EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 22
P894/24

Lord Matthews
Lord Armstrong
Lord Clark

OPINION OF THE COURT

delivered by LORD CLARK

in the reclaiming motion

in the cause

HEPTAGON PORTFOLIO ARBROATH LIMITED

Petitioner and Reclaimer

against

ANGUS COUNCIL

Respondent

Petitioner and Reclaimer: D Thomson KC, Tosh; Addleshaw Goddard LLP
Respondent: Upton; Anderson Strathern LLP

1 May 2026

Introduction

[1] The petitioner and reclaimer, Heptagon Portfolio Arbroath Limited, was the owner of a shopping centre in Arbroath, called the Abbeygate Centre. The shopping centre contains a number of units. After several of these units had become unoccupied, Heptagon let them out to Room for Faith Limited, which in turn sub-let the premises to Local Faith Limited. Heptagon's rental charge was £1 *per annum* for each unit.

[2] Section 16 of the Valuation and Rating (Scotland) Act 1956 provides that the occupier of a non-domestic property, rather than the owner, is liable to pay non-domestic rates to the local authority. However, where the property is unoccupied, section 24ZA of the Local Government (Scotland) Act 1966 provides that the owner shall be liable for the non-domestic rates. As a result of letting the units out, the liability for payment of non-domestic rates is said to have passed from Heptagon to the tenant, Room for Faith Limited and then to the sub-tenant, Local Faith Limited. The tenant and sub-tenant are said to benefit from the exemption from liability for non-domestic rates for premises which are used for worship, under section 22 of the 1956 Act. As a consequence, there is, according to this argument, no payment to the local authority of non-domestic rates for these units.

[3] The respondent, Angus Council, considered that the leases between Heptagon and Room for Faith were an artificial non-domestic rates avoidance arrangement. Put shortly, the council's view was that the leases had no commercial substance or purpose other than to displace Heptagon's liability for non-domestic rates. In accordance with Regulation 4 of the Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023, on 22 November 2023 the council advised Heptagon that they intended to treat the company as liable to pay non-domestic rates for the premises from 22 December 2023. Heptagon appealed against that decision and on 4 July 2024 the Non-Domestic Rates Appeal Sub-Committee of the council's Policy and Resources Committee refused the appeal. Heptagon brought a petition for judicial review of the council's decision. The Lord Ordinary, in his Opinion dated 12 August 2025, refused the petition and Heptagon now reclaim (appeal) against that decision.

Legal and factual background

[4] In 2016 the Scottish Ministers approached Mr Kenneth Barclay, former chair of the Royal Bank of Scotland, to conduct a review into the system of non-domestic rates in Scotland. On 22 August 2017 Mr Barclay's review was published. The Non-Domestic Rates (Scotland) Act 2020 followed his recommendations. One area of particular focus was about combating the avoidance of paying non-domestic rates.

[5] Section 37 of the 2020 Act empowers the Scottish Ministers to make regulations preventing or minimising the advantages arising from non-domestic rates avoidance arrangements that are artificial. In terms of section 39, an arrangement is a non-domestic rates avoidance arrangement if:

> "(1) …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)."

[6] Section 38 sets out the meaning of "advantage":

> "(1) An 'advantage', in relation to non-domestic rates, includes in particular—
> (a) avoidance of a possible assessment,
> (b) remission,
> (c) relief (or increased relief),
> (d) repayment (or increased repayment),
> (e) deferral of a payment or advancement of a repayment.
>
> (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."

[7] Section 40 provides that an arrangement is "artificial" if either condition A or condition B, set out in that section, is met. In this case, condition B and part of section 40(4) are of relevance:

> "(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…"

[8] The Scottish Ministers duly made the 2023 Regulations. There are various procedural requirements which do not concern us here and the relevant provision is found in Regulation 4:

"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".

[9] For present purposes, the statutory scheme thus outlines three requirements the local authority must satisfy before it may treat an owner as liable. First, there must be a tenancy. Second, the tenancy must have the purpose of gaining an advantage. Third, the tenancy must be an artificial arrangement.

[10] Regulation 4 continues:

"(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."

In the present case the amount of non-domestic rates would, cumulatively, have been in the region of £38,000 *per annum*.

