



VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal: Local Government Finance Act 1988, Local Government Act 2003; Farmer (VO) v Buxted Poultry Ltd [1993] AC 369; Senova v Sykes (Valuation Officer) [2019] UKUT 275 (LC); Agricultural Exemption - whether buildings occupied together with agricultural land; egg packing facilities; appeal dismissed.

APPEAL NUMBER: CHG100582485

RE: Chequer Tree Farm, Benenden Road, Rolvenden, Cranbrook,
TN17 3PN (the "Chequer Tree Farm")

BETWEEN: Fridays Ltd Appellant

and

Leigh Collins Respondent
(Valuation Officer)

SITTING: remotely via Microsoft Teams

ON: Thursday 22 June 2023 at 14:00 hours

BEFORE: Mr G Garland (President)

CLERK: Mr W Hamilton IRRV(Dip) A.Inst.Pa (Deputy Registrar)

APPEARANCES: For the Appellant
Mr C Ormondroyd of Francis Taylor Building (Counsel)
Mr I Charman FRICS FIRR V (Expert Witness)
Mr A Irvine of Fridays Ltd (Managing Director)

For the Respondent
Mr G Williams KC of Landmark Chambers (Counsel)

DECISION and STATEMENT OF REASONS

Summary of Decision

1. The appeal is dismissed.
2. In summary, I find that –
 - (1) the Egg Packing Centre, the Egg Packaging Store and the Egg Warehouse do not form a single agricultural unit with agricultural land at Chequer Tree Farm (or elsewhere); and accordingly
 - (2) those buildings do not fall to be agricultural buildings under paragraph 3(a) of Schedule 5 to the 1988 Act; and consequently
 - (3) the rateable value of Chequer Tree Farm is £352,500 with effect from 17 September 2018.

Introduction

3. This appeal relates to the entry in the 2017 non-domestic rating list for Chequer Tree Farm, and in particular, whether three buildings that are situated at Chequer Tree Farm are agricultural buildings and thus exempt from rating under paragraph 3(a) of Schedule 5 to the Local Government Finance Act 1988 (the “1988 Act”). Those three buildings – namely, the Egg Packing Centre, the Egg Packaging Store and the Egg Warehouse (together the “relevant buildings”) – are used in connection with the storage and packing of eggs for distribution.
4. This statement of reasons is not, and does not purport to be, a full verbatim record of proceedings.
5. I am grateful to the parties for their flexibility and concise submissions in this matter.

Challenge and appeal to this Tribunal

6. On 28 January 2021, the Appellant Company, Fridays Ltd (“Fridays”) submitted to the Respondent Valuation Officer a proposal to alter Chequer Tree Farm’s entry in the rating list (the “Challenge”). That Challenge sought a reduction in rateable value for Chequer Tree Farm to £102,000 from 17 September 2018. The parties are agreed that, for the purposes of this challenge and appeal, this is the material date.
7. On 15 September 2022, the Respondent Valuation Officer issued their decision in respect of the Challenge. That decision was, in short, that the Challenge was not well-founded, but also that the rateable value for Chequer Tree Farm was unreasonable, reducing the rateable value to £352,500 with effect from 17 September 2018.
8. On 5 January 2023, Fridays filed an appeal with this Tribunal against the Respondent Valuation Officer’s decision of 15 September 2022.

Background

9. Chequer Tree Farm was entered into the 2017 non-domestic rating list as a Food Processing Centre and Premises (part exempt) from 17 September 2018 at a rateable value of £392,500. Chequer Tree Farm mostly comprises of approximately 200 hectares of agricultural land, with some agricultural and non-agricultural buildings and plant and machinery. The agricultural land at Chequer Tree Farm is used to grow barley, which is milled at the farm. The buildings on site include offices, machinery stores, workshops, food mills, grading and packing stores as well as structures housing boiling plant/kitchens, storage and preparation of chilled products. There are also some older poultry houses on the site, a water treatment plant, silos/grain stores and a weighbridge.
10. As mentioned above, this appeal relates to three of those buildings on Chequer Tree Farm: the Egg Packing Centre, the Egg Packaging Store and the Egg Warehouse (together “the relevant buildings”). I am told that the names of each of relevant buildings accurately describes their respective functions, but together they are used in connection with the storage and packing of free-range eggs for wholesale distribution.
11. The relevant buildings handle approximately 3.15 million eggs per week; however, no eggs are produced at Chequer Tree Farm that are processed in the relevant buildings. Of those eggs processed in the relevant buildings, approximately 55% are produced by four other farms occupied by Fridays. The remaining 45% are produced by 15 farms that are not in the Fridays’ occupation, and which are geographically spread from Devon to Derbyshire. Those 15 other farms are subject to Layer Flock Agreements, which provides for the exclusive sale of the eggs to Fridays (naturally, subject to grading and quality controls).

Relevant Law

The non-domestic rate and agricultural exemption

12. Part III of the 1988 Act makes provision for the establishment of the local non-domestic rate payable in respect of non-domestic hereditaments.
13. Section 51 of, and Schedule 5 to, the 1988 Act make provision for determining the extent (if any) to which a hereditament is, for the purposes of Part III, exempt from local non-domestic rating. Paragraphs 1 to 8 provide for exemption in relation to agricultural premises. So far as is relevant to these proceedings, it 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,*

...

