IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG100749607

Sitting remotely using Microsoft Teams

Date: 28 January 2026

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — Schedule 5, paragraph 3(a) — agricultural exemption — Bunyan (VO) v Fridays Ltd [2025] EWCA Civ 666 — appeal dismissed

Before:
MRS S PATEL
MR S MULDOON
MR P BECKHAM

Between:

COTTAGE FARMS (HORSMONDEN) LTD Appellant

\- and -

ANDREW MOULAND (VALUATION OFFICER) Respondent

Regarding:
AUGUST PITTS FARM, CHURN LANE, TONBRIDGE, KENT TN12 8HW
(the "appeal property")

Mr I Charman (Consultant, Turner Morum LLP) for the appellant
Mr C Browning (Managing Director), Cottage Farms Ltd
Mr J Feltham (VOA Technical Adviser), for the respondent
Mr E Genchev (VOA Regional Valuation Lead), witness of fact

Hearing date: 12 January 2026

DECISION AND STATEMENT OF REASONS

DECISION

1. The appeal is dismissed. The rating list entry for the fruit packing facility is not deleted because the property does not qualify for agricultural exemption.

STATEMENT OF REASONS

Introduction

2. The appeal property was entered in the 2017 rating list as “fruit packaging plant and premises”, with a rateable value of £317,500 effective from 31 May 2019. The proposal sought a deletion of the rating list entry on grounds that the property qualified for an agricultural exemption.

3. The valuation officer (VO) refused to delete the entry and that decision was appealed to this tribunal under regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

4. Initially, the appellant had sought agricultural exemption under paragraph 3(c) of Schedule 5 to the Local Government Finance Act 1988 (the “1988 Act”). However, the appellant had appointed a new representative, and exemption was now sought under paragraph 3(a) of that Schedule.

5. This statement of reasons is not and does not purport to be a full verbatim record of proceedings.

Relevant law

6. The dispute between the parties involved paragraph 3(a) of Schedule 5 to the 1988 Act:

> 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***

7. The words shown above in bold italics were inserted by section 67(2) of the Local Government Act 2003. Prior to the amendment the words were simply “… on the land”.

8. Under regulation 3(4) of the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day on which to consider the appeal property was 31 May 2019, the date from which deletion was sought.

9. The Court of Appeal had recently made a judgment concerning this area of law in *Bunyan (VO) v Fridays Ltd* [2025] EWCA Civ 666.

10. The parties have also referred to several other important judgments:

- *Peddie v Roxburghshire Assessor* [1964] SC 353
- *W T Rimmer & Co v Perth and Kinross Assessor* [1965] RA506
- *W & JB Eastwood Ltd v Herrod (VO)* [1971] AC 160
- *Roxburgh Assessor v West Cumberland Farmers Trading Society* [1977] RA298
- *Farmer (VO) v Buxted Poultry Ltd [1993] AC 369*

The appellant and the appeal property

11. On the material day, the appellant was growing fruit on 4.7 hectares (11.6 acres) of land at August Pitts Farm and a further 4.5 hectares (11.12 acres) at Tibbs Court in Petteridge, which was a short distance away in the general locality.

12. The appellant's orchard produced a very small percentage (0.0067% was stated by the VO in the hearing) of the produce packed and processed at the facilities. These orchards were owned, occupied and managed by the appellant but harvested by Allied Growers picking gangs over 3 to 4 days, not by the appellant's employees.

13. Individuals and companies within Allied Growers Limited own 400 hectares (which includes 9 hectares owned by the appellant). Mr Browning is also a director and Chairman of Allied Growers Limited.

14. Depending on the year, between 9 and 25% is UK produce, and 75 to 91% is from overseas (New Zealand, South Africa, France, Spain, Portugal, Belgium and Holland). The fruit ratio is 95% top fruit (apples and pears) and 5% mangos.

15. The appellant packs 350 million apples (approximately 45,000 tonnes) per year and 8,500 tonnes of pears (a total of 4.1 million boxes).

