Lloyds TSB Bank Plc v Inland Revenue [2002] UKSC SPC00336 (17 October 2002)

SPC00336

INHERITANCE TAX – agricultural property relief – freehold house which was owned and occupied by the deceased - agreed that it was a farmhouse – whether it was of a character appropriate to the property – yes – IHTA 1984 s 115(2)

THE SPECIAL COMMISSIONERS

LLOYDS TSB
AS PERSONAL REPRESENTATIVE OF
ROSEMARY ANTROBUS DECEASED

Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE

Respondents

Special Commissioner: DR NUALA BRICE

Sitting in London on 30 and 31 July 2002

William Massey QC with James Henderson of Counsel, instructed by Messrs Morton Fisher Solicitors, for the Appellant

Peter Twiddy, the Assistant Director of the Capital Taxes Office, for the Respondents

DECISION

The appeal

1. Lloyds TSB (the Appellant), as the personal representative of Rosemary Antrobus deceased, appeals against a Notice of Determination dated 20 March 2002 in the following form:

> "The Commissioners of Inland Revenue have determined-
>
> **In relation to** the deemed disposal on the death on 22 June 2001 of Rosemary Antrobus ("the Deceased")
>
> **That** the residence of the Deceased, Cookhill Priory, Alcester, Warwickshire was not, with the exception of the annexe used by a farm employee, having regard to the provisions of section 115(2) Inheritance Tax Act 1984 a farmhouse of a character appropriate to the agricultural land or pasture which formed part of the Deceased's estate."

2. After the issue of the Notice of Determination, and before the hearing of the appeal, the words "with the exception of the annexe used by a farm employee" were deleted. The amended determination thus read:

> "**That** the residence of the Deceased, Cookhill Priory, Alcester, Warwickshire was not, having regard to the provisions of section 115(2) Inheritance Tax Act 1984, a farmhouse of a character appropriate to the agricultural land or pasture which formed part of the Deceased's estate."

The legislation

3. Chapter II (sections 115 to 124C) of the Inheritance Tax Act 1984 (the 1984 Act) contains the provisions giving relief for agricultural property. Section 116 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 shall be reduced by the appropriate percentage. In certain cases the appropriate percentage is 100% and on other cases it is 50%. "Agricultural property" is defined in section 115(2) as:

> **"(2) In this chapter "agricultural property" means 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."**

The issue

4. At the date of her death Miss Rosemary Antrobus (Miss Antrobus) lived in a freehold dwellinghouse known as Cookhill Priory in Warwickshire. The house was surrounded by about 126 acres of freehold land and 6.54 acres of tenanted land all of

which was agricultural land or pasture. The Inland Revenue agreed that the house was a farmhouse.

5. Thus the issue for determination in the appeal was whether the farmhouse was "of a character appropriate to the property" within the meaning of section 115(2), "the property" being the 126 acres of freehold land and the 6.54 acres of tenanted land which constituted the agricultural land or pasture.

The evidence

6. There was a statement of agreed facts. A bundle of documents was produced by the Appellant and another bundle by the Inland Revenue. This contained a report of the District Valuation Office dated 12 March 2002 and details of some comparable properties; these documents were not agreed by the Appellant. Oral evidence was given on behalf of the Appellant by Mr Carl Henry Humphries, a Fellow of the Institute of Financial Accountants and the sole proprietor of an accountancy practice in Redditch. Mr Humphries had been the accountant of Miss Antrobus and had recorded his evidence in chief in two written and signed statements, one dated 24 July 2002 and the other dated 29 July 2002. Oral expert evidence was given on behalf of the Appellant by Mr Clive D Beer HND AGRIC DIP REM MRICS, an Associate Director of FPDSavills. Mr Beer had signed a comprehensive written report on 24 July 2002 which report contained, among many other things, some photographs of the property. I found Mr Beer to be an impressive witness; he was thorough, competent and precise and he had prepared his report, and gave evidence, in a most professional way. In particular he had prepared details of twenty-seven comparable properties which were of great assistance.

