

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2009] 138 (LC)

LT Case Number: RA/33/2007

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

*RATING – exemption – coffee shop and bookshop within part of church building used as a church hall and run by church volunteers – whether part of church hall and so exempt – held that it was – appeal dismissed – Local Government Finance Act 1988 Sch 5 para 11(1)(b)*

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

BETWEEN

**RICHARD EBURY**  
(Valuation Officer)

**Appellant**

and

**THE CHURCH COUNCIL OF  
THE CENTRAL METHODIST CHURCH**

**Respondent**

**Re: Café and Premises,  
Cornerstone Christian Books & Coffee Shop,  
Central Methodist Church,  
Saltergate, Chesterfield,  
Derbyshire, S40 1UT**

**Before: The President**

**Sitting at 43-45 Bedford Square, London WC1B 3AS  
on 7 July 2009**

*Daniel Kolinsky* instructed by HMRC Solicitors for the appellant  
*Christopher Lewsley* instructed by Potheary Witham Weld for the respondent

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The following cases are referred to in this decision:

*Gallagher (VO) v Church of Jesus Christ of Latter-Day Saints* [2006] RA 1 (LT); [2007] RA 1 (CA); [2008] 1 WLR 1852 (HL)

*West London Methodist Mission v Holborn Borough Council* (1958) 3 RRC 86

## DECISION

1. This is an appeal against a decision of the Derbyshire Valuation Tribunal allowing the ratepayer's appeal in respect of the Cornerstone Christian Books and Coffee Shop, Central Methodist Church, Chesterfield. The premises, which consist of two rooms in the Central Methodist Church building, had been entered in the list as a hereditament described as "Café and premises" at a rateable value of £4250. The VT held that they were exempt under paragraph 11(1)(b) of Schedule 5 to the Local Government Finance Act.

2. Paragraph 11(1) provides as follows:

11(1) A hereditament is exempt to the extent that it consists of any of the following

- (a) a place of public religious worship which belongs to the Church of England or the Church in Wales (within the meaning of the Welsh Church Act 1914) or is for the time being certified as required by law as a place of religious worship;
- (b) a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public religious worship in that place.

3. Also to be noted is paragraph 11(2) which, so far as material, provides:

11(2) A hereditament is exempt to the extent that it—

- (a) is occupied by an organisation responsible for the conduct of public religious worship in a place falling within sub-paragraph (1)(a) above, and
- (b) is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place

4. The church building is held by the Church Council, the members of which are, by virtue of the Methodist Church Act 1976, its managing trustees on the Model Trusts of the Methodist Church. With the exception of the two rooms in issue in the present case (and possibly also a steward's flat, about which I have no information in this respect) the whole of the building is accorded exemption, as to part under paragraph 11(1)(a) as a place of public religious worship and as to the rest under paragraph 11(1)(b) as a church hall, chapel hall or similar building.

5. There is an agreed statement of facts, and an uncontested witness statement on the part of the valuation officer; and evidence was given, on the basis of a witness statement and in cross-examination, by the Reverend Eric Gordon Webb, the Minister of the Church. On the basis of this I find the following facts. The building, the principal part of which was built in 1870, has an imposing frontal elevation constructed in a Palladian style with a full height-projecting

6. The church as originally built was extensively modernised and extended in the mid 1980s following the granting of planning permission on 19 April 1983 for “Extension to form Church Hall, Class Rooms, Vestries and Caretakers flat together with alterations to the existing elevations. For continued church use”. The works consisted of three distinct elements as follows:

- (a) Alteration of the existing premises, which included the raising of the sanctuary floor together with excavating under the sanctuary to provide additional accommodation at lower ground level;
- (b) the construction of a large single storey extension to the rear of the listed building for use as a general purpose church hall; and;
- (c) the construction of a three storey extension to the west of the listed building to provide two rooms and a store at lower ground level, a further two rooms and a store at upper ground floor level and a steward’s flat at first floor level.

