

3 W.L.R.

A

[HOUSE OF LORDS]

DEBENHAMS PLC.

RESPONDENTS

AND

WESTMINSTER CITY COUNCIL

APPELLANTS

B

1986 Oct. 27, 29, 30;
Dec. 4Lord Keith of Kinkel, Lord Templeman,
Lord Griffiths, Lord Mackay of Clashfern
and Lord Ackner

C

Rating—Unoccupied hereditament—Exemption from rates—Hereditament comprising two buildings joined by bridge and subway—One building listed as of special architectural or historic interest—Whether listing extending to both buildings—Whether exemption applying to hereditament only part of which listed—General Rate Act 1967 (c. 9), Sch. 1, para. 2(c) (as amended by Town and Country Planning Act 1971 (c. 78), s. 291, Sch. 23)—Town and Country Planning Act 1971 (c. 78), s. 54(9)

D

Schedule 1, paragraph 2(c) of the General Rate Act 1967 (as amended) provided that no rates should be payable in respect of an unoccupied hereditament for any period during which “(c) the hereditament is . . . included in a list compiled or approved under section 54 of [the Town and Country Planning Act 1971] . . .” Section 54(9) of the Act of 1971 provides:

E

“for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of a building, shall be treated as part of the building.”

F

Two buildings comprised a single hereditament for rating purposes. The first building fronted on to a main thoroughfare and its rear faced on to a minor road. The second building was on the opposite side of the minor road but was joined to the first building by a bridge over the road and a subway under it. Both buildings had been used together as shop premises, but in the rating year February 1982 to March 1983 both were unoccupied and during January to March 1985 the subway was filled in and the bridge removed, to enable the second building to be sold separately. The owners of the hereditament contended that they were under no liability to pay unoccupied rates pursuant to section 17 of and Schedule 1 to the Act of 1967 on the ground that the inclusion of a description of the first building in a list of buildings of special architectural or historic interest compiled by the Secretary of State under section 54 of the Act of 1971 was apt to include the whole of the rateable hereditament. On the hearing of the rating authority’s summons for non-payment of rates, the stipendiary magistrate held that the first building was included in the listing, but not the second, and that as only part of the hereditament was listed there was no exemption from liability to rates when unoccupied. On the owners’ appeal by way of case stated, Hodgson J. held that the entire hereditament was included in the listing and was therefore exempt from rates. The Court of Appeal upheld that decision.

G

H

On appeal by the rating authority:—

Held, (1) that notwithstanding the extended definition of “listed building” in section 54(9) of the Act of 1971 being prefaced by the words “for the purposes of this Act”, the

Debenhams Plc. v. Westminster Council (H.L.(E.)) [1986]

definition applied equally for the purposes of Schedule 1, paragraph 2(c) of the Act of 1967 (post, pp. 1069c–e, 1071b–c, d, 1076f–h). A

(2) (Lord Ackner dissenting), that on its true construction, section 54(9) in including “a structure fixed to a building” in the definition of a listed building referred only to structures ancillary to the listed building itself and not to structures constituting some other complete building; accordingly, only the first building was listed under section 54 of the Act of 1971 (post, pp. 1068d–g, 1069c, 1071b–c, 1073e–g, 1074h–1075a). B

Attorney-General ex rel. Sutcliffe v. Calderdale Borough Council (1982) 46 P. & C.R. 399, C.A. distinguished.

(3) Allowing the appeal, (*per* Lord Keith of Kinkel, Lord Templeman, Lord Griffiths and Lord Mackay of Clashfern) that the exemption from rates afforded to buildings listed as being of special architectural or historic interest by Schedule 1, paragraph 2(c) of the Act of 1967 did not apply to hereditaments only part of which were listed under section 54 of the Act of 1971 and, accordingly, exemption from rates was not available to the owners’ hereditament for the rating year 1982–83 (post, pp. 1070g–1071b, b–c, d). C

Providence Properties Ltd. v. Liverpool City Council [1980] R.A. 189, D.C. applied.

Decision of the Court of Appeal [1986] R.A. 114 reversed. D

The following cases are referred to in their Lordships’ opinions:

Attorney-General ex rel. Sutcliffe v. Calderdale Borough Council (1982) 46 P. & C.R. 399, C.A.

Corthorn Land and Timber Co. Ltd. v. Minister of Housing and Local Government (1965) 17 P. & C.R. 210

Providence Properties Ltd. v. Liverpool City Council [1980] R.A. 189, D.C. E

The following additional cases were cited in argument:

Camden London Borough Council v. Post Office [1977] 1 W.L.R. 892; [1977] 2 All E.R. 795, C.A.

Methuen-Campbell v. Walters [1979] Q.B. 525; [1979] 2 W.L.R. 113; [1979] 1 All E.R. 606, C.A.

Vandyk v. Oliver [1976] A.C. 659; [1976] 2 W.L.R. 235; [1976] 1 All E.R. 466, H.L.(E.) F

Appeal from the Court of Appeal.

This was an appeal by leave of the House of Lords by the appellants, the City of Westminster, against the order of the Court of Appeal (Fox, Neill and Ralph Gibson L.J.J.) [1986] R.A. 114 on 25 March 1986 dismissing their appeal from the judgment of Hodgson J. [1985] R.A. 265 on 7 February 1985 allowing an appeal by way of case stated from the direction of the stipendiary magistrate (John Quentin Campbell) on 29 March 1983 that a distress warrant be issued against the respondents, Debenhams Plc., for non-payment of rates in respect of their premises at 200-202 Regent Street, 50-52 and 27-28 Kingly Street, London, W.1. G

The facts are set out in the opinions of their Lordships. H

Graham Eyre Q.C. and *Richard Hone* for the appellants.

Matthew Horton and *Michael Humphries* for the respondents.

Their Lordships took time for consideration.

4 December. LORD KEITH OF KINKEL. My Lords, this appeal raises difficult questions as to the proper construction of certain of the

3 W.L.R.

Debenhams Plc. v. Westminster Council (H.L.E.))

