

UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2015] UKUT 0548 (LC)

UTLC Case Number: RA/60/2014

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – exemption – agricultural building – redundant retail warehouse used for the storage of agricultural machinery, fertiliser and silage produced on adjoining land – whether a “contrivance” – whether used together with agricultural land and solely in connection with agricultural operations – Local Government Finance Act 1988, sch.5, para 3 – appeal allowed

**IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE VALUATION TRIBUNAL FOR ENGLAND**

BETWEEN

**MR EDWARD WOOTTON
(TRADING AS E F WOOTTON & SON)**

Appellant

and

**MS SARAH GILL
(VALUATION OFFICER)**

Respondent

**Re: The Home Store,
Perkins Road,
Bedford**

**Before: Martin Rodger QC, Deputy President
Sitting at: The Royal Courts of Justice, Strand, London WC1A 2LL
on**

30 September, 1 October 2015

Mr Cain Ormondroyd instructed by Geoffrey Leaver LLP Solicitors for the Appellant

Mr Matthew Donmall instructed by HMRC Solicitors for the Respondent

The following cases are referred to in this decision:

Farmer (VO) v Buxted Poultry Ltd [1993] AC 369

Kenya Aid Programme v Sheffield City Council [2013] EWHC 54 (Admin)

Makro Properties Ltd v Nuneaton & Bedworth Borough Council [2012] EWHC 2250 (Admin)

Post Office v Oxford City Council [1980] 2 All ER 439

W. & J. B. Eastwood Ltd. v. Herrod [1971] A.C. 160

Inland Revenue Commissioners v Duke of Westminster [1936] AC 1

Introduction

1. In the law of non-domestic rating a hereditament is exempt to the extent that it consists of agricultural buildings. By paragraph 3 of Schedule 5 to the Local Government Finance Act 1988 one way in which a building will be an agricultural building is if it is not a dwelling and is occupied together with agricultural land and used solely in connection with agricultural operations on that or other agricultural land.
2. The issue in this appeal is whether a modern retail warehouse on the outskirts of Bedford, designed and formerly used for the sale of furniture and household goods, was an agricultural building and thus exempt from rating between 8 June 2010 and 26 January 2012. The building has subsequently been converted for use as a Waitrose supermarket but in the period in question it was used by the appellant, Mr Wootton, for the storage of agricultural machinery, foodstuff and silage. Mr Wootton is a farmer.
3. By a decision given on 12 June 2014 the Valuation Tribunal for England dismissed an appeal by Mr Wootton against a refusal by the valuation officer to delete the building from the rating list. In his appeal against that decision Mr Wootton was represented by Mr Cain Ormondroyd and relied on the evidence of Mr David Parker, a chartered surveyor and a Director of Savills, in addition to his own evidence. Mr Mathew Donmall appeared on behalf of Ms Gill, the valuation officer, who also gave evidence.

The statutory provisions

4. Section 51 of the 1988 Act provides that Schedule 5 of the Act has effect to determine the extent (if any) to which a hereditament is exempt from local non-domestic rating. Paragraph 1 of Schedule 5 provides that a hereditament is exempt to the extent that it consists of either agricultural land or agricultural buildings. Paragraph 2 defines agricultural land. For the purpose of this appeal it is necessary to be aware only that it includes land used as arable, meadow or pasture ground.
5. Paragraphs 3 to 7 provide a series of definitions of the expression “agricultural building”. Of these it is agreed that for the purpose of this appeal only the definition in paragraph 3(a) is material. It provides that:
 - “3. A building is an agricultural building if it is not a dwelling and –
 - (a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or other land”
6. Paragraph 8(3) deals with buildings used for a variety of purposes; it provides that:
 - “(3) In determining for the purposes of paragraphs 3 to 7 above whether a building used in any way is solely so used, no account shall be taken of any time during which it is used in any other way, if that time does not amount to a substantial part of the time during which the building is used.”

It is also relevant to note that paragraph 8(4) provides that a “building” includes a separate part of a building.

