

THE SPECIAL COMMISSIONERS

RICHARD WILLIAMS (PERSONAL REPRESENTATIVE OF Appellant
MARY PHILOMENA WILLIAMS DECEASED)

- and -

HER MAJESTY'S REVENUE AND CUSTOMS Respondents

Special Commissioner: CHARLES HELLIER

Sitting in London on 24 June 2005

A J Neal of MFG Solicitors, for the Appellant

P R Twiddy, Assistant Director HMRC Capital Taxes Office, for the Respondents

DECISION

1. This is an appeal which concerns the meaning and effect of the requirement in the definition of agricultural property in section 115(2) Inheritance Tax Act 1984 ("IHTA") that the occupation of a building used in connection with the intensive rearing of livestock or fish be ancillary to the occupation of the agricultural land with which it is occupied.

The Appeal

2. The Appellant appeals against the notice of determination issued by HMRC on 2 December 2004. That determination states that:

"In relation to the deemed disposal on the death on 11 January 2001 of Mary Philomena Williams (the Deceased).

"That of the property at Wells Farm, Cradleigh, Malvern Worcestershire WR13 5JS forming part of the Deceased's estate the only part thereof which, having regard to the terms of section 115(2) Inheritance Tax Act 1984, is agricultural property for which relief under section 116 of that Act is available is 3.99 acres of the extent, having had regard to the requirements of section 117.".

3. As will become apparent, it is implicit in this determination that three buildings (the "broiler houses") used for the intensive rearing of poultry and the "blue land" on which they are sited do not constitute agricultural property for the purposes of section 115(2) IHTA.

The Legislation

4. Section 4(1) IHTA provides that:

"On the death of any person tax shall be charged as if, immediately before his death, he had made a transfer of value and the value transferred by it had been equal to the value of his estate immediately before his death".

5. Section 5(1) IHTA provides a definition of "estate" as:

"The aggregate of all the property to which a person is beneficially entitled, except that the estate of a person immediately before his death does not include excluded property".

6. Section 116(1) IHTA provides that:

"Where the whole or part of the value transferred by a transfer value is attributable to the agricultural value of agricultural property, the whole or that part of the value transferred shall be treated as reduced by the appropriate percentage, but subject to the following provisions of this chapter."

7. Section 116(2) IHTA provides that the appropriate percentage is 100 per cent where the interest of the transferor in the property immediately before the transfer, either carries the right to vacant possession or the right to obtain it within the next 12 months, or, where the property does not carry either of those rights, the property is let on a tenancy beginning on, or after, 1 September 1995; and is generally 50 per cent in any other case.

8. Section 115(3) provides that the agricultural value of any agricultural property is the value that it would have if it was subject to a perpetual covenant prohibiting its use otherwise than as agricultural property.

9. Section 117 provides that the relief given by section 116 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 7 years ending with that date and was throughout that period occupied (by him or another) for the purposes of agriculture."

10. As will be seen the effect of these provisions in the context of this appeal is that if a transfer is made of agricultural property which is let under a tenancy beginning after 1 September 1995, and which for seven years ending with the date of the transfer was owned by the transferor and occupied (by him or another) for the purposes of agriculture, then the value of the transfer made is reduced by an amount equal to the value the agricultural property would have if it could only be used as agricultural property. The issue in this appeal relates to whether the broiler houses were agricultural property so as to benefit from this relief.

11. Section 115(2) defines agricultural property. The definition contains three parts which were identified by the Court of Appeal in *Starke and Anor (Executors of Brown (dec'd) v IRC* 1995 STC 689, 1995 (1) WLR 1439. These parts are indicated by the italics in the definition which follows:

"Agricultural property" – means agricultural land or pasture [*Part 1*] 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 [*Part 2*]; and also includes such cottages, farm buildings and farm houses, together with the land occupied with them, as are of a character appropriate to the property [*Part 3*]."

12. As will be seen, it was on Part 2 of this definition that the arguments in this appeal were centred.
13. Later in this decision, I use the phrase "intensive building" to refer to any building used in connection with the intensive rearing of livestock or fish.

The Case Law relevant to section 115

14. Both Mr Neal and Mr Twiddy took me to two decisions relating to s115(2).
15. The first was the decision of the Court of Appeal in *Starke* (cited above). In that case the issue was whether a house and farm buildings were agricultural land within Part 1 of the definition in section 115(2). The Court of Appeal held that they were not, and that the structure of section 115(2) meant that "agricultural land or pasture" in Part 1 of the definition did not include buildings or other structures on land. Therefore if such structures were to be eligible for agricultural property relief they had to fall within Part 2 or Part 3. At the end of his judgement Morritt LJ made some comments about Part 2 and Part 3 to which I shall return later.
16. The second was *Rosser v Inland Revenue Commissioners* SpC 368 2003 STC (SPC) 311. In this case the issue was whether a house and a barn qualified as agricultural property within Part 1 or Part 3 of the definition. The Special Commissioner held that as a result of *Starke* the house and barn did not fall within Part 1. He then went on to consider whether they fell within Part 3. He held that the words in Part 3: "farm buildings... as are of a character appropriate to the property" required "farm buildings" to be considered together only with other property which was in the same ownership, rather than the same occupation as the buildings.

The Evidence

17. There was an agreed Statement of Facts which included a plan and a copy of a tenancy agreement. I was also provided with a set of photographs of the relevant buildings.
18. I heard evidence from Richard Williams, the son of the deceased.

The Facts Found

19. I found the following facts.

(1) Wells Farm, Tan House Lane, Ridgeway Cross, Malvern ("Wells Farm") was part of the estate of Mary Philomena Williams (the deceased) who died on 11 January 2001.

The area covered by Wells Farm is about 7.41 acres. It consists of 4 pieces of land:

(i) the "red land", which amounts to about 0.51 acres and consists of a dwelling occupied by the deceased and its gardens;

(ii) the "green land", which has an area of about 0.32 acres which, prior to the deceased's death, was let to a neighbour who used it for the grazing of horses.

(iii) the "orange land", with an area of about 3.99 acres which was occupied by a neighbour at the time of the deceased's death for the grazing of stock. HRMC and the Appellant agreed that this area qualified for agricultural property relief at 100 per cent;

(iv) the "blue land" of 2.59 acres. Three broiler houses were situated on the blue land.

(2) The broiler houses cover in total approximately 30,000 sq. ft or about 0.68 acres. Two of the poultry units each measure 100 ft in length by 60 ft in width. Each has a total capacity of 25,000 birds. The third unit measures 240 ft by 60 ft and has a capacity for 30,000 birds. All three units are fully automated with lighting, heating and ventilator controls.

