OUTER HOUSE, COURT OF SESSION

[2025] CSOH 69

P147/25

OPINION OF LORD BRAID

In the Petition by

BRIDGEPORT ESTATES LIMITED

Petitioner

for

Judicial Review of a decision of Highland Council to treat the petitioner as liable to pay non-domestic rates in respect of 14 Inglis Street, Inverness dated 13 November 2024

Petitioner: Thomson KC, Tosh; Addleshaw Goddard (HBJ Gateley)
Respondent: Byrne KC, Middleton; Harper Macleod LLP (Edinburgh)

5 August 2025

Introduction

[1] This is one of a number of petitions to reach this court in which the efficacy of anti-rates-avoidance legislation, and local authorities' application thereof, has come under scrutiny, in each case in the context of a scheme apparently designed to secure exemption from paying rates by taking advantage of the exemption available for premises used for the purpose of religious worship.

[2] The petitioner is the owner of premises at 14 Inglis Street, Inverness. By lease dated 1 August 2024 it let those premises to Room for Faith Ltd, which in turn sub-let them to Local Faith Ltd. The rent, in each case was £1, in addition to which the petitioner retained

liability to pay for utilities. Local Faith Ltd subsequently wrote to the respondent stating that the premises would be used as a place of religious worship.

[3] By decision dated 13 November 2024, exercising powers conferred on it by the Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023, made under the Non-Domestic Rates (Scotland) Act 2020, the respondent determined that the petitioner, as owner, was to be treated as liable to pay non-domestic rates in respect of the premises, on the basis that the leases were an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40 of the Act which had as its main purpose the gaining of an advantage within the meaning of section 38 of that Act.

[4] In this petition for judicial review, the petitioner seeks to reduce (quash) that decision on the grounds that it is both unlawful and irrational, arguing (a) that the decision was unsupported by any evidence and (b) that the respondent's reasoning was internally inconsistent and perverse.

[5] The respondent opposes the petition on its merits, arguing that it was entitled to reach the decision it did on the evidence it had, and that there was no inconsistency in its reasoning. It also argues that the petition is incompetent on the basis that an alternative remedy was available to the petitioner which it failed to pursue, viz, a right of appeal under section 238 of the Local Government (Scotland) Act 1947.

[6] Accordingly, there are two issues to resolve: (i) whether the petition is competent; and (ii) if so, whether the decision was unlawful and/or irrational.

The statutory framework

Non-Domestic Rates (Scotland) Act 2020

[7] Section 37 of the 2020 Act provides:

"37 Anti-avoidance regulations

(1) The Scottish Ministers may by regulations ('anti-avoidance regulations') make such provision as they consider appropriate with a view to preventing or minimising advantages (see section 38) arising from non-domestic rates avoidance

arrangements that are artificial (see sections 39 and 40).

(2) The Scottish Ministers may not make anti-avoidance regulations unless they consider that it is appropriate to do so.

(3) Anti-avoidance regulations—

(a) may modify any enactment (but not this Part),..."

[8] Section 38 provides, insofar as material:

"38 Meaning of 'advantage'

(1) An 'advantage', in relation to non-domestic rates, includes in particular—

...

(c) relief (or increased relief),

...

(2) In determining whether a non-domestic rates avoidance arrangement has resulted in an advantage, regard may be had to the amount of non-domestic rates that would have been payable in the absence of the arrangement."

[9] Section 39 provides:

"39 Non-domestic rates avoidance arrangements

(1) An arrangement (or series of arrangements) is a non-domestic rates avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining an advantage is the main purpose, or one of the main purposes, of the arrangement.

(2) An 'arrangement' includes any agreement, transaction, undertaking, action or event (whether legally enforceable or not)."

[10] Section 40 provides:

"40 Meaning of 'artificial'

(1) A non-domestic rates avoidance arrangement is artificial if Condition A or B is met.

(2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the non-domestic rates provisions in question having regard to all the circumstances, including—

(a) whether the substantive results of the arrangement are consistent with—

(i) any principles on which those provisions are based (whether express or implied), and

(ii) the policy objectives of those provisions,

(b) whether the arrangement is intended to exploit any shortcomings in those provisions.

(3) Condition B is met if the arrangement lacks economic or commercial substance.

(4) Each of the following is an example of something which might indicate that a non-domestic rates avoidance arrangement lacks economic or commercial substance—
  (a) the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,
  (b) the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangements as a whole,
  (c) the arrangement includes elements which have the effect of offsetting or cancelling each other,
  (d) transactions are circular in nature,
  (e) the arrangement results in an advantage that is not reflected in the business risks undertaken.