The issues

7. It is apparent from these statutory provisions that a building (or a separate part of a building) will be exempt from rating if three conditions are satisfied, namely:
 - (a) it is not a dwelling;
 - (b) it is occupied together with agricultural land; and
 - (c) it is used solely in connection with agricultural operations on that or other agricultural land.

It is common ground in this appeal that Mr Wootton’s building is not a dwelling, it is a retail warehouse used temporarily for the storage of agricultural machinery and animal feed. The issues for determination are therefore whether, during the period in question, it was occupied together with agricultural land, and whether it was used solely in connection with agricultural operations on that or other land.

The Valuation Tribunal’s decision

8. In its decision of 12 June 2014 the Valuation Tribunal concluded that Mr Wootton’s building was not exempt, because it was not occupied together with agricultural land and was not used solely in connection with agricultural operations. It reached its conclusion after referring to the decision of the House of Lords in *W. & J. B. Eastwood Ltd. v. Herrod* [1971] A.C. 160 and directing itself that “agricultural buildings connote buildings subsidiary or ancillary to or needed as a necessary aid to agricultural operations taking place on the land”. The VTE went on, at paragraph 13:

“... farm buildings are seen as supporting the work on the land, rather than being a dominating feature. In the subject case the Panel held that a property which is a large retail unit on a retail park with a rental value in excess of £340,000 cannot be said to be subsidiary to the agricultural land.”
9. On the question of sole use, the VTE found that “some items stored within the building relate to the previous retail use of the hereditament and are not connected with agricultural operations on the land”. It was also satisfied that the building was only being used for the storage of silage and farm machinery on a temporary basis while planning permission for an alternative use was obtained and a sale to Waitrose was negotiated.

The Facts

10. Having heard the evidence I base my decision on the following facts.
11. In 2010 the appeal hereditament was a single-storey retail warehouse with a ground floor area of approximately 2,837m² and a mezzanine floor with an area of 1,227m². The building was constructed in the mid-1990’s and comprised a steel portal frame with brick cladding and a ribbed steel roof. To the front was a car park with spaces for 70 vehicles. At the rear of the building was a service yard shared with an adjoining retail warehouse.
12. The site is on the eastern fringe of Bedford, bounded to the north by the A4280, Goldington Road, a busy dual carriageway leading to the town centre, and to the south and east by open farm land. To the west is another retail warehouse and its associated car park. In 2010 access to

both of these warehouses was along Perkins Road, which was then a *cul de sac* leading from Riverfield Drive and ending at the appeal hereditament. To the north of the site, on the other side of the A4280 is an estate of light industrial buildings and retail warehouses.

13. The appeal hereditament is entered in the 2010 Rating List as a retail warehouse and premises with a rateable value of £342,500. The valuation officer's evidence to the VTE included a breakdown which showed that only £20,340 of that value was attributed to the mezzanine floor. No separate value was attributed to the 70 car parking spaces.
14. The land on which the hereditament now stands was formerly agricultural land and the site of the farm buildings of Bury Farm which had been acquired by Mr Wootton in about 1960 and was farmed by him together with other land to the north of Bedford. In 1988 he sold the buildings of Bury Farm together with some adjoining land for development as part of an out-of-town shopping area. Mr Wootton's remaining agricultural land to the south and east of the hereditament comprises 53 acres of pasture known as Castle Mill Meadow lying between the A4280 and the river Great Ouse. Access to the land was originally through the Bury Farm farmstead but when this was sold access was by means of a farm gate leading directly onto the dual carriageway or by a culvert which Mr Wootton created across a ditch adjoining Perkins Road.
15. The hereditament was occupied by the furniture retailer Courts in about 1997. In 2005 Courts went into administration and Mr Wootton purchased the building. He explained that he regarded the acquisition as a commercial investment but that it also provided an opportunity to improve the access to Castle Mill Meadow.
16. Mr Wootton first let the building for the sale of household goods and furnishings to a company named Carbadale Ltd, trading as The Home Store, but in 2009 it too got into financial difficulty. Rent due to Mr Wootton went unpaid and a debt in excess of £31,000 had accumulated by the time he instructed bailiffs to levy distress and to take possession of the warehouse and its contents on 30 November 2009. The goods were subsequently removed and sold at auction in March 2010. After the departure of The Home Store Mr Wootton removed part of the hedge separating the car park from Castle Mill Meadow to obtain a more satisfactory access to his land.
17. Mr Wootton runs a mixed arable and livestock enterprise on approximately 2,500 acres in ten separate freehold parcels widely dispersed to the north and north east of Bedford with additional land taken on a seasonal basis. Castle Mill Meadow is the most southerly part of his combined holding of which approximately 600 acres are in grass. In 2010 he kept approximately 700 head of cattle and produced around 8,000 tons of grain on his arable acreage.
18. Having resumed possession of the building in 2009 Mr Wootton made inquiries of local letting agents and was informed that there was a significant over supply of vacant retail warehouses in the locality and that there was no realistic prospect of achieving a letting. He decided not incur the expense of advertising or erecting a sale or letting board but the building is in a prominent location and he was occasionally approached about possible alternative uses. On one occasion he allowed the building to be used for a large religious service and later entered into unsuccessful discussions with the University of Bedfordshire over the possibility of its use as an exam hall.
19. It is not clear on the evidence when Mr Wootton first began to negotiate with Waitrose over the sale of the building to them, but it is likely that such discussions began as early as 2008. In that year an unsuccessful application was made by Mr Wootton to create a new service road connecting Perkins Road with the A4280 and I infer from his evidence that Waitrose were behind that application. The service road, for which permission was eventually granted in