7. The principal floor of the building main building, to which access is gained from the street by ascending a short flight of steps to the portico and passing through an entrance lobby area, contains the sanctuary. This is a high-ceilinged room with communion table and organ, capable of seating between 200 and 300 worshippers in the main floor area, with additional seating available in a balcony, to which access is gained by two staircases rising from the entrance lobby area. Natural light is provided by tall, wooden, Victorian style windows to the sides, with additional lighting from windows in the balcony area. A door let into the side wall close to the communion table gives access to a side extension which, at this level, contains a lavatory, minister’s and steward’s offices, and various store cupboards. The side extension also has a wheelchair-accessible side entrance at this level, which opens onto a gently sloping walkway rising from the street, and internal staircases leading up and down. Access to the main chapel hall at the rear of the original building is by the paved roadway. Car parking is available to the side and rear. The property occupies a roughly rectangular area of land the total area of which is approximately 1706 sq m.

8. The lower ground floor has five points of access. These are (1) by internal stairs down from the entrance lobby area at principal floor level, (2) by internal stairs down from the side extension at principal floor level, (3) by two side doors accessible from the street giving direct access to the appeal premises, (4) by a further side door leading into the side extension at lower ground floor level which opens onto a made-up drive leading from the street to a car parking area at the back of the church, and (5) through the main entrance to the church hall which opens onto the car parking area. The church hall occupies the whole of the rear extension to the original church building. It comprises an entrance vestibule, with access to ladies and gentlemen’s lavatories, and a large hall with a stage at the opposite end to the entrance with

9. The central corridor runs the entire length of the original building, linking the stairs down from the main entrance lobby to the door through to the church hall. On one side of this corridor are ladies' and gentlemen's lavatories, and three further rooms, one large and two small. The two smaller rooms interconnect internally, and have access through to the rooms under the stage in the church hall. On the opposite side of the corridor are the appeal premises and the kitchen, which serves the church hall, separated by a side corridor leading to the side extension. At lower ground floor level this side extension contains two small rooms and a store, a side door giving access to the driveway leading from the street to the car parking area, an internal staircase leading up to the principal floor level, and an internal staircase leading down to a low-ceilinged basement which houses the central heating plant for the entire building.

10. The appeal premises comprise a large, rectangular open-plan room, having a total area of 73.16 square metres or thereabouts, divided by a timber and glass partition with a sliding door into two unequal parts, one of 45.07 square metres and one of 28.09 square metres. There is a single WC available for customers' use in a small adjoining room, with access from a door from the smaller bookshop area. Both parts of the appeal premises have windows and doors opening onto a paved courtyard or patio at lower ground floor level, which is reached by a gentle ramp down from street level. Durable plastic tables and chairs are provided to enable this patio to be used as a sitting-out area when the clement weather is fine.

11. In one corner of the smaller division of the appeal premises is a shop counter and service area, with a large serving window through the partition and serving counter, enabling staff to serve both parts of the appeal premises from a single location. The serving area has its own door opening on to the central corridor of the lower ground floor (the only direct access from the smaller division to the rest of the church building) and is equipped with electronic tills, a range of storage cupboards, worktop surfaces, a sink unit with drainer and a refrigerator.

12. The smaller division of the appeal premises is furnished with fixed wall-mounted bookshelves and moveable shelving units, and is used as a bookshop selling a wide range of Christian books, greeting and occasional cards, devotional items and the like. The larger division of the appeal premises is furnished with tables and chairs, and there are notice boards on the walls detailing the activities of a number of Church groups and giving information and details of various counselling and similar services. It is used as a coffee shop selling hot and cold drinks and light refreshments. Full meals are not served. No food preparation takes place at the appeal premises, as all food sold there is prepackaged. There is a double glass door from the larger division of the appeal premises to the central corridor of the lower ground floor, enabling customers to gain access to the toilets at this level. Although both divisions of the appeal premises have glass doors opening onto the courtyard or patio, the door from the larger

