3 in the Schedule contains the following:

"(g) A pipe-line, that is to say, a pipe or system of pipes for the conveyance of any thing, not being –

(i) a drain or sewer; or

(ii) a pipe-line which forms part of the equipment of and is wholly situated within, relevant premises;..."

"Relevant premises" are defined in the paragraph as including a factory; and there is no dispute that a sewage treatment works is a factory and thus relevant premises for this purpose.

Facts

6. There is no dispute on the primary facts. There is an agreed statement of facts, and we heard evidence from the valuation officer, Brian John Whitney Webster BSc MRICS, and from Christopher James Biddle FRICS on behalf of the ratepayer. There was also an expert report on behalf of the VO by Christopher Leonard Miller BSc, MRICS, IRRV, ABEng, who was not called, dealing with pipeline valuation. The reports of Mr Webster and Mr Biddle contained a number of appendices, including, as one of Mr Webster's appendices a statement (not in the form of an expert's report) by John Philip Adamson, a civil engineer on the Scalby Mills pumping station and the need for removal of grit and screenings. On the basis of all of this we find the following facts.

7. The installation at Scalby Mills forms part of a system of sewerage and sewage treatment operated by the respondent, who is responsible for the collection, treatment and disposal of waste water within the area of Scarborough Town and its surroundings. It is owned by Yorkshire Water. Until 1991 effluent from the area was collected by four sewerage systems, each of which discharged directly into the sea by means of a separate discharge outfall. In October 1987 the respondent, so as to comply with Directive 76/160/EEC, which was eventually implemented by the Bathing Waters (Classification) Regulations 1991, started work on an improvement scheme for the disposal of Scarborough's waste water. The cost was about £31m. The main objective of the Directive and the Regulations was to protect public health and the environment from faecal pollution in bathing waters. In April 1991 the Scalby Mills site opened. Two of the four sewerage systems serving Scarborough were intercepted and the other two were re-directed, so that the raw sewage was brought by three pipes to Scalby Mills for treatment with the effluent being discharged to sea by an outfall 1.45km long. The treatment consisted of screening to 5mm and de-gritting so as to make the effluent fit for discharge to sea. Storm water facilities were provided. The building that housed the works was fitted with extensive air handling and odour control facilities, with the foul air emitted by the effluent being subject to treatment prior to emission to the atmosphere.

8. Between 1999 and 2000, in order to comply with the EC Urban Water Waste Treatment Directive (91/271/EEC) as implemented by the Urban Waste Water Treatment (England and Wales) Regulations 1994, the ratepayer built additional treatment facilities at the Burniston Road site. The total cost of the works was about £30m. The standard of treatment required under the Directive and the Regulations depends on certain factors such as the size of the population served and the discharge consent for the particular location. All waste water must be subject to one or more of four treatment processes. The four processes are preliminary treatment, consisting typically of screening and/or maceration and grit removal; primary treatment, involving physical and/or chemically-enhanced settlement of suspended solids not removed at the primary stage; secondary treatment, in which bacteria are used to break down the biogredable matter, followed by further settlement; and tertiary treatment, which can involve disinfection, to reach a standard of effluent fit for discharge. At Burniston Road the facilities consisted of primary, secondary and tertiary treatment. The site, 1.77 km from Scalby Mills, was connected to Scalby Mills by two pipelines, one carrying the waste water and the other foul air. The effluent pipeline is 700 mm in diameter, and the foul air pipe is 1200 mm in diameter. A third pipeline, 700 mm in diameter, return the treated effluent from Burniston Road for discharge to sea. All three pipelines are approximately 2.1 km long.

9. At about the same time as the Burniston Road facilities and associated works were carried out the ratepayer made similar alterations to its other disposal facilities on the east coast. Each of the new treatment works included preliminary treatment. By contrast no preliminary treatment facilities were installed at Burniston Road.

10. Because there is the estuary of a stream, Scalby Beck, which runs directly across the line between Scalby Mills and Burniston Road, and because an elevated pipeline would be visually unacceptable, the three pipelines have to pass under the beck. A tunnel commences at the Scalby Mills site and at a point near the south side of the beck a vertical shaft some 6.5 m in depth takes the three pipelines down to a tunnel under the beck for a distance of 330 m, and the pipelines then rise through another vertical shaft 29 m deep on the north side of the beck. Each shaft has an internal diameter of 7.5 m, and the tunnel is constructed of precast segmental sections 2.87 m in diameter. From the north shaft the pipes are laid below ground across farmland in a conventional trench with a downward gradient to Scalby Mills.

