[2019] UKFTT 650 (TC)

TC07425

INHERITANCE TAX – Agricultural property relief – Business property relief – whether dwelling was a farmhouse – nexus between farmhouse and land – agricultural purposes - whether business wholly or mainly consisted of holding investments – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2018/03761

BETWEEN

WILLIAM CHARNLEY

&

MAXWELL HODGKINSON

AS EXECUTORS OF THE ESTATE OF THOMAS GILL (DECEASED) **Appellants**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE JENNIFER DEAN
MR DAVID MOORE

Sitting in public at Manchester on 15 July 2019

Dr C. McNall, Counsel for the Appellant

Mr J. Brinsmead-Stockham, Counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. This appeal concerns the availability of agricultural property relief ("APR") and business property relief ("BPR") from inheritance tax ("IH") in respect of the value of assets forming part of the estate of Thomas Gill.

2. By way of background, Mr Gill died on 20 November 2013 aged 79. Mr William Charnley and Mr Maxwell Hodgkinson ("the Appellants") were appointed in Mr Gill's will as executors of his estate. Prior to his death, and at all times relevant to this appeal, Mr Gill lived at Woodlands Farm, Dunkirk Lane, Leyland, Lancashire. At the time of his death, Mr Gill owned the freehold to 11 properties ("properties 1 – 11").

3. The Appellants filed an Inheritance Tax Account in respect of Mr Gill's estate on 10 October 2014 which included claims for APR and BPR in the sums of £1,129,200 and £17,700 respectively.

THE PROPERTIES

4. Woodlands Farm (property 1) was 22.72 acres in total, and comprised:

   (1) The house in which Mr Gill lived;

   (2) A yard, brick barn and other outbuildings;

   (3) 21.19 acres of bare agricultural land (permanent pasture);

   (4) A separate range of buildings and yard adjacent to 331 Dunkirk Lane. The buildings were leased to Ian Veevers trading as Grasstec from 1 March 2011 for the storage of commercial grass cutting equipment.

5. Woodlands Farm is situated on a 90 degree bend on Dunkirk Lane, Leyland. The house is on the left of the entrance and the brick barn is on the right. Behind the house and barn is an old outbuilding in the yard and at the back of the yard is a large three bay pole barn. Behind the barn (and adjacent to Dunkirk Lane) is a cultivated area in which Mr Gill grew crops. We were helpfully provided with a plan of the areas comprising the farm and photographs which showed the house and outbuildings.

6. No claims for APR were made in relation to property 11 (a residential dwelling called Dorbaricia, Ulnes Walton Lane, Leyland) which was held on an assured shorthold tenancy or for the buildings and yard adjacent to 331 Dunkirk Lane (see 4(4) above).

7. Properties 2 – 10 consisted entirely of permanent pasture save for properties 8 and 9 which both also contained a number of stores for cattle or dilapidated buildings.

8. During the relevant period Mr Gill did not own any livestock. He allowed farmers to graze their livestock on his agricultural land under annual grazing licences. From at least 1 February 2006 until Mr Gill's death the following grazing licences were in place:

   (1) Grazing Licence WG01.01 with Mr George Blacklidge in respect of the agricultural land at properties 1, 2, 8 and 10;

   (2) Grazing Licence WG02.01 with Mr George Blacklidge in respect of the agricultural land at property 4;

(3) Grazing Licence WG01.04 with Mr Gerrard Pope in respect of the agricultural land at properties 3, 6 and 7.

9. The agricultural land making up properties 5 and 9 were not subject to grazing licences. We were told that in respect of property 5 the annual grass crop was taken by Mr Veevers in return for maintaining the hedges around the property and in relation to property 9, this was used by Mr Blacklidge's cattle to obtain drinking water.

THE APPEAL

10. On 1 November 2017 HMRC issued a Notice of Determination to the Appellants which:

(1) Refused the Appellants' claim for APR in respect of the value of the house, the brick barn and all other outbuildings at Woodlands Farm; and

(2) Refused the Appellants' claim for BPR in its entirety.

11. The APR allowed was granted on the basis that the land was "agricultural property" within s115(2)IHTA 1984, at the date of Mr Gill's death he had the right to obtain vacant possession of the land within 12 months (s116(2)(a) IHTA 1984) as the grazing licences had less than 1 year left to run, Mr Gill had owned the land for the required period and it had been occupied throughout that period by Mr Blacklidge and Mr Pope "for the purposes of agriculture" (i.e. the grazing of their livestock) such that s117(b) IHTA 1984 was satisfied.

12. The APR claim in respect of the house, the brick barn and all other outbuildings at Woodlands Farm was refused on the basis that the house was not a "farmhouse" and thus did not constitute "agricultural property" within s115(2) IHTA 1984 and neither the house nor the other buildings were occupied by Mr Gill "for the purposes of agriculture" throughout the period of two years ending with Mr Gill's death as required by s117(a) IHTA 1984.

13. BPR was refused on the basis that the business carried on by the Appellant was not "relevant business property" as it consisted "wholly or mainly of…making or holding investments" (i.e. the land owned by Mr Gill).

14. By Notice of Appeal dated 14 June 2018 the Appellants appealed to the Tribunal. The Grounds of Appeal can be summarised as follows:

(1) The whole of the land, the farmhouse and buildings were agricultural property within the meaning of s115(2) IHTA 1984 and hence qualify for APR;

(2) S117 IHTA 1984 is satisfied; the whole of the land, the farmhouse and buildings were occupied by Mr Gill (a) for the purposes of agriculture throughout the period of 2 years ending with the date of the deemed transfer, or (b) were owned by him throughout the period of seven years ending with that date and was throughout the period occupied (by him or another) for the purposes of agriculture;

(3) Insofar as HMRC has sought to break down the farm into different, discrete elements, this is the wrong approach and an artificial disaggregation which ignores the general or overall nature of the farm;

(4) Eligibility for APR is unaffected by the fact that the lands were, in the main, the subject of seasonal grazing licences or agistment arrangements;

(5) The nature of the agreements were such that they were not leases; Mr Gill was not the grantees' landlord and the grantees were not his tenants. They did not confer any

estate in the land upon the grantees but merely gave a personal permission to occupation for a limited period. Possession, overall control and paramount occupation of the land remained with Mr Gill. Mr Gill received the Single Farm Payment on the footing that the land was at his disposal on each and every claim date;

(6) It remained Mr Gill's responsibility to attend to the hedges, fencing, ditches, drains, control of weeds, topping, harrowing, rolling and preventing 'poaching' by animals;

(7) The agricultural vehicles and equipment subject to the claim for BPR were used for and in connection with working the land;

(8) Useful guidance on the meaning of "farming" or "good husbandry" can be found in s832(1) ICTA 1988 and s11 Agriculture Act 1947;

(9) Mr Gill's receipt of payments from the Rural Payments Agency supports the contention that he was a farmer;

(10) The legislative requirements for both APR and BPR are satisfied and the Appellants should be granted the relief available.

