THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; exemption; whether places of public religious worship; Gallagher v Church of Jesus Christ of Latter-Day Saints [2008]; public test set out in Broxtowe Borough Council v Birch [1983]; burden of proof; whether offices were exempt regardless of use; appeals dismissed.

Re: 146 Queen Victoria Street, London EC4V 4BY

68 Tottenham Court Road, London W1T 2EZ

258-260 Deansgate, Manchester M3 4BG

APPEAL NUMBERS: 503025236539/053N10, 521025282605/053N10, 421525302099/134N10.

BETWEEN:

CHURCH OF SCIENTOLOGY

RELIGIOUS EDUCATION COLLEGE INC

(Appellant)

and

ANDREW RICKETTS

RITCHIE ROBERTS

(Respondent)

(Valuation Officers)

BEFORE: Gary Garland (President)

CLERK: Jon Bestow FIRRV (Registrar)

REMOTE HEARING: 26 May 2021

PARTIES PRESENT: Mr Cain Ormondroyd of Francis Taylor Building for the Appellant. Miss Hui Ling McCarthy QC of 11 New Square for the Respondents.

WITNESSES: Mr Massimo Angius and Peter Hodkin for the Appellant. Jonathan Cooper and Dr George Chryssides for the Respondents.

Summary of decision

The appeals were dismissed as none of the buildings contained a place of public religious worship. The legislation did not permit exemption to be awarded to offices regardless of location and use, on the basis that somewhere in England there was an exempt building.

Remote Hearing

1. Ordinarily, the tribunal would have considered and determined these appeals, following a public face to face hearing. However, in view of the Covid 19 pandemic and to avoid justice being further delayed, a remote hearing was held.
2. As President, I am required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. By virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.
3. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working.
4. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by me before I came to my decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Introduction

5. These appeals concern the following entries in the local rating lists:

   146 Queen Victoria Street, London EC4V 4BY

   Description of the property: Offices and Premises

   Rateable Value: £810,000

   Proposal: 12 March 2015

   68 Tottenham Court Road, London W1T 2EZ

   Description of the property: Shop, Meeting Rooms, Interview Rooms, Offices and Premises

   Rateable Value: £112,000

   Proposal: 18 March 2015

   258-260 Deansgate, Manchester, M3 4BG

   Description of the property: Offices and Premises

   Rateable Value: £51,500

   Proposal: 18 March 2015

6. All three proposals sought deletion of the existing entries from 31st May 2011 on the grounds that "the property is now domestic or exempt from rating and is no longer rateable".

Agreed facts

7. The agreed facts were as follows:

   1. Scientology is a religion.

2. The Appellant is an incorporated association registered as a charity in Australia (no details of current UK status provided).

3.The three appeal hereditaments, are all occupied by the Appellant, together with other Churches of Scientology in England, including Saint Hill in East Grinstead.

4. Each of the three appeal hereditaments is certified as required by law as a place of religious worship by the General Register Office. The Chapel at 146 Queen Victoria Street was registered on 18 December 2013 and the whole of 146 Queen Victoria Street was registered on 19 May 2014. 68 Tottenham Court Road was registered on 19 May 2014. 258-260 Deansgate was registered on 8 May 2014.

5. Each of the three appeal hereditaments is also registered as a place of religious Worship for the solemnisation of marriages. The dates of being so registered are the same as the dates on which they were registered as places of meeting for religious Worship.

6. On 13 December 2013 the UK Supreme Court ordered the General Register Office to register the Chapel at 146 Queen Victoria Street as a place of meeting for Worship under section 3 of the Places of Worship Registration Act 1855 and as a place of meeting for the solemnisation of marriages under section 41(1) Marriage Act 1949.

7. The largest Scientology Church in England is situated Saint Hill in East Grinstead. West Sussex. Two buildings at that property were separately certified as required by law as places of religious Worship and as places of meeting for the solemnisation of marriages by the General Register Office on 3rd February 2014. These buildings are known as Saint Hill Chapel and Saint Hill Castle. On 18th June 2014 the VOA determined that Saint Hill Chapel and The Great Hall at Saint Hill Castle were places of public religious Worship within the meaning of sub-paragraph (1)(a) of paragraph 11 of Schedule 5 to the Local Government Finance Act 1988, and exempted them from rating, together with a number of offices under sub-paragraph (2)(b).

8. On 1st April 2017 the VOA removed from the rating list another hereditament occupied by the Appellant. This was known as Storage Barn Bullards, which was used for the storage of parishioner files, on the ground that it was wholly used for office purposes by an organisation responsible for the conduct of public religious Worship in a place falling within sub-paragraph (1)(a) of paragraph 11, Schedule 5 to the Local Government Finance Act 1988.

9. The Appellant has an internet presence. As at today's date, the website contains a description of a Scientology Sunday Service.

10. The doorway to 146 Queen Victoria Street has immediately above it a large Scientology cross and a sign saying "Church of Scientology London". The doorway is glass.

11. 146 Queen Victoria Street has a disabled entrance, with a button which opens it automatically.

12. 146 Queen Victoria Street has 6 windows at pavement level.

13. Churches of Scientology offer a practice known as auditing. These are provided to both groups and one-on-one in various places in the appeal properties.

1. 68 Tottenham Court Road is part of the Church of Scientology London and serves as an information centre.

15. 68 Tottenham Court Road has glass doors and frontage.

16. 258-260 Deansgate is the location of the Church of Scientology in Manchester.

17. 258-260 Deansgate has glass doors and frontage.

8. At the hearing, and under cross examination, Mr Cooper from the VOA agreed to the following:

a. All 3 appeal hereditaments are open to the general public 7 days a week from 9.30 am to 6 pm, as well as at other times.

b. All 3 appeal hereditaments house Chapels, to which the public enjoy free access 7 days a week, during the times that the properties are open.

c. The Appellant holds congregational Services in its Chapels – a Sunday Service (which has also been on a Monday) and a Testimony Service. All such Services are open to the public.

d. The Appellant has an extensive internet presence. On its own website it invites the public to attend many events at its churches, including Sunday Services. The website also contains a description of a Scientology Sunday Service so that the public know what to expect.

f. No donations or other payments are required, requested or expected from anyone attending Services in the Appellant's Chapels.

h. 146 Queen Victoria Street has 6 windows at pavement level. While what is in the windows may vary from time to time, they contain invitations to come into the building for different activities.

i. 146 Queen Victoria Street usually has an A-Board and other notices outside inviting the public to come in for different activities when it is open.

j. 146 Queen Victoria Street has on the side of the door a permanent notice inviting the public to visit the Information Hall inside.

k. Sunday Worship Services in the Chapel are promoted in the windows and on other notices outside from time to time at 146 Queen Victoria Street.

n. Thousands of members of the public visit 146 Queen Victoria Street each year (when there is no lockdown).

