Neutral Citation Number: [2024] UKUT 149 (LC)

Case No: LC-2023-537

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
ON APPEAL FROM THE VALUATION TRIBUNAL FOR ENGLAND

Royal Courts of Justice

31 May 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – EXEMPTION – Agricultural Buildings – Paragraph 3, Schedule 5, Local Government Finance Act 1988 – whether buildings "occupied together with" agricultural land and used solely for agricultural operations on "that or other land" – whether "or" is inclusive or exclusive in that provision – appeal allowed

BETWEEN:

FRIDAYS LIMTED **Appellant**

-and-

DAWN BUNYAN (VALUATION OFFICER) **Respondent**

Chequer Tree Farm
Benenden Road
Rolvenden
Cranbrook
Kent
TN17 3PN

JUDGE ELIZABETH COOKE and PETER McCREA FRICS FCIArb

Hearing date: 16 April 2024

Cain Ormondroyd for the appellant, instructed by Thrings LLP
Guy Williams KC for the respondent, instructed by HMRC Solicitor's Office

The following cases are referred to in this decision:

Senova Ltd v Sykes (VO) [2019] UKUT 0275 (LC)

Farmer (VO) v Buxted Poultry Ltd [1993] AC 369

Hilleshog Sugar Beet Breeding Co. Ltd. v. Wilkes (Valuation Officer) [1971] R.A. 275

Handley (Valuation Officer) v Bernard Matthews plc. [1988] R.A. 222

Maurice E. Taylor (Merchants) Ltd. v Commissioner of Valuation [1981] N.I. 236

W & JB Eastwood Ltd. v Herrod [1971] A.C. 160

Wootton v Gill (VO) [2015] UKUT 548

Introduction

1. This is an appeal concerning agricultural exemption for the purposes of business rates. It is by the ratepayer, Fridays Limited ('Fridays'), against a decision of the Valuation Tribunal for England (Mr G Garland, President), dated 24 July 2023 in which the ratepayer's challenge to the entry of buildings at Chequer Tree Farm, TN17 3PN in the 2017 nondomestic rating list was dismissed. The President found that the three buildings concerned did not meet the test for exemption from liability for rates.

2. Fridays was represented by Mr Cain Ormondroyd and the respondent by Mr Guy Williams KC; we are grateful to them both. We visited Chequer Tree Farm the day before the hearing accompanied by representatives of the parties.

Facts

Chequer Tree Farm and the three buildings

3. Our account here is taken from the evidence of fact given by Mr Andrew Friday, director of Fridays, and by Mr Evgeni Genchev of the Valuation Office Agency for the respondent. Their evidence was consistent and Mr Genchev's was unchallenged, while Mr Friday was cross-examined only briefly.

4. Fridays is one of the country's largest producers of free-range eggs, producing some 4 million eggs a week. Chequer Tree Farm is the company's headquarters, encompassing some 530 acres in rural Kent. It also owns or operates a number of other farms within a ten-mile radius and farms some 2,000 acres of arable land, including the land at Chequer Tree Farm itself, to grow wheat and barley to make chicken feed. Free-range eggs or organic eggs are produced at the four parcels known as Combwell, Tolehurst, Summer Hill and Waterlane Farms (we refer to these four farms together as the "Fridays Farms").

5. It is agreed that much of the land and some of the buildings at Chequer Tree Farm are exempt from non-domestic rating, including 482 acres of the agricultural land used to produce barley and wheat, a mill store, feed mill, and chicken houses. The chicken houses were used at the material day (September 2018) to house caged hens; it is agreed that that operation is not material to the current appeal (and it came to an end in 2021). Some other buildings, including the reception, offices, a vehicle workshop and other buildings are assessed for rating; there is no dispute before us about those buildings and we have not been told why some are assessed for rating and some are not.

6. Three buildings at Chequer Tree Farm are the subject of the single issue before us – whether they should also be exempt from rating. They are the Egg Packing Centre, the Egg Packaging Store, and the Egg Warehouse, which we shall collectively call 'the three buildings.' The alternative valuations are agreed. If the three buildings are exempt, an assessment described in the rating list as Food Processing Centre and Premises (part exempt) of £136,000 is agreed; if they are not, the agreed figure is £352,500 RV.

