VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Local Government Act 2003; Agricultural Exemption - whether buildings occupied together with agricultural land; Turkey processing facilities; appeal dismissed .

APPEAL NUMBERS:	CHG101067665 & CHG101067668
RE:	Processing Plant at Dairy House Farm, Chester Road,Knutsford,WA16 0PP (the "subject property")
BETWEEN:	Baileys Turkeys Ltd — Appellant and (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	22 August 2024
BEFORE:	Mrs T Watson, Presiding Senior Member Mr S Mustafa, Senior Member
CLERK:	Mrs J Routledge IRRV(Tech)
APPEARANCES:	Mr P Willmore of Rupert David Ltd Appellant's representative. Mr T Tisdall Respondent's representative

---

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel found that there was insufficient evidence on balance of probabilities to satisfy it that –

(1) the Processing Plant formed a single agricultural unit with agricultural land at Dairy House Farm and accordingly.

(2) the building does not fall to be an agricultural building under paragraph 3(a) of Schedule 5 to the 1988 Act; and consequently.

(3) the rateable value (RV) of £98,000 was correct from 1 April 2017 and subsequently £93,500 from 14 January 2022.

Introduction

3. Under the Appeal Management Powers contained within regulation 6 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269), the hearing of these two appeals were consolidated and the parties agreed for the evidence to be admissible on each.

4. These appeals relate to the entry in the 2017 non-domestic rating list for Processing Plant at Dairy House Farm, and in particular, whether the building was an agricultural building and thus exempt from rating under paragraph 3(a) of Schedule 5 to the Local Government Finance Act 1988 (the "1988 Act").

5. Mr Willmore appeared on behalf of the Appellant as advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018], Mr Willmore declared that he was receiving a conditional fee.

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

Background

7. The subject property is valued as a factory, workshop, and premises. The property was built in 1993 and has an eaves height of 4.05m. Its main purposes is the processing of turkeys for the table and the frozen market.

8. On 26 May 2023, Mr Willmore on behalf of the appellant company submitted to the Valuation Officer two proposals to alter the entry for the subject property in the rating list (the "Challenge"). The Challenges sought an exemption in respect of the subject property. The parties are agreed that, for the purposes of this challenge and appeal, the material dates are 1 April 2017 the effective date of the entry in the list and 1 April 2022 which resulted in the second challenge following an alteration in the RV to £93,500.

9. On 23 November 2023 and 4 January 2024 , the Valuation Officer issued the decision notices in respect of the Challenges. The decisions were, in short, that the Challenges were not well-founded.

10. On 28 March 2024, an appeal was received by this tribunal against the Valuation Officer's decision.

Preliminary issue

11. Mr Willmore made an application to exclude the Valuation Officer's evidence on CHG101067668 as the information on the decision notice was incorrect. It referred to the wrong RV and an incorrect effective date.

12. He also advised that the Clerk had referred to a decision that was progressing to the Court of Appeal where the facts were similar but it had not been identified or referred to by the Valuation Officer or the Clerk. This may have placed him at a disadvantage as this judgment may support his case especially as it had not been put forward as supporting the Valuation Officer's case.

13. He also advised that he had made requests for a face to face hearing as he considered that the technology relied upon for online hearings was unreliable. This was illustrated by some difficulty he experienced during the hearing with his camera. However this did not prevent him from participating fully in the hearing. The Clerk advised that an application for a face to face hearing was required in writing to the President of the Valuation Tribunal for England. Mr Willmore had been sent the application form twice but had not returned either.

14. The panel retired to consider these matters.

15. The panel carefully considered the application to bar the Valuation Officer's evidence on CHG101067668 having accepted there had been an error in the decision notice. However, the grounds for this appeal were that the list was inaccurate in relation to the hereditament (other than in relation to valuation) and therefore the error on the decision notice had no effect of what was being considered.

16. The caselaw referred to by the Clerk was clarified as relating to an egg packing plant and the decision was issued on 31 May 2024. It is for the parties to identify and provide any caselaw they consider supports their case. The Valuation Officer was not relying on this caselaw and therefore was under no obligation to provide it to the panel or the appellant.

17. With regard to regard to the face to face hearing this had been dealt with by the Clerk as no application had been made for a face to face hearing and therefore the panel was content to continue to the substantive hearing.

Relevant Law

<u>The non-domestic rate and agricultural exemption</u>

18. Part III of the 1988 Act makes provision for the establishment of the local non-domestic rate payable in respect of non-domestic hereditaments.

19. 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. 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;

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

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

(3) This subparagraph applies if the building is occupied by individuals ea ch 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.

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 fal ling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings.

(2) Subparagraph (1)(a) 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 in connection with agricultural operations on that land, and its use together with the use mentioned in sub-paragraph (1) (b) is its sole use.

