SPC00565

INHERITANCE TAX – exempt transfers and reliefs – agricultural property relief – property comprising small country estate with main house, other let houses, arable land and farm outbuildings – owners of main house instructed land agents to manage the agricultural land and entered into contract farming agreements under which the land was farmed by contractors - whether main house a farmhouse - no – if so, whether farmhouse "of a character appropriate to the property" – no – if so, whether house occupied for the purposes of agriculture – no – whether farm outbuildings occupied for the purposes of agriculture – some yes some no – appeal on main issues dismissed - IHTA 1984 Ss 115(2) and 117

THE SPECIAL COMMISSIONERS

C J F ARNANDER, D T M LLOYD AND M M VILLIERS
EXECUTORS OF
DAVID MCKENNA DECEASED

Appellants

-and-

THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS

Respondents

C J F ARNANDER, D T M LLOYD AND M M VILLIERS
EXECUTORS OF
LADY CECILIA MCKENNA DECEASED

Appellants

-and-

THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS

Respondents

Special Commissioner : DR A N BRICE

Sitting in London on 21, 22 and 23 June 2006 and 13 and 14 July 2006

William Massey QC, instructed by Messrs Coodes, Solicitors, for the Appellants

Jonathan Karas of Counsel, instructed by the Acting Solicitor for HM Revenue and Customs, for the Respondents

DECISION

The appeals

1. Mr David McKenna CBE (Mr McKenna) and his wife Lady Cecilia Elizabeth McKenna (Lady Cecilia) lived at Rosteague House, Cornwall which was surrounded by farmland. Mr McKenna died on 29 January 2003 and Lady Cecilia died on 16 June 2003. The executors of both Mr McKenna and Lady Cecilia are Mr Christopher James Folke Arnander, Mr David Thomas Marner Lloyd and Mrs Myee Miranda Villiers and they are the Appellants in these appeals. They are of the view that, at the dates of the two deaths, Rosteague House was a farmhouse; that it was therefore agricultural property; and that the relief from inheritance tax for agricultural property should be available.

2. Mr Arnander, Mr Lloyd and Mrs Villiers, as the executors of Lady Cecilia, each appeal against a Notice of Determination sent to them on 23 February 2004 in the following form;

> "The Commissioners of Inland Revenue have determined –
>
> In relation to the deemed disposal on the death on 16 June 2003 of Lady Cecilia McKenna ("the Deceased")
>
> That the Deceased's interest in her residence Rosteague, Portscatho, Truro, Cornwall TR2 5EF was not an interest in agricultural property within the meaning of section 115(2) Inheritance Tax Act 1984."

3. Mr Arnander, Mr Lloyd and Mrs Villiers, as the executors of Mr McKenna, each appeal against a Notice of Determination sent to them on 23 September 2005 in the following form;

> "The Commissioners of Inland Revenue have determined –
>
> In relation to the deemed disposal on the death on 29 January 2003 of David McKenna ("the Deceased")
>
> That the Deceased's interest in his residence its gardens and grounds at Rosteague Farm was not an interest in agricultural property within the meaning of section 115(2) Inheritance Tax Act 1984."

The legislation

4. Part V (sections 103 to 159) of the Inheritance Tax Act 1984 (the 1984 Act) contains provisions about miscellaneous reliefs. Chapter II (sections 115 to 124B) contains the provisions giving relief for agricultural property. Section 116(1) provides that, where the whole or part of the value transferred by a transfer of value is attributable to the agricultural value of agricultural property the whole or that part of the value transferred is reduced by the appropriate percentage which in this case would be 100%. Section 115 contains some preliminary provisions and section 115(2) provides:

> **"115(2) In this Chapter "agricultural property" means agricultural land or pasture … and also includes such cottages, farmbuildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property."**

5. Section 117 contains provisions about the minimum period of occupation or ownership and provides:

> **"117 Subject to the following provisions of this Chapter, section 116 above does not apply to any agricultural property unless-**
>
> > **(a) it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of the transfer, or**

(b) it was owned by him throughout the period of seven years ending with that date and was throughout that period occupied (by him or another) for the purposes of agriculture."

The issues

6. Rosteague estate now consists of the main house with its six acres of gardens and some domestic outbuildings (Rosteague House); a lodge house (the Lodge), a cottage (the Cottage), and a stable flat (the Stable Flat) all of which are let to third parties; a range of farm outbuildings; and 187.82 acres of land which includes 52 acres of coastal slope and foreshore. The Revenue agree that 110 acres of land is agricultural land (and therefore agricultural property) and that agricultural property relief is also available for one of the farm outbuildings. The Appellants agree that the rest of the land and the three let properties are not agricultural property.

7. However, the Appellants claim that Rosteague House and the other farm outbuildings should obtain agricultural property relief. The Revenue dispute that claim because they are of the view that Rosteague House is not a farmhouse; that, even if it were, then it is not of a character appropriate to the agricultural land; and that it was not occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death. The Revenue accept that the other farm outbuildings are agricultural property but argue that they were not occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death.

8. Thus the issues for determination were the same for each appeal and were:

(1) whether Rosteague House was a farmhouse within the meaning of section 115(2);

(2) if so, whether Rosteague House was a farmhouse "of a character appropriate to the property" within the meaning of section 115(2);

(3) if so, whether Rosteague House was occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117(a); and

(4) whether the other farm outbuildings were occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117(a).

9. In the appeal relating to the estate of Mr McKenna the issues have to be determined at the date of his death, namely on 29 January 2003. In the appeal relating to the estate of Lady Cecilia the issues have to be determined at the date of her death, namely on 16 June 2003.

The evidence

10. There was a statement of agreed facts. Nine bundles of documents were produced by the parties (A1 to A3 and D1 to D6). Not all the documents were referred to at the hearing. Oral evidence was given on behalf of the Appellants by:

Mr C J F Arnander who is one of the Appellants and who is the son-in-law of Mr McKenna and Lady Cecilia; and

Mr Peter Brian Fletcher, a chartered surveyor and land agent. Mr Fletcher is a partner with the firm of Messrs Stratton Creber (later Messrs Stratton & Holborow) of Truro, Cornwall. Throughout this Decision I call that firm Messrs Strattons. Mr Fletcher is also the owner of a house on the Rosteague estate now known as Rosteague Vean and he and his firm advised Mr McKenna on farming matters.

11. Expert evidence was given on behalf of the Appellants by Mr Clive Derek Beer, HND AGRIC DIP REM MRICS, a Director of Savills (L&P) Limited. Mr Beer produced a report dated 20 April 2006 and supporting documents (bundle B). He also produced a supplemental report dated 16 June 2006. Expert evidence was given on behalf of the Respondents by Mr James Richard Bere, a Member of the Royal Institution of Chartered Surveyors (Land Agency and Agricultural Division) and a Fellow of the Association of Agricultural Valuers. Mr Bere is a Senior Valuer in the Taunton Office of the District Valuer Service and has worked in the Valuation Office since 1989. Mr Bere produced a report dated 26 April 2006 and supporting documents (bundle C).

12. Mr Beer and Mr Bere met and produced a statement of agreement and disagreement on 26 May 2006. On 20 June 2006 a supplemental statement of agreement and disagreement was produced.

13. After the hearing, and by agreement, I received a number of documents from the parties. I found these helpful and am grateful to both Counsel. The documents were:

> (1) a letter from the Appellants dated 28 July 2006 with an analysis of invoices and valuations;
>
> (2) a letter from the Revenue dated 4 August 2006 with a response to the Appellants' analysis of invoices and valuations together with other documents including agreed notes of the oral evidence of Mr Arnander and Mr Fletcher; and
>
> (3) a letter dated 21 August 2006 from the Appellants with a reply to the Revenue's response.

The facts

14. From the evidence before me I find the following facts.

15. Rosteague estate has a long history and over the years the houses on the estate have changed their names. To avoid confusion I have identified each house by one name only, save for Rosteague Farmhouse which became Rosteague Vean in 1989.

Rosteague estate

16. Rosteague estate is situated on the Roseland Peninsula, near Portscatho, Cornwall. The nearest town is Truro. The estate is within a designated area of outstanding natural beauty and an area of great scientific value. The estate land occupies 187.76 acres and has over a mile of sea frontage. The land includes nearly 52 acres of the foreshore from which seaweed was previously collected and used to fertilise the land. However, that use has long been abandoned and the Appellants did not claim relief for agricultural property in respect of the foreshore land. There are now about ten acres of woodland and the farm land extends to about 110 acres. The Revenue accepts that these 110 acres are agricultural land and, therefore, agricultural property.