More about Fridays' business

7. The production of eggs for human consumption is of course heavily regulated, and a lot of land is needed both for disease control requirements and in order for eggs to be classed as free range; one shed housing 64,000 birds requires 79 acres or 32 hectares of "ranging land". The practical consequence of this is that while Fridays would operate its egg production business from one site if that were possible, according to Mr Friday, that would require a site of over 400 acres and there is no suitable site of that size available. The business has therefore created a collection of sites in a ten-mile radius.

8. At Chequer Tree Farm itself, therefore, the arable land is used for barley and wheat, which is milled on site and fed to the hens at the other holdings; and eggs come from the other holdings to the three buildings to be packaged. So far as this appeal is concerned all that happens at Chequer Tree Farm is the growing of barley to feed the chickens on the other holdings, and the packaging of eggs at the three buildings. The arable production is carried out by three members of staff (two tractor drivers and a manager); they and their equipment are based at Tolehurst Farm. The equipment used includes tractors, trailers and a large combine harvester, and it is used to farm all the arable land occupied by Fridays.

9. Mr Friday's evidence was that the other holdings are managed from Chequer Tree Farm; staff at the other locations feed the hens and manage the land and buildings, but they report to the Poultry Management Team at Chequer Tree Farm at a weekly meeting and all decisions about feeding are taken there; feeding is complex because feed is blended differently for each farm based on the age, health and productivity of the birds so there is considerable calculation and control undertaken at Chequer Tree Farm. Planning for the arrival of chickens at 1 day old and their removal for slaughter at the age of about 85 weeks (by which time the shells of their eggs are too thin for commercial use) is all done at Chequer Tree Farm. Mr Friday was cross-examined about management arrangements and confirmed that staff at the other farms are titled "managers" to reflect their skill and importance, but their role is to look after the chickens on a day-to-day basis and how they do so is determined by senior management at Chequer Tree Farm.

10. The production and packaging of eggs prior to sale is regulated by legislation and by the British Egg Industry Council's "Lion Code of Practice". Eggs have to be stamped at the producing farm before being taken to Chequer Tree Farm for packing; the procurement department at Chequer Tree Farm supplies the ink and materials for the stamping. Mr Friday was asked in cross-examination if the eggs are packed at source, and he explained that the eggs are stamped and put on to 'keyes trays' – large trays with egg-shaped dips to hold the eggs safely, many dozen on each tray – and then stacked on to wooden pallets and loaded on to a lorry to be brought to Chequer Tree Farm. There they are weighed, graded, stamped with their grade and date, and then the grade A eggs are packed in supermarket egg boxes, mostly for Asda and Lidl. Grade B eggs – misshapes for the most part - are picked out by the machines and packed for use for baking.

11. About 1.7 million eggs produced on Fridays' Farms are processed in this way each week, but that is not enough to meet the supermarkets' requirements. Fridays therefore also grades, packages and sells on about 1.4 million free range eggs each week from around 15 smaller independent farms who do not produce eggs on a big enough scale to do the

packing themselves (and who of course cannot sell their eggs unless they are graded and packed in accordance with regulations and industry practice).

The law

12. The relevant parts of Schedule 5 to the Local Government Finance Act 1988 ("the LGFA 1988") read as follows:

> "1. A hereditament is exempt to the extent that it consists of any of the following—
>
> (a) agricultural land;
>
> (b) agricultural buildings.
>
> 2(1) Agricultural land is—
>
> (a) land used as arable, meadow or pasture ground only…
>
> 3 A building is an agricultural building if it is not a dwelling and—
>
> (a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land …
>
> 5 (1) A building is an agricultural building if—
>
> (a) it is used for the keeping or breeding of livestock, or
>
> (b) it is not a dwelling, it is occupied together with a building or buildings falling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings. (2) Sub-paragraph (1)(a) above does not apply unless— (a) the building is solely used as there mentioned, or
>
> (b) the building is occupied together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(a) is its sole use.
>
> (3) Sub-paragraph (1)(b) above does not apply unless— (a)
>
> the building is solely used as there mentioned, or
>
> (b) the building is occupied also together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(b) is its sole use."

13. Fridays' case is that the three buildings are agricultural buildings as defined in paragraph 3(a). Therefore the issue before us can be considered in the light of two questions – are the three buildings 'occupied together with agricultural land', and are they used 'solely in connection with agricultural operations on that or other agricultural land'. Both questions are in dispute. The more difficult one is whether the three buildings are

"occupied together with" agricultural land, and we have to consider what the phrase means in the light of the authorities.