o. Churches of Scientology offer a spiritual practice known as auditing and religious training. These are provided congregationally in the Chapels, and elsewhere in the appeal properties. They are also provided in classroom/meeting areas and in minister offices.

p. 68 Tottenham Court Road is part of the Church of Scientology London and serves as an information centre for the London Church.

q. 68 Tottenham Court Road has glass doors and frontage. staff stand out of the front handing out leaflets inviting the public to come in to watch a Scientology film and for other activities in the building.

r. 68 Tottenham Court Road introduces the public to Scientology by providing books that can be perused or bought, through film showings in 2 purpose-built film rooms, and through an audio-visual exhibition. It also provides spiritual and pastoral assistance, and directs public to 146 Queen Victoria Street for further information and religious Services. From time-to-time public Worship Services are held at 68 Tottenham Court Road, either on the ground floor or an upper floor Chapel.

s. The upper floors of 68 Tottenham Court Road are used as meeting places for Scientology Services, as well as social and communal activities.

t. The Church of Scientology has a strong social mission and frequently hosts drug education and human rights events, as well as interfaith meetings and other community events at the 3 appeal properties.

u. 258-260 Deansgate is the location of the Church of Scientology Manchester.

v. 258-260 Deansgate has glass doors and frontage. It has a large sign "Church of Scientology Manchester" and its website address clearly visible on its exterior

w. 258-260 Deansgate provides the same Services and activities as 146 Queen Victoria Street, albeit on a smaller scale. It holds congregational Sunday Services and Testimony Services in its Chapel on the 2nd floor.

9. There were a few facts which Mr Cooper did not agree to:

e. Sunday Services are also promoted by the Appellant on Facebook and Eventbrite (Mr Cooper – not present at the Material Day).

g. The doorway to 146 Queen Victoria Street has immediately above it a large Scientology cross and a sign saying "Church of Scientology London". The doorway is glass and further Scientology crosses and the name "Church of Scientology London" and a large sign saying "Chapel" are easily visible to someone standing on the pavement outside (Mr Cooper – not easily seen).

l. Leaflets promoting Sunday Worship Services are available in the reception area of 146 Queen Victoria Street.

m. The times of Sunday Services and Testimony Services are on a sign immediately outside the Chapel inside 146 Queen Victoria Street.

10. Under cross examination and re-examination Mr Cooper clarified some of the points conceded earlier including:
    a. he believed the website had most likely changed between the Material Day and the hearing and that it was set out badly if it was promoting services;
    b. he was of the opinion that services were not public; and
    c. there was not always a notice visible setting out the times of services.
11. In closing, Miss McCarthy raised concerns over the approach by the Appellant's counsel in introducing unagreed facts as a question to an expert witness and questioned the value of such a technique in agreeing matters which previously

had not. I was quite surprised by the degree with which Mr Cooper agreed "facts"; facts upon which he could not possibly have first-hand knowledge not only at the date of the hearing but back to the Material Day, when he clearly was not involved in the case at the earlier date and would have had no knowledge. In my opinion his concessions to the assertions made was not truly agreement to the points being put to him and his position on these issues was of little assistance.

Evidence and submissions

12. The Appellant, on behalf of both parties, submitted a hearing bundle, an authorities bundle, skeleton arguments, a statement of agreed and unagreed facts and a separate second witness statement from Mr Hodkin following introduction to proceedings of a Charity Commission decision from November 1999.

Issue in dispute

13. The issue in the appeals comprised the extent to which each of the premises, if at all, was exempt from non-domestic rates under paragraph 11 of Schedule 5 to the Local Government Finance Act 1988. I narrowed the principle point further to:
    a. whether any of the chapels were places of 'public' religious worship;
    b. if they were, then whether any of the identified rooms qualified as a building (similar to a church hall) used in connection with the chapel; and
    c. regardless of the outcome whether areas identified as offices were exempt regardless of their use.
14. If exemption was found to apply to all or part of any of the premises, then a further issue arose as to the effective date for each list alteration (although in deciding the above points the Material Day (being the effective date) needed to be decided.

The law

15. Prior to 1 April 1990 ratepayers paid general rates on the rateable value of all rateable property (or hereditaments) regardless of whether or not they were domestic in accordance with the General Rate Act (GRA) 1967. From 1 April 1990 this changed when Community Charge (or Poll Tax) replaced the rating of domestic dwellings and a new uniformed business rate (set by the Secretary of

State) was introduced for everything else by the Local Government Finance Act 1988 (LGFA 88).

16. Whilst the GRA was abolished much of its legislation and the approach to rating established then (and earlier) was continued. This resulted in some of the case law followed today being established on legislation in force prior to 1990 but still relevant. However, one matter I did need to bear in mind was where society, fashion or technology had progressed and wasn't relevant in earlier decisions but was prevalent at the Material Day and therefore should be taken into account in my decision (such as the internet).

17. The LGFA 88 introduced local rating lists which were compiled initially on 1 April 1990 and should have been prepared for five yearly terms thereafter. However, the list that was due to be compiled on 1 April 2015 was postponed until 1 April 2017.

18. Every relevant non-domestic hereditament must be entered in a local rating list in accordance with section 42 (1) (c) on the basis that some of it is not exempt (amongst other criteria). Section 51 of the Act gave effect to Schedule 5 where a list of exemptions could be found. It was not disputed, and commonly accepted, that part or all of a hereditament may be exempt from rates.

19. The appeals before me were concerned with the exemption granted to *Places of religious worship etc* found within paragraph 11 of Schedule 5:

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.

(2) A hereditament is exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious worship in a place falling within sub-paragraph (1)(a) above and—

(a) is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place; or

(b) is used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes.

(3) In this paragraph "office purposes" include administration, clerical work and handling money; and "clerical work" includes writing, book-keeping, sorting papers or information, filing, typing, duplicating, calculating (by whatever means), drawing and the editorial preparation of matter for publication.

20. In determining whether or not the exemption applied, Neuberger LJ observed in *Gallagher (VO) v Church of Jesus Christ of Latter Day Saints* LT [2006] RA 1; CA [2007] RA 1; HL [2008] RA 317 at [31]:

"…the types of factors which must weigh with a court of law when considering whether or not a building owned and used by a particular religious group qualifies for exemption from rating, and indeed the conclusion of the court as to whether or not such a building is so exempt, will often seem surprising, even inappropriate, to members of that religion. The exercise which had to be carried out by Mr Bartlett [i.e. the Lands Tribunal] in this case, while involving consideration of the Appellant's belief and activities, required a very different focus from that which would seem appropriate to its members. His (and indeed our) perspective must be external, objective and analytical, not internal, subjective or holistic. The exercise we are carrying out is concerned with a topic which cannot be characterised as remotely religious, namely rating legislation."