March 2009 was essential to the successful conversion of the building to use as a food superstore. I am satisfied that before the Home Store ceased trading at the premises, Mr Wootton and Waitrose were already engaged in the process which eventually led to the grant of planning permission to change the use of the building to a food retail unit in March 2011.

20. In the 20 years following Mr Wootton's sale of Bury Farm in 1988 a new housing estate has been constructed on either side of Riverfield Drive to the west and south west of the appeal hereditament. The proximity of Castle Mill Meadow to expanding urban development has created problems of trespass and vandalism. The land had last been used for livestock in 2005 when Mr Wootton let it for grazing by sheep but encroaching urbanisation rendered that use problematic and since 2006 he had been using the land for making silage in large wrapped bales for storage and use as cattle feed.
21. When Castle Mill Meadow was first used for silage Mr Wootton had left the wrapped bales on the land overnight but in two consecutive years they were vandalised. It therefore became his practice to remove the bales on the day on which they were wrapped and to transport them by tractor and trailer a distance of approximately 9 or 10 miles to White House Farm or Brook Farm where he kept livestock. Mr Wootton explained, and I accept, that the need to transport a large number of silage bales over relatively long distances in June and September when silage was made across the whole farm was an inconvenience; it was much more efficient for the bales to remain at Castle Mill Meadow until they could be transported in the quieter winter months when they were principally required for feeding.
22. At about the same time as Mr Wootton instructed bailiffs to resume possession of the building Savills wrote on his behalf to the valuation office stating that he intended to use the building for the storage of animal feed and inquiring about the possibility of securing an agricultural exemption from rating. Ms Gill, the valuation officer, replied on 7 December 2009 explaining the basis on which such an exemption could be justified.
23. The local planning authority was also consulted and informed Mr Wootton that planning permission was not required for a temporary change of use of a retail warehouse to the storage of animal feed and agricultural implements. Armed with that advice, and with the advice of Ms Gill, Mr Wootton set about adapting the building to make it suitable for his intended use. He first removed planters and other obstacles from the car park to create clear space for loading and manoeuvring trailers and machinery. He removed a large area of glazing immediately adjoining the main entrance to the building and installed a wide roller-shutter door to enable access by a trailer, a combine and other implements. He installed collapsible security bollards in front of the roller-shutter door and a new alarm system. Inside the building he stripped out a central reception desk and made good the floor. The removal and sale of the contents of the store left a clear floorspace with only some storage racking along part of the perimeter wall and on the mezzanine. I am satisfied that, although modest, these adaptations were more than cosmetic and were necessary for Mr Wootton's intended use of the building, which at that stage was of indeterminate duration. It was not necessary for the suspended ceiling or mezzanine to be removed or for the carpeting or wooden flooring to be taken up. They did not interfere with the intended use and their removal would have been of no additional benefit to Mr Wootton, so there was no point in stripping them out.
24. Mr Wootton was cross-examined on his motive for adapting the building in this way. He explained that it was his preference to store machinery indoors, both for protection from the elements and to preserve it from theft or vandalism. It was more convenient to store the silage taken from Castle Mill Meadow adjoining the land than to transport it long distances at a particularly busy time of year and it was more secure to keep it indoors than to leave it in the open. He had considered the use of the building as a calf rearing unit (a possibility alluded to in correspondence between his agent and the valuation officer) but had decided against it. When asked whether obtaining an exemption from rates was an important aspect of his reasons for