14. We have been here before. In *Senova Ltd v Sykes (VO)* [2019] UKUT 0275 (LC) we explained that:

> "18. The leading case on the meaning of "occupied together with" remains *Farmer (VO) v Buxted Poultry Ltd* [1993] AC 369. This requirement remains unchanged despite the 2003 amendment and there can be no doubt of the continued authority of *Buxted Poultry* on this point.
>
> …
>
> 19. So for the appellant to qualify for exemption it must show that its offices and warehouse were, on the material days, both "in the same occupation" as agricultural land, and jointly controlled and managed with it. The agricultural land need not be contiguous, but the buildings and the land must be "worked together so as to form one agricultural unit"."

15. Crucial to what we have to decide in this appeal is whether we were right in *Senova* to say that "the meaning of "occupied together with" … remains unchanged despite the 2003 amendment", and so we have to revisit *Farmer v Buxted* in order to assess whether what the House of Lords said there about the meaning of "occupied together with" remains authoritative. It is worth pointing out at this stage that in *Senova* the difficulty for the ratepayer was that the Tribunal found that it was not occupying any agricultural land; so the question whether the building was occupied together with other land did not arise. Therefore what we said about *Farmer v Buxted* in *Senova* was obiter and what we are going to say in the present decision does not cast any doubt on our conclusion in *Senova*.

16. We agree with the parties that in order to understand the statutory provisions we have to look at the evolution of the law over the last century, and so we explain that evolution first before considering the parties' arguments about the two requirements.

The evolution of the law

17. Provision for the exemption of agricultural buildings was first made in the Rating and Valuation (Apportionment) Act 1928, which defined "agricultural buildings" as:

> "buildings (other than dwelling houses) occupied together with agricultural land or being or forming part of a market garden, and in either case used solely in connection with agricultural operations thereon."

18. It is important, for present purposes, that that definition required a building occupied together with agricultural land to be solely used in connection with agricultural operations on that land.

19. The Rating Act 1971 extended exemption to buildings used for "keeping or breeding of livestock", and also, by section 2, to buildings occupied together with such buildings. It was section 2 that was under consideration in *Farmer v Buxted*, which was about a

poultry processing factory used for the slaughter and processing of chickens reared in "broiler houses" (meaning houses for battery hens) at 48 farms at various distances – ranging from one quarter of a mile to 120 miles – away from the factory.

20. To be exempt under section 2 a building that was not itself used for keeping or breeding livestock had to be "occupied together with" one or more such buildings and used solely in connection with operations carried on in those same buildings (or occupied together with those buildings and with agricultural land, and used solely in connection with operations in the buildings and with agricultural operations on that land). The same provision is found today in paragraph 5 of schedule 5 to the LGFA 1988. In *Farmer v Buxted* the ratepayer argued that the processing plant was occupied together with the broiler houses on the 48 farms. By the time the case reached the House of Lords it was no longer in dispute that the factory was solely used in connection with the agricultural operations carried on in the broiler houses. The issue was whether it was also occupied together with those farms.

21. By 1992 when *Farmer v Buxted* was heard a body of case-law had built up around the meaning of "occupied together with". The Lands Tribunal had taken the view in a number of cases that geographical separation did not matter; what mattered was that the functional connection between the building in question and the building or land together with which it was claimed to be occupied. Thus in *Hilleshog Sugar Beet Breeding Co. Ltd. v. Wilkes (Valuation Officer)* [1971] R.A. 275 it was found that a plant research centre was occupied together with a number of plots of land up to 40 miles away; in *Handley (Valuation Officer) v Bernard Matthews plc.* [1988] R.A. 222 a hereditament used for producing pelleted turkey feed was found to be occupied together with 29 farms, between 9 and 74 miles distant, where the turkeys were kept. In *Maurice E. Taylor (Merchants) Ltd. v Commissioner of Valuation* [1981] N.I. 236 the Court of Appeal found that a shed and a potato bagging and grading store were occupied together with land where the potatoes were grown, between 10 and 20 miles away; Gibson LJ and Lord Lowry LCJ both expressed the view that the connection implied in "occupied together with" was functional rather than geographical.

