

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Clynderwen & Cardiganshire Farmers Ltd

Appeal Property: Clynderwen & Cardiganshire Farmers, Gelliaur, Llantood, Glanrhyd, Cardigan SA43 3NX

Appeal number: 684530769237/285NV17

The Matter Appealed Against: 2017 Rating List

Date of Hearing: 30th March 2023 & 3rd August 2023

Appearances: Mr Alex Booth, KC (counsel for the appellant)
Mr David Evans (expert witness for the appellant)
Mr Andrew Williams (expert witness for the appellant)
Ms Isabel McArdle (counsel for the respondent)
Mr Neil Holmes (expert witness for the respondent)

Date of Decision: 12th September 2023

Decision of Tribunal: Appeal dismissed

Members of the Tribunal: Mr K Curry (Chairperson) & Mr A Hallett & Mr R Harris

Tribunal Clerk: Mr G Harris

Introduction

1. The appeal before the tribunal followed a proposal made by Mr R Hutchings, agent for Clynderwen & Cardiganshire Farmers Ltd, Gelliaur, Llantood, Glanrhyd, Cardigan SA43 3NX which the respondent Valuation Officer received on 4th June 2018. The proposal sought a deletion of the entry in the 2017 Rating List with effect from 15th March 2018 on the following grounds –

The property is exempt by virtue of paragraph 7 of Schedule 5 of the Local Government Finance Act, 1988

2. In advance of the hearing the tribunal was presented with a bundle of evidence containing the grounds of appeal, statements of case, witness statements, various correspondence, spreadsheets containing the appellant's management accounts for 2015-18, the skeleton arguments of both parties and an authorities bundle.
3. It was agreed between the parties that Clynderwen & Cardiganshire Farmers (CCF) was an agricultural cooperative established in 1902. The Glanrhyd facility had been created in 1988 for the drying, cleaning and storage of grain, with the intention of providing a service to CCF members

who did not have their own facilities to roll and process it. CCF would buy its member's grain and sell it back once processed.

4. The facility was modified in 2004 to produce blended feeds for members and extended in 2007, with new stores added in 2009 and 2014. The processes carried out by the facility were, as per the appellant's skeleton argument –
 - Rolling wheat imported from member's farms for processing and then inclusion (at the facility) of blended feeds
 - Manufacture of blended feeds for farm stock for supply to farmer, and for supply to branch for collection in small bags (25kg) and larger bags (500kg)
 - Storage and transshipping compound feed to farms
 - Storage and supply of chemical for use in processes above and for supply direct to farms and branches.

A plan of the facility was provided with the grounds of appeal.

5. The Statutory exemption relating to agricultural buildings was provided for under Schedule 5 of the Local Government Finance Act 1988, the "1988 Act". Paragraph 1 stated –

1 A hereditament is exempt to the extent that it contains any of the following

(a) agricultural land;

(b) agricultural buildings.

Agricultural land was defined in paragraph 2(1)(e) as –

2(1) Agricultural land is –

(e) land occupied with, and used solely in connection with the use of, a building which (or buildings each of which) is an agricultural building by virtue of paragraph 4, 5, 6 or 7 below.

Paragraph 3(a) defined an agricultural building as –

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

Paragraphs 7(1) and 7(6) further provided –

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 out on agricultural land, and

(b) it is occupied by a body corporate any of whose members are or are together with the body occupiers of the land, and

(c) the members who are occupiers of the land have control of the body.

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(6) Sub-paragraph (1) above does not apply unless the use there mentioned, or that use together with the use mentioned in sub-paragraph (2) above, is its sole use.

Paragraph 8(3) stated –

8(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.