11. In order to avoid solids settling within the effluent pipe and blocking it, which would tend to happen if a sufficient flow were not constantly maintained through the pipeline as it passes through the tunnel and the vertical shafts, the existing screening and de-gritting facilities were retained at Scalby Beck and were modified as necessary. The bar screens, which previously dealt with large solid particles such as rag, wood and plastic in the flow from the northern drainage area, were replaced by drum screens. After passing through the drum screens the flow then passes, as previously, to the screw pump chamber, where it is joined by the sewage from Burniston and Scalby, and is then raised by Archimedian screw before being joined at the overflow chamber by the flow from Toll House. New screening, washing and de-watering equipment and a new stone trap screen were installed at this point, with the flow then passing, as before, through two single entry drum screens with 5mm aperture mesh, where additional but smaller matter is removed. After the screens it passes through the 9.0m diameter detritor, where the flow rate is slowed down to facilitate the deposition of grit, sand and glass of 200 microns (0.22mm) and above. Material collected by the screens and detritor is washed, dewatered, pressed and then collected in skips and sent to landfill as it was previously.

12. In storm conditions the excess flow is dealt with as before, being sent out to sea either through the long sea outfall, after screening, or in extreme storm conditions through the short sea outfall. The odour control system within the building has been modified, with new ducts, dampers and coverings to the pumps and the storm screens. The foul air, which was previously treated at Scalby Mills, is now pumped to Burniston Road through the air duct for treatment in the odour control building on that site before being released to the atmosphere. The effluent from Scalby Mills is pumped through the tunnel before running by gravity from the north shaft to Burniston Road, where it is discharged into primary settlement tanks without any further screening or de-gritting before undergoing primary, secondary and tertiary treatment. The fully treated effluent returns to Scalby Mills down the third pipeline and is then discharged to sea through the long sea outfall.

13. The hereditament at Scalby Mills was originally entered in the 1990 valuation list as "Sewage Plant" at a rateable value of £3,000,000 with effect from 1 April 1992. The entry was later amended by the VO to £720,000 RV and again, following a proposal by the ratepayer, to £490,000 RV. In the 1995 list the hereditament was originally entered at £720,000 RV, but this was later reduced to £455,000 following a proposal by the ratepayer. In the 2000 list the Scalby Mills hereditament was originally entered at £545,000, but this was later reduced to £508,500 following a proposal by the ratepayer.

14. The new site at Burniston Road was entered as a separate hereditament as "Sewage Treatment Works" at a rateable value of £288,000 with effect from 1 April 2002. In July 2003 four proposals were made on behalf of the ratepayers. One of these requested the merger of the two assessments. On 13 March 2006 the VO updated the list by merging the assessments into a single assessments, "Sewage Treatment Works and Premises" at £727,500 RV with effect from 1 April 2002. The ratepayer's four proposals were then withdrawn; and on 31 March 2006 a further proposal was made in respect of the new entry, seeking a reduction of the rateable value to £1 and giving as the detailed reasons, "That the present assessment is incorrect, excessive and wrong in law". It was this proposal that was the subject of the VT's decision, from which appeal is now made. The VT reduced the rateable value from £727,500 to £286,500.

The VT decision

15. In reaching its conclusion the VT noted that the effluent pumped from Scalby Mills to Burniston road could not be regarded as final effluent in view of the higher standards in the EU Directive, and it went on:

> "The tribunal accepted that Scalby Mills was still screening and de-gritting sewage as it had always done, but, since the commissioning of the Burniston Road site, its functionality had changed.
>
> It was the opinion of the tribunal that the function of Scalby Mills since 2002 was to provide primary treatment to the sewage, which was essential to the transfer of that sewage to the Burniston Road site. This primary treatment ensured protection to the pipes and the inverted siphon, which would not function effectively without the screening and de-gritting, as this prevented blockages in the pipe transfer system.