(5) The examples given in subsection (4) are not exhaustive.

(6) Where a non-domestic rates avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements."

Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland)

Regulations 2023

[11] The 2023 regulations were made pursuant to section 47 of the 2020 Act. Regulation 4, insofar as material, provides:

"4.— Circumstances in which owners must be treated as liable for non-domestic rates

(1) This regulation applies where—
  (a) non-domestic rates are payable in respect of lands and heritages and,
  (b) by virtue of a tenancy or other arrangement entered into on or after 1 April 2023, the occupier of those lands and heritages would, but for this regulation, be liable to pay non-domestic rates in respect of them.

(2) Subject to regulation 5(3), a local authority must treat the owner of lands and heritages as liable to pay non-domestic rates in respect of them where the local authority is satisfied, in all the circumstances, that the tenancy or other arrangement—
  (a) has as its main purpose, or one of its main purposes, the gaining of an advantage within the meaning of section 38 of the 2020 Act, and
  (b) is an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40 of the 2020 Act.

(3) In determining whether the condition in paragraph (2)(a) is met, the local authority may have regard to the amount of non-domestic rates that would have been payable in respect of the lands and heritages in the absence of the tenancy or other arrangement.

(4) A local authority may only be satisfied that the condition in paragraph (2)(b) is met where a tenancy or other arrangement was entered into on or after 1 April 2023 and at least one of the following applies—

(a) the tenancy or other arrangement on the basis of which the lands and heritages are occupied is considered not to be on a commercial basis (see paragraph (6)),

...

(6) For the purposes of this regulation, a tenancy or other arrangement may only be considered by a local authority not to be on a commercial basis where at least one of the following applies—

...

(d) the rent charged for the lands and heritages is significantly below the level of the rent which could reasonably have been obtained for the lands and heritages on the open market at the time the tenancy or other arrangement was entered into..."

[12] Regulation 5 provides:

"5.— **Notification of owner of intention to treat as liable for payment of non-domestic rates**

(1) Where a local authority intends to treat the owner of lands and heritages as liable to pay non-domestic rates, the local authority must inform the owner, by sending a notice to them in writing.

(2) A notice under paragraph (1) must—

(a) set out the local authority's intention to treat the owner as being liable to pay non- domestic rates,

(b) explain the basis, under regulation 4, on which the local authority proposes to do so,

(c) set out the date with effect from which the local authority proposes that the treatment will have effect, with an explanation of how this has been calculated in accordance with regulation 6,

(d) advise that, where an owner is treated as liable to pay non-domestic rates on a subsequent occasion, the liability will have effect from a date determined in accordance with regulation 6(2),

(e) advise that any relief from liability to non-domestic rates in respect of the lands and heritages which was previously available will cease to be available, with effect from whichever is the relevant date under regulation 6.

(3) Any owner who receives a notice under paragraph (1) may—

(a) make representations as to why they consider—

(i) that the tenancy or other arrangement under which the lands and heritages are occupied does not have as its main purpose, or one of its main purposes, the gaining of an advantage within the meaning of section 38 of the 2020 Act, and

(ii) that the tenancy or other arrangement is not an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40 of the 2020 Act,

...

(4) Representations under paragraph (3)(a)—

(a) must be in writing,

(b) must be sent to the local authority within the period of 28 days beginning with the day on which the notice under paragraph (1) is presumed to have been received, and

(c) may be sent by means of electronic communication.

...

(6) The owner of lands and heritages is not to be treated as being liable to pay non-domestic rates where the owner demonstrates, to the satisfaction of the local authority, that both of the conditions in paragraph (3)(a) are met.

(7) Unless paragraph (3)(b) applies, the local authority must, within the period of 28 days beginning with the day on which representations under paragraph (3)(a) are received or, where no representations are submitted, the last day on which any
representations could be submitted, send to the owner a final notice advising—

(a) whether or not the owner is to be treated as liable to pay the non-domestic rates,

(b) the reasons for the decision, including a summary of consideration of any representations submitted, and

(c) where the owner is to be treated as liable to pay the non-domestic rates—

(i) the liability resulting from that, including a statement as to the relief, if any, removed in accordance with regulation 6, and

(ii) the date from which the treatment and, where relevant, the removal of relief has effect."