16. There are 110 permanent staff and 30-40 agency staff daily.

17. The appellant also provides ripening services in temperature control rooms at 21 degrees Celsius before packing.

18. Fruit remains in the growers' ownership. Most fruit coming in from third parties remains on site for as short a period as possible. It remains in the growers' ownership for a maximum of 21 days and then passes to ownership of the retailer (if for some reason the fruit cannot be dispatched to the ultimate retail customer or wholesaler within this period).

19. The appellant never owns the fruit. The appellant is responsible for the packing and distribution, and manages the process of sorting, cleaning, quality control, labelling and storage if required.

20. There is no long-term climate-controlled storage on site, just short-term ripening and chiller and room temperature stores. Allied Growers use other storage premises locally for longer term climate-controlled storage.

21. The appellant charges UK and overseas growers for the various packing, grading, quality control and storage services provided.

22. UK fruit comes from Allied Growers (five producers) who own 400 hectares of UK land. The majority (90%) of the member growers are from Kent; there are some growers in the Wisbech area and one in Hampshire.

23. In 2019, 90% of the produce went to Tesco. The other main supermarket client was Asda.

24. There are no formal contracts with the retailers or the producers (UK or overseas).

25. Non-UK produce comes by boat with port to packing facilities logistics expenses paid by the producers.

26. Substandard fruit (primarily identified in the grading of UK fruit) is either passed to a wholesaler or sent for juicing, but rotten fruit is sent for use as animal feed or power generation and all discarded original packaging is crushed and sent for recycling or for power generation, with the intention of processing, using or recycling virtually everything that is received on site.

27. The UK fruit is stored by the growers in long term stores on their own farms or at a storage site in Horsmonden. It is the growers' responsibility to arrange this storage.

28. All produce from New Zealand and South Africa arrives already graded, sized and quality checked. Some of the produce comes already packed in packs of six and the appellant carries out the quality control process and then applies a traceability/best before date label on the existing packaging, this is so it meets both UK regulations and retailer requirements. Where possible, the same cardboard boxes are used (Pink Lady apples being an example). During an inspection in November 2025, products from South Africa and France were seen already packed in packs of six.

29. Other produce from overseas arrives loose with separating cardboard profiled trays in 18kg Bushell boxes before being put through the quality control, cleaning, and packing machines into retailers' trays

30. All UK produce arrives loose in 340kg wooden bins. It goes through the scanner which checks colour and scans for surface defects and shape and uses infra-red technology to

verify the soundness and health of the interior of the fruit. The fruit is washed and graded for size using an automated water flotation system and is dried, packed and labelled.

31. All New Zealand produce comes loose and is dealt with in the same way except for grading and sorting. Most of the South African produce is already packed in retailer packaging. The appellant does sample checks for quality control purposes and then labels for sale and for traceability purposes.

32. All produce from New Zealand and South Africa is already graded and sorted.

33. Produce is packed into 9kg supermarket boxes and has a best before period stated of 6/7 days after dispatch on average. Labels contain country of origin, name of grower for traceability and where necessary, within 3 hours, the product can be traced in all cases.

34. A plan of the site is shown below showing the various buildings. However, it must be noted that the solar panels shown on the plan did not replace the orchard until 2021/22.

Discussion

35. The appellant sought removal of the appeal property from the 2017 rating list on the basis that it comprised agricultural buildings under Schedule 5, paragraph 3(a) to the 1988 Act. This required demonstrating that the buildings were:

    (a) Occupied together with agricultural land, and

    (b) Used solely in connection with agricultural operations on that land or other agricultural land.

36. The panel applied the two-stage "occupation" and "use" tests set out in the Court of Appeal judgment, *Bunyan (VO) v Fridays Ltd* [2025].

37. The VO in the present case had adopted a third test or question, asking "are they solely so used?". The panel appreciated that this was an important question but preferred to include it in the "use" test.