Further to the provisions under Paragraph 7 above, “control” was defined under Section 450 of the Corporation Tax Act 2010 as –

(2) A person (“P”) is treated as having control of a company (“C”) if P-

- (a) exercises,*
 - (b) is able to exercise, or*
 - (c) is entitled to acquire,*
- direct or indirect control over C’s affairs.*

(3) In particular, P is treated as having control of C if P possesses or is entitled to acquire-

- (a) the greater part of the share capital or issued share capital of C,*
- (b) the greater part of the voting power in C,*
- (c)*

6. The following Case Law was referred to in the proceedings –

- A Bartlett and Sons (05154059152/017N95)
- Corser (VO) v Gloucestershire Marketing Society [1980] 1 WLUK 66
- Courtman (VO) v West Devon and North Cornwall Farmers Ltd [1990] RA17
- Hambleton District Council v Buxted Poultry Ltd [1992] 2 All ER 70
- Pyrke (VO) v Dyfed Seeds Ltd [2003] RA 318
- Jacobs v London CC (No.2), [1950] A.C. (1950)

7. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

Submissions and Decision

8. In order for the appeal hereditament to benefit from an exemption it was common ground that its use must satisfy the conditions set out under Schedule 5 of the Local Government Finance Act 1988, particularly those under Paragraphs 7(1) and 7(6), which stated inter alia, the use must be “*in connection with agricultural operations*” and those operations must be carried out “*on agricultural land*”. It was not disputed that the activities operated at the hereditament were agricultural. However, whether these operations constituted “its sole use” or whether a proportion attributable to non-members were considered to be ‘*de-minimis*’ and therefore disregarded as not significant was.
9. Both parties agreed that, for the above to be satisfied, there were three matters at issue in the proceedings which the tribunal considered below, namely –
 - i. The ‘Supplier Issue’;
 - ii. The ‘Purchaser Issue’; and
 - iii. The ‘Control Issue’.
10. In Mr Booth’s opening remarks, he outlined the appellant’s position on the three matters at issue, contending that there were a number of points in dispute, some legal and some factual. He noted that although the ‘burden of proof’ lay with the appellant it was important to bear in mind that the standard of proof rested on ‘the balance of probabilities’, being the ‘civil standard’.
11. Mr Evans, Chief Executive of the appellant, described the primary purpose of the Glanrhyd facility and the products it sold, which were specific to the farming industry and sold in bulk and bag form. Referring to the essence of its membership he explained that there was no formal process to vet members or to check the nature and scale of the agricultural businesses supplied. Most customers had used CCF for years, often over several generations, living and working in an area where agriculture was a way of life. He was confident both by reference to the nature of the products supplied and through his knowledge of the membership that the appellant remained an agricultural cooperative.
12. Under cross examination, Ms McArdle highlighted various examples of purchasers, such as construction companies, holiday parks, pet food suppliers, sports clubs, and an animal sanctuary amongst others and those where the purchaser had been described as ‘gone-away’, ‘deceased’ and ‘four-wheeler’. She contended that the spreadsheets illustrated examples where some purchases were not agricultural.
13. Mr Evans accepted some purchasers were not agricultural however he considered the percentage spent in relation to those purchasers to be minimal, with Mr Booth providing some examples. Others were known personally to Mr Evans, and he contended that they were farmers despite their descriptions on the spreadsheet.