using the building as he did, Mr Wootton said that it was well worth his effort to try to do so, but that he had not been concerned solely with the avoidance of rates. He was aware of a number of alternative courses of action, including short term lettings to an associate or the removal of the roof of the building, which would also have enabled him to achieve relief from rating if that had been his only objective. He preferred to put the building to a productive use by storing machinery and cattle feed than to leave it empty or obtain exemption by another route.

25. The successful storage of silage bales requires an area of hard standing and some means of protection from damage by birds or vermin. It is not normal agricultural practice to store baled silage indoors. Before the departure of The Home Store Mr Wootton stored his silage outdoors, including the silage taken from Castle Mill Meadow. Nevertheless, if a suitable building is available for which no other productive use can be found, its use to store baled silage has certain marginal benefits: protection from bird damage without the need to net the bales, and more reliable protection from rodents. In areas where vandalism is an issue (as it is at Castle Mill Meadow) indoor storage has the more substantial additional benefit of increased security. Mr Wootton also suggested that storage indoors at a relatively constant temperature improved the quality of the silage, but in the absence of independent confirmation of that view I place no weight on it.
26. In his oral evidence Mr Wootton was not confident of dates, but I was told that his witness statement had been drafted by reference to his farm diary in which he recorded cultivations and other important events. The diary itself was not in evidence but Mr Parker had seen it and his colleague Ms Borg had used it when assisting Mr Wootton to prepare his witness statement. I am satisfied that Mr Wootton's evidence was given honestly and that points of detail were drawn from the diary. I am also satisfied that the farm diary is likely to be an accurate record of the events noted in it. On that basis I am satisfied that the installation of the roller shutter door and new alarm system were completed by 19 May 2010, and that the storage of machinery occurred for the first time on 8 June 2010.
27. By 8 June 2010 Mr Wootton had instructed his staff to move a trailer into the building together with a quantity of seed in very large sacks. Mr Wootton's evidence was that machinery was also moved in at that time, including a number of ploughs and a tool carrier, perhaps half a dozen items in all. 151 wrapped bales of silage newly taken from Castle Mill Meadow and weighing approximately 110 tonnes were moved into the building in July. A second cut of silage was taken from the meadow in late September and a further 78 bales (approximately 55 tonnes) were moved into the building. Some indistinct photographs taken by a colleague of Ms Gill on 16 August 2010 show either 8 or 16 of the sacks of seed stored next to a long-bed trailer loaded with further sacks; the wrapped bales of silage can also be seen arranged in ranks. The August photographs do not appear to show other items of machinery but those may have been present as the photographs show only a limited part of the building. There is no evidence to contradict Mr Wootton's recollection that a quantity of machinery was already there before the silage was made.
28. Ms Gill made her first inspection of the building on 14 September 2010 and recorded a long list of machinery and other items as being present: a quantity of mineral blocks, animal feeders, metal containers, mangers, a cattle crush, a roller mill, a trailer and metal gates, a calf feeder, bales of silage, two combine trailers and grass seed drills, a quantity of unspecified "out of season" machinery, seed corn for animal feed, a circular feeder, a baler and straw spreader, a water container and muck trailer, various trailers in at least three different areas of the building and three ploughs used for salvaging spare parts. In addition Ms Gill noted a quantity of redundant shop fittings and shelving.
29. In summary, the storage of a quantity of machinery and seed began on 8 June and was progressively supplemented in the following weeks; a substantial quantity of silage totalling

151 bales had arrived by mid-July with more in September; and the list of machinery, animal feed and other items observed by Ms Gill were present by mid-September.

