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

Case No: CHG101091653

Sitting remotely using Microsoft Teams

Date: 31 July 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — EXEMPTION — Agricultural buildings — Whether building "used in connection with agricultural operations" and is "occupied by a body corporate" whose members "occupiers of the land" and whose members "have control of the body corporate" — meaning of "body corporate" — meaning of "members"— appeal dismissed

Before:
MR G GARLAND, PRESIDENT
MS JL HADLEY

Between:

BRITISH WOOL MARKETING BOARD **Appellant**

- and -

ANDREW MOULAND (VALUATION OFFICER) **Respondent**

Regarding:
BUILDING AT WALNUT TREE FARM, CHURCH ROAD, SMEETH, ASHFORD, KENT, TN25 6SA
(the "subject property")

Mr D Kolinsky KC (instructed by **Newmark Gerald Eve LLP**) **for the Appellant**
Mr Hugh Flanagan (instructed by **HMRC Solicitors**) for the **Respondent Valuation Officer**

Hearing date: 1 July 2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. We are satisfied that the subject property—

   (1) is not an agricultural building and thus is not exempt from non-domestic rating; and accordingly,

   (2) is correctly shown in the 2017 local non-domestic rating list.

Introduction

3. This appeal is the first of four appeals made to the Tribunal by the British Wool Marketing Board (the “Board”) which challenges a decision by the Respondent Valuation Officer. The decisions relate to proposals made by the Board to de-rate buildings occupied by it for the collection, sorting, grading, packing and storage of fleece wool prior to its sale. The remaining three appeals have been stayed pending the outcome of this case.

4. The hearing of this appeal took place by Microsoft Teams as is the Tribunal’s standard practice. We are grateful to counsel for both parties for their concise submissions.

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

Background

6. On 22 August 2019, the Respondent Valuation Officer entered the subject property into the valuation list as a building and warehouse with effect from 1 June 2018 with a rateable value of £61,500.

7. On 3 March 2023, the Board, through their representative Newmark Gerald Eve LLP, submitted to the Respondent Valuation Officer a ‘check’ in relation to the subject property in accordance with Regulation 4A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268] (the “NDR Regulations”).

8. On 18 July 2023, the Board then served a proposal (also known as a ‘challenge’) upon the Respondent Valuation Officer pursuant to Regulation 4 of the NDR Regulations. The proposal sought for the subject property to be deleted from the 2017 non-domestic rating list on the basis that it is exempt from rating as an agricultural building. The proposal relied upon the exemption provided at paragraph 7(1) of schedule 5 to the Local Government Finance Act 1988 (the “1988 Act”).

9. On 30 September 2024, the Respondent Valuation Officer decided that the proposal was not well-founded and declined to alter the list.

10. On 16 January 2025, the Board filed an appeal to this Tribunal pursuant to Regulation 13A of the NDR Regulations. This challenges the Respondent Valuation Officer’s decision on the ground that the list is inaccurate in relation to the hereditament (other than in relation to the valuation). It remains the Board’s contention that the subject property is an agricultural building and thus exempt from non-domestic rating.

11. Prior to the hearing, the parties have filed with the Tribunal two bundles: an agreed hearing bundle (including statements of case) and an agreed bundle of legislation and authorities. Mr Kolinsky has also filed a skeleton argument.

Material day

12. It was not contentious, but for the purposes of completeness we record that the “material day” – the date on which to take account of the physical state of the subject property and its locality – was the 1 June 2018, this being the date the subject property was entered into the rating list and the date from which deletion is sought.

Relevant Law

Non-domestic rating and exemptions

13. Part III of the 1988 Act makes provision for the levying of a non-domestic rate.

14. Relevant to these proceedings, section 51 and schedule 5 to the 1988 Act makes provision for determining the extent (if any) to which a hereditament (or part of a hereditament) is exempt from local non-domestic rating. So far as is relevant to this appeal, paragraphs 1 and 7 of schedule 5 provide—

> **Agricultural premises**
>
> 1 A hereditament is exempt to the extent that it consists of any of the following —
>
> (a) agricultural land;
>
> (b) agricultural buildings;
>
> …
>
> 7(1) A building is an agricultural building if it is not a dwelling and—
>
> (a) it is used in connection with agricultural operations carried on on agricultural land, and
>
> (b) it is occupied by a body corporate any of whose members are or are together with the body the occupiers of the land, and
>
> (c) the members who are occupiers of the land together have control of the body.
>
> …
>
> (9) In this paragraph “control” shall be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010.

15. In its recent judgment in the matter of *Bunyan (VO) v Fridays Limited* [2025] EWCA Civ 666, the Court of Appeal has eloquently set out, from [14], the development of the law in relation to an agricultural exemption from rating, and in particular, agricultural buildings. We shall not repeat the evolution of the law here.