14. Mr Williams, finance controller for the appellant, provided a detailed explanation of the management spreadsheets, and his role in producing them. He explained that the spreadsheets for each year showed each product supplied from Glanrhyd, and those members of CCF that had purchased through Glanrhyd either direct from the facility or where the product had been delivered to their nearest branch for collection. Each year also had a summary sheet setting out the percentage of sales to members either direct or via branches, the percentage of sales to non-members and details of the number of shareholders using the facility by share number and value. Despite difficulties in producing the figures, including those relating to the supply of agricultural chemicals, Mr Williams was wholly satisfied that the detailed information was accurate.
15. Under cross examination, Ms McArdle highlighted various examples where she perceived the spreadsheets could contain errors, for example where the various pages were not interlinked. Mr Williams did not accept that the spreadsheets were unreliable due to the lack of interlinking. Following a question from Mr Booth, Mr Williams confirmed that, although the respondent had been in receipt of the management spreadsheets for 6 months prior to the hearing, the reliability of the data had not been previously challenged.
16. Mr Holmes, expert witness for the respondent, referred the tribunal to his witness statement, in which he contended that discrepancies in the management spreadsheets rendered the appellant's data unreliable.
17. Mr Holmes believed the spreadsheets failed to prove that users of the hereditament used agricultural land. Sales to non-shareholders amounted to 3.83% of sales in 2017 (4.32% in 2018) which Mr Holmes did not consider to be '*de-minimis*', and relied on guidance from *Hambleton District Council v Buxted Poultry Ltd* which found that 6-8% of sales was not regarded as *de-minimis*. Similarly, as the spreadsheets indicated some 89% of produce supplied was sourced from non-members, this indicated that the members did not occupy the land where the majority of goods came from.
18. Under cross examination, Mr Holmes conceded that following Mr Williams' explanation the 'control' issue was no longer in dispute.
19. In the respondent's closing submission, Ms McArdle referred the tribunal to the relevant Legislation, in particular Paragraphs 7(6) and 8(3) which referred to the 'sole use' of the hereditament. She reiterated that for an agricultural exemption to apply the 'supplier', 'purchaser' and 'control' issues had to be satisfied. It was her opinion that none had, and that the burden of proof rested with the appellant to prove otherwise. Although she agreed that if the management figures were correct then the 'control' issue was satisfied.
20. To support her contentions, Ms McArdle directed the tribunal to the House of Lords case *Jacobs v London CC*, where the legal term *obiter dictum* was discussed. She explained its relevance to the case law contained

within the authorities bundle, noting that only a true passing remark made in a decision could be *obiter dictum* and therefore not binding on the tribunal.

21. Mr Booth, in his closing submissions, reiterated that although the burden of proof rested with the appellant, it was the civil standard that had to be met. That is, on 'the balance of probabilities' or whether a particular proposition was 'more likely than not'. He noted that no material evidence had been provided by the respondent and their expert witness' testimony had contained no substantive oral evidence.
22. Mr Booth explained that the relevant day was 15th March 2018, therefore the relevant evidence had been contained within the 2018 management spreadsheets. Whereas the respondent had placed significant focus on the data relating to 2016/17 noting that no appeal was pursued in relation to that year.
23. In making its decision, the Tribunal noted that for an exemption to apply all three 'issues' must be satisfied. As such, it considered each matter in turn, taking into account the parties' arguments and submissions, expert witness statements, evidence, Legislation and relevant case law.

The 'Control Issue'

24. Both parties agreed that the 'control issue' was a statutory test as set out under Paragraph 7, Schedule 5 of the 1988 Act and Section 450 of the Corporation Tax Act 2010.
25. Mr William's evidence, in the form of the management spreadsheets, showed that for the year in question 1804 of a total of 4448 members had purchased from Glanrhyd, and that those members held 56.29% of the share capital.
26. Although Mr Booth had contended that the respondent had provided no evidence to challenge the management spreadsheets, the tribunal noted that the persuasive burden of proof rested with the appellant and not the respondent Valuation Officer by virtue of a statutory duty to prepare and alter the Rating List.
27. Ms McArdle had contended that the data held within the spreadsheets was unreliable. However, she conceded, as had Mr Holmes, that if the data was correct then the 'control issue' was satisfied.
28. Based on Mr Williams' explanation of the evidence, the tribunal saw no reason to doubt the reliability of the data within the management spreadsheets. The data had to be taken in good faith and considering this, the tribunal held that the 'control issue' had been satisfied with the members having 'control' of the company in line with the statutory framework.

The 'Supplier Issue'