[13] Regulation 6, insofar as material, provides:

"6.— Date from which owner treated as liable

(1) Subject to paragraph (3), any treatment of the owner of lands and heritages as liable for payment of non-domestic rates under regulation 4 is to have effect from the date set out in the final notice issued under regulation 5(7).

(2) The date referred to in paragraph (1) must be no earlier than 28 days after the date on which the final notice is to be presumed to have been received.

..."

Local Government (Scotland) Act 1947

[14] Section 237 of the 1947 Act, insofar as material, provides:

"237.— Demand note for rates.

(1) Every rating authority shall as soon as practicable cause to be issued demand notes for payment of rates payable to the authority to every person liable in payment thereof.

(2) Every such demand note (other than a demand note issued in respect only of a second or later instalment of rates) shall contain information with respect to the following matters, that is to say—

(a) the situation of the lands and heritages in respect of which the demand note is issued and such description thereof as is reasonably necessary for the purpose of identification; and
(b) the rateable value of the lands and heritages; and
(c) the date on which the rates are payable; and
(d) the period in respect of which the rates are levied; and
(e) the amount per pound in the case of each of the rates; and [...]
(g) the manner in which and the time within which appeals may be made against the rates."

[15] Section 238 provides:

"238.— Appeals against rates.
(1) In respect of each rate levied by them every rating authority shall fix a date on or before which any person may lodge with the officer of the authority designated for the purpose an appeal against the rates claimed from him on the ground that he is being improperly charged, and another date on which the appeals shall be heard by the rating authority or a committee thereof.
(2) The demand note shall contain a notice of the date by which appeals may be lodged and state the name or designation and the address of the officer with whom appeals may be lodged, and if the date for the hearing of appeals is not notified in the demand note, notice in writing thereof shall be given on behalf of the authority to the persons appealing.
(3) Every rating authority may if they think fit make rules with respect to the lodging and hearing of appeals under this section, so however that such rules shall not be inconsistent with the provisions of this Part of this Act."

The facts

[16] Prior to 1 August 2024, the premises had been leased to Costa Ltd for more than 24 years. That lease having ended, the premises were advertised by the petitioner's letting agent as being available for a new lease at offer in excess of £32,500. Also on 1 August 2024, the lease to Room for Faith Ltd was entered into at an annual rent of £1. On 8 August 2024, Local Faith Ltd, the subtenant, wrote to the respondent stating that it intended to use the premises as a place of worship. On 3 October 2024, the respondent issued a notice under regulation 5(1) of the 2024 regulations, intimating its intention to treat the petitioner as liable to pay non-domestic rates (which, for the period from 1 August 2024 to 31 March 2025,

were £11,438.31), and inviting representations within 28 days. On 6 November 2024 agents for the petitioner made representations, submitting, among other things, that the respondent had provided no evidence that the rent due under the leases was not the best (*sic*) rent that could be obtained on the open market. On 13 November 2024, the respondent issued its final notice, which is the subject of challenge in this petition. The notice stated that the respondent considered that the two leases constituted an arrangement within the meaning of section 38 of the 2020 Act; and that the arrangement was an artificial non-domestic rates arrangement within the meaning of sections 39 and 40. The notice went on to say that the respondent had concluded that the conditions in paragraphs (a) and (b) (of regulation 4(2)) had been met. In relation to the latter, the leases were considered not to be on a commercial basis; the arrangement lacked economic or commercial substance; it could not be considered as carried out in a manner that would normally be employed in reasonable business conduct; and it was inconsistent with the actions currently undertaken in respect of the premises. After referring to the fact that the premises were being advertised as available for a new lease at offers over £32,500 per annum, the notice stated that the rent was significantly below the level of the rent which could reasonably have been obtained for the premises on the open market at the time the leases were signed.

[17] On 17 December 2024 a demand note, or notice, in respect of the premises was issued to the petitioner, under section 237 of the 1947 Act, requiring payment of rates of £5,083.69 for the period 14 December 2024 to 31 March 2025. The reverse side of the notice contained guidance about various matters, including that non-valuation appeals must be lodged within 28 days of the date of the notice, that is, by 14 January 2025. On 8 January 2025, the petitioner's Steven Jackson forwarded the notice to the petitioner's agents, Verity Commercial Services Ltd, by way of pdf attachment to an email which read "Please see

attached." The attachment comprised only the front page of the notice. Verity had been appointed by the petitioner to manage its interest in the premises, including non-domestic rates matters. No appeal was lodged against the demand notice. Although, in an affidavit lodged in process, Jordan Street of Verity testified to receipt of the pdf from Mr Jackson, he did not explain why no action was taken to lodge an appeal or to query with Mr Jackson what his instructions, if any, were; nor was any explanation forthcoming from Mr Jackson as to whether he had read the reverse of the notice, whether he was aware of the time limit for lodging an appeal or what he expected Verity to do with the notice.

