Neutral Citation Number: [2025] EWCA Civ 666

Case No: CA-2024-001662

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
JUDGE ELIZABETH COOKE AND PETER McCREA FRICS FCIArb
2024 [UKUT] 149 LC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/05/2025

Before :

LORD JUSTICE LEWISON
LADY JUSTICE ASPLIN
and
LORD JUSTICE COULSON

- -

Between :

DAWN BUNYAN (VALUATION OFFICER)	**Appellant**
- and -	
FRIDAYS LIMITED	**Respondent**

- -
- -

Guy Williams KC (instructed by **HMRC Legal Group**) for the **Appellant**
Cain Ormondroyd (instructed by **Thrings LLP**) for the **Respondent**

Hearing date: 13/05/2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 22/05/2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Lewison:

Introduction

1. The issue in this appeal is the scope of the agricultural exemption from business rates. Three buildings are in issue, respectively labelled the Egg Packing Centre, the Egg Packaging Store and the Egg Warehouse. The Upper Tribunal (Judge Elizabeth Cooke and Mr Peter McCrea FRICS FCIArb), allowing an appeal from the Valuation Tribunal for England (the "VTE"), held that all three buildings were within the scope of the exemption; but gave permission to appeal. The decision of the UT is at [2024] UKUT 149 (LC), [2024] RA 229.

2. An appeal from the Upper Tribunal (the "UT") to this court is limited to a point of law arising from a decision of the UT: Tribunals Courts and Enforcement Act 2007, section 13 (1).

The facts

3. I can take the facts from the UT's decision.

4. The three buildings are all located at Chequer Tree Farm in Kent, which is owned by Fridays Ltd. Fridays is one of the country's largest producers of free-range eggs, producing some 1.7 million eggs a week. Chequer Tree Farm is the company's headquarters, encompassing some 530 acres in rural Kent. It also owns or operates a number of other farms within a ten-mile radius and farms some 2,000 acres of arable land, including the land at Chequer Tree Farm itself, to grow wheat and barley to make chicken feed. Free-range eggs or organic eggs are produced at the four parcels known as Combwell, Tolehurst, Summer Hill and Waterlane Farms (the "Fridays Farms"). The production of free-range eggs is a traditional, land based form of farming. It requires the birds to have access to open land. Each of the Fridays Farms also has buildings in which the hens can roost and lay their eggs. Chequer Tree Farm itself is an arable farm. No free range eggs are produced there. Nevertheless, the three buildings in issue on this appeal are located at that farm.

5. It was agreed that much of the land and some of the buildings at Chequer Tree Farm are exempt from non-domestic rating, including 482 acres of the agricultural land used to produce barley and wheat, a mill store, feed mill, and chicken houses. The chicken houses were used at the material day (September 2018) to house caged hens; but that operation was not material to the appeal. Some other buildings, including the reception, offices, a vehicle workshop and other buildings were assessed for rating. There was no dispute about those buildings.

6. Three buildings at Chequer Tree Farm were in issue. They are the Egg Packing Centre, the Egg Packaging Store, and the Egg Warehouse, ("the three buildings"). The alternative valuations were agreed. If the three buildings are exempt, an assessment described in the rating list as Food Processing Centre and Premises (part exempt) of £136,000 is agreed; if they are not, the agreed figure is £352,500 RV. The three buildings stand or fall together. Neither party suggested that they should be separately considered.

7. The production of eggs for human consumption is heavily regulated, and a lot of land is needed both for disease control requirements and in order for eggs to be classed as free range; one shed housing 64,000 birds requires 79 acres or 32 hectares of "ranging land". The practical consequence of this is that while Fridays would operate its egg production business from one site if that were possible, that would require a site of over 400 acres and there is no suitable site of that size available. The business has therefore created a collection of sites in a ten-mile radius.

8. At Chequer Tree Farm itself the arable land is used for barley and wheat, which is milled on site and fed to the hens at the other holdings; and eggs come from the other holdings to the three buildings to be packaged. All that happens at Chequer Tree Farm is the growing of barley to feed the chickens on the other holdings, and the weighing, grading and packaging of eggs at the three buildings. The arable production is carried out by three members of staff (two tractor drivers and a manager); they and their equipment are based at Tolehurst Farm. The equipment used includes tractors, trailers and a large combine harvester, and it is used to farm all the arable land occupied by Fridays.

9. The other holdings are managed from Chequer Tree Farm; staff at the other locations feed the hens and manage the land and buildings, but they report to the Poultry Management Team at Chequer Tree Farm at a weekly meeting and all decisions about feeding are taken there. Feeding is complex because feed is blended differently for each farm based on the age, health and productivity of the birds so there is considerable calculation and control undertaken at Chequer Tree Farm. Planning for the arrival of chickens at 1 day old and their removal for slaughter at the age of about 85 weeks (by which time the shells of their eggs are too thin for commercial use) is all done at Chequer Tree Farm. Staff at the other farms are titled "managers" to reflect their skill and importance, but their role is to look after the chickens on a day-to-day basis and how they do so is determined by senior management at Chequer Tree Farm.