(3) Included on the blue land was a Dutch barn used for storage of materials and equipment used in the broiler houses and the other parts of the blue land.

(4) A margin of several yards was required to be, and was, kept clear around each of the broiler houses. This was to satisfy certain regulatory requirements relating to the keeping of the birds.

(5) The broiler houses were used for rearing birds for the table. The birds arrived as day old chicks and grew for 8 weeks at which point they were slaughtered. The birds did not leave the broiler houses during their stay.

(6) One of the broiler houses had an earthen floor, the other two had concrete floors. The birds were not kept in cages but were free to move about within the houses where light, heat and food were supplied.

(7) One corner of the blue land contained an apple orchard which produced cider apples. It had been part of a larger orchard, the larger part of which was at the time of Mrs Williams' death no longer part of her estate. Apart from the apple orchard the remainder of the blue land was kept clear.

(8) Mrs Williams had farmed the whole area herself until about 2000. At that time she had recognised that the farm was losing money. The only net income had come from the cider apples and the stabling. She had been advised by a business consultant to let the broiler houses and had done so in April 2000 when the blue land had been let to Summers Poultry Ltd ("SPL"). The rental income was £6,150 per month. A small income was derived from the green land. The orange land was let to a neighbour on an informal basis: the neighbour grazed the land broadly in return for looking after the fences.

(9) The blue land was occupied by SPL under the terms of the farm business tenancy agreement, dated 27 April 2000 made between the deceased and Summers Poultry Limited at an annual rent of £6,150. The agreement permitted either party to terminate on 12 months notice following the end of an initial term of two years, and also at any time by "three crops notice" i.e. the period of time after the giving of the notice during which three complete crops of birds (from 1 day old to 8 weeks) could be completed. At most this would be about 32 weeks' notice. Clause 1 of the Agreement provided that the "Tenant shall use the Holding for agricultural purposes only unless the Landlord's written consent has been obtained in advance for any non-agricultural use... For the duration of the term of the Tenant shall farm in accordance with the Rules of Good Husbandry as set out in Section 11 of the Agricultural Act 1947".

20. It was common ground that the usage by Summers Poultry Limited of the broiler houses constituted "the intensive rearing of livestock" for the purposes of the Inheritance Tax Act.

The Argument of the Appellant

21. Mr Neal contended that the broiler houses fell within Part 2 of the definition of agricultural land. It was not contended that Part 3 applied. He noted that it was accepted that the buildings were used in connection with the intensive area of live stock. The questions were therefore:-

(i) what land were the buildings occupied with?

(ii) was their occupation ancillary to the occupation of that land?

What land were the buildings occupied with?

22. Mr Neal said it was clear that the broiler houses were occupied with the blue land. Further he said they were also occupied with the orange land.
23. Mr Neal argued that Part 2 of the definition identifies the other agricultural land as that owned by the same person. On that basis he said that both orange and the red land are relevant because they are both agricultural property and both in the transferor's estate. He said it does not matter who occupied the orange land so long as it was in the same ownership. He said that section 115 refers to "occupation" and not "use". He accepted that the orange land was not used with the blue land, but said that both pieces of land were occupied for agricultural purposes and were under common ownership.
24. He submitted that the test to be applied in determining what other land is relevant is common ownership rather than common occupation. What was therefore necessary was that the other land be occupied, and be in the same ownership as the broiler houses. In this contention he submitted that *Starke* and *Rosser* were relevant to the construction of Part 2.
25. In *Starke*, Morritt LJ said (at page 694h):-

"It is necessary to emphasise that the decision for this Court was confined to the proper construction of part 1 of the definition. Thus the question whether the property with which this appeal is concerned is excluded from part 3 because there is no other property in the same ownership to which its character may be appropriate does not arise for decision. Counsel for the Crown indicated that the official view is that there must be some nexus between the property alleged to fall within part 3 and other agricultural land or pasture and that such nexus must be derived from common ownership as the structure of the inheritance tax legislation deals with the diminution in the value of the estate of the transferor. The alternative view might be that the nexus, which must surely be required, may be provided by common occupation without common ownership thereby recognising the reality of the agricultural unit of which, as in this case, the buildings evidently form part. But in the circumstances as I have described them, that point is not open to executors and does not arise on this appeal."

26. The test of common ownership was accepted by the Special Commissioner in *Rosser* where the Special Commissioner said at paragraph 49:-

"Mr Twiddy submitted that the nexus must be derived from common ownership rather than common occupation. To arrive at this conclusion it is necessary to consider section 115(2) in the context of the 1984 Act as a whole in the structure for inheritance tax. Under the 1984 Act inheritance tax is charged on the value transferred by a chargeable transfer. The chargeable transfer is a transfer of value which is made by an individual but is not an exempt transfer. A transfer of value is defined as a disposition made by a person as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition and the amount by which it is less is the value transferred by the transfer. Under section 4(1) tax shall be charged on the death of any person as if, immediately before his death he had made a transfer value and the value transferred by it had been equal to the value of his estate immediately before his death. The common denominator throughout this charging regime is the word *estate* the value by which it is has decreased during lifetime transfers or its value at death will provide the reference point for the amount of tax charged. It follows from this that the farm buildings and the property referred to in section 115(2) must be part of the estate of the person at the time he makes the disposition, including a deemed disposition of death.

"50. I agree with Mr Twiddy's analysis. ...".

27. Mr Neal pointed out that Part 3 refers to the land occupied with the buildings. This land, if *Rosser* is to be followed, must be land owned with the relevant buildings.
28. Mr Neal says that therefore the test of ancillary occupation (the second question I have to address) must be performed by reference to the blue land and the red land. However in relation to that question that he puts his argument in the alternative.

Was the occupation of the buildings ancillary to the occupation of the land?

29. Mr Neal noted the definition "ancillary" in the New Shorter Oxford dictionary namely:-

"1. subservient, subordinate; auxiliary, providing support; now *esp.* providing essential support or services to essential function or industry, especially the hospital medical staff ... 2. of or pertaining to maid servants.",

and submitted that the most relevant meaning in the context of the section was subordinate or subsidiary.