Lord Keith
of Kinkel

A unoccupied rates provisions of the General Rate Act 1967 (as amended) in their application to buildings listed by the Secretary of State, under section 54 of the Town and Country Planning Act 1971, as being of special architectural or historic interest. The proper construction of certain provisions of section 54 is also in issue.

B The appellants are the rating authority for the City of Westminster, and the respondents were at the material time owners of a hereditament described in the valuation list which came into force on 1 April 1973 as "200/202 Regent Street (and 50/52 Kingly Street)." This hereditament was formerly Hamley's toy shop. It comprised premises fronting onto Regent Street and running back to the west side of Kingly Street at the rear, and also (notwithstanding the description in the list) further premises on the east side of Kingly Street and known as 27/28 Kingly Street.

C The back part of the former premises (50/52 Kingly Street) was formerly connected to the latter premises by a footbridge passing over Kingly Street at second floor level and by a tunnel passing underneath it. The tunnel was filled in by operations which concluded in January 1983 and the footbridge was removed in March 1983. These works were done to enable 27/28 Kingly Street to be sold separately. No physical demarcation existed between 200/202 Regent Street and 50/52 Kingly Street.

D

In 1973 the Secretary of State for the Environment compiled, under section 54 of the Act of 1971, a list of buildings of special architectural or historic interest which included a number of properties in Regent Street. Under the heading "Regent Street, W1 (East Side)" there appeared, inter alia, "Nos 172 to 206 (even)."

E The respondents occupied the hereditament and carried on Hamley's toy shop there until 31 October 1981, when they vacated it, and it remained unoccupied when, on 22 July 1982, the appellants made a complaint against the respondents for non-payment of rates amounting to £68,696.91 upon the hereditament in respect of the period from 1 February 1982 to 31 March 1983. At the same time they issued a summons applying for a distress warrant, which was heard by Mr.

F Campbell, a metropolitan stipendiary magistrate, on 29 March 1983. The respondents claimed exemption from unoccupied rates under Schedule 1, paragraph 2(c) to the Act of 1967 as amended, but the magistrate rejected the claim and issued a distress warrant, holding that the exemption for listed buildings there provided for was not available when, as he found to be the case, part only of the hereditament was listed. He found that 200/202 Regent Street and 50/52 Kingly Street were listed but that 27/28 Kingly Street was not. At the request of the respondents the magistrate stated a case for the opinion of the High Court, in which he made findings of fact upon which the foregoing account is based and posed the following questions of law:

G

H "(i) Did I err in law in holding that only part of the hereditament was listed? (ii) Did I err in law in holding that the listed part was 200/202 Regent Street and 50/52 Kingly Street?"

The respondents' appeal by stated case was heard by Hodgson J. [1985] R.A. 265, who allowed it and answered the questions of law in the affirmative. On appeal by the rating authority the Court of Appeal (Fox, Neill and Ralph Gibson L.JJ.) [1986] R.A. 114 affirmed that decision. The authority now appeals to your Lordships' House.

Section 17 of the Act of 1967 provides that a rating authority may resolve that the provisions of Schedule 1 to the Act shall apply to their area, and the appellants have done so. Paragraph 1(1) of Schedule 1 provides that in these circumstances where any relevant hereditament in the area is unoccupied for a continuous period exceeding three months

“the owner shall, subject to the provisions of this Schedule, be rated in respect of that hereditament for any relevant period of vacancy; and the provisions of this Act shall apply accordingly as if the hereditament were occupied during that relevant period of vacancy by the owner.”

By paragraph 15:

“‘relevant hereditament’ means any hereditament consisting of, or of part of, a house, shop, office, factory, mill or other building whatsoever, together with any garden, yard, court or other land ordinarily used or intended for use for the purposes of the building or part; . . .”

Paragraph 2, as amended by section 291 of, and Schedule 23 to the Town and Country Planning Act 1971, provides:

No rates shall be payable under paragraph 1 of this Schedule in respect of a hereditament for, or for any part of the three months beginning with the day following the end of, any period during which—(a) the owner is prohibited by law from occupying the hereditament or allowing it to be occupied; (b) the hereditament is kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the hereditament or to acquiring it; (c) the hereditament is the subject of a building preservation notice as defined by section 58 of the Town and Country Planning Act 1971 or is included in a list compiled or approved under section 54 of that Act, or is notified to the rating authority by the Minister as a building of architectural or historic interest; (d) the hereditament is the subject of a preservation order or an interim preservation notice under the Ancient Monuments Acts 1913 to 1953, or is included in a list published by the Minister of Public Building and Works under those Acts; (e) an agreement is in force with respect to the hereditament under section 56(1)(a) of this Act; or (f) the hereditament is held for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office.”

It is in sub-paragraph (c) of that paragraph which is directly in point here. If it be a correct conclusion that the whole of the hereditament is to be regarded as included in the list compiled by the Secretary of State in 1973, notwithstanding that only part of it is specifically mentioned in that list, then exemption from unoccupied rates will be available. Counsel for the respondents argued that, on a proper construction and application of the relevant provisions of the Act of 1971 as regards listing, this was indeed the position.

Section 54(1) (2) and (9) of that Act is in these terms:

“(1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act in relation to buildings of special

3 W.L.R.

Debenhams Plc. v. Westminster Council (H.L.E.)

Lord Keith
of Kinkel

A architectural or historic interest, the Secretary of State shall compile
lists of such buildings, or approve, with or without modifications,
such lists compiled by other persons or bodies of persons, and may
amend any list so compiled or approved. (2) In considering whether
to include a building in a list compiled or approved under this
section, the Secretary of State may take into account not only the
B building itself but also—(a) any respect in which its exterior
contributes to the architectural or historic interest of any group of
buildings of which it forms part; and (b) the desirability of
preserving, on the ground of its architectural or historic interest,
any feature of the building consisting of a man-made object or
structure fixed to the building or forming part of the land and
comprised within the curtilage of the building. . . . (9) In this Act
C ‘listed building’ means a building which is for the time being
included in a list compiled or approved by the Secretary of State
under this section; and, for the purposes of the provisions of this
Act relating to listed buildings and building preservation notices,
any object or structure fixed to a building, or forming part of the
land and comprised within the curtilage of a building, shall be
treated as part of the building.”