13. Mr Webb, whose evidence I accept in its entirety, said that Cornerstone Christian Books and Coffee Shop was set up by the church council when the works to the church were carried out 20 years ago as a matter of deliberate policy to provide the facility as part of the church's mission and service. Cornerstone, he said, was a non-profit-making activity provided as a service to the local community and staffed entirely by volunteers. Any surplus remained under the control of the church council which ring-fenced it for Christian outreach and mission. The surplus was £8,900 in 2005-6, but it fluctuated.

14. The encouragement of reading had been an integral feature of the Methodist faith since John Wesley, and the bookshop was provided for this purpose. The coffee shop had modestly pitched prices and sought to attract people as part of the church's outreach and mission. Mr Webb produced a copy of the written guidance provided at a training session to the volunteers who staff the Cornerstone shop. It begins as follows:

“When people come into Cornerstone they do so for a variety of reasons –

- Coffee
- Books
- A rest
- A chat
- Friendship
- Counselling
- Seeking Christ

As a Church we have set up Cornerstone for a variety of reasons, and if we were to list these in terms of priority it would probably be something like the following –

- Seeking Christ
- Counselling
- Friendship
- A chat
- A rest
- Books
- Coffee

As you can see from the two lists above, people's expectations of Cornerstone when they come in and what we desire to offer, are very similar but in a different order. Now really the question is: How are we going to bridge the gap between what a

person anticipates when they come into Cornerstone and what we hope ultimately to offer them?”

In answer to Mr Kolinsky Mr Webb said that the coffee and book shop formed part of the church’s service to the wider community. Local doctors, for instance, would suggest to depressed patients that they should come here. Worship inspired mission, and he found it difficult to draw the distinctions that the VO sought to draw between the Cornerstone use and the use of other parts of the church and church hall building. Such distinctions seemed to him to be artificial.

15. Mr Webb said that the coffee shop was substantially used in connection with church activities. Every Friday there was a lunchtime service attended by about 50 people, and a substantial proportion of the congregation would gather at the coffee shop before proceeding to the sanctuary for the service and most of them would go down to eat their lunches there afterwards. Twice a month when communion was celebrated, and also on Ash Wednesday, Maundy Thursday, Ascension Day and Christmas Eve, the coffee shop was used by the communion stewards for the preparation of the bread and the washing up of the 200 or so small glasses in which the wine was served. Occasionally coffee would be served in the coffee shop to worshippers after the Sunday morning services, and once a month, before the evening service, the coffee shop would be used as the venue for the “bus tea”, where elderly members of the congregation collected by community transport would be served tea provided by church members. On Christmas Day it was opened to provide free food and fellowship to the homeless and those who would otherwise be on their own. In the evenings after Cornerstone had closed the coffee shop would be used for church meetings and, between September and March, for bible study groups. The kitchenette area in the bookshop would be used in when the coffee shop was being used for these various purposes outside opening hours. Specifically the meetings were those of the Central Church Council (4 times a year), the Church Life meetings (3 times), the Church in the World meetings (3 times), the Church Property and Finance Committees (probably 5 times), the Pastoral Committee (twice), the Church Worship Team (4 times), the Circuit meeting of the 11 churches in and around Chesterfield (once or twice), the Circuit Local Preachers’ meeting (once or twice), the Circuit Finance and Property Committees (once each) and the Circuit Team meetings (3 times).