22. In *Farmer v Buxted* Lord Slynn at page 377 made special mention of a recent Court of Appeal decision, *W & JB Eastwood Ltd. v Herrod* [1971] A.C. 160:

> "… again the rearing, killing and preparing of poultry for sale were at issue. The case turned on whether the buildings in question were used 'solely in connection with' the agricultural operations on the land …, it being conceded … that all the buildings were occupied together with the 1150 acres of land. Viscount Dilhorne expressed surprise that that should be so. He said, at p. 180:
>
> > 'But for this concession I do not think I should have found it easy to conclude that the packing station in Gainsborough nine miles or so away was occupied together with the agricultural land in the sense in which those words are used in the definition, and it may be that I would have had difficulty in coming to that conclusion in relation to the five layer houses at Norton Brisney some six miles away and some of the other buildings. In its context 'occupied together with agricultural land' may connote more than common ownership. My impression on reading the

> definition of 'agricultural buildings' is that it was an attempt by the draftsman to define a farm in statutory language and that it was intended to include buildings used and occupied together with the land for the purpose of farming the land, not buildings far distant and not used in connection with an operation on the land, even though owned by the same person.'"

23. That then was the background to *Farmer v Buxted,* where many of the broiler houses together with which the factory was said to be occupied were many miles away. It is interesting to look at the arguments presented to the House of Lords, set out in the Appeal Cases report. We can see that the parties agreed that the factory and the broiler houses

must be in common occupation at the same time, which they were; there must be a geographical connection; and there must be a functional connection. For the ratepayer it was emphasised that distance was not decisive; for the Valuation Officer it was argued that the farms were just too far apart: "Without some form of geographical test a building in Dover could be exempt if it were 'occupied together with' a poultry farm in Calais. The buildings need not be contiguous, but through location, common ownership, common machinery and common workforce they must as a matter of fact be one poultry farm" (page 372).

24. The House of Lords found that the factory was not occupied together with the broiler houses. Lord Slynn, with whom their lordships all agreed, said this at page 378:

> "for one building to be 'occupied together with' another for the purposes of this Act they must be in the same occupation and the activities carried on in both must be jointly controlled or managed. I also consider that the buildings must be so occupied and the activities so controlled and managed at the same time. These are necessary conditions to be satisfied but to satisfy each of them separately or together is not sufficient to establish that one building is 'occupied together with' another for rating purposes. Nor is there any geographical test which gives a conclusive answer - though the distance between the buildings is a relevant consideration, as the Court of Appeal held.
>
> It is not, however, sufficient to ask generally whether the buildings or buildings and land in question are all part of the same business enterprise. What it is necessary to show is that two buildings, or as the case may be the buildings and agricultural land, are occupied together so as to form in a real sense a single agricultural unit. Contiguity or propinquity may go far to show that they are. Thus farm buildings surrounded by land which is farmed with other land nearby though not contiguous or even land in another neighbouring village may well as a matter of fact be found to be 'occupied together with' each other. On the other hand separation may indicate that they are not and the greater the distance the less likely they are to be one agricultural unit.
>
> In view of the extension in the Act of 1971 to derate further hereditaments, it is not right now to ask whether the two premises constituted one 'farm' in the ordinary sense but Viscount Dilhorne in the passage quoted above, in my view, indicates the right direction. …the important question is whether the two

> buildings or the buildings and land are worked together so as to form one agricultural unit.
> …
> In the present case there are 48 farms with their broiler houses and each broiler house must be surrounded by at least two hectares of land to qualify. They are kept separate and distinct, in part, in order to prevent or reduce the spread of disease. Yet it is an inescapable finding that they are separate and distinct farms and are to be treated as such for rating purposes since it has not been suggested that any two or more of the broiler houses are in reality run as a single unit. It seems to me that it is quite impossible on the findings of the Lands Tribunal to say that each farm or broiler house is occupied together with all of the other broiler houses as one unit or that the factory is occupied as one unit together with all of the farms, some of which are 120 miles away.
>
> Applying the test as to whether the several buildings are worked together as one agricultural unit, and having regard to their physical separation, as part of this test, it seems to me the Lands Tribunal could not possibly conclude that the 48 farms are 'occupied together with' the factory for the purposes of the Act.

25. When the LGFA 1988 was enacted, paragraph 5 of Schedule 5 repeated the provisions of section 2 of the 1971 Act, and paragraph 3 of Schedule 5 echoed the definition in the 1928 Act, as follows:

> "A building is an agricultural building if it is not a dwelling and – (a) It is occupied together with agricultural land and is used solely in connection with agricultural operations on the land."