30. Mr Neal said that if ancillary was to be construed as requiring that the use of the other land be dominant to the use of the buildings then there would be very few examples, if any, in which buildings for intensive rearing of animals would qualify as agricultural property. The intensive rearing of animals normally involved the animals being reared within a building; the dominant activity was that conducted within the building and, in relation to that use, the use of any other land would always be subservient to the dominant use of the building. In other words such a construction of Part 2 would mean that intensive buildings would never qualify as agricultural property. That could not have been the purpose of Parliament. The addition of intensive buildings in Part 2 must be taken to extend what qualified for agricultural property relief in a realistic manner.
31. He said there must therefore be some other meaning which should be given to ancillary occupation. He submitted that the relative size of the buildings and the land with which they were occupied was the best objective test of whether the occupation of the buildings was ancillary to the

occupation of other land. In support of this he noted that Part 2 refers to "occupation" rather than "use". The area of a piece of land was relevant to its occupation.

32. On the basis of the contention that the other agricultural land was both the orange and the blue land, Mr Neal said that since the total area of the orange and blue land was 8.99 acres, the proportion occupied by the broiler houses was

This small percentage made the occupation of the broiler house ancillary to the occupation of the other land.

33. If I rejected his submission that the orange land was relevant for the purposes of the ancillary occupation question, Mr Neal's submission was that the percentage of the blue land occupied with the broiler houses was

0.68

2.59 or about 26.25% of the land,

which was small enough to make the occupation of the broiler houses ancillary to that of the blue land.

34. If a comparison by reference to size only was not appropriate, Mr Neal said that we should look at the nature of the use of the land. By its nature, occupation of land for the purposes of intensive farming, did not require such large areas of land as dairy or arable farming. The meaning of "ancillary" had to be considered by reference to the nature of the agricultural operation. The land around the broiler houses was occupied with the broiler houses for the purposes of the intensive farming activities carried out in the broiler houses and the broiler houses themselves were occupied in a manner ancillary to that occupation of the land.
35. In response to a later suggestion by Mr Twiddy that the turnover generated from the use of a piece of land or a building might be a better test of "ancilliaryness" than the area occupied, Mr Neal noted that SPL paid its rent for the blue land as a whole not just for the buildings. In any event, Mr Neal said, profitability would not be an appropriate test: it could vary from year to year depending upon economic conditions and did not provide a constant affecting the land by which the test of ancilliary occupation should reasonably be performed.
36. Mr Neal also took me to the legislative history and the Hansard record of debate which inserted the words "or building" and "any building used in connection with the intensive rearing of livestock or fish" into the definition in section 115. I return to these issues below.

The Argument of the Respondent

37. Mr Twiddy says that the decision in *Starke* to the effect that agricultural land and pasture in Part 1 of the definition excludes buildings and structures on the land means that the broiler houses do not fall within Part 1.
38. In relation to Part 2 of the definition, Mr Twiddy argues that the agricultural land or pasture "with" which woodland or an intensive building needs to be occupied means land in the same occupation as the woodland or intensive building. He says that such agricultural land or pasture need not belong to the transferor: so for example if a woodland shelterbelt which is owned by A is let to B,

who occupies it with adjacent fields owned otherwise than by A, the occupation by B potentially qualifies the woodland for relief. If B's occupation of the woodland is ancillary to his occupation of those fields, A's interest in the woodland will qualify for relief.

39. Mr Twiddy noted that one effect of the woodland in this example qualifying as agricultural property would be that the question whether a farm house or building also owned by A would qualify for relief under Part 3 would be determined by judging whether it was of a character appropriate to property which included the woodland.
40. In relation to the second condition in Part 2 – that the occupation of woodland or intensive building be ancillary to that of the agricultural land with which it is occupied – Mr Twiddy says that "ancillary" should have the New Shorter English dictionary meaning of "subservient, subordinate; auxiliary, providing support". That meant that the occupation of the other land should be dominant and the woodland or intensive buildings serve that occupation. He accepts that this may mean that it will be rare that an intensive building will satisfy Part 2: many intensive buildings will be occupied for their own purposes and that purpose will not serve the other land. The pigs on an intensive piggery might in some cases sometimes leave it to forage on the surrounding land, but even if they do that means that the surrounding land serves the piggery rather than vice versa: the surrounding land will serve the piggery and be ancillary to the piggery. The piggery would not fall within Part 2. In the case of the broiler houses on the blue land, the chickens did not even leave the broiler houses: these were not buildings in which they were accommodated at night and which served the purpose of rearing poultry on land occupied with them.
41. This approach meant that there would be few examples when buildings would qualify, but there were some: the provision would not be wholly ineffective on his interpretation. He gave the example of a building for the intensive rearing of beef cattle which were fed with barley grown on the other land occupied by the occupier of the buildings, and whose manure was used to fertilise that land. In that case, the use of the buildings was not dominant but he said could serve the other land.
42. Mr Twiddy said the object of the provision was to give relief for buildings such as those used for "barley beef" in his example. The previous relief from CTT had been for smaller working farmers farms; the new relief was more extensive but it was for ordinary farms rather than factory farms. A restrictive interpretation served that purpose. If intensive buildings occupied by a transferor did not fall within section 115(2) as agricultural property, they would in all likelihood qualify for business property relief. Like any other factory business they would only so qualify if the transferor carried on the business rather than let out buildings in which the business was carried on.
43. In this case, Mr Twiddy said, the only land occupied with the broiler houses was the blue land, and the occupation of the blue land was subsidiary to the occupation of the broiler houses – or at the very least the occupation of the broiler houses was not subordinate to the occupation of the blue land.
44. Mr Twiddy said that "ancillary" must connote some supportive use of the buildings. A test by reference merely to the area occupied was not appropriate. If area, why not the volume occupied for a purpose, or the turnover generated by the use of the buildings and other land. "Occupation" involved "use", and only if the use was ancillary would the occupation be ancillary. Even if the turnover was an appropriate test the income generated from the broiler houses (being, one assumed, at least in the order of the rent of £6,150 p.a.) exceeded the income generated from the other blue land.

45. Mr Twiddy also took me to the history of the legislation and certain parliamentary statements to which I shall refer later.

DECISION

46. It is clear from *Starke* that the broiler houses cannot fall within Part 1 of the definition of agricultural property.
47. Part 2 of the definition requires two conditions to be satisfied by the broiler houses before they can qualify:
- (i) that they be occupied with agricultural land or pasture; and
 - (ii) that that occupation be ancillary to that of the agricultural land or pasture.
48. Relevant to both these questions is the meaning of "occupation". I therefore deal with the question as to whether the broiler houses fall within Part 2 under three headings:
- (i) the meaning of "occupation";
 - (ii) the land occupied with the buildings, and
 - (iii) whether the occupation of the buildings was ancillary to the occupation of the land.
49. Mr Neal told me that it was not contended that Part 3 of the definition was applicable, and, although Mr Twiddy had included some remarks on the application of Part 3 in his skeleton argument, in the light of Mr Neal's position Mr Twiddy did not advance any argument on Part 3. I shall return to Part 3 at the end of this decision.