16. In its decision, given on 16 March 2007, the VT said that the premises fell within the ambit of church hall, chapel hall or other similar building as that phrase had been interpreted in the Lands Tribunal’s decision in *Gallagher (VO) v Church of Jesus Christ of Latter-Day Saints* [2006] RA 1. Having listed a number of meetings and activities for which the coffee shop was used, it went on:

“In addition to the above, the hereditament is also used on a regular basis both during and following Church services. The tribunal considered all these uses to be significant in ‘connecting’ the premises to the Church and thus were firmly of the opinion that it is used in connection with a place of public religious worship. Whilst the Valuation Officer contended that the prime use is that of a coffee shop, the tribunal did not consider that this precluded it from being used in connection with the place of religious worship. Indeed the tribunal noted that the Cornerstone philosophy effectively included the coffee shop as being part of their ethos.

The tribunal then considered whether the hereditament is used for the purpose of the organisation responsible for the conduct of public religious worship in that place. It was accepted that the evidence presented by the appellant clearly illustrated that the premises is used for the purpose of ministry, worship, fellowship, mission and service and for the care in the wider community, which is the whole purpose of the Methodist Church, and the obligations placed upon it. The tribunal noted the appellant's contention that the Cornerstone Christian Books and Coffee shop was set up by the Church Council with the specific intention of providing a facility as part of the Church's mission and service.

The tribunal also noted all the points raised regarding the staffing of the cornerstone by volunteers, its non-profit making activity, the nominal low prices of the refreshments available, and the encouragement to the wider community of being able to use the premises as a place where people can go to talk, rest and be counselled in a caring environment, and felt that these points were all relevant in determining this point. The tribunal concluded that the hereditament was in fact, used in a manner to satisfy this requirement.”

17. The VT said that it noted the contentions advanced in relation to paragraph 11(2) but said that it was not persuaded that it applied as the use of the room did not necessarily meet the administration requirements of this provision. However, since the appeal succeeded on paragraph 11(1)(b) it did not feel it necessary to explore the application of paragraph 11(2) further.

18. In submitting that the VT had come to the wrong decision Mr Daniel Kolinsky for the VO said that, while it was accepted that there was a church hall serving the Central Methodist Church, the appeal premises were not part of it since the uses to which they were put for the majority of the time were not church hall activities. They consisted of a coffee shop and a book shop use, advertised to the general public, with access through an entrance separate from the church and church hall (albeit connected internally with those parts of the building). The book shop was not used for any purpose other than the sale of books, and while the coffee shop was put to other uses outside opening hours these were minor compared with its main use as a coffee shop open to the public. Mr Kolinsky accepted that the appeal premises were used “for the purposes of the organisation responsible for the conduct of public religious worship” in the church, but he submitted that they were not used “in connection with” the church to any material extent. The mere existence of a religious motivation for the activities was insufficient.

19. Having referred to *Gallagher* in the Lands Tribunal, the Court of Appeal ([2007] RA 1) and the House of Lords ([2008] 1 WLR 1852), Mr Kolinsky submitted that while there could be no temporal apportionment for church hall use, there could be temporal apportionment under section 11(2). If, therefore, the primary submission, that the appeal premises were a coffee shop and book shop and not part of the church hall, was accepted, there could be an apportionment to reflect the limited extent to which the coffee shop was “used for carrying out of administrative or other activities relating to the conduct of public religious worship” in the church. While the primary submission on this was that such activities were *de minimis*, if that was not accepted a minor temporal adjustment might be appropriate.



20. For the church, Mr Christopher Lewsley submitted that, while the introduction into the legislation of the phrase “to the extent that” required a more focussed approach than before, this did not mean that, where (as was the case with a church hall, chapel hall, or similar building) a characteristic of a building was that it is used for a spectrum of activities, it was appropriate to consider each activity separately and to assess whether if that activity were the only activity the property would be exempt. He submitted that the starting point was to consider the activities present within the building taken as a whole and to assess in that context whether any activity was, as a matter of fact and degree, outside the spectrum of activities appropriate to a church hall, chapel hall or similar building.