17. The estate is about three fields deep from the shore inland. A county road approaches the land to the eastern boundary of the estate and the Lodge is situated where the county road meets the land of the estate. The Lodge is a detached two-storey house of stone and slate with three bedrooms. The road then continues as a private road going westwards through the estate. Rosteague House is situated about one mile away from the Lodge, being approximately two-thirds of the way through the estate. Before the private road meets the house a lane forks to the left and leads through trees and the garden to a round drive which circles the lawns at the front of Rosteague House. The private road continues to the rear of the house in a westerly direction and terminates at a house formerly known as Rosteague Farmhouse but now known as Rosteague Vean. Rosteague House, the farmyard (which is on the other side of the private road to the rear of Rosteague House) and Rosteague Vean comprise a group of buildings all of which are surrounded by agricultural land.

Rosteague House

18. Rosteague House has medieval origins and its title deeds go back to the 13th century. It has always been one of the principal houses of the parish being one of the few marked on a map of 1597. The building is part Elizabethan and part 18th century. The house is approached from the lane which leads from the private road. The external walls are of stone with granite dressings and there are slate hipped roofs. The house has many period details including twelve pane sash windows, mullioned windows and intricate plastered ceilings. The principal rooms face south over lawns and have sea views. Rosteague House was recently described in its sale particulars as "an historic and substantial Manor House, Listed Grade II*" and as "an outstanding manor house and private estate". Its accommodation was described in one of the sales particulars as: "long hall, dining room, library, study, drawing room, flower room, main foyer and stairs, cloakroom, rear hall, kitchen, staff sitting room, back kitchen, seven bedrooms, three bathrooms, sewing room, laundry room, staff flat, detached lodge, cottage, music room, garage, gardens, range of outbuildings".

19. The floor plan of the house has a main horizontal section running from east to west with windows facing north and south. There are two forward wings, one at each end. The house is entered through a front door which is mid-way between the two wings and which leads to the long hall. To the right of the long hall is the study and also access to the drawing room (which constitutes the east wing). The study is behind the drawing room and gives access to the flower room which is off the study. To the left of the long hall is the dining room and also access to the library which constitutes the west wing. The dining room also gives access at the rear of the house to the kitchen, staff room, back kitchen and larder. Access to the music room is gained from doors which lead from the study into a rear courtyard from which access is gained to the music room. The music room comprises the building which forms the east side of the rear courtyard and it was converted from an existing barn in 1977. It could be used for concerts as there is a stage at one end which leads to a gallery. The first floor of the house contains the bedrooms, bathrooms, sewing room and laundry room. A particular feature of the house is that the footprint does not consist of regular rectangles and that internally access to many rooms is obtained through other rooms.

20. The curtilage of Rosteague House contains a number of buildings. Looking towards the house from the shore (that is, from the south) one sees lawns to the front of the house and gardens to the west and the east. The gardens extend to about six acres. To the west of the house is a woodland garden and to the east there is a walled garden, a vegetable garden, a thatched summer house, a green house, and an impressive knot garden which was probably planted in the 16th century. Behind the house is a cobbled courtyard which is approached externally from the west. The south wall of the courtyard is the northern wall of the house. To the east of the courtyard is the converted barn that is now the music room. The west wall of the courtyard comprises the external walls of the back kitchen and larder of Rosteague House and the external access to the courtyard. To the north is a range of buildings which include the Cottage, the Stable Flat with a stable for horses below, and a garage. The Cottage is a two-storey terraced dwelling of stone and slate and has two bedrooms. The Stable Flat is accessed by steps from the courtyard and has two bedrooms. The private road runs behind the buildings to the north of the courtyard and on the opposite side of the road is the farm yard on which stand a number of farm outbuildings.

The farm outbuildings

21. The farm yard on which the outbuildings stand is an approximate square approached from the south side. The yard itself is paved and there is one building to the north; one to the east with three areas; two to the west; and an L shaped building part of which is to the west with the largest part to the south of the square. Mr Fletcher produced a very helpful sketch plan of the farmyard and its buildings and he gave each area in each building a number. Throughout the hearing the areas were referred to by those numbers which I now adopt.

22. The building to the north of the farm yard is a timber frame, timber clad, Dutch barn with a roof made partly of corrugated sheet asbestos and partly of metal sheet. This is area 1. To the east of the farm yard is an open area which Mr Fletcher called area 2 and also a building which is partly concrete block with a steel roof and partly stone with an asbestos roof. It has three areas which Mr

Fletcher called areas 3, 4 and 5. To the south and west of the farm yard is an L shaped single storey building of stone with slated roof slopes. It has three areas which Mr Fletcher called areas 6 and 7 (to the south) and 8 (to the west). The two buildings to the west of the farm yard are a round grain silo (area 9) and a monopitch timber storage building, which was open fronted under an asbestos sheet roof, and called area 10. In addition to the farm outbuildings in the farm yard there is another farm outbuilding which was described as a galvanised shed and which is situated to the east of the music room behind the gardens to the east of Rosteague House. This was referred to as area 11.

The history of farming at Rosteague

23. In 1365 a John de Rosteak was described as a "yeoman proprietor" by a Cornish historian. In 1619 Rosteague was acquired by the Kempe family who, in about 1670, laid down the walled garden to the east of the house. In the mid-1770s the present woodland garden was added and by 1760 Nicholas Kempe owned 94 acres. In 1780 the house was purchased by Thomas Harris for his fourth son, Henry, who was described as a "gentleman farmer" and who occupied it until 1830. Until 1820 the house had two wings, the principal horizontal south facing wing and the forward east wing. The forward west wing was added in 1820 giving the house its present shape. In 1830 Mary Hartley inherited the house under the will of her uncle, Henry Harris, which will stated that Rosteague "should be farmed and cultivated in a farmer-like manner without wilful waste either by the cutting down of trees or in any other respect whatsoever". In 1841 the land with Rosteague was 144 acres. In 1868 Mary Hartley died and was succeeded by her son William who died in 1894. Extensive litigation followed to determine to whom the estate should devolve. From 1841 to 1901 seven decennial censuses listed the occupants of Rosteague as bailiffs, agricultural labourers, masons, caretakers, servants and their families; Mary and William Hartley were not listed as being in residence on the census dates; they also had homes in Rosewarne and Bath.

24. In 1901 the Van Grutten family were declared the owners of Rosteague and in 1903 the house and farmland were let to a Mr Henry Eva who lived in Rosteague House. In 1908 the Van Gruttens built a separate farmhouse to the west of the house (which new farmhouse was then known as Rosteague Farmhouse) and Mr Eva moved into it after which Rosteague House became dissociated from the farming activities. Mr Eva was succeeded as tenant in 1917 and there was another change of tenancy in 1924 which lasted until 1939. In 1941 the Van Gruttens entered into a tenancy agreement relating to Rosteague Farmhouse and the approximately 126 acres of farm land which went with it. The tenancy agreement was with a Mr W J Badcock, Senior and a Mr W J Badcock Junior and was a yearly tenancy from 29 September 1940. In 1945 a Mr and Mrs Bell acquired the estate from the Van Gruttens subject to the tenancy.

1945 – 1984 - the purchase of the estate by Mr McKenna

25. On 14 December 1945 Mr McKenna purchased the estate from Mr and Mrs Bell. At that time Rosteague House had about 14 acres and Rosteague Farmhouse had about 126 acres. At the date of purchase Rosteague House became a second home for Mr McKenna and Lady Cecilia as their main home was in London. When Mr McKenna purchased the estate the sale was stated to be with vacant possession but in fact Messrs W J Badcock did not then vacate Rosteague Farmhouse or the agricultural land which went with it. Mr McKenna received the rent payable by Messrs W J Badcock and had discussions with them about matters such as water, roads, hedges, fences, buildings, damage by cows and rents.

26. In February 1952 Rosteague House and the stable block (which then formed the rear courtyard) was listed Grade II*. It was described as a "country house with stable block". It was agreed that at that time Rosteague House was not used as a farmhouse.

27. In 1952 Mr MvKenna decided to engage in pig breeding and this business was kept quite separate from the farm tenancy. Because the McKennas were in London the pigs were looked after by Mr Joe Matthews, the gardener. Accounts were prepared for five years and showed a profit of £57 in the first year followed by four years of losses (with a maximum loss of £115). The pig breeding business was terminated in 1959 on the retirement of Mr Matthews.

28. On 29 November 1961 Mr McKenna entered into a deed of covenant with the National Trust under which Mr McKenna covenanted not to place anything on the land which would materially alter its natural appearance or condition or would be prejudicial to the amenities of the land or the neighbourhood or the Trust. Mr McKenna also covenanted that no building would be erected on the land without the consent of the Trust. However, it was specifically stated that nothing in the deed was to prevent the cultivation of the land in the ordinary course of agriculture.

29. On 23 October 1972 Mr McKenna entered into an agreement with Mr W J Badcock Junior to let the 126 acres and buildings then known as Rosteague Farm on a yearly tenancy from 25 March 1972. This tenancy was surrendered on 30 September 1984.