10. The production and packaging of eggs prior to sale is regulated by legislation and by the British Egg Industry Council's "Lion Code of Practice". Eggs have to be stamped at the producing farm before being taken to Chequer Tree Farm for packing; the procurement department at Chequer Tree Farm supplies the ink and materials for the stamping. Eggs are stamped and put on to "keyes trays" which are large trays with egg-shaped dips to hold the eggs safely, many dozen on each tray; and then stacked on to wooden pallets and loaded on to a lorry to be brought to Chequer Tree Farm. There they are weighed, graded, stamped with their grade and date, and then the grade A eggs are packed in supermarket egg boxes, mostly for Asda and Lidl. Grade B eggs (misshapes for the most part) are picked out by the machines and packed for use for baking.

11. About 1.7 million eggs produced on Fridays Farms are processed in this way each week, but that is not enough to meet the supermarkets' requirements. Fridays therefore also grades, packages and sells on about 1.4 million free range eggs each week from around 15 smaller independent farms who do not produce eggs on a big enough scale to do the packing themselves (and who also cannot sell their eggs unless they are graded and packed in accordance with regulations and industry practice).

The current legislation

12. Schedule 5 to the Local Government Finance Act 1988 ("the LGFA 1988") relevantly provides:

> "1. A hereditament is exempt to the extent that it consists of any of the following—
>
> (a) agricultural land;
>
> (b) agricultural buildings.
>
> 2. (1) Agricultural land is—
>
> (a) land used as arable, meadow or pasture ground only…
>
> 3. A building is an agricultural building if it is not a dwelling and—
>
> (a) it is occupied together with agricultural land and is used solely in connection with agricultural operations on that or other agricultural land …
>
> 5. (1) A building is an agricultural building if—
>
> (a) it is used for the keeping or breeding of livestock, or
>
> (b) it is not a dwelling, it is occupied together with a building or buildings falling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings.
>
> (2) Sub-paragraph (1)(a) above does not apply unless—
>
> (a) the building is solely used as there mentioned, or
>
> (b) the building is occupied together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(a) is its sole use.
>
> (3) Sub-paragraph (1)(b) above does not apply unless—
>
> (a) the building is solely used as there mentioned, or
>
> (b) the building is occupied also together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(b) is its sole use."

13. In essence, the appeal turns on the interpretation of paragraph 3. But in order to understand the rival arguments, it is necessary to trace at least some of the legislative history.

The development of the legislation

14. The late 19th century saw a serious depression in British agriculture as a result of a dramatic fall in grain prices, caused in part by the opening of the American prairies together with mechanisation of agriculture, and in part by the increased use of steamships to import food. British agriculture did not recover from the depression until the Second World War.

15. Against that background, in 1896 Parliament passed the Agricultural Rates Act 1896 which lowered the rates payable on "agricultural land" by 50 per cent. The Agricultural Rates Act 1923 increased the discount to 75 per cent. At that stage the legislation did not refer to "agricultural buildings".

16. The legislation changed in 1928. Section 1 of the Rating and Valuation (Apportionment) Act 1928 ("the 1928 Act") required "agricultural hereditaments" to be distinguished in the list. Section 2 (1) provided that "agricultural hereditament" means any hereditament being agricultural land or agricultural buildings. Those two expressions were themselves defined by section 2 (2) as follows:

> " "Agricultural land" means any land used as arable meadow or pasture ground only, land used for a plantation or a wood or for the growth of saleable underwood, land exceeding one quarter of an acre used for the purpose of poultry farming, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the Allotments Act, 1922, but does not include land occupied together with a house as a park, gardens (other than as aforesaid) pleasure grounds, or land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a race-course; and for the purpose of this definition the expression "cottage garden" means a garden attached to a house occupied as a dwelling by a person of the labouring classes:
>
> "Agricultural buildings" means buildings (other than dwelling-houses) occupied together with agricultural land or being or forming part of a market garden, and in either case used solely in connection with agricultural operations thereon."

17. At this stage, therefore, in order for a building to fall within the definition two requirements had to be satisfied:

    i) The building had to be occupied together with agricultural land ("the occupation test");

ii) The building had to be used solely in connection with agricultural operations "thereon" (i.e. on the land together with which it was occupied) ("the use test").

18. The concept underlying these two tests was, in essence, that the building had to be ancillary to the agricultural operations on the agricultural land together with which it was occupied. The definition in the 1928 Act was considered by two important decisions: one of the Court of Appeal and one of the House of Lords.