D The argument for the respondents, which was accepted by Hodgson J.
and the Court of Appeal, was that the building 27/28 Kingly Street, not
mentioned in the list compiled by the Secretary of State, was, within the
meaning of section 54(9) a “structure” which by the footbridge and the
tunnel was fixed to the building 200/202 Regent Street and 50/52 Kingly
Street, which was mentioned in that list, or alternatively formed part of
E the land and was within the curtilage of the latter building. Accordingly
it fell to be treated as part of that listed building. The argument was
supported by reliance on *Attorney-General ex rel. Sutcliffe v. Calderdale
Borough Council* (1982) 46 P. & C.R. 399. That case concerned a
disused mill and a terrace of cottages with a bridge linking the two, the
cottages having been formerly owned by the millowners and occupied by
F their workers, though they had later come to be in separate ownership.
The mill was listed but the cottages were not. The Court of Appeal held
that, within the meaning of section 54(9), the terrace of cottages was a
structure fixed to the mill, and further was one which formed part of the
land and was comprised within the curtilage of the mill. The cottages
could not, therefore, be demolished without the consent of the Secretary
of State.

G In my opinion, the success or failure of the argument must turn on
the meaning to be attributed to the word “structure” in section 54(9). In
its ordinary significance the word certainly embraces anything built or
constructed and so would cover any building. The question is whether its
context here requires a narrower meaning to be attributed to it. The
wider meaning could lead to some strange results. For example, if one
H house in an architecturally undistinguished terrace were listed as having
once been the birthplace of an historically famous personage, it appears
that all the houses in the terrace, being fixed to the listed building either
directly or through each other, would require to be treated as part of it,
as indeed might many other terraces connected to that one. Many other
such examples may be figured. Notice of listing, under section 54(7), is
required to be given only to the owner and occupier of the listed
building itself, so the owner of some quite remote building might

unwittingly undertake its demolition and become liable to penalties under section 55(1). The incongruous results which might follow from the decision in the *Calderdale* case were recognised by Stephenson L.J., giving the leading judgment in the Court of Appeal, 46 P. & C.R. 399, 405, but he took the view that the argument from incongruity was met by the fact that the listing building code of control did not prevent demolition or alteration, but merely required consent to it. It is to be observed that the words in section 54(9) "any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of a building" echo similar words in section 54(2), where, however, the words are prefaced by "man-made," and the relevant object or structure must be a feature of the building. It is, I think, clear that in the context of section 54(2) the word "structure" is not intended to embrace some other complete building in its own right. This indicates that the draftsman of the relevant part of the Act has thought it appropriate to use the word in a narrow sense the first time that he introduced the quoted phrase, and it is a reasonable inference that he intended to use it in the same sense the second time. At all events, the result is to introduce an ambiguity into section 54(9), or perhaps more accurately, to deepen the ambiguity which is there already. In resolving a statutory ambiguity, that meaning which produces an unreasonable result is to be rejected in favour of that which does not, it being presumed that Parliament did not intend to produce such a result. In my opinion to construe the word "structure" here as embracing a complete building not subordinate to the building of which it is to be treated as forming part, would, in the light of the considerations I have mentioned, indeed produce an unreasonable result. Stephenson L.J. in the *Calderdale* case considered that objection to be offset by what he regarded as part of the purpose of the listing provisions, namely that of protecting the setting of an architecturally or historically important building. But if that was part of the purpose, it would have been to be expected that Parliament would not have stopped at other buildings fixed to or within the curtilage of such a building, but would have subjected to control also buildings immediately adjoining but not fixed to the listed building, or on the opposite side of the street. All these considerations, and the general tenor of the second sentence of section 54(9) satisfy me that the word "structure" is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage. In my opinion the concept envisaged is that of principal and accessory. It does not follow that I would overrule the decision in the *Calderdale* case, though I would not accept the width of the reasoning of Stephenson L.J. There was, in my opinion, room for the view that the terrace of cottages was ancillary to the mill.

The question thus comes to be whether the building 27/28 Kingly Street was at the material time ancillary to the building 200/202 Regent Street and 50/52 Kingly Street. The former was not of its nature ancillary to the latter, in the sort of sense that a steading is ancillary to a farmhouse. It was historically an independent building. It is true that for a very considerable period of time both buildings were occupied and used together for the purposes of Hamley's toy shop, but throughout the rating year 1982/83 neither of them was being used for any purpose whatsoever, and indeed it must have been in contemplation that there

3 W.L.R.

Debenhams Plc. v. Westminster Council (H.L.E.)

Lord Keith
of Kinkel

A would be no resumption of joint use, as is evidenced by the circumstance that in October 1982 steps began to be taken to sever the links between the two buildings with a view to 27/28 Kingly Street being sold off separately. These considerations tend to show that on a broad perspective 27/28 Kingly Street was not ancillary to the Regent Street building. The matter of listing or not listing cannot turn upon the business purposes or manner of use of adjoining properties of a particular occupier. Fox L.J., giving the leading judgment in the Court of Appeal in this case, said that 27/28 Kingly Street was really an annexe fixed to the rest of the hereditament. From the point of view of the occupier that may have been so, but the subordination of one building to another for the particular purposes of someone who happens for the time being to occupy both does not mean that objectively speaking and for the purposes of the listing legislation one of the buildings is ancillary to the other. In my opinion, 27/28 Kingly Street was an independent building and does not fall within section 54(9).

D A large part of the argument for the appellants was directed to the proposition that the words in section 54(9) "for the purposes of the provisions of this Act relating to listed buildings and building preservation notices" had the effect that the enactment which followed them was not to be taken into account for the purposes of Schedule 1 to the General Rate Act 1967. In my opinion that proposition is ill-founded. The quoted words have the effect, for the purposes of the listed building provisions of the Act, of widening the definition of "building" in section 290(1) of the Act of 1971. No other effect can properly be attributed to them. It would be an absurd result, such as cannot have been intended by Parliament, if a structure subjected to listed building control by the Act of 1971, were to be treated as not so subjected for the purpose of some other Act dealing with the consequences of listing.

