



## VALUATION TRIBUNAL FOR ENGLAND

*2017 Rating List Appeal: Local Government Finance Act 1988; Agricultural Exemption; Schedule 5 to the Local Government Finance Act 1988; Hambledon District Council v Buxted Poultry Ltd [1982]; Lotus and Delta v. Culverwell (VO) 1976 RA141; Subject property not used solely in connection with agricultural operations; Appeal dismissed.*

APPEAL NUMBER: CHG100823166

RE: Kingswood Christmas Trees, Rowan House, Kingswood ME17 3NU  
(the “subject property”)

|          |                                    |            |
|----------|------------------------------------|------------|
| BETWEEN: | Mr Robert Schroeder                | Appellant  |
|          | and                                |            |
|          | Dawn Bunyan<br>(Valuation Officer) | Respondent |

AT: Maidstone Community Support Centre, 39-48 Marsham St, Maidstone,  
ME14 1HH.

ON: 16 April 2024

BEFORE: Mr A Hussain, Presiding Senior Member  
Prof P Catterall, Member

CLERK: Mr J Massey

APPEARANCES: Mr R Schroeder – Appellant  
Mr R Das – Respondent’s representative

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### DECISION AND STATEMENT OF REASONS

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#### Decision

1. The appeal is dismissed.
2. The Tribunal panel did not consider that the subject property fulfilled the criteria set out in Schedule 5 to the Local Government Finance Act 1988 and could not therefore be considered to be exempt.

## **Introduction**

3. The appeal process began following a challenge against the subject property's entry in the 2017 Rating List of £18,750 with effect from 1 April 2017. The appellant's challenge to the Valuation Officer was made on 30 June 2022, the Valuation Officer's challenge decision was given on 6 April 2023 and the appellant's appeal to the Valuation Tribunal was received on 8 August 2023.
4. The subject property was inspected in February 2022 and on 28 March 2022 it was entered into the 2017 Rating List as Warehouse and Premises. The Rateable Value (RV) was set at £18,750 with an effective date of 1 April 2017, which was based on the date the current valuation list commenced.
5. The subject property comprised a collection of steel framed profiled metal clad buildings with a total area of 2,346.81 m<sup>2</sup>. They were situated on agricultural land owned by the appellant and the land was predominantly used for the growing of Christmas trees. Parts of the buildings comprised open sided barns, with other parts being fully clad, and internally converted to provide a café area, sales area, mezzanine storage and a grotto area.
6. The material date with regards to this appeal was 1 April 2017, the effective date of the subject property's entry into the 2017 Rating List.
7. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

## **Issue**

8. The issue in dispute was whether the subject property was exempt from Non Domestic Rates in accordance with Schedule 5 to the Local Government Finance Act 1988, as an agricultural building.

## **Evidence and submissions**

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental and assessment evidence for comparable properties, the parties' arguments, a copy of the Challenge Decision and location maps and a plan and photographs of the subject property.
10. The appellant's challenge was made on the grounds that the entry was wrong as he considered that the subject property was an agricultural building which should be removed from the rating list. He stated that the use of the subject property for selling Christmas trees was generally for no more than five weeks of the year, and was therefore 'de-minimus' and in any case, he considered that such use was ancillary to the use of adjacent land which was used for growing Christmas trees.
11. The appellant referred to there being no public access to the subject property for 47 weeks of the year, and any potential tenant would have no lawful access to the building and no electricity or water supply. He therefore contended that no tenant would pay a rent anywhere near that indicated by the RV of £17,750 (£35,000 from 1 April 2023) for the subject property.

12. The appellant stated that he was aware of numerous Christmas tree growers around the country who had a similar set up to himself but were not being asked to pay business rates on their buildings and he considered that these properties were more comparable to his than those provided by the respondent.
13. Mr Das was presenting the case on behalf of the respondent as advocate only as he had not been involved with the assessment of the subject property or the challenge decision. He considered that the subject property when open for the pre-Christmas period was used for retail and for the remainder of the year was used for storage of non-agricultural products. The subject property was therefore not used for solely agricultural purposes in connection with the land and could not be considered exempt from rating.
14. He stated that even if it was accepted that the subject property reverted to use for agricultural purposes for 47 weeks of the year, its use for five weeks, just under 10% of the year, for non-agricultural purposes could not be considered de-minimus and it was therefore not used solely for agricultural purposes. This was in line with the Court of Appeal decision ***Hambleton District Council v Buxted Poultry Ltd*** [1992] 1WLR 330 in which it was found that even if non-agricultural use was 6-8% of the time it could not be regarded as de-minimus.
15. Given that he disagreed that the subject property should be exempt from Rating, Mr Das considered that vacant and to let, the mode and category of the subject property was that of 'warehouse and premises', and in the absence of it should be valued in line with similar warehouses and workshops in the locality.