19. In *Farmers' Machinery Syndicate (11th Hampshire) v Shaw (VO)* [1961] 1 WLR 393, a syndicate of 13 owner-farmers and one other farmer financed the purchase of a grain dryer. The legal estate in the land was conveyed to three members of the syndicate and one other farmer. A committee was set up to control the running of the venture and each farmer had to pay an annual subscription and had the right to send a certain quota of grain to be dried each year. During the operating part of the season the committee employed two men to work the dryer. This court held that the hereditament was not within the definition of "agricultural buildings" because the building was in the rateable occupation of the committee of management and not the individual members and it was not occupied solely in connection with "agricultural operations on the land," that is, the individual farms.

20. In the light of that decision, and encouraged by this court, Parliament amended the legislation in the Rating and Valuation Act 1961 by extending the definition of agricultural building to include buildings used solely in connection with the agricultural operations of certain syndicates and corporations.

21. The definition in the 1928 Act was also considered by the House of Lords in *W & JB Eastwood Ltd v Herrod (VO)* [1971] AC 160. The ratepayer owned and occupied about 1,150 acres of agricultural land, and buildings consisting of 20 layer houses, a hatchery, a poultry-food-compounding mill, 72 broiler houses, a packing station and ancillary premises. The operations carried on in the buildings were the intensive rearing of hundreds of thousands of broiler chickens, and their killing, cleaning, freezing and packing for the market. The layer hens and broiler birds never left the buildings, but the cockerels which fertilised the hens were let out to graze in batches of some 14,000 on free range for 12 of their 64-weeks life-cycle. The land was used as to 1,130 acres for the production of barley, all of which was converted into poultry food pellets in the mill and represented about 13 per cent of the grain and 4 per cent of the total ingredients by weight; and the remaining 20 acres were grassland on which the cockerels grazed for their free-range period.

22. The House of Lords held that the buildings did not satisfy the definition of "agricultural building". Lord Reid began by saying that the key question was whether the buildings were used solely in connection with the agricultural operations on the agricultural land. At 168 he said:

> "… I find that, to qualify as an agricultural building, a building must (1) be occupied together with agricultural land and (2) be used solely in connection with agricultural operations "thereon." I shall return to an argument that "thereon" must be given a special meaning here: but, neglecting that argument for the moment, it appears to me to be obvious that "thereon"

> means on the agricultural land together with which the building is occupied. …The key words are "used in connection with" agricultural operations on the land. Ordinary usage of the English language suggests that the buildings must be subsidiary or ancillary to the agricultural operations. Logically it may be that if A is connected with B, then B must be connected with A. But language is not always logical and I think it would be at least unusual to say of an ordinary farm that the agricultural land is used in connection with the buildings. And I am reinforced in my view by the strong impression that this derating was intended to benefit agriculturists but not those conducting commercial enterprises where the use of agricultural land plays only a small part in the enterprise. … I do not foresee serious difficulty if "used in connection with" is held to mean use consequential on or ancillary to the agricultural operations on the land which is occupied together with the buildings."

23. It is important to note that Lord Reid clearly distinguished between the two separate tests that had to be satisfied: the "occupation test" and the "use test," which he numbered separately. He made the additional point that in considering whether the use test was satisfied:

> "It does not matter whether the uses which are made of the buildings are in themselves agricultural operations. What does matter is whether those uses are solely "in connection with" agricultural operations on the agricultural land."

24. He then went on to consider what amounted to an adequate connection. At 169 he approved the statement in *Midlothian Assessor v Buccleuch Estates Ltd* [1962] RA 257 that operations reasonably necessary to make the product marketable are operations in connection with agricultural operations. Nevertheless, he returned to the point that the use test was satisfied if the building was "consequential on or ancillary to" the agricultural operations on the land together with which it was occupied.

25. He went on to say at 169:

> "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."

26. In his concurring speech Lord Morris said at 174:

> "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."

27. What we can take from this decision is that the operations carried on inside a building occupied "together with" agricultural land need not themselves be agricultural operations, provided that they are "connected with" the agricultural operations on the agricultural land together with which it is occupied. The building must be ancillary to those agricultural operations. Doing what is reasonably necessary in making a product marketable satisfies that test.

28. Once again, in the light of that decision Parliament amended the legislation. The Rating Act 1971 extended the exemption to buildings used for the keeping or breeding of livestock, if they were either solely used for that purpose or used for that purpose and also in connection with operations on agricultural land. The relevant parts of the definition read:

> "(1) Subject to subsections (2) to (4) of this section, each of the following is an agricultural building by virtue of this section - (a) any building used for the keeping or breeding of livestock; and (b) any building (other than a dwelling) which is occupied together with one or more buildings falling within paragraph (a) above and is used in connection with the operations carried on in that building or those buildings.
>
> …
>
> (3) A building occupied and used as mentioned in subsection (1)(b) of this section is not an agricultural building by virtue of this section unless either - (a) it is solely so used; or (b) it is occupied also together with agricultural land (as defined in the principal section) and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in subsection (1)(b) of this section is its sole use."