The tribunal noted that three pumps had been installed at Scalby Mills in order to transfer materials to the WWTW at Burniston Road. It considered that the movement of materials from Scalby Mills to Burniston Road was by sewer via the inverted siphon. It therefore concluded that the Scalby Mills site was an accessory belonging to the sewer. As such it fell to be exempt.

Given that valuations in the alternative were agreed, the tribunal ordered the Valuation Officer to amend the Rating List to show the assessment of the WWTW at Burniston Road with a rateable value of £286,500 effective from 1 April 2002."

The Issues

16. The contention of the VO is that none of the Scalby Mills installation is an accessory belonging to a sewer. The principal contention of the ratepayer is that the whole installation is an accessory belonging to a sewer. Alternatively, it is said, if the screens and detritor are not exempt, the pumping station, comprising the pumps and the main part of the building at Scalby Mills, is nevertheless exempt. The VO also advances a contention in relation to the pipelines. He says that the pipelines taking the screened and degritted effluent and the odorous air from Scalby Mills to Burniston Road are rateable to the extent that they are outside the curtilage of those premises as being within Class 3(g) of the Valuation for Rating (Plant and Machinery) (England) Regulations 2000. The ratepayer says that the effluent pipeline is exempt as a sewer under paragraph 13(1) of Schedule 5 to the 1988 Act and Class 3(g)(i) of the Regulations and the odorous air pipeline is either a ventilating shaft, and so exempt under paragraph 13(1)(b), or a drain to be ignored for valuation purposes under Class 3(g)(i). The ratepayer also says that the two sites constitute separate hereditaments. This, however, is not a matter that arises from the proposal, which simply sought a reduction in the assessment.

The parties' cases

17. The VO, Mr Webster, said that his specialist field was that of a rating valuer practising in the field of sewage treatment works valuations. He had been practising as a rating valuer for 17 years, the last 11 of these as part of the Specialist Rating Unit Northern. He had been responsible for valuations and the settlement of proposals relating to STWs in the 1990, 1995, 2000 and 2005 rating lists. Mr Webster said that he had considered the relevant case law, and in the light of this he considered that the screening works at Scalby Mills were rateable. In all the years that he had been dealing with the rating assessments of sewage works, treatment and rateability were always regarded as commencing with the screens. In his view the headworks at Scalby Mills were always intended to be the main screening point for Scarborough's waste water. The screens and detritor treated the sewage, and they continued to treat the sewage as part of the whole process carried out at the two sites in order to comply with the relevant legislation. Mr Webster said that he did not believe that the primary purpose of the screens and detritor was to protect the transfer pipe. They, and the associated odour control facilities were in operation for nine years before Burniston Road become operational, and it was the requirement to carry out further treatment to satisfy more demanding environmental controls that led to the construction of Burniston Road and the pipelines between the two sites.

18. Mr Webster said that the changes made to Scalby Mills did not make the sewage any less treated than it had been before the connection to Burniston Road. Equally, since there were no screens and detritor at Burniston Road, it was impossible to connect any new drain or sewer at any point later than the screens and the detritor at Scalby Mills without preventing Burniston Road from providing a complete treatment of the sewage. In response to Mr Biddle's statement that it was quite common for on-line pumping stations to have screening or grit removal facilities, Mr Webster said that, while screens could be found in some on-line pumping stations, they tended to be bar screens which were there to protect the pumps from being fouled by large items of debris. He was not aware of any that had full 6 mm elevator screens together with a detritor for grit removal as was the case at Scalby Mills.

19. For the VO Mr Timothy Morshead submitted that the authorities showed that the question of at what point a sewer ends and treatment begins is to be judged by reference to the point at which the sewer begins to receive treatment to make it suitable for discharge. He relied in particular on *Gudgion (VO) v Erith Borough Council* (1960) 7 RRC 9 and *Fife County Council v Fife Assessor* [1965] RA 373. He distinguished, as turning on its own facts, *Northumberland Water Authority v Little (VO)* [1986] RA 61, in which the Lands Tribunal (V G Wellings QC) held that an installation on one side of the river Tyne containing screening and de-gritting facilities, which protected a siphon under the river to a sewage treatment works on the other side of the river, was not part of the sewage treatment facilities.