21. Counsel for the Respondents reminded me what case law said about the term 'to the extent that' in paragraphs 11(1) and (2). Part of a building may be exempt and an apportionment undertaken but that the primary function of the areas in dispute must meet the exemption criteria.

22. However, in para 11(1) the exemption applied to a place of religious worship or a church hall, chapel hall or similar building. Therefore, the phrase 'to the extent that' has been given by the Lands Tribunal and higher courts a spatial meaning. In *Gallagher* Neuberger LJ stated:

"21. In my judgment, Mr Bartlett was right as to the effect of those words. Having said that, dependent on context, the words "to the extent that" "are capable of bearing either a physical or temporal meaning or both" he went on to say this:

"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…"

23. However, in relation to para 11(2) the phrase 'to the extent that' case law has established that the phrase could be applied on a temporal as well as spatial basis because the paragraph concerns the occupation and use of the parts concerned. In *Gallagher* George Bartlett QC said at the Lands Tribunal:

"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 the exemption is conferred to the extent that the hereditament is occupied by an organisation of the sort specific 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."

24. Lord Hope went on to say in the same case at the House of Lords:

"The words "to the extent that" which qualify para 11(2) would require an apportionment if a definable part of the building was occupied and used for these purposes. It need not be segregated 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. So long as this can be done, the question as to the method of apportionment is pre-eminently one for the valuation officer. No facts were put before the President to show that, in the case of any of these three buildings an apportionment would be appropriate. In this situation it will be sufficient if the building, albeit not exclusively, is nevertheless primarily occupied for a use which will qualify it for exemption under para 11(2)(a)."

25. And continued:

"I agree with Mr Sumption that this conclusion turns on fine distinctions, because areas used for the same purposes which were within the Stake Centre and not sufficiently clearly identifiable for apportionment would qualify for exemption along with the rest of the building of which they formed part. But the valuation officer must take each building on the hereditament as he finds it, according to the way it is actually occupied and used by the ratepayer."

26. There was a considerable amount of case law on such exemptions and a number cited by the parties. I have referred to those elements relevant to proceedings before me within the discussion and decision elements of this decision.

Material Day

27. The material day for these appeals is the date that the deletion is effective from in accordance with the legislation:

3 Material day for list alterations

(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.

(2) …

(4) Where the determination is with a view to making an alteration so as to show in, or delete from the list any hereditament which—

(a)…;

(b) has ceased to be, or become, domestic property or property exempt from non-domestic rating;

the material day is, subject to paragraph (5), the day on which the circumstances giving rise to the alteration occurred.

28. The Appellant argued that the effective dates (Material Day) for each appeal should be:

a. 31 May 2011 for the Chapel and remainder at the London Church;

b. 6 March 2014 for the London Church Information Centre;

c. 6 March 2014 for the Manchester Church.

29. Respondents contended that the effective dates for any exemption should be:

a. 18 Dec 2013 for the Chapel and remainder at the London Church;

b. 19 May 2014 for the London Church Information Centre;

c. 8 May 2014 for the Manchester Church.

30. The Respondents argued that the later dates were on the basis that they were not "for the time being certified as required by law" until those dates. However, according to the Respondents the process involved the premises being certified by the religious body to the registrar, who is then required to enter the certificate in a register: Places of Worship Registration Act 1855, s2.

The premises were certified (by the Church) on the following dates:

a. 31 May 2011 for the Chapel and premises at the London Church;

b. 6 March 2014 for the London Church Information Centre;

c. 6 March 2014 for the Manchester Church.

31. Mr Ormondroyd submitted in closing that exemption could be awarded from any date post the one sought which I have concluded he was looking to follow the Upper Tribunal decision in *Colour Weddings Limited* v. *Ritchie Roberts (Valuation Officer)* [2019] UKUT 0385 (LC). In that appeal the Upper Tribunal stated:

"21. Regulation 6 specified what was to be included in a valid proposal. By regulation 6(1)(e), the proposal should include:

(i) a statement of the grounds for making the proposal;

(ii) in the case of a proposal made on any of the grounds set out in regulation 4(1) [(h) and (i)] a statement of the reasons for believing that those grounds exist;

22. It will be noted that there is no requirement, in the case of a proposal made either on the grounds that the hereditament ought not to be shown in the rating list or that some part of it is exempt from non-domestic rating, for the proposer to state the date on which the deletion or exemption should take effect.

23. Accordingly, I do not think Mrs Mellors is correct, nor were the VTE in following her, that in treating Mr Ehsan's proposal as one based on deletion, the property must be considered at the date which Mr Ehsan stated in the VOA standard proposal form.

There is no requirement in the regulations that the date of deletion be specified in the proposal and no reason to restrict the ratepayer to the date so stated if the facts on which the ratepayer relies suggest a different date."

32. The Upper Tribunal in the above appeal decided the deletion date was 26 April 2015 which was the first date the member found that a deletion could take place but which was post the date of proposal (24 March 2015). Therefore, what I believe Mr Ormondroyd was implying, following the Upper Tribunal judgment, was that a proposal may be made seeking a flexible or floating date for a deletion or exemption up to the date the list closed. In the appeal before me the approach proposed by counsel for the Appellant would, in my opinion in respect of matters before the VTE, fall foul of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, in so much as the proposal must fail or be treated as invalid if it is found by the date of the proposal that no deletion or exemption should be given.

33. I therefore accepted the point that Mr Ormondroyd made that exemption should be considered not only on the date of the proposal but other later dates in accordance with *Colour Weddings* but would not go as far as post the date of proposal. I therefore considered exemption at various dates on that basis.

A Place of "*Public Religious Worship*"

34. The first consideration was whether the three hereditaments contained areas of '**public** religious worship' (my emphasis). There was no dispute that religious worship took place in all three at one time or other (although an alternative approach was made by Mr Ormondroyd in respect of Tottenham Ct Rd). I saw no suggestion that the areas (such as the chapel) did not qualify as areas of religious worship. The question was, what does public mean?

35. The House of Lords held, in respect of a Mormon Temple, that where entry was limited to Mormons of good standing and in possession of a "recommend" from a bishop it was not a place of *public* religious worship (*Church of Jesus Christ of Latter Day Saints v Henning (VO)* [1964] AC 420). Lord Pearce said at 440:

"By the Act of 1833 the legislature was intending to extend the privileges of exemption enjoyed by the Anglican churches to similar places of worship belonging to other denominations. Since the Church of England worshipped with open doors and its worship was in that sense public, it is unlikely that the legislators intended by the word "public"

some more subjective meaning which would embrace in the phrase "public religious worship" any congregational worship observed behind doors closed to the public.

I find it impossible, therefore, to hold that the words "places of public religious worship" includes places which, though from the worshippers' point of view they were public as opposed to domestic, yet in the more ordinary sense were not public since the public was excluded."