29. The amended definition was considered by this court and the House of Lords in *Hambleton DC v Buxted Poultry Ltd* [1992] 1 WLR 330 and *Farmer (VO) v Buxted Poultry Ltd* [1993] AC 369. It is necessary to consider that case in some detail. In that case the ratepayer owned and occupied a poultry processing factory and 67 poultry rearing and breeding farms with broiler rearing houses situated at distances from it of between a quarter of a mile and 120 miles. Poultry from 48 of the farms was slaughtered and processed at the factory. The claimed exemption was an exemption for a building "occupied together with" another building used for the keeping or breeding of livestock.

30. In this court Glidwell LJ considered the phrase "occupied together with". He rejected the argument that it was sufficient if the livestock building and the other building were occupied by the same person and that the second building were used in connection with operations carried out in the livestock building. That, he said, would make the phrase "occupied together with" otiose. The words "together with" had to be given some meaning. Having considered a number of cases, he said at 339:

> " In my view, a building can be said to be occupied together with another building used for the breeding or keeping of livestock, provided, first, that they have a single occupier; secondly, that the activities carried on in both are jointly controlled or managed; and, thirdly, that the physical communication between the two buildings is, by reason either of physical nearness or some other factor, so close and convenient that they can properly be regarded as being occupied as parts of the same enterprise."

31. Although the use test had been in issue in this court, by the time that the appeal reached the House of Lords, that issue had fallen away. The House was therefore only concerned with the occupation test. Lord Slynn summarised the ratepayer's case at 375:

> "Buxted's case is that the factory was occupied together with those buildings since they were both occupied by the same person, they were both so occupied during the same period and they both took part in one continuous process of rearing, slaughtering and preparing poultry for sale so that a test of functional unity was satisfied. There is no requirement that the relevant building should be contiguous or adjacent to the farms. The absence of contiguity in the present case was not found by the Lands Tribunal to prevent the factory being "occupied together with" the broiler houses. That is a question of fact and degree which cannot be interfered with on appeal."

32. That was the case that he rejected. At 378 he said:

> "I agree with Glidewell LJ 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." (Emphasis added)

33. At 379 he approved the observations of Sir Michael Rowe QC in *Hilleshog Sugar Beet Breeding Co Ltd v Wilkes (VO)* [1971] RA 275 to the effect that "the important question is whether the two buildings or the buildings and land are worked together so as to form one agricultural unit". He also referred to the definition of "agricultural buildings" in section 2 of the 1928 Act which gave him the same impression. It is, to my mind, clear from these supplementary observations that Lord Slynn was not confining himself to livestock buildings, but was approaching the question of interpretation more generally.

34. The ultimate test that he applied was as follows:

> "Applying *the test as to whether the several buildings are worked together as one agricultural unit*, and having regard to their physical separation, as part of this test, it seems to me the Lands Tribunal could not possibly conclude that the 48 farms are "occupied together with" the factory for the purposes of the Act." (Emphasis added)

35. All these observations are plainly dealing with the "occupation test"; not the "use test".

36. The exemption was carried forward into the LGFA 1988 as originally enacted. Schedule 5 relevantly provided:

> "1. A hereditament is exempt to the extent that it consists of any of the following—
>
> (a) agricultural land;
>
> (b) agricultural buildings.
>
> ..
>
> 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 the land, or

> (b) it is or forms part of a market garden and is used solely in connection with agricultural operations at the market garden.
>
> …
>
> 5. (1) A building is an agricultural building if—
>
> (a) it is used for the keeping or breeding of livestock, or
>
> (b) it is not a dwelling, it is occupied together with a building or buildings falling within paragraph (a) above, and it is used in connection with the operations carried on in that building or those buildings.
>
> (2) Sub-paragraph (1)(a) above does not apply unless—
>
> (a) the building is solely used as there mentioned, or
>
> (b) the building is occupied together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(a) is its sole use.
>
> (3) Sub-paragraph (1)(b) above does not apply unless—
>
> (a) the building is solely used as there mentioned, or
>
> (b) the building is occupied also together with agricultural land and used also in connection with agricultural operations on that land, and that other use together with the use mentioned in sub-paragraph (1)(b) is its sole use."

The 2003 amendment

37. There the matter stood in 2003. The legislation was amended again by the Local Government Act 2003. Section 67 (2) of that Act provided:

> "For paragraph 3(a) (which provides that a building is an agricultural building if it is occupied together with agricultural land and is used solely in connection with agricultural operations on the land) there is substituted—
>
> "(a) it is occupied together with agricultural land and is used solely in connection with agricultural operations *on that or other agricultural land*,"" (emphasis added)

38. This amendment did not change any of the words of the "occupation test"; but substituted "on that or any other agricultural land" for "on the land" (i.e. the agricultural land which was occupied with the building in question). The critical question on this appeal is whether that amendment broke the link between occupation and use, as the ratepayer contends and the UT held. In so concluding, the UT held that the VTE had made an error of law.