[11] Regulation 4(4) sets out further conditions, one of which is relevant in this case:

"(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)),"

[12] Finally Regulation 4(6) sets out a list of conditions which entitle a local authority to consider that a regulation, tenancy, or other arrangement is not on a commercial basis, with condition 4(6)(d) being of central importance in the present case:

> "(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,"

[13] Heptagon took entry to the shopping centre on 4 January 2018. It paid £3,290,000. As senior counsel for Heptagon observed in oral submissions, the owners of commercial premises generally intend either to occupy them or to let them for an income, and the latter was Heptagon's intention. The properties relevant in this case were previously let out for a period of time but in due course the rentals came to end.

[14] Room for Faith Limited took occupancy of the properties from 10 May 2023, at an annual rent of £1. In June 2023, the council became aware that Room for Faith Limited was possibly involved in rates avoidance in the Aberdeen, Aberdeenshire, Dundee, Glasgow, Falkirk, Fife, and West Lothian Council areas. Room for Faith Limited, and the subtenant Local Faith Limited, are said to offer space for religious worship by community groups. Officers of the council visited the premises. There was no information on how to access the premises for worship. For three of the units, the officers could not see into the property. Four others contained only a table and chair and one had whitewashed windows.

[15] Officers then carried out internet searches for property rental values in Arbroath town centre as a comparator. They found four such properties, all situated on Arbroath High Street, annual rents for which ranged from £6,000 to £23,000. Further internet searches discovered no websites in the name of Room for Faith Limited or Local Faith Limited, but that the properties were listed on "faithful.global" as bookable prayer rooms, albeit with no obvious details as to how to book a room. Finally, officers noted that Room for Faith Limited's property agent advertised a service to stop businesses receiving rates bills on empty properties.

[16] The officers thus concluded that the leases between Heptagon and Room for Faith Limited were an artificial non-domestic-rates avoidance arrangement. The annual rent of £1 was considerably below the level of rent that could be expected on the open market. There was no information as to how the premises could be booked for worship, nor did their contents suggest any such use. There was no commercial substance to such an arrangement and so condition B in section 40 of the 2020 Act was thus met. The advantage to Heptagon was that it avoided annual non-domestic rates liability. By letter dated 23 October 2023, Heptagon was notified that the council intended to treat it as liable for payment of non-domestic rates. Heptagon was given the opportunity to make representations as to why that should not happen.

[17] On 10 November 2023 representations on behalf of Heptagon were submitted. After considering them, on 22 November 2023 the council served its final notice on Heptagon. The notice stated that the council confirmed its view that the sole purpose of the arrangement with Room for Faith Limited was an artificial non-domestic rates avoidance arrangement within the meaning of the regulations and that the main purpose, or one of the main purposes, of the arrangement was for Heptagon to gain an advantage and seek to

avoid their rates liability. After further correspondence, Heptagon appealed under section 238 of the Local Government (Scotland) Act 1947.

[18] The council's Non-Domestic Rates Appeal Sub-Committee met on 20 June 2024. It had before it a report by the council's Director of Finance, with an appeal submission attached. This referred in detail to the background to Heptagon's appeal, relevant statutory provisions and regulations, the sequence of events, investigations undertaken and the conclusions reached. For each of Heptagon's six units, it set out the rateable value, annual rates charged, the service charge and the £1 annual rent. It then stated the potential rental values of the four High Street premises. Copies of the relevant provisions of the 2020 Act and 2023 Regulations were in the appendices, along with Scottish Government guidance and evidence.

[19] The sub-committee also had before it written and oral representations from an advocate, on Heptagon's behalf. The written submissions set out Heptagon's arguments and attached two emails from its asset manager, Rob Melling. In the first email, Mr Melling referred to the efforts Heptagon had made and the difficulty it faced in trying to secure retail tenants to occupy the premises. He explained that in 2023 the six units now let to Room for Faith Limited had become unoccupied, tenants having either terminated or chosen not to renew their leases or having become insolvent. The coronavirus pandemic had seriously impacted towns like Arbroath. Heptagon engaged specialist retail leasing companies and asset management consultancies to try and market the shopping centre premises for let. In 2 years, the only significant interest had been from a national gym operator, who offered to take on three units. Heptagon had speculatively invested £25,000 in professional fees to design a space suitable for the prospective tenant, only for the tenant to withdraw their interest after 4 months of negotiations "due to concerns around Arbroath as a town".

Mr Melling also stated that, to try and secure occupiers for the centre, the agents embarked on a campaign offering the retail units "at cost" on flexible leases. The total all-inclusive rent for each unit covered the service charge, insurance, and business rates liability, but no rentals were made.