36. Lord Morris said at 435:

"I consider that there is a distinction between private or domestic or family worship on the one hand and public religious worship on the other. In my view the conception of public religious worship involves the coming together for corporate worship of a congregation or meeting or assembly of people, but I think that it further involves that the worship is in a place which is open to all properly disposed persons who wish to be present."

37. In *Gallagher* Lord Hope stated that in order to be public 'notice' must be provided, although it could take on many guises:

"29. Slade LJ said in Broxtowe Borough Council [v Birch [1983] 1 All ER 641], at p 334, that in his judgment a meeting of persons which takes place on private premises cannot be said to be "public" within the ordinary meaning of words unless members of the public, or of the particular section of the public most concerned, are given some notice that they will not be treated as trespassers or intruders if they seek to enter the premises and attend the meeting. The forms of notice, he said, could be many and various. In some cases, even the exterior appearance of the building might be enough to indicate to members of the public that they will be welcome.

30. In the present case however the respondent does not need to rely on the absence of a notice or on the appearance of the Temple from outside. To some it may seem like a large church or a cathedral. But there is no invitation to the public, or any section of it, to enter the Temple and worship there. On the contrary, the public, and even that section of the public most concerned because they are members of the Mormon church, are actively excluded from it. There simply is no question of members of the public in general being admitted to the Temple to participate in religious worship there. And only those Mormons whose worthiness to do so has been established after a searching private interview with the local bishop or branch president and stake president may receive a

pass to enter it. The worship that takes place in the Temple on those conditions cannot, in the application of the Henning test, be said to be public religious worship."

38. In *Broxtowe* (which Lord Hope quoted from) five factors were set out as to why a public service didn't take place, which both parties used in the hearing before me, by Slade LJ:

"*(1) The brethren do not think it right to exert any positive encouragement to other persons to come to their meetings. They do not advertise either themselves or their meetings. Their belief is that those attending their meetings should be inspired by the example of the way of life of the brethren and brought to the meetings by the hand of God. (2) They do not tell an inquirer the place or time of their meetings unless he specifically asks. (3) There is nothing in the external appearance of either meeting hall to indicate the use to which the building is put. (4) No notice-board is in position outside either meeting hall indicating the use of the building. When the Hillside Road premises were erected in about 1967, there was a board which stated that the Word of God would be preached at certain times on Sunday, or words to that effect, but this notice was removed many years ago. No notice-board has at any time been in position informing the passer-by of the use to which the Cyprus Avenue premises is put. (5) Apart from the attendance at the Hillside Road premises of representatives of the rating authority, there has been no more than one newcomer at either hall in recent years.*"

39. In looking at the five criteria Slade LJ went on to say (as commented on above):

"But I do not for one moment think that either of them would have intended to suggest that a group of persons who meet together for corporate religious worship outside their homes can render the nature of such worship 'public' for rating purposes, merely by establishing an unannounced convention that properly disposed persons who turn up and seek to attend their meetings shall not be refused admission. The 'openness' or otherwise of the meeting cannot, in my view, be tested simply by reference to what is passing through the minds of the persons present.

What more then is required? In no case to which we have been referred has the court attempted to lay down any comprehensive and exhaustive definition of the phrase 'public religious worship' and I would not attempt one. With Stephenson and Oliver LJJ, however, I am of the opinion that it does necessarily involve at least the element of some invitation, express or implied, to members of the public to attend the meeting in question. This conclusion is supported by the judgments of Maugham J in Stradling v Higgins [1932] 1 Ch 143 at 151, [1931] All ER Rep 772 at 775 and of Lowe J in Association of

the Franciscan Order of Friars Minor v City of Kew [1944] VLR 199 at 204, which was referred to with apparent approval by Lord Pearce in the Henning case. Furthermore, it seems to me to accord with common sense and the ordinary use of language.

In my judgment a meeting of a group of persons which takes place on private premises cannot be said to be 'public' within the ordinary meaning of words, unless members of the public, or of the particular section of the public who are most concerned, are given some notice that they will not be treated as trespassers or intruders, if they seek to enter the premises and attend the meeting. The forms which such notice may take are many and various. In some cases the external appearance of the relevant building might perhaps even by itself be said to give members of the public sufficient notice that they will be welcome. That some such notice is necessary, however, I feel no doubt."

40. Whilst no test has been set out by the higher courts and tribunals there is a clear implication that the public must be invited. It seemed to me from the above therefore that the public must not only be aware that a service is taking place but that it must also be readily accessible to them. Each case would need to be decided on its own facts. I personally would use the test in this case of whether the man on the Clapham Omnibus, who was not a member of the Church of Scientology, would know, and be able to attend if he wished, a service at any of the three hereditaments. Has the Appellant, on which the legal burden is placed, convinced me of that? Was their evidence such that I could say it was more probable than not that they could (civil standard of proof)?
41. Counsel for the Respondents suggested they must be 'actively invited'. I was concerned at such an approach in that it suggested to me more than an invitation that members of the public would be welcome. The concept of public hearings is familiar to many and such hearings must be advertised as such and accessible to the public. For example, a Tribunal or Court does not need to actively invite members of the public in to deliver open justice, merely make people aware so that they have the opportunity to attend without obstruction (unless there is a good reason in exceptional cases why the public should be excluded).
42. If the Appellant passed that examination, I then needed to decide whether other spaces used for miscellaneous religious and social purposes by the Appellant fell within para 11(2)(b)

Church halls, chapel halls and similar buildings

43. The critical test was that such buildings must be **used in connection with a place of public religious worship** (my emphasis). If the activities were found mainly not to be connected with public religious services, then the exemption would not be granted although occasional (not defined) use was permissible. In *Gallagher* Neuberger LJ held (at the Court of Appeal):

"21. In my judgment, Mr Bartlett was right as to the effect of those words. Having said that, dependent on context, the words "to the extent that" "are capable of bearing either a physical or temporal meaning or both" he went on to say this:

"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 a reduction of the relief that is accorded. The church would still be a church and a church hall would still be a church hall and, to the extent that a hereditament physically comprised one or both of these, it would 'consist' of it or them for the purposes of the exemption.'"

44. Also, in *Gallagher* reference was made to the decision of the Lands Tribunal in respect of a definition of hall:

"Without myself 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. It is not itself a place of worship."

45. This description was broadly approved in *Gallagher*, with Neuberger stating:

"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. The uses for which a church or chapel hall will, in many cases, be let out from time to time are pretty wide, and

(probably) provided such uses do not positively conflict with those of the church or chapel, it seems to me that they would not prevent the use being consistent with that of a church or chapel hall."

46. In the appeals before me it was the use of such buildings which was the principle objection by the Respondents. It was promoted that the use must be ancillary, citing Lord Hoffman who opined in *Gallagher*:

"… 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."