26. However, paragraph 3 (but not paragraph 5) was amended in 2003; its current text is as follows, with the amendment underlined:

> ""A building is an agricultural building if it is not a dwelling and – (a) It is occupied together with agricultural land and is used solely in connection with agricultural operations on <u>that or other agricultural land</u>."

27. The purpose of the amendment was to allow exemption for buildings that were shared by a number of famers; the Explanatory Memorandum to the amending statute (the Local Government Act 2003) said:

> "122. Schedule 5 to the Local Government Finance Act 1988 sets out the conditions that must be met if land and buildings are to be deemed to be agricultural and thereby entitled to exemption from rates. Section 67 amends the Schedule to reflect modern farming practices so that where farmers work on other agricultural land, perhaps on a share or contract basis, or through the pooling of resources or machinery, the exemption will apply."

28. So whereas before 2003 paragraph 3 of Schedule 5 required the building in question to be occupied together with agricultural land and used solely in connection with agricultural operations on *that land* – which Viscount Dilhorne in *Eastwood* described as "an attempt by the draftsman to define a farm in statutory language" - the building may

now be used in connection with agricultural operations on *that or other land*. Does the change in the use requirement have any effect upon the meaning of the occupation requirement? That is the question we have to answer in relation to the three buildings at Chequer Tree Farm.

The first requirement: are the buildings "occupied together with" agricultural land?

The arguments

29. As we saw above, in *Farmer v Buxted* the House of Lords looked at the meaning of "occupied together with", and concluded that there was more to it than a requirement that activities on the land and in the building be jointly controlled and managed, at the same time, together with perhaps a degree of geographic connection; it was also necessary for them to be "occupied together so as to form in a real sense a single agricultural unit", or "worked together so as to form one agricultural unit." Mr Williams KC argued that that this is more than a functional relationship; the fact that grain grown at Chequer Tree Farm

    is fed to chickens elsewhere who lay eggs that are packed in the three buildings is not enough to establish that the buildings form a single agricultural unit either with the arable land at Chequer Tree Farm or with the Fridays Farms.

30. Mr Williams KC set out and adopted what the VTE said about whether the three buildings are occupied together with the land at Chequer Tree Farm at paragraph 20 of its decision:

    > " …this is simply demonstrable of Friday's business arrangements. No eggs processed in the relevant buildings are produced at Chequer Tree Farm, they are transported to site from other farms. The relevant buildings could be located anywhere, it just so happens that Fridays have decided to utilise the relevant buildings on Chequer Tree Farm to package eggs in preparation to market. Mr Ormondroyd sought to create a link between Chequer Tree Farm's barley growing operation its milling into chicken feed, the offsite production of eggs, and then subsequently the packaging of those eggs in the relevant buildings. At Chequer Tree Farm, other than being a part of the same business enterprise, there is no "working together" of the agricultural land and the relevant buildings; they are just owned and operated by Friday's and are physically contiguous. I do not find that this is sufficient to satisfy the test established in *Buxted Poultry*: the buildings and the land are not, in my view, 'worked together so as to form one agricultural unit'"

31. As to the Fridays Farms, the President of the VTE said at his paragraph 22:

    > "…I do not consider that any of the 19 egg supplying farms could be part of a single agricultural unit with Chequer Tree Farm. Firstly, only four are within the same rateable occupation, but more importantly, they are all farms which are naturally, and have been kept, separate and distinct and they are geographically distant. As was the case in *Buxted Poultry*, it is an inescapable finding that those other egg producing farms are not "occupied together with" the relevant buildings at Chequer Tree Farm and thus do not form part of a single agricultural unit."

32. Again Mr Williams KC said that that was correct. And he argued that the same approach to "occupied together with" was found in *Senova*, and also in the Tribunal's decision in *Wootton v Gill (VO)* [2015] UKUT 548.

33. For the appellant, Mr Ormondroyd submitted that the reasoning in *Farmer v Buxted* is no longer applicable to the legislation in its current form; paragraph 3 of Schedule 5 has been amended since *Farmer v Buxted* was decided and the consequence of the amendment is that "occupied together with" can no longer mean "worked together so as to form one agricultural unit" with the land together with which the building is occupied.