[20] In the second email, Mr Melling commented on the High Street units referred to in the appendix to the report of the Director of Finance. He explained that three of the High Street units were located on sections of the street that still allowed vehicular traffic to come through and had roadside parking immediately in front of their units, giving them significantly more visibility and accessibility than the shopping centre. He also said that none of the High Street units was within a covered shopping centre and therefore they were unlikely to contribute towards a service charge. His view was that occupiers cannot afford to pay the rent and the service charge, so they choose to locate on the High Street instead of Heptagon's units in the shopping centre.

The council's decision

[21] Following the meeting of 20 June 2024, the council wrote to Heptagon on 4 July 2024 refusing the appeal. It is appropriate to set out what was said in the sub-committee's decision, given its importance in relation to Heptagon's grounds of appeal.

> "The Non-Domestic Rates Appeal Sub-Committee convened on 20 June 2024. Written and oral submissions, which were considered in full by Members of the Sub-Committee, were presented by the Director of Finance's representative and the Appellant's representative. The Sub-Committee decided that the meeting be adjourned to receive legal advice.
>
> The Non-Domestic Rates Appeal Sub-Committee re-convened to receive legal advice, in private, accompanied by the Legal Advisor and the Committee Clerk on 25 June 2024. Thereafter, Members retired to make their decision in the presence of only the Committee Clerk.

The Decision of the Sub-Committee is that Angus Council 'the local authority' must treat Heptagon Portfolio Arbroath Limited as liable to pay non-domestic rates. This is in respect of the Sub-Committee being satisfied, in all the circumstances, that each tenancy:-

(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 Non-Domestic Rates (Scotland) Act 2020 ('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

in terms of Regulation 4(2) of the Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023/92 ('the 2023 Regulations').

The Sub-Committee was satisfied that, in terms of Regulation 4(4)(a) of the 2023 Regulations, that 'the tenancy or other arrangement on the basis of which the land and heritage are occupied is considered not to be on a commercial basis'. Further, in terms of Regulation 4(6), section (d) applied.

Having regard to all the circumstances, the evidence permitted the Sub-Committee to determine, in terms of section 38, 39 and 40 of the 2020 Act, it was reasonable to conclude that obtaining an advantage is the main purpose or main purposes of the arrangement. The non-domestic rates avoidance arrangement is artificial by virtue of condition B being met in section 40, 'that the arrangement lacks economic or commercial substance' by virtue of '(a) the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct'.

It was a matter of agreement that:

1. non-domestic rates were payable in respect of the premises and by virtue of a tenancy or other arrangement entered into on or after 1 April 2023, the occupier of those premises would, but for regulation 4, be liable to pay non-domestic rates in respect of them.

2. the tenancies were entered into after 1 April 2023.

3. the leases and sub-leases are a series of arrangements.

4. the annual rent due under each of the leases and sub-leases is £1 *per annum*.

From the evidence, the following facts were established by the Sub-Committee in reaching their decision:

1. the series of arrangements is carried out in a manner which would not normally be employed as reasonable business conduct.

2. the arrangement results in an advantage that is not reflected in the business risks undertaken thereby indicating a lack of economic or commercial substance.

3. the Appellants could charge more rent than the £1 *per annum* charge currently levied for each unit.

4. the Appellants are gaining an advantage by the avoidance of paying non-domestic rates in their entirety (s38(1)(a) avoidance of possible assessment).

5. the comparative figures, as referred to on page 13 of the combined bundle, at Table 4, although not directly the same due to pros of properties on the High Street (parking, although limited, directly in front of shops, easier accessibility, increased visibility) and cons (individual need to maintain, clean and secure properties) and pros of properties within covered shopping areas (more comfortable experience for shoppers in cold weather, adjoining car park, access to a number of shops at one time, arguably leading to greater footfall, and cons (service charge to be paid to benefit customers i.e. by maintaining public toilets, advertising and security) did show the gulf between the £1 *per annum* rent for each unit and the Table 4 rents which are so significant that £1 rent for each unit cannot be considered the best commercial rent available.

On the balance of probabilities, the Non-Domestic Rates Appeal Sub-Committee unanimously agreed that the evidence led by the Director of Finance's representative was the preferred evidence in this matter."