47. On that basis it was said by Lord Hoffmann that the Mormon Temple in *Gallagher* was not exempt even though the much smaller Stake Centre was, as it would be like:

"*having the tail wag the dog. The use of the Temple is not ancillary to the use of the Stake Centre but a separate and independent use*".

48. Lord Hope agreed with Lord Hoffman about the phrase:

"…the sacredness of the building [the Mormon Temple] and of the functions that are performed there are decisive on this point… I think that on those findings it would be a complete inversion of the facts to describe the Temple as ancillary or subsidiary to the Stake Centre."

49. There was also a suggestion by the Respondents that such premises would typically have a variety of uses or functions, although I saw nothing in the law or cases cited to confirm that aspect.

50. Therefore, the conclusion one could reasonably reach from the case law was that the Temple was far too important to the life of the Mormon Church to be described as being ancillary to the Stake Centre, and therefore an understanding of what took place within such areas in these appeals and the relationship with the chapels was important. If I found that the areas were not for ancillary purposes no exemption could be granted.

Administrative or other activities relating to the organisation of the conduct of public religious worship

51. Issues appeared to arise from the case law on whether such activities related to the organisation of the conduct of public religious worship. Lord Hope in *Gallagher* stated:

"*40. …The mere fact that there are links between what happens in these buildings and what happens in the Stake Centre, as Mr Sumption suggested, will not suffice. To be within this subparagraph, the use must be for administrative or other activities relating to "the organisation of the conduct" of public religious worship there. This cannot be said to be so in the case of the Missionary Training Centre. As the President put it, the missionaries are instructed as part of their training in the conduct of chapel services. But this is not the primary purpose of their training. In any event this is an activity which relates to how services in general are conducted, not to the organisation of the conduct of services in the Stake Centre or any other building that the appellant uses for public religious worship. Nor can it can be said of the use that is made of the Patrons' Accommodation. It merely provides short-term living accommodation that is primarily used by members of the Church visiting the Temple.*

The Grounds Building houses machinery and equipment which is used for the maintenance of the grounds and all the buildings on the site. There is also a workshop area, a garage and a plant room which includes the air-conditioning plant for the Temple. It serves the whole of the site including the Stake Centre. But it is not suggested that a definable part of it used for serving the Stake Centre, nor is serving the Stake Centre the primary purpose for which it is used. In any event, as the President said, it is not used for activities that relate to the organisation of the conduct of public religious worship there. I agree with Mr Sumption that this conclusion turns on fine distinctions, because areas used for the same purposes which were within the Stake Centre and not sufficiently clearly identifiable for apportionment would qualify for exemption along with the rest of the building of which they formed part. But the valuation officer must take each building on the hereditament as he finds it, according to the way it is actually occupied and used by the ratepayer."

52. It is quite clear that the activities must relate to the services that the Church of Scientology provided at each Chapel. Careful consideration of what occurred would need to be considered.

Decision and reasons

53. In order for the appeals to succeed in full, in my opinion, I needed to initially be satisfied that public religious worship took place as without that the whole case fails. There were three hereditaments in question, although in respect of 68 Tottenham Court Road it was argued by the Appellant in the alternative that the premises could be treated as a church

or chapel hall (or similar building) and ancillary to the public religious worship that took place at 146 Queen Victoria Street.

Public Religious Worship

54. The vast majority of the evidence provided by the Appellant to support their contention was concerned with events sometime after the Material Day. The Appellant called two witnesses, Mr Massimo Angius (a trustee for 25 years) and Mr Peter David Hodkin (a solicitor acting for the Appellant).

55. It was unfortunate that on occasions Mr Angius didn't answer questions from the Respondents' counsel but made statements, although I took that as being the passionate views of someone committed to Scientology. Much of Mr Angius's evidence was hearsay, anecdotal and not from his own personal experience, rather having been gleaned from others and he fairly conceded he was not a regular attender at any of the appeal sites. An awful lot of evidence was provided on the religious activities and I do not intend to cover it here as it only came into play if I decided that any of the hereditaments contained a place of public religious worship. However, it was important to signify a small number of key points in connection with his evidence as an expert:

    a. Sunday services were not always advertised during the week;
    b. he was a regular visitor to the East Grinstead building but would visit Queen Victoria Street on occasions, although there might have been a gap of three to four months. He did not visit Deansgate;
    c. he believed there was no record of services taking place at the Tottenham Court Road site in 2011; and
    d. at the Material Day(s) he had not attended a service at any of the appeal chapels.

56. Mr Hodkin provided expert evidence of the different religions and exemptions granted but on the point in question concerning public religious worship I only ascertained from him that:

    a. he would generally visit Queen Victoria Street several times a year,
    b. was rarely at Tottenham Court Road and attended Deansgate from time to time and;
    c. at no time did he state he attended a service at any of the appeal hereditaments.

57. I mentioned the above in particular as the evidence given whilst interesting was of little weight given its nature and lack of underlying knowledge; it only had limited value being mostly hearsay in respect of the promotion of public religious worship at any of the sites. Indeed, as Miss McCarthy submitted, there was no direct evidence to suggest any invitation at all took place in 2011. No better example was provided by the

witnesses' lack of personal knowledge of what occurred at the three hereditaments than the information on Monday services in London. There was a difference of opinion between Mr Hodkin and Mr Angius as to when they took place at Queen Victoria Street. Mr Hodkin said they were running in May 2019 whereas Mr Angius said they stopped much earlier, around 2016. The lack of clarity in the position was most unhelpful as was the absence of compelling evidence to back up the Appellants case. Put simply, neither witness was able to provide an authoritative view as to actually what went on at any of the venues subject to this appeal. To be frank the evidence was vague, inconsistent and unreliable, though I am sure given with the best of intentions.

58. Mr Cooper provided expert witness evidence on behalf of the Respondents. There was an error in the date provided for the agreed inspection (being 24 April 2018 and not May 2018) and the photographs advertising events and service which were from the Tottenham Ct Rd site and not Queen Victoria Street as stated in the bundle. The date of the photographs was also incorrect. Mr Ormondroyd tried to make a great play of those errors however, they were corrected before the evidence was given orally on the day and I was satisfied that Mr Cooper was also a credible expert witness and the error was nothing more than an innocent one.

59. Miss McCarthy submitted in closing that without any evidence from the Material Day, the Appellant's case was lost as they were unable to satisfy the evidential burden.

60. The burden determined who had to produce evidence in order to succeed on a particular issue. It would often vary from party to party during the hearing, depending on the state of the evidence at any particular time. However, it should not be confused with the legal burden which was on the Appellant to prove there was entitlement to exemption, not for the Respondents to prove they don't qualify.