Farming activities after 1984 - contract farming arrangements

30. Meanwhile in 1978 Mr McKenna retired and he and Lady Cecilia sold their London home. Thus Rosteague House became their main home. When the tenancy to Mr W J Badcock Junior was surrendered on 30 September 1984 the firm of Messrs Strattons started to advise Mr McKenna and Lady Cecilia and they valued the tenant's fixtures which had been left by Mr Badcock Junior.

31. On 1 October 1984 Mr McKenna (who was then aged 73) and Lady Cecilia (who was then aged 74) agreed that the business of running the farm, which was owned by Mr McKenna, should be carried out jointly by them, profits and losses being shared equally. Advised by Messrs Strattons they decided not to enter into another farm tenancy and they also decided not to farm the land personally. Instead they decided to enter into contract farming arrangements.

32. Contract farming developed in the 1970s and provides a way in which the owner of an agricultural holding can arrange for the land to be farmed by a contractor. The owner provides the capital of the business, principally the agricultural land and buildings. The contractor provides the manpower and machinery and performs the physical functions necessary to undertake the farming activities. The owner pays income tax under Schedule D in respect of his business and the contractor is chargeable to income tax on his profits as a contractor. The pricing structure under a contract farming agreement is a matter of negotiation and varies considerably and the terms of each agreement reflect individual requirements. The benefits of a contract farming arrangement to an owner are that he retains the full vacant possession value of the land and also receives some reward under the agreement. Also, because the owner retains the choice of contractor he remains in effective control over farming policy and cropping. The benefit to the contractor (who is usually a local farmer) is that he can maximise the use of his existing plant and machinery and his labour force.

33 When the decision had been made to enter into contract farming arrangements Mr McKenna informed the Inland Revenue, HM Customs and Excise (for value added tax purposes) and his professional accountants. He set up an accounting system which continued until his death. He had new business stationery printed headed "Rosteague Farm". He applied for the rateable value of Rosteague House to be reduced on the basis that, after 1 October 1984, it was a farmhouse as on that date the farm had been taken in hand and was run from Rosteague House. The application was successful and a reduction in rates was agreed. The partnership of Mr McKenna and Lady Cecilia was advised by Messrs Strattons on all farming matters.

1985 - 1990 – the first agreement - with John Parker

34. The first contractor was Mr John Parker and he was introduced to Mr McKenna by Messrs Strattons. On 12 December 1985 Mr McKenna and Lady Cecilia (as owners) entered into a contract farming agreement with a Mr John Parker (the contractor) in respect of 118.62 acres. The agreement provided that the contractor would farm the farm and that the owners would retain sole ownership and exclusive occupation subject only to specific rights given to the contractor. It was specifically stated that nothing in the agreement constituted a tenancy of any part of the farm in favour of the contractor. The contractor was to be solely responsible at his own expense for supplying any necessary agricultural machinery and solely responsible for taking all decisions of farming policy and day to day

management after consultation with the owners. The contractor was also to act as agent for the owners for the purchase of stock, seeds and fertiliser. The owners were to assist in the supervision and management and security of the crops and stock on the farm. On the usual quarter days in each year the owners were to provide a statement of the expenditure and income of the farm for that quarter, including as part of the expenditure annual drawings for themselves in respect of their services amounting to £5,500 per annum (£1,375 each quarter). The contractor would then sell such stock or other produce as was necessary to meet the debit balance. The agreement was to be for five years with an option to renew.

35. At that time the cropping policy for the land was the planting of daffodil bulbs in rotation and the growing of wheat and barley with the steeper land being laid to grass.

1990 – 1994 – the second agreement - with John Parker Farms

36 When the tenancy to Mr W J Badcock Junior was surrendered in 1984 Rosteague Farmhouse became empty and was unoccupied until about 1988. In about 1988 Mr McKenna let Rosteague Farmhouse to a local couple at a concessionary rent to reflect the fact that much work required to be done on the house. On 5 May 1989 Mr McKenna conveyed the freehold of Rosteague Farmhouse with a garden and one acre of land, together with a right of way across the private road to the rear of Rosteague House, to Mr and Mrs Peter Fletcher. Thereafter Rosteague Farmhouse became known as Rosteague Vean.

37. Mr Fletcher moved to Rosteague Vean in 1989 and thus became, in effect, resident on site as Rosteague Vean was close to Rosteague House. From the autumn of 1989 Mr Fletcher was the sole representative of his firm (Messrs Strattons) advising the McKennas on farming matters. He advised on the renewal of the contract farming arrangements with Mr Parker. A new agreement was formally entered into in 1990 and was in essentially the same terms as the agreement of 12 December 1985. It lasted for four more years.

1994 – 1996 – the third agreement - with Angloflora Limited

38. In October 1994 Angloflora Limited (Angloflora) took over John Parker Farms and on 27 October 1994 Mr McKenna and Lady Cecilia as owners entered into a contract farming agreement with Angloflora. The terms of the agreement were very similar to those of the agreement of 12 December 1985 with Mr Parker save that the agreement commenced on 29 September 1994; was in respect of 110.83 acres; the contractor was to be "solely" responsible for providing the agricultural machinery and for all decisions of farming policy and day to day management after appropriate consultation with the owners; the contractor was to act as agent for the owners in respect of the purchase of stock, seeds and fertilisers in accordance with agreed policy; and the amount to be included as expenditure as the annual drawings of the owners was £6,675 per annum payable as £1,668.75 each quarter. The difference between the acreage mentioned in the first contractor's agreement of 12 December 1985 and the third agreement of October 1994 is explained by the fact that between the two dates a number of acres were taken for tree planting under a woodland scheme.

39. Angloflora grew daffodil bulbs on the land. However, these arrangements required careful management because of the risk of build-up of bulb root fly and soil erosion. Mr McKenna indicated a strong wish to get away from a farming regime which included bulbs. In October 1995 the McKennas agreed that notice should be given to Angloflora and Mr Fletcher gave such notice to Angloflora and that agreement terminated on 29 September 1997.

1996 – the fourth agreement - with Mr Ken Symons

40. Meanwhile, in May 1993 Mr Fletcher had been approached by a local farmer, Mr Ken Symons of Portscatho, who wished to use the Dutch barn in the farmyard at Rosteague (building area 1) in order to store straw which he purchased from John Parker Farms. After correspondence with Mr McKenna, Mr Fletcher confirmed with Mr Symons the terms of a licence to use this building on the basis that Mr Symons would keep it in repair.

41. In 1996, after notice had been given to Angloflora, Mr McKenna suggested that Mr Symons should be approached to see if he would like to enter into a contract farming agreement at Rosteague. Mr Fletcher then approached Mr Symons and discussed the terms for his occupation of the land at Rosteague from 29 September 1997 with a "rent" of about £8,000 per annum, to include the use of the Dutch barn (building area 1) for the storage of straw.

42. On 20 December 1996 Mr McKenna and Lady Cecilia entered into a contract farming agreement with Mr Symons The terms of the agreement were very similar to those of the agreement of 12 December 1985 with Mr Parker save that the agreement commenced on 29 September 1997; was in respect of 110.83 acres; the contractor was to be "solely" responsible for providing the agricultural machinery and for all decisions of farming policy and day to day management after appropriate consultation with the owners "as to overall cropping programme as may be appropriate"; the contractor was to act as agent for the owner in respect of the purchase of stock, seeds and fertilisers in accordance with agreed policy and cropping programme; and the amount to be included as expenditure as the annual drawings of the owners was £8,240 per annum payable as £2,060 each quarter. Also a new provision was included to the effect that the Dutch barn (building area 1) was included in the agreement with no liability on the owners to maintain it or carry out works of repair. The contractor could use the building to store crops or produce, or machinery or equipment (but not livestock) at his own risk during the term of the agreement. Mr Symons had not expressed any interest in using any other farm outbuilding.

43. In October 1997 Messrs Strattons wrote to the Ministry of Agriculture, Fisheries and Food on behalf of Mr McKenna as owner of Rosteague Farm. The letter stated that, as from 29 September 1997, Angloflora had ceased to farm the land at Rosteague which was then farmed by Mr K Symons, The letter was written to ensure that the eligibility to claim arable aid payments was that of Mr Symons.

44. In 2001 Mr Symons approached Mr Fletcher to seek a reduction in the payment due to the McKennas under the contract farming agreement. Mr Fletcher advised Mr McKenna to agree to a reduction of the payment to £1,800 each quarter. Mr McKenna agreed to this reduction with effect from 1 September 2001.

45. In May 2002 Mr McKenna decided to apply for a farm woodland grant scheme in order to plant up to trees a steep area of land abutting on the existing woodland area. Mr Fletcher discussed the matter with Mr Symons who agreed to release the area from his contract farming arrangement. The woodland grant scheme contracts had to be signed by both Mr McKenna as owner and Mr Symons as occupier.

46. In November 2002 Mr Symons approached Mr Fletcher because he, Mr Symons, intended to enter some of his own farm into the countryside stewardship scheme and asked if some of the land at Rosteague could also be entered. Mr Symons could only do this as occupier. In the event Mr McKenna decided not to proceed with this scheme.

