VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; exemption from rating; schedule 5 of the Local Government Finance Act 1988; distinction between "agricultural land" and "agricultural building"; hereditament used as a mushroom packhouse by company controlled by growers but not occupied with agricultural land or forming part of a market garden or a nursery ground not exempt; appeal dismissed

APPEAL NUMBER:	CHG100383307	
RE:	Brick Kiln Lane, Swainsthorpe, NR14 8PY (the "subject hereditament")	
BETWEEN:	Waveney Mushrooms Ltd	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent
BEFORE:	Mr M Young (Vice President)	
CLERK:	Mr P Hill IRRV Tech	
HEARING:	Remote hearing 3 on 11 May 2023	
APPEARANCES:	Mr S Bicknell of Brown and Co for the Appellant Mr D McLaren of Valuation Office Agency for the Respondent	

Summary of Decision

1. The appeal is dismissed for the reasons set out below.

2. I am grateful to both advocates for their clear and comprehensive written submissions and evidence.

Introduction

3. Under the Tribunal Business Arrangements, as Vice President I was authorised to hear this appeal sitting alone.

4. This decision is not and does not purport to be a verbatim record of proceedings.

5. This appeal has been brought under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]. The appeal challenges the respondent's decision that the appellant's proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded.

6. The appellant's proposal had sought an exemption for the subject hereditament under section 51 of the Local Government Finance Act 1988 with effect from 1 April 2017, as comprising an agricultural building within Schedule 5 to that Act.

7. Mr Bicknell appeared on behalf of the appellant as advocate. He was on a conditional or success related fee.

8. Mr McLaren appeared on behalf of the respondent as advocate.

Relevant statutory provisions

9. This is section 51 of the Local Government Finance Act 1988, within Part III "Non-Domestic Rating", which provides:

> "Schedule 5 below shall have effect to determine the extent (if any) to which a hereditament is for the purposes of this Part exempt from local non-domestic rating".

Schedule 5 "Non-Domestic Rating: Exemption" (as amended), set out in full to paragraph 8 in deference to the arguments for the appellant, then provides:

> *"Agricultural premises*
>
> 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,
>
> (b) land used for a plantation or a wood or for the growth of saleable underwood,
>
> (c) land exceeding 0.10 hectare and used for the purposes of poultry farming,
>
> (d) anything which consists of a market garden, nursery ground, orchard or allotment (which here includes an allotment garden within the meaning of the Allotments Act 1922), or
>
> (e) land occupied with, and used solely in connection with the use of, a building which (or buildings each of which) is an agricultural building by virtue of paragraph 4, 5, 6 or 7 below.

(2) But agricultural land does not include—

(a) land occupied together with a house as a park,

(b) gardens (other than market gardens),

(c) pleasure grounds,

(d) and used mainly or exclusively for purposes of sport or recreation, or

(e) land used as a racecourse.

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, . . .

(b) it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden, or

(c) it is or forms part of a nursery ground and is used solely in connection with agricultural operations at the nursery ground.

4 (1) A building is an agricultural building if it is used solely in connection with agricultural operations carried on on agricultural land and sub-paragraph (2) or (3) below applies.

(2) This sub-paragraph applies if the building is occupied by the occupiers of all the land concerned.

(3) This sub-paragraph applies if the building is occupied by individuals each of whom is appointed by the occupiers of the land concerned to manage the use of the building and is—

(a) an occupier of some of the land concerned, or

(b) a member of the board of directors or other governing body of a person who is both a body corporate and an occupier of the land concerned.

(4) This paragraph does not apply unless the number of occupiers of the land concerned is less than 25.

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.

(4) A building (the building in question) is not an agricultural building by virtue of this paragraph unless it is surrounded by or contiguous to an area of agricultural land which amounts to not less than 2 hectares.