61. The standard of proof in civil matters was the degree of likelihood with which an issue must be established. I have found it seldom possible to establish facts with certainty. In practice, the law usually had to be applied to facts established on the basis of probability rather than certainty. Probability is the measure of confidence that a tribunal has in its finding of facts. The civil standard of proof was addressed by Denning J in *Miller v Minister of Pensions* [1947] 2 All ER 372:

If the evidence is such that the tribunal can say 'We think it more probable than not', the burden is discharged…

62. In these appeals there were some facts, which although not present at the Material Day, could have led me to the conclusion that if it occurred at a later date, it was more probable or not that it would have occurred earlier. I believed that was particularly important in these appeals to consider the evidence provided later due to the timelines involved. The bundle included correspondence between the parties in 2014 where discussions took place about activities and information was sought. Proposals were made in 2015 by the Appellant. Further correspondence continued and questions were raised and evidence sought by the Respondents. In October 2016, Mr Ken Hazel of the VOA (who had unfortunately since passed away) wrote to the Appellant stating he was prepared to give them the 'benefit of the doubt regards chapel use'. Despite that view discussions continued and no exemption (not even partial) was awarded for the appeal hereditaments. Discussions and disputes appeared to have continued up to the present day.

63. Mr Anguis stated in evidence that, the Church of Scientology wished to promote itself to the public and he would find it 'incredulous' to suggest that it wasn't doing so, but the test wasn't that of what members of the church thought occurred, but the rating test as set out in law.

64. Therefore, I looked at the evidence submitted and decided whether it met the invitation test in any meaningful way and if it did, whether or not the evidence provided could draw me to the conclusion that it probably occurred at the Material Day. I said that as whilst I am not bound by the civil rules on evidence, it is the weight that I gave each piece which was important where it was not provided at the Material Day. In other words, there has to be reliable and compelling evidence from which I can be satisfied that the relevant tests have been met on the balance of probabilities.

The Buildings

65. There was no suggestion that anything structurally significant had changed at Queen Victoria Street and indeed due to its Grade II Listed building status, that was unlikely to occur. The building was purchased, refurbished and opened by the Appellant in 2006. The previous occupier was BP. Mr Cooper, witness for the Respondents, considered the building looked like an office block or library and that he had initially been unable to locate it for his first visit, due to its characteristics. Mr Angius disagreed, the building had originally been constructed for the British and Foreign Bible Society in 1866, although that was not a place of worship. There was only one building he was aware of which was owned by the Appellant and did not contain a place of public religious worship and therefore with all the signage would have obviously been a place of

religious worship. For example, above the entrance was wording of 'Church of Scientology London' and various symbols (Dianetics and Scientology) around the entrance and the Scientology 'Star Burst' Cross clearly on display.

66. I do not agree. Whilst I acknowledge that various signs and notices appeared permanently in *situ* none of them nor the structure itself would have told me, or the man on the Clapham Omnibus, that this was the site of public religious worship. Whilst nearly all such buildings occupied by the Church of Scientology would include a chapel, the man on the Clapham Omnibus would have no such knowledge without further explanation.

67. The building at Tottenham Court Road looked to me like a number of retail units that you can come across in London. It was believed to be built in the 1840's of brick construction but with a clear glazed retail frontage. It did not give the appearance of being a place of public religious worship. In fact, I was informed at the hearing by the Appellant it was primarily an information centre although from time-to-time religious worship took place there. Whilst of course architectural prevalence may help one decide what activity is going on within, that alone would not be conclusive or demonstrative of religious activity within.

68. Work had been undertaken at the Deansgate, Manchester building between the Material Day and the date of the hearing. Photographs were provided of the frontage prior to and post the works. The building had a classic shop window front appearance and it could not be said to provide any indication of being a place of public religious worship and therefore failed the test.

69. Whilst the Appellant failed this test it did not mean in itself that the appeals were lost but it did require other evidence of an invitation having been made to the public. Indeed, a structure that may look like a place of religious worship may not necessarily be one (many old churches and chapels have been converted to living accommodation) whilst nowadays many non-classic worship type buildings do provide such facilities. The bundle included photographs of other such buildings which were submitted by the Appellant which fell under the second category.

Signage at the buildings

70. There appeared to be three types of signage at Queen Victoria Street. It was said by Mr Angius that a portable or stand-alone sign was provided at the entrance on a day when public religious worship took place. A photograph of such a sign was provided from when the London Marathon took place on Sunday 13 April 2014 (post hearing a dispute arose as to the date of the photograph but I was content to accept it was from 2014 and

advertised a service). No direct evidence was provided of how regularly and for how often on the day of a service the portable sign was placed outside the building. The Appellant's statement of case said the sign was placed outside shortly before and during a service. It was said to me by Mr Angius that such a sign was in *situ* during services around the Material Day. However, I was not convinced that the signs were there on any regular basis.

71. There were also signs in the windows of the building advertising services. However, there were a variety of signs placed in those windows promoting services, events and inviting people inside. The Respondents reported on six visits to the building, none of them at the Material Day, where it was noted whether signs advertising services were present. When inspections were arranged with the Appellant an advert for either a Sunday or Monday were present however, on the three occasions when no announcement was made, there were no such adverts on display. This tends to support the view that the advertising, was sporadic and irregular.

72. Finally, it was said there was a permanent sign outside the chapel (which was down a short flight of stairs behind reception) giving the times of weekly services. Even though photographs were shown through the glass door of this sign, only someone who had actually entered the building and had advanced towards the sign would have any idea what it was and in my view was not a clear invitation to the public at large.

73. I believe it has been accepted that services no longer regularly take place at the Tottenham Ct Rd chapel. Inspections took place in 2018 and 2019 and no signs advertising public religious services were prevalent.

74. When Mr Cooper inspected the Deansgate property on 1 June 2018 there was a poster advertising a Sunday Service at 4:30 pm. A colleague of Mr Cooper's reported the sign was still there on 4 October 2018. However, no such posters were observed during further external inspections in 2019 on 9 August, 13 August, 22 August, 6 September, and 12 September. Similarly, no poster was found to be present on 6 February 2020. Whilst none of the inspections took place at the Material Day, no evidence has been put forward by the Appellant to persuade me that such signage was prevalent over any significant period of time.

75. The Appellant accepted that such signage promoting services was not always present and that displays which included other information were rotated to ensure that people passing maintained an interest, which in my view undermined their contention that the services were widely advertised and promoted.

76. The one thing I can be certain of from the evidence provided is that services were not promoted daily or on a regular basis outside any of the buildings subject to these appeals.

I found this quite surprising given the insistence of the Appellant of the importance of the religious service. Furthermore, it also seemed to me unlikely, on the basis of the limited information provided by the Appellant and the observations of the Respondents, that such adverts of invitation were present for any significant period of time or at all.