47. Throughout the contract with Mr Symons three quarters of the land was grown to wheat or barley. The rest was grown to corn or grass with the exception of two seasons where Mr Symons grew maize. However, Mr McKenna disliked the growing of maize and insisted that maize growing be stopped. During the operation of the contract farming arrangements Mr Symons decided which land was to be set aside and he did not give any plans to Messrs Strattons or to Mr McKenna. Mr Symons was responsible for informing DEFRA about the land set aside.

The operation of the contract farming arrangements

48. Each of the contract farming arrangements referred to a quarterly account of expenditure and income, the expenditure to include drawings for the McKennas. What happened in practice was that each quarter Messrs Strattons would prepare two draft invoices. One was an invoice from the contractor to Mr McKenna for, say, ploughing and planting; for seed and fertilisers; and for trimming

hedges. The other was an invoice from Mr McKenna to the contractor for the sale of the crops; sometimes the crops were sold as standing crops. The invoice from Mr McKenna to the contractor always exceeded the invoice from the contractor to Mr McKenna by exactly the amount of the quarterly payment due under the farming contract agreement. In this way the agreed quarterly payments under the contract farming agreement were made by the contractor to the McKennas.

49. Under the contract farming agreement the contractor was responsible for the purchase of seeds and fertilisers as agent for the McKennas from which I deduce that the crops belonged to the McKennas. However, when the contractor had paid his invoice from Mr McKenna for the crops the crops belonged to him and he could move the crops to his own land and sell them as he wished on the open market. While the crops were in the ground the risk was with Mr McKenna (although it appears that he did not insure this risk). Once the crops left Rosteague they were at the contractor's risk. As far as the bulbs were concerned the McKennas did not own the crop but just made the land available for growing the bulbs.

50. All the contractors made all claims for arable aid subsidy over the land farmed at Rosteague. Without the subsidy the contract farming arrangements would not have been profitable for the contractors in every year. The aid was payable to the producer of the crop and was not available to a non-producer.

51. The contractors maintained the hedgerows and topped the set aside areas.

The use of the farm outbuildings under the contract farming arrangements

52. Mr Parker did not use any of the farm outbuildings at Rosteague during the period of his contract farming agreements. After 1993 Mr Symons used the Dutch barn to the north of the farm yard (building area 1) for the storage of straw and that arrangement continued during the contract farming agreement with him (which commenced in 1996 and existed at the dates of the two relevant deaths). Typically the building was filled to capacity with bales of straw in the autumn and, as the straw was used, the space which was made available was used for the storage of machinery and also fertiliser and corn.

53. Building area 2 was not actually a building but a dung stead where dung from building areas 3, 4 and 5 was stored until spread on the holding. Building area 3 was initially used as a secure store for agricultural chemicals. Between 1993 and 2002 it was used as an informal tack room when horses were stabled in building area 4. Building area 4 was used for the stabling of horses between 1993 and 2002. During this time Mr McKenna allowed a Mrs D Johnson (later Mrs D Crewes) to graze some horses over defined land at Rosteague and they were stabled in building area 4. This area was also used for about six or seven months to house calves belonging to the contract farmer (Mr Symons) during the foot and mouth crisis. Otherwise it was used for the storage of objects such as coils of water pipes and fittings etc. Building area 5 was never used for horses. For about five or six years it was used to store some seasoned timber belonging to a Mr Terry Green, a local villager and carpenter who paid Mr McKenna a small rent. This arrangement ended in about November 2002.

54. Building area 6 was used for general storage including field troughs, gates, fencing stakes and materials. Building area 7 was also used for the storage of items such as creosote, hand tools, farm tools etc. Building area 8 was used for general farm storage including from time to time cement and blocks for construction. The grain silo (building area 9) was used mainly for the secure storage of agricultural chemical containers pending their proper disposal and building area 10 was used for the storage of agricultural machinery (including a tractor, trailer, pasture topper, fertiliser spinner etc) together with bales of hay for fodder. I received no evidence about the use of building area 11.

55. I accept the evidence of Mr Arnander that he did not see the farm outbuildings used for the storage of Mr McKenna's own lawn mowers (which included two motor mowers and a tractor mower). The farmyard was "a very scruffy farmyard" and some of the farm outbuildings did not have very much in them.

The role of Messrs Strattons

56. Mr Fletcher of Messrs Strattons was responsible for the management of the land, the farming activities, the invoicing of the contractors and all discussions with the contractors. All correspondence with the contractors was conducted by Messrs Strattons; there was no correspondence directly between Mr McKenna and any contractor. Further, most meetings with the contractors were conducted by Messrs Strattons and not with Mr McKenna, apart from one meeting, arranged by Mr Fletcher, between Mr Symons, Mr McKenna and Mr Fletcher which meeting was held at Rosteague House when cropping was discussed. Although some of the contract farming agreements referred to an agreed policy there was no document recording any agreed cropping policy; in practice the contractor would have discussions with Mr Fletcher about cropping. Decisions about farming strategy were made by the contractor after consultation with Mr Fletcher (who in turn might consult Mr McKenna) .

57. Most of the supervision and management of farming matters was undertaken by Mr Fletcher. The only occasion which Mr Fletcher could recall when Mr McKenna handled a matter personally was in 2001. Mr Fletcher told Mr McKenna that normally South West Water would grant an allowance for leakage and suggested that Mr McKenna take the matter up with South West Water. On 12 November 2001 Mr McKenna completed an application for a leak allowance stating that the property served by the water supply was "Farm, small Manor house, 3 other houses".

58. Mr Fletcher had meetings with Mr McKenna, sometimes informally, to discuss farm matters. Mr Fletcher had notes of forty-six meetings between 1994 and 2003 (about five a year). The meetings were either on the telephone or in the study at Rosteague House. Matters discussed included the negotiation and finalisation of the contract farming arrangements; cropping plans; the improvement of access and widening of gateways to facilitate modern farm machinery; the improvement of the water supply; the maintenance of hedgerows; issues about soil erosion; the viability and implementation of woodland planting schemes; pest control; the use of some farm buildings for winter straw storage; the maintenance of the farm buildings; crop spraying; grazing; improvements to drainage; and the viability of a countryside stewardship scheme. As owner, the roads, water and drainage were the responsibility of Mr McKenna. There was consultation as to cropping programmes at least annually and Mr McKenna made a number of decisions about the direction of ploughing, sub-soiling to reduce soil compaction, and a change of cropping to take winter cereals further away from the sea so as to reduce salt burn. Mr McKenna would occasionally take a lead in which seed should be used for which crop because he took an interest in seed crop variety.

The role of Mr McKenna

59. Throughout the contract farming arrangements Mr McKenna, in addition to having discussions with Mr Fletcher, frequently walked the farm inspecting things as he went; and he kept the farm records and documents. In fact both Mr McKenna and Lady Cecilia walked the property regularly to see that everything was in order. Mr McKenna was helped in the inspection by his gardener/handyman (25% of whose wages were claimed as a deduction in the income tax accounts for the business). After 1989 Mr Fletcher effectively lived on site at Rosteague Vean and was able to inspect the farming arrangements also.

60. Mr McKenna personally prepared and kept meticulous documents and records. These included a cash book, which recorded all receipts and expenditure, and the value added tax calculations and returns. Mr McKenna paid the bills and retained vouchers and working papers, which included detailed spread sheets, to facilitate the preparation of income tax returns and audited farm accounts. Mr McKenna also completed and kept copies of farm census documentation. Finally, he corresponded with Messrs Strattons and kept files of this correspondence which covered all aspects of the management of the farm. Mr McKenna worked on these matters, and kept all the relevant documents, in the study at Rosteague House which served as the farm office and where meetings with Mr Fletcher were usually held. Field plans covered the walls and box files filled the bookcases. The box files contained all the agricultural and financial records.

61. Mr McKenna paid income tax under Schedule D in respect of the farming business. Farm accounts were first prepared for the period from 1 October 1984 to 30 April 1985 and thereafter for each year ending on 30 April until 30 April 2002. After that farm accounts were prepared for the period from 1 May 2002 to 16 June 2003 and from 17 June 2003 to 27 February 2004. For the purposes of the accounts Messrs Strattons prepared a valuation of the growing crops as at 30 April each year The farm accounts were audited by chartered accountants. Mr Fletcher agreed that a different type of accounts would have been prepared if Mr McKenna had farmed the land personally; for example, the expenses would have been different if Mr McKenna had his own machinery. The accounts showed turnover increasing from £6,740 on 30 April 1985 to £19,450 on 30 April 2002. After the deduction of the cost of sales and administrative costs the adjusted profit moved from £57 on 30 April 1985 to £5,837 on 30 April 2002. Between 1985 and 2002 there were five years when a loss was made. The highest profit was £6,820 in 1998 and the highest loss was £7,975 in 1994. Mr McKenna did not depend on the farm for his income as he was in receipt of a pension from a previous employment.

