

# THE VALUATION TRIBUNAL FOR ENGLAND



*Non-domestic rating appeal; Local Government Finance Act 1988; schedule 5 exemption; shop and premises; whether exempt as ancillary to Fineshade Wood; hereditament found rateable as served purposes unrelated to park; appeal dismissed.*

RE: Big Barn, Top Lodge, Fineshade, Corby, Northamptonshire  
NN17 3BB ("the subject hereditament")

APPEAL NUMBER: CHG100584290

BETWEEN:	AE Catering Limited	Appellants
	and	
	Valuation Officer	Respondent

SITTING: Remotely via Microsoft Teams Conference Call

ON: 8 February 2023

PANEL: Mr M Heslop-Mullens (Senior Member)  
Dr P Thomson

CLERK: Mr S Fletcher

APPEARANCES: Mr M Lovett of LHL Property Auditors  
(Appellants' representative acting as advocate only)

Mr T Briggs of Valuation Office Agency  
(Respondent's representative)

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## DECISION and STATEMENT OF REASONS

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### Summary of decision

1. Appeal dismissed. The panel did not determine the subject hereditament to be ancillary to Fineshade Wood. Consequently, its entry into the rating list of £6,500 rateable value (RV) with effect from 16 November 2018 was deemed as correct.

## Introduction

2. The appeal process began with a challenge made by the appellants on 3 February 2021 in respect of the Valuation Officer's (VO) compiled list entry of the subject hereditament at £6,500 RV with effect from 16 November 2018. The appellants sought the deletion of the hereditament from the rating list on the basis it was ancillary to the non-rateable public space of Fineshade Wood.
3. The respondent issued a challenge case decision notice on 19 May 2022, which stated that based on the evidence available, the subject hereditament was not considered exempt from rating and the existing rating list entry of £6,500 was reasonable. The appellants appealed that decision to this tribunal on 12 July 2022.
4. The subject hereditament was a shop and premises occupied by the appellants and located at Fineshade Wood. The property operated as a bicycle hire, sales and service shop known as Grounds Cycle Centre. Fineshade Wood is operated by Forestry England and is located north of Corby in Northamptonshire.
5. This decision document is not and does not purport to be a verbatim record of proceedings.

## Issue

6. The issue for the panel to ascertain was whether the subject hereditament was ancillary to Fineshade Wood which would determine whether it was exempt from the rating list.

## Evidence and submissions

7. Arguments and factual evidence for both the appellant and respondent were subsumed into a combined evidence bundle. This comprised of documentation exchanged between the parties as part of the challenge process, the appellants' challenge submission, the respondent's challenge decision notice and photographs and location plans of the subject hereditament.
8. The following case law was submitted by the parties and is cited in the decision:

*Lancashire County Council v Lord (VO)* [1987] RA 153  
*Sheffield Corporation v Tranter (VO)* [1957] 2 All ER 583

## Relevant Law

9. The relevant legislation to this appeal was paragraph 15, Schedule 5 Non-Domestic Rating: Exemption, of the Local Government Finance Act 1988 ("the Act") and reads —

## 15 Parks

*(1) A hereditament is exempt to the extent that it consists of a park which—*

*(a) has been provided by, or is under the management of, a relevant authority or two or more relevant authorities in combination, and*

*(b) is available for free and unrestricted use by members of the public.*

*(2) The reference to a park includes a reference to a recreation or pleasure ground, a public walk, an open space within the meaning of the Open Spaces Act 1906, and a playing field provided under the Physical Training and Recreation Act 1937.*

*(3) Each of the following is a relevant authority—*

*[(aa) a Minister of the Crown or Government department or any officer or body exercising functions on behalf of the Crown,]*

*(a) a county council,*

*[(aa) a county borough council,]*

*(b) a district council,*

*(c) a London borough council,*

*(d) the Common Council,*

*(e) the Council of the Isles of Scilly,*

*(f) a parish or community council, and*

*(g) the chairman of a parish meeting.*

*(4) In construing sub-paragraph (1)(b) above any temporary closure (at night or otherwise) shall be ignored.*

## Decision and reasons

10. The parties agreed that Fineshade Wood was an exempt park in accordance with the above legislation and therefore was exempt from the rating list. The panel was required to ascertain whether the subject hereditament was ancillary to the park which would determine whether it was also exempt from rating. The panel was aware there was significant case law on that point.
11. In *Sheffield Corporation v Tranter (VO)*, a refreshment pavilion located within a public park was found by the Lands Tribunal and the Court of Appeal not to be rateable. In that appeal, the pavilion was only available to those frequenting the park and the tenant was under a close supervision and

exclusively part of the park amenities. Lord Evershed MR stated the position as follows:

*“in my judgement, the tribunal was well justified in saying that the provision of refreshments such as are provided in this pavilion can properly be described as an essential amenity of a public park: and he was also, in my view, amply justified on the facts in finding that [the tenant’s] conduct of this refreshment pavilion was in truth nothing more than an ancillary activity of the conduct of the park itself.”*

Lord Evershed proceeded to state:

*“...it must be a question of fact and degree in cases of this kind whether in truth it can be said that the refreshment pavilion – or, it might be, to take an example cited in argument, a hut or shed for storing some other amenities of the park such as the park chairs – and the part of the park so occupied and used, is in reality still an inherent and essential part of the park as an entity, providing a necessary amenity for that park; or whether the hereditament in question has been so carved off as to acquire a distinct status from the park and, in the latter case, to render itself liable for the rating assessment.”*

12. In *Lancashire County Council v Lord (VO)*, an information centre, house, garage and premises occupied by the county council was exempt as part of the country park it was located approximately 570 yards from.

Mr Emlyn Jones stated in his decision:

*“There remains the contention that the Carwags forms part of the Beacon Fell County Park, though physically detached from it, and as such qualifies for exemption as an ancillary part of the park...I have come to the conclusion that Carwags is properly to be regarded as part of the Beacon Fell Country Park and, as an ancillary part, is entitled to exemption under the provision of s 44. From the evidence it is clear that it was acquired to be an administrative centre for the park; to facilitate the implementation of an effective warden service; and, as described in a report to the Countryside sub-committee of the county council dated 7th August 1971:*

*“complementing the quiet informal character of the hill top by providing a place within a short walk that can cater for the more gregarious needs of the visitor; to act as an assembly point for the purpose as a place for exhibitions and the sale of literature concerning the park and the countryside generally; to provide refreshments, picnicking and informal games”*

*There was some indication that the use of the centre was to a very minor extent connected with “countryside” interests of the county council. I do not consider that these links – such as the provision in emergency of mountain rescue equipment, or the display of literature relating to other areas – to be of any real significance. In effect, the sole reason for the occupation and use of Carwags by the county council is its proximity to Beacon Fell...I am satisfied*

*that the facilities provided at Carwags form an integral part of the attractions of the park and sub-serve the enjoyment of the park, and that in this way they help to realise the objectives of the county council in acquiring the land and securing its designation.”*

Mr Emlyn Jones went on to state:

*“in the instant case, the provision of the information centre and the housing of the warden and the park equipment at Carwags can properly be described, in my judgement, as an essential amenity of the Beacon Fell Country Park. The appeal hereditament provides an essential amenity, not in the sense that the park could operate without it, but rather because in essence it has no other purpose than to serve the objects of the park...”*

13. The appellants contended that the subject hereditament was an essential and necessary amenity to Fineshade Wood, and consequently, should be exempt from rating. They stated that the subject hereditament was primarily used as a bike hire service for visitors to the park. They referred to *Tranter*, and the question of whether the subject hereditament was so carved off as to acquire a distinct status from the park. The appellants' position was that the subject hereditament was not. They argued that the bike hire service provided a unique and valuable service which benefitted visitors to the park. The park was renowned for its cycle paths, and bike hire empowered visitors to enjoy the park to its full potential.
14. The appellants considered that the subject hereditament was an essential amenity in line with *Lord*. They considered the services offered by the store to be akin to services offering refreshments or information in the manner that they added further enjoyment and enhanced the park. They did not consider the store to be distinct from the hereditaments which were found as exempt in *Tranter* and *Lord*. To add further credence to the subject hereditament being considered as an essential amenity, the appellants stated that it was let by the Forestry Commission on the condition it was used as a bike hire service. They argued that no other party was interested in the property due to its low potential to make profit, and they had offered to run the service on the basis they paid no base rent and instead paid a small percentage of turnover.
15. The appellants accepted that the bike hire store offered the services of bike repair and also sold bikes. They argued that those services were offered to maximise revenue due to the low profit margins of the bike hire. They contended that they sold few bikes, and the repair service was mostly used to maintain the condition of the hire bikes. Some customers did use the repair service for their privately owned bikes but more so on the basis that they were already in the vicinity rather than making a specific visit to the store for that purpose. It was the appellants' opinion that there were far more convenient locations to purchase bikes or utilise repair facilities, whereas the subject hereditament's location was best suited for hiring bikes for Fineshade Wood.
16. The appellants stated that the bike hire store was required to adhere to standards stipulated in its lease with Forestry England. Under the terms of the

agreement, the appellants must support Forestry England in marketing campaigns and their staff were required to wear Forestry England designed uniforms. The appellants considered that those terms demonstrated that the subject hereditament shared branding and marketing ideals with the forest and effectively acted as an additional tool to forward the goals of the forest as a whole.