The facts

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

8. Cookhill Priory is described in the probate valuation, prepared on the death of Miss Antrobus, as "a detached country house with a traditional range of farm buildings, agricultural buildings, Summer House, Turret House, together with gardens, grounds and agricultural land in all extending to around 124.11 acres all of which form a working farm holding known as Cookhill Priory." It was agreed that, at the date of the death of Miss Antrobus, the house had six bedrooms.

The dwelling house

9. The site of Cookhill Priory has been occupied from ancient times. Within the grounds are the remains of an ancient camp with circular moats and earthworks. The present dwelling house stands on the site of a nunnery founded by Isabelle, Countess of Warwick, in 1260, although the charter of the foundation of the Order (probably Cistercian) dates from 1188. Whilst very little of the original nunnery remains it is believed that sections of the east and northern walls of the chapel are remnants from this period. The chapel is attached to the house at its northern end.

10. At the Dissolution the nunnery was valued at £35. 9s. 3d. In 1542 the site of the old nunnery was granted to Nicolas and Catherine Fortescue; Nicolas Fortescue was a member of the household of King Henry VIII. He built a new house which incorporated portions of the original establishment. Parts at least of this Tudor building remain and, at the date of the death of Miss Antrobus, they provided the east front of the dwellinghouse. This Tudor part is of a timber frame with brick infill; it has two storeys and is one room deep; and the rooms have oak panelling, large fireplaces and heavily beamed ceilings. During the lifetime of Miss Antrobus the ground floor rooms were used as the study, dining room and kitchen of the dwellinghouse. On the first floor there were four smaller rooms which were used as bedrooms; these were panelled and beamed. There was also an open attic above with a tank room. The rooms of this Tudor part overlook a concrete apron, also referred to as the farmyard or the cattle yard, which now provides the normal mode of access to the dwellinghouse.

11. In about 1765 a Georgian extension was added parallel to (that is, back-to-back with) the Tudor house although being only approximately half its length. Externally this extension was of a grander design than the Tudor house; it had two storeys and was built of mellow brick with ashlar quoins; it had a brick parapet over a stone cornice, a stone band to the ground floor, an angled bay window to the left and a stone doorcase, with Doric pilasters and segmental pediment, to the right. Inside, the rooms had tall ceilings, ornate covings and mouldings, and large windows. On the ground floor was a dining room and hall and on the first floor there was a bedroom and dressing room. Doors in the rear wall of the Tudor building gave access to the rooms in this Georgian extension.

12. In 1783 the Chapel of the Nuns was rebuilt. This is attached to the northern end of the Tudor house and of the 1765 Georgian extension. The chapel abuts onto what used to be the dining room in the Georgian extension, although that room is now the drawing room. There is no access from the chapel to the house. The chapel has pointed arched windows and a main door which is on the west front and above which is a quatrefoiled roundel. The whole is crowned by an embattled parapet behind which rises a hipped slate roof. In the chapel are believed to be the Fortescue family vaults within which are buried many members of the Fortescue family. Externally the chapel elevations are partly stone and partly rendered.

13. The property remained within the Fortescue family until about 1823 when it was sold to a Sir Thomas Shepherd. Six years later a further sale took place to Mr John Phillips, whose daughter, Miss Catherine Emma Phillips, held it for life. In an Indenture made on 30 May 1902 Cookhill Priory was mentioned as having an acreage of 118 acres two roods and four perches. The same acreage was mentioned in another Indenture of 17 August 1905 which indicated that land occupied with the "Homestead" was one acre two roods and eleven perches and that the rest of the land was either pasture, arable, meadow or plantation. Miss Phillips died in 1907 and the property was put on the market for sale by auction.