34. In summary, according to Mr Ormondroyd, a building can satisfy the definition of an agricultural building if it is occupied together with agricultural land but used solely in connection with agricultural operations on other land. Occupation and use no longer have to relate to the same land – in contrast with the position when *Farmer v Buxted* was decided. Where a building is occupied together with agricultural land it is therefore no longer necessary to find that it is worked as an agricultural unit with that land; all the

> "working"- the functional connection - can be done in connection with other land.

Accordingly there is no barrier to finding that the three buildings are occupied together with the arable land at Chequer Tree Farm

35. The respondent's answer to that is that where words in a statute are unamended their meaning must be regarded as unchanged; the words "occupied together with" have not changed and the analysis in *Farmer v Buxted* remains authoritative. And it is not possible to say that the three buildings are "worked together with" either the land at Chequer Tree Farm, or the other Fridays' Farms, as an agricultural unit; they are not worked together, their functional connection is too distant.

36. In the course of the hearing the Tribunal asked Mr Williams KC if he construed the words "that or other agricultural land" to mean "that land, or that and other agricultural land" and he confirmed that he did. He argued that the 2003 amendment extended exemption to cover buildings occupied by Farmer A together with agricultural land and used in connection with agricultural operations not only on that land but also on the land of Farmers B and C who share the equipment stored in the building. Prior to the amendment the shared use would have ruled out exemption but now it does not. The amendment did not go so far as to exempt buildings that are not used in connection with the land together with which it is occupied.

37. Mr Ormondroyd referred in his skeleton argument to the explanation given by Mr Nick Raynsford MP, one of the promoters of the Bill, in response to questions in committee, with added emphasis:

> "Subsection (2) amends schedule 5 of the Local Government Finance Act 1988, so that where a building that is occupied with agricultural land is used in connection with agricultural operations on **other** agricultural land, the farmer will still retain the right to an exemption from national non-domestic rates. That situation could arise in the case of machinery rings, where a group of farmers collectively own machinery that they use not only on their own land but on others' land. The current phrasing of the Act would exclude such arrangements, **because the machinery is not exclusively for the use by the farmer on his**

> **own land. We are proposing the amendment so that, in sensible arrangements where farmers work together more cost effectively by using machinery that otherwise would stand idle, they do not lose the agricultural exemption as a result.**
> …
> The purpose of an association or a machinery ring is to use machinery more efficiently, but that activity currently precludes those people from benefiting from the exemption, so we are extending the exemption to them. It does not matter whether they are tenants or owner-occupiers; what matters is that the equipment is used for agricultural purposes, **whether on the land of the individual farmer or not**."
>
> (emphasis added)

38. Mr Ormondroyd maintained that the effect of the amendment is that a building may be used solely in connection with agricultural operations on land beyond the land together with which it is occupied.

39. Finally and in any event Mr Ormondroyd contended that the three buildings are occupied together with the arable land at Chequer Tree Farm, and with the Fridays Farms, whether

    or not we accept his argument that the "agricultural unit" interpretation in *Famer v Buxted* is not applicable to the statute as it now stands. As to the arable land at Chequer Tree Farm, he argued that it and the three buildings are in common occupation by Fridays, are controlled together as part of Fridays' farming enterprise and both used as part of the egg farming operation, managed from the Chequer Tree Farm offices, as well as being physically contiguous and part of the same hereditament.

40. As to the Fridays Farms Mr Ormondroyd said that they too are in common occupation by Fridays, are controlled together as part of Fridays' farming enterprise and used as part of the egg farming operation, managed from the Chequer Tree Farm offices. Moreover they are used directly together in the process of producing eggs for sale, and although not contiguous are close enough to form a single agricultural unit.

Discussion (1): is Farmer v Buxted *still authoritative as to the meaning of "occupied together with" in paragraph 3(a) of Schedule 5?*

41. It is well-established that where statutory wording is changed its meaning is presumed to have been changed whereas if it remains unchanged its meaning should be unchanged. Thus far we agree with the respondent. The question is whether the appellant is correct to say that the amendment to the second requirement (about use) in paragraph 5(3)(a) of Schedule 5 has necessarily had an effect upon the construction of the unamended words "occupied together with".

42. The answer depends upon whether the words "on that or other land" means "on that land, or on that and other land". In other words, is the word "or" in "that or other land" used in the inclusive sense or the exclusive sense?