The Lord Ordinary's decision

[22] Before the Lord Ordinary, Heptagon submitted that the council had determined the wrong question. It had asked itself whether a higher rent could have been obtained for the premises and taken the view that, because the annual rent was £1, the answer was plainly yes. That was impermissible. What it ought to have done was consider whether an annual rent of £1 was significantly below the level of rent which could reasonably be obtained on the open market. The council had material before it vouching the significant difficulties Heptagon had experienced in getting in a commercial tenant. These demonstrated that the

£1 rent charged was not "significantly below" the open market rent; the simple fact was that the retail economy of Arbroath was depressed and there was no real interest in the premises.

[23] In any event, the council's reasons were insufficient. It ought to have ascertained for itself the rent which the petitioners could reasonably have obtained on the open market. Only had they done so could they properly make a finding that:

> "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"

in terms of Regulation 4(6)(d). It had merely recited the statutorily prescribed conclusion rather than engage with the arguments presented to it. It had left the informed reader in "real and substantial doubt" as to the reasons for the decision (*Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345).

[24] The Lord Ordinary rejected both submissions. Whilst the sub-committee had recited the statutory test, the terms of the decision letter identified the factual conclusions which underlay the finding that the test was met. The undisputed factual circumstances, as narrated above, gave the sub-committee the basis for inferring that condition B applied to the leases between Heptagon and Room for Faith Limited. Heptagon's approach was to subject the decision of a non-legally qualified body to an overly exacting standard of scrutiny. The letter of 4 July 2024 was sent to parties who knew the background. In such circumstances, it could give relatively brief reasons (*South Bucks DC* v *Porter* [2004] 1 WLR 1953; [2004] UKHL 33). There was no merit in the submission that the council ought to have ascertained for itself the rent Heptagon could have achieved; all they required to do was consider whether the rent actually charged was significantly below what Heptagon might have achieved, which they had done.

Grounds of appeal

[25] The individual parts of the grounds of appeal are analysed later when we come to explain our decision but they can be summarised in the following terms. Heptagon now submit that the Lord Ordinary should have found that the council erred in its approach to the statutory criteria, in particular Regulation 4(6)(d). The council failed to deal with the issue of the rent which Heptagon could reasonably have obtained on the open market properly, in that it did not find for itself what such a level of rent would be and, in particular, failed to take into account the fact that specialist letting agents had been unable to market the premises for 2 years. In the alternative, if it did take these factors into account it had failed to explain why any significantly higher level of rent could reasonably have been obtained at the time that the arrangements were entered into in light of that evidence. Further, the decision merely recited the statutorily prescribed conclusion and *indicia* in finding that the arrangement lacked economic or commercial substance. These reasons were insufficient. The Lord Ordinary erred in not so finding.

Submissions

[26] Each party lodged written submissions and addressed the key points in their oral submissions. What follows is a brief summary of the main points made.

For the reclaimer

[27] Senior counsel for Heptagon invited us to allow the reclaiming motion, recall the Lord Ordinary's interlocutor, reduce the council's decision of 4 July 2024 and remit the matter back to the council for a fresh decision by a differently constituted sub-committee.

[28] The council's approach was infected with a fundamental error. Heptagon had furnished the sub-committee with considerable material demonstrating their difficulties in marketing the premises for let. The sub-committee had not engaged with this material. Instead, it had only addressed the question of whether a higher rent could have been obtained. It pointed to a "gulf" between the £1 annual rent and the comparators on Arbroath High Street. However, all of this ignored the reality that Heptagon had tried to let the premises at a commercial rent and been unsuccessful. The sub-committee's decision "flew in the face" of that reality. Heptagon had provided submissions as to why the High Street was a bad comparison to an off-street indoor shopping centre. Senior counsel pointed out that if there had been a tenant willing to rent at commercial rates, Heptagon would have transacted with them. The focus had to be on the real world, not a hypothetical market.

[29] Senior counsel disclaimed the idea that this was simply a "reasons challenge". The council had not, as a matter of substance, addressed the correct question. Reference was made to *Lanark County Council* v *Frank Doonin Ltd* 1974 SLT (Sh Ct) 13. In any event, however, as a matter of law inadequate reasons had been given. With reference to *De Smith's Judicial Review*, 9th Edition, at 9-137, the reasons for the decision were not "intelligible". No findings had been made as to what reasonable business conduct ought to have been for Heptagon in these circumstances. The reasons did not demonstrate that a "systematic analysis" had been undertaken.