Leaflets

77. The Appellant provided details of a 'Visitor Information' leaflet for Queen Victoria Street published in 2020 which within promoted Sunday Worship services at 10:30am to which 'All are welcome'. The leaflet was copyright 2020. It was said that the leaflet was available from reception, would be handed out on the street and available from shops and hotel counters in the vicinity. Mr Cooper told me that he was familiar with the area, which he had visited on a number of occasions, and had never seen the leaflet on display in other buildings.
78. No evidence was put to me that a similar leaflet advertising services on the Material Day or even at any day prior to the proposal being made was available at the time.
79. Similarly, information was provided in respect of the Casa De Pan Christian Church which held its Sunday public worship services at the Queen Victoria Street chapel. However, such services only commenced post August 2017 and were not present at the Material Day or anytime during the life of the list entry in dispute, so I could not give such evidence any meaningful weight.
80. The Church of Scientology has also advertised on television. At least one of those adverts was during the screening of Coronation Street in May 2014. However, no evidence was provided that the adverts gave details of service times and venues. Similarly, it is said that other forums were used but bringing the Church of Scientology to the attention of the public was not the same as inviting the public to attend services on a specific day of the week, at a specific time and at a specific location.
81. One way in which an invitation for public religious worship might be demonstrated was by the number of members of the public that attended services, although non-attendance doesn't necessarily mean that a building didn't qualify. I found it surprising that there was very little evidence of those attending the various venues or a breakdown of the different types of visitors. It seems to me that any organisation that was attempting to raise its profile, and in particular it's services which were said to be important, would have been very interested in the information as a means of helping them focus on whether their promotions and advertising was encouraging attendance.

Public Attendance

82. Mr Angius stated that hundreds of non-Scientologists attended congregational worship services in the London Church Chapel every year. I know that Mr Angius does not regularly attend the chapel so he must have received the information to make such a statement from others. Details of 'new public' weekly attendances from 2 January 2014 to 29 April 2021 were provided in evidence. From 2018 further detail was provided of the number of walk-ins. However, what wasn't provided was how many, if any, of those weekly numbers attended services at the chapel. Mr Angius didn't know, neither did Mr Hodkin and no evidence was put forward by any other witnesses. The burden was on the Appellant to satisfy me that the public attended services if it was part of their case.
83. Dr George Chryssides was an Honorary Research Fellow in Contemporary Religion at the University of Birmingham and a witness for the Respondents. When Dr Chryssides attended the Blackfriars org (Queen Victoria Street) unannounced in 2009 for a Sunday service he found no such service taking place. Indeed, when he asked members present about such a service there were only vague responses. There may of course been a satisfactory reason for this and the date of the visit was prior to the Material Day. A further visit to a service in May 2010 did take place but that was arranged directly through Mr Hodkin. Dr Chryssides also reported that in the recent lockdown there was no evidence of any streamed services from the Queen Victoria Street chapel although that was disputed by Mr Angius.
84. In conclusion, I was not satisfied from the evidence provided that any members of the public attended a service at the Queen Victoria Street chapel at the Material Day or any date up to the date of proposal for the purpose of "public religious worship" as the law requires for an exemption to exist.
85. Similarly details of weekly 'new public' attending the Church of Scientology at Deansgate were provided from 2 January 2014 to 29 April 2021 with 'walk-ins' from 22 March 2018. But no details of those attending a chapel service were provided and the evidence was unhelpfully vague.

Website

86. Details of services were not easy to locate within the Church of Scientology website. Mr Cooper provided the following observations in his witness statement:

"44. I have also noted how CoS advertise the Sunday Scientology Services on their website and the consistency on which they use this platform. The homepage of the CoS London contains a lot of detail and when I scrolled down, I calculated approximately five full pages of information on the homepage alone. At the top of the homepage, there are

links which took me to pages providing more detail about Scientology, their founder L Ron Hubbard, the beliefs and practices of Scientology and a video tour of the subject building. There is no detail at the top of this homepage provided about a Scientology Sunday Service or any other events.

45. Scrolling down, I identified a banner in grey text titled 'London events and activities'. This is on a continuous repeat sequence detailing one of the following:

Personal Efficiency Course: Daily, 1:00pm and 7:00 pm

The Story of Dianetics Film Showing: All Day, 9:30 am-8;30pm

Free Tour of the Public Information Centre: All Day, 9:30am-8:30pm

Free Personality Test: All Day, 9:30am-9:30 pm

There is no mention of a Scientology Sunday Service within the repeated sequence of events.

46. On the same part of the homepage under the heading 'maps and directions', a map, the address and the contact telephone number are provided for the subject building. When I clicked on the link adjacent to the address, I was taken to a page detailing the opening hours of the building and that there was a service at 10:30 on a Sunday. No further detail was provided, though there was a link to a contact page which would have allowed me to email CoS London. I would add this was not a booking form and there was no detail provided as to whether I would be welcome at this event.

47. Scrolling further down, there is a link in small grey text titled 'Events'. Clicking on this took me to a full list of events taking place at the building over the next seven days. Each event then has a further link titled 'attend' which would allow me to enter my name, phone number and email to book onto the event I wished to attend. I can confirm that on each occasion I have clicked on 'Events', a Sunday Scientology Service has been listed for the Sunday of that week.

48. When I scrolled to the bottom of the homepage, I noted the events taking place at the building on that day are detailed. Adjacent is a link titled 'See Full Calendar' which then took me to the calendar of events over the next seven days as detailed at paragraph 47."

87. I was advised by Mr Cooper that details of Sunday services at the Deansgate chapel were even harder to locate on the website.

88. I was told by Mr Angius that if I typed in 'London Church of Scientology service' into my internet search engine I would find details of services. I and the Respondents took up the challenge at the hearing, but neither of us found that to be the case. The link took you to the homepage but not details of services. According to Mr Cooper no details of any services at Tottenham Ct Road were provided on the website when viewed (which was sometime after the Material Day).

89. I cannot describe the internet web pages of the Church of Scientology as being an invitation for the public to attend services at any of the venues. The web pages available made it difficult and was surprising given the importance of services as pronounced by the Appellant. I would liken it to a service taking place and members of the public that wished to attend not being aware unless they entered the building and asked someone.

90. Mr Angius also gave evidence of the Facebook page which advertised religious worship. There was within the bundle Facebook information including reference to a post made on 7 May 2021 promoting an online event concerning Dianetics but I could not locate any material clearly promoting services at a chapel. Furthermore, no details were provided of what information was available at the Material Day.

91. Bookings to services, as well as other Scientology events, could be made via Eventbrite but there was no suggestion that such a facility was available at the Material Day or any later date up to when the proposals were made. I gave that fact no evidential weight.