Issue 1: competency

Submissions for the petitioner

[18] Senior counsel for the petitioner submitted that the petition was competent. He accepted the general rule that judicial review was not available where there was an alternative remedy which had not been resorted to or exhausted, other than where there were special or exceptional circumstances (*British Railways Board* v *Glasgow Corporation* 1976 SC 224). However, it was important that there be an effective alternative remedy. The decision appealed against was that of 13 November 2024 to treat the petitioner as liable to pay non-domestic rates, against which there was no statutory right of appeal; section 238 of the 1947 Act did not permit a person to appeal against such a decision, other than incidentally as part of an appeal against rates subsequently claimed. Even if there was an alternative remedy, whether judicial review was available should properly be understood as an exercise of the court's discretion, rather than as a question of competency: *McGeogh* v *Electoral Registration Officer, Dumfries & Galloway* 2011 SLT 633, Lord Tyre at [30]. Whether it was properly a question of competency or discretion, the test, on either approach, was

whether the alternative remedy was an effective one in the circumstances of the case: *Tarmac Econowaste Ltd* v *Assessor for Lothian Region* 1991 SLT 77, Lord Clyde at 79 A to B, I to J. If there was an alternative remedy in the present case, there were four reasons why the petitioner was nonetheless not precluded from challenging the decision of 13 November 2024 by judicial review: (i) if that decision was unlawful, any demand notices proceeding upon it were fundamentally invalid: *Mensah* v *Secretary of State for the Home Department* 1992 SLT 177, 180 D-L; (ii) section 238 did not provide an effective remedy, because the respondent would in effect be judge in its own cause, one of the possible exceptions to the general rule cited by Lord Clyde in *Tarmac Econowaste* at 79 E to F, under reference to *Hope* v *Corporation of Edinburgh* (1897) 5 SLT 195; further, there was no right of appeal from a decision of the respondent on such an appeal and no right to apply for permission to appeal out of time; (iii) any appeal under section 238 was optional rather than mandatory, as indicated by use of the word "may" rather than "shall" lodge an appeal; (iv) there were special or exceptional circumstances, namely the inadvertence of scanning only the first page of the demand notice to the petitioner's agent.

Submissions for the respondent

[19] Senior counsel for the respondent submitted that the issue was one of competency, not discretion, the general principle having been articulated by the Lord Justice Clerk (Wheatley) in *British Railways Board* v *Glasgow Corporation* (above), at 237, that:

> "it is not competent to have recourse to the Court of Session for a common law remedy when provision is made by statute for a statutory form of review and recourse to that form of review has not been made".

It appeared that *British Railways Board* v *Glasgow Corporation* was not cited to Lord Tyre in *McGeogh*, which in any event was before the thorough analysis of the law carried out by

Lord Jones in *McCue* v *Glasgow City Council* 2014 SLT 891, in which he concluded that, as a matter of competency, a common law remedy could not be sought where a statutory remedy was available. Even if the matter was regarded as a question of exercise of discretion, the result ought to be the same in practice: Clyde and Edwards, *Judicial Review*, paragraph 12.04. The right of appeal under section 238 had been held to be an effective remedy in *British Railways Board.* As for the point that the 2020 Act contained no mechanism for appealing a decision under that Act, the scheme required that a demand notice be issued as soon as practicable after liability had arisen, but the liability was merely theoretical until the demand notice had been issued and it was that which was capable of being appealed. The reason for lateness arising from Jordan Street's affidavit was wholly inadequate to provide a basis for holding that there were exceptional circumstances. Finally, *Mensah*, above, fell to be distinguished, since the decision of 13 November 2024 was not itself said to be a fundamental nullity, as distinct from the decision challenged in that case.