F Having reached the conclusion that only the building 200/202 Regent Street and 50/52 Kingly Street is listed, and not the building 27/28 Kingly Street, it is necessary to consider whether or not paragraph 2(c) of Schedule 1 to the Act of 1967 as amended applies to that situation. The construction of paragraph 2(c) presents difficulty owing to the draftsman, as it would appear, not having kept in view the distinction between a hereditament and a building. It is buildings, not hereditaments which may be the subject of building preservation notices (under section 58 of the Act of 1971), and which are included in lists compiled under section 54. Although a hereditament may consist in a building and no more, there are a great many hereditaments which comprise a building and also something more, even if only a small garden or yard. Some hereditaments may comprise more than one independent building, as is the position here. "Hereditament" throughout paragraph 2 of Schedule 1 to the Act of 1967 must, in my opinion, be read as "relevant hereditament" as defined in paragraph 15. The Schedule is, after all, dealing only with relevant hereditaments. So it is clearly in contemplation that a hereditament which attracts the exemption from rates afforded by paragraph 2 may be not only one which is a building and no more, but also one which is a building with a garden, yard, court or other land ordinarily used for the purposes of the building. It follows that the presence of such garden etc. would not deprive the hereditament of the exemption, notwithstanding that it is only the building, and not the whole hereditament, which, for example, is included in a list compiled under section 54 of the Act of 1971. Likewise, the presence of some

ancillary structure such as a garage or outhouse, either fixed to the main building or within its curtilage, would not affect the exemption since by virtue of section 54(9) such ancillary structure would fall to be treated as part of the building.

The position in the present case is that the hereditament comprises two independent buildings, one of which is listed and the other of which is not. In the event that one of the buildings, but not the other, were the subject of a building preservation notice made under section 58 of the Act of 1971, it could be said, without any undue straining of language, that the hereditament as such was the subject of the notice, even though the notice applied to part only of it. If one only of two buildings on the hereditament were included in a list compiled under section 54, it could surely not be said that the hereditament as such was included in the list. On the other hand, it is not likely that Parliament would have intended to treat the two cases differently. Paragraph 2 should be construed so as to accord the same treatment to both. In making the choice between the stricter and the more liberal constructions some assistance can, in my opinion, be derived from paragraph 3 of Schedule 1, which provides:

“The Minister may by regulations provide that rates shall not be payable under paragraph 1 of this Schedule in respect of hereditaments of such descriptions as may be prescribed by the regulations or in such circumstances as may be so prescribed and the regulations may make different provision for hereditaments of different descriptions and for different circumstances.”

This provision enables the Minister to enlarge the classes of hereditaments in respect of which the exemption is afforded. It does not enable him to restrict it. There would seem to be nothing to prevent the Minister, if so advised, from prescribing by regulations hereditaments comprising both a listed and unlisted building in relation to which the value of the listed building amounted to more than some specified proportion of the value of the whole hereditament. It might seem unfair that exemption should be denied where the value of the listed building accounted for a very large proportion of the value of the whole hereditament. Yet from the other point of view it might seem unreasonable that exemption should be afforded where the value of the listed building formed a very small proportion of the total value. The Minister has been given power which would enable him to alleviate the former anomaly but not the latter. Accordingly paragraph 3 is an indication in favour of the view that Parliament intended the stricter construction of paragraph 2(c) of Schedule 1 to the Act of 1967.

In *Providence Properties Ltd. v. Liverpool City Council* [1980] R.A. 189, a Divisional Court consisting of Lord Lane C.J. and Boreham J. had occasion to consider the scope of the paragraph 2(c) exemption in relation to a hereditament which comprised three warehouses, one of which was listed and the other two of which were not. It was decided that the exemption was not available to a hereditament part only of which was listed. The reasoning was that if Parliament had intended to afford the exemption to such a hereditament it would have done so in express terms. There is much force in that view of the matter, and taken in conjunction with the other considerations set out above it must, in my opinion, determine the issue in favour of the appellants.

3 W.L.R.

Debenhams Plc. v. Westminster C.C. (H.L.E.))

Lord Keith
of Kinkel

- A My Lords, for these reasons I would allow the appeal and restore the adjudication of the stipendiary magistrate and the distress warrant. The questions posed in the case stated do not deal exhaustively with the issues raised in the appeal. They should be answered in the affirmative, but in addition it should be found that on a true construction of paragraph 2 of Schedule 1 to the Act of 1967 as amended exemption from rates is not available to the respondents' hereditament in respect of
- B the rating year 1982/83.

LORD TEMPLEMAN. My Lords, for the reasons given by my noble and learned friend, Lord Keith of Kinkel, I agree that this appeal should be allowed and that this House should make the findings he has proposed.

- C LORD GRIFFITHS. My Lords, I have had the advantage of reading in draft the speeches prepared by my noble and learned friends, Lord Keith of Kinkel and Lord Mackay of Clashfern. I agree with them, and for the reasons which they give I would allow the appeal.

- D LORD MACKAY OF CLASHFERN. My Lords, I have had the advantage of reading in draft the speeches prepared by my noble and learned friends Lord Keith of Kinkel and Lord Ackner.

- E I agree with both, that the principal argument relied upon by the appellants in the present case is ill-founded. I agree with my noble and learned friend Lord Keith of Kinkel that this appeal should be allowed for the reasons which he has given. Since I differ from my noble and learned friend Lord Ackner on this aspect of the appeal and also from the unanimous judgment of the Court of Appeal [1986] R.A. 114 I shall add some observations.

Although the question in this appeal arises in the context of relief from rates on unoccupied property, the point that has divided us is of considerable importance in the administration of the system of listed building control now governed by the provisions of the Town and Country Planning Act 1971.