The Upper Tribunal's reasoning

39. At [41] the UT formulated the question which it had to decide as follows:

> "The question is whether the appellant is correct to say that the amendment to the second requirement (about use) in paragraph 5(3)(a) of Schedule 5 has necessarily had an effect upon the construction of the unamended words "occupied together with"."

40. Why the UT referred to paragraph 5(3)(a) (which related to an exemption which was not claimed), rather than to paragraph 3 is a puzzle. The UT went on to say at [44]:

> "The question, which has not been answered before this appeal, is whether the amendment saves the exemption in a case where Farmer A's machine shed is occupied by Farmer A and is adjacent to agricultural land also occupied by Farmer A, but where the machinery in the shed is used on agricultural land elsewhere (whether by Farmer A or by other farmers or both). The shed is still in the same occupation as the land next to it, at the same time, but it does not have any functional connection with it. Is it occupied together with it?"

41. Both counsel had difficulty in explaining what exactly the UT meant by this example. Mr Ormondroyd acknowledged that there was an "infelicity" in the wording. He suggested that what the UT was driving at was a case in which the machinery was used on other agricultural land "whether *owned* by Farmer A or by other farmers or both"; and that if the contemplated use was solely by other farmers, then that would have gone too far. He also acknowledged that what the UT said at [44] went further than the UT's conclusion at [48] (which I quote below), and that paragraph [44] needed to be read down in the light of [48].

42. The UT first considered the meaning of the phrase "on that or other land". They considered that the use of the word "or" meant that satisfying either alternative was sufficient. Thus the use test was met where a building was used solely in connection with agricultural operations on the agricultural land together with which it was occupied or solely in connection with agricultural operations on other agricultural land; or a combination of both. Applying that to the facts of this case, the disputed buildings were occupied together with the arable land at Chequer Tree Farm, but were used solely in connection with agricultural operations on the other Fridays Farms (and the other farms whose eggs were processed at the disputed buildings).

43. That conclusion led to the UT reasoning as follows at [48]:

> "On the basis that "or" is exclusive, and that the respondent's construction of "or other land" is incorrect, "occupied together with" can no longer require a functional connection and cannot imply that the land and the building have to be a single agricultural unit. Occupation and use have been split up by the amendment; occupation can therefore no longer require a functional connection, let alone anything closer such as

> constituting or being part of a farm or unit. Nevertheless the word "together" is likely to have a meaning beyond occupation by the same person at the same time, and we take it to mean that the building and the land must be occupied as part of the same enterprise and must be geographically close if not contiguous."

44. Although the UT expressed their conclusion very clearly, the reasoning process leading up to it is not easy to discern. Moreover, as the UT pointed out at [49], the consequence of that conclusion was that the phrase "occupied together with" had a different meaning in paragraph 3 of Schedule 5 to the LGFA 1988 from the same phrase in paragraph 5 of the same Schedule.

45. Having found that the VTE had made an error of law, the UT were entitled to remake the decision: Tribunal Courts and Enforcement Act 2007 s. 12 (2) (b) (ii). Applying their interpretation of paragraph 3, the UT went on to hold that the three buildings were "occupied together with" the arable land at Chequer Tree Farm. However, the UT also held that the three buildings and the arable land could not be said to be worked together so as to form a single agricultural unit. They were functionally independent. If, therefore, "occupied together with" had the meaning attributed to that phrase in *Farmer v Buxted*, the three buildings were not occupied together with the arable land at Chequer Tree Farm.

46. Finally, on this part of the case, the UT held that the three buildings *were* occupied together with the Fridays Farms on which the free-range eggs were produced.

47. The UT then considered whether the three buildings were solely used in connection with agricultural operations on agricultural land. First, they held that the roosting sheds on Fridays Farms were ancillary to the use of the land itself; and that the use of the land where the chickens ranged was an agricultural use of land. Second, they held that the eggs could not be sold unless they had been weighed and graded in accordance with regulatory and industry practice. Although the eggs had been stamped at the producing farms and placed in keyes trays for transporting to Chequer Tree Farm, the weighing and grading took place in the three disputed buildings. The necessity for that to be done gave the three buildings a close functional connection with the agricultural operations of producing eggs on the land at Fridays Farms and the independent farms. Consequently, the use test was met.

The appeal

48. The general principles of statutory interpretation are not in doubt. They were explained by Lord Hodge in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at [29] to [32]. The task of the court is to identify the meaning of the words that Parliament has used. Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained. External aids to interpretation therefore must play a secondary role. Explanatory Notes, prepared under the authority of Parliament, may

cast light on the meaning of particular statutory provisions. A statement made by a minister is relevant only if three conditions are satisfied. They are (i) that the legislative provision must be ambiguous, obscure or, on a conventional interpretation, lead to absurdity; (ii) that the material must be or include one or more statements by a Minister or other promoter of the Bill; and (iii) the statement must be clear and unequivocal on the point of interpretation which the court is considering.