30. The use of the building for these purposes was always intended by Mr Wootton to be temporary. In March 2011 planning permission was obtained for a change of use and negotiations over the details of the sale to Waitrose then commenced (Mr Wootton had already granted the supermarket operator an option to purchase but the price remained to be settled). Silage and equipment remained in the building throughout 2011 when further silage was added, but all was removed in January 2012.

Issue 1 – Was the building occupied together with agricultural land?

31. It is agreed that both Castle Mill Meadow and the rest of the 2,500 acres occupied by Mr Wootton are agricultural land. It is also agreed that the land on which the retail warehouse was constructed was not agricultural land in its own right because agricultural land does not include the sites of agricultural (or other) buildings. The first issue is therefore whether Mr Wootton's building was occupied by him "together with" the remainder of his land.
32. In her evidence to the Tribunal Ms Gill confirmed that it had originally been her view, on inspecting the building, that it was occupied together with Castle Mill Meadow but she no longer considered that to be the case on the basis of legal advice she had received.
33. Mr Ormondroyd, for the appellant, submitted that for a building to be occupied together with agricultural land the building and the land must be "worked together as one agricultural unit". For the respondent Mr Donmall submitted that the key consideration was whether the building and the land were "occupied together so as to form in a real sense a single agricultural unit". Each of those submissions was derived from a passage in the speech of Lord Slynn in the aptly named *Farmer (VO) v Buxted Poultry Ltd* [1993] AC 369.
34. In *Farmer* the ratepayer was a major poultry producer which sought the deletion from the rating list of its poultry processing factory on the grounds that it was an agricultural building. The factory was used by the ratepayer to process birds reared on 48 of its 67 poultry farms which were situated at distances from the factory of between a quarter of a mile and 120 miles. Both the local valuation court and the Lands Tribunal had been satisfied that the factory was occupied together with the farms and was entitled to exemption under section 2(1)(b) of the Rating Act 1971, but the Court of Appeal had disagreed. On the ratepayer's further appeal to the House of Lords Lord Slynn gave the leading speech, in which he reviewed the different approaches which had been taken to the phrase "occupied together with" in previous cases, and the significance which they attributed to geographical proximity on the one hand and functional connection on the other.
35. The relevant passage from Lord Slynn's judgement is at 378 D-G; having referred to the judgement of Glidewell LJ in the Court of Appeal he went on:

"I agree with Glidewell L.J. 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. I also consider that the buildings must be so occupied and the activities so controlled and managed at the same time. These are necessary conditions to be satisfied but to satisfy each of them separately or together is not sufficient to establish that one building is 'occupied together with' another for rating purposes. Nor is there any geographical test which gives a conclusive answer – though the distance between the buildings is a relevant consideration, as the Court of Appeal held.

It is not, however, sufficient to ask generally whether the buildings or buildings and land in question are all part of the same business enterprise. What it is necessary to show is that the two

buildings, or as the case may be the buildings and agricultural land, are occupied together so as to form in a real sense a single agricultural unit. Contiguity or propinquity may go far to show that they are. Thus farm buildings surrounded by land which is farmed with other land nearby though not contiguous or even land in another neighbouring village may well as a matter of fact be found to be ‘occupied together with’ each other. On the other hand separation may indicate that they are not and the greater the distance the less likely they are to be one agricultural unit.”

Having explained that amendments to the 1971 Act meant that it was no longer right to ask whether the two premises constituted one “farm”, at 379A and E Lord Slynn preferred to consider whether the buildings and the land were a single agricultural unit and to have regard to their physical separation as part of that test: “... the important question is whether the two buildings or the buildings and land are worked together so as to form one agricultural unit.”