- F By the first part of section 54(9) for the purposes of the Act of 1971 "listed building" means a building which is, for the time being, included in a list compiled or approved by the Secretary of State under the section. The list so compiled or approved is to be a list of buildings of special architectural or historic interest. Since it is obviously necessary that the list should identify the buildings contained in it, the question
- G whether a particular physical entity is listed or not listed depends upon whether on reading the list and taking account of the statutory provisions that entity is to be regarded as a building or part of a building included in the list. In the present case the contention for the respondents is that the entry in the list under the heading "Regent Street, W.1. (East Side) Nos. 172 to 206 (even)" meant not only that the building which has the address 200/202 Regent Street, and since it physically carries through to
- H Kingly Street also has the address 50/52 Kingly Street and which I shall refer to as "the Regent Street building," was included in the list, but also that a building on the opposite side of Kingly Street, namely 27/28 Kingly Street which I shall refer to as "the Kingly Street building," was in the list. If this contention is correct, inevitably a considerable number of other buildings in Kingly Street, in Foubert's Place, in Carnaby Street and in Fuch's Place, which were included in the block of which the Kingly Street building formed part, were also included in the list. If the

intention of the Secretary of State in compiling or approving this list was to include all these buildings in it one would have expected the entry to have clearly included them. If the effect of the action taken by the Secretary of State was that all of these buildings should be included, in my opinion the entry in the list is positively misleading. A

The magistrate found that the entry in the list referred and referred only to the Regent Street building and did not extend to the Kingly Street building. He has asked, for the opinion of the court whether he erred in law in so holding. The respondents urge that he was wrong and the reason for this submission is the second part of section 54(9) which provides that: B

“for the purposes of the provisions of this Act relating to listed buildings and building preservation notices, any object or structure fixed to a building, or forming part of the land and comprised within the curtilage of a building, shall be treated as part of the building.” C

Before considering this submission further I think it is necessary to refer to the definitions of “land” and “building” provided in the interpretation section, section 290(1) of the Act of 1971: D

“‘land’ means any corporeal hereditament, including a building, and, in relation to the acquisition of land under Part VI of this Act, includes any interest in or right over land;

and:

“‘building’ (except in sections 73 to 86 of this Act and Schedule 12 thereto) includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building; . . .” E

Cases under the Income and Corporation Taxes Act 1970 demonstrate that the word “plant” is a word of very extensive import and it is obvious that plant or machinery could be fixed to a building and might include structures so fixed. F

The statutory provision which is now the latter part of section 54(9) first appeared in the Town and Country Planning Act 1968. As an illustration of a question that had arisen prior to that statutory provision which might throw light on the reason for its insertion in the legislation in 1968 your Lordships were referred to the decision of Russell L.J. sitting as an additional judge in the Queen’s Bench Division in *Corthorn Land and Timber Co. Ltd. v. Minister of Housing and Local Government* (1965) 17 P. & C.R. 210. In that case a building preservation order had been made in respect of a mansion of outstanding architectural merit. The building preservation order provided, inter alia, that the mansion should not, without the consent of the planning authority be demolished, altered or extended and that the following items, inter alia, should not be altered or removed: G H

“1. 27 portrait panels in the King’s room being 19th century copies of Tudor and Stuart Kings and Queens. 2. Carved oak panels in the wall of the Oak Room dating from the 15th to mid 17th centuries. 3. A large wood carving in the Great Hall. 4. Large wooden medieval equestrian figures on the main landing. 5. A pair

3 W.L.R.

Debenhams Plc. v. Westminster C.C. (H.L.E.)

Lord Mackay
of Clashfern

A of painted wooden panels depicting the Hall in the ornate
mantlepiece in one of the drawing rooms.”

The owner applied to quash the building preservation order on the ground that the above mentioned items were not properly included in it. It was held that any chattel which was affixed definitely to a building became part of the building; that there was no doubt that the items in dispute were all fixed and annexed in their places as part of an overall and permanent architectural scheme and were intended in every sense to be annexed to the freehold, and were accordingly part of the building; and that, in these circumstances, the restriction on their removal was properly made. Russell L.J. after saying that he did not propose to detail the effect of the evidence laid before him as to the methods of fixing employed in relation to the various items in dispute said, at 17 P. & C.R. 210, 213: “it suffices to say that all the items would properly be described as fixtures as that phrase is commonly applied in law.” Russell L.J. went on to quote from a number of authorities which can be summarised by saying that the ancient rule of the common law was that whatever is planted or built in the soil or freehold becomes part of the freehold or inheritance, thus a house becomes part of the land on which it stands and anything annexed or affixed to any building (not merely laid upon or brought into contact with the building) was treated as an addition to the property of the owner of the inheritance in the soil and was termed a “fixture.” This rule of the common law was relaxed in favour of trade to enable tenants to affix their machinery or plant to a building or to the land and not thus make a present of it to the landlord, so that machinery or plant fixed to the inheritance for the purposes of trade may be removed by the tenant during the tenancy under certain conditions.

In the Act of 1971 the general definition of “building” excludes from its scope plant and machinery. Certain items that otherwise would be “fixtures” and form part of the building are therefore excluded. Against this background it appears to me that the word “fixed” is intended in section 54(9) to have the same connotation as in the law of fixtures and that what is achieved by the latter part of section 54(9) is that the ordinary rule of the common law is applied so that any object or structure fixed to a building should be treated as part of it. The provision is dealing with the question whether certain things, namely objects or structures, are to be treated as part of a building, not whether what is undoubtedly a building or part of a building is to be regarded as part of another building. The use of the indefinite article in describing the subject matter of the provision tends to suggest this, in my opinion. The result would be to put beyond question the matter that was decided by Russell L.J. in the *Corthorn* case and I consider that in its context this is the natural interpretation of the provision. I think it is not a natural use of language to describe two adjoining houses in a terrace by saying that one is an object or structure fixed to the other. It would, I think, be a perfectly appropriate provision in a contract for the sale of a house that there was included in the sale any object or structure fixed to the house but I think it highly unlikely that the purchaser would expect under the terms of such a contract to become the owner of the house next door, with which it shared a mutual wall.