17. The appellants' representative was asked about the provision of bikes for sale. He stated that the appellants operated four stores in different locations and maintained a website that bikes were sold through. The appellant agreed that those bike sales were not ancillary to the park, however, he argued that the sales were minimal and any profit from the sales was negligible. He was asked if the hire bikes were only allowed to be used in the forest and responded that the appellants were unable to enforce the bikes to be used solely on the park but given the typical length of time available for a customer to hire it was unlikely that a customer would utilise them elsewhere. He also stated it was a stipulation of the lease that the hire bikes were used solely on site.
18. The appellants' representative was asked what income the bike hire store received from repairs. He stated that it was difficult to ascertain as the appellants had not provided itemised figures with regard to each store they operated and instead collated them as a whole. It was his opinion that the bike hire store was not a commercial venture and reiterated that its primary function was to offer bikes for hire for Fineshade Wood.
19. The respondent accepted that the subject hereditament served the visitors to Fineshade Wood. However, it was considered that the store provided additional purposes that were not of any relevance to the park. In addition, the respondent did not consider the provision of bike hire to visitors of the park to be an essential amenity.
20. The respondent considered the provision of bike sales and servicing to be a significant function of the subject hereditament. The respondent's representative stated that he had inspected the property on 20 January 2023. He stated that three quarters of the ground floor space was dedicated to the display of bikes for sale. The remaining quarter was a partitioned area containing bikes for hire. The area behind the sales counter contained provisions for bike repair. A storage unit was outside the property which held further bikes. The respondent stated that a wide range of bicycles were available to purchase through the appellants including city bikes, hybrid bikes, mountain bikes and electronic bikes. Bikes could be trialled at the subject hereditament and could also be purchased through the appellants' website on a click and collect basis. The respondent contended that a wide range of servicing, repair and upgrade work was also offered. The respondent stated that a breakdown of custom regarding bike sales and repair had not been provided by the appellants.
21. The respondent did not agree with the appellants that the subject hereditament was an essential amenity as bike trails existed through the

woods which were open to all visitors and not restricted to those using the bike hire service. The respondent argued that the facts of the appeal were not in line with those in *Lord*, as the subject hereditament provided other purposes than to solely serve the park. The respondent did not consider those provisions as essential akin to food, drink, and information. The respondent referred to *Tranter* and determined that the provision of non-related services to Fineshade Wood gave the subject hereditament a distinct status which rendered it liable for rating assessment.

22. The panel considered the caselaw to indicate that for the subject hereditament to be exempt it must be exceptionally demonstrated to the extent that all other case law on what constitutes a hereditament can be disregarded. The panel would have to be satisfied that the connection between the subject hereditament and Fineshade Wood was so inextricably joined that it existed wholly as one.
23. The panel accepted that the bike hire provided an important and valuable service to visitors of Fineshade Wood. The park contained cycle trails and the store provided a provision to enhance visitors' enjoyment of them. However, the store also provided other services, in the form of bike sales and repair, which the panel determined were not wholly or significantly linked to the park.
24. The panel agreed with the appellant that the provision of bike hire in this instance served no other purpose than to the objects of the park, and to some extent, the repair service. However, it found that the subject hereditament did not exist solely to serve the park. The appellants' website and the store layout clearly demonstrated that bike sales and a repair service were available to the general public and not confined to visitors to Fineshade Wood. The subject hereditament was not an integral part of a visit to the park, as visitors could utilise their privately owned bikes on the trails of the park.
25. The panel acknowledged that the appellants were bound by the terms of its lease with Forestry England. However, in this instance, it did not consider that any stipulations were of significance when determining whether the subject hereditament was exempt from rating. The clause that the store must be used for bike hire did not suggest that the store was managed in a manner that it could only operate in connection with the park. The availability of bikes for purchase to the general public demonstrated that the store was not restricted to solely leasing bikes for hire on the park.
26. The panel was not provided with any evidence of sales figures to substantiate that the additional services of bike sales and repair provided by the store were so minimal as to detract in any significant way from the purpose of the facility. It was clear to the panel that the subject hereditament did not just complement Fineshade Wood, in line with *Lord*, but had a distinct status from the park to render itself liable for assessment following *Tranter*.
27. In view of the foregoing, the appeal was dismissed.

**Date:** 23 February 2023

**Appeal number:** CHG100584290

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**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.

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