20. Mr Morshead said that the question was to identify at what point treatment of the sewage begins. The treatment of sewage at the hereditament depended on the screening and de-gritting functions being carried out at Scalby Mills. The same functions would otherwise have to be provided at Burniston road, and the mere fact that the ratepayer found it convenient to treat the sewage at two installations connected at pipelines, rather than at one installation where no pumping was necessary, was immaterial. It was immaterial also that the screening and de-gritting took place downstream of the pumps. The "primary purpose" test, relied on by the ratepayer, was not appropriate. The screening and de-gritting was integral to the overall process of treating the sewage. Rateability should not depend on anything so adventitious as whether or not an installation had been so engineered that some piece of machinery, such as a pump, would stop working properly if the effluent reached it without having been screened and degritted.

21. It was common ground, Mr Morshead said, that during the period between 1991 and 2002 was treated at Scalby Mills before its discharge to sea. All that happened in 2002 was that the same effluent was instead pumped up to Burniston Road for further treatment prior to its discharge to sea. The ratepayer's case necessarily involved the idea that the opening of Burniston Road had the effect of reducing the value of the hereditament by £441,000. The merger of the two hereditaments, relied on by the ratepayers, in no way affected the rateability of the two installations. Both played a crucial part in the treatment of the sewage received at Scalby Mills.

22. Mr Morshead said that the respondent's alternative case, that, if the screening and de-gritting plant was properly to be regarded as provided for the purposes of treatment and was not an accessory belonging to the sewer, the rest of the Scalby Mills installation was nevertheless such an accessory, did not require further consideration. If what was pumped

from Scalby Mills was partially-treated effluent the pipeline was not a sewer. Similarly, contentions that the three pipelines or any of them were not rateable were wrong, since under Class 3(g) of the Valuation for Rating (Plant and Machinery) Regulations 2000 pipelines were rateable unless they formed part of the equipment of a factory and were wholly situated within it.

23. Mr Biddle said that in his opinion the pipeline between Scalby Mills and Burniston Road was a sewer since it was carrying sewage. Despite the removal of rag and grit the sewage remained foul sewage.

24. He said that the design adopted for the river crossing ensured full use of the existing Scalby Mills site, but the use of an inverted siphon meant that the sewage had to be lifted vertically for a height of 29 metres and then a further 20 metres on a gradient of 1 in 800. If there was grit in the sewage and pumping was not constant or if the flow was insufficient or ceased for any reason, the grit and other solids would settle at the bottom of the pipe. That would inevitably lead to blockages of the pipe. It was to prevent such occurrences that the particular type of screens and the detritor were installed

25. He said that the construction of the Burniston Road site, with the installation of the pumps at Scalby Mills and the other alterations made there, and the pipeline connection between the two sites totally altered the purpose for which the Scalby Mills site was used. There were two other similar installations occupied and operated by Yorkshire Water, one at Whitby and the other at Bridlington. Both were similar in that they consisted of headworks for screens and grit removal. Both had sewage treatment plants constructed inland and linked to the original pumping station. In both instances the original screening and de-gritting plant were transferred to the new sewage treatment works. It was likely that the same arrangement would have been followed at Scarborough if a simple link could have been established between the two installations. The plant, however, was retained at Scalby Mills, and the purpose in having it there was to protect the pipeline between the two works and to prevent blockage occurring, and this was its principal function. Treatment was provided at Burniston Road, and the fact that the odour control facilities had been move there showed, Mr Biddle said, the preference to have all treatment facilities located on one site. In his opinion the mere addition of screening and de-gritting at any pumping station did not necessarily mean that treatment had started at that point. Indeed it was quite common for on-line pumping stations to have screening or grit removal facilities.

26. Ms Wigley submitted that the authorities established the following propositions. Firstly, the *Fife* case showed that whether or not a facility is an accessory to a sewer and so exempt from rating depends upon its primary function and purpose. A screen house in one location with a particular primary function could be rateable whereas a similar screen house in a different location with a different primary function might be exempt. She referred to *Hoggett (VO) v Cheltenham Corpn* (1963) 10 RRC 225, *Gudgion* and the *Northumberland* case. Secondly, if the primary function of a facility is to protect the sewer it will be considered ancillary to that sewer and exempt: *Jones (VO) v East Valleys (Monmouthshire) Joint Sewerage Board (No.2)* (1960) 6 RRC 387 and *Gudgion*. Thirdly the function of a sewer is to convey or transport sewage from the points of origin to the point of discharge (*Fife*), and discharge in this context means either final disposal such as to sea or discharge into the sedimentation tanks of a treatment works (*Gudgion*).