The respondents’ contention involves reading the word “structure” in its context as including a completely distinct building which is connected

structurally to the first building. This reading seriously restricts the power of the Secretary of State in relation to listed buildings since on this view he could not select one out of a terrace of houses nor could he select a part of a building to be listed. Part of a building necessarily is fixed in the sense contended for to the rest of the building. It is suggested that having regard to the purpose of the Act of 1971 no harm is done by forcing the Secretary of State if he wishes to list a building in a terrace to list the whole terrace since in respect of the buildings in the terrace not of architectural or historic interest permission for alteration or demolition could readily be given. However, section 54(2)(a) gives ample power to the Secretary of State if he chooses to list the whole terrace in respect of architectural or historic interest possessed by the whole; and the suggestion involves a compulsory notification to the owners of the whole terrace that their houses have been included in the list in view of the terms of section 54(7). I consider the respondent's construction is hard to reconcile with the provisions of section 190 of the Act of 1971 dealing with the service of a purchase notice when listed building consent has been refused, conditionally granted, or modified. In certain circumstances the owner may require the listed building to be purchased. Section 190(3) provides:

"In this section and in Schedule 19 to this Act, 'the land' means the building in respect of which listed building consent has been refused, or granted subject to conditions, or modified by the imposition of conditions, and in respect of which its owner serves a notice under this section, together with any land comprising the building, or contiguous or adjacent to it, and owned with it, being land as to which the owner claims that its use is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding."

This seems to envisage that a listed building will normally constitute a single holding.

In my opinion it is inconsistent with this provision to interpret section 54(9) as having the effect that if the Secretary of State lists one building in a terrace the consequence is that all the other buildings in the terrace which are distinct from the listed building and are owned separately from it and from one another and whose uses are completely independent from that of the listed building are to be treated as part of the listed building.

I see no practical difficulty in the operation of the Act of 1971 on the construction which appears to me to be correct. If a listed building is extended the extension will form part of the listed building without any need to rely on section 54(9). So far as buildings are concerned which exist at the date of the listing the Secretary of State will have the right to include or exclude without being constrained to include by reason of physical connection between a building he wishes to include and one he wishes to exclude.

Applying these considerations to the present case leads me to the conclusion that the magistrate decided it correctly. He concluded that what is found in the list was intended to refer only to the Regent Street building and was not intended to include the Kingly Street building. I consider that he was not bound to hold that the Kingly Street building was a structure fixed to the Regent Street building. It was a completely distinct building which at the end of the period in respect of which

A

B

C

D

E

F

G

H

3 W.L.R.

Debenhams Plc. v. Westminster C.C. (H.L.E.)

Lord Mackay
of Clashfern

- A exemption was in question was completely separate from the Regent Street building and even when connected to it by footbridge and tunnel it was not a structure fixed to it within the meaning of section 54(9). The magistrate was not, in my opinion, in any way bound to hold that the Kingly Street building was within the curtilage of the Regent Street building as it was separated from that at ground level by a public street, although, for rating purposes, when the buildings were in common
- B occupation they were treated as a single hereditament. The effect of the respondents' contention, in my opinion, is to say that the list compiled or approved by the Secretary of State included not only the Regent Street building but also the Kingly Street building. The list so long as it remained unaltered therefore included the Kingly Street building even after the footbridge was demolished and the tunnel was closed and the
- C two buildings were completely distinct and separated by a public road. If the Secretary of State should now decide that the Kingly Street building should be deleted from the list it is not entirely clear to me what action he could take to achieve this purpose. The same consideration applies to all the other buildings in the block, of which the Kingly Street building forms part. According to the respondents' contention, as I have already said, these were all listed when 200/202 Regent Street was inserted in
- D the list and notice should have been served on the owners of all these properties in terms of section 54(7) that they were so included. If this were truly the position the only proper course, in my opinion, would have been to include their addresses in the list along with 200/202 Regent Street. The concept of a building impliedly in the list when it consists of premises distinct from those whose address is given in the list
- E seems to me calculated to lead only to confusion in a case where the list is a document which requires to be registered in the register of local land charges and which should, consequently, have the precision necessary to enable a person inspecting that register to appreciate all the subjects to which it relates.

- In my opinion, *Attorney-General ex rel. Sutcliffe v. Calderdale Borough Council*, 46 P. & C.R. 399 is a very special case on its facts and I believe that it was possible to treat the terrace and the mill, having regard to the history of the properties, as a single unit. At the time the listing was made the whole property was in one ownership and therefore when the mill was included a notice to that effect was served on the only person who was interested as owner in the terrace. For the reasons which I have already given, I cannot regard, with respect, the reasoning by which the Court of Appeal in that case reached its
- G conclusion as according with the true construction of section 54(9) of the Act of 1971.

- LORD ACKNER. My Lords, when Mr. Graham Eyre opened this appeal, he submitted to your Lordships, consistent with the appellants' written case, that the appeal only raised one question and that this
- H question, although wrongly answered by the Court of Appeal, had been properly formulated by Fox L.J. in the course of his judgment, with which Neill and Ralph Gibson L.JJ. concurred. The question was:

"Can a building which is treated as part of the listed building by the provisions of section 54(9) be properly regarded as 'included in a list compiled or approved under section 54 of the Town and Country Planning Act 1971?'".

Neither in the Court of Appeal nor in his case nor before your Lordships' House did Mr. Eyre seek to suggest that if that question, contrary to his submissions, was answered in the affirmative, the appeal could succeed on any other ground, or that it gave rise to any other issue. Until invited by your Lordships to consider the matter, he did not suggest that the Court of Appeal was in error in their following conclusions:

(a) that 27/28 Kingly Street was a 'structure fixed to' 200/202 Regent Street, the building expressly included in the list, and (b) that 27/28 Kingly Street was a 'structure forming part of the land and comprised within the curtilage' of that listed building.

And accordingly by reason of the provision of section 54(9) of the Act of 1971 27/28 Kingly Street was to be treated as part of 200/202 Regent Street.