The British Wool Marketing Board

16. The Agricultural Marketing Acts of 1931 and 1949 provided that a Minister may establish a scheme regulating the marketing of an agricultural product. Section 2 of the 1931 Act provided—

> **2 Constitution of boards to administer schemes.**
>
> (1) Every scheme shall provide for the registration of any producer who makes application for that purpose, and shall constitute a board to administer the scheme, which shall (subject to the provisions of the scheme as to the filling of casual vacancies) be composed of representatives of registered producers elected by them in such manner as may be provided by the scheme…

17. The 1931 and 1949 Acts have been repealed and re-enacted by the Agricultural Marketing Act 1958, which now contains the operative statutory framework and savings provisions (although nothing turns on this). It was pursuant to the 1931 and 1941 Acts that the Houses of Parliament approved the British Wool Marketing Scheme (the "Scheme") which was scheduled to the British Wool Marketing Scheme (Approval) Order 1950 [SI 1950 No 1326] (the "1950 Order").

18. Part II of the Scheme makes provisions for the establishment of the Board, its membership, and the establishment of committees. Paragraph 4 established the British Wool Marketing Board as a body corporate to administer the Scheme—

> **4.** The Board to administer this Scheme shall be called the British Wool Marketing Board, and is in this Scheme referred to as "the Board." The Board shall be a body corporate with a common seal, and the power to hold land without licence in mortmain.

19. Upon establishment, paragraph 5 of the Scheme provided that the Board consisted of ten members representing the regions ("regional members"), and two persons who were ministerial appointments ("appointed members"). The number of board members has changed over time, but nothing turns on this. The current constitution consists of nine regional members – one for each region – and not less than two appointed members. Paragraphs 6 and 7 of the Scheme provide—

> **6.** … as to the filling of casual vacancies in the case of regional members, the Board shall, after 30th June 2020, consist of nine members, all of whom shall be elected as hereinafter provided, and no less than two members appointed by the Minister in accordance with section 3 of, and paragraph 2(1)(b) of the Schedule to, the Agricultural Marketing Act 1958; …

> **7.** For the purposes of this Scheme, there shall be nine regions constituted in accordance with the First Schedule to this Scheme. One regional member of the Board shall be elected for each region by the registered producers in that region. …

20. Part III of the Scheme makes provision for the registration of producers of wool. The Board must keep a register of producers, and every producer of wool is entitled to be registered upon application, however, a producer is exempt from registration if they have less than four sheep. At the time of the hearing, there were approximately 35,000 registered providers.

21. Part VI of the Scheme sets out the Board's primary powers in relation to the sale of wool in the United Kingdom. Paragraph 69 of the Scheme provides a general bar on the sale of wool by unregistered producers—

> ***PROHIBITION OF SALES BY UNREGISTERED PRODUCERS***
>
> **69.** A producer shall not sell any wool either in the United Kingdom or elsewhere, unless he is registered or exempt from registration.

22. Paragraph 71 establishes the requirement for registered producers to sell their wool to the Board, and paragraph 72 makes provisions for the Board to pay to the producer an amount for the value of the wool once that value is finally decided—

> ***POWER TO REGULATE MARKETING***
>
> **71.**— (1) … no registered producer shall sell any wool except through the agency of the Board, and the Board shall be entitled to receive the purchase price of all wool sold through their agency from the purchaser thereof.
>
> …
>
> **72.**— …
> (2) The Board shall accept for sale, or by way of sale, as the case may be, all wool tendered by any registered producer and shall sell the same at such time or times and in such manner as and to or through such persons (including the Board) as the board may think fit.
>
> …
>
> (7) When the value of the wool is finally decided the Board shall pay that amount to the producer.

23. Part VII of the Scheme provides a requirement for the Board to hold an annual general meeting of registered producers and other general meetings, or regional general meetings (as it determines). At such meetings, the registered producers have a right to vote on questions put in those meetings. Paragraph 87 provides—

> ***MEETINGS OF REGISTERED PRODUCERS***
>
> **…**

> **87.**— …
>
> (2) On a show of hands every registered producer entitled to vote shall have one vote and the declaration of the chairman as to the result of the vote shall be final.
>
> On a ballot every registered producer entitled to vote shall have one vote plus one additional vote for every ten sheep which are over four months old and are in his possession on such date as the Board may determine for the purpose of any meeting provided that for purposes of voting at Regional Meetings only sheep in the region on the appropriate date shall be counted.
>
> …

Appeal to the Tribunal

24. Regulation 13A of the NDR Regulations makes provision for an appeal against the Respondent Valuation Officer's decision to this Tribunal. So far as is relevant, it provides –

> **13A Making an 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—
>
> (a) the [Valuation Officer] has decided under regulation 13 not to alter the list;
>
> …
>
> (2) The grounds are—
>
> …
>
> (b) the list is inaccurate in relation to the hereditament (other than in relation to valuation).