(i) "Occupation"

50. There is no definition of "occupation" in IHTA, and no authority was shown to me on its meaning in that context. The word was used in rating law and in relation to the charge to tax under Schedule B. It seems to me that the meaning of the word in IHTA should be taken to be that which it was given in rating law and for Schedule B purposes.
51. *Back v Daniels* 9 TC 183 was a case about whether a potato merchant was the "occupier" for the purposes of income tax under Schedule B of certain land. The potato merchant planted and harvested crops of potatoes on land belonging to another which the merchant was given a right to use for that purpose. In that case Pollock MR quoted Lord Hershall in an earlier case:

"The question whether a person is an occupier or not within rating law is a question of fact, and does not depend on legal title."

Later Pollock M.R. said (at page 198)

"...although possession is an element of, it is not equivalent to occupation."

52. Scrutton L.J. said of the term "occupier" for Schedule B purposes (at page 201)

"The term is probably used in the same sense as in the law of rating. That sense ... appears to involve possession of a permanent character such that trespass could be brought by the occupier with the enjoyment of a benefit from the land.",

and later: "I agree ... that exclusive occupation does not mean the power of excluding everyone else from the land, but it does mean the exclusive power of rights given him in the soil."

53. In *J.A and J Dawson v Counsell* 22 TC 149, Scott LJ said:

"The occupier for tax purposes [Schedule A or B] is, I think, broadly the same kind of occupier as the occupier for rates. ..."

He then referred to the explanation of the term given by Lord Russell in *Westminster Council v Southern Railway Co* 193 C AG 511 where Lord Russell said:

"Occupation, however, is not synonymous with legal possession : the owner of an empty house has the legal possession, but he is not in rateable occupation. Rateable occupation, however, must include actual possession, and it must have some degree of permanence : a mere temporary holding of land will not constitute rateable occupation. Where there is no rival claimant to the occupancy, no difficulty can arise; but in certain cases there may be a rival occupancy in some person who, to some extent, may have occupancy rights over the premises. The question in every such case must be one of fact – namely, whose position in relation to occupation is paramount, and whose position in relation to occupation is subordinate; but, in my opinion, the question must be considered and answered in regard to the position and rights of the parties in respect of the premises in question, and in regard to the purpose of the occupation of those premises. ..."

A familiar instance of this competing occupancy is the case of the lodger. It has long been settled on the one hand that, in the case of lodgers in a lodging house, the lodgers are not rateable in respect of their occupancy of their rooms, but that the landlord is the person who is rateable in respect of his occupancy of the entire house. In view of the frequently fleeting nature of the occupancy of a lodger, the convenience of this view, indeed the necessity for it, is obvious; but it purports to be based upon the paramountcy of the landlord's occupation, arising from his control of the front door and his general control over and right of access to the lodgers' rooms for the proper conduct of the lodging house. ..."

"My Lords, I cannot but feel that the position of the lodger in relation to rateability is an exceptional one, and is largely the product of practical considerations. But it can I think be justified and explained when we remember that the landlord, who is the person held to be rateable, is occupying the whole premises for the purpose of his business of letting lodgings, that for the purpose of that business he has a continual right of access to the lodgers' rooms, and that he, in fact, retains the control of ingress and egress to and from the lodging house, notwithstanding that the power of ingress and egress at all hours, is essential to the lodger. The general principle applicable to the cases where persons occupy parts of a larger hereditament seems to be that if the owner of the hereditament (being also in occupation by himself or his servants) retains to himself general control over the occupied parts, the owner will be treated as being in rateable occupation; if he retains to himself no control, the occupiers of the various parts will be treated as in rateable occupation of those parts."

54. I see no reason to suppose that the draftsman of section 115 had in mind any different meaning of occupation from that developed in earlier case law. I draw the conclusion that "occupation" for the purposes of section 115 is the state of affairs which exists when a person:-

(i) has physical possession of land – and I take a person to have physical possession of land when he actually uses it for such purposes as he see fit (subject to any requirement imposed upon him by any agreement relating to the land or restriction to which the land is subject);

(ii) controls the use of that land;

(iii) has the power of excluding (by trespass action) other persons from the benefit he enjoys in the land; and

(iv) has some form of right to some enjoyment of the land.

55. I also draw the conclusion that where land is let on a tenancy, the tenant will generally be the only occupier rather than the landlord. Accordingly in my judgement, SPL was the occupier of the blue land and Mrs Williams was not the occupier of that land. Likewise the green land and the orange land were not occupied by Mrs Williams at the time of her death.

(ii) The land occupied with the buildings

56. In my judgment, of the land at Wells Farm, the only land occupied with the buildings for the purposes of Part 2 of the definition is the blue land. This is for the following reasons.

57. The first part of Part 2 of the definition of agricultural property requires the identification of some agricultural land with which the buildings are occupied. In the case of the broiler houses, there are three possible categories of land which could potentially be so identified:

(i) any other land in the occupation of SPL;

(ii) any other land which was both occupied by SPL and owned by Mrs Williams;

(iii) any land occupied by Mrs Williams;

(iv) any other land owned by Mrs Williams.

58. For the reasons which follow, it seems to me that the proper way to construe land "occupied with the buildings" in section 115(2) is to limit the possible categories of land to (i) and (ii). In other words for land to be occupied with the buildings, the land must be in the occupation of the same person as the buildings.

59. First, the building has to be occupied "with" the agricultural land or pasture. For a building or land to be occupied with the land, in my view it is a necessary condition that the same person must be the occupier of both the land and the buildings. The generally exclusive nature of the meaning of "occupation" means that generally only one person can occupy a piece of land. The natural meaning of "with" in the context is that the occupation is by the same person.

60. Second, the reasoning which drove the Special Commissioners in *Rosser* to the conclusion in relation to part 3 of the definition that the nexus between the buildings and the property is

ownership, does not apply with such force in relation to Part 2. Part 2 provides its own nexus – namely occupation - whereas no nexus is specified in Part 3; the question "which land" is answered in Part 2 as "the land occupied with the buildings". Occupation is the touchstone. In this appeal the blue land and the orange land were occupied by different persons, and the nature of their occupation was not such as to enable one to say that the broiler houses or blue land were occupied "with" the red land.