(5) In deciding for the purposes of sub-paragraph (4) above whether an area is agricultural land and what is its size, the following shall be disregarded—

(a) any road, watercourse or railway (which here includes the former site of a railway from which railway lines have been removed);

(b) any agricultural building other than the building in question;

(c) any building occupied together with the building in question.

6 (1) A building is an agricultural building if it is not a dwelling, is occupied by a person keeping bees, and is used solely in connection with the keeping of those bees.

(2) Sub-paragraphs (4) and (5) of paragraph 5 above apply for the purposes of this paragraph as for those of that.

7 (1) A building is an agricultural building if it is not a dwelling and—

(a) it is used in connection with agricultural operations carried on on agricultural land, and

(b) it is occupied by a body corporate any of whose members are or are together with the body the occupiers of the land, and

(c) the members who are occupiers of the land together have control of the body.

(2) A building is also an agricultural building if it is not a dwelling and—

(a) it is used in connection with the operations carried on in a building which, or buildings each of which, is used for the keeping or breeding of livestock and is an agricultural building by virtue of paragraph 5 above, and

(b) sub-paragraph (3), (4) or (5) below applies as regards the building first mentioned in this sub-paragraph (the building in question).

(3) This sub-paragraph applies if—

(a) the building in question is occupied by a body corporate any of whose members are, or are together with the body, the occupiers of the building or buildings mentioned in sub-paragraph (2)(a) above, and

(b) the members who are occupiers of the land together have control of the body.

(4) This sub-paragraph applies if the building in question, and the building or buildings mentioned in sub-paragraph (2)(a) above, are occupied by the same persons.

(5) This sub-paragraph applies if the building in question is occupied by individuals each of whom is appointed by the occupiers of the building or buildings mentioned in sub-paragraph (2)(a) above to manage the use of the building in question and is—

(a) an occupier of part of the building, or of part of one of the buildings, mentioned in sub-paragraph (2)(a) above, or

(b) a member of the board of directors or other governing body of a person who is both a body corporate and an occupier of the building or buildings mentioned in sub-paragraph (2)(a) above.

(6) Sub-paragraph (1) above does not apply unless the use there mentioned, or that use together with the use mentioned in sub-paragraph (2) above, is its sole use.

(7) Sub-paragraph (2) above does not apply unless the use there mentioned, or that use together with the use mentioned in sub-paragraph (1) above, is its sole use.

(8) Sub-paragraph (4) or (5) above does not apply unless the number of occupiers of the building or buildings mentioned in sub-paragraph (2)(a) above is less than 25.

(9) In this paragraph "control" shall be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010.

8 (1) In paragraphs 1 and 3 to 7 above "agricultural land" shall be construed in accordance with paragraph 2 above.

(2) In paragraphs 1 and 5(5)(b) above "agricultural building" shall be construed in accordance with paragraphs 3 to 7 above.

(3) In determining for the purposes of paragraphs 3 to 7 above whether a building used in any way is solely so used, no account shall be taken of any time during which it is used in any other way, if that time does not amount to a substantial part of the time during which the building is used.

(4) In paragraphs 2 to 7 above and sub-paragraph (2) above "building" includes a separate part of a building.

(5) In paragraphs 5 and 7 above "livestock" includes any mammal or bird kept for the production of food or wool or for the purpose of its use in the farming of land".

Issue raised by the appeal

10. The issue is whether an agricultural exemption under paragraphs 1 to 8 of Schedule 5 to the Local Government Finance Act 1988 applied. The appellant argues that the clear intention of the legislation is that an exemption should apply to the appeal property. The respondent contends the exemption does not apply and that the appellant is applying its own interpretation.