21. Applying this approach, Mr Lewsley said that the following factors were to be noted. There was a single rateable occupier of the entire premises, namely the Church Council who were managing trustees of the Central Methodist Church at Saltergate. The coffee shop and bookshop use was an activity of the Church Council run by a sub-committee of the council. It was the Church Council that was the legal entity which exercised control over the entire premises and was therefore the rateable occupier. The purposes of the Methodist Church included the advancement of the Christian faith. The Model Trusts on which the premises were held stated that the trustees (ie the Church Council) might permit any suitable building or part of a building to be used as an office, hostel, college, bookshop, or other institution for or incidental to any purpose of the Church. The Cornerstone training session notes made it clear that, amongst the reasons for setting up and operating Cornerstone, the advancement of the Christian faith was the first priority, with community and social purposes also being important reasons. Cornerstone was run using volunteer staff. Any surplus was used for the advancement of Christian faith. The items sold in the bookstore were Christian books, greeting and occasional cards, devotional items and the like.

22. Mr Lewsley contended that the sale of such religious items in this way was not, as a matter of fact and degree, out of place in a church hall, chapel hall or similar building. In the circumstances of the present case it was a method of promoting the advancement of the Christian faith and wider community purposes, reflecting the nature and purposes of the ecclesiastical body that was in occupation. It was not unusual for a church hall, chapel hall or similar building to be equipped with kitchen facilities and for coffee to be provided to accompany activities or gatherings in the building. It was moreover important to bear in mind that part of the context was that the appeal premises were used outside the shop opening hours for a variety of other uses which were accepted to be within the range of uses appropriate to a church hall, chapel hall or similar building. Also, part of the context was the surrounding uses with which there was interconnection in the same building, ie chapel, general purpose hall, games room, lounge etc. Viewed in that context, Mr Lewsley said, the book and coffee shop was consistent with the description of the whole as a chapel, chapel hall or similar building.

23. In addition, Mr Lewsley submitted, a number of the activities in the appeal premises were administrative and other activities relating to the organisation of the conduct of public religious worship within the meaning of paragraph 11(2)(a), so that there was an entitlement to exemption on this ground. The activities which fell within this provision were the preparation of holy communion, the evening meetings of church committees and groups and the circuit and other meetings. These were not, as the VO suggested, de minimis or very minor. Contrary to

24. I accept substantially Mr Lewsley’s submissions and the conclusion reached by the LVT in relation to paragraph 11(1)(b). Under that provision there are three requirements that have to be met if premises are to qualify for exemption. They must constitute, or constitute part of, a church hall, chapel hall or similar building; they must be used in connection with a place of public religious worship; and they must be used for the purposes of the organisation responsible for the conduct of public religious worship in that place. It is accepted on the part of the VO that the third requirement is met, but it is contended that the first two are not. In *Gallagher* in the Court of Appeal ([2007] RA 1 at paragraph 23) Neuberger LJ said that he saw force in the point that it was better to consider the provision as a composite whole, and I accept that this is likely to be the most useful approach. Support for it is also to be derived from the House of Lords judgments, where at paragraph 16 Lord Hoffman said:

“...in my opinion the words ‘used in connection with’ carry, in this context, an implication of ancillary use, which is reinforced by the requirement that the building should be similar to a church hall or chapel hall.”

And at paragraph 33 Lord Hope said, with reference to paragraph 11(1)(b):

“...The key words, which colour the meaning of the entire paragraph are the words ‘used in connection with’. These too are words whose meaning has long been settled by decisions of the court in the context of exemption from non-domestic rating.”

He referred to the House of Lords decision in *W & J B Eastwood v Herrod (VO)* [1971] AC 160, which concerned those words as they appeared in provisions relating to agricultural buildings in section 2(2) of the Rating and Valuation (Apportionment) Act 1928. There, at 168, Lord Reid had said that the ordinary meaning of the English language suggested that the buildings must be subsidiary or ancillary (to the agricultural land together with which they were occupied).