## Relevant Law

16. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (the "1988 Act")(as amended):

"The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local non-domestic rating) shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

- a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made; The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):
  - b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
  - c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".
17. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

18. Section 51 of the 1988 Act gives effect to Schedule 5 of that Act which determines the extent to which a property may become exempt from non-domestic rating. Paragraphs 1-8 of Schedule 5 define “agricultural land” and “agricultural buildings” which are exempt from rating and are not entered in to the Rating List.

### *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).....

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) ...

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(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)....

### **Discussion**

19. The panel had to determine whether the subject property should be classed as ancillary to the agricultural operations on the land and if so, exempt. The starting point for the panel was to consider the legislation in regard to the exemption for an agricultural building. The panel therefore referred to Schedule 5 to the 1988 Act.
20. The panel considered that there was no dispute that the adjoining land was agricultural land, used for the growing of Christmas trees and the subject property was occupied together with that agricultural land. In order to be exempt under as an agricultural building the panel considered that the subject property must satisfy the second limb of Schedule 5 (3)(a);

'and is used solely in connection with agricultural operations on that or other agricultural land'

21. The panel considered the photographs of the subject property, some of which had been provided by the appellant, with the remainder being taken by the respondent during an inspection of the subject property in February 2022. The appellant had contended that the subject property was used solely for selling Christmas trees grown on the adjoining land during five weeks of the year and was closed to the public and used for storing agricultural equipment for the remainder of the year.
22. Within the photographs, the panel noted that 'netting' equipment used for packaging Christmas trees for sale was being stored in parts of the subject property when the photographs were taken in February 2022. It considered that this equipment could be construed as agricultural equipment. The appellant also contended that the open sided barns were used for storage of fertiliser and farm equipment for most of the year, although this was not evident from the respondent's photographs.
23. Further to enquiries from the clerk, Mr Schroeder explained that along with Christmas trees, tree stands, lights and decorations, and other Christmas paraphernalia were also sold during the five weeks the subject property was open to the public. The panel also noted that there was a café, Christmas grotto area and children's play area which were also open to the public in the pre-Christmas period.
24. It was evident to the panel that much of the areas described as sales area and mezzanine storage were, in February 2022 being extensively used for the storage of stock, and not agricultural equipment.
25. Mr Schroeder accepts farm shops are not exempt, but they are open 52 weeks of the year and he did not therefore consider them to be comparable to the subject property. The panel noted that the VO had assessed the subject property as a warehouse and premises, rather than a shop and premises, as although it was a retail premises for 5 weeks, it was used as storage for 47 weeks.
26. Mr Schroeder had stated that many similar Christmas tree farms operated similar operations to his own, but were exempt from rates. However, the panel noted that he had not provided any details of these farms from which it could make any comparisons of their circumstances.
27. Having considered the evidence and submissions, the panel was not persuaded that the subject property was used solely in connection with agricultural operations on the adjoining agricultural land. The panel had investigated whether parts of the subject property, particularly the open sided barn areas, may have been used to store agricultural equipment when the shop was closed for 47 weeks of the year. However, it was accepted that for five weeks of the year those parts were used for retail purposes and not agricultural. Mr Schroeder had contended that their use for non-agricultural purposes was less than 10% and therefore de-minimus.
28. The panel noted that in *Buxted Poultry* it was held by the Supreme Court that even if non-agricultural use was 6-8% of the time it could not be regarded as de-minimus. Unfortunately for Mr Schroeder, the panel was unable to conclude that any parts of the subject property were used solely in connection with agricultural operations on adjoining agricultural land. The subject property did not therefore qualify for an exemption as an agricultural building within the criteria set out in Paragraph 3 of Schedule 5 to the 1988 Act.

29. The panel therefore found that the subject property was not exempt from rating and fell to be valued in line with Schedule 6 to the 1988 Act. The appellant considered that no tenant would pay a rent for the subject property for its use as a shop for only five weeks of the year, as there was no access, electricity or water for the remainder of the year. The panel found that a hypothetical landlord would not restrict access to the subject property or deny water and electricity supply to a hypothetical tenant. It therefore considered that the subject property could reasonably be let to a tenant from year to year.
30. In order to determine the annual rent achievable for the subject property the panel made reference to *Lotus and Delta v Culverwell*. The respondent had referred to this Lands Tribunal judgment which provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.
31. The respondent had provided assessment evidence of a number of similar sized properties in the ME17 3 and ME17 4 postcode area which were described as 'warehouse and premises', 'storage depot and premises' or 'workshop and premises'. The adopted values for these properties were between £36.08 per m<sup>2</sup> and £50 per m<sup>2</sup>. The appellant had not provided any rental or assessment evidence. The panel was satisfied that the assessment evidence provided by the respondent supported the adopted value of £15.60 per m<sup>2</sup> for the subject property, which resulted in its entry in the 2017 rating list at rateable value £18,750.
32. The appeal is therefore dismissed.

**Date issued to parties:** 10 June 2024

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### **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.

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