RELEVANT LEGISLATION

15. The charge to IHT is provided for in the Inheritance Tax Act 1984 ("IHTA 1984") which provides, in so far as is relevant, as follows:

1 Charge on transfers

Inheritance tax shall be charged on the value transferred by a chargeable transfer.

2 Chargeable transfers and exempt transfers

(1) A chargeable transfer is a transfer of value which is made by an individual but is not (by virtue of Part II of this Act or any other enactment) an exempt transfer.

3 Transfers of value

(1) Subject to the following provisions of this Part of this Act, a transfer of value is a disposition made by a person (the transferor) as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition; and the amount by which it is less is the value transferred by the transfer.

…

(4) Except as otherwise provided, references in this Act to a transfer of value made, or made by any person, include references to events on the happening of which tax is chargeable as if a transfer of value had been made, or, as the case may be, had been made by that person; and "transferor" shall be construed accordingly.

4 Transfers on death

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

5 Meaning of estate

(1) For the purposes of this Act a person's estate is the aggregate of all the property to which he is beneficially entitled

16. The provisions relating to APR are set out in Part V Chapter 2 IHTA 1984:

115 Preliminary

(1) In this Chapter references to a transfer of value include references to an occasion on which tax is chargeable under Chapter III of Part III of this Act (apart from section 79) and—

(a) references to the value transferred by a transfer of value include references to the amount on which tax is then chargeable, and

(b) references to the transferor include references to the trustees of the settlement concerned.

(2) In this Chapter "agricultural property" means agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.

(3) For the purposes of this Chapter the agricultural value of any agricultural property shall be taken to be the value which would be the value of the property if the property were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property…

(5) This Chapter applies to agricultural property only if it is in—

(a) the United Kingdom…

116 The relief

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

(2) The appropriate percentage is[100 per cent if . . . —

(a) the interest of the transferor in the property immediately before the transfer carries the right to vacant possession or the right to obtain it within the next twelve months…

117 Minimum period of occupation or ownership

Subject to the following provisions of this Chapter, section 116 above does not apply to any agricultural property unless—

(a) it was occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of the transfer, or

(b) it was owned by him throughout the period of seven years ending with that date and was throughout that period occupied (by him or another) for the purposes of agriculture.

17. The relevant provisions relating to BPR are as follows:

103 Preliminary

(3) In this Chapter "business" includes a business carried on in the exercise of a profession or vocation, but does not include a business carried on otherwise than for gain.

104 The relief

(1) Where the whole or part of the value transferred by a transfer of value is attributable to the value of any relevant business property, the whole or that part of the value transferred shall be treated as reduced—

(a) in the case of property falling within section 105(1)(a)…by 100 per cent…

but subject to the following provisions of this Chapter.

(2) For the purposes of this section, the value transferred by a transfer of value shall be calculated as a value on which no tax is chargeable.

105 Relevant business property

(1) Subject to the following provisions of this section and to sections 106, 108, [. . .] 112(3) and 113 below, in this Chapter "relevant business property" means, in relation to any transfer of value,—

(a) property consisting of a business or interest in a business;

(3) A business or interest in a business, or shares in or securities of a company, are not relevant business property if the business or, as the case may be, the business carried on by the company consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments.

106 Minimum period of ownership

Property is not relevant business property in relation to a transfer of value unless it was owned by the transferor throughout the two years immediately preceding the transfer.

ISSUES

18. The issues to be determined in this appeal can be summarised as follows:

(1) APR

19. HMRC allowed the Appellants' claim for APR at a rate of 100% in respect of the "agricultural value" of all of the agricultural land owned by Mr Gill. The issue remaining relates to HMRC's refusal of the Appellants' claim for APR in respect of the following buildings at Woodlands Farm:

(a) The house;

(b) The brick barn; and

(c) The other outbuildings.

20. HMRC contend that the buildings at 19 (a) – (c) above do not satisfy the conditions for APR on the basis that:

(i) On the date of the death of Mr Gill the house was not a "farmhouse" and thus did not constitute "agricultural property" within the terms of s115(2) IHTA 1984; and

(ii) Neither the house nor the other buildings at Woodlands Farm were "occupied by Mr Gill for the purposes of agriculture" throughout the period of two years ending with his death and therefore the requirements of s117(a) IHTA 1984 were not satisfied.

21. The issues relating to APR are therefore:

(i) Whether the house at Woodlands Farm constitutes "agricultural property" (i.e. a farmhouse) within the terms of s115(2) as at the date of Mr Gill's death; and

(ii) Whether Mr Gill occupied the house and other buildings at Woodlands Farm "for the purposes of agriculture" throughout the period of two years leading up to his death.

(2) BPR

22. HMRC accept that Mr Gill was carrying on a "business" for the purposes of BPR and that Mr Gill "owned" that business throughout the relevant period for the purposes of s106 IHTA 1984.

23. However, HMRC contend that BPR is not available in respect of the deemed transfer of value on the death of the deceased on the basis that the business carried on by Mr Gill was not "relevant business property" as it consisted "wholly or mainly of…making or holding investments".

24. The issue in relation to BPR is therefore:

(i) Did the business carried on by the Appellant throughout the relevant period "consist wholly or mainly of…making or holding investments"?

25. The burden of proof rests with the Appellants in respect of all matters.

EVIDENCE ON BEHALF OF THE APPELLANTS

26. On behalf of the Appellants we heard evidence from Mr George Richard Blacklidge and Mr David Charnley.

27. Mr Blacklidge is a 61-year-old farmer who owns approximately 200 acres of land in England and 4600 in Scotland. He is also a tenant at the farm where he lives and occupies other areas of farm land on different bases; on some he has grazing licences and on others he puts livestock to eat grass for which he is charged for what they eat.

28. Mr Blacklidge became involved with Mr Gill in about 1996 when it was agreed that Mr Blacklidge would put stock on the land as Mr Gill did not want to deal with the paperwork involved with livestock passports. The initial agreement was to put 20 cows and calves on the land and pay £2.50 per week for them. Mr Gill would look after the cattle and only inform Mr Blacklidge if there was a problem.