61. Third, in *Farmer (Valuation Officer) v Buxted Poultry Ltd* 1993 IALL ER 117, the House of Lords had to consider whether a factory was "occupied together with agricultural land" for the purposes of section 26 of the General Rate Act 1967. Lord Slynn said (at p. 122):

"I agree... that for one building to be "occupied together with" another for the purposes of this Act they must be in the same occupation and the activities carried on in both must be jointly controlled or managed."

62. Lord Slynn went on to hold that for the purposes of that Act the buildings and the land must form a single agricultural unit.
63. The requirements of that Act were different from than those of s.115(2), and the relevant phrase was "together with" rather than "with", but there is nothing in their Lordships' opinions which suggests that their interpretation of that Act as imposing a condition of common occupation would have been different had the word "together" been omitted. Indeed the requirement of "togetherness" seemed relevant principally to the requirement that the buildings and land were worked together as one agricultural unit – see Lord Slynn at p.122.
64. This reasoning seems to me to dispose of the third and fourth potential categories of other land identified above. The question remains as to whether, in addition to the requirement that the land in common occupation (Category (i)) it should also be in the ownership of the transferor (Category (ii)).
65. No suggestion was made to me that SPL occupied land other than that at Wells Farm "with" the broiler houses. Accordingly, in this appeal the question as to whether a second ownership limitation is required is not relevant. But Mr Twiddy suggested, and I agree, that it is not required.
66. Finally, I should note that I do not accept that the presence of the words "land occupied with them" in Part 3 of the definition affects this conclusion. In Part 3 a comparison is required of houses and buildings and land occupied with them with other property. *Rosser* addressed the question: which other property? and concluded it meant property in the same ownership. That decision did not address the identification of the "land occupied with" the house or buildings or impose any requirement that it be in common ownership.

(iii) was the occupation ancillary?

66. If it is possible to identify land occupied with the buildings the first hurdle in Part 2 has been crossed, it then remains to determine whether the ancillary test has been satisfied. That test, it seems to me, must be conducted by reference to the land identified in the earlier part of Part 2. That is because that part reads:

"the ... building is occupied with agricultural land ... and the occupation is ancillary to that of *the* agricultural land ..." [My emphasis]

67. It seems to me that "*the* agricultural land" is a reference back to the agricultural land with which the building is occupied. The use of the word "the" makes it clear that it is not any other agricultural land.
68. Therefore in the light of my conclusion that the only land occupied with the broiler houses was the blue land, the remaining question is whether the occupation of the broiler houses was ancillary to the occupation of the blue land.
69. I approach this issue by considering the words of Part 2 as a matter of general impression, detailed application, and having regard to the draftsman's purpose. I then consider their situation within the context of section 115(2) and the Act as a whole.
70. My general impression on reading section 115(2) is that it is intended to provide that intensive buildings may qualify for relief if they are used as part of a farm.
71. If Part 2 had required that the buildings be ancillary to the other land, then it seems to me that an investigation into the relative size and layout of the two would be relevant to the determination of whether the requirement was satisfied. But Part 2 does not direct attention to the land or buildings themselves but to their occupation. That focus on occupation is to some extent emphasised by Part 3 which concerns the character of the relevant land or buildings rather than their occupation.
72. Thus if a room was built on to the side of a house and formed part of the same legal title as the house it might be right to say that the room was ancillary to the house. But if the house was the dwelling of a veterinary surgeon, and the room was his or her surgery and the house used only for domestic purposes, it would seem wrong to say that the *occupation* of the room was ancillary to the *occupation* of the house.
73. The primary meaning of "ancillary" to my mind involves the provision of a service or support and carries the implication that the ancillary matter is less important or subsidiary to the matter to which it is ancillary. But its use in conjunction with "occupation" may flavour that primary meaning. In particular it may permit emphasis to be placed upon the "subordinate" part of the meaning of the word as well as on the "service and support" element.
74. "Occupation" I concluded earlier involved four features. I now consider the meaning of ancillary occupation by reference to those features.
75. First, the physical possession of the buildings should be ancillary to the physical possession of the other land. This requires that the purpose for which the buildings are actually used to be ancillary to the purpose for which the other land is actually used. If "ancillary" is permitted to have the meaning of "subordinate" as well as "serving or supporting", then this test, it seems to me would, be met when both are used for some single purpose in which the buildings play a smaller or subordinate part (or where the purpose for the use of the buildings is an add-on to the principal use of other land), as well as in the case where the buildings merely serve or support the purpose for which the other land is used.
76. In the context of woodland occupied with a field, ancillary physical possession would, on this basis, exist both where cattle grazed the field and (particularly, perhaps, when it was hot) the woodland – i.e. where there was a common purpose in which the woodland played a smaller (subordinate or subsidiary) part – and also where the woodland only provided shelter to the land to enable the fields better to service the grazing cattle. In the context of intensive buildings, ancillary

physical possession would exist where the purpose for which the buildings were used was a smaller part of the purpose of a larger farming enterprise conducted on the other land (thus an intensive building used for pigs could qualify as agricultural property if it were part of an intensive and extensive mixed farming operation and was a smaller part of, or an "add-on" to, that operation), as well as where the purpose for which the intensive buildings were used merely served the other land (as it might perhaps when the manure from the intensive operation was used to fertilise the fields occupied with the building).