Decision on competency

[20] The general and long-established rule is that it is incompetent, other than in exceptional circumstances, to pursue a common law remedy, whether by judicial review or otherwise, where an alternative and effective statutory remedy is available and has not been pursued or exhausted: *British Railways Board* v *Glasgow Corporation; McCue* v *Glasgow City Council*, both above. In the latter case, Lord Jones after an extensive review of the authorities concluded that there was also no reason in principle or logic why an aggrieved party should not be required to resort to a non-statutory remedy if that was capable of remedying an injustice. By a parity of reasoning, it is no answer to the respondent's assertion that an alternative remedy was available, for the petitioner to say that the 2020 Act itself does not

contain any mechanism for appealing a decision under that Act and the regulations made thereunder. A decision that a person is liable to pay non-domestic rates leads ineluctably to the issuing of a demand notice, by virtue of regulation 6(1) and (2) of the 2023 regulations read with section 237 of the 1947 Act. It is then open to the aggrieved landowner to challenge the anterior decision under section 238 (which was the approach taken by the petitioner in *Dunston Dunfermline Nominees Ltd*, which petition was heard alongside the present case). As both parties accept, that appeal would not be restricted to questions of law but would entail a root and branch reconsideration of the entire case, including the leading of evidence (as was the case, for example, in *Coalburn Miners Welfare and Charitable Society* v *Strathclyde Regional Council* 1995 SLT 950, which also involved a rating appeal under section 238).

[21] The petitioner argued, under reference to *Mensah*, above, that because the demand notice had been issued following an unlawful decision, it was a fundamental nullity and consequently that the jurisdiction of the court had not been ousted. However, in *Mensah*, the decision challenged was that of an immigration officer who did not have the authority to make that decision. A statutory appeal process was pursued, during which that point was not taken. A subsequent petition challenging the decision by means of judicial review was held by Lord Coulsfield to be competent on the basis that recourse to the court was not excluded in a case of fundamental nullity of a decision, unless specifically ousted by the court. However, in the present case, even if it is correct that the demand notice was a fundamental nullity, it is not the demand notice itself which is challenged, but the previous decision of 13 November 2024 to treat the petitioner as liable for non-domestic rates. That decision is not said to be fundamentally invalid, but it is challenged because the respondent is said to have erred in law (*et separatim* irrationally) in reaching it. That is plainly a decision

which is amenable to review by section 238 appeal, and were the jurisdiction of the court not held to have been ousted in such a case, the general rule would be deprived of any meaningful content.

[22] As to whether the remedy available to the petitioner is an effective one because an appeal under section 238 is to the respondent itself, the petitioner's submission founders on the authority of *British Railways Board* v *Glasgow Corporation*, in which the Inner House held that an appeal under section 238 was an effective remedy. As the Lord Justice Clerk (Wheatley) said at pp 238-239 (in dealing with the argument apparently founded on *Hope*, above, that a review by a body which at one and the same time was party and judge could not properly be regarded as an appeal):

> "...when Parliament has enacted that there is to be a right of appeal and designates the body which will hear that appeal, no matter who or what the body is, then it is a statutory appeal."

That effectively also disposes of the petitioner's remaining arguments that the section 238 appeal is not an effective remedy owing to the lack of discretion to allow a late appeal, and the absence of any further right of appeal. In any event, the petitioner did not attempt to lodge an appeal late in the present case. As for the petitioner's point that any appeal under section 238 is optional rather than mandatory, all that the word "may" in that section conveys is that an appeal may be lodged if the ratepayer wishes, rather than that an appeal may be pursued by some other means.

[23] That leaves the question of whether there are exceptional circumstances such as to allow the petition to proceed notwithstanding the existence of an alternative remedy. Although the petitioner argued, under reference to *McGeogh*, above, that this was a matter for the exercise of the court's discretion, rather than a strict question of competency,

ultimately it makes no difference, since on either approach the circumstances in which the court will allow the common law remedy to be pursued are the same. The sort of circumstances required were described by Lord Clyde in *Tarmac Econowaste*, above, at page 79, as including the situation where the complainer had been prevented from pursuing a statutory appeal through a procedural irregularity on the part of the authority. The circumstances in the present case fall some way short of that. The mistake in forwarding only the first page of the demand notice, omitting the guidance on appealing, was one entirely of the petitioner's making, and was neither the fault of the respondent, nor exceptional. The petitioner's agent appointed to deal with rates matters might in any event have been expected to know, if not the final date for lodging an appeal, at least that there was likely to be such a date and to have made enquiries as to what it was.

[24] For all these reasons, I find that there was an alternative and effective remedy available to the petition to challenge the decision of 13 November 2024 which it did not pursue and, in the absence of special circumstances, that the present petition is incompetent.

Issue 2: was the decision unlawful and/or irrational

[25] Although strictly unnecessary I will deal with the merits briefly, in deference to the arguments made and in case my decision on competency is wrong.