Discussion

25. Both Mr Kolinsky and Mr Flanagan distilled the test from paragraph 7(1) of Schedule 5 into three parts: the use test, the occupation test, and the control test, essentially following the three sub-paragraphs (a), (b), and (c). We also approach the question in that order.

The use test: Paragraph 7(1)(a)

26. The factual circumstances regarding the use of the subject property were not in dispute. The subject property is used for the collection, sorting, grading, and storage of wool that has been delivered to it by the registered providers. Upon delivery at the subject property, the registered producer's wool is combined with the wool of other registered producers, making it impossible for the registered provider to have the wool they produced returned to them. The

Board sort, grade and store the wool, before selling it at auction. The registered producer is paid for their wool at the conclusion of the year based upon the amount achieved at auction.

27. Mr Kolinsky referred us to the House of Lord's judgment in Eastwood, in particular Lord Ried's approval of the dicta of Lord Hunter in *Midlothian Assessor v Buccleuch Estates Limited* [1962] SC 443 at 459. Lord Ried said at 169—

> "… I agree with Lord Hunter when he said in *Midlothian Assessor v. Buccleuch Estates Limited.,* 1962 S.C. 453, 459:
>
> > *'I would agree that agriculture and pasturage do not cease when the crops are grown or beasts raised, but may properly include operations reasonably necessary to make the product marketable or disposable for profit.'"*

28. Continuing, Lord Reid also said in the following paragraph—

> "But I also agree with Lord Sorn when he said in *Perth and Kinross Assessor v. Scottish Milk Marketing Board*, 1963 S.C. 95 that if a farmer set up a butcher's shop on his farm to sell his fat stock as meat no one would suggest that it should be derated, for the shop would be used for an independent purpose distinct from the farming operations."

29. What is key in the present case on this first question, is identifying whether the operations undertaken by the Board at the subject property are operations ancillary to agricultural operations, being reasonably necessary to make the product marketable or disposable for profit, or if the Board's operations at the subject property are in fact an independent commercial enterprise.

30. It is abundantly clear to us that the wool gathered by the registered producers must, in order to be sold for profit, be taken to the subject property (or one of the other hereditaments operated by the Board). As is shown at paragraphs 24 and 25, above, the provisions of the Scheme require registered producers to sell the wool only to the Board.

31. For the Respondent, Mr Flanagan took the point that it was significant that there is a transfer of ownership of the wool upon delivery to the Board. This contention was not disputed by Mr Kolinsky, but he did not consider it to be a relevant factor as the transfer was purely to give effect to the Scheme under the 1950 Order.

32. But Mr Flanagan's analysis is supported in the Lands Tribunal's judgment in *Secker (VO) v Kent Wool Growers Limited* [1984] RA 173. Kent Wool Growers Limited ("Kent Wool Growers") was an industrial and provident society comprised of director members, all of whom were involved in the production of wool. There was a specific contract of agency between the Board and Kent Wool Growers, under which it acted for the Board and not for the farmers who delivered their wool to the hereditament. In that judgment the Lands Tribunal considered this very issue, but with a third party – Kent Wool Growers– acting on behalf of the Board as its agent. In allowing the Valuation Officer's appeal, the Lands Tribunal (W H Rees Esq, FRICS) said at 181 (with our <u>*emphasis*</u>)—

> "It is abundantly clear to me that the ownership of the fleeces passes to the board on delivery to the subject buildings. … In *Home Grown Fruits* there

was an agreement between the growers and the occupiers of the subject premises there: no fruit went to the building. The occupier in that instance acted as agent for the fruit growers and so the position there differs from that here. The transfer of the ownership of the fleeces on arrival at that hereditament from the farmers to the board, whose agents the occupiers of the subject buildings are, is fatal to the claim for exemption: *the activities at the subject premises, in my judgment, comprise an independent enterprise carried on by the board through their agents*. The dichotomy comes at the point where the ownership of the fleeces passes from the farmer to the ratepayer ie when fleeces are delivered to the subject premises. I do not consider that I can look behind the agency agreement and take the broader view as I was invited to do."

33. Mr Kolinsky dismisses *Secker* on the basis that it includes a multiplicity of parties not present in this appeal. He stresses that the Lands Tribunal refused to look behind the agency agreement and that it was the addition of the agent which resulted in the loss of the exemption. But we do not agree. In that case, Kent Wool Growers were, for all intents and purposes, acting as and for the Board, its principle behind the agency agreement. We take the view that the Lands Tribunal refused to look behind that agency agreement and to consider the multiplicity of parties, as was attempted in that appeal and as Mr Kolinsky invites us to do now.