43. Certainly the respondent is right to say that the effect of the amendment is that where Farmer A's machine shed is surrounded by Farmer A's land where the machinery is used,

the amendment saves the exemption in a case where the combine in the shed is also used by other farmers. It still has its close connection with the land next to which it is situated, being in the same occupation at the same time, being contiguous, and having a close functional connection so that the building and the land are or are part of the same farm.

44. The question, which has not been answered before this appeal, is whether the amendment saves the exemption in a case where Farmer A's machine shed is occupied by Farmer A and is adjacent to agricultural land also occupied by Farmer A, but where the machinery in the shed is used on agricultural land elsewhere (whether by Farmer A or by other farmers or both). The shed is still in the same occupation as the land next to it, at the same time, but it does not have any functional connection with it. Is it occupied together with it?

45. In that situation, on Mr Ormondroyd's argument, the shed has the exemption. It is occupied together with the agricultural land next to it, and its sole use is in connection with agricultural operations, but on other agricultural land. And that situation is identical to the situation in the present appeal where the three buildings are used in connection with agricultural operations on *other* land, not on the arable land next to it.

46. For Mr Williams KC there is no exemption in that case.

47. We agree with Mr Ormondroyd on this point. Looking at the example of shared use in paragraph 44 above, that is the sort of situation that the amendment was designed to save,

and for it to be disqualified because the shed is next to agricultural land belonging to Farmer A but not the right bit of Farmer A's agricultural land seems arbitrary. We think that the word "or" is generally exclusive in ordinary language; and we note that where a statute contains a list of alternatives separated by the word "or" it is used in an exclusive sense – any one of the alternatives will suffice. The literal construction, taking that as exclusive, accords with the purpose of the amended provision. And in light of the ambiguity it is permissible to note the words of Mr Raynsford MP, quoted above, who appears to have taken a view consistent with what is said for the appellant.

48. On the basis that "or" is exclusive, and that the respondent's construction of "or other land" is incorrect, "occupied together with" can no longer require a functional connection and cannot imply that the land and the building have to be a single agricultural unit. Occupation and use have been split up by the amendment; occupation can therefore no longer require a functional connection, let alone anything closer such as constituting or being part of a farm or unit. Nevertheless the word "together" is likely to have a meaning beyond occupation by the same person at the same time, and we take it to mean that the building and the land must be occupied as part of the same enterprise and must be geographically close if not contiguous.

49. Accordingly we have to distinguish *Farmer v Buxted*; it remains authoritative as to the meaning of "occupied together with" in paragraph 5 of Schedule 5 to the LGFA 1988 but is no longer relevant to the construction of those words in paragraph 3.

50. So we were wrong to say in *Senova* that the meaning of those words was unchanged by the 2003 amendment. That has no effect upon the result in *Senova* (where the point was not argued) for the reasons we gave above (paragraph 15). And what we have said here

is consistent with the outcome in *Wootton v Gill (VO)* [2015] UKUT 548, where again the point was not argued because the building in question had a close functional connection with the agricultural land together with which it was occupied.

Discussion (2): on that basis, were the three buildings occupied together with the arable land at Chequer Tree Farm?

51. On the basis of what we have said above, there is no difficulty in finding that the three buildings were occupied together with the arable land at Chequer Tree Farm. They were in the same occupation at the same time; they are contiguous (the fields are just across the yard behind the buildings); they are part of the same business enterprise.

Discussion (3):if we are wrong about Buxted, *were the three building occupied together with agricultural land?*

52. In case we are wrong to distinguish *Farmer v Buxted* we go on to consider whether the three buildings were occupied together with either the arable land at Chequer Tree Farm or the Fridays' Farms, in the sense of forming a single agricultural unit with them.

53. In order to do that we have to consider what an "agricultural unit" is. This is not a statutory term. Lord Slynn in introducing it as part of the meaning of "occupied together with", refrained from defining it, save to say that it is not the same as a farm. It was the extension of the legislation to include buildings occupied together with other buildings that led Lord Slynn to say "it is not right now to ask whether the two premises constituted

    one 'farm' in the ordinary sense", and that is perhaps the best clue we have as to what an "agricultural unit" is.

54. In explaining why the factory was not a single unit with the broiler houses Lord Slynn pointed out (at page 379) that it had not been suggested that any two of the broiler houses formed a single unit; that being the case, and having regard to their physical separation, he said that it was not possible to conclude that any of the 48 farms was "occupied with" the factory. From that we can conclude that being an agricultural unit must be something to do with management; the problem was that the 48 farms were each run separately rather than being a unit with one or more others. And it seems that proximity is important although not definitive.