77. It does not seem to me that in the context of physical possession that the legislation imposes a requirement that the purpose for which the buildings are used be wholly or exclusively the purpose of the use of the other land: the purpose for which the buildings are used may contain a free-standing element of use which is not itself a purpose for the use of the other land, but for the test to be satisfied in this context there must be purposes which are part of, or which assist, the purposes for which the other land is used. Thus in the context of the earlier example of woodland occupied with an adjacent field, it is to my mind right to say that the physical possession of the woodland is ancillary to that of the field, even if the woodland is also managed to grow timber or for wildlife so long as that management does not dominate the use of the fields and the woodland.
78. In the course of the hearing I discussed the following proposition: The land on which the broiler houses stood was land used for the rearing of poultry. That use is an agricultural use. The broiler houses cover the land and, on the authority of *Starke*, are not themselves agricultural land. The broiler houses serve the use of the land they cover by providing better accommodation for the agricultural activity conducted on the land beneath them, and their occupation is therefore ancillary to that of that land. Mr Twiddy suggested that the reality was that the land served and supported the buildings and was ancillary to them rather than vice versa. But it seems to me that the proposition is not sustainable because, in the same way as a construction which required the purposes for which the buildings were used to be wholly and exclusively subordinate to the use of other land would mean that no intensive building would ever qualify, this proposition would deprive the condition of any effect because realistically all intensive buildings would qualify. It seems to me that the conclusion to be drawn from *Starke* is that the intensive buildings are to be considered as one with the land on which they stand and, absent specific inclusion by Part 2 or Part 3, as not being (as a whole) agricultural land or pasture.
79. Likewise, in relation to Mr Neal's argument recorded at paragraph 34 above, the fact that the land around the broiler houses was kept clear and so occupied for the purpose of the agricultural activity conducted within the broiler houses is in my view insufficient to enable the conclusion that the purpose of the use of the broiler houses was in addition or subordinate to, or served or supported, the use of that land.
80. Second, the control of the land. It would seem rare that the control of one piece of land could assist or serve the control of another piece of land. But where two pieces of land were in common control it might be said that control of one was subordinate to that of the other if the control of the other was more important. The control aspect of occupation is thus to my mind supportive of a meaning of ancillary occupation which places some emphasis on the "subordinate" side of the meaning of ancillary. In any event, ancillary control does not in my view require any test of relative size of the piece of land to be applied.
81. Third, the power of excluding others from the land. I can derive no help in determining the meaning of ancillary occupation from considering the exercise of such a power. They may be circumstances where it could be relevant but none suggest themselves to me.

82. Lastly, the right to some enjoyment of the land. It is possible for example a piece of woodland might encompass a right of way or a means of access which could assist or be subordinate to the enjoyment of another piece of land but would rarely assist or be subordinate to the *right* to enjoy the other land. On the present facts this feature is of little help in determining how occupation can be ancillary. Neither does it appear to affect the colour which may be given to the meaning of ancillary other than that it be something extra or additional to the main matter.
83. I therefore conclude that whether occupation is ancillary or not is in the circumstances of this case best determined by reference to the purposes of use of the woodland, buildings and other land, and is satisfied where, even if the purpose for the use of the woodland or buildings includes a free-standing purpose, that purpose, or an element of it, is either a smaller part of the larger purpose of the occupation of the other land, or specifically helps or serves the purposes to which the other land is put.
84. The requirements for common occupation and ancillary occupation have features in common with those which led to the "single agricultural unit" test applied in *Farmer v Buxted*. For the occupation of the buildings to be subordinate to the occupation of the other land, there must, in my view, be a common purpose for the occupation of the land and the buildings to which both contribute, and the intensive buildings must be the junior partner in the enterprise.
85. In the context of Part 2, this construction of ancillary occupation does not deprive the inclusion therein of woodlands or intensive buildings of all practical effect. A requirement that the only purpose for the use of woodlands or intensive buildings must be to serve the other land seems to me to be unduly restrictive. An intensive building is one whose primary purpose will be to house animals reared and kept principally in that building; if Part 2 required that purpose to be only to serve the purpose for the use of other land, it would seem to me almost never to be satisfied. Even Mr Twiddy's barley beef building would not qualify because the main purpose of the building would be to house the cattle, not to use the excess barley or to use the manure fertilise the land. I find unattractive the proposition that the draftsman included words which have no practical effect. That to my mind makes it clear that there is no requirement that the sole purpose of the intensive buildings or woodland is to serve the other land, it is also strongly indicative of an emphasis on the purpose of the occupation of the buildings being subordinate to the occupation of the land in the sense that such occupation is an "add-on" to or a smaller part of a larger agricultural purpose.
86. I now turn to Part 3 of the definition to ask whether anything there supports or contradicts this construction of the words of the statute.
87. Part 3 provides for relief for farm buildings which are of a character appropriate to the property. If intensive buildings are associated with agricultural land (rather than, for example, being located in the heart of a city) it would generally be natural to call them "farm buildings". Accordingly relief could be available under Part 3 if they were of a character appropriate to the property.
88. It does not seem to me that the specific reference in Part 2 to intensive buildings disqualifies such buildings from being farm buildings for the purpose of Part 3. What is, or is not, a farm building will be a matter of impression derived from the appearance, situation and use of a building, and there is nothing about intensive buildings in general, or the particular broiler houses in this case, which would lead me to say that they cannot be farm buildings. Indeed the appearance, situation and use of the broiler houses leads me to conclude that they are farm buildings.
89. Thus in approaching Part 2 I bear in mind that an intensive building may potentially fall within either, or both, of Parts 2 or 3. Not every farm building will be an intensive building so there will

be buildings which qualify within Part 3 but not with Part 2. But I should also assume that parliament did not intend the reference to buildings in Part 2 to be otiose, but to cover something in addition to that which is covered by Part 3. Thus I should lean towards construing Part 2 in such a way that at least some intensive buildings which are outside Part 3 are within Part 2.

90. An intensive building falls outside Part 3 if it is not of a character appropriate to the property. In *Rosser*, the Special Commissioner adopted the principles enunciated in *Lloyds TSB v IRC* [2002] STC (SCD) 468 in relation to the "character appropriate" test. Those principles were:
- (i) the size, content and layout by reference to the farmland;
 - (ii) the proportionate size of the farmhouse or building to the requirements of the farming activities;
 - (iii) overall impression (the "know it when you see it" test);
 - (iv) the impression of the educated rural layman; and
 - (v) the history of the house or building.
91. Only the second of these tests looks to the farming activities conducted. The others are broadly about design, location, relative size, and impression. None of them specifically relates to whether the purpose for the use of building or farm house is part of, or serves the purpose of, activities on the other property.
92. Thus the construction that I have adopted above does not render the reference to intensive buildings otiose. Indeed the contrast of the emphasis in Part 3 on the character rather than the use of the buildings, and on the ownership (as held in *Rosser*) rather than the physical possession or occupation of the buildings is indicative of the tests I have adopted.
93. Finally, I turn to the remainder of this part of the Act to ask whether there is anything which is either supportive of what appears to me to be the natural meaning of the words, or alternatively indicates an absurdity or an anomaly in this construction.
94. Section 117 imposes alternative additional pre-conditions for the granting of relief, namely that the agricultural property either be "occupied by the transferor for the purposes of agriculture" for two years, or owned for seven years, but "occupied (by him or another) for the purposes of agriculture" for that seven year period.
95. These words indicate the same link in the draftsman's mind between "occupation" and "purpose" that I note above in relation to the meaning of ancillary occupation. They also make clear in the context of this part of the Act that the use of an intensive building for its purpose of factory farming is an agricultural purpose: otherwise the inclusion in Part 2 of intensive buildings would be otiose.
96. Accordingly, in my judgement in the context of the Act, in the context of section 115(2) as a whole, and in the context of Part 2 itself, the requirements in Part 2 are satisfied if the woodland or intensive building is used for purposes which either serve or assist the purposes for which the other land is occupied, or which form an "add-on" or a smaller (subsidiary or subordinate) part of the overall agricultural purposes for which the other land is also occupied; and that this latter requirement is satisfied even if the woodlands or intensive buildings are occupied for a free-standing purpose, so long as that purpose does not dominate the overall purposes of the use of the

land and is a subsidiary part of the purpose of an overall agricultural activity carried out on the land occupied by one person. In the determination of whether or not woodland or buildings are occupied for a purpose which forms a subsidiary or subordinate part of the purpose for which the land is occupied, the extent of the physical activities undertaken and in some circumstances the turnover generated by those activities would be relevant, but it seems to me that rarely would the area occupied be a significant factor.