29. Mr Gill had a formal agreement drawn up which Mr Blacklidge signed. Mr Blacklidge confirmed that he read the first agreement but did not read any of the subsequent agreements.

30. In later years, more stock was put on the land. For several years Mr Gill made silage which he fed to the cattle in the bunker buildings and for which he charged Mr Blacklidge. Mr Gill moved the stock from field to field depending on where there was grass and what the ground was like. After 2001 Mr Blacklidge took on grazing more of Mr Gill's land after a dispute between the previous occupant and Mr Gill led to the termination of their agreement.

31. Mr Blacklidge recalled that the fences and hedges were not in ideal condition when he began putting stock on the land. Over a couple of years Mr Gill worked to make the fences and hedges sheep-proof with wire, netting and fencing. The arrangements continued after the death of Mr Gill's father and up until Mr Gill's death. The arrangements did not change; Mr Gill dictated what could be put on the land and when. Mr Gill set the charges and told Mr Blacklidge when stock had to be removed. The livestock were rotated round the different areas as the seasons went on; some of the fields were best for grazing, others had shelter for the animals and there was a shed in the yard in which the animals could be penned. Mr Blacklidge explained how Mr Gill would move the animals depending on the state of the land.

32. Mr Blacklidge described Mr Gill's activities as *"farming his land using my stock"* and that Mr Gill was *"the boots on the ground"*. The arrangement was more akin to agisting than a grazing licence because Mr Gill did the lookering to the stock; Mr Blacklidge was only required if manual strength was needed. He described Mr Gill as the *"director of operations"* and the person who kept the land in good heart by fixing fences and hedges, digging out and clearing ditches, harrowing and rolling the fields. Mr Gill also saw to mole trapping and harrowing which took five or so hours per area of land. Mr Gill used Mr Blacklidge's stock to eat grass down and manure the land. He described Mr Gill topping the land which could take four to five hours per piece of land; the cattle would then be moved onto that field so that Mr Gill could carry on in other fields. This would be done about twice per year. Mr Gill would herd cattle on his tractor. Mr Blacklidge told us that Mr Gill was *"always around, like a night watchman"*.

33. Mr Blacklidge described the deterioration to the land after Mr Gill's death. He considered the arrangement with Mr Gill perfect as *"there was a farmer on the spot looking at my stock every day with an experienced eye. I could leave them alone and did not need to visit them from one week to the next because I knew that Tom was looking after them and that if there was a problem he would be on the 'phone to me. Tom was a man I could trust to look after my stock. It must be understood that you have to look to livestock daily. Tom did this and I did not need to."* Mr Blacklidge explained that early in the year when there were new calves he might visit more frequently but this lessened as the stock grew older. Mr Gill checked the animals daily and if the stock was new he would check three to four times per day for the first few weeks.

34. Mr Blacklidge described the *"hands on"* approach of Mr Gill who would tell Mr Blacklidge when the animals needed vaccinations. He described arriving at 7am to meet Mr Gill to find him already with the animals and how Mr Gill would be right "99 times out of 100" when he told Mr Blacklidge that a certain animal was ill. Mr Blacklidge agreed that Mr Gill enjoyed the work.

35. Mr Blacklidge described how Mr Gill kept a JCB for ditching and would usually ride around the land on his tractor with whatever machinery was needed to cultivate the grass and carry out other works on the land. He used a 4x4 to get around the land when he was fencing as it was more convenient. He did not consider Mr Gill to be a landlord; he was a farmer who carried out whatever jobs that needed to be done to maintain the productivity of the land. He organised the grazing and took stock off before the land became poached; he kept the ditches and drains flowing so that the land did not become waterlogged. Mr Blacklidge took the view that it was Mr Gill farming the land rather than himself as he could only do what Mr Gill permitted.

36. We heard evidence from Mr David Charnley ("Mr Charnley"), the younger brother of the first Appellant William Charnley who was unable to attend the hearing due to health problems.

37. Mr Charnley described how in the later years of Mr Gill's life he had more involvement with his uncle, Mr Gill, than his brother. He had visited Woodlands Farm fairly regularly and Mr Gill would call him out if there was a problem or he needed help repairing tractors, machines and the like. Mr Charnley recalled that Mr Gill *"never stopped and was working on the farm every day doing something or other"*. Mr Charnley agreed that he was not at the farm on a daily basis and could therefore only provide information in broad terms.

38. Mr Charnley described Mr Gill as *"…a farmer. He looked like an old farmer, he dressed like an old farmer, he spoke like an old farmer, he acted like an old farmer and he was an old farmer."* Mr Charnley noted that at the time of his death Mr Gill had a significant amount of money, although this had not increased significantly since the death of Mr Gill's father in 2003 which, in Mr Charnley's view, supported the fact that Mr Gill was not an investor. He explained that Mr Gill had no need to work but it was the way he lived. Mr Charnley agreed that Mr Gill was provided with a steady and secure income from the licence fees and Single Farm Payments.

39. Mr Charnley explained that from around 1996 the cattle farming carried out by Mr Gill and his father was run down. Following the death of Mr Gill's father in 2003 he put the majority of land down to grass and let others graze the majority of the land on seasonal licences. Mr Charnley noted that Mr Gill did not like crossing the railway line as he got older and trains got faster, nevertheless he continued to look after the land, drove until his death and kept insurance as a farmer describing himself as such to the National Farmers Union Mutual Insurance Society Limited.

40. Mr Gill claimed Single Farm Payment which meant that he had to comply with the regulations attached to the payment and which he did by seeing to hedges, ditches, fences, drains, rolling, reseeding pasture topping and keeping the land in good order generally.

41. The pole barn and outbuildings were used to store machinery and farm equipment, seed fertilisers and tools. The following items were valued by Clitheroe Auction:

(i) Ford 5000 tractor with hedge cutter permanently attached due to the difficulty of attaching it and which was taxed at the time of Mr Gill's death;

(ii) Ford 6600 tractor with a transport box attached to carry items ranging from fence posts to dead sheep;

(iii) Ford 4000 tractor with pallet forks for moving items;

(iv) Two Nuffield 465, one of which was used for parts and the other was used to carry loose items such as hedge cuttings;

(v) Three Massey Ferguson 35 tractors, one of which was used in land cultivation, one with harrows and one used after ditches were dug out;

(vi) Fordson Major tractor which was used for parts;

(vii) Two JCB 3Cs, one of which was used for ditching and the other for parts;

(viii) Welgar RP12 baler to turn grass cut into bales;

(ix) Daihatsu Fourtrack 1998 which was used as Mr Gill's main transport around the land;

(x) 8 ft pasture topper used twice a year to top the pastures and help prevent growth and seedling of weeds;

(xi) Two scarifiers;

(xii) Stone trough for watering cattle;

(xiii) Four trailers used for carrying stone for mending, grass or materials used in fencing or equipment for other tasks;

(xiv) Twose buckrake fitted to a tractor;

(xv) Potato planter used on one of the Massey tractors;

(xvi) Two ridgers used with a Massey tractor to ridge up ground when vegetables were planted;

(xvii) Scarifier;

(xviii) Discs, sundry tools and minimal household furniture;

(xix) Two rollers, one at the Woodlands barn and one on the land by Dobaricia and two forage harvesters which were not fit for use.