62. I accept the estimate of Mr Bere that the total amount of work required for the farming operations each year was .about 900 hours, namely 22.5 weeks of 40 hours each. Of these 900 hours, 700 were carried out by the contractor and a substantial proportion of the rest of the time required for management was carried out by Mr Fletcher. I conclude that Mr McKenna would have spent about an hour a day on farming matters

Other activities

63 In addition to the time spent on farming matters the McKennas both had many other interests and engaged in a very wide range of activities. When Mr McKenna retired in 1978, and sold the London flat, he purchased a smaller flat in London which he used to visit regularly as he was Vice-President and Honorary Secretary of the Royal College of Music, the Chairman of the Sadlers Wells Trust, the Chairman of the Bach Choir and a member of the Madrigal Society. He frequently made visits of two to three days to London. As the years went by Mr McKenna purchased smaller and smaller flats until in 1998 he sold the last flat after which he stayed with Mr Arnander when he visited London. Mr Arnander estimated that in the early 1990s Mr McKenna would spend about two to three days a month in London for ten months each year after which the number of visits to London declined. In addition to the visits to London Mr McKenna and Lady Cecilia took holidays abroad more frequently in summer than in winter. Mr McKenna was also involved in many other activities of a musical, artistic or charitable nature. He was a member of the Country Landowners Association and of the Royal Cornwall Agricultural Association as well as many other societies and associations.

64. Other activities that the McKennas undertook during their years at Rosteague House included vegetable and fruit growing, bee keeping, poultry keeping, apple juice manufacture, horse grazing, and woodland development.

1995 – 2003 – the ill-health of Mr McKenna and Lady Cecilia

65. In 1995 Mr McKenna had a bad fall and suffered a stroke. He was taken to hospital and thereafter gradually became lame and could not get about. He also damaged one eye and needed a cataract operation. Thus after 1995 Mr McKenna was unable to inspect the property and this was done by Mr Fletcher and family members. Mr Arnander said that the family felt responsible and kept an eye on everything. From about 1997 Mr Fletcher took decisions on agricultural matters.

66. On 5 June 1997 Mr McKenna made a deed of gift and conveyed all the land and buildings the subject of the 1945 conveyance (other than the land and buildings sold to Mr and Mrs Fletcher) to himself and Lady Cecilia to hold the same as beneficial tenants in common. In 1998/99 Lady Cecilia had a heart seizure and was taken to hospital. She recovered and then went home to Rosteague House. However, although she was physically well she became absent-minded and forgetful. She also required a cataract operation. At that time the staff at Rosteague House included Mr Copp (who was the gardener/handyman and who did some things on the farm) and Mrs Copp (who cleaned and did some light cooking in the house); they both lived at the Lodge.

67. On 3 March 1999 Lady Cecilia appointed Mr Arnander and her two daughters, Mrs Villiers and Sophia Mary McKenna as her attorney under the Enduring Powers of Attorney Act 1985. In 2000 Mr and Mrs Copp left the Lodge after which it was occupied by a Mr and Mrs Humphries and a part-time gardener was employed. In December 2001 both Mr McKenna and Lady Cecilia applied for disability living allowance and attendance allowance after which two carers lived at Rosteague House (but they were not there at the same time).

2003 – the deaths of Mr McKenna and Lady Cecilia

68. Mr McKenna died on 29 January 2003 aged 91. The obituaries which were published after his death mentioned very many of his numerous activities but none mentioned an interest in farming. After the death of Mr McKenna, Mr Arnander kept the cash book and the value added tax records for the farming business. Lady Cecilia, who was then aged 92, became increasingly frail and was unable to cope on her own and so she entered a nursing home. Mr Arnander as her attorney took charge of running the farm and visited Rosteague House on eight occasions (for 38 days) between the death of Mr McKenna and the death of Lady Cecilia. He spent about two hours each day that he was there looking after administrative and financial matters (including value added tax and income tax) and he also walked the property. The house remained fully furnished and was maintained by employees and ready for the use of Lady Cecilia at all times. The business books, and tax and value added tax records, remained at the house and were attended to by Mr Arnander who also continued to meet Mr Fletcher at the house on matters of farm business.

69. Lady Cecilia died in the nursing home on 16 June 2003. After the death of Lady Cecilia the estate was put on the market and, until the date of the sale, the farm business was carried on by the Appellants as her executors. Mr Fletcher also remained as land agent and was involved with the management of the contract farming arrangement with Mr Symons and with the preparation for the sale of the estate

2004 - the sale of the estate .

70. The sale of the estate was conducted jointly by the residential sales team at Messrs Strattons and by Knight Frank of London. The estate was sold as a residential property and Messrs Strattons did not try to sell it as a farm. The farmland was mentioned briefly in the sale particulars. During enquiries before contract the purchasers were informed that Mr Symons had made all the returns under the Integrated Administration and Control System (IACS) and that therefore eligibility for arable area payments might not remain with the land.

71. On 28 October 2003 a visual building survey report was prepared by a firm of surveyors for the benefit of potential purchasers. The report contained many pages of recommendations and indicated that substantial expenditure was required. On 22 December 2003 contracts for the sale were signed. The sale price was stated to be £3,050,000 with completion to take place on 27 February 2004.

72. On 9 November 2005 the firm of surveyors which had prepared the visual building survey report reported to the Appellants' solicitors that very considerable essential works had been needed to make the house properly wind and water tight since it was evident on inspection that not much essential maintenance had been done for many years. The pointing was bad and water was saturating the walls. The roof was in poor repair where two valley gutters were leaking badly. Water had caused decay to the ceilings on the west side of the property and the windows were in a "shocking" state. Urgent re-instatement works had been undertaken to make the exterior of the house sound; this included re-roofing, pointing and restoration of the windows. There had also been re-wiring and some renewal of the plumbing system. The total cost, excluding plumbing and heating, came to £189,780.14 and the plumbing and heating works cost in the region of an additional £19,000. However, this was only stage 1 of a programme which would be completed by the purchasers. I accept the evidence of Mr Arnander that, at the dates of death of Mr McKenna and Lady Cecilia, Rosteague House was unmodernised and in very poor condition. There was no central heating or double glazing. I saw

photographs of the interior which indicated that generally the property was in a poor state of repair at the relevant dates of death.

Reasons for Decision - Issue (1) – Was it a farmhouse?

73. The first issue in the appeals is whether Rosteague House (with its gardens and domestic outbuildings) was a farmhouse within the meaning of section 115(2).

74. It was the Appellants' case that where there was only one house on a farm, and where it was in the occupation of the persons carrying on the farming business, it was a farmhouse as it would be the chief, and indeed the only, dwelling attached to the farm. Rosteague House was the dwelling of the owners of the farm and the place from which the farming business was managed. The McKennas were in charge of the direction of the farming business; they directed the contractors through their agent, Mr Fletcher; they maintained the business and tax records at the house and meetings with Mr Fletcher to discuss farm policy were held there. It was the Revenue's case that a farmhouse was a building with a particular function and in each case it was necessary to look at the function the house performed in relation to the agricultural land. The occupant of the farmhouse must be someone who could be called a farmer and who lived in the house in order to farm the land on a day-to-day basis.

75. In approaching the arguments of the parties I have found it convenient to begin by considering the statutory context of the word farmhouse. I then consider the authorities cited to me on the meaning of the word farmhouse, beginning with those which consider section 115(2) and then turning to those which deal with its use in income tax legislation. From these authorities I identify some relevant legal principles and then apply them to the facts of this appeal.

The statutory context

76. The full text of section 115(2) is:

> **"115(2) In this Chapter "agricultural property" means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property."**

77. A number of matters become clear on a full reading of the section. The first is the primacy of the agricultural land; the other things mentioned have to be ancillary to the land or of a character appropriate to the land. The second is that farmhouses are mentioned in the plural after cottages and farm buildings. And the third is that there is no provision that every farm must have a farmhouse; the reference is not to "the farmhouse" but to farmhouses generally.

The inheritance tax authorities

78. As there is no definition of farmhouse in section 115(2), it should be given its ordinary meaning within the context of that section relying on *Brutus v Cozens* (1973) AC 854 at 861 B-G. The parties agreed that the correct meaning of farmhouse in that context had been given by the Special Commissioner in *Rosser v Inland Revenue Commissioners* [2002] STC (SCD) 311 at paragraph 53 which states:.

> "53. The dictionaries define farmhouse as "the chief dwelling house attached to a farm" (see Oxford English Dictionary (2nd edn., 1989)); "a house attached to a farm especially the dwelling from which the farm is managed" (see Collins Concise Dictionary 21st Century Edition (2001); "the farmer's house attached to a farm" (see Chambers English Dictionary (1989)) The ordinary and natural meaning that I would attach to the word "farmhouse" in s 115(2) is that it must be a dwelling for the farmer from which the farm is managed."