36. Mr Donmall submitted that for the retail warehouse to be occupied together with Castle Mill Meadow or with Mr Wootton’s land as a whole, it was not enough that they be in the same occupation, at the same time, or that the activities carried on there be jointly controlled and managed as part of the same business enterprise, all of which he accepted had been the case; what additionally was required was that the building and the land must comprise “in a real sense” a single agricultural unit. The question of whether a building is an agricultural building should be subjected to what Mr Donmall described as “a test of *reality*, rather than mere appearance”. It followed, he submitted, that “a contrived, unnecessary and transient use of a building does not suffice”.
37. In support of his contention that the use made of the building by Mr Wootton from June 2010 to January 2012 was “contrived, unnecessary and transient” Mr Donmall relied on the evidence of Ms Gill. She considered that the items stored in the building were of a type which would not otherwise be kept indoors. The machinery she had seen was “surplus” or obsolete but in any event it was unnecessary that it be kept indoors. Most of the equipment appeared to her to be for use in connection with livestock farming rather than for the making of silage, which was the principle activity carried on at Castle Mill Meadow. She could see no good reason why a farmer would go to the lengths of transporting and storing equipment in a urban location far from where it was required unless it was to enhance the opportunity to secure exemption from business rate liability on what was evidently a retail property.
38. Mr Donmall also submitted that the “reality” of the use made of the building should be assessed in view of the following considerations: that the adaptations made to the property were minor; it remained available for lease or sale; the previous tenant’s fittings were not fully dismantled or taken away; only a part of the building was used for the storage of agricultural machinery and silage; there had been no need to store the silage bales in the building, nor was it necessary for any agricultural reason to store the agricultural machinery there; the use of the building by Mr Wootton was a temporary measure and his real purpose was to achieve the agricultural exemption.
39. I asked Mr Donmall whether he could point to any line of authority in the rating field which supported his submission that a use motivated by a desire to obtain exemption from liability to pay non-domestic rates, which he referred to as a “contrivance”, should be disregarded and treated as being incapable of founding a valid application to delete a hereditament from the list. He was unable to do so other than by reference to what Lord Slynn had said about the need for land and buildings to form a single agricultural unit “in a real sense”. I do not think Lord Slynn’s words can bear the weight Mr Donmall and Ms Gill seek to place on them. They must be read in the context of the issue in that case, which was whether premises which were separated by considerable distances could nonetheless be described as being “occupied together” by reason of their functional connection as part of a single business enterprise. They were not intended to introduce considerations of motive but rather to emphasise that the issue was practical and fact sensitive and required all relevant factors to be taken into account. It is

striking that Lord Slynn made no further reference to “reality” when he identified the important question as being “whether the two buildings or the buildings and land are worked together so as to form one agricultural unit.”

40. More broadly, as Mr Ormondroyd pointed out, Mr Donmall’s submission is contrary to the well established principle that an arrangement should not be treated differently because it exists for the purpose of tax avoidance. A well known statement of that principle is that of Lord Tomlin in *Inland Revenue Commissioners v Duke of Westminster* [1936] AC 1:

“Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.”

Recent examples of the application of the same principle can be found in the rating field. In *Kenya Aid Programme v Sheffield City Council* [2013] EWHC 54 (Admin) the question was whether premises used by a charity for the storage of a small quantity of furniture were “wholly or mainly used for charitable purposes”. At [36] Treacy LJ said that consideration of the “efficiency” of the use or the “necessity” for the premises to be used in that way was irrelevant, and at [38], that if “the parties were indulging in tax avoidance, I do not consider that this is a matter to which weight should have been attached”. In *Makro Properties Ltd v Nuneaton & Bedworth Borough Council* [2012] EWHC 2250 (Admin) the use of a former cash and carry warehouse for the temporary storage of 16 pallets of documents occupying about 0.2% of its total floor space of 140,000 sq.ft. was held to be rateable occupation triggering a rate free period irrespective of the motivation of the ratepayer. Neither Kenya Aid nor Makro was an agricultural exemption case but they illustrate a general principle which is contrary to Mr Donmall’s primary submission.