34. We are bound to follow the Lands Tribunal's judgment in *Secker*. The operations of the Board at the subject property must therefore amount to an independent commercial enterprise. That is fatal to the appeal and is sufficient to dispose of it: the appeal must be dismissed. But in the event we were wrong to follow *Secker*, we continue to make our findings in respect of the occupation test.

The occupation test: Paragraph 7(1)(b)

35. The Board itself does not occupy agricultural land, thus the crux of the occupation test at paragraph 7(1)(b) of Schedule 5 turns upon the correct interpretation to be applied to the meaning of "members". The test requires identification of the members of the corporate body which occupies the subject property and who occupy the agricultural land.

36. For the Appellant, Mr Kolinsky contends that the members in this case are the 35,000 producers of wool registered by the Board under the provisions of the Scheme. For the Respondent, Mr Flanagan contends that the provision should be interpreted more strictly, and that only the members of the Board itself can fulfil the definition.

37. Despite Mr Kolinsky's enticing argument that Mr Flanagan was putting form over substance, he conceded that the 1950 Order established only the Board as the body corporate, which consists only of the regional and appointed members. Nevertheless, he contended that the 35,000 registered producers were akin to shareholders of a company; indeed, they have rights over the election of the regional members of the Board, and to vote at meetings of registered providers. Mr Kolinsky was correct to highlight that there was no definition of "member" in schedule 5 of the 1988 Act, and he argued that a wider interpretation should be applied to encompass the registered providers under the Scheme.

38. But this was not the situation where a syndicate or cooperative of farmers established a corporate body. The Board is a creature of statute with a singular purpose: the implementation of the Scheme as approved by Parliament in the 1950 Order. The Scheme is

clear, in our view, as to who the *members* of the Board are, and it is the Board, and only the Board, which constitutes the corporate body. The registered producers are not subscribers in a company; they interact with the Board solely because the Scheme, adopted by Parliament and implemented by the Board, requires them to do so in order to sell their produce. The Scheme may have corporate appearances, especially in that the Scheme provides for the election of members to the Board and a right to vote at meetings, but the Scheme is not itself the corporate body.

39. This leads us to the inevitable conclusion that the subject property cannot satisfy the second limb at paragraph 7(1)(b) of Schedule 5.

40. There is no evidence before us that there is any use of the subject property in connection with agricultural operations on land occupied by the members of the Board. But accepting there may be such use by the regional members (or the regional member for the region in which the subject property is located), we anticipate that in all likelihood such use would be *de minimus* in comparison to the amount of wool that would be provided by other registered producers. But even if there is more than *de minimus* use by the members of the Board, it raises the issue that there is a two-tier arrangement, similar to that disapproved in *Home Grown Fruits Ltd v Paul (VO)* [1974] AC 160. In that judgment, the Lands Tribunal (J Stuart Daniel Esq. QC) said, at 347—

> “Then I come to the question of the two tier cooperative as it has been called. There also I cannot accept the submissions of counsel for the ratepayers. To make the building in the present case exempt it would be necessary to insert the word "some" before the word " land " at the end of s 4(1)(b). For I am quite satisfied that the word "land" must be regarded as coextensive in the two parts of the subsection. If I am right in thinking that this building is used in connection with agricultural operations on agricultural land then the land in terms of s 4 (1) (a) is (leaving the associate members apart) the whole of the land totalling 3,879 ac on the one hand and 5,721 ac on the other which is mentioned in pp 5 and 6 of the agreed statement. It is quite impossible on the facts to say that some or any of the members or the ratepayer company itself occupies the whole of this land, for more than half of it is not occupied by any of them.”

The control test: Paragraph 7(1)(c)

41. As we have found above, the “members” must solely mean members of the Board (and not the registered producers), we do not need to go into great detail regarding this last limb. However, for completeness, we again reiterate the point from *Home Grown Fruits Ltd* that the land referred to under paragraph 7(1)(a) must be coextensive with the land for the purposes of this limb.

42. Therefore, the subject property also fails to fulfil the requirements of the final limb at paragraph 7(1)(c) of Schedule 5.

Conclusion

43. For the reasons set out above, we are satisfied that the subject property is not an agricultural building and thus is not exempt from non-domestic rating.

44. We dismiss the appeal.

Right of further appeal

45. 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 Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

46. 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/.

Mr G Garland, President
31 July 2025

Ms JL Hadley, Senior Member
31 July 2025

Mr W Hamilton, Deputy Registrar
Clerk to the Tribunal
Date issued to the parties: 31 July 2025

Decision reissued on 1 August 2025 to correct a clerical mistake in accordance with Regulation 39 of the Tribunal Procedure Regulations, namely in paragraph 10, the date "16 July 2025" is corrected to "16 January 2025".