Case Name: *Senova Limited v Chris Sykes (VO)* [2019] UKUT 0275 (LC) (19 September 2019)

Topic: Agricultural exemption and expert witnesses

Full Case: click here

Summary: This case concerned the application of the agricultural land exemption, in particular what is needed for a building to be exempt on the basis that it is (1) occupied together with agricultural land and (2) used solely in connection with agricultural operations on that or other agricultural land. The tribunal applied the established test, namely whether the buildings in question (namely a warehouse for seed storage and despatch and a nearby office floor) were worked together with an adjoining paddock (occupied by another party as an adjunct to a dwelling) so as to form one agricultural unit and found that the test was not satisfied. Accordingly, the exemption did not apply.

The tribunal was also critical of the conduct of the expert witness, whose evidence was not admitted on the grounds that he failed to disclose a conditional fee arrangement. The cases of *Gardiner & Theobald* and *Merlin* were referred to and the tribunal restated that the duty of independence extends to factual evidence as well as opinion evidence.

Commentary: The ratepayer's seed production business occupied part of a warehouse (for storage and despatch) and a ground floor office nearby, together with a car park and a landscaped area. It also owned an adjoining paddock, which was the subject of a grazing licence held by the owner of a dwelling sold off in 2008. The 2010 compiled list RV was £33,750 but (following the construction of a new warehouse and reconstitution of the list to reflect a sister company's occupation) the hereditament's RV by the time of the appeal was £22,500.

The agricultural exemption extends to buildings occupied together with agricultural land which are used solely in connection with agricultural operations on that or other agricultural land (emphasis added, showing a change made by the Local Government Act 2003). The paddock and the land situated elsewhere (used for trialling and multiplying seeds) were clearly agricultural land but the buildings must be "occupied together" for the exemption to apply.

The leading case on the meaning of this phrase is *Farmer (VO) v Buxted Poultry Limited* [1993] AC 369. The guiding principle is that the buildings must be in the same occupation as the agricultural land and the activities carried on in both must be jointly controlled or managed. Further, the occupation and activities in question must occur at the same time. The buildings and agricultural land must form part of a single agricultural unit.

The tribunal found that the paddock, although agricultural land, was not in the rateable occupation of the appellant. The grazing licence entitled the house owner to occupy the paddock to graze her horses, without there being any element of day to day control by the appellant. Also, there was no functional connection between the appellant's business and the paddock. It followed that there was no "single agricultural unit" and the claim for exemption on the basis of a connection with the paddock must fail.

The tribunal also considered whether a connection with the seed trialling land could be established, as argued for on behalf of the appellant. It decided that the mere provision of seeds was not sufficient to comprise occupation of the relevant land and that it could not be said to be occupied together with the warehouse and office, as a single agricultural unit.

The tribunal then turned to the conduct of the expert witness, having stated at the start of the hearing that his evidence would not be admitted as he had failed to disclose a conditional fee arrangement. He had informed the tribunal (at a case management hearing) that he was acting solely as a witness of fact and was not therefore required to disclose his fee basis. He then wrote to the tribunal a few days before the hearing to say that he was in fact instructed on a conditional fee basis, but reiterated that he was not obliged to make that disclosure.

The tribunal referred to the previous cases of *Gardiner & Theobald* and *Merlin* and restated that the duty of independence extends to factual evidence as well as opinion evidence. On that basis, the expert had misrepresented the position.

The safe approach for all those contemplating an appearance before the Upper Tribunal (even at an early stage when it is not clear if the case will be heard) is to ensure that all expert evidence is provided under a ring-fenced fixed-fee arrangement. This may, for example, entail commuting the overall fee payable to the expert or his/her firm to a fixed amount at the point when expert evidence is about to be given, for example in the Appellant's Statement of Case.

To reduce the risk of expert evidence being ruled inadmissible, it is essential that any remaining element of a conditional fee arrangement for the life of the list in question is drawn to the Upper Tribunal's attention at the earliest possible stage, enabling the Tribunal to form a view as to whether the success-related fee is acceptable in that particular case (e.g. where the matter is being dealt with under the simplified procedure). Failing to do so, or attempting to portray the evidence as factual only, will cause the tribunal to turn the spotlight on the expert and make it more likely that the evidence will be disregarded in whole or in part.

The Valuation Tribunal for England ("VTE") is not currently adopting as rigorous an approach, in recognition of the practice of surveyors acting both as advocates and experts in that forum and the need to preserve access to justice. However, there needs to be a clear separation (wherever possible) of evidence and expert opinion to avoid questions being asked by the tribunal members - an answer from the advocate/expert which is not entirely clear may cause the evidence to be discounted to an extent which will become fully apparent only when the written decision is issued.