

PUBLIC PARKS

RATEABILITY AND EXTENT OF THE HEREDITAMENT

A number of queries have prompted a short paper on this topic.

The main reference work is Ryde on Rating and the Council Tax – Chapter 7 [D 713]

Background

In the case of *Hare v Putney Overseers* the Courts determined that land dedicated to the public as a highway is not rateable because the public is not in beneficial occupation. In *Lambeth Overseers v LCC* [the Brockwell Park case] the House of Lords extended that principle to a public park.

Legislation

Any doubts, which may have existed in our minds about the scope of this decision, were removed by legislation. The Rates (Amendment) (Northern Ireland) Order 1996 at Article 11 amended Schedule 11 to the Rates (Northern Ireland) Order 1977 by inserting a new entry – 11A that provides as follows:

- (1) This entry applies to any park, recreation or pleasure ground, open space or public walk –
 - Which has been provided by a district council or 2 or more district councils acting jointly or by the Department of the Environment under Article 6 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1984: and
 - Is available for free and unrestricted use by members of the public.
- (2) In determining for the purpose of this entry whether use is unrestricted no account shall be taken of any time during which use is restricted by closure (at night or otherwise).

Extent of the Hereditament

The provision that a park etc is not rateable to the extent that it is provided by a district council or by the Department seems to suggest that if part of a park (for example a cafe) were let out and separately occupied so that it constituted a separate hereditament, that the café would be valued as such and would be rateable. The logic being that the café would not in itself be a park and would not be provided by a council or by the Department. This however may not be the case. In *Sheffield Corporation V Tranter* [VO] the Court of Appeal held that a refreshment pavilion situated in a public park and let to a caterer on a yearly tenancy was not rateable on the grounds that it was an essential amenity to the park and was, like

the park itself, deemed to be occupied on behalf of the public. There are numerous other examples – bandstands, bowling greens, park keeper’s residence etc [a list of examples and relevant case can be found at section 723 of “Ryde”]

The test to use in making a decision about the rateability of any “ancillary” structure was formulated by Lord Evershed in the Sheffield Corporation case noted above:

“it must be a question of fact and degree in cases of this kind whether it can be said that the refreshment pavilion – or to take an example cited in argument, a hut or shed for storing other amenities of the park such as the park chairs – and the part of the park so occupied and used, is in reality still an inherent and essential part of the park as an entity, providing a necessary amenity for the park; or whether the hereditament has been so carved out as to acquire a distinct status from the park and to render itself liable for rating assessment.”

Free and Unrestricted Use

The requirement that the park should be “available for free and unrestricted use by members of the public” does not mean that the public must have unrestricted access or that charges for facilities provided cannot be made. The courts have held that an appropriate amount of regulation is not inconsistent with public use. This concept will be familiar to readers as both the Lurgan Swimming Pool and Maysfield Leisure Centre cases acknowledged that an appropriate amount of regulation did not mean that the public user test was not satisfied.

Issues

No difficulty should be experienced in identifying parks etc which should be excluded by virtue of the legislation but other features of parks, such as cafes, should be examined bearing in mind the test formulated by Lord Evershed and the decided cases referred to in “Ryde”.

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