25. Both parties referred to my attempt in *Gallagher* to encapsulate the essence of a church hall. I said ([2006] RA 1 at paragraph 51:

“...without...attempting a complete definition, I think that in essence a church or chapel hall is a hall, often with other rooms and ancillary accommodation, which is used for functions and meetings by the congregation, and at times also by others, for the conduct of church business and sometimes for wider community purposes that reflect the nature and purposes of the ecclesiastical body that is in occupation.”

26. In the Court of Appeal at paragraph 34 Neuberger LJ said with reference to this passage:

“I have already mentioned the risk of seeking to define, or redefine, an expression used in a statutory provision, and the opening words of this quotation indicates that Mr Bartlett appreciated the risk as well. Having said that, it seems to me that his formulation is pretty satisfactory, save that it may be a little too restrictive so far as the words which follow ‘wider community purposes’ are concerned.”

Later, at paragraph 41, he referred to the “multifarious type of use” that the expression “church hall, chapel hall or similar building” envisaged.

27. The VO’s contention is that the use of the appeal premises is not ancillary to the church and is outside the range of activities that could realistically be described as church hall activities. I do not agree. Leaving aside for the moment those activities that take place outside the hours when Cornerstone is open to the public, I am satisfied on the facts that the underlying purpose of the coffee shop and bookshop is to promote both the Christian religion as practised by Methodism and attendance at the church itself and involvement in its activities. That is clear, it seems to me, from what the Church hopes “ultimately to offer” those who come to Cornerstone (see paragraph 14 above) and from other quite minor indications such as the juxtaposition of the moveable coffee shop sign and the church notice board, and the notice boards on the walls inside the coffee shop that detail the activities of Church groups and give information and details of various counselling and similar services. It is strongly supported by the Minister’s evidence as to the purpose of the use and its close association with the other activities of the church in the building. Physically the shop is part of the church and church hall building and it is never shut off from it internally. Its use in my judgment is ancillary to the church just as much as the other parts of the church hall are and it is not outside.

28. In the light of this I see no reason for thinking that the coffee shop and bookshop use, given its underlying purpose and the way that it relates physically to the rest of the church hall, is outside the “multifarious type of use” (in Neuberger LJ’s words) comprehended in the concept of a church hall; while the uses to which it is put when closed to the public are undoubtedly ones that are church hall uses and lend support to the conclusion that the appeal premises are indeed part of the church hall. The appeal must therefore be dismissed.

29. Mr Lewsley argued additionally for exemption on the basis of paragraph 11(2)(a) and contended that the words “to the extent that” had a spatial connotation only. For completeness I will deal with these submissions.

30. Subparagraph (2)(a), covering as it does “administrative or other activities relating to the organisation of the conduct of public religious worship”, is rather restricted in its scope: see *Gallagher* in the Lands Tribunal ([2006] RA 1 at paragraph 50) and the approval to what was said there in the Court of Appeal decision ([2007] RA 1 at paragraph 28). Only a few of the activities seem to me to fall within the terms of this provision, since most of the meetings were of groups and committees not concerned with the organisation of the conduct of services in the church, and I think that the VO’s contention that they were insufficient to give rise to exemption is correct.

31. I do not think that Mr Lewsley is correct in his contention that the words “to the extent that”, wherever they appear in Schedule 5, have a spatial connotation only. At paragraph 47 of my decision in *Gallagher* I said this:

“The words ‘to the extent that’ also appear in other exemption provisions in Schedule 5 of the 1988 Act and they seem to me to be a useful, fair and practical addition to the provisions of the earlier legislation. Depending on the context in which they appear they are capable of bearing either a physical or temporal meaning or both (see Ryde D[617]-D[627]), and both parties in the present case agreed that this was so. The exemption in sub-paragraph (1) is given to the extent that the hereditament “consists of” a place of public religious worship or a church hall etc. The qualification here, in my judgment, is a purely physical one, so that those parts of a hereditament that are neither a place of public religious worship nor a church hall etc are excluded from the exemption. But the fact that, for instance, a church is used from time to time for secular concerts or a church hall is let out for functions unconnected with the church would not lead to reduction in the relief that is accorded. The church would still be a church and the church hall would still be a church hall and, to the extent that a hereditament physically comprised one or other or both of these, it would ‘consist’ of it or them for the purposes of the exemption. The qualification as it applies in sub-paragraph (2), on the other hand, in my view operates in terms of both space and time. That is because exemption is conferred to the extent that the hereditament is occupied by an organisation of the sort specified and used as specified in (a) or (b), and a use can be viewed both in terms of time and the space to which it relates.”