27. Ms Wigley submitted that the primary function of the screens and detritor could be seen from their separation, by a distance of 1.77 km, including a river crossing, from the treatment works at Burniston Road and by the fact that they were sited at Scalby Beck because they were essential to protect the pumps and the transfer pipeline or sewer. They had no real treatment function, and the fact that they were described in the industry as "preliminary treatment" showed that their function was seen as distinct from the treatment itself.

28. In relation to her secondary argument – that, even if the screens and detritor were considered to be primarily for treatment, the pumps and other accessories were nevertheless accessories belonging to the sewer – there was, Ms Wigley said, no general principle that rateability starts at the screens or the first point of treatment. This was recognised in the *Northumberland* case, in which the facts were similar in all respects to those in the present case.

29. Ms Wigley said that it was not accepted on behalf of the ratepayer that the Scalby Mills site formed part of the same hereditament or the same sewage treatment works as the Burniston road site. The degree of separation between the two sites and the difference in their functions – one to assist in the conveyance of the sewage, the other to treat the sewage, showed that they must be two separate hereditaments. As for the pipelines, Ms Wigley said that the main transfer pipeline was a sewer and so exempt and the foul air pipeline was either a ventilating shaft and exempt as an accessory to the sewer or it was a drain to be ignored for valuation purposes under Class 3(g)(i). There was no suggestion that the return pipeline was rateable.

Conclusions

30. Two basic questions arise for decision: firstly whether the pipeline that takes the effluent between Scalby Mills and Burniston Road is a sewer; and secondly, if it is, whether the screens and detritor are accessories belonging to it.

31. The principal characteristic of a sewer, as defined in section 343(1) of the Public Health Act 1936, is that it provides drainage for premises. One cannot say that that is the only function that a sewer may have because the definition is not an exclusive one, but it is the function of drainage – the removal of surface water or foul effluent away from premises – to which the definition draws particular attention. A sewer, as distinct from a drain as defined in the provision, provides drainage from more than one set of premises. In general, it seems to us, a sewer will come to an end at the point at which some treatment is given to the effluent because it is there that its drainage function is completed. The connecting conduit between the first part of the treatment and the second part is not a sewer since its function is not drainage but the transfer of the liquid between two processes. Thus in a number of cases it has been held that, where the sewer is a foul sewer and the sewage in it is to be treated, the point at which it comes to an end is the point at which treatment begins: see the cases above referred to by counsel. The determinative issue in relation to the first question, therefore, is whether treatment of the sewage is to be regarded as commencing at Scalby Mills or whether treatment does not commence until Burniston Road.

32. In *Gudgion (VO) v Erith BC* (1960) 31 RRC 305 the Lands Tribunal (Erskine Simes QC), in a decision that was later upheld by the Court of Appeal, held that three sewers inside a sewage treatment works were exempt up to the point of discharge into sedimentation tanks. One of these conveyed the sewage through screens, to protect the pumps that pumped it to the sedimentation tanks. Another conveyed the sewage to a sand or detritus pit, which had been originally designed to protect pumps that pumped it to the sedimentation tanks but which, following the installation of new pumps, was no longer necessary for this purpose. Sewage in this sewer was also screened before reaching the pumps. The Member said (at 315) that the problem was to determine where the conveyance of the sewage ended and treatment began, since whether or not a pipe was a sewer depended on its function. He concluded that the function of the screens and sand pit was not to be regarded as treatment because they had been provided solely to protect the pumps. Had it not been for the need to pump the sewage it could have been discharged into the sedimentation tanks without treatment. He was therefore not satisfied that the sewers lost their character as sewers owing to the intervention of the screens and sand pit. In the Court of Appeal, Sellers LJ, with whom Devlin and Danckwerts LJJ agreed, said:

> "I think it has been the fallacious view of this case that, because some pumping assistance is given to bring the sewage up to the place where it is received in the tank, those pipes which are under the influence of the pumping system, if it can be said to be exclusively effective in the pipes in question, are in some way of a different character from the main sewage system. The pumping is not incidental to the treatment of the sewage in any way. The treatment could take place if the sewage came there from some other source altogether."