Occupation test

38. In relation to established case law that had developed before the 2003 amendment, Lewison LJ stated in *Fridays* at [67]:

    > "… The occupation test, as I interpret it, acts as a limiting factor on the use test just as it did before the 2003 amendment. The 2003 amendment was intended to broaden the use test only, so as to abrogate the previous law that the agricultural use had to be confined to the land with which the building was occupied. It still does that on the interpretation which I prefer."

39. In *Fridays*, the exemption being considered was on three buildings used for weighing, grading and packaging of eggs. The various farms involved in egg laying were located elsewhere, within a 10-mile radius from those buildings. Lewison LJ stated at [75]:

    > "… The UT [Upper Tribunal] posed the correct legal question: namely whether the three buildings and the Fridays Farms were occupied together so as to form a single agricultural unit. … Consistently with *Eastwood v Herrod* it is not necessary for the operations carried out in the three buildings to be agricultural operations, provided that they are "connected with" agricultural operations on agricultural land. …"

40. The Court of Appeal did not disturb the fact finding already carried out by the Upper Tribunal. At [76] Lewison LJ stated:

    > "The UT found that they were under common ownership and occupation. The UT had earlier found that the other Fridays Farms were managed from Chequer Tree Farm, where the important decisions were taken. Thus, to echo Lord Slynn, they

were in the same occupation and jointly controlled or managed at the same time. Contiguity and propinquity are relevant considerations, which the UT also considered. They decided that although they were not contiguous, they were all near each other. Whether they were sufficiently close is, in my judgment, a matter of fact and degree for the factfinding tribunal. Thus far, I consider that the UT faithfully applied the test in *Farmer v Buxted*."

41. Then at [77]:

> "So far as the functional connection was concerned, it is clear from *Eastwood v Herrod* that operations reasonably necessary to prepare produce for sale satisfies the agricultural connection. Although the eggs were (at least provisionally) packed on Fridays Farms elsewhere, they could not be sold without being weighed and graded. That activity took place in the three buildings. I consider that the UT was entitled to find that that activity was sufficiently connected with agricultural operations on that agricultural land."

42. The VO argued that the occupation test was not met. The principal reason was the scale of the operation and that the vast majority of fruit was coming from overseas, with only a fraction of 1% coming from the appellant's own farms. The situation was contrasted with *Fridays,* where 55% of eggs came from Fridays' own local farms.

43. It was contended by the VO that the following must be satisfied:

    (a) the orchards and the packing centre are in the same rateable occupation;

    (b) the activities carried on in both must be jointly controlled or managed at the same time;

    (c) the orchards and packing centre must be occupied together so as to form a single agricultural unit. This may be tested as to whether they are worked together so as to form a single agricultural unit.

44. It was clear to the panel from the evidence that (a) was satisfied. On the material day, the appellant was growing fruit on 4.7 hectares of land at August Pitts Farm and a further 4.5 hectares at Tibbs Court in Petteridge, located approximately three miles away. This fruit was processed, sorted, graded, packed and stored in the buildings at the appeal property.

45. With respect to (b), the panel noted that the fruit from the orchards at August Pitts Farm and Tibbs Court were harvested by Allied Growers' picking gangs. However, the appellant stated that it would not be commercially practical to have a permanent in-house team whose only function is to pick fruit, over a period of around 3 to 4 days once every year. Mr Browning clarified at the hearing that he managed the land and discussed the picking of the fruit with the picker (who worked 15 different sites).

46. The appellant's representative contended that this was a sharing of resources in much the same way that the appellant in turn packs the fruit from Allied Growers. It was common in agriculture for such sharing of resources or specialist equipment to occur. It was pointed out that the 2003 amendment to Schedule 5 of the LGFA 1988 was explicitly introduced to recognise the sharing of equipment, vehicles, resources and machinery.

47. Ultimately, the panel was satisfied that the orchards at August Pitts Farm and Tibbs Court were owned, occupied and managed by the appellant.