The subject hereditament and the use to which it is put

11. There was no dispute about the material facts, helpfully set out in detail with supporting documentary evidence in the submissions for the appellant. After some editing by me as shown (…) and in parenthesis (save as to the reference to Haylock Mushrooms) in order to record facts and not contentious terminology significant in rating law, those facts can be summarised thus:

> "The property comprises a modern … building used as a packhouse for the packing and distribution of mushrooms. It is occupied (by the appellant to support) … five mushroom growers who have joined forces to consolidate their individual costs. …The (appellant) was registered on 16th May 1991 with the Financial Conduct Authority under the Industrial and Provident Societies Act 1965, later replaced by the Co-operative and Community Benefit Societies Act 2014. The (appellant) is therefore a body corporate.
>
> No growing of mushrooms takes place within the packhouse. One of the grower farms directly adjoins it (Haylock Mushrooms) but the others are located between 3.3 and 20 miles away".

Decision and reasons

12. In order to be exempt from the statutory liability to rating a hereditament has to fall within a statutory exemption. As put by leading counsel for the VO and not disputed before or by the Upper Tribunal in The Church of Scientology Religious Education College Inc v Andrew Ricketts (VO) [2023] UKUT 00001 (LC) at [79], with respect to statutory construction the need is to construe legislation purposively and to identify Parliament's purpose from the legislation itself and not, for example, from antecedent legislation. Exemptions constitute an exception to a general rule and ought in principle to be construed strictly.

13. The difficulty for the appellant in this appeal, as is apparent from the written submissions for it, is that it is not possible to fit the subject hereditament into a specific exemption in Schedule 5, so the appellant puts the case: "Exemption under a specific paragraph within the schedule is not submitted as it is believed the whole schedule should be read in the context of its intent".

14. I cannot accept that case, despite the arguments deployed to support it. Schedule 5 paragraph 1 commences with the straightforward proposition that the exemption applies to the extent that a hereditament is (a) agricultural land (b) agricultural buildings. Mr Bicknell correctly accepts the distinction in rating law between those two categories of agricultural hereditament. He cannot and does not contend that the packhouse in issue is agricultural land: it is a building, "built in 2015 and is constructed around a steel portal frame with double skin insulated profiled protected metal walls and a single skin fibre cement sheet roof" and fitted out as further set out in the appellant's evidence.

15. Paragraph 2 of Schedule 5 cannot, therefore, be of any application as it deals exclusively with agricultural land and I cannot apply it to a building in any way without distorting the ordinary meaning of its words.

16. The subject hereditament cannot be an agricultural building within paragraph 3 of Schedule 5 because, while it is not a dwelling:

    (a) it is not occupied (by the appellant) together with agricultural land

    (b) it does not form part of a market garden,

    (c) it does not form part of a nursery ground.

    It may be used solely in connection with agricultural operations at a market garden or nursery ground elsewhere but it is not argued for the appellant, correctly in my opinion, that it forms part of either.

17. Paragraph 4 of Schedule 5 comes close to providing an exemption but, again, the subject hereditament cannot be placed within it. This is because, as accepted correctly for the appellant, the growing of mushrooms is not an agricultural operation carried on on agricultural land: mushrooms are grown in buildings.

18. Paragraph 5 of Schedule 5 is concerned with buildings used for the keeping or breeding of livestock. Notwithstanding its deployment in argument for the appellant in seeking to show there is a gap in the legislation when taken with paragraph 7(2)(a), it is clearly of no application to the subject hereditament. The same applies to paragraph 6 of Schedule 5 which provides an exemption for agricultural buildings used for keeping bees.

19. Paragraph 7 of Schedule 7 was amended by the Local Government Act 2003 so as to provide exemption for agricultural buildings occupied by bodies corporate. The mushroom grower members of the appellant are in control of it for the purposes of paragraph 7(1)(b) and (c) but paragraph 7(1)(a) is not fulfilled because, as with paragraph 3(a) the subject hereditament is not used in connection with agricultural operations carried on on agricultural land: it is used in connection with agricultural operations carried on in buildings. Paragraphs 7(2), (3), (4), (5), (7) and (8) are concerned with livestock or the livestock exemption under paragraph 7(2). Sub-paragraphs (6) and (9) would be fulfilled if paragraph 7(1) applied, but it does not.