Submissions

[26] Senior counsel for the petitioner argued that the respondent erred in law, and acted irrationally, in finding that the rent charged was significantly below the level of the rent which could reasonably have been obtained for the premises on the open market at the time the arrangement was entered into, thus meeting the condition in regulation 4(6)(d). That

finding had been made solely on the basis of evidence that the petitioner had advertised the premises for let and invited offers of rent in excess of £32,500 per annum. The test was a real-world test, rather than a hypothetical one. Evidence of rent sought which had not been obtained was self-evidently not evidence of the rent which could have been obtained on the open market at the time. Had the petitioner been able to rent the premises at a higher figure than £1, then it would have done. There was simply no evidence to support the finding. The decision was therefore unlawful (Carnwath (Ed), *De Smith's Judicial Review* (9th Edn 2023) paragraph 6.039). The lack of evidence also rendered the decision irrational. Separately, the respondent had acted irrationally in finding that the arrangement was artificial within the meaning of section 40 of the 2020 Act. Its reasoning was internally inconsistent. It was implicit in the findings that the petitioner had entered into an arrangement whereby the sub-tenant had sought religious exemption relief on the ground that the premises were to be used for religious worship, and that rates of £11,438.81 would have been payable for the period from 1 August 2024 to 31 March 2025 but for that arrangement, that one of the main purposes of the arrangement was to procure relief from non-domestic rates and that relief on religious grounds would be granted; however such relief could only be granted if the premises were used for the purpose of religious worship. It followed that the finding that the arrangement would result in an advantage could not be reconciled with its finding that the arrangement was artificial.

[27] The respondent submitted in response that the rent at which the premises were advertised for rent on the open market was a relevant adminicle of evidence bearing on the issue of what level of rent could reasonably have been obtained, and the respondent was entitled to draw the inference that £1 per annum was significantly below the level of rent which could reasonably have been obtained on the open market. The subjects had been

marketed by a reputable letting agency and there was a presumption of regularity. The respondent did not need to settle on a precise valuation of what rent could have been achieved, when what mattered was the dissonance between the rent paid, and that which could have been achieved. To say that the subjects would have been leased at a higher rent had such been achievable started from the wrong premise, namely that it was a *bona fide* scheme. As for rationality, the respondent's finding that the leasing arrangements were an attempt to gain non-domestic rates religious exemption was quite clearly compatible with the finding that the arrangements were artificial.

Discussion

[28] The question which the respondent had to consider under regulation 4(6)(d) was whether the rent charged for the premises was significantly below the level of rent which could reasonably have been obtained on the open market at the time the tenancy was entered into. The level at which commercial subjects are advertised for rent is an adminicle of evidence as to what level of rent might reasonably be achieved on the open market, on the basis that no owner, acting on professional advice, would be likely to seek a rent which was commercially unrealistic (noticing, too, that offers were sought *in excess of* £32,500, indicating that there was an aspiration, at least, that a higher figure might be achieved). Accordingly, the respondent was entitled to take that into account as one piece of evidence which might found an inference as to the likely achievable rent. However, that was not the only evidence that the rent was significantly below what could reasonably be obtained, since another adminicle was the fact that the actual rent charge of only £1 was on any view only a nominal amount. It is likely to take little in the way of additional evidence to entitle a decision-maker to conclude that a nominal rent was significantly less than the rent which could have been

achieved (bearing in mind that even a rental figure significantly less than the rent being sought might still be significantly more than a nominal rent). The petitioner's argument that had a higher rent been available, it would have leased the premises at that higher rent is no more than superficially attractive. As senior counsel for the respondent submitted, that argument proceeds on the premise that the arrangement was not an artificial one, which is the wrong starting point. Further, the petitioner's argument comes perilously close to arguing that the only evidence of the rent which could reasonably have been obtained on the open market is evidence of rent actually achieved for the premises in question, which would deprive the test of any meaningful content.

[29] For all these reasons, I would not have found the decision of 13 November 2024 to have been unlawful or irrational by reason of an absence of evidence supporting it.

[30] Finally, I do not consider that the respondent's reasoning was in any way internally inconsistent. It was open to the respondents to find that a purpose of the arrangement was to secure the religious relief exemption. If the premises were not in fact being used for religious purposes then it was also open to the respondents to find, applying the statutory test, that the arrangement was an artificial one.

Disposal

[31] An alternative remedy having been available to the petitioner, and the petition therefore being incompetent, I have sustained the respondent's first and second pleas-in-law and refused (rather than dismissed) the petition. I was not addressed on expenses, and so have reserved those.