97. Mr Twiddy and Mr Neal also took me to the legislative history of the provisions and the parliamentary material. I turn to those issues now.

Legislative History

98. The Finance Act 1975 provided a relief from Capital Transfer Tax (CTT) for agricultural property. The relief was subject to a number of conditions which included the following:

...i) the transferor had, broadly, to be a working farmer;

(ii) the land had, broadly, to be occupied by the farmer for agricultural purposes;

(iii) the relief was limited to land of agricultural value £250,000 or of an area up to 1000 acres.

99. There was no relief for agricultural land which was let by the transferor. The relief was effectively restricted to the smaller farms of working farmers.

100. The definition of agricultural property was the same as that in section 115(2) save that there was no reference to buildings for intensive rearing. Part 2 of the definition therefore excluded the italicised words below:

"... 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 and the occupation is ancillary to that of the agricultural land or pasture..."

101. Parts 1 and 3 of the definition were the same as those in section 115(2).

102. Up until 1981 the Inland Revenue applied an extra statutory concession which provided:

"For the purposes of the relief for agricultural property for capital transfer tax purposes, buildings used in connection with the intensive rearing of livestock or fish on a commercial basis for the production of food for human consumption are treated as "agricultural property"."

103. That concession imposed no ancillary occupation requirement. But an occupation requirement (ancillary or otherwise) was an integral part of the relief which was then available broadly only to those who occupied the land.

104. In the Finance Act 1981 the terms of the relief were changed. Schedule 14 of that Act provided a self-contained regime for the relief and the previous provisions were repealed. The definition of agricultural property was changed at that time to insert the italicised words noted above, and the conditions for the relief were relaxed. In particular:

(i) land occupied by a person other than the transferor could qualify for relief, albeit at lower rates;

(ii) the restrictions to £250,000 or 1000 acres were removed.

105. The general requirement requiring owner occupation were therefore released, but the concession was incorporated into the new legislation in a manner which imposed an ancillary occupation condition for intensive buildings.
106. The rate of relief, however, for land let on a longer term tenancy was at 20 per cent of the agricultural value (rather than 50 per cent for land with vacant possession, or the right to obtain it within 12 months).
108. In 1984 CTT was replaced with Inheritance Tax. The IHTA provided for relief for agricultural property in sections 115 to 125 IHTA in terms broadly identical for present purposes to those in Schedule 14 FA 1981.
109. In 1992, the rates of relief were increased to 100 per cent and 50 per cent, and in 1995 the 100 per cent relief was extended to property let on a tenancy.
110. Mr Twiddy suggested to me that the reason that agricultural property relief was given to a landlord transferor in respect of agricultural property whereas it was not given to a landlord of other land was because a landlord of agricultural land generally had more involvement with the farming or management of the land than a commercial landlord.
111. Mr Twiddy also suggested that the 1975 Act, although aimed at working farmers' farms, did not include factory farms. That was the background to the concession: the concession was in the context of the working farmers' relief; it did not relate to the landlord of land or buildings. In 1981 the scope of the relief changed and the concession, which was of relevance only to working farmers, was replaced by a more restrictive inclusion of intensive buildings which applied both to landlords and working farmers.
112. One of the effects of the concession, Mr Twiddy, said was to permit CTT agricultural property relief for the farm house of a working farmer who operated a factory farm. Absent the concession such a farmer might not qualify for relief in respect of his farm house because it did not fall within Part 1 (land only) or Part 2 (woodland), and would only fall within Part 3 if it was a farmhouse of a character appropriate to "the property", and the property referred to was the agricultural property. If that property did not include the intensive buildings then it would have to be ignored in applying Part 3, and since the agricultural property would consequently be smaller, the farm house itself might not qualify. There was also some doubt about whether the intensive buildings themselves would qualify under Part 3: they could qualify under Part 3 only if they were of a character appropriate to "the property" and it was not clear whether they counted towards "the property" for the purposes of that test. The concession removed both of these uncertainties.
113. When the 1975 regime was replaced in 1981, Mr Twiddy accepts that the regime became, on his approach, significantly more restrictive. The factory farmer's farm house would qualify only if the occupation of the intensive buildings was ancillary to the occupation of other land. If there was no such land, then it was unlikely that they would fall into Part 3 and no agricultural property relief would be available for the buildings or the associated farm house. Instead Mr Twiddy said, Business Property Relief should be available for the intensive buildings – and it was right that it should be because it was more like a factory than a farm. And for that very reason it was less likely that parliament could have intended a landlord to obtain agricultural property relief in relation to such buildings unless they were ancillary to the farm.

114. Mr Neal says that Schedule 14 was a new code for agricultural relief. It should be construed even-handedly between working farmers and landlords. That he says points to construing ancillary occupation widely rather than restrictively.

115. In *Ex parte Spath Holme Ltd*, [2001] 2 AC 349 Lord Hutton said:

"In its judgement the Court of Appeal cited a number of authorities on the construction of consolidation Acts. Whilst there is some variation in the speeches in the leading cases on the proper approach to the construction of a consolidation Act, I consider that the underlying principle which emerges from the cases is that in construing a consolidation Act a court should not have regard to earlier enactments unless the language of the Act is unclear or ambiguous, or there is something in the context of the Act or the relevant section which causes the court to consider that it should look for guidance to an earlier enactment or enactments."

116. That was in relation to consolidation Acts. The IHTA is very similar to a consolidation Act, replacing and consolidating the regime in FA 75 and subsequent Finance Acts including that of 1981. It is also an Act which ostensibly created a new tax to replace CTT.