42. Mr Charnley explained that most of the machines were used by Mr Gill up until his death; they were in working order and the condition of, for instance, the tractor with hedge cutter attached and other machinery clearly showed that they had been used regularly even though Mr Charnley had not witnessed it.

43. Mr Charnley described how the buildings around the yard at Woodlands were used in farming. The yard itself was used to gather livestock to collect and load by Mr Gill and Mr Blacklidge. If an animal was unwell Mr Gill would put it in one of the buildings to look after.

44. Mr Charnley corroborated the evidence of Mr Blacklidge regarding the arrangement relating to livestock and time spent by Mr Gill lookering. He clarified that livestock was confined to certain areas so that they could eat the grass down in one part and then be moved to another part and so on throughout the seasons. Mr Gill looked after all of the land save for Snailhams across the railway, by cutting hedges, ditching, harrowing, rolling and instructing where cattle could graze and moving them when necessary. Snailhams was left to Mr Pope due to access difficulties, although Mr Gill would regularly check the fields to make sure no one was camping. In relation to Moss Foot Mr Gill cultivated the land every year and bartered grass for hedge cutting. Mr Charnley described how cutting hedges is slow work and the task would be spread over a few months. Some tasks were more seasonal such as digging out ditches which would be done 2 -3 months per year and 2 – 3 times per month depending on the weather as water levels are higher in winter. Harrowing was carried out on each field about twice per year and rolling was done in the Spring.

45. Mr Gill grew vegetables at Woodlands Farm up until his death; the surplus would be bartered at the local shop which was corroborated in a letter from the shop owner. He carried

out tasks such as gathering and directing cattle for worming or medicine. Mr Gill remained in occupation of the land and could enter and carry out any jobs; the graziers did not have exclusive occupation.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

46. The submissions on behalf of the Appellants can be summarised as follows:

(1) The evidence demonstrates that Mr Gill was a farmer;

(2) The whole of Woodlands Farm, including the land, farmhouse and buildings, were agricultural property within the meaning and effect of IHTA 1984 s115(2) and qualify for APR as such;

(3) S117 IHTA 1984 is satisfied; the whole of the land, farmhouse and buildings were occupied by Mr Gill for the purposes of agriculture throughout the period of two years ending with the date of the deemed transfer, or were owned by him throughout the period of seven years ending with that date and was throughout that period occupied by him for the purposes of agriculture;

(4) HMRC have (i) failed to recognise the difference between a lease and a licence; (ii) worked on the basis that stocking density is part of s115 IHTA which is incorrect; (iii) worked on the incorrect basis that APR is only available to someone "farming in his own right"; (iv) wrongly asserted that maintaining the land is not agricultural activity;

(5) The farm and nature of Mr Gill's farming enterprise should be considered "in the round". To split the farmhouse, yard and buildings from the farmland would be an artificial exercise which ignores the general and overall nature of the farm;

(6) HMRC have accepted that all the land at the farm (21 acres) and all the other land farmed (approx. 87 acres across 9 locations) were agricultural. APR having been granted in relation to the land, it should also have been granted in relation to the farmhouse and buildings. Not to have done so is irrational and erroneous.

47. In relation to the farmhouse Mr McNall submitted that it was Mr Gill's dwelling from which farming at the farm was managed. The management of the land and conduct of agricultural operations is the nexus between the farmhouse and the land.

48. The legislation does not specify when a house is a farmhouse. HMRC do not dispute that if it was a farmhouse, it was of a character appropriate to the farm in terms of size, layout, content, style and construction. The Appellant submits that an educated rural lay-person driving past would regard the house as a farmhouse and not simply a house with land.

49. As in *Golding v HMRC* [2011] UKFTT 351 (TC) the farmhouse is modest with acreage immediately adjacent with additional land elsewhere. In *Golding* the taxpayer's appeal was allowed and APR granted to Mr Golding's estate even though his farming was not commercial (selling eggs at the farm gate to 3-4 people a week) and without any evidence of a farming business.

50. As in Golding (Mr Golding died at 81 years as compared to Mr Gill's 79) it would be unreasonable to expect Mr Gill's farming to have been extensive or intensive activity. A farmer does not cease to be a farmer or cease to be in occupation of the farmhouse for agricultural purposes if he gets old, or sick.

51. The nature of Mr Gill's occupation of the farmhouse and its associated buildings satisfies the tests set out in *Hanson v HMRC* [2013] UKUT 0224 (TCC). In *Hanson* the UT declined to follow *Rosser v IRC* [2003] STC (STD) 311; in *Rosser* the Special Commissioner held that a house was not in use as a farmhouse at the date of death because its prime function was a

retirement home. The owners had given away all of their land except for 2 acres and had dissolved their farming partnership some years earlier.

52. *Arnander v RCC* [2006] STC (SCD) 800, relied on by HMRC, supports the Appellant's case; in *Arnander* the Special Commissioner held that the house in question was too grand for the farming operations carried on. In contrast to this appeal, the farm buildings were not really used as such and a layman would have thought of the house as a large country house.

53. Records belonging to Mr Gill have been exhibited which show the last entry being on 19 June 2013. Mr Gill died on 20 November 2013. The records are those of a farmer and not an investor in land. The records kept by Mr Gill are support the Appellant's case; if Mr Gill was simply an investor, the number and whereabouts of the stock would be a matter of indifference; the records are consistent with a farmer engaged in agriculture. The fact that Mr Gill was a wealthy man who chose to get up early to move cattle or check on the livestock rather than live off the income from the land supports the fact that he was, and always had been, a farmer. The hours worked by Mr Gill were variable and therefore impossible to quantify. However, it is clear from the evidence that in additional to seasonal work, Mr Gill was regularly engaged in tasks such as fencing and maintaining fields in such a condition that grass would grow in the right place at the right time. There was financial risk to Mr Gill; one licensee had left due to a disagreement and Mr Blacklidge made it clear that if he was dissatisfied with the working arrangement at any point he would leave. Mr Blacklidge confirmed that although cheaper land was available, he used that belonging to Mr Gill because of their working relationship. The licence agreements are irrelevant to the extent that they did not reflect what actually happened.