48. The VO contended that with regard to (c), the degree of interaction in activity between the orchards and the packing centre showed that the two were not worked together so as to form a single agricultural unit. The VO was of the view that the overriding purpose and activity of the packing centre, and its scale, is the packing and merchandising of produce from other agricultural units including a wide range of agricultural units across the globe. It was submitted that the packing centre does not form a single agricultural unit with any identified orchards or farms. It was argued that an objective view suggested that the hereditament essentially comprised a commercial packing plant.

49. However, the Court of Appeal had decided in *Fridays* at [75] that it was not necessary for the operations carried out in the buildings to be agricultural operations, provided that they were "connected with" agricultural operations on agricultural land. The panel was satisfied that this was the case as the fruit was weighed and graded, packed and stored, before being sold. The panel was therefore in full agreement with the appellant that this activity was sufficiently connected with agricultural operations on the agricultural land.

50. It was also clear to the panel that the fact that fruit from other agricultural land, not in the ownership and occupation of the appellant, which is also processed, graded, packed and stored at the appeal property, was not relevant to the occupation test. This did not prevent the exemption in *Fridays* despite a substantial number of eggs (1.4 million per week) coming from farms not owned or operated by Fridays' own farms.

51. In the present case, the panel found that on the material day the appeal property was occupied together with agricultural land. The appellant grew fruit on 4.7 hectares on land adjacent to the buildings and had a further 4.5 hectares at Tibbs Court in Petteridge, located nearby. While the fruit from the appellant's own land was only a fraction of a percentage of what was processed at the appeal property, there was a substantial volume of fruit coming from 400 hectares of land in the UK, mostly from Kent. The fact that there was other fruit being handled, the vast majority of which came into the appeal property from abroad, did not, in the panel's view, prevent the occupation test from being satisfied.

The use test

52. Para 79 of *Fridays* provided the following:

> "The 2003 amendment clearly broadened the use test. Provided that the building in issue is used solely in connection with agricultural operations *on that or other agricultural land*, the use test is satisfied. The "other agricultural land" may include both other agricultural land on farms owned or occupied by Fridays; or other agricultural land owned or occupied by the independent egg producers; or a combination of both. …"

53. In the context of the present appeal, the appellant's representative argued the "other agricultural land" may include both other agricultural land on farms owned or occupied by the appellant; or other agricultural land owned or occupied by the other British fruit producers or even fruit producers located overseas; or a combination of both or all three. It was submitted that there was no distinction in *Fridays* which limited in any way the geographical location of the other agricultural land nor the proportions of use of the buildings with the subject land and/or other land, whether in the UK or abroad. It was further submitted that the fruit that was processed and packed must necessarily have been grown on agricultural land; therefore, the appellant's representative was of the belief that the use test was satisfied.

54. The VO emphasised the need to consider what was meant by "agricultural operations". In doing so reference was made to the decision of the House of Lords in *Eastwood Ltd v Herrod (VO)*. A summarised quotation of this judgment was referred to at [22] in *Fridays* from Lord Reid when he was considering "used in connection with" agricultural operations on the land. He was of:

> "… the strong impression that this derating was intended to benefit agriculturists but not those conducting commercial enterprises where the use of agricultural land plays only a small part in the enterprise. … I do not foresee serious difficulty if "used in connection with" is held to mean use consequential on or ancillary to the agricultural operations on the land which is occupied together with the buildings."

55. The panel understood that to qualify for exemption the use of the appeal property must be consequential or ancillary to the agricultural operations on that or other agricultural land. Further, the buildings have to be used *solely* in connection with agricultural operations.

56. The panel was comfortable that the appeal property was used in respect of agricultural operations on land at August Pitts Farm and at Tibbs Court in Petteridge, and also the other orchards in Kent. The appeal property was processing fruit to meet the requirements of the retailers by producing fruit of all the same size and quality and removing others to other uses such as juicing. Mr Browning stated in the hearing that the appellant had to do something with every apple before it could reach the consumer.