Discussion

20. The panel had regard to the decision notices and the appeal submission provided by Mr Willmore. The panel noted the appeal submissions were identical on both appeals.

21. Mr Willmore argued that it was clear from the extracts from the Valuation Officers guidance included in his submission that the subject property was exempt. It was wholly used for processing turkeys for the local market, there was no processing into other turkey based products and no long term storage. He also provided extracts from the subject property's website to support his contention by the comments "Reared at our Cheshire Farms" and

> "We source everything we can from within the borders of Cheshire. Our turkeys are hatched on the Wirral and enjoy high quality local feed. The average food miles for a Bailey's turkey from farm to your butchers shop is an average 47 miles- but can be less than 10…it doesn't get much fresher than that."

22. Mr Willmore also advised that the appellant company had ceased trading following the Valuation Officer's decision to include the subject property in the 2017 rating list, the backdated rates demand had been a contributing factor to the closure of the business.

23. Mr Willmore was asked by Mr Tisdall on what grounds within the legislation was he seeking an exemption, he was unable to identify the specific part of the legislation. Mr Tisdall then asked what evidence was being relied upon for the exemption to be granted. Mr Willmore advised it was overt there had been a farm on site since 1965, it was an agricultural business and therefore it was clearly exempt.

24. Mr Tisdall in his submission advised that there had been no evidence provided at Challenge of a link between the agricultural land and the subject property which is one of the requirements within Schedule 5 paragraph 3(a). There had been no information supplied where the land was, who was in occupation, what it was used for and where the land was geographically in relation to the subject property. In a previous form of return the information was supplied that a considerable percentage of the turkeys were bought in from other farms and therefore the subject property was not ancillary or consequential to activities on the agricultural land.

25. The subject property did not meet the requirements of 5(1) (b) as there was no evidence of the connection between the subject property and a building used for “keeping or breeding livestock.

26. Mr Willmore in questioning asked if Mr Tisdall had inspected the subject property. Mr Tisdall advised an attempt had been made but access to the property was not gained, he viewed it from the road. Mr Willmore suggested that as the subject property was situated in the farm then it was clearly connected to land. He also put it to Mr Tisdall that in the Court of Appeal judgment of *Farmer (VO) v Buxted Poultry Ltd* the court of appeal found that despite the turkeys being supplied from up to 120 miles away there was still a connection to the land.

27. The Clerk advised the criteria for an agricultural exemption was contained in Schedule 5 to the 1988 Act and read the requirements to the panel and parties.

28. The first question the panel considered was whether the relevant building was *“occupied together with agricultural land”*. To satisfy this requirement the relevant building need not only 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. 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 <u>worked together so as to form one agricultural unit</u>”.*

29. No evidence was submitted to establish that the subject property was in common occupation with Dairy House Farm or that the turkeys were produced on land that was occupied or managed by the same occupier as the processing plant. The photograph supplied showed only a number of buildings together with no explanation of which was the subject property or how it was linked to the other buildings. The extract from the website states that “when you buy a Bailey’s Turkey you are supporting farms who believe strongly in good animal welfare” which implied to the panel that the turkeys were not from a single agricultural unit, but came from a number of farms. Therefore the panel found that the subject property did not fall within the definition in Schedule 5 (3) of the 1988 Act.

30. The panel went on to consider whether there was evidence submitted to satisfy it that any of the other requirements of Schedule 5 were satisfied as it did not consider that it was overt that the subject property should be exempt.

- Paragraph 1 provides for agricultural land and buildings to be exempt.

- Paragraph 2 relates to land.

- Paragraph 3 provides that an agricultural building must be occupied together with agricultural land; the panel found no evidence was submitted to link the land to the subject property, no occupier or ownership evidence was submitted in order for the link to be made.

- Paragraph 4 was not satisfied as no evidence had been provided to link the occupier of the land to the subject property.

- Paragraph 5 (1) was not satisfied as there had been no evidence provided to link the subject property to the other buildings which were used for the keeping or breeding of livestock.

- Paragraph 5 (2) was not satisfied as it had not been shown that the subject property was occupied together with agricultural land and its sole use was in connection with agricultural operations on that land as there was no link between the two.

31. In appeals of this nature it is for the appellant to submit sufficient evidence to satisfy the panel on the balance of probabilities that the subject property should not be shown in the list. The panel found that in the absence of any evidence to link the agricultural land or the other buildings on the site to the subject property it could not be satisfied that the subject property was an agricultural building and therefore exempt as prescribed by Schedule 5 of the 1988 Act.

Disposal

32. In view of the above findings and conclusions, the Tribunal Panel concluded that there was insufficient evidence on the balance of probabilities that the criteria prescribed in Schedule 5 of the 1988 Act was satisfied in order for it to determine that the subject property was an agricultural building which would be subject to an exemption, and therefore the entry in the Valuation List was correct.

Date issued to parties: 16 September 2024

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.