54. Mr Gill controlled, maintained and he farmed. Monitoring livestock, monitoring the land to keep it in good condition, maintaining hedges, fences, drains and ditches, controlling weeds, harrowing, rolling and topping are all agriculture. They are part of "good husbandry" within the meaning of s11 of the Agriculture Act 1947 and its obligation to keep the land in a condition to enable a reasonable standard of efficient production (s11(1)), keep pasture in a state of good fertility and condition (s11(2)(a)) and carry out works of maintenance and repair (s11(2)(f)). "Farming" and "husbandry" mean managing resources and Mr Gill's resources were fields. His management included ensuring that grass grew when animals were not on the fields and removing pests. The meaning HMRC seek to give to Mr Gill's work is unarguable and goes against what happened on the ground.

55. This interpretation links to the Tax Code in the following way:

(1) Land wholly or mainly occupied for the purposes of husbandry is farmland, and "farming" shall be construed accordingly: s832(1) ICTA 1988;

(2) Arguments of a similar nature were heard by the Tribunal in *HMRC v John Carlisle Allen* [2016] UKFTT 0342 (TC) where the taxpayer's appeal was allowed in relation to agricultural land in Northern Ireland. The decision was not appealed by HMRC and although not binding on this Tribunal it is nonetheless persuasive and should be followed.

56. HMRC's argument that Mr Gill's activities were no more than general management and maintenance of land are wrong. Mr Gill received significant payments from the Rural Payments Agency ("RPA") under the Single Payment Scheme for England. The RPA was satisfied that Mr Gill met the legislative conditions for such payments, meaning:

(a) He was a "farmer" within the proper meaning and effect of the Regulations, meaning he was a natural person with a holding who exercises an agricultural activity;

(b) He was exercising an agricultural activity, including "maintaining the land in good agricultural and environmental condition";

(c) He was meeting the cross-compliance rules including maintaining hedgerows and watercourses; controlling weeds; avoiding overgrazing; and protecting trees.

57. Mr McNall noted HMRC's contention that "maintaining land in good agricultural and environmental condition" ("GAEC") does not constitute agriculture for the purpose of APR. However, GAEC is a condition for the payment of a single payment, which is something only paid to farmers. HMRC have provided no basis for its contention that GAEC is not agriculture.

58. Moreover, Mr McNall queried why, if Mr Gill was not a farmer, he would own 9 tractors, 2 JCBs, a baler, an 8ft pasture topper, 3 scarifiers and an assortment of buckrakes, potato planers, discs, rollers and tools. The test of occupation is satisfied by Mr Gill's activities which were inextricably linked to those of the licensees such as Mr Blacklidge.

59. In relation to BPR, Mr McNall highlighted the most recent binding decision of the UT in *HMRC v Vigne* [2018] UKUT 357 (TCC) in which the taxpayer's appeal was allowed and BPR granted in relation to land occupied as a livery stables. The UT dismissed HMRC's appeal and approved the FtT's approach to s105(3) IHTA which had been to ask:

(1) Was the deceased operating an investment business?

(2) Was this a business of holding investments?

(3) Does the business bear the hallmarks of a purely investment business?

60. The FtT observed:

> "section 105 of the 1984 Act is essentially driving at businesses which can properly be characterised as investment businesses, that is, where there is little or no element of trading or the provision of services in consideration of monies received."

61. A similar approach was taken in *PRs of Grace Graham v HMRC* [2018] UKFTT 0306 (TC) in which the taxpayer's appeal was allowed in relation to a holiday letting business. Judge Hellier approved the approach of the FtT in *Vigne* and considered that the statutory test properly read was: "was the business mainly one of holding investments". It was not correct to start with the preconceived idea that it was such a business and then ask if that preliminary view should be altered. Judge Hellier highlighted the following comments of Deeny J in *McCall and Keenan v HMRC* [2009] NICA 12 - agreeing with Girvan LJ – who added in relation to the words in section 105(3) which dealt in particular with dealings in shares and securities:

> "…However, if one applies the maxim *noscitur a sociis* then one can see the possibility that Parliament intended a business more akin to one dealing in and holding securities, shares or properties in a portfolio to be excluded from this form of business relief rather than as here, the management by a widow with a single farm business, which might otherwise be inherited intact by a daughter or son. Paying inheritance tax on a farm which had development value because of its location may well lead to a breakup in the farm unit by the necessity to sell the land to pay the tax. Taking a purposive approach to the provision might therefore yield a different outcome from a literal approach. The point was not argued ... before us, in the circumstances I would like to reserve my position on this issue."

62. Mr McNall submitted that the correct approach is that set out in *Vigne* and, in adopting that approach no properly informed observer would say that Mr Gill's business was one wholly or mainly of holding investments and BPR should be available. He farmed the land using his plant and machinery. The evidence of Mr Blacklidge and Mr Charnley clearly shows that the machinery was used in association with Mr Gill's business of agriculture. HMRC's position is untenable.

63. HMRC's primary case is that neither the houses nor the outbuildings at Woodlands Farm were "occupied by the [deceased] for the purposes of agriculture" throughout the period of two years ending with Mr Gill's death. There was no "[objective] connection between the residential use of the [house] and an agricultural purpose sufficient to make the use occupational for the purposes of agriculture" as per *HMRC v Atkinson* [2012] STC 289 at [12], [18], [19] & [23]:

> "12. Although it is not unhelpful to consider, as Mr Davey has done, what amounts to occupation and to address separately whether the occupation is for the purposes of agriculture, the condition which has to be fulfilled in the present case is in reality a single condition namely that the property must be occupied for the purposes of agriculture. Each limb of the condition (occupation and for the purposes of agriculture) informs the other. Whether a particular use of the property can be said to amount to occupation for the purposes of agriculture must be answered by reference to the type of property concerned and the type of activities which are capable of amounting to use for the purposes of agriculture.
>
> 18. So, what is it that makes the use of the cottage as a home by the agricultural worker, in contrast with an unconnected person, occupation for the purposes of agriculture? The search is for some sort of connection between the residential use of the cottage and an agricultural purpose sufficient to make the use occupation for the purpose of agriculture. In both cases, the actual use of the cottage is as a home, in the one case for an agricultural worker and in the other for an unconnected person. It is not, therefore, the use per se which distinguishes the two cases. Rather, the agricultural worker uses the cottage as a home because that is what he is and because he works on the farm. There is a sufficient connection between that use and the agricultural activities on the agricultural land for his occupation to be seen as being for the purposes of agriculture. That is underlined by the consideration that the provision of a home is no doubt often an attractive part of a worker's terms of service and it may even be, in practice in some cases, that it is not only attractive but necessary if suitable employees are to be recruited. Extra-Statutory Concession F16 ("Agricultural Property and Farm Cottages") carries this a step further in regarding the condition regarding occupation for agricultural purposes as satisfied in some cases even where the cottage concerned is occupied by a retired farm employee or their widow, namely where the occupier is a statutorily protected tenant or the occupation is under a lease granted for life as part of the employee's contract of employment for agricultural purposes.
>
> 19. All of this is correct as far as it goes. But we add that there must also be some objective connection between the occupation of the cottage and the relevant agricultural activities. Where a farm worker lives, as it were, on the job for the convenience of both himself and his employer, the connection may go without saying because it is obvious. That could be so, for instance, in the case of a herdsman or a worker responsible for the milking of cows. It is less obviously so in the case of worker who operates machinery and who could equally well live in a local village or even a village some miles away from the farm. But no-one would suggest, we think, even in the case of such a worker that the cottage in which he lives was not occupied "for the purposes of agriculture" within the meaning of the section. Indeed, section 169 IHTA recognises this in providing favourable valuation rules where a cottage is "occupied by persons employed solely for agricultural purposes". Similarly, Extra-Statutory Concession F16 (see at the end of paragraph 18 above) expressly regards the condition as satisfied in some cases even where the cottage is occupied by a retired worker or a surviving spouse.

> 23. Where a cottage falls vacant when a worker leaves it, it will be a matter of fact and degree whether it remains "occupied for the purposes of agriculture", an issue which it might not be easy to determine. If the landowner wishes to find a replacement worker intending that the new employee should live in the cottage but is having difficulty in finding a suitable employee, it may well be that even a prolonged period while the cottage remained empty would not preclude agricultural relief. Similarly, a farm building might remain empty, reflecting a change of use on the farm. For instance, a dairy farmer may decide to give up dairy farming and to turn his land to some other agricultural use. His milking parlour may remain empty, perhaps for a considerable time, while he decides how to incorporate it into his new operations and, once the decision has been made, while it is converted to a new use. It will again be a matter of fact and degree in any case whether the building remains occupied for the purposes of agriculture within the relevant definition."

64. HMRC submit that the Appellant's assertion that a farmer does not cease to be a farmer or in occupation of a farmhouse for agricultural purposes simply due to age or infirmity is not supported by *Atkinson*. Furthermore, HMRC's decision was not based on such factors; HMRC contend that Mr Gill did not carry on agricultural activities throughout the relevant period but instead rented his agricultural land to Mr Blacklidge and Mr Pope. HMRC submitted that it was clear from the evidence that little was done in respect of land to the west of the train line which was used by Mr Pope. Although HMRC accepted that some activities were carried out by Mr Gill in relation to the land used by Mr Blacklidge, they submit that this was not sufficient to meet the requirements of the legislation.

65. HMRC submit that the activities purported to be carried out are insufficient for Mr Gill to have been engaged in "agriculture" (or "farming"). HMRC contend that those activities constitute no more than general maintenance and management of the land. The activities were simply the actions of a prudent and conscientious landowner keeping his land in good condition in order to generate an income from that asset. Mr Brinsmead-Stockham highlighted *Atkinson* at [6] that in this context no "special meaning [is] given to the words 'for the purposes of agriculture' and it therefore follows that they must be given their ordinary English meaning. The Shorter Oxford English Dictionary defines *"agriculture"* as *"the science or practice of cultivating the soil and rearing animals; farming"*.

66. HMRC submit that the definitions urged by the Appellants which rely on concepts such as "farming" and "good husbandry" do not apply in the context of IHT and APR and are therefore irrelevant. Similarly, those definitions contained within ICTA 1988 do not apply as IHTA 1984 is not included within "the Tax Act" in TA 1988. The case of *John Carlisle Allen v HMRC* [2016] UKFTT 0342 (TC) concerned definitions within s832 TA 1988 and therefore the context was entirely different to this appeal.

67. HMRC rely on the following in support of its case:

> (i) All of Mr Gill's agricultural land was permanent pasture. There is no evidence that during the relevant period Mr Gill cultivated any crops or reared any animals on that land;
>
> (ii) The income Mr Gill received from the agricultural land was derived solely from his property rights over that land, such as payments from grazing licences and Single Farm Payments, and not from agricultural activities that he carried on;

(iii) The activities carried on by Mr Gill, with the exception of observing the livestock of Mr Blacklidge and Mr Pope, constituted maintenance or management of his property with a view to securing a continued income from granting grazing licenses. The activities did not constitute the use of the land by Mr Gill for the purposes of agriculture. If Mr Blacklidge and Mr Pope had not grazed their animals on the land it is clear that Mr Gill's activities would not have amounted to "agriculture";

(iv) Mr Gill was not subject to any obligation (contractual or otherwise) to carry out the activities relied upon. This was expressly stated in the later grazing licenses but was also the effect of the earlier licenses. Mr Gill was not paid for carrying out those activities either under the terms of the grazing licenses or otherwise;

(v) To the extent that Mr Gill observed the livestock it is clear that it was an entirely voluntary and unpaid activity. The livestock remained the responsibility of the owners.

68. Mr Brinsmead-Stockham noted that if the activities of Mr Gill are deemed to be sufficient to constitute "agriculture" for the purposes of APR, this will be a significant expansion to the scope of APR with the potential to affect landowners who carry on very limited activities in relation to the land they own.

69. HMRC do not accept that Mr Gill's estate should be considered by the Tribunal "in the round". The legislation requires the Tribunal to consider whether each item of "agricultural property" satisfies all the requirements to be eligible for APR (as per *Harrold v IRC* [1996] STC (SCD) 195 at [9(2)]).

70. HMRC do not accept that Mr Gill's receipt of Single Farm Payments in respect of some or all of the 7 year period prior to his death indicates that he was engaged in "agriculture" for the purposes of APR.

71. The definition of "agricultural activity" for the purpose of the Single Farm Payment was:

> "the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or <u>maintaining the land in good agricultural and environmental condition</u>"

(HMRC's emphasis)

72. HMRC submit that maintaining the land in good agricultural and environmental condition does not constitute "agriculture" for the purposes of APR. It is possible for a person to be entitled to Single Farm Payments despite not being engaged in "agriculture".