14. The auction particulars prepared in 1907 described the property as a "small freehold country estate of exceptional historical and antiquarian interest" and continued:

"The Property comprises the quaint brick and stone and half-timbered Homestead, constructed on the site of, and partly from the materials of, the old Priory, together with a brick and stone-faced wing erected about the reign of George II, and a very old and interesting Chapel adjoining thereto. THE HOUSE contains wide entrance hall, a large dining room with similar bedroom and dressing-room over, and in the older part of the house is a sitting-room with panelled oak walls, kitchen, back-kitchen, dairy, two pantries and cellar, and on the upper floors are five bed chambers, two of which are oak-panelled, two attics and lumber rooms."

15. The 1907 auction particulars also mentioned a number of farm buildings and gave a schedule of the land which then amounted to 126 acres two roods and fourteen perches. On 21 September 1907 Mr Philip Antrobus purchased the property as described in the auction particulars. (Mr Philip Antrobus was the father of Miss Antrobus.) In the conveyance to him the property was described as "ALL THAT messuage or homestead known as "Cookhill Priory", together with the Chapel Farm and other buildings summerhouse and lands adjoining and belonging and appurtenant thereto or occupied therewith" containing one hundred and twenty-six acres two roods and fourteen perches as described in the first schedule. The first schedule described the house and its grounds as "house gardens and farm buildings" of one acre, one rood and twenty nine perches and on the plan attached to the conveyance the whole property was described as Priory Farm.

16. In about 1910 Mr Philip Antrobus further extended the Georgian extension so that it ran almost the full length of the Tudor house and was parallel to (that is back-to-back with) he Tudor house. The result is that almost the whole of the west front of the dwellinghouse is now in the Georgian style. Externally it is just possible to see where the 1765 Georgian extension joins the 1910 addition but both parts are in the same mellow brick with stone quoins. Thus the complete Georgian front now consists of two-storeys being the 1765 bay and front door with window over and with three further windows on each storey as constructed in 1910; there is a parapet roof above the whole. Internally, the "Georgian" accommodation is one room deep and now comprises, on the ground floor a drawing room, a great hall, staircases and a pantry and, on the first floor, a sitting room, a bedroom, a kitchen, a bathroom and a staircase landing.

17. Thus the building of the present dwellinghouse consists of the Tudor house, the chapel, and the "Georgian" additions. The east front is of Tudor origin being of timber frame with brick infill and a pitched roof. The north front is the northern wall of the chapel. And the west front consists of the 1765 and 1910 "Georgian" extensions with a parapet. Internally there are doors leading from the Tudor part of the house to the "Georgian" part. There are two drives to the property. One drive approaches the west front and leads to the "Georgian" part of the house and the grander front door which appears to be rarely used. This drive continues and then meets the other drive which goes round the north of the house, skirting the chapel, and emerging onto the concrete apron which forms the farmyard in front of the east (Tudor) front. This farmyard is surrounded by farm buildings and outbuildings and the normal access to the house is from an external door in the east front.

18. It appears that between 1907 and 1942 Philip Antrobus farmed the land in hand as there is no evidence of any tenancy during this period. On 25 March 1942 Philip Antrobus entered into a tenancy agreement with Miss Antrobus under which all the fields that lay around Cookhill Priory and which belonged to Philip Antrobus were let to Miss Antrobus at a rent of £50 per annum. On 21 April 1943 Philip Antrobus died and the freehold title vested in his executors who were Mrs Mabel Antrobus (his widow) and Lloyds Bank. On 9 April 1957 the executors granted a yearly tenancy to Miss Antrobus which was stated to be in substitution for, and amplification of, the agreement of 25 March 1942. That tenancy was of 104.293 acres of arable and pasture land and there was also a grazing licence over 20.876 acres of land surrounding the dwellinghouse. The plan attached to this agreement was very similar to that attached to the Conveyance of 21 September 1907 which described the property as "Priory Farm".

20. Mrs Mabel Antrobus died on 8 January 1959 and on 18 September 1959 Lloyds Bank, as surviving executor of Philip Antrobus, conveyed the property to Miss Antrobus in consideration of the sum of £10,100. On 30 July 1959 the house (described as a farmhouse) was listed Grade II*. In evidence which I accept Mr Beer expressed the opinion that that was because of its historical interest and not for its architectural merit.

