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## Property Developers Should Beware of Greater Local Authority Scrutiny of Guardian Schemes

### Introduction

Owners of vacant commercial properties would do well to consider the impact of the ruling in *Ludgate House Limited (LHL) v. Ricketts (VO)* and *London Borough of Southwark* (2018), which was decided by the Valuation Tribunal for England in 2018.

In particular, it casts doubt over the validity of schemes using live-in guardians to convert the use of premises from commercial to residential, thereby replacing the obligation to pay business rates with the more economical council tax liabilities that apply to residential buildings.

### Background

Such schemes are used fairly widely for vacant commercial premises, as it has the added attraction of securing the premises against squatters, and in 2015, LHL, the owners of Ludgate House, a nine storey office building in London, entered into such an agreement with a property guardian company (VPS).

In November 2015, LHL successfully applied to have Ludgate House removed from the non-domestic rates register with effect from June 2015, however inspections carried out by the London Borough of Southwark in 2016 disputed this, and in 2017, whilst the premises were vacant and being stripped out for re-development, the Valuation Office restored the property to the non-domestic ratings list. The reason that the Valuation Office's decision was appealed by LHL centered around the date from which the non-domestic treatment was applied (it was backdated to June 2015). The appeal was decided by the Valuation Tribunal for England in 2018.

### Decision

The Tribunal dismissed LHL's appeal and in reaching its decision, the following reasons given would appear to be of particular relevance to owners of vacant commercial properties who may be considering adopting a similar scheme of guardians:

#### 1. Extent of domestication

The Tribunal considered the vast scale of Ludgate House and the extent of certain parts of each floor that had been left as office space and unoccupied by the guardians. Property owners should therefore be aware of the extent of their buildings that are actually domesticated by guardians.

#### 2. Temporary nature of domestication

The Tribunal also opined that, essentially, the premises that were domesticated by the guardians still largely resembled offices, save for temporary appliances.

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Whilst converting the premises to full-scale residential use might be too much to expect from a guardian, it is clear that the Tribunal expects to see some degree of conversion from commercial to residential use.

### 3. Terms of guardians' occupation

The Tribunal also appeared concerned that the terms of the licenses issued by VPS to the residents/guardians more closely resembled a security services agreement, with the added benefit of residential occupation, rather than a tenancy agreement.

### 4. Exclusive occupation and off-limits areas

Furthermore, a copy of the guardians' tenancy agreement should confirm whether the guardians are entitled to exclusive possession of the areas that they occupied and whether there are any parts of the building that they were not allowed to access. If there were any 'off-limits' areas, this would suggest that those areas, in particular, should not be classified as domestic.

### 5. General Control

The Tribunal goes on to state that based on the terms of the licenses granted to each guardian — it was VPS and not the guardians themselves — that retained control of the premises.

## Comment

A key statement given by the Tribunal, which best sums up all of these concerns, is that after considering the various agreements allowing the guardians to occupy the premises, and, notably, the facts in this particular case regarding the extent to which the building as a whole was converted for domestic use, the Tribunal was not satisfied that Ludgate House was used "wholly for the purposes of living accommodation."

The significance of the case is that owners of commercial properties employing such schemes should review their existing arrangements and that owners of vacant properties, who are considering putting such a scheme in place, should seek assurances as to how their particular scheme will not fall foul of the above concerns.

Given the fact that some local authorities will look to maximise their revenue streams and the recent publicity of increases to business rates, this decision should act as a warning that there may be more scrutiny applied by local authorities to properties where guardian schemes are utilized.

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