79. The meaning of the phrase "a dwelling for the farmer from which the farm is managed" was amplified in the decision of the Lands Tribunal in *Lloyds TSB Private Banking Limited as personal representative of Rosemary Antrobus deceased v Peter Twiddy* (2005) DET/47/2004 (*Antrobus 2)* at paragraph 49 which states::

> "49. A farmhouse is the chief dwelling-house attached to a farm, the house in which the farmer of the land lives. There is, we think, no dispute about the definition when it is expressed in this way. The question is: who is the farmer of the land for the purpose of the definition in section 115(2)? In our view it is the person who lives in the farmhouse in order to farm the land comprised in the farm and who farms the land on a day to day basis. It is likely, though it may not necessarily always be the case, that his principal occupation will consist of farming the land comprised in the farm. We do not think that a house occupied with a farm is a farmhouse simply because the person living there is in overall control of the agricultural business conducted on the land; and in particular we think that the lifestyle farmer, the person whose bid for the land is treated by the appellant as establishing the agricultural value of the land, is not the farmer for the purpose of the provisions."

80. I approach that statement with some caution because the Lands Tribunal is primarily concerned with agricultural values. Also, it seems to me that it is more appropriate to decide in each case whether a house is a farmhouse within the meaning of section 115(2) rather than to set out general principles which are not part of the statutory language and then decide if the facts conform with those general principles. Nevertheless the principle that the farmer of the land is the person who farms it on a day-to-day basis rather then the person who is in overall control of the agricultural business conducted on the land is a helpful principle.

The income tax authorities

81. For the Appellants Mr Massey suggested that one definition of farmer could be the person carrying on the Schedule D Case 1 business and he cited a number of authorities on the meaning of farmhouse for income tax purposes including *Lindsay v Commissioners of Inland Revenue* (1953) 34 TC 289; *Commissioners of Inland Revenue v John M Whiteford & Son* (1962) 40 TC 329; and *Korner and Others v Commissioners of Inland Revenue* (1969) 45 TC 287. He argued that there was nothing in these income tax authorities to suggest that the occupier of a farmhouse had himself to undertake farming work.

82. In *Lindsay (*1953) a tenant farmer lived abroad and the farm was managed by agents. The only dwelling house on the farm was occupied by a shepherd and his family. The tenant incurred certain expenditure on the house and the issue was whether the house was a farmhouse because, if it was, only one-third of the expenditure was deductible for income tax purposes. The tenant argued that the house was not a farmhouse because he did not live there. The General Commissioners held that the dwelling was a farmhouse and their decision was upheld by the Court of Session. At 292 Lord Carmont said:

> "The farm-house does not, as I understand it, cease to be the farm-house merely because the person conducting the farm is not the farmer himself but a person to whom he delegates the duty of running the farm as in this case the shepherd who is employed on his behalf to run it. It seems to me that the Section contemplated a building used by the person running the farm as being the farm-house … ."

83. In my view that authority does not support the case of the Appellants. The principle established in *Lindsay* is that the farmer of the land is the person who actually farms it on a day-to-day basis rather than the person who is in overall control of the agricultural business conducted on the land.

84 In *Whiteford* (1962) a father and son as partners operated two holdings as one and lived in the original farmhouse of one holding. The son got married and the partnership built him a house. The issue was whether the new house was a cottage, with the result that the whole of the expenditure was

deductible for income tax purposes, or a farmhouse with the result that only one-third of the expenditure was deductible. The General Commissioners held that the new building was a cottage and their decision was upheld by the Court of Session. At 384 the Lord President said:

> "In my view the status or employment of the occupier of the premises is not the test and the proper criterion is the purpose of the occupation of the premises in question. … Of course, if the house had been proved to be extravagantly large for the purpose for which it was being used, or if it had been constructed upon some more elaborate and expensive scale, it may be that it could be treated, notwithstanding the purpose of its occupation, as having fallen out of the category of a cottage and been converted into something much more grand. But this is a question of degree and largely of fact … ."

85 Using that test of the purpose of the occupation of the premises the Lord President held that the new house was an agricultural cottage for the purposes of the relevant legislation. Thus the principle in *Whiteford* is that the status of the occupier of the premises is not the test but the proper criterion is the purpose of the occupation of the premises in question.

86. In *Korner* (1969) the appellant acquired an estate of five farms which together amounted to 1,768 acres of which 212 acres were let, the rest being farmed by the appellant. There were six houses on the estate, being the main house and five others. Each of the five others went with one of the five original farms. One of the five houses was occupied by the tenant farmer of the let land and the other four by foremen employed by the appellant. The appellant employed a local farmer as factor to control the day-to-day farming activities but the appellant himself exercised financial control and spent at least one hour a day on the business, and sometimes five or six hours. The main house had over 20 rooms but only the library and drawing room were used for the farming business. The issue was whether the main house was the farmhouse for the purpose of deducting expenditure for income tax purposes. The Special Commissioners were not satisfied that the main house was the farmhouse within the meaning of the legislation but in the Court of Session and the House of Lords the Revenue conceded that the main house was the farmhouse. However Lord Upjohn at 299 came to a different view and said:

> "I think it right to say that I am no more satisfied than the Special Commissioners that this house could properly be described as "the farmhouse" within s 526. This is a matter of fact to be decided in the circumstances of each case, and I would think that to be "the farmhouse" for the purposes of the section it must be judged in accordance with ordinary ideas of what is appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farm being farmed, and not part of a rich man's considerable residence. I say that without reference to the facts of the case."

87. Lord Donovan at 299 remarked that the Special Commissioners were not satisfied that the main house was the farmhouse "and having regard to the kind of accommodation it affords, and the use of the house for farming business for about one hour a day as a rule, this is not surprising."

The legal principles

88. From those authorities I derive the following principles. That a farmhouse is a dwelling for the farmer from which the farm is managed *(Rosser);* that the farmer of the land is the person who farms it on a day-to-day basis rather then the person who is in overall control of the agricultural business conducted on the land (*Antrobus 2 and Lindsay);* that the status of the occupier of the premises is not the test but the proper criterion is the purpose of the occupation of the premises (*Whiteford)*; however, if the premises are extravagantly large for the purpose for which they are being used, or if they have been constructed upon some more elaborate and expensive scale, it may be that, notwithstanding the purpose of occupation, they should be treated as having been converted into something much more grand (*Whiteford);* and that the decision as to whether a building is a farmhouse is a matter of fact to be decided on the circumstances of each case and must be judged in accordance with ordinary ideas of what is appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farm being farmed *(Korner*).

Application of legal principles to the facts

89. Before applying those principles to the facts of the present appeals I have found it convenient to summarise what I see to be the relevant factual context.

90. Before 1908 it would appear that the day to day farming activities at Rosteague were carried on from Rosteague House. However, in 1908 a new farmhouse was built and after that date the tenant farmer moved to the farmhouse and farmed the land. Rosteague House then became dissociated from the farming activities and that position remained for the seventy-five years until 1984. After 1945 Mr McKenna owned Rosteague House and the estate and until 1984 received the rent from the tenant farmer and no doubt paid income tax on the rents received. He also had discussions with the tenant farmer directly about matters such as water, roads, hedges, fences, buildings, damage by cows and rents. The Appellants agreed that between 1908 and 1984 Rosteague House was not the farmhouse. What changed in 1984?

91. In 1984 the tenant farmer surrendered his tenancy and after that date the day to day farming activities were instead conducted by the contract farmers who were managed by Mr Fletcher of Messrs Strattons. Mr McKenna had discussions with Mr Fletcher in his study at Rosteague House and also used his study to prepare and keep the farm accounts and other farm records. He received the payments from the contract farmers through Messrs Strattons and paid income tax under Case I of Schedule D on the profits.

92. With that factual context in mind I turn to decide if Rosteague House was a farmhouse. In my view, as a matter of fact in these appeals, Rosteague House was not the main dwelling from which the agricultural operations over the land were conducted and managed. The day to day management and all acts of farm husbandry over the land were solely the responsibility of the contractors and the management of the contractors was carried out by Mr Fletcher. I agree that Mr Fletcher managed the farm as the agent for the McKennas but the fact remains that the instruction of Mr Fletcher meant that the use of Rosteague House for farming matters was very much reduced. If the farmer of the land is the person who farms it on a day-to-day basis rather than the person who is in overall control of the agricultural business conducted on the land then Mr McKenna was not the farmer. The purpose of his occupation of Rosteague House was not to undertake the day to day farming activities. In any event, in my view Rosteague House was larger, grander, more elaborate and more expensive than was required for the reduced farming purposes for which it was in fact used. Its size, content and layout, taken in conjunction with the farm buildings and the particular area of farm being farmed points to the conclusion that it was primarily a rich man’s residence rather than a farmhouse.