33. In *Hoggett (VO) v Cheltenham Corpn* [1964] RA 1 the Lands Tribunal (H P Hobbs FRICS) held that screens, a detritor and storm water tanks situated within a sewage treatment works were not accessories belonging to sewers. The Member said (at 5) that the issue was the determination of the point at which the sewer, including any accessory belonging to it, terminated. The VO contended that the sewer finished at the screening chamber. The ratepayers said that the sewer continued beyond the screens, detritor and storm water tanks up to the automatic penstock which regulated the flow into the sedimentation tanks. The Member found (at 6) that the screens and detritor, by removing solids from the sewage, assisted the subsequent treatments in the sedimentation tanks, filters and humus tanks and also aided the functioning of the pumps at the storm water tanks. He went on (at 6-7):

> "It is accordingly true to say that each of the items at issue performs a dual function, but, having seen the works and listened to the evidence, I am satisfied that, for the efficient functioning of the sedimentation tanks, the filters, and the humus tanks, it is essential that the sewage shall first go through the screen chamber and detritor, for otherwise the rate of flow would be so impaired that, far from the works dealing with the bulk of the sewage, the bulk would perforce have to be directed into the storm water tanks and a large proportion would have to go over the overflow thereto, so largely destroying the very function and object of the sewage works, viz., the purification of sewage. Accordingly, I find that in this case the treatment starts at the screens and that the screens and detritor cannot be said to be accessory to the sewer, which terminates at the screens."

34. In *Northumberland Water Authority v Little (VO)* [1986] RA 61, the principal case relied on by the ratepayer, the Lands Tribunal (V G Wellings QC) held that a siphon through which effluent was pumped under the river Tyne from Jarrow on the south bank to a sewage treatment works at Howdon remained a sewer despite the fact that screening and grit removal were carried out at Jarrow. The screens had been at 25mm spacing, but it does not appear from the report that further screening took place at Howdon before discharge into sedimentation tanks. In his conclusions the Member said (at 77):

> "I am unable to take the view that the installation at Howdon and Jarrow and the syphon together comprise one single sewage treatment works. The following matters militate against that view: (a) the intervention between Howdon and Jarrow of the River Tyne; (b) the size and complexity of the syphon; (c) the importance of Howdon as the place where primary treatment of sewage takes place, whereas such treatment as takes place at Jarrow, rather than affecting the character of the sewage, is cosmetic; the foul sewage is just as foul after removal of rags, grit and other impedimenta (not all such matters are removed) as it was beforehand.
>
> The purpose and function of the syphon are, in my opinion, to convey the sewage collected by the interceptor sewers to Howdon for primary treatment. That consideration leads me to hold that the syphon is a sewer. It appears to me that statements in the authorities to the effect that a pipe ceases to be a sewer at the point where treatment is reached are not apt to cover the facts of the present case, one of which facts is that treatment in a real sense does not occur south of Howdon."

35. The Member held that, although the designers of the siphon might ex abundanti cautela have provided more protection for the siphon than was strictly necessary, the function of the screen house and the grit chambers was nevertheless protection, so that all the buildings and structures at Jarrow were accessories belonging to the siphon.

36. *Fife County Council v Fife Assessor* [1965] RA 373, a decision of the Lands Valuation Appeal Court under the Scottish legislation, concerned two screening houses installed on a sewer near to a sea discharge. The purpose of them was the maceration of the sewage, which caused a speedier oxidisation of the discharged sewage and reduced the possibility of visual offence on the nearby beach. The pumps in one of the screening houses could not work unless the sewage was macerated (although larger pumps, which would not have required the sewage to be macerated could have been installed). The land valuation committee that had determined the case at first instance found as a fact that the primary purpose of the screening houses was to treat the sewage so that it could be discharged to sea. The Lands Valuation Appeal Court rejected the contention that they were exempt as accessories belonging to a sewer. Lord Kilbrandon at 376 said that "the history of the matter and this crucial finding" made it plain that the screening houses were designed and used for the treatment of sewage and were therefore primarily sewage disposal works. The fact that larger pumps could have worked without the sewage having been screened showed that the maceration plant was not accessory to the sewer.