The gardens, grounds and agricultural land

21. The gardens lie mainly to the west (Georgian) front of the house and are not considerable or important. They consist mainly of lawns with mature shrubs and plants.

22. Surrounding the concrete apron (or farm yard) which gives access to the east front (Tudor) of the house there are some farm buildings and outbuildings. These are mostly of traditional design (being of mellow brick with pitched tile roof). They were described by Mr Beer, in evidence which I accept, as being "very much redundant and unworkable". The farm buildings are close to the dwellinghouse and are integrated with it by the surrounding concrete apron. There are also other agricultural buildings of a modern, utilitarian design including a tractor shed, a mill and implement shed, a multi-purpose building, a cattle shed and a lean-to implement shed. These extend beyond the western front of the house. These modern farm buildings are large and built mostly of corrugated iron; some are painted bright green. They are not visually attractive and appear to have been built without any regard to their effect on the view of the house. They are in a moderate state of repair.

23. The dwellinghouse and the farm buildings are situated within grounds which also contain other buildings. These include the Turret House and the Summer House. The Turret House is on the eastern boundary of the whole property and the Summer House fronts on to the west front of the dwellinghouse. Both the Summer House and the Turret House are let to tenants and are excluded from the property the subject of this appeal.

24. Surrounding the dwelling house and its gardens there are said to be areas of parkland with trees and five pools. However, the photographs reveal that the areas of

parkland appear to include a number of the corrugated iron agricultural buildings and the pools could be better described as farm ponds. Beyond these grounds lie the pastureland and arable land.

Miss Antrobus and her farming business

25. Each year Miss Antrobus gave a strawberry and wine party at Cookhill Priory for the Cookhill Conservative Party and Mr Humphries first visited Cookhill Priory in 1977. He then became Miss Antrobus's accountant and visited the Priory at least once a month. Miss Antrobus used to discuss with him her day-to-day problems in running the farm. In evidence which I accept, Mr Humphries said that Miss Antrobus was a farmer in every sense of the word. She would drive tractors, plough fields, carry out all husbandry duties, deliver calves and help at lambing. She knew her stock and knew when to sell at the best prices. The farmhouse was used just as any other farm building. As Mr Humphries said:

> "Only once a year were outsiders invited to Miss Rosemary's house and quite frankly it took a small army of local Conservative Party workers to clean the place up before the day. They needed to scrub the place down after the regular visit of some of the farm livestock, such as dogs, hens, ducks and lambs."

26. Miss Antrobus had two employees who were brothers; their father had worked for Miss Antrobus before them.

27. The annual accounts for the farming business of Miss Antrobus prior to 1991 were not available but, in evidence which I accept, Mr Humphries said that the relevant figures were:

1987	loss	£11,508
1988	profit	£ 276
1989	loss	£ 2,665
1990	loss	£ 2,885

28. After about 1991 Miss Antrobus ran a business of keeping a small flock (about 40) of ewes and selling their lambs and wool and she also kept as many as 80 to 100 fattening cattle. The amounts of her stock sales turnover each year were:

1991	£16,745
1992	£15,020
1993	£39,025
1994	£26,512
1995	£16,365
1996	£23,596
1997	£32,337
1998	£20,818
1999	£13,366
2000	£15,239
2001	£20,173

29. In addition barley was grown regularly on the farm and also potatoes and cabbage. There were also egg sales and the sale of geese. These sales were shown in the accounts as sundry receipts. After 1991 the accounts showed:

1991	loss	£ 3,881
1992	loss	£ 8,809
1993	profit	£ 2,492
1994	profit	£ 6,761
1995	loss	£10,811
1996	loss	£ 3,687
1997	loss	£ 3,178
1998	loss	£51,408
1999	loss	£26,654
2000	loss	£13,451
2001	loss	£18,787

30. In evidence which I accept Mr Humphries stated that he had fourteen farming clients all of whom were making less profit now than previously.