93. For the Appellants Mr Massey argued that there was no provision that the farmer had to make a profit; in this respect agricultural property relief differed from business property relief because section 103(3) of the 1984 Act specifically provided that a business carried on otherwise than for gain was not included in business property relief. Also, paragraph 3 of Schedule 8 of the Finance Act 1975, the predecessor of the current provisions, provided that agricultural property relief was only available to a transferor who was wholly or mainly engaged in farming carried on as a trade and not less than 75% of whose income was immediately derived from his engagement in agriculture. However those provisions did not appear in the 1984 Act the provisions of which did not confine the relief to a working farmer or a full-time working farmer. Now the relief was based on ownership of agricultural property. I agree with all these arguments but they do not alter my view that Rosteague House was not a farmhouse within the meaning of section 115(2).

94. My conclusion on the first issue in the appeals is that Rosteague House (with its gardens and domestic outbuildings) was not a farmhouse within the meaning of section 115(2). That conclusion means that I do not have to consider issues (2) and (3). However, in case I am wrong in concluding that Rosteague House was not a farmhouse, and as arguments were put to me, I express my views.

Reasons for decision - Issue (2) – Was it “of a character appropriate”?

95. The second issue in the appeals is, if Rosteague House was a farmhouse, whether it was "of a character appropriate to the property" within the meaning of section 115(2). It was the Appellant's case that Rosteague house was a farmhouse of a character appropriate to the property and it was the Revenue's case that it was not.

96. In approaching the arguments of the parties I have again found it convenient to begin by considering the statutory context of the words "of a character appropriate to the property". I then consider the authorities cited to me and also the expert evidence before reaching a decision.

The statutory context

97. The full text of section 115(2) is:

> **"115(2) In this Chapter "agricultural property" means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property."**

98. Once again I note the primacy which the section gives to the agricultural land. Also, it is clear that "the property" referred to in the phrase "of a character appropriate to the property" is the agricultural property which is primarily the agricultural land.

The authorities

99. The Appellants relied upon the principles identified by the Special Commissioners in *Lloyds TSB (personal representative of Antrobus deceased) v Inland Revenue Commissioners* [2002] STC (SCD) 468 (*Antrobus 1)* at paragraph 48. The Revenue agreed that these principles gave very useful guidance but argued that the matter was still a question of fact and degree having regard to all material considerations. They also cited *Higginson's Executors v Inland Revenue Commissioners* [2002] STC (SCD) 483 which was distinguished by the Appellants.

100. In paragraph 48 of *Antrobus 1* the principles were identified in the following way:

> "48. Thus the principles which have been established for deciding whether a farmhouse is of a character appropriate to the property may be summarised as: first, one should consider whether the house is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed (*Korner*); secondly, one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question *(Starke v Inland Revenue Commissioners* [1994] STC 295 and [1995] STC 698); thirdly that although one cannot describe a farmhouse which satisfies the "character appropriate" test one knows one when one sees it *(Dixon v Inland Revenue Commissioners* [2002] STC (SCD) 53)*;* fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm *(Dixon v Inland Revenue Commissioners* [2002] STC (SCD) 53); and finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (*Dixon*)."

101. In *Higginson's Executors* the Special Commissioner said at paragraph 13:

> "13. I am of the clear opinion that for the purposes of section 115(2) the unit must be an agricultural unit: that is to say, that within the unit the land must predominate. As Morritt LJ said in *Starke and anor (exors of Brown, decd) v IRC* [1995] STC 698 at 694 … "It is as though the draftsman had started with the land and then dealt with what should be treated as going with it."

For present purposes any qualifying cottages, farm buildings or farm houses must be ancillary to the land."

102. The Revenue relied upon *Higginson's Executors* for the principle that the price or value of the house relative to that of the agricultural land and the profitability of the agricultural land relative to the affordability of the house were relevant factors to be borne in mind. The Appellants argued that the "character appropriate" test related to the character of the house and not the price and the fact that the price would be a bad investment in terms of yield from the farm was not a relevant factor. In my view it is not appropriate to compile an exclusive list of relevant factors which are to be considered in deciding whether a farmhouse is of a character appropriate to the agricultural land. The question is one of fact and degree and any factor could be relevant. No one factor is determinative but relevant factors in this appeal are: the historical associations; the size, content and layout of the house; the farm outbuildings; the area being farmed and whether the house is proportionate to the land being farmed; the view of the educated rural layman; and the relationship between the value of the house and the profitability of the land. Before considering each of these I summarise the expert evidence about comparable properties.

The comparable properties

103. Mr Beer, who gave expert evidence on behalf of the Appellants, had compared thirty-one other properties in Devon and Cornwall to demonstrate the range of size, style and substance of agricultural holdings in the area. He had approached Messrs Strattons and also a firm in Exeter and asked them to send him sale particulars of properties like Rosteague, that is with larger houses. He had analysed all the replies. The thirty-one properties had between five and eleven bedrooms with a average being about seven; they had an acreage of between 100 acres and 509 acres. Most of the houses were listed, with two being Grade 1, fourteen being Grade II and three being Grade II*. Twelve of the farms had livestock (beef, sheep or dairy) and eighteen were mixed farming. One grew vegetables only. Thirteen were farmed under tenancies under the Agricultural Holdings Act 1986; two had been so farmed until 2001 after which they were owner occupied; fifteen others were owner occupied; and one was farmed under a lease for 25 years. Some of the comparable properties looked visually like Rosteague House having a horizontal wing with a forward wing at each end and being of stone construction with slate roofs.

104. Mr Bere, who gave expert evidence on behalf of the Revenue, had analysed the sale particulars of forty-eight farms in Cornwall. As he had no access to information about sales of tenanted farms he accepted that he had looked at a small cross-section. Ten of his farms had been identified from documents delivered to the Land Registry and forwarded to the District Valuer relating to properties with an acreage similar to that of Rosteague; of these one farm with 104 acres had a farmhouse with four bedrooms and one had an acreage of 142 acres with a five bedroomed farmhouse. Twenty-five of the farms analysed by Mr Bere had been selected from the magazine called Farmland Market between 2000 and 2005 where the acreage was not less than 50 acres. The rest had been identified from the sale particulars of similar properties in Cornwall. Mr Bere's comparable properties demonstrated that a farmhouse could have anything from between three to seven bedrooms and that the acreage could vary from about 80 acres to about 450 acres. Some of the farms had very pleasant gardens.

The historical associations

105. Although before 1908 farming activities seem to have been conducted from Rosteague House, the fact is that for the nearly seventy-five years between 1908 and 1984 they were agreed to have been conducted from Rosteague Farmhouse and Rosteague House was not then a farmhouse. After 1984 the farming activities were conducted under contract farming arrangements, through the agency of Mr Fletcher, and the use of Rosteague House for farming matters was very limited indeed.

The size, content and layout of the house

106. Mr Bere had calculated the gross external areas of his comparable farmhouses (which information he derived from council tax returns). Rosteague House had a gross external area of 740

square metres (excluding the music room) and 865 square metres (including the music room) and the farmhouses in Mr Bere's analysis had significantly less that that. Mr Bere concluded that the accommodation provided by Rosteague House did not compare with the operational farmhouses occupied with similar amounts of agricultural land; the interior was not similar to those of typical farmhouses and no other farms had properties which were let to persons working in the house but not on the farm. On the other hand the farmhouses in Mr Beer's comparable properties had gross external areas of between 163 and 1,576.square metres.

107. Only two of Mr Beer's comparable properties had more bedrooms than Rosteague House. One had nine bedrooms but these were used for holiday accommodation. One had ten bedrooms but that was a dairy farm with 250 acres; it was farmed under the Agricultural Holdings Act and the fact that the rent had to be paid out of the results of the business demonstrated that the land was being farmed commercially. It was not known whether any of the owner occupied farms were farmed under contract farming arrangements.

108. It seems to me that a raw gross external area figure is not very helpful unless one knows the use to which the property is being put. However, the indications are that Rosteague House is at the very top end of the size of a farmhouse in Cornwall and that the farms with a house of that size had more acres of land. I agree that the interior of Rosteague House was not similar to that of a typical farmhouse. Although it may not have been in a good state of repair, lack of repair goes to value rather than character. Rosteague House had an interior of grace and charm.

The farm outbuildings

109. The farms in Mr Bere's comparable properties had significantly more farm outbuildings than Rosteague. It is also relevant that some of the farm outbuildings at Rosteague were not used for agricultural purposes. I also regard the situation of the farm outbuildings as relevant. As one approached the front of Rosteague House the farm outbuildings were not visible at all. They were located to the rear of the house and separated from it by the rear courtyard.

The area being farmed

110 In Mr Beer's comparable properties only two had acreages smaller than Rosteague House. One was a dairy farm with 100 acres but the tenant also rented a further 100 acres of land in various parcels. The other had 102 acres of land which was mainly pasture and woodland with extensive equestrian facilities. In my view the size of Rosteague House was not proportionate to the land being farmed.