20. The interpretative provisions of paragraph 8 of Schedule 5 emphasise that the exemptions provided by that Schedule are self-contained.

21. Mr Bicknell pointed out that the subject hereditament is occupied by a group of mushroom growers and they are the only mushroom growers Farmer's Co-operative in England. This is, he argued, a situation that was not around at the time the Act was drafted and it is unreasonable, and impractical, to have expected the drafter to envisage every circumstance that may arise. Most other mushroom farms in England are large scale, so it is probable that the drafter of the 1988 Act, or any subsequent amending legislation, did not give thought to independent mushroom grower collectives occupying a separate building, there being none around at the time the Act was drafted. He invited me to extend the relevant provisions of Schedule 5 to cover this unforeseen development in the mushroom farming sector, relying on what Lord Wilberforce held in RCN v DHSS [1981] Act 80:

> "In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, this being not such a case, when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the Parliamentary intention. They may be held to do so, if they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made. How liberally these principles may be applied must depend upon the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed.

> The courts should be less willing to extend expressed meanings if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the subject matter is different in kind or dimension from that for which the legislation was passed. In any event there is one course which the courts cannot take, under the law of this country; they cannot fill gaps; they cannot by asking the question 'What would Parliament have done in this current case - not being one in contemplation - if the facts had been before it?' attempt themselves to supply the answer, if the answer is not to be found in the terms of the Act itself".

22. Despite the assistance of both Mr Bicknell and Mr McClaren I was unable to see what policy reason there might be for excluding the mushroom growers collective packhouse premises from exemption. However it is not for me or this Tribunal to find that reason, in my judgment. The law in Schedule 5 is clear enough and there is no room for a liberal application of the principles described by Lord Wilberforce to rating exemption or to pose the impermissible question. Parliament's purpose was to provide the exemptions set out in Schedule 5, amending as seen fit by subsequent legislation. I cannot accept that this is a case where the overall "direction of travel" of exemption, even if it could be discerned, should be used to extend the exemption as asked. I have regard to the words of Lord Bingham in R (Quintavale) v Secretary of State for Health [2003] UKHL 13, relied on by the appellant, but the court was there concerned with the interpretation of controversial provisions, not adding a new category of statutory exemption from non-domestic rates.

23. The need for Parliament to legislate for such exemptions, if considered appropriate, is emphasised by the decision of the Court of Appeal in Tunnel Tech Ltd v Reeves (VO) [2015] EWCA Civ 718. It was held that rating legislation distinguished between agricultural land and agricultural buildings and between market gardens, in which all the agricultural operations were undertaken in buildings exempt from rates and nurseries in which all the agricultural operations were undertaken in buildings not exempt from rates. It was a case on the then provisions of Schedule 5 and the appellant was a mushroom grower who produced mushroom material on his land which was then transferred to specialist farms for growing on.

It was observed by the Chancellor of the High Court that:

> "There is no obvious explanation as to why Parliament intended that the LGFA 1988 and indeed its predecessor legislation since 1928 should confer exemption for rates on market gardens where all the agricultural activities are carried on in buildings but not confer such exemption on nurseries where all the agricultural operations are carried on in buildings. I agree with the Upper Tribunal, however, that the statutory distinction between their treatment is perfectly clear and unambiguous"

It was, as Mr Bicknell points out, left to Parliament to deal with that apparent inconsistency by the Non-Domestic Rating (Nursery Grounds) Act 2018 and the addition of sub-paragraph (c) to paragraph 3 of Schedule 5.

24. Therefore, I am unable to extend the exemption from rating as sought by the appellant, given the clear and unambiguous words of the material paragraphs of Schedule 5 and I accept the arguments for the respondent that I should not do so. The appeal is dismissed accordingly.

M.F. Young
Vice-President

Date: 6 June 2023

Appeal number: CHG100383307

Right of appeal

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.