73. The fact that DEFRA determined that Mr Gill was entitled to Single Farm Payment is irrelevant to IHT issues, as per *John Carlisle Allen* (ibid) at [56]:

> "Whilst the 2001 Conacre Licence Agreement was drawn up on the footing that the 'Licensor Claims Entitlements', and hence was drawn clearly with an eye to the Basic Payment Scheme ('BPS') we do not consider it relevant that the Ministry (the Department of Agriculture and Rural Development: 'DARD') has latterly categorised the conacre holder as the 'active farmer' for the purposes of claiming entitlements and receiving payments under the Basic Payment Scheme. Regardless of whether that approach is right or wrong, it is a departmental decision which goes principally to determining who should be entitled to claim the 'entitlements' under the BPS. That departmental decision cannot and does not have any substantive bearing on our assessment as to who is in occupation wholly or mainly for the purposes of husbandry. Even if the position were reversed and the owner (and not the conacre holder) were

> regarded as the active farmer, that could not be determinative either since, as Mr Hanna QC pointed out to us, and we accept, the conacre holder and the grantor are still entirely free as between themselves to agree to transfer the money actually paid under the BPS Scheme from one to the other."

74. Furthermore, it was Mr Blacklidge and Mr Pope as licensees who were responsible for ensuring that the land owned by Mr Gill met the conditions to qualify for Single Farm Payment and therefore the submission does not support the contention that Mr Gill was engaged in "agriculture". HMRC highlighted that under the licenses Mr Gill had no contractual obligation to carry out activities such as supervising the livestock.

75. In respect of the machinery, HMRC submitted that this was maintained by Mr Gill but does not amount to agriculture; the mere fact of ownership is not relevant to the test to be applied.

76. Mr Gill was a landowner charging for access to graze. The provision of advice and other tasks carried out by Mr Gill do not constitute farming or agriculture for the purposes of the legislation. The focus of the Appellant's case has always been on livestock and not on grass as a crop. In any event, there is no basis to conclude that Mr Gill farmed the land for grass in the relevant period; Mr Pope may have taken grass but there is no evidence as to what Mr Gill did in this regard. Although Mr Blacklidge said that grass was necessary for grazing the animals, Mr Gill did not charge for this and there was no evidence that he cultivated or fertilised the land. Similarly, there was no evidence in relation to the crops grown by Mr Gill which, HMRC submitted, amounted to no more than a vegetable patch. The records kept by Mr Gill which noted the number of animals and their movements is consistent with HMRC's case that Mr Gill was acting as a landowner deriving income from the fees charged for the animals.

77. The farming equipment owned by Mr Gill at the time of his death does not support the argument that Mr Gill occupied the house and outbuildings *"for the purposes of agriculture"*. The ownership of such equipment can be explained by the fact that Mr Gill used some of the machinery for the activities carried out and the letter of Steele & Son dated 1 September 2015 which stated: *"that it is what one would expect to see on the farm of elderly male farmers in the north of England who had suffered the privations of wartime and were not inclined to waste or discard something which might come in useful."*

78. HMRC do not accept the Appellant's contention that Mr Gill was farming his land using the animals of others. Mr Brinsmead-Stockham highlighted that the only activity Mr Gill undertook was to observe the livestock grazing and call the owner if there were any problems. Furthermore, Mr Blacklidge and Mr Pope retained responsibility for the livestock and any damage they caused; Mr Gill was under no obligation in relation to the livestock nor was he paid for any activities he undertook.

79. For those reasons HMRC submit that Mr Gill did not occupy the house or outbuildings "for the purposes of agriculture" under s117(a) IHTA 1984 throughout the relevant period and no APR is available.

80. Further, HMRC contend that the house at Woodlands Farm was not a "farmhouse" at the relevant time on the basis that there was no relevant "functional connection" between the house and the operation of a farm (citing in support *Hanson v HMRC* [2013] STC 2394 at [47] and *Arnander v RCC* [2006] STC (SCD) 800 at [88]).

81. HMRC submit that Mr Gill merely lived in the house as a residence; the house was not the dwelling "from which the farm [was] managed" nor was Mr Gill engaged in farming on a "day-to-day basis". As such, the property was not "agricultural property". The status of the occupier is not the test – the proper criterion is the purpose of the occupation of the house.

82. In respect of BPR, HMRC submit that the business carried on by Mr Gill (and it is common ground that there was a business) consisted *"wholly or mainly of…making or holding investments"* within s105(3) IHTA 1984 and that this is the conclusion that an "intelligent businessman" viewing the deceased's business "in the round" would inevitably reach in relation to the agricultural land owned by Mr Gill. In support of this contention, HMRC rely on the following:

> (i) The turnover in relation to the agricultural land (such as grazing fees, Single Farm Payments etc) was derived wholly from the exploitation of Mr Gill's proprietary rights over that land;
>
> (ii) The activities said to be carried out by Mr Gill consist of the management or maintenance of that land in order to ensure that Mr Gill was able to continue to derive income from the land; and
>
> (iii) Mr Gill was not remunerated for any of the activities at (ii) above.

83. HMRC submitted that it is clear that s105(3) IHTA 1984 applies to deny BPR if the business of Mr Gill is viewed as limited only to his dealings with his agricultural land. However, the conclusion that the business consisted of "wholly or mainly of…making or holding investments" is further supported if Mr Gill's business is also viewed as including the activity of leasing (such as Dorbaricia - property 11) and the buildings adjacent to 331 Dunkirk Lane at Woodlands Farm – namely the yard and buildings leased to Ian Veevers t/a Grasstec.

84. HMRC submitted that Mr Gill held the land as an investment and turned it to account by using his proprietary rights over it to derive income. Mr Gill did not engage in any non-investment activities as part of his business; save for observing livestock Mr Gill's activities were all maintenance or management of the land which constituted investment activities. Mr Gill was not paid for any activities undertaken and any expenses incurred related to investment activities.

85. The only non-investment activity Mr Gill could be said to have carried out was observing livestock that grazed on his land. However, HMRC submitted, this did not form part of Mr Gill's business in the relevant period because he was under no obligation to carry out the activity nor was he remunerated for it.

86. Looking at the facts "in the round" the business of Mr Gill was wholly one of holding investments.

87. HMRC cited in support of its submission *McCall and Keenan* (ibid) in which the Court of Appeal in N. Ireland held in favour of HMRC on very similar facts.

88. In summary, HMRC concluded that APR should be refused on the basis that the house was not a "farmhouse" on 20 November 2013 and did not constitute *"agricultural property"* for the purposes of s115(2) IHTA 1984. Further, and in the alternative neither the house nor the outbuildings were occupied by Mr Gill *"for the purposes of agriculture"* throughout the period of two years ending with Mr Gill's death within s117(a) IHTA 1984. There was no dispute between the parties that the sole occupier of the relevant properties was Mr Gill.

