

## Insights

# EMPTY PROPERTY RATES IN ENGLAND; GUARDING THE GUARDIANS?

Nov 05, 2020

## A tax on failure

The two taxes in England on the occupation of property are non-domestic rating and, for domestic rating, council tax. Pre COVID, business rates yielded £30bn and council tax £36bn annually. Rates are payable on business premises whether occupied or empty. For some general comments on empty property rates ( a tax on failure) see my article “Empty property rates in England; how can a business mitigate its liability?” posted on 23 October 2020.

Affected ratepayers look to mitigate their liabilities to empty property rates. The devolved administrations of the UK are developing their own rules to restrict mitigation. This note provides comments for England.

## Yes, you can

In England, you can mitigate your liability for business rates using a variety of techniques. This note looks at the use of property guardians.

## Property guardians

Empty buildings may need security. Live in “guardians” can provide that service. There are providers of guardian services who will find people to move into empty business premises and live there. These arrangements should also produce a saving of business rates.

## How does that work?

Property is domestic and liable to Council Tax if it is used wholly for the purposes of living accommodation. Otherwise, unless exempt, it will be liable to be assessed for non-domestic rating. Property may be “wholly” used for a particular purpose even if not all of it is so used. Property which is not in use is domestic property if it appears that when next in use it will be domestic.

Where a property is partly used for domestic purposes, and partly used for non-domestic purposes, it is a “composite” and appears in both the rating list and the Council Tax valuation list.

A property may be a “composite” if, notwithstanding its mixed domestic and non-domestic use, it is nevertheless a single unit. Examples of composite hereditaments include live-work units, owner-occupied flats above shops, and public houses with resident landlords where the same person is in rateable occupation of the whole property for both non-domestic and domestic purposes.

## **How much?**

The rateable value for a composite is an amount equal to the rent, which “would reasonably be attributable to the non-domestic use of property”. Council tax should be the cheaper option.

## **Arrangements**

In a pending case, the owner of a vacant office building, earmarked for redevelopment, agreed with a provider that they would install 32 guardians to provide a robust level of protection. The owner gave the provider a licence to occupy the building and the provider granted licences to the individual guardians.

The area over which each guardian was granted rights was referred to as the “living space” meaning the area designated as available for occupation from time to time, which could be varied by the provider. In practice the living space extended to the whole of the building excluding the plant rooms. The guardians could occupy the living space and share it with the others. A guardian had no right to exclusive occupation of any part of the living space and could be required to move to a different room. All those permitted to occupy the building were entitled to share the whole of the living space and they were to agree amongst themselves how it was to be shared, but each guardian would have a room of their own.

## **How to tax the premises**

In 2019, the Upper Tribunal held that the guardians’ individual rooms were separate units and the relevant occupier was not the owner of the building but the individual guardian whose temporary home it was. The rooms were used wholly for the purposes of living accommodation and the guardians were not liable for rates but were liable for council tax. The building was not a composite because there was no single occupier of the domestic and non-domestic space.

That outcome suited the owner and disappointed the local authority responsible for collections.

## **Appeal**

The decision of the Upper Tribunal will be tested in an appeal hearing in the Court of Appeal later this month.

## **What to look for**

Ratepayers will be hoping that the Court of Appeal follows the reasoning of the Upper Tribunal. Nevertheless, the Court of Appeal has an opportunity to hold that it is the council's ability to charge empty rates that is in greater need of guarding.

*Ludgate House Limited v Ricketts and London Borough of Southwark [2019] UKUT 278 (LC)*

## RELATED PRACTICE AREAS

- Real Estate
- Real Estate Disputes

## MEET THE TEAM



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