49. In addition, there is a presumption that a word or phrase has the same meaning throughout an Act of Parliament; but whether Parliament intended a word to have a different meaning in different sections of the same Act must be determined by looking at the context of the section in question and the Act as a whole: *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16, [2025] 2 WLR 879 at [12] to [14].

50. Finally, in interpreting an Act of Parliament it should be assumed that Parliament intended to act reasonably, and not to produce absurd or unlikely results: Bennion, Bailey and Norbury on Statutory Interpretation (8th ed) Section 13.1.

51. Mr Williams KC, for the Valuation Officer, challenges the conclusion of the UT. He argues that the theme that runs through the legislation in all its iterations since 1928 is that two different tests must be satisfied before a building qualifies for exemption from rates as an agricultural building. The ratepayer must still meet two different tests:

    i) The building is "occupied together with agricultural land" ("the occupation test") and

    ii) The building is used solely in connection with agricultural operations on that agricultural land or other agricultural land ("the use test").

52. That continues to be the case. The amendment made in 2003 altered the use test, but it did not alter the occupation test. The occupation test was well-established in the case law as it stood in 2003. Since Parliament did not see fit to alter that test, it continues to apply in the way that the courts had interpreted it. This interpretation fits with the concept that runs through rating law to the effect that the agricultural land must be in the same rateable occupation as the building in question and that together they form a single unit.

53. The only agricultural land occupied together with the disputed buildings is the arable land at Chequer Tree Farm. But on the UT's findings the three disputed buildings and the arable land are not a single agricultural unit. Therefore, the occupation test is not satisfied. If the UT are correct, then whether a building is or is not exempt from rates depends on the pure happenstance of whether it happens to be occupied together with agricultural land even though there is no functional connection between the land and the building. As the President of the VTE said: the relevant buildings could be located anywhere; it just so happens that Fridays have decided to use the buildings at Chequer Tree Farm to prepare and pack eggs for market.

54. The established position before the 2003 amendment was that both the occupation test and the use test had to be satisfied. A change in the wording of the use test does not entail an inevitable (and unstated) change to the occupation test; and the UT were wrong at [48] to hold otherwise. It is a general principle of statutory interpretation that

where Parliament re-enacts a statutory provision which has been the subject of authoritative judicial interpretation, the court will readily infer that Parliament intended the re-enacted provision to bear the same meaning that the case law had already established: *R (ZH and CN) v London Borough of Newham* [2014] UKSC 62, [2015] AC 1259 at [53]. This applies as much in the field of rating as any other: *Nuffield Health v Merton LBC* [2023] UKSC 18, [2024] AC 653 at [35]. In the present case Parliament changed the use test, but did not change the occupation test. The nature of the occupation test was authoritatively laid down by the House of Lords in *Farmer v Buxted*. A building that is occupied and used in the same overall business enterprise as agricultural land does not meet the occupation test. The occupation test thus remains that mandated by the decision of the House of Lords in *Farmer v Buxted*.

55. Mr Ormondroyd, for the ratepayer, supports the decision of the UT. His argument is founded on the proposition that exemption applies if (a) the building is occupied together with agricultural land but (b) it is solely used in connection with agricultural operations on other (i.e. different) agricultural land. As Bennion, Bailey and Norbury on Statutory Interpretation point out (8th ed section 8.6):

> "Where an Act makes textual amendments to an earlier Act the intention is usually to produce a text that may be construed as a whole in its revised form."

56. Since paragraph 3 must be interpreted as a coherent whole, it necessarily follows that "occupied together with" cannot require a common use. To hold otherwise would stultify the amendment. Accordingly, the previous law on the meaning of "occupied together with" is no longer a reliable guide. *Farmer v Buxted* proposed the test whether the land and buildings were worked together as one agricultural unit. The concept of an "agricultural unit" is not found in the statutory language: it is a judge-made concept. Parliament has not adopted that as the statutory test.

57. Although it is correct that, on the interpretation adopted by the UT, the phrase "occupied together with" has different meanings in paragraphs 3 and 5, that is because Parliament chose to amend paragraph 3 but not paragraph 5.