Conclusion on the invitation test

92. As I said earlier, the burden was on the Appellant to satisfy me that the exemption should be awarded and were required by the Respondents to establish that each of the three chapels was a place of public religious worship at the Material Day. No such evidence was provided; however, I did find at subsequent dates that:

    a. None of the buildings appeared from its physical appearance to be a place of public religious worship;
    b. there was no regular advertising of services on the outside of any of the buildings relating to public worship;
    c. at Queen Victoria Street there was a mobile sign advertising a chapel service in 2014 when a service took place;
    d. it was said that a further sign advertising services was present within the building just outside the chapel;

e. the website did not promote in an easily accessible way services at the appeal hereditaments;
f. leaflets existed in 2020 to promote services at Queen Victoria Street but that they were only available inside the building. Furthermore, there was no evidence that similar leaflets were available at the Material Day or the time since then; and
g. there was no evidence that members of the public had attended services of worship at any of the chapels.

93. In conclusion the only 'invitation' I could find in respect of any of the three chapels that might fulfil the public test was a photograph of a freestanding sign in April 2014. For how long on a service day the sign was out I was not told (merely just before and during a service), nor that it was present every time there was a service (Mr Angius was simply not in a position to make such a statement due to the timings of his limited number of visits). Mr Ormondroyd argued the bar was set very low in testing whether public religious worship took place. On more than one occasion he submitted that the test could be addressed by simply asking whether the religious service was domestic or private. If not domestic, he concluded it must be public. I do not agree with that proposition. I was not persuaded by this and in fact such an approach would set the bar so low that the requirements would be pointless.

94. The proper test required a real and meaningful invitation to the public to be made. I did not believe it was set so low that the public would simply not be aware that public religious worship took place unless by chance they passed the Queen Victoria Street chapel on the day of a service and the mobile sign was outside or had visited the building and located the chapel (down a flight of stairs behind reception). In respect of the posters promoting services, it was rather a strange coincidence that on nearly all occasions when an unannounced external inspection took place there were no posters but when an arranged visit took place posters were always present. In my opinion, it gave weight to the view that public religious services would not appear as important to the Appellant as the witnesses were trying to make out. Further doubt as to the regularity of services was provided by the experience of Dr Chryssides, albeit on the basis of one visit prior to the Material Day, the vague evidence on when services took place at Tottenham Ct Rd and the disagreement between the two Appellant witnesses on when Monday services stopped at Queen Victoria Street undermined their case.

95. The burden was on the Appellant to prove to the Tribunal that it '*was more probable than not'* that each chapel was a place of public religious worship at any time from the first Material Day up to the date of each proposal, and this they failed to do by some distance. Therefore, all three appeals seeking exemption under either 11 (1) (a) or (b)

had to fail regardless of which Material Day I considered up to the dates that the proposals were made, as there were no significant material differences.

96. There was one other matter which I had still to consider and that was whether the offices at any of the three appeal hereditaments qualified as offices under 11 (2)(b).

Office Exemption

97. Counsel for the Appellant made a succinct point in relation to this paragraph. He argued that where an organisation is 'responsible for the conduct of public religious worship' in any place which is exempt under para 11(1)(a) all of the office premises of that organisation are exempt regardless of use or location. He considered there was no requirement in the legislation that the offices to be used for a particular office purpose just be used as an office. The relevant part of the legislation stated (in bold):

(2) A hereditament is exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious worship in a place falling within sub-paragraph (1)(a) above and—

(a) is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place; or

(b) is used as an office or for office purposes**, or for purposes ancillary to its use as an office** or for office purposes**.**

(3) In this paragraph "office purposes" include administration, clerical work and handling money; and "clerical work" includes writing, book-keeping, sorting papers or information, filing, typing, duplicating, calculating (by whatever means), drawing and the editorial preparation of matter for publication.

98. The Church of Scientology chapel at Saint Hill was held exempt from 24 January 2014 and therefore counsel argued that any offices at the three appeal hereditaments would be exempt from that date. I should add that if the Appellant was correct, I would need to reflect on what part of the premises in each case was used as an office. I say that as at times during discussions with the Respondents, the Appellant referred to Auditing Rooms as ancillary to worship with a specific purpose and at other times as offices and therefore caught by the exemption regardless of use.

99. Counsel for the Respondents stated that exemption was available '*to the extent that*' it was occupied by the organisation responsible for the conduct of religious worship in a

place within para 11(1)(a). In support counsel quoted the words of Lord Hope in *Gallagher* from para 39:

"'...Second, paragraph 11(2)(b) requires them to be used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes. It is not suggested that any of these buildings qualify for exemption under para 11 (2)(b). The words "to the extent that" which qualify para 11(2) would require an apportionment if a definable part of the building was occupied and used for these purposes. It need not be segregated 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. So long as this can be done, the question as to the method of apportionment is pre-eminently one for the valuation officer. No facts were put before the President to show that, in the case of any of these three buildings an apportionment would be appropriate. In this situation it will be sufficient if the building, albeit not exclusively, is nevertheless primarily occupied for a use which will qualify it for exemption under para 11(2)(a)".

100. Therefore, Counsel believed that as 11(2)(b) was conditioned by the words *'to the extent that'* the primary use of the space so occupied at the hereditament in question must be for public religious worship.

101. In support of Mr Ormondroyd's submission he argued the relevant section of the decision in respect of offices in *Gallagher* focused on 11(2)(a) and not (b). However, one would have thought that if any office anywhere qualified under 11(2)(b) regardless of its use, then the offices included within the Missionary Training Centre under appeal in *Gallagher* would have qualified. The Lands Tribunal, in reversing an opinion of the Valuation Officer before them that the Missionary Training Centre might be exempt, said none of it was (including the offices). In the House of Lords in *Gallagher* the Lands Tribunal view was upheld.

102. Lord Mance in the final judgment stated:

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 Finance 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.

103. This then leaves me to decipher what 11(2)(b) was trying to achieve. It appeared to me that it was trying to cover 'other' office work carried out within a place of public religious worship. That is why the words *'to the extent that'* were included. I don't believe it was ever Parliament's intention that all offices of an organisation regardless of their location and what they are used for would be exempt from rates as offices on the basis that somewhere in the country there was a place of public religious worship. If that was correct reading and I adopted Mr Ormondroyd's approach, then paragraph 11(2)(a) would be redundant. Furthermore, the explanation of office purposes in 11(3) would create an anomaly if any office regardless of use was exempt but other spaces were only exempt if used for defined office purposes.

104. An alternative reading would be that the office use must, by the very nature of the qualifying explanation of office purposes, be used for the type of administrative functions described under office purposes which you would most likely see in any religious worship back office. The Appellant did not provide any details of the administrative activities undertaken in the offices (some of which were used for Auditing) and the exemption applications would also fail on that point.

105. In conclusion, I am satisfied that the Appellants have failed to make a compelling case and for the reasons given above the appeals failed on all grounds; and no alteration to the Rating Lists were required.

President

Registrar

Date: 10 June 2021

Appeal numbers: 503025236539/053N10, 521025282605/053N10, 421525302099/134N10