37. It is clear from these decisions that where the sole or primary purpose is of the installation is treatment of the sewage there is no question but that the sewer comes to an end at the screens. More difficult questions arise on the other hand where the screening plant has a

dual function, as it clearly does in the present case. We accept that the screening and grit removal that is carried out at Scalby Mills is necessary to ensure that the inverted siphon in the tunnel under the beck does not silt up as the result of variations in the flow rate. That, however, does not mean that the screening and de-gritting of the sewage is not the commencement of treatment. If provided at Burniston Road it would in our judgment certainly be treatment – the preliminary treatment that is necessary before the effluent can pass on to the primary, secondary and tertiary treatment processes – and it would have to have been provided at Burniston Road had it not been for its earlier provision at Scalby Mills.

38. In a case such as this the Tribunal must, in our judgment, come to an overall conclusion, in the light of the facts, as to whether the screening processes to which the sewage is subject are properly to be regarded as the commencement of treatment. All the circumstances are to be taken into account, including, it seems to us, the relative importance of the screening in relation to the totality of the treatment to which the sewage is subject, the physical relationship between the works under consideration and any associated treatment works, and the circumstances that have resulted in the arrangements being as they are.

39. It is clear, as we have said, that, if the screening and de-gritting did not take place at Scalby Mills the same or similar facilities would have to have been installed at Burniston Road. The preliminary treatment at Scalby Mills can thus be seen as essential to the overall treatment process. It is also the case, as we find, that because some treatment has taken place at Scalby Mills, so that the effluent in the pipeline has been partially treated, and because there are no screening and de-gritting facilities at Burniston Road, connections of foul drains into the pipeline would not be acceptable.

40. The history of the installations and their physical arrangements are also relevant, in our judgment. Before Burniston Road was commissioned the screening and de-gritting at Scalby Mills was carried out for the purpose of ensuring that effluent of a compliant standard was discharged through the long sea outfall. That was treatment. Modified as they subsequently were, the works at Scalby Mills continued to perform this treatment function, but as a preliminary to the further treatment at Burniston Road. The physical arrangements show that the two sites operate together as a treatment works. Besides the pipeline that conveys the partially treated sewage there is the odorous air pipeline and the return pipeline for the fully treated effluent, all running together in tunnel and trench between the two sites. That the length of each pipeline is over two kilometres does not, in our view, diminish the degree of connection or alter the nature of the relationship between the two sites.

41. For these reasons we conclude that treatment of the sewage brought to Scalby Mills by the three sewers commences at Scalby Mills, so that the pipeline to Burniston Road is not a sewer. The second question – whether the screening and de-gritting facilities are an accessory belonging to a sewer – accordingly does not arise.

42. The conclusion that we have come to is reached, as we have said, on the facts of the case. For this reason we see no need to distinguish on the facts the decision of this Tribunal in the *Northumberland* case. It may be that another Member would have reached a different decision, but in any event it is sufficient to say that the facts relating to the physical works, the history of

the installations and their physical relationships and the relative importance of the screening in relation to the treatment processes were different from those in the present case.

43. Since the valuation is agreed, the question of the rateability of the pipelines does not need to be decided, nor, as we have said, does the question whether the two sites are properly to be treated as parts of a single hereditament. We would certainly tend to the view that the two sites and the tunnel, trench and pipelines connecting them are properly treated as a single hereditament. We would also tend to the view that the pipelines for the partially treated sewage and the odorous air are rateable since they are not exempt under Schedule 5 and, beyond the perimeters of the two works, they are not wholly situated within relevant premises for the purposes of Class 3. We express no final view on this, however, because we have heard only limited submissions and the questions do not need to be decided.

44. The appeal is accordingly dismissed. The parties are now invited to make submissions on costs, and a letter dealing with this accompanies this decision, which will become final when the question of costs has been determined.

Dated 5 October 2009

George Bartlett QC, President

N J Rose FRICS