External material

58. In the course of their decision, the UT referred to a statement made in Parliament by Mr Nick Raynsford MP, one of the promoters of the Bill. In response to questions in committee he said:

> "Subsection (2) amends schedule 5 of the Local Government Finance Act 1988, so that where a building that is occupied with agricultural land is used in connection with agricultural operations on other agricultural land, the farmer will still retain the right to an exemption from national non-domestic rates. *That situation could arise in the case of machinery rings, where a group of farmers collectively own machinery that they use not only on their own land but on others' land.* The current phrasing of the Act would exclude such arrangements, because the machinery is not exclusively for the use by the farmer on his own land. We are proposing the amendment so that, in

> sensible arrangements where farmers work together more cost effectively by using machinery that otherwise would stand idle, they do not lose the agricultural exemption as a result.
>
> …
>
> The purpose of an association or a machinery ring is to use machinery more efficiently, but that activity currently precludes those people from benefiting from the exemption, so we are extending the exemption to them. It does not matter whether they are tenants or owner-occupiers; *what matters is that the equipment is used for agricultural purposes, whether on the land of the individual farmer or not.*" (Emphasis added)

59. The UT referred to this statement at [47] and held that Mr Raynsford took a view consistent with that of the ratepayer. I agree that the second emphasised part of this statement could be said to express a view consistent with the ratepayer's argument. Nevertheless, Mr Raynsford was only dealing with the *use* of land; not with its occupation. In addition, the first emphasised passage does not. To the contrary, it contemplates use of machinery *both* on land owned by the individual farmers *and* other land ("not only … but also"). In my judgment, this statement is not so clear and unequivocal as to satisfy the third of the three conditions which must be met before such a statement can properly be relied on as an aid to interpretation.

60. We were also referred to the explanatory notes which accompanied the 2003 Act. Paragraph 122 of those notes states:

> "Schedule 5 to the Local Government Finance Act 1988 sets out the conditions that must be met if land and buildings are to be deemed to be agricultural and thereby entitled to exemption from rates. Section 67 amends the Schedule to reflect modern farming practices so that where farmers work on other agricultural land, perhaps on a share or contract basis, or through the pooling of resources or machinery, the exemption will apply."

61. This statement is also directed to the use of land, rather than its occupation; and in addition does not (at least explicitly) state that the amended section would apply where the farmer in question works *only* on agricultural land which is not occupied together with the building in question.

62. None of the external material indicates an intention to reverse an authoritative decision of the House of Lords.

Conclusions

63. As Lord Sumption explained in *Woolway (VO) v Mazars LLP* [2015] UKSC 53, [2015] AC 1862 business rates are a tax on property, not on businesses; and the hereditament is the unit of assessment. A hereditament is (in the vast majority of cases) a parcel of land with cartographic unity. Nevertheless, there is in some cases a functional test which may in certain cases be relevant either to break up a

geographical unit into several subjects for rating purposes or to unite geographically dispersed units in unum quid ("one thing"). By far the commonest application of the functional test is in de-rating cases. The extent of the hereditament is not decisive in a case such as this. The exemption is available "to the extent that" a hereditament satisfies the test. That is why in this case it is agreed that at least part of Chequer Tree Farm does not benefit from the exemption.

64. The external materials give no clear steer. The consequence of the UT's interpretation of the occupation test produces very surprising consequences, which I consider are unlikely to represent the intention of Parliament.

65. In my judgment, essentially for the reasons given by Mr Williams, the UT were wrong to interpret the occupation test in the way that they did. Parliament did not alter the wording of that test, the meaning of which had been clearly established by the House of Lords. Where the same wording is carried forward into an amended section, it is a natural inference that the meaning remains the same. In addition, where Parliament uses the same phrase in related parts of the same Act, it is the natural inference that the same phrase means the same thing. The interpretation adopted by the UT gives different meanings to the same phrase used in different paragraphs of the same schedule of a single Act of Parliament, even though Parliament did not change a single word of the occupation test. That is an unconventional approach to statutory interpretation. In my judgment it would require a strong context to justify that conclusion; and I do not find it here.

66. The meaning of "occupied together with" favoured by the UT was that the building and the land had to be "occupied as part of the same enterprise and must be geographically close if not contiguous." That is the very test that was rejected by the House of Lords in *Farmer v Buxted*; and potentially converts a tax on land into a tax on businesses.

67. I do not accept the argument that this interpretation means that the paragraph, considered as a whole is incoherent, or that this interpretation stultifies the 2003 amendment. It does not produce arbitrary, irrational or unreasonable results. We were not shown anything to suggest that the application of the test in *Farmer v Buxted* has caused any difficulty over the last thirty or more years since it was formulated. The occupation test, as I interpret it, acts as a limiting factor on the use test just as it did before the 2003 amendment. The 2003 amendment was intended to broaden the use test only, so as to abrogate the previous law that the agricultural use had to be confined to the land with which the building was occupied. It still does that on the interpretation which I prefer.

68. The occupation test remains the same. I would therefore accept the first ground of appeal; and hold that the UT's interpretation of the occupation test was wrong.

Application of the *Buxted* test

69. That, however, is not the end of the appeal. Although the UT held that the occupation test as formulated in *Farmer v Buxted* no longer applied, they went on to consider whether that test was satisfied in case they were wrong. In other words, they considered whether there was "one agricultural unit". Mr Williams accepted that in

order to succeed on appeal, he needed to show that in applying that test, the UT made an error of law.

The occupation test

70. The UT first decided that the three buildings did not form a single agricultural unit with the arable land at Chequer Tree Farm because there was no functional connection between the two.