57. The difficulty the panel had was with the fruit from overseas, which represented 75 to 91% of all the fruit processed at the appeal property.

58. The panel was shown photographs of Pink Lady apples from South Africa that had already been pre-packed into Tesco packaging before transportation to the UK. They had already been graded and packed. The only activity at the appeal property was a quality check by sampling, with the origin and a best before date added before being shipped again to Tesco's stores/distribution centres. The panel accepted the VO's argument that this use was not an agricultural operation and was an additional service for the retailer.

59. Photographs were also provided in respect of mangos to show that this fruit also arrived in boxes containing a dozen mangos. They then went into one of the four temperature-controlled ripening rooms at the appeal property before being quality checked and a best before date added. They were then re-boxed into similar, albeit larger, cardboard boxes to meet the specific requirement of individual retailers for their supermarket shelves. The panel found that this repacking element to be an additional merchandising service for the retailer and not an agricultural operation.

60. The appellant was charging for its services to both retailers and the producers who were invoiced accordingly. One would not expect a retailer to pay for agricultural services, this would normally be the producer.

61. The VO argued that the activity at the appeal property was an independent enterprise for the packing, distribution and merchandising of fruit grown by others, that could be operated by a ratepayer that occupied no agricultural land at all. The panel found that the scale of the overseas fruit operation showed that the predominant use of the appeal property was as the VO put it, a "middleman or marketing/retail use". Something that was a stage removed from agricultural production. It took fruit produced and packaged elsewhere in the world and carried out further merchandising activities for large modern retailing companies. A large proportion of the fruit being handled at the appeal property could potentially go straight to market without further work.

62. In view of the foregoing, the panel was not satisfied that the appeal property was used *solely* in connection with agricultural operations. The panel was not persuaded to delete the appeal property on the grounds of agricultural exemption.

63. The VO raised one final point and that was in respect of whether the 2003 amendment referring to "or other land" extended to land outside of the UK, and also whether there was a requirement for the ratepayer to be a farmer. The VO argued that this went beyond Parliament's intentions. In support of this, the VO referred to the explanatory note that accompanied the 2003 amendment.

64. The panel did not need to specifically determine this aspect of the appeal because it was satisfied that the appeal property was not *solely* used for agricultural operations.

Conclusion

65. In conclusion, the panel found the occupation test was satisfied:

- The appellant grew fruit on 4.7 hectares at the main site and 4.5 hectares nearby.
- That fruit was processed at the appeal property.
- Even though the appellant used Allied Growers’ labour for harvesting, the orchards were owned, occupied, and managed by the appellant.
- The fact that most fruit handled came from other UK and overseas growers did not break the “occupation together” requirement, consistent with the *Fridays* decision.

66. However, the appeal failed on the use test.

67. Although the processing of the appellant’s own and other UK-grown fruit could be considered ancillary to agricultural operations, the majority (75–91%) of fruit handled was overseas produce which:

- Had often already been graded, sorted and packed.
- Often underwent only quality checking and labelling at the appeal property.

68. The panel held that these activities amounted to commercial merchandising services, not agricultural operations. The facility effectively acted as a middleman between foreign growers and UK retailers, providing services for which both producers and supermarkets were invoiced.

69. Because the building was not used *solely* in connection with agricultural operations, the statutory test was not met.

70. Thus, the use of the property went far beyond agricultural operations due to the overwhelmingly commercial processing of foreign produce. Consequently, the appeal property did not qualify as agricultural buildings, and the appeal was dismissed.

Right of further appeal

71. Any party who is aggrieved at the Tribunal’s decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to regulation 42 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) using Form T385 (Notice of appeal) within **four weeks** of the date this decision and statement of reasons was issued.

72. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mrs S Patel, Senior Member (Chair)
Mr S Muldoon, Senior Member
Mr P Beckham, Senior Member
28 January 2026

Mr D Mulgrew
Clerk to the Tribunal
Date issued to the parties: 28 January 2026