32. In the Court of Appeal Neuberger LJ said at paragraph 21 that in his judgment I was right as to the effect of the words “to the extent that”. In the House of Lords Lord Hope at paragraph 38, having concluded that the patrons’ services building did not qualify for exemption under paragraph 11(1)(b), rejected the contention that there was an analogy with the treatment of the hereditament in *West London Methodist Mission v Holborn Borough Council* (1958) 3 RRC 86, saying:

“38...The legislation is now qualified by the words ‘to the extent that’. Their effect is to require an apportionment to be made between those parts of the building that qualify for the exemption and those which do not.”

33. Lord Hope went on to consider whether paragraph 11(2)(a) was applicable, and he said:

“39...The words ‘to the extent that’ which qualify paragraph 11(2) would require an apportionment if a definable part of the building was occupied and used for these purposes. It need not be separated from the rest of the building by walls or partitions, but it must be capable of being identified in the rating list for exemption as a separate hereditament...”

And he rejected the contention that the grounds building was entitled to exemption under paragraph 11(2)(a), saying:

“41...It serves the whole of the site including the stake centre. But it is not suggested that a definable part of it is used for serving the stake centre, nor is serving the stake centre the primary purpose for which it is used...”

34. Lord Mance entered a reservation about Lord Hope’s use of the words “definable part”. He said:

“55. I would only add that I would not myself wish the phrase ‘definable part’ used in paras 39 and 41 of the speech of my noble and learned friend, Lord Hope, to be understood as requiring any physical or spatial separation of different parts of a building before the building could be said to some ‘extent’ either to consist of a place or building within paragraph 11(1) or to be occupied for the conduct, or used for activities relating to the organisation, of public religious worship within paragraph 11(2)(a) or (b) of Schedule 5 to the Local Government Act 1988. However, here neither the patrons services building nor the grounds building was shown to be, to any ascertainable extent, occupied for the conduct, or used for activities relating to its organisation of such worship.”

35. Mr Lewsley relied on what was said in both these speeches for his contention that the words “to the extent that” have only a spatial connotation wherever they appear in Schedule 5. I do not see how what Lord Mance said could possibly lend support to that contention. In relation to the passages in Lord Hope’s speech it seems clear that he was addressing himself to the question of whether part of an otherwise non-exempt building might qualify for exemption. That there should need to be a definable part of the building that is used for an exempt purpose before exemption can arise is understandable, since, as Lord Hope said, it would be necessary for the part in question to be identified in the rating list. Where, on the other hand, the building in question is mainly used for exempt purposes but is partly not so used there would be no need for the purpose of an entry in the list to define the spatial extent of the non-exempt use. The entry could relate to the whole of the building, state that it was partially exempt and include a value that reflected the degree of non-exempt use. (That could have been done by the VO in the present case instead of entering the shop as a separate hereditament.) Lord Hope, in my judgment, was not addressing himself to this latter situation, so that I do not think that what he said supports Mr Lewsley’s contention.

36. I have concluded that the VT was correct in its decision that the coffee shop and bookshop were part of the church hall and so exempt. The appeal is dismissed. The parties are now invited to make representations as to costs, and a letter dealing with this accompanies this decision, which will become final when the question of costs has been determined.

Dated 17 July 2009

George Bartlett QC, President