117. It seems to me therefore that I should resort to the legislative history only if I find that s115(2) is unclear or ambiguous. Only if there is no "plain and primary meaning, in their appropriate register, of the words used" should a secondary canon of construction be used to resolve the issue (Lord Simon in *Maunsell v Olins* [1975] AC 373).

118. If I were in any doubt about the meaning of ancillary occupation of buildings I would derive little help from the statutory history. The most I can derive from it is that the addition of intensive buildings to the definition suggests that they were not thought to be covered by the terms "agricultural land" in Part 1, or always within farm buildings of an appropriate character in Part 3. But those are conclusions which derive from a consideration of the section in its place in the Act.

Hansard

119. Mr Twiddy and Mr Neal relied upon statements made in the Finance Bill 1981 committee stage on 19 July 1981 by the Hon. Peter Rees Q.C. (then a Treasury Minister) in the debate on what became Schedule 14 FA 1981. (Hansard 15 July 1981 Column 1348). Mr Benyon had proposed an amendment to the definition of agricultural property. He had suggested amending it so that the relevant part of Part 2 read:

"if the woodland or building is occupied with agricultural land or pasture and the occupation of the woodland is ancillary to that of the agricultural land or pasture..."[proposed amendment underlined].

120. In other words, his amendment was intended to limit the ancillary occupation condition to the woodland alone. Mr Benyon said:

"The amendment removes the second test. I hope it is acceptable. If the Government tell me it is not, will my hon. and learned friend say categorically that the definition contained in the Bill covers the items to which I refer, namely, piggeries, broiler houses, fish farms, and so on, and recognises them as an integral part of British agriculture, which will therefore receive relief?"

121. Mr Rees replied:

"I hope that I can reassure my hon. friend. It is certainly our intention that the intensive rearing of livestock as fish should qualify for the relief, provided that those activities are subsidiary to the occupation of the agricultural land,

"If... the second condition will create difficulties in practice and unduly restrict the scope of the relief with regard to the activities he has in mind... we shall be prepared to reconsider the matter next year..."

122. The conditions under which a court or tribunal may have regard to parliamentary material as an aid to the construction of legislation were laid down in *Pepper (Inspector of Taxes) v Hart* 1992 STC 898. They can be summarised thus:

(i) the provisions to be construed must be "uncertain" i.e. ambiguous, obscure or have a literal meaning which may lead to absurdity;

(ii) the parliamentary material must clearly show the legislative intention behind those provisions; and

(iii) the statement in question must be that of a minister or other promoter of the bill.

123. I approach the Hansard extracts on the basis that although it is clear that the ancillary occupation test is satisfied if a purpose of the occupation of the intensive buildings serves or supports the purposes for which the other land is used, it is less clear that the alternative emphasis on "subordinate" which I adopted above was intended by parliament. I therefore approach on the assumption that the first condition is satisfied.

124. The third condition is satisfied. That leaves the question as to whether the parliamentary material clearly shows the legislative intention. In that regard:

(i) it is plain that Mr Rees does not give Mr Benyon an assurance that all intensive buildings will qualify. Instead he says they will qualify if the "activities are subsidiary to the occupation of the agricultural land";

(ii) if there were any uncertainty about the meaning of "ancillary", Mr Rees paraphrases it as "subsidiary";

(iii) if there is any uncertainty about what it is about a particular person's occupation of buildings that makes it ancillary to the occupation of land, Mr Rees uses the word "activities".

125. In my view the only help in the construction of section 115(2) with which these extracts provide me is that the ancillary occupation condition should be treated as satisfied where the activities for which the intensive buildings are used are subsidiary to those for which the other land is used. In other words that the emphasis I have put above on the subordinate purpose of the intensive buildings is not misplaced.

(iv) Conclusion

126. Neither the legislative history of the provisions nor the parliamentary material seem to me to afford any substantial help in the construction of these provisions, or provide any indication

which would disturb the preliminary conclusion I reached above in relation to Part 2 of the definition.

127. The broiler houses were occupied by SPL together with the blue land. The purpose for which the broiler houses were used did not serve to help or assist the purposes of the occupation or any of the blue land other than that on which they were situated, and as indicated earlier I do not believe the legislation permits me to conclude that the broiler houses served the land on which they were built (whether they had earthen or concrete floors).

128. Thus in my judgment the broiler houses would qualify only if they were occupied as an "add-on" to or as a subsidiary part of the purposes of a larger agricultural enterprise carried out on the other land with which they were occupied. The purposes for the occupation of the remainder of the blue land do not enable that condition to be satisfied because the use of the broiler houses dominated the use of the blue land. There was no evidence that SPL conducted a wider agricultural enterprise on other land it occupied. Accordingly, the broiler houses do not qualify an agricultural land within Part 2.

129. The remainder of the blue land – i.e. that part of which remains after exercising the broiler houses - was used for agricultural purposes, namely the purposes of serving the occupation of the broiler houses and to a limited extent for growing cider apples. It therefore qualified as agricultural property within Part 1 of the definition.

130. The Dutch barn, whilst not part of that land for these purposes, was in my view appropriate to the character of the property and was a farm building. It therefore qualified within Part 3.

(v) Part 3

131. As I have noted Mr Neal did not contend that Part 3 of the definition was applicable to the broiler houses, and Mr Twiddy therefore did not pursue the arguments in that part of his skeleton argument which related to it.

132. Nevertheless, this appeal is against a determination which relates generally to section 115(2) IHTA rather than to Part 2 of the definition, and I cannot determine the appeal without giving some consideration to whether Part 3 is applicable to the broiler houses.

133. As noted earlier the appearance, situation and use of the broiler houses leads me to conclude that they are properly described as farm buildings. They will therefore fall within Part 3 if they are of a character appropriate to "the property". That property, the Special Commissioners held in *Rosser* was other agricultural land in the ownership of the deceased. On that basis it therefore includes the whole of the 6.8 acres of agricultural land at Wells Farm. The broiler houses occupy 10% of that area (0.68 acres). They dominate the blue land and are a significant feature of the view from the orange land. In these circumstances, I can accept that the buildings were not of a character appropriate to the other agricultural property.

Determination

134. My decision is therefore that of the property at Wells Farm, Cradleigh, Malvern, Worcestershire, WR13 535 forming part of the Deceased's estate, the only part thereof which, having regard to the terms of section 115(2) IHTA, is agricultural property for which relief under

section 116 of that Act is available is 3.99 acres plus that part of the blue land which remains after having excised therefrom the broiler houses, having had regard to the requirements of section 117.

CHARLES HELLIER

SPECIAL COMMISSIONER

Release Date: 26 August 2005

SC 3021/05