Hodgson J. [1985] R.A. 265, and the Court of Appeal [1986] R.A. 114, in reaching their decisions on the above two matters, derived assistance from the *Attorney-General ex rel. Sutcliffe v. Calderdale Borough Council*, 46 P. & C.R. 399 in which the leading judgment was given by Stephenson L.J. and with which Sir Sebag Shaw and I concurred. Mr. Eyre, neither in his case nor in your Lordships' House, until invited to do so, sought to criticise that decision. He submitted that the essential issue in the *Calderdale* case was whether the terrace in question was subject to the statutory control of works of demolition, under section 55 of the Act of 1971. He submitted that the Court of Appeal in that case did not have any reason to consider the provisions of Schedule 1 to the General Rate Act 1967 relating to the exemption from rates in respect of an unoccupied hereditament included in a list compiled or approved under section 54 of the Act of 1971. He maintained that there was no conflict between that case and *Providence Properties Ltd. v. Liverpool City Council* [1980] R.A. 189. Mr. Eyre contended that the question as to what is or is not a "listed building" or what is or is not to be treated as part of such a building for the purpose of the provisions of the Act of 1971 is wholly irrelevant to the question whether a hereditament is exempt, by virtue of paragraph 2(c) of Schedule 1 to the General Rate Act 1967, as being "included in a list compiled or approved by the Secretary of State under [section 54 of the Act of 1971.]"

Mr. Eyre's contention was that the words in section 54(9) "for the purposes of the provisions of this Act relating to listed buildings" confined the effect of what is provided in the subsection—namely the widening of the definition of "listed building"—to the provisions of the Act of 1971. It could not be taken into account for the purposes of Schedule 1 to the General Rate Act 1967. I entirely agree with the view expressed by my noble and learned friend Lord Keith of Kinkel, whose speech in draft I have had the privilege of reading, that this proposition is ill-founded. If a structure is by virtue of the Act of 1971 to be treated as a part of a building which has been expressly included in the list, it cannot cease to be so treated for the purposes of some other Act which itself makes special provision (exemption from rates in certain circumstances) for buildings which are included in the list.

The fact that the appellants were willing to accept the Court of Appeal's construction of the words "structure" as used in section 54(9) of the Act of 1971 and their almost total absence of enthusiasm in

A

B

C

D

E

F

G

H

- A espousing the critical comments of that decision made by your Lordships during the course of argument, is not and cannot in any sense be decisive of the point. If the Court of Appeal in the *Calderdale* case and in the instant appeal has misinterpreted those words, then your Lordships must so declare. However, the course which the appellants' argument took, particularly when they stressed at the outset of the appeal the importance of their success in the appeal, is not lightly to be dismissed.
- B It certainly suggests that if the Court of Appeal was in error in the *Calderdale* case and/or in this case that error is not easily discernible. For the reasons which I now set out I am unable to discern the error and accordingly I would have dismissed this appeal.

(1) *The literal interpretation of the words "structure fixed to . . ."*

- C It has at no time been disputed that "structure" in its ordinary everyday sense includes a building. Section 290 of the Act of 1971 is the definition section. It does not define "structure." It provides, however, that except so far as the context otherwise requires, building "includes any structure or erection and any part of a building, as so defined, but does not include plant or machinery comprised in a building." Thus, the power given by section 54 of the Act of 1971 to the Secretary of State to
- D compile lists of buildings of special architectural or historic interest, includes the power to list a part only of a building. Thus, it is accepted that if the Secretary of State should include in the list only the facade of a building, as indeed we are told he does from time to time, then by virtue of section 54(9) the whole building, that is the structure of which the facade is but a part, falls to be treated as part of that which is expressly included in the list, i.e. the facade.

- E But in the example given above what is the building? The facade, the "listed building", may only extend across part of the face of the original building, let alone the original building as subsequently extended. Clearly on a literal interpretation of the words of subsection (9) every part of the building, original or extended, is "a structure fixed to" the listed building, the facade, and is by virtue of the subsection to be
- F treated as part of the facade. Thus far, I believe, there is no dispute. Yet to treat such a structure as ancillary or subordinate or as a feature of the facade would, to my mind, be quite unrealistic.

- Approaching the matter from another angle, one can well envisage a listed Georgian mansion, far too large to provide a convenient private residence, whose optimum, or most profitable use, bearing in mind its situation and the size of its grounds, is that of a high class hotel.
- G However, for such a development considerable extensions and alterations are necessary to provide more bedroom accommodation, conference halls and other facilities. Clearly such alterations and extensions would affect the character of the Georgian mansion and accordingly listed building consent would be required (see section 55). If the consent were to be given on terms, inter alia, that the extensions should be achieved
- H by building two extensive wings onto the Georgian mansion, again quite clearly on a literal interpretation of the words of the subsection the wings, when built, would fall to be treated as part of the Georgian mansion.

However, assume that the extra accommodation which is contemplated as being necessary to make the development a success, would so dwarf the listed building, if it were to consist of two wings built onto the listed building, that listed building consent is only given on terms that two

large buildings were erected on either side of the listed building, but each connected thereto with a bridge. Again, applying the ordinary meaning to the word “structure,” each of those new buildings would by reason of the terms of section 54(9) be treated as part of the listed building.

(2) *The purposive “approach”*

The purpose of “listing” buildings is to ensure the protection and enhancement of the local heritage of buildings. This is achieved by making it an offence for a person to execute “any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest:” section 55(1). To confine this control to the building which is expressly included in the list, because of its special architectural or historic interest, may be often quite insufficient—the example of the Georgian facade referred to above is but one obvious example. Hence the extended definition of “listed building” contained in section 54(9). If the two additional buildings connected to the Georgian mansion in the example given above are not, when built, to be treated as part of the mansion, the purpose of the Act would be frustrated. Listed building consent would not have been necessary in the first instance and demolition of *one* of the new buildings, thereby destroying the whole harmony of the development, could take place at the whim of the owner. It is common ground that no planning permission would be required for such demolition and that the building by-law control is only designed to ensure that the physical stability of the remaining building is not affected, that control not being concerned with aesthetics.

Thus, both the ordinary meaning of the words used in section 54(9) and the very purpose of the legislation strongly supports the proposition that the word “structure” covers any building and therefore includes 27/28 Kingly Street. It is not disputed that it was “fixed to,” that is joined onto 200/202 Regent Street both by the underground tunnel and by the footbridge. Moreover, it formed part of the land and was comprised within the curtilage of 200/202 Regent Street.