55. So: are the three buildings worked together with the arable land at Chequer Tree Farm in the sense of being worked as a single agricultural unit? We think not. They were under common ownership and common occupation, they were contiguous and they were part of the same business enterprise of producing eggs for sale. But they were functionally independent. Each was managed by Fridays Limited but through different individuals. The arable land was used to produce grain, which was used to supply the Fridays Farms but did not have to be; it could have been sold. So the connection between the arable land and the Fridays Farms was thin; the arable land and the farms could have been run without that connection. And the only functional connection between the arable land and the three buildings is the Fridays Farms, which took the grain and produced the eggs.

56. So on the *Farmer v Buxted* understanding of "occupied together with" we find that the three buildings were not occupied together with the arable land at Chequer Tree Farm. Their operations and management were not connected with each other.

57. Next, are the three buildings occupied together with the Fridays Farms in the sense of being worked as a single agricultural unit? Again they are under common ownership and occupation; they were not contiguous but they are all near each other; and they were part of the same business enterprise of producing eggs for sale. But were they sufficiently functionally close to be described as a single unit?

58. It is not possible to sell loose eggs. Even at a garden gate with an honesty box they have to be in an egg box or tray of some kind. But the individual farms are able to cope with that by putting the eggs into the keyes trays on pallets. But it is also impossible to sell eggs that have not been graded and weighed, and that is what the Fridays Farms themselves cannot do. We have seen the equipment involved; it is big and costly and it is obviously a process that has to be to some extent centralised. That is why the independent farms send their 1.4 million eggs a week to Chequer Tree Farm because they too do not have the equipment to do what is needed in order to sell their eggs (which is the point of the operation).

59. Accordingly we take the view that despite their not being contiguous with Chequer Tree Farm and the three buildings – although they are not far away – the Fridays Farms are operated as a single agricultural unit with the three buildings and vice versa. Neither is any use without the other.

The second requirement: are the three buildings used solely in connection with agricultural operations on land?

60. We can now turn to the second requirement in paragraph 3 of Schedule 5; the three buildings must be solely used in connection with agricultural operations on agricultural land. We can deal with this more shortly.

61. The appellant argues that the three buildings are used solely in connection with agricultural operations on the Fridays Farms and the independent farms. Those farms do have sheds for the hens to roost and lay eggs in, but those sheds are not comparable to the broiler houses in *Farmer v Buxted*; these are not battery hens and the sheds are ancillary to the surrounding land where the chickens range. The appellant's case is that the three buildings at Chequer Tree Farm are solely used in connection with the agricultural operations on the land, not the buildings, at Fridays Farm (if the connection argued was with the buildings then the appellant would have to use paragraph 5 of the Schedule 5, but that is not its argument). And the essential function of weighing, grading and packaging is something that has to be done with the eggs laid on the Fridays Farms; otherwise the farming operation fails because the eggs cannot otherwise be sold (because of the regulatory framework for the egg market).

62. The respondent argues that the three buildings are not ancillary or subsidiary to the land at Fridays Farms; their use is a "primary use" of land for packing and distribution purposes, and goes well beyond operations that can reasonably be said to be consequential to the agricultural operation of producing the eggs. Similarly, the three buildings are an independent packing hub for the independent farms.

63. We think that the respondent's argument lays too much weight on the packing of the eggs, and overlooks the weighing and grading. Regulations and industry practice make it impossible to sell the eggs without this operation; and the packing of the eggs goes handin-hand with their grading, because the grade A eggs go into supermarket boxes for retail while the grade B eggs take a different journey in keyes trays, as we saw. The necessity for these processes to be done before the eggs can be sold gives the three buildings a close functional connection with the agricultural operation of producing eggs on the land at Fridays Farms, and therefore we take the view that the second requirement is met.

Conclusion

64. In conclusion, we respectfully disagree with the learned President of the VTE. The appeal succeeds.

65. In those circumstances the parties agree that the correct assessment in the Rating List is £136,000.

66. This decision is final on all matters except costs, and a letter outlining the procedure for making costs submissions, in the event that they cannot be agreed, accompanies the decision.

Judge Elizabeth Cooke Peter McCrea FRICS FCIArb

31 May 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.