The dispute

31. Miss Antrobus died on 22 June 2001. At the date of her death she owned the land and buildings acquired by purchase from her father's executors on 18 September 1959 extending to a little over 126 acres and a tenancy of land extending to 6.54 acres. All the land and the buildings were agreed to be agricultural property within the meaning of section 115(2) of the 1984 Act except for the Turret House and The Summer House (which were let to tenants) and Cookhill Priory which is at issue in this appeal.

32. Shortly before the hearing of the appeal it was agreed that the chapel building was a farm building and was agricultural property. I was informed that the pews had been taken out in 1950 and since then it had been used for storing logs and potatoes; for sheep shearing; and for the storage of animal foodstuffs and agricultural equipment.

33. The probate valuation stated that Cookhill Priory was "very much in a time warp". It was in a very poor state of repair and decoration with little work having been carried out for a considerable number of years. It was in need of a great deal of attention to the entire property including windows and roofs. The chapel, garden, grounds and the traditional farm buildings were also in need of a great deal of attention and repair.

The expert evidence

34 In order to prepare his expert report Mr Beer had visited Cookhill Priory. At the date of his visit the property was in the possession of the new owners and was undergoing significant alteration, mainly to the interior. Mr Beer described the property as a working farm. As an Appendix to his report he provided details of

twenty-seven comparable holdings found in the locality of Western/Middle England. The purpose of these "comparables" was to provide evidence, by way of creating a "tone of the list", of the type of character appropriate to farmhouses occupied with agricultural land of an area similar to, or not dissimilar to, the property at issue in the appeal. Many of the houses were of historic interest and some were described by Mr Beer as "important houses". Some were held under agricultural tenancies where the tenants paid rent and so were being farmed commercially. These twenty-seven properties may be summarised as:

	Bedrooms	Acreage	Listing	Type
1	8	Over 200	No	arable and stock
2	6	212	Grade II	dairy and arable
3	6	149.98	Grade II	dairy
4	3	149	No	arable
5	5	206	No	dairy and arable
6	4	198.40	Grade II	fruit
7	7	128.30	Grade II	arable and stock
8	7	165	No	arable and stock
9	6	232.13	Grade II	arable
10	8	105	No	livestock
11	7	178.31	No	arable
12	8	276	Grade II	pasture
13	4	152	No	arable and bottled water
14	7	276.87	Grade II	arable and stock
15	5	115.28	No	mixed stock and arable
16	5	91	No	sheep
17	9	125.5	No	horticultural and arable
18	7	130.98	No	arable and stock
19	5	48.6	No	arable
20	5	184.43	Grade II	mixed
21	5	204.81	No	beef/sheep/arable
22.	7	200	Grade II	stock
23	4	181.136	No	dairy/arable
24	6	218	No	arable and livestock
25	3	169.41	No	beef and sheep
26	6	178.20	Grade II	dairy and arable
27	6/7	81.57	No	stud farm

35. Mr Beer was of the opinion that the accommodation of the dwellinghouse at Cookhill Priory was consistent with other farmhouses occupied with similar amounts of agricultural land and that the interior accommodation was typical of a farmhouse.

36. Mr Beer's expert opinion was that, having regard to its physical factor, its location and integration with the holding, the Listing facts, the historic user, the financial and taxation records, the comparable evidence and the expert commentaries, Cookhill Priory was a farmhouse of a character appropriate to the agricultural land and pasture owned and occupied by Miss Antrobus.