71. As to the remaining Fridays Farms they said this:

> "[57] Next, are the three buildings occupied together with the Fridays Farms in the sense of being worked as a single agricultural unit? Again they are under common ownership and occupation; they were not contiguous but they are all near each other; and they were part of the same business enterprise of producing eggs for sale. But were they sufficiently functionally close to be described as a single unit?
>
> [58] It is not possible to sell loose eggs. Even at a garden gate with an honesty box they have to be in an egg box or tray of some kind. But the individual farms are able to cope with that by putting the eggs into the keyes trays on pallets. But it is also impossible to sell eggs that have not been graded and weighed, and that is what the Fridays Farms themselves cannot do. We have seen the equipment involved; it is big and costly and it is obviously a process that has to be to some extent centralised. That is why the independent farms send their 1.4 million eggs a week to Chequer Tree Farm because they too do not have the equipment to do what is needed in order to sell their eggs (which is the point of the operation).
>
> [59] Accordingly we take the view that despite their not being contiguous with Chequer Tree Farm and the three buildings – although they are not far away – the Fridays Farms are operated as a single agricultural unit with the three buildings and vice versa. Neither is any use without the other."

72. They added at [63]:

> "Regulations and industry practice make it impossible to sell the eggs without this operation; and the packing of the eggs goes hand-in-hand with their grading, because the grade A eggs go into supermarket boxes for retail while the grade B eggs take a different journey in keyes trays, as we saw. The necessity for these processes to be done before the eggs can be sold gives the three buildings a close functional connection with the agricultural operation of producing eggs on the land at Fridays Farms…"

73. On this alternative basis, the UT also found that the exemption applied.

74. Mr Williams argues that the UT has simply found that the three buildings and the Fridays Farms are part of the same business enterprise. The UT did not consider whether the functional connection was an agricultural function; and it also ignored its earlier conclusion that the three buildings were occupied together with the arable land at Chequer Tree Farm rather than the other Fridays Farms. Moreover, the functional connection between the three buildings and the Fridays Farms is the same as that between the buildings and the independent egg producers who use the Egg Packaging Centre to prepare their eggs for sale.

75. In my judgment these criticisms are misplaced. The UT posed the correct legal question: namely whether the three buildings and the Fridays Farms were occupied together so as to form a single agricultural unit. I can see no legal misdirection here. Consistently with *Eastwood v Herrod* it is not necessary for the operations carried out in the three buildings to be agricultural operations, provided that they are "connected with" agricultural operations on agricultural land. What Mr Williams quarrels with is the application of the correct legal test to the facts. It is true that the UT held that the three buildings and the Fridays Farms were part of the same business enterprise. But that was not the sole criterion by which they reached their conclusion.

76. The UT found that they were under common ownership and occupation. The UT had earlier found that the other Fridays Farms were managed from Chequer Tree Farm, where the important decisions were taken. Thus, to echo Lord Slynn, they were in the same occupation and jointly controlled or managed at the same time. Contiguity and propinquity are relevant considerations, which the UT also considered. They decided that although they were not contiguous, they were all near each other. Whether they were sufficiently close is, in my judgment, a matter of fact and degree for the fact-finding tribunal. Thus far, I consider that the UT faithfully applied the test in *Farmer v Buxted*.

77. So far as the functional connection was concerned, it is clear from *Eastwood v Herrod* that operations reasonably necessary to prepare produce for sale satisfies the agricultural connection. Although the eggs were (at least provisionally) packed on Fridays Farms elsewhere, they could not be sold without being weighed and graded. That activity took place in the three buildings. I consider that the UT was entitled to find that that activity was sufficiently connected with agricultural operations on that agricultural land.

78. It remains to consider the independent egg producers. In my judgment, the problem that Mr Williams faces, is that at this stage of the analysis the UT was only considering the occupation test. The significance of the independent egg producers only bears on the use test.

The use test

79. The 2003 amendment clearly broadened the use test. Provided that the building in issue is used solely in connection with agricultural operations *on that or other agricultural land,* the use test is satisfied. The "other agricultural land" may include both other agricultural land on farms owned or occupied by Fridays; or other agricultural land owned or occupied by the independent egg producers; or a combination of both. That the buildings are so used is, in my judgment, the

consequence of the UT's acceptance of Fridays argument recorded at [61] (even though it is not a formal finding of fact).

Respondent's Notice

80. Mr Ormondroyd had a separate argument which he raised by way of Respondent's Notice. That argument proposed a different interpretation of the test in *Farmer v Buxted*. But since I have concluded that the UT were entitled to apply the test as formulated in *Farmer v Buxted* in the way that they did, it is not necessary to say anything about it.

Result

81. I would dismiss the appeal.

Lady Justice Asplin:

82. I agree that the appeal should be dismissed for the reasons given by Lewison LJ.

Lord Justice Coulson:

83. I also agree.