[30] In answer to questioning by the court as to why Heptagon had bothered letting out the premises for £1 at all, senior counsel submitted that Heptagon wished to see the shopping centre made use of to benefit the local community rather than lying empty, in accordance with its environmental, social and governing policy. Senior counsel was asked by the court about *Bridgeport Estates* v *Highland Council* [2025] CSOH 69, 2025 SLT 1120, an

analogous case in which he had also appeared. Senior counsel submitted that the analysis by the commercial judge in that case was incorrect.

For the respondents

[31] Counsel invited us to refuse the reclaiming motion and adhere to the interlocutor pronounced by the Lord Ordinary.

[32] The context of the decision was critical. The sub-committee's decision made clear that it had the terms of the legislation before it, along with the report of the council's officers (and the findings of their investigations), and the submissions from Mr Tosh, advocate. Heptagon was inviting the court to require a quasi-judicial level of detail from the sub-committee. That was not required. Reference was made to the decision in *South Bucks DC*, paragraph 36. With reference to the statutory criteria, counsel submitted that a finding that the rent was "significantly below" what might be achieved on the open market required little in the way of detailed analysis where the rent was only £1. By analogy, he suggested that one did not need a theodolite to determine that a mountain is significantly taller than a hill.

[33] The sub-committee had narrated that it had considered the written and oral submissions in full. It was not required to address every material consideration. Counsel referred to *De Smith* at 9-141, where the learned authors suggest that the decision-maker is obliged to tell parties "in broad terms" why they lost or won, and leave no genuine (as opposed to forensic) doubt over the decision. The submissions for Heptagon that the council was obliged to fix the level of commercial rent, or go into considerable detail, flew in the face of this passage. The submissions for Heptagon were a classic example of "forensic" doubt.

Analysis and decision

[34] The first question is whether the Lord Ordinary erred in law by holding (at para [15]) that the council had correctly directed itself when it considered whether the condition in Regulation 4(6)(d) of the Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023 was met.

[35] When dealing with the appeal before it, the sub-committee had copies of all of the relevant statutory provisions and regulations, including the terms of Regulation 4(6)(d). The sub-committee expressly stated in its decision that it was satisfied that "in terms of Regulation 4(6), section (d) applied". It determined that the comparison between the £1 *per annum* rent for each unit and the High Street rents showed the "gulf", which was significant. It is therefore clear that the council did address the question in Regulation 4(6)(d).

[36] As to whether the regulation was addressed correctly, we agree with the Lord Ordinary that the decision letter should be seen and read in its context, which includes that the sub-committee had the report from the Director of Finance, the full written and oral submissions and all relevant documents. Taking that approach, it would be unreasonable to conclude from the wording of the decision letter that, in reaching its conclusion, the sub-committee did not properly apply the test set out in Regulation 4(6)(d).

[37] The next issue, closely linked to the first one, is whether the Lord Ordinary erred in law in holding (at para [18]) that the council did not require to find the level of rent which could reasonably have been obtained for each of Heptagon's six premises on the open market at the time the arrangements were entered into. Heptagon contends that, absent such a finding, the council was not entitled to hold that the condition in Regulation 4(6)(d) was met.

[38] As noted, in reaching its decision, the sub-committee took into account the rental figures on four premises located in the High Street, an area situated relatively close to the premises of Heptagon. It cannot have been necessary for the sub-committee to attempt to identify precisely what rent was able to be obtained for each of Heptagon's six units, which had certain differences in size and positions in the shopping centre. It is not the case that the only relevant evidence is the rent actually achieved for the premises in question (as was observed by Lord Braid in *Bridgeport Estates* v *Highland Council* [2025] CSOH 69, 2025 SLT 1120, para [28]). The wording in Regulation 4(6)(d) - "the level of the rent which could reasonably have been obtained" - must allow other appropriate evidence to be considered, such as a comparison with properties that are located reasonably close to the premises in question and are of a broadly similar size.

[39] It is clear from the decision of the sub-committee that the comparison was not simply made on the figures quoted. Proper consideration was given to what it described as the "pros" and "cons" of the High Street properties and Heptagon's units, having taken into account Mr Melling's comments. The sub-committee noted that the comparative figures, although not directly analogous due to the pros and cons, showed the "gulf". In reaching that view, the sub-committee was not proceeding on the basis that Heptagon could have obtained the same rental prices as for the High Street premises; rather, it gave due regard to the rental prices there and the relevant pros and cons. In short, there was no need to arrive at a specific figure for the actual level of rent that could have been obtained at the premises. The Lord Ordinary did not err in finding that it was not incumbent on the council to do so. It was enough to make the comparison in the sufficiently analytic and reasonable manner adopted by the council.