41. I am therefore satisfied that Mr Wootton’s motive in using his retail warehouse for the storage of silage and agricultural implements is irrelevant to the issue of whether the building was occupied together with the adjoining agricultural land. In any event I accept Mr Wootton’s evidence that, irrespective of any advantage he might achieve in reducing his liability for non-domestic rates, it was both convenient and beneficial for him to store silage in the building because of the risk of vandalism if it remained outdoors in that location and the distance over which it would eventually have to be transported. The use was temporary and it might fairly be described as opportunistic, while negotiations over the sale of the building to Waitrose continued. I have no doubt that Mr Wootton’s primary motivation was fiscal rather than agricultural, and that he could have carried on his business as he had previously done, but the use itself was substantial, exclusive, beneficial and prolonged and I see no reason to disregard it.
42. Mr Donmall did not argue strongly that even if I was against his primary submission then I should nonetheless find that the building was not occupied together with the land. That was a realistic approach. The produce of Castle Mill Meadow was stored in the building, to which it was immediately adjacent; a new access had been created between the car park and the land by the removal of a part of a hedge; a new gate had been erected at the entrance to the car park to enable the building and the land to be secured from intrusion. The building was clearly occupied together with Castle Mill Meadow, but it was also occupied together with the remainder of Mr Wootton’s holding, which was managed by him as a single agricultural unit; the silage stored in the building was fed to cattle on other parts of the combined unit; the implements and machinery kept in the building had been used on other parts of the unit, and would either be used there again or cannibalised for spares for other machinery which would be so used.

43. I am therefore satisfied that the building was occupied together with agricultural land and that the first limb of paragraph 3(a) of Schedule 5 to the 1988 Act was satisfied between 8 June 2010 and 26 January 2012.

Issue 2 – Was the building used solely in connection with agricultural operations on that or other agricultural land?

44. In its decision the VTE referred to the need for a building to be used in connection with agricultural operations on the land with which it was occupied and directed itself that the use of the building must be “subsidiary or ancillary to or needed as a necessary aid to agricultural operations taking place on the land”. It derived that direction from the decision of the House of Lords in *W. & J. B. Eastwood Ltd. v. Herrod* [1971] A.C. 160.

45. *Eastwood* was another poultry producer case in which the ratepayer occupied 1,150 acres of land in various parcels on which stood more than 90 buildings used in the intensive rearing of chickens. All but 20 acres of the land was used for the production of barley for use as poultry feed, but this represented only 13% of the food consumed by the birds housed in the buildings. The remaining 20 acres was available for cockerels to graze, but the broiler birds never left the buildings. It was common ground that the buildings were occupied together with the land, and the question considered by the House of Lords was whether the buildings were used solely “in connection with the agricultural operations on the land”. The leading speech was given by Lord Reid, who said that “ordinary usage of the English language suggests that the buildings must be subsidiary or ancillary to the agricultural operations” (168D). He went on, at 169H:

“If I have correctly determined the meaning of the statutory definition, the buildings with which this case is concerned fall far outside its scope. Their use is in no sense ancillary to the agricultural operations on the land. This is a large commercial enterprise in which the use of the land plays a very minor part. Seven-eighths of the grain and all the other constituents of the food for the poultry are bought in the market, far the greater part of the poultry never go on the land at all, and the fact that the cockerels run for a few weeks on a small part of the land is a very small element in the whole operation. It would, I think, be a travesty of language to say that these buildings are used solely in connection with agricultural operations on this land.”

46. Mr Donmall also drew attention to a sentence in the speech of Lord Morris at 174G-H which I quote in its context:

“On these facts it seems to me that the agricultural operations on the land play but a subsidiary part in connection with the separate but main enterprise for which the layer houses are used....It appears, therefore, that the agricultural land is used in connection with the operations for which the layer houses are used. The words of the definition of “agricultural buildings” suggest to my mind buildings that are needed as an adjunct or a necessary aid to agricultural operations taking place on agricultural land and used solely in connection with those operations. This does not necessarily involve that the use to which the buildings are put must be of minor or minimal importance but it does involve that no part of the use is unconnected with the agricultural operations on the land. In the present instance it is the agricultural land that is needed as an adjunct or aid to the operations and enterprises for which the layer houses are used.”