The authorities

37. The following authorities were cited at the hearing:

Lindsay v Commissioners of Inland Revenue (1953) 34 TC 379

Commissioners of Inland Revenue v John M Whiteford & Son (1962) 40 TC 379

Korner and others v Commissioners of Inland Revenue (1969) 45 TC 287

Starke and another (executors of Brown deceased) v Inland Revenue Commissioners [1994] STC 295; [1995] STC 689 (CA)

38. Reference was also made to *Dixon v Inland Revenue Commissioners* [2002] STC (SCD) 53. In addition reference was made to an unpublished decision of the Special Commissioners given in September 1994. Because this decision was unpublished, and so cannot be identified in this Decision, I have not relied upon it in reaching my decision.

The arguments for the Appellant

39. For the Appellant Mr Massey argued that the test as to whether a farmhouse was “of a character appropriate to the property” was whether it properly belonged to the surrounding farm. He referred to *Dixon* at 59, paragraph 40 and suggested that the “character test” could be re-phrased so as to ask three questions, namely: was the property as a whole really a house with land or a farmhouse of a farm? was it normal for land of the quality, use and area to have a dwellinghouse of that character when compared with a comparable functioning agricultural holding? and, had the house and the agricultural property in question been associated historically for a long time with a history of agricultural production? The test was objective and required consideration of the physical nature of the property having regard to the quality of the land, the farm buildings and the other agricultural property in question. In this appeal the house and the agricultural property in question had been associated historically for a long time with a history of agricultural production.

40. Mr Massey distinguished the words of Blackburne J *Starke* at [1994] STC 295 at 2991 where Blackburne J described property which was of a character appropriate to agricultural land or pasture as being “proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question”. He argued that that was not an accurate paraphrase of section 115(2) which did not mention the intensity of the farming activities.

The arguments for the Inland Revenue

41. For the Inland Revenue Mr Twiddy argued that the test of whether a farmhouse was of a character appropriate to the property was whether a reasonable man would consider that the house possessed the character of a farmhouse viewed in its setting. He cited *Korner* at 299c to support his argument that the test was that of the reasonable man although he accepted that that authority concerned different

legislation. Relevant factors included: the activity carried on in the house and the nature and extent of the deceased's activities on the land in the period before her death; whether the house was one that it was appropriate for someone engaged in agriculture to occupy; and the financial or economic factor. No factor was decisive and the correct approach was a broad one. He cited *Starke* [1994] STC 295 at 294. It was also necessary to consider whether the house in question was typical in size and nature to houses in the area with land of a similar area and quality. He agreed that the dwelling house at issue in the appeal was not "a rich man's considerable residence" but argued that over the years the house had changed; it had been modified externally and "gentrified" so that it was no longer a Tudor farmhouse with a Georgian wing. Although it was a farmhouse it had a dual purpose because it became the dwelling of a prosperous man and was surrounded by parkland; it had become a family home of some distinction. Turning to the financial or economic factor Mr Twiddy argued that the holding was not an economic holding.

Reasons for decision

42. In considering the arguments of the parties a start can be made with the words of section 115(2) which defines agricultural property, for the purposes of the relief, as agricultural land or pasture, including such farm buildings and farmhouses and the land occupied with them, as are of a character appropriate to the property. It was agreed that the dwelling house was a farmhouse so what has to be decided is whether it is of a character appropriate to the property, the property in question being the 126 or so acres which comprise the agricultural land and pasture.

43. Turning to the authorities cited by the parties, *Lindsay* and *Whiteford* concerned the definition of a farmhouse for the purposes of income tax allowances for capital expenditure on farmhouses; however, as it was agreed that in this appeal the dwellinghouse was a farmhouse, those authorities are not of direct help. *Korner* (1968) also concerned income tax and the question whether expenditure on repairs and maintenance of a farmhouse were fully deductible; the farmhouse in that appeal had twenty rooms of which only one was used for business concerning the farm. Nevertheless it was held that the expenditure should be allowed in full. The Special Commissioners were not satisfied that the house was a farmhouse but, by the time the appeal reached the House of Lords, the Inland Revenue had conceded that it was and so that issue did not fall to be decided. However, at 299B, in a passage relied upon by Mr Twiddy, Lord Upjohn said:

> "But I think it right to say that I am no more satisfied than were 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 farmland being farmed and not part of a rich man's considerable residence."