(3) *Does the context require a different meaning from that normally associated with the ordinary use of the word?*

In the *Calderdale* case, 46 P. & C.R. 339 there was a terrace of cottages, a mill and a bridge which linked the two. The mill was expressly included in the list but the terrace was not. The issue was—was listed building consent necessary for the demolition of the terrace? Skinner J., dealing with the first limb of section 54(9) held that the terrace was not a “structure fixed to” the mill on the ground, not argued by counsel or put to them by the judge, that the terrace could not be both fixed to the mill and comprised in the curtilage of the mill and that the two alternative limbs of section 54(9) were mutually exclusive. He then proceeded to give his reasons for holding that the terrace was within the curtilage of the mill. The Court of Appeal rejected this proposition, concluding that a structure can be both fixed to a listed building and comprised within its curtilage, as indeed had been common ground before the judge. No reliance was placed in your Lordships’ House on this aspect of Skinner J.’s decision.

Skinner J.’s interpretation of the first limb of the section 54(9) was designed to avoid what he considered was the incongruity of deciding, in

3 W.L.R.

Debenhams Plc. v. Westminster C.C. (H.L.(E.))

Lord Ackner

A accordance with the ordinary sense of the words of the subsection, not only that the first of the cottages was fixed to the mill but so was the whole terrace.

Stephenson L.J. in the *Calderdale* case expressly accepted that the literal construction could give rise to incongruity. He said, at p. 405:

B “A multiple store adjacent to the birthplace of a statesman might have to be treated as part of the birthplace because it was a structure fixed to it. A block of flats replacing the stables of a mansion house might have to be treated as part of the mansion because they are within the curtilage of the mansion.”

C However he concluded, rightly in my judgment, that the theoretical absurdities are fairly met by the nature of the control imposed on listed buildings and all their parts, actual and deemed. The code of listed building control does not *prevent* demolition or alteration or extension. It merely requires *consent* to such works. As Mr. Eyre emphasised, there is likely to be far less difficulty in obtaining permission to demolish, alter or extend a structure fixed to a building, which has not been expressly referred to in the list, since *ex hypothesi* it is not of itself of sufficient architectural or historic interest to merit specific mention.

D In the *Calderdale* case a subsidiary argument, not taken before the judge, was raised in the notice of appeal. This argument, which was rejected by the Court of Appeal and not in terms adopted by Mr. Eyre in your Lordships’ House has apparently found some favour with your Lordships. As I understand it, it proceeds as follows.

Section 54(2) of the Act of 1971 provides:

E “In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also— . . . (b) the desirability of preserving, on the ground of its architectural or historic interest, *any feature of the building consisting of* a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.” (Emphasis added.)

F The submission in the *Calderdale* case was that the words which I have emphasised were intended by the draftsman to be included in section 54(9) immediately prior to the words “any object or structure fixed to a building” thereby qualifying and very substantially limiting the ordinary meaning, *inter alia*, of the word “structure” to a mere feature or characteristic of the building which has been expressly listed. Thus the words in section 54(9), with which your Lordships are concerned, are said to be mere shorthand for the words in section 54(2)(b).

G I cannot attribute to the draftsman of section 54 some invincible repugnance to repeat in subsection (9) some eight words which he had used in an earlier subsection of the same section. The words in section 54(2)(b) are used in a quite different context, namely in the context of the factors, other than the building, which the Secretary of State may take into account when considering whether or not to include a building in the list. Section 54(2)(b) empowers the Secretary of State to list a building which may have little or no architectural or historic interest if it includes a special feature e.g. a staircase, a painted ceiling or a 17th century folly within its grounds. That subsection is not concerned with extending the definition of “listed building.” If such a narrow construction is acceptable then it really defeats the purpose of the Act of 1971.

Lord Ackner

Debenhams Plc. v. Westminster C.C. (H.L.(E.))

[1986]

However, I do not understand your Lordships to limit “structures” to mere features or characteristics of the building expressly included in the list. Your Lordships, are prepared to accept that “structure” has a wider meaning and includes a separate building providing it is ancillary or subordinate or an accessory to the building expressly included in the list. Your Lordships would not therefore overrule the decision in the *Calderdale* case, that the terrace of cottages were a “structure fixed to” the mill, but would not accept the width of the reasoning of Stephenson L.J.

The only support for this approach appears to me to be a combination of the language of 54(2)(b) and the incongruity argument. With all proper respect, I cannot accept that this provides sufficient justification for departing so radically from the ordinary meaning of the words in section 54(9) and the very purpose for which they were used.

However, to my mind, even on that interpretation, 27/28 Kingly Street qualified to be treated as part of 200/202 Regent Street. It was attached to the main shop in order to extend its shopping facilities. Understandably listed building consent was thought to be necessary for the removal of the connecting footbridge and this was accordingly applied for and granted prior to its demolition in March 1983. 27/28 Kingly Street was used as a subordinate part of the main shop and an ancillary there to. It was, as Fox L.J. aptly described it—an annexe. It is thus in no way surprising that it, together with the main shop 200/202 Regent Street, formed a single hereditament for rating purposes.

Appeal allowed.

Solicitors: Solicitor, Westminster City Council; Forsyte Kerman.

C. T. B.

[HOUSE OF LORDS]

In re D. (A MINOR)

1986 Oct. 8;
Dec. 4

Lord Keith of Kinkel, Lord Brandon of Oakbrook,
Lord Griffiths, Lord Mackay of Clashfern
and Lord Goff of Chieveley

Children and Young Persons—Care proceedings—Relevant considerations—Child born with drug dependency due to mother’s drug abuse—Child taken from mother at birth—Juvenile court finding that child’s health being impaired or proper development being prevented—Whether mother’s conduct during pregnancy relevant—Whether justices entitled to make care order—Children and Young Persons Act 1969 (c. 54), s. 1(2)(a)

Section 1(2) of the Children and Young Persons Act 1969 provides:

“If the [juvenile] court before which a child or young person is brought . . . is of opinion that any of the following conditions is satisfied with respect to him, that is to say—
(a) his proper development is being avoidably prevented or neglected or his health is being avoidably impaired or