Mr Donmall stressed the words “needed as an adjunct or a necessary aid to agricultural operations” and submitted that these imported a further test of reality or necessity in the relationship between the use of the buildings and the use of the land which was defeated by the opportunistic and contrived use made of the building by Mr Wootton. I do not agree. As the passage as a whole makes clear, the difficulty for the ratepayer in *Eastwood* was that the dominant relationship was inverted: the land was used in connection with the operations conducted in the buildings rather than the buildings being used in connection with the

operations on the land. I do not read Lord Morris as importing a further test of necessity into the relationship between the use of the buildings and the use of the land.

47. The statute requires that the buildings be used “in connection with” agricultural operations on the land together with which they are occupied. For substantially the same reasons as are given in paragraph 41 above I am satisfied that during the period for which exemption is sought by Mr Wootton his retail warehouse was used in connection with the agricultural operations which he carried on on his land. The fact that it was not necessary for silage or machinery to be stored in the building (which it was not) is irrelevant. The correct focus is on the use itself, not on the motive for the use or whether Mr Wootton could have arranged his enterprise differently.
48. It was originally suggested that the use Mr Wootton made of the buildings was not “solely” in connection with the agricultural operations on the land. In her evidence Ms Gill compared the building to a “show home” and said that it was being preserved in its condition as a retail warehouse and could have been let for that purpose. She also considered that it was used for the storage of the remaining shop fittings, carpets on the floor, suspended ceilings and ancillary items. In his written argument Mr Donmall suggested that the additional use being made of the building was use for the purpose of rendering the hereditament exempt from rates.
49. None of these lines of thinking was pursued by Mr Donmall in his oral submissions and after hearing the evidence he accepted that the sole use being made of the building was for the storage of animal feed and agricultural implements. Once again that was a realistic concession. There was no evidence of any steps being taken to preserve or display the building to promote a letting or sale and in any event the availability of a building for disposal cannot be said to be a use. Nor can the presence of redundant shop fittings in a building abandoned by the shop keeper amount to the use of the building for the storage of those items. Carpets and wooden flooring attached to the floor, the suspended ceiling and the mezzanine were all parts of the building itself, rather than items stored there.
50. Mr Donmall also placed reliance on *Post Office v Oxford City Council* [1980] 2 All ER 439, but the question in that case was whether a car showroom, garage and repair shop was entitled to exemption from a rating surcharge on the grounds that it was “a factory ... or other premises of a similar character for use wholly or mainly for industrial purposes”, and I did not find it of assistance.
51. I am therefore satisfied that the building was used solely in connection with the agricultural operations carried on by Mr Wootton on his agricultural land, including in particular Castle Mill Meadow but extending also to the remainder of his unit.
52. Finally it was suggested by Mr Donmall that even if part of the building was used in such a way as to qualify for exemption, the whole building was not so used. In particular he submitted that no use was being made of the mezzanine, and that it was capable of being separately let and should be regarded as a “separate part of a building” for the purpose of paragraph 8(4) of Schedule 5 to the Act. This final contention had not been included in the respondent’s statement of case and there was no satisfactory evidence concerning the construction of the mezzanine or access to it. The point was relied on not simply with a view to maintaining an entry in the valuation list in respect of the mezzanine but in support of the more fundamental submission that, as the proposal to delete related to the building as a whole, it must be rejected in its entirety if only part of the building was entitled to the exemption. It was acknowledged by Mr Donmall that it would now be too late for Mr Wootton to make a further proposal to delete the entry in relation to part of the hereditament as he no longer had any interest in it. In my judgement if this point was to be relied on it ought to have been pleaded so that proper evidence could have been prepared, and I decline to permit it to be raised at so late a stage. I say nothing about Mr Donmall’s underlying technical submission, which Mr Ormodyd disputed, that it would be impermissible to construe a proposal to delete an entry on the

grounds that the hereditament was exempt as extending to either the whole or to such parts as were found to be entitled to the exemption.

Disposal

53. For these reasons I allow Mr Wootton's appeal and direct that the hereditament should be deleted from the rating list for the period from 8 June 2010 to 26 January 2012. The parties should now seek to agree the appropriate costs order but if they are unable to do so any application for costs should be made within fourteen days of the date of this decision.

Martin Rodger QC,

Deputy President

15 October 2015