45. Those words are relevant to the definition of a farmhouse and not to the question at issue in this appeal, which is whether the farmhouse is of a character

appropriate to the property; however, the principle that a farmhouse "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 farmland being farmed" does encapsulate the idea that it must be of a character appropriate to the property.

46. In *Starke* the legislation at issue was the same as in this appeal and the dispute concerned a 2.5 acre site with a substantial six bedroomed farmhouse and an assortment of outbuildings together with some small areas of enclosed land. The appellants, however, had agreed not to argue that the land in dispute came within the meaning of "such cottages, farm buildings and farmhouses, together with the land occupied with them as are of a character appropriate to the property" and so the words at issue in this appeal were not in issue in *Starke.* The issue there was whether the disputed land was "agricultural land". It was held that agricultural land was undeveloped land without buildings used for agricultural purposes and the disputed land was not agricultural land. However, in a passage relied upon by Mr Twiddy Blackburne J at 298j said:

> "If cottages, farm buildings and farmhouses which are occupied and used for the purposes of agriculture fall within the meaning of agricultural land it is difficult to see what the point is of the "character appropriate" requirement in limb (3). If, however, cottages, farm buildings and farmhouses, together with any land occupied with them, are not within the expression "agricultural land or pasture" but will constitute "agricultural property" if used in connection with agricultural land or pasture provided that they are of a character appropriate to such agricultural land or pasture (that is, are proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question) then it is possible to attribute a full meaning to that limb."

47. *Dixon* also concerned the legislation at issue in this appeal and both parties in this appeal adopted the test described at 59g in the following way:

> *"McCutcheon [on Inheritance Tax* (ninth cumulative supplement, 1999)] para. 14.72 describes the "character test" in the following way:
>
>> "The present position is that the "character test" is considered against three main tests: (i) the elephant test; although you cannot describe a farmhouse which satisfies the character test you will know one when you see it! (ii) man on the (rural) Clapham omnibus: would the educated rural layman regard the property as a house with land or a farm? (iii) historical dimension: how long has the house in question been associated with the agricultural property and is there a history of agricultural production?"

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);* thirdly that although one cannot describe a farmhouse which satisfies the "character appropriate" test one knows one when one sees it *(Dixon);* fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm *(Dixon);* 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*).

49. Before turning to apply those principles to the facts of the present appeal it is necessary to say something about the unique nature of this property. The site of the dwellinghouse appears to have been occupied in some form for over a thousand years. During such a long period of time very many changes have taken place. However, this appeal is concerned with the state and use of the property on one date only, namely 22 June 2001 which was the date of the death of Miss Antrobus. It may well be that on another date, and in another century, the dwellinghouse might have been regarded, in the words of Mr Twiddy, as a family home of some distinction. There is no doubt that the "Georgian" front is still visually attractive and, as one would expect, it formed the cover picture of the estate agent's brochure for the sale of the house after the death of Miss Antrobus. However, the expert evidence of Mr Beer was that the "Georgian" front was only a façade which gave the impression from a distance of a house of greater importance than it was. Without that façade the property had significantly less impact and importance. Mr Beer regarded the dwellinghouse as "pretentious" as it was pretending to be something that it was not; in his view it was not a gentleman's residence and architecturally it was poor. He described it as "a mongrel property". However, it had been a working asset, and integral to the farm, for at least one hundred years. I accept the evidence of Mr Beer. It is also relevant that the visual impact of the "Georgian" front is somewhat modified by the presence of the large corrugated iron farm buildings not too far away.