29. It was agreed between the parties that in excess of 80% of inputs to the Glanrhyd facility were from non-members.
30. Ms McArdle, in her closing submission, referred to the Supreme Court of Appeal 'Corser' decision, which held that the "sole use" test had not been satisfied as "*a substantial proportion of the use of the Hall was attributable to the sale by auction of non-members' produce*". Mr Booth considered that the Supreme Court decision was not relevant to the subject appeal due to the differences between the hereditaments, in that Glanrhyd was not a general retail facility unlike the auction house in *Corser*.
31. Mr Booth qualified this with the Lands Tribunal 'Courtman' decision which referred to an agricultural facility that was similar to Glanrhyd. In the 'cases referred to', *Corser* had not been analysed in the decision and the tribunal had accepted "*...it was appropriate to look only at the outputs*". Ms McArdle argued that the decision had been made '*per incuriam*', that is without regard to the higher authority in *Corser* and therefore was not binding on the current appeal.
32. To support her contentions Ms McArdle referred the tribunal to the '*Bartlett*' decision, which she agreed was not binding on the current tribunal being a Valuation Tribunal decision. However, it was an example of the correct approach taken. In this case 14.61% of inputs were brought in from land occupied by non-members. The tribunal, considering the *Corser* decision, held that the 'sole use' test had not been satisfied with 14.61% not considered *de minimis*. Mr Booth did not believe *Bartlett* to be relevant due to the factual differences between the hereditaments, and that *Courtman* had not been considered in the decision.
33. Ms McArdle's final case was '*Pyrke*', a Lands Tribunal Case which related to a similar facility to the subject property. Here, in the final paragraph after he had announced his decision, the President wrote –
- 15. That is sufficient to entitle the valuation officer to succeed. But I also agree with him on the "sole use" point. The proportion of the tonnage received into the warehouse from non members (41.4% in 1990 and 55.88% in 1995) and the proportion of the tonnage sold (24.6% in 1990 and 16.14% in 1995) clearly show that the sole use of the building was not in contention with agricultural operations on the land of Dyfed Steels Ltd members (or their members). The appeals succeed.*
34. Ms McArdle contended that this was not a passing remark and not therefore *obiter dictum*. In light of this and with regard to the previous decisions, including that in *Corser*, Ms McArdle argued that inputs were important when looking at the "sole use" of the hereditament

35. Mr Booth contended that *Pyrke*, was not an authority on whether inputs were relevant. It had not considered the decision in *Courtman* nor specifically asked 'are inputs relevant'. In addition, the decision had been determined by Paragraph 14 as such the tribunal did not need to engage with the final paragraph. Mr Booth believed the appellants position in relation to the 'supplier issue' was supported in law and having never been raised in discussions prior to the hearing by the respondent underscored their weak proposition.
36. The tribunal considered the *Pyrke* decision and held that although the final paragraph could be considered to be *obiter dictum* therefore not binding, it still carried significant weight as an authoritative guidance. The Tribunal believed that as *Corser* was a higher authority than that of *Courtman* it could not be ignored and as such inputs had to be considered when considering the "sole use" of the hereditament. This was in line with the decision *Bartlett* decision which the tribunal agreed was not binding but saw no reason to depart from its findings.
37. As such the tribunal held that the 'supplier issue' did not succeed as more than 80% of inputs to the facility were from non-members, the sole use of the hereditament was therefore not in connection with agricultural operations carried out on the land of Glanrhyd members.

The 'Purchaser Issue'

38. It was agreed that, should the data contained within the management spreadsheets be correct, then the sum of sales made to non-members related to 4.32% of the total for 2018. The issue before the tribunal was whether this amount was *de minimis* for the purpose of the "sole use" test.
39. The tribunal had previously decided that they had no reason to doubt the veracity of the data when considering the 'control issue' therefore looked to the case law for guidance.
40. Both parties referred the tribunal to the *Courtman* decision where it had been held "*that 2% cannot be regarded as a substantial part of the whole manufacturing time*" and that the use of the mill therefore satisfied the "sole use" test. Whereas, in the decision in *Hambleton* the Judge held "*I do not see how 6% to 8% of the production can be regarded as de minimis*".
41. The tribunal believed the question of whether 4.32% could be *de minimis* to be a subjective one. Looking at the management spreadsheets, the tribunal accepted that there was a margin of error as contended for by the respondent, however believed that 4.32% of the total sales for 2018 could be classed as *de minimis*. As such the 'purchaser issue' was satisfied.
42. After consideration of all three 'issues' the tribunal noted that although the 'control' and 'purchaser' issues had been satisfied, the 'supplier issue' had not. As all the conditions set out under Schedule 5 of the Local Government Finance Act 1988 had not been met the tribunal dismissed the appeal.