(c) *land exceeding 0.10 hectare and used for the purposes of poultry farming;*

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;*

...

14. There is a considerable body of authorities in relation the meaning of the provision in the agricultural exemption. The parties provided a bundle of authorities which, in addition to the statutory provisions above, included copies of –

(1) *W&JB Eastwood Ltd v Herrod (VO)* [1971] AC 160;

(2) *Symes v Harvey (VO)* [1973] RA 141;

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

(4) *Senova v Sykes (Valuation Officer)* [2019] UKUT 275 (LC);

(5) *The Church of Scientology Religious Education College Inc v Andrew Ricketts (VO)* [2023] UKUT 00001 (LC);

(6) *Merton v Nuffield Health* [2023] UKSC 18;

(7) *Farmers' Machinery Syndicate (11th Hampshire) v Shaw (VO)* [1961] 1 WLR 393 CA;

(8) *Tunnel Tech Ltd v Reeves (VO)* [2015] PTSR 1940; and

(9) *Waveney Mushrooms Ltd v Moore (VO)* [2023] VTE (CHG100582485).

Appeal to this Tribunal

15. Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] makes provision for an appeal against the Respondent Valuation Officer's challenge decision to this Tribunal. So far as is relevant to this case, it provides –

13A Making and appeal to the [Valuation Tribunal for England]

(1) A proposer may appeal to the [Valuation Tribunal for England] on either or both of the grounds set out in paragraph (2) if—

...

(b) the [Valuation Officer] has decided under regulation 13 to alter the list otherwise than in accordance with the proposal;

(2) The grounds are—

(a) the valuation for the hereditament is not reasonable;

(b) the list is inaccurate in relation to the hereditament (other than in relation to valuation).

Discussion

16. The case that the relevant buildings are agricultural buildings is made by the Appellant's representatives solely based on paragraph 3(a) of Schedule 5 to the 1988 Act: that they are *occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land*.
17. For the Respondent Valuation Officer, Mr Williams distils this test into two requirements: 1) that the building is "*occupied together with agricultural land*" and 2) that the building is "*used solely in connection with agricultural operations on that agricultural land or other agricultural land*". Mr Ormondroyd categorises the same, but into four elements with a degree of overlapping between the four propositions.
18. The first question on either view is whether the relevant buildings are "*occupied together with agricultural land*". From their respective submissions, both parties agree that to satisfy this requirement the relevant buildings need not only need to be in the same rateable occupation as the agricultural land, but they must also form, in a real sense, a single agricultural unit with the land. Indeed, that is the effect of the House of Lord's judgment in *Buxted Poultry*. In that judgment, Lord Slynn concluded "*that the important question is whether the two buildings or the buildings and the land are worked together so as to form one agricultural unit*".
19. For the Appellant, Mr Ormondroyd argues that Chequer Tree Farm is the single agricultural unit, grouping the relevant buildings with the remainder of Chequer Tree Farm. He contends that they are in common rateable occupation, that they are controlled together as part of Fridays' farming enterprise, that they are both used as part of the egg farming operations (in that the barley grown at Chequer Tree Farm is milled into chicken feed supplied to other egg producing farms), that they are both managed from the same offices on site, and that they are physically contiguous.
20. However, I agree with Mr Williams that this is simply demonstrable of Fridays' business arrangements. No eggs processed in the relevant buildings are produced at Chequer Tree Farm, they are transported to the 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, but I do not believe this is the correct approach: to do so requires looking outside of the proposed single agricultural unit, being Chequer Tree Farm, to create the functional unity between the agricultural land and 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 Fridays 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*".

21. Mr Ormondroyd contends that this approach seeks to merge the occupation and use requirements and cannot be right, especially following the amendment to paragraph 3 of Schedule 5 to the 1988 Act by the Local Government Act 2003 (the "2003 Act"). That amendment extended the exemption, substituting the phrase at the end of the paragraph "*on that or other agricultural land*" in place of "*on the land*". I was referred to paragraphs 122 and 123 of the Explanatory Memorandum to the Act in an effort to demonstrate the purpose of the extension. But I am reinforced in my conclusion by the Upper Tribunal's judgment in *Senova* which confirmed (at para.18) that the requirements and meaning of "*occupied together with*" was unchanged by the 2003 Act and that *Buxted Poultry* remained authoritative. Taking account of *Senova*, the amendment made by the 2003 Act modifies, in my view, the second requirement of paragraph 3(a) as to the use in connection with agricultural operations only.
22. Although I acknowledge it is not argued as such by Mr Ormondroyd, for completeness, 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.

Disposal

23. My conclusion in respect of this first requirement is sufficient to dispose of the appeal. As I have found that the relevant buildings do not form a single agricultural unit with agricultural land at Chequer Tree Farm, they do not fall to be agricultural buildings under paragraph 3(a) of Schedule 5 to the 1988 Act. I need go no further.
24. In view of that finding, I am satisfied that the rateable value of £352,500 with effect from 17 September 2018, as set out in the Respondent Valuation Officer's challenge decision notice of 15 September 2022, is not unreasonable.
25. Accordingly, the appeal fails, and I dismiss it.



PRESIDENT

Issued to parties: 24 July 2023

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. In paragraphs 2(3), 7 and 24 the rateable value for the Chequer Tree Farm shown as £352,000 is substituted for the corrected figure of £352,500.

Right of further 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.