[40] Heptagon also argued that the Lord Ordinary erred in law in holding (at para [17]) that the council had not failed to take a relevant factor into account, namely that Heptagon had engaged specialist retail letting agents to market the premises for let for 2 years, but that it had been unable to secure any other interest in letting the premises. Heptagon's interpretation of Regulation 4(6)(d) is that it is about what would actually have happened in the real world and that the sub-committee could not take a hypothetical approach and assume that there would have been a willing lessee. Heptagon submitted that if the evidence was that no tenants were willing to take up the rental, the rent would be nominal, hence allowing the £1 figure to be seen as not significantly below what reasonably could have been obtained.

[41] We do not accept this argument. It is no doubt true that Heptagon had sought to let out the premises at a higher rent but failed to do so. However, the evidence before the sub-committee did not show that no tenants were willing to take up rental of the units. Instead, the evidence was that no let was achieved at the all-inclusive rent for each unit, which covered the service charge, insurance, and business rates liability. Heptagon did not seek to establish that a lower amount, but still significantly higher than £1, could not have been obtained. The evidence about the lack of rental did not negate the inference that tenants could take it up at a lower figure, but still much more than £1 *per annum*. On all of the information before it, the sub-committee was fully entitled to draw that inference. The decision was not reached merely on an assumption; when analysing what could reasonably have been obtained in the real world a comparison can readily be used.

[42] It can therefore be taken as read that the sub-committee did indeed have proper regard to what was said about the experience of Heptagon in trying to let out the premises. There was no need to specifically address that in the sub-committee's decision, given that

Heptagon was fully aware of the context in which the decision was made. The sub-committee's conclusion that the High Street figures were relevant and demonstrated the difference to be significant must have been reached even though it was aware of what Heptagon had failed to achieve. It was entitled to reach that view.

[43] Heptagon's next contention was that the Lord Ordinary erred in law in holding (at para [17]) that the council had given adequate reasons for its finding that the condition in Regulation 4(6)(d) was met. We have no reason to doubt that the sub-committee considered all of the evidence and had full and proper regard to everything said in the report by the Director of Finance and the documents appended to that report. The sub-committee's reasons correctly proceeded on the basis that Heptagon knew the context in which it would reach its decision. It cannot be said that the decision made about rent was not explained, as there had been the reasonable analysis of the figures and the pros and cons. As already observed, it can readily be inferred that, having taken into account the evidence about Heptagon not being able to rent the units at the amounts stated, the sub-committee saw that as superseded by the comparative evidence.

[44] The law on adequate reasons is well-established (*Wordie Property Co Ltd* v *Secretary of State for Scotland* 1984 SLT 345, *South Bucks DC* v *Porter (No 2)* [2004] 1 WLR 1953; [2004] UKHL 33), and explained in *De Smith's Judicial Review* (9th Edition at 9.136 - 9.142). We are satisfied that the sub-committee's decision and reasons dealt with the main contentions advanced by Heptagon and explained, in broad terms, why they did not succeed. The reasons why the council determined that a significantly higher level of rent could reasonably have been obtained are obvious, based on the comparison it made. The informed reader was left in no real and substantial doubt as to why the council found that

the condition in Regulation 4(6)(d) was met. We agree with the Lord Ordinary that adequate reasons were given.

[45] The final ground argued by Heptagon was that the Lord Ordinary erred in law in holding that the council was entitled to find that the arrangement was an artificial non-domestic rates avoidance arrangement within the meaning of section 40 of the Non-Domestic Rates (Scotland) Act 2020 when the sub-committee was said to have merely recited the statutorily prescribed matters but failed to identify any facts which supported those findings or explain why it had made those findings.

[46] We are not satisfied that there was merely a recital of the statutory language. Again, the decision letter must be read as a whole in its proper context. The points made by the sub-committee did indeed involve a direct reference to the statutory tests, but it also expressly stated that the facts were established from the evidence. The sub-committee's conclusion that it "unanimously agreed that the evidence led by the Director of Finance's representative was the preferred evidence in this matter" indicates that it accepted what was said by the director about the facts, which supported this being an artificial arrangement. The informed reader was again left in no real or substantial doubt as to why this decision was reached.

Disposal

[47] For the reasons given, the reclaiming motion is refused and we adhere to the interlocutor of the Lord Ordinary. We find the reclaimer liable to the respondent in the expenses of this reclaiming motion.