50. In this connection the state of the property at the date of the death of Miss Antrobus is also relevant. Again, on another date and in another century, the condition and position of the outbuildings and the farm buildings, and the state of upkeep of the gardens and the grounds, may have been other than they were on 21 June 2001. However, on 21 June 2001 the whole property was in a poor state of repair and maintenance. The result was that, even if the dwellinghouse had at one time been a family home of some distinction, it had, both in appearance and in use, become a farmhouse on a working farm. Perhaps the best illustration of the effect of the changes over time is the use of the chapel. No doubt when it was rebuilt in 1783 it was of importance as evidenced by the fact that it said to have contained the family vaults of the Fortescue family. However, by 1950 it was being used as a farm building and was agreed to be agricultural property.

51. With those background comments in mind the legal principles identified above can be applied to the facts of this appeal. In asking whether the dwellinghouse in this appeal is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed two factors are relevant, namely the history of the property and the comparables.

52. As far as the history of the property is concerned it has been found as a fact that since 1907 the house and the farm have been owned and occupied by the Antrobus family. From 1907 Philip Antrobus farmed the land and after him Miss Antrobus farmed it. The evidence of Mr Humphries, that Miss Antrobus was a farmer in every sense of the word, has been accepted. Mr Humphries' description of the use of the house by Miss Antrobus confirms the view that the farmhouse was used just as any other farm building. During the lifetime of Miss Antrobus the house was not used as a family home of distinction but as a working farm building.

53. As far as the comparables are concerned, the evidence of Mr Beer that the dwelling house was comparable, in size and layout, with many other farmhouses within a wide area by reference to the particular area being farmed, is accepted. The photographs of the farm buildings surrounding the dwelling house also point towards the same conclusion.

54. The conclusion therefore is that the dwellinghouse in this appeal is appropriate, by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed.

55. The second question is whether the farmhouse is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question. Here the relevant facts are: that the dwelling house is agreed to be a farmhouse; that it has been the farmhouse for the particular holding of agricultural land and pasture in question for almost one hundred years; and that it has been occupied, and farmed by, the same family for that period. Those facts speak for themselves. One has to accept that, in her later years, Miss Antrobus's farming business was not financially successful but she was personally involved in the farming business. The evidence of Mr Humphries that most farmers are now making less profits than previously is also accepted. The comparables are also relevant to this question and they indicate that there are many farmhouses of the same size and nature as the dwellinghouse at issue in this appeal where the farming activities are conducted on agricultural land of approximately the same size and where the farming activities are also similar in nature (arable and stock). It is accepted that the evidence about the comparables did not extend to the profitability of their farming activities but, in my view, profitability cannot be a conclusive factor. It is therefore concluded that the farmhouse at issue in this appeal was proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question.

56. Although it may not be possible to describe a farmhouse which satisfies the "character appropriate" test, the principle is that you will know one when you see it. Here I rely upon, and adopt, the expert evidence of Mr Beer which was that the dwellinghouse was a farmhouse of a character appropriate to the agricultural land owned and occupied by Miss Antrobus.

57. In asking what the man or woman on the rural omnibus would think, and whether the educated rural layman would regard the property as a house with land or a farm, I rely upon the evidence of both Mr Beer and Mr Humphries and also the

evidence of the photographs which I saw. That leads to the conclusion that the house in this appeal was, at the date of the death of Miss Antrobus, a farmhouse with a farm and definitely not a house with land. The whole use and visual presentation of the property, in particular the siting of the modern agricultural buildings within the line of view of the west front, and the concrete apron and the other farm buildings surrounding it which cluster round the east front, support that view.

58. Finally, turning to the historical dimension it is necessary to ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production. Here the answer is that the house has been associated with the agricultural property since at least 30 May 1902, namely one hundred years, and since at least 1907 there has been a history of agricultural production within the same family.

Decision

59. The decision on the issue for determination in the appeal is that the farmhouse, and the land occupied with it, was "of a character appropriate to the property" within the meaning of section 115(2).

60. The appeal is, therefore, allowed.

61. Under the provisions of section 224 of the 1984 Act I declare that I am satisfied that the determination ought to be quashed.

DR NUALA BRICE

SPECIAL COMMISSIONER

Released: 17 October 2002

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09.10.02