The view of the educated rural layman;

111. In my view the educated rural layman would conclude that Rosteague was primarily an estate with a large country house and some farmland. This is borne out by the sales particulars for the marketing of the estate which described Rosteague House as "a substantial Manor house" and " a large country house"; there was no mention of a farmhouse and the farm land was mentioned only briefly. I accept the evidence of Mr Bere that usually farmhouses were advertised in the agricultural press in order to attract the agricultural market. Finally, I note that when Mr McKenna was corresponding with South West Water in 2001 he described Rosteague House as a "small Manor house".

The value of the house and the profitability of the land

112. Mr Bere had analysed the sale prices of his comparable properties which indicated that the price per acre was significantly less than for Rosteague with land values forming a greater proportion of the overall figure. Mr Bere had also analysed the consideration paid by the purchaser for the whole estate and he calculated that £2,030,000 had been paid for Rosteague House with the rest of the consideration being paid for the land and the three let properties. Thus the agricultural land only represented 12% of the total sale proceeds and Rosteague House 65%. These relative values demonstrated the predominant nature of Rosteague House in the overall estate. Mr Bere then went on to consider what level of income could be expected from the land, assuming an average farmer. He calculated that a total gross margin of between £27,500 to £32,500 could be expected before fixed

costs, borrowings and the value of the farmer's own labour. After deduction of fixed costs (of machinery and labour estimated at £16,500) the net profitability from the farming activities would be between £11,000 and £16,000 and so would not provide a living income to support a person living in Rosteague House. It was therefore not a property that would attract demand from a commercial farmer who had to earn a living from the land.

113. I accept the principles of Mr Bere's analyses without necessarily accepting the details. In my view Rosteague House was predominant in the estate over the agricultural land and this is demonstrated by the sales particulars. I also agree that, even bearing in mind the changes in the value of money, the amount of profits shown in the audited accounts (which varied between a profit of £6,820 in 1998 and a loss of £7,975 in 1994) would not provide a living income for a person who paid over £3m for the whole estate and so would not attract demand from a commercial farmer.

114. In conclusion, Rosteague House was not used as a farmhouse between 1908 and 1984 and after 1984 its use for farming activities was very much reduced because of the instruction of Messrs Strattons and because of the contract farming arrangements. Rosteague House is at the very top end of the size of a farmhouse in Cornwall and farms with a house that size have more agricultural land. Rosteague House was sold as a large country house with farmland and not as a farm with a house. The value of Rosteague House was well out of proportion to the profitability of the farm.

115. My conclusion on the second issue in the appeals is that, if Rosteague House was a farmhouse, then it was not "of a character appropriate to the property" within the meaning of section 115(2).

Reasons for decision - issue (3) - occupied for the purposes of agriculture

116. The third issue in the appeal is whether Rosteague House (with its gardens and domestic outbuildings) was occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117(a).

117. For the Appellants Mr Massey relied upon *Harrold v IRC* [1996] STC (SCD) at page 200 applying *Graysim Properties Ltd v P & O Property Holdings Limited* [1995] 4 ALL ER 831 for the principle that the occupation of agricultural property falls to be determined by reference to a consideration of each constituent element of the agricultural property. He argued that the McKennas were in occupation of the farmland for the purposes of agriculture and of the house as a farmhouse for the purposes of agriculture The fact that the contractors undertook the day to day farming activities were sensible features of the McKennas' farm operation given their relative ages and strength. He argued that the fact that Lady Cecilia was not physically present at Rosteague House in the last months of her life did not mean that the farmhouse was not occupied by her for agricultural purposes. Physical presence was not required and he cited *Bacchiocchi v Academic Agency Limited* [1998] 1 WLR 1313. Lady Cecilia continued to carry on the farming business through the contractor; she remained in rateable occupation of the house; she wanted to return; and all her things were there.

118. For the Revenue Mr Karas argued that, as Rosteague House was not a farmhouse of a character appropriate to the property, this issue did not arise.

119. I agree with Mr Karas. In the light of my conclusions on issues (1) and (2) I have to conclude that Rosteague House (with its gardens and domestic outbuildings) was not occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117(a) Even if I had concluded that Rosteague House was a farmhouse of a character appropriate to the property it is clear that neither Mr McKenna nor Lady Cecilia were able to engage in farming matters throughout the period of two years ending with the relevant dates of death.

Reasons for decision- issue (4)– occupied for the purposes of agriculture

120. The fourth issue in the appeal is whether the farm outbuildings were occupied for the purposes of agriculture throughout the period of two years ending with the relevant date of death within the meaning of section 117(a).

118. For the Appellants Mr Massey argued that all the outbuildings were occupied for the purposes of agriculture as they were used or kept ready for use predominantly for the purposes of the storage of farm machinery and utilities. They were not used for any non-agricultural purposes. For the Revenue Mr Karas accepted that the Dutch barn (building area 1) and the grain silo (building area 9) were used for the purposes of agriculture. As far as building areas 3, 4 and 5 were concerned these had not been used for the purposes of agriculture. He left it to my decision as to whether the other buildings had been so used.

119. Before considering each building in turn I make a number of general comments. Before 1984 it appears that most of the farm outbuildings were used by the tenant farmer for dairy farming purposes. After 1984 there was only arable farming at Rosteague and this was conducted by the contract farmers. The first contract farmer, Mr Parker, did not use any of the farm outbuildings at Rosteague during the period of his contract farming agreements which ended in 1994. After 1993 Mr Symons used the Dutch barn to the north of the farm yard (building area 1) for the storage of straw and that arrangement continued during the contract farming agreement with him (which commenced in 1996 and existed at the dates of the two relevant deaths).

120. The burden of proof in these appeals is on the Appellants to show that the outbuildings were used for the purposes of agriculture throughout the period from 2001 to 2003.

121. It was agreed that building area 1 was used for the purposes of agriculture. Building area 2 was not actually a building but a dung stead. I am not satisfied on the evidence before me that it was a building within the statutory definition. Also after 1984 dairy farming had given way to arable farming and so the dung stead would have been used only when the horses were present and that was between 1993 and 2002. The livery of horses is not agricultural purposes and so if the dung stead were used after 2001 it was not used for agricultural purposes.

122. Between 1993 and 2002 building area 3 was used as an informal tack room when horses were stabled in building area 4. Thus building area 3 was used for non-agricultural purposes after 2001. Building area 4 was used for the stabling of horses between 1993 and 2002. This area was also used for about six or seven months to house calves belonging to the contract farmer (Mr Symons) during the foot and mouth crisis but I was not given the dates. However, as the horses were there after 2001 this building was used for non-agricultural purposes after 2001. Building area 5 was used to store some seasoned timber belonging to a Mr Terry Green, a local villager and carpenter who paid Mr McKenna a small rent. This arrangement ended in about November 2002 and so this building area was used for non-agricultural purposes after 2001.

123. After October 1984 building area 6 was used for general storage including field troughs, gates, fencing stakes and materials. Building area 7 was also used for the storage of items such as creosote, hand tools, farm tools etc. Building area 8 was used for general farm storage including from time to time cement and blocks for construction. In my view the Appellants have not discharged the burden of proving that these buildings were used for the purposes of agriculture for the two years prior to the dates of death.

124. The grain silo (building area 9) was used mainly for the secure storage of agricultural chemical containers pending their proper disposal and it was agreed that it was used for agricultural purposes. Building area 10 was used for the storage of agricultural machinery (including a tractor, trailer, pasture topper, fertiliser spinner etc) together with bales of hay for fodder. On balance I accept that this building area was used for agricultural purposes I received no evidence about the use of building area 11 and so the Appellant has not discharged the burden of proving that it was used for agricultural purposes.

125. My conclusion on the fourth issue in the appeal is that the farm outbuildings numbered 1, 9 and 10 were occupied for the purposes of agriculture throughout the period of two years ending with

the relevant date of death within the meaning of section 117(a) but that the farm outbuildings numbered 2, 3, 4, 5, 6, 7, 8 and 11 were not occupied for the purposes of agriculture throughout the period of two years ending with the relevant date of death within the meaning of section 117(a).

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Decision

126. My decisions on the issues in the appeals are:

(1) that Rosteague House (with its gardens and domestic outbuildings) was not a farmhouse within the meaning of section 115(2). That conclusion means that I do not have to consider issue (2) but in case I am wrong in concluding that Rosteague House was not a farmhouse, and as arguments were put to me, I express my views which are:.

(2) that if Rosteague House was a farmhouse it was not "of a character appropriate to the property" within the meaning of section 115(2);

(3) that Rosteague House was not occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117(a); and

(4) that the farm outbuildings numbered 1, 9 and 10 were occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117(a) but that the farm outbuildings numbered 2, 3, 4, 5, 6, 7, 8 and 11 were not.

127. That means that the appeals on the main issues are dismissed and I therefore confirm the Notices of Determination appealed against.

DR A N BRICE

SPECIAL COMMISSIONER

RELEASE DATE: 23 October 2006

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