89. BPR should be refused on the basis that Mr Gill's business in the two years leading to his death consisted of *"wholly or mainly of...making or holding investments"* within s105(3) IHTA 1984 such that the business was not *"relevant business property"* for the purposes of BPR.

DISCUSSION AND DECISION

90. We have carefully considered all of the evidence, submissions and authorities before us. There was no real dispute between the parties as to the facts in this case; the differences arise

in the parties' application of the law to those facts. In those circumstances there was no robust challenge to the evidence given; both Counsel fairly and properly questioned the witnesses in order to clarify matters relevant to the issues before us and provide us with a full picture of the situation at Woodlands Farm during the relevant period. We found the evidence of both Mr Blacklidge and Mr Charnley clear and compelling and we accepted it as fact. Although Mr Charnley accepted he was not on the farm on a daily basis and therefore the evidence he gave was in "broad terms" we found it to be consistent with the evidence given by Mr Blacklidge and it assisted in adding to the overall picture. We should add that we disregarded the witnesses' opinions on the issues for us to determine.

91. The two issues before us relate to the availability of APR and BPR. In reality, the issues stand and fall together.

92. Turning first to the issue of APR, the questions we must determine are whether Mr Gill occupied the house and other buildings for the purposes of agriculture, and whether the house lived in by Mr Gill was a farmhouse which constituted agricultural property.

93. There was no dispute in relation to the issue of occupation (s117 IHTA 1984); Mr Gill occupied the house until his death. There was also no dispute that the house was "of a character appropriate to the property". Indeed, we could not envisage any sensible basis upon which HMRC could feasibly argue to the contrary; the pictures and descriptions with which we were provided were clear evidence of the spartan and basic (to put it at its highest) way in which Mr Gill lived and the features of the house generally and we were wholly satisfied that the house met the principles encapsulated by Dr Brice in *Lloyds TSB Bank Plc (Antrobus Deceased) v Inland Revenue* [2002] UKSC SPC00336 (17 October 2002):

> "Thus the principles which have been established for deciding whether a farmhouse is of a character appropriate to the property may be summarised as: first, one should consider whether the house is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed (*Korner*); secondly, one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question *(Starke);* thirdly that although one cannot describe a farmhouse which satisfies the "character appropriate" test one knows one when one sees it *(Dixon);* fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm *(Dixon);* and, finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (*Dixon*)."

94. We considered whether there existed a functional connectivity between Mr Gill's occupation of the house and the agricultural activities that took place on the farm such that it constitutes "agricultural property" for the purposes of the legislation.

95. We heard detailed submissions from Counsel on this issue and we were grateful for their careful examination of the evidence and authorities relevant to this appeal.

96. The definition of 'agricultural property' in section 115(2) IHTA is 'agricultural land or pasture'. This is expanded to include woodland and any building used in connection with the intensive rearing of livestock or fish, provided that the woodland or the building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture. It also includes such cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property.

97. The provisions of s117 were considered in *Atkinson & Smith (executors of the Will of Atkinson (Decd))* [2010] UKFTT 108 (TC) by Sir Stephen Oliver QC, with whom we respectfully agreed (at [16]):

> "But "for the purposes of agriculture" is not further qualified. This no doubt reflects the wide range of activities that can constitute agriculture. It also recognises that the class of properties defined as agricultural property by section 115(2) includes those that are directly used in the functioning of the agricultural activity, such as land and farm buildings, as well as those that are less directly employed but nonetheless provide the structure within which the agricultural activities are conducted. Farm cottages are an example of the latter. Their function is to accommodate people engaged in the relevant agricultural activities." (emphasis added)

98. In our view the scope of the term "for the purposes of agriculture" is wide and whilst we were grateful for counsels' endeavours to provide us with a self-contained definition, we took the view that although definitions found in other statutes, such as the Agriculture Act 1947 may provide useful guidance, they do not aid construction on the specific facts of this appeal. We considered that we should not take a restrictive approach but rather assess the facts of this case bearing in mind the comments in *HMRC v Atkinson* [2012] STC 289 at [6] that: "nor is any special meaning given to the words 'for the purposes of agriculture'".

99. The issue is whether there was a functional nexus between Mr Gill's occupation of the house and the agricultural activities carried out. We therefore considered the activities Mr Gill was engaged in. It was not in dispute that Mr Gill and his father had historically farmed the land. Mr Gill had continued to farm after his father's death, however as the years went on, third parties such as Mr Blacklidge took over grazing on a number of fields. Such arrangements, certainly that with Mr Blacklidge, were made as long ago as 1996 and more land was made available to Mr Blacklidge on or about 2001. It appeared from the evidence that there were a number of reasons for the arrangement, including the difficulties posed by foot and mouth disease and the paperwork involved livestock passports. However, the arrangements clearly suited both Mr Gill and Mr Blacklidge.

100. It seemed to us that there could be no doubt that, certainly historically, Mr Gill's occupation of the farmhouse and activities on the farm would satisfy the requirements of the legislation in that the occupation was for agricultural purposes such that the farmhouse would constitute agricultural property. The question is whether the activities of Mr Gill changed sufficiently and to the extent that he could no longer be said to be farming the land during the relevant period.

101. In reaching our decision we have relied on the evidence of both witnesses in informing our view. It is correct to say that Mr Gill no longer owned livestock. However, it seemed to us that to all intents and purposes Mr Gill's activities – or, to put it another way, his occupation or vocation - had always been, and remained, that of farming. We accept that there was a change to the business in that Mr Gill gradually ceased rearing livestock. However, we did not accept that this factor was sufficient to alter the true nature of Mr Gill's work. The fact that Mr Gill did not wish to undertake specific tasks in his latter years, for instance, cutting hedges near the railway, in our view does not detract from his activities as a whole; to isolate the tasks carried out would, in our view, be an artificial exercise.

102. In our view, the activities carried out by Mr Gill were those of a farmer, working an active farm. Mr Gill provided substantial work which we did not consider could be accurately described as limited to the provision of land for grazing. We found that the work carried out by Mr Gill was not done in order to successfully let the land or prepare the land to let nor was

it done to improve the land so as to increase income which would be more akin to the activities of an investor or a business in the letting of land.

103. We accepted the evidence that Mr Gill could be found "at the crack of dawn" in the outbuildings with Mr Blacklidge's livestock ready to start vaccinations. We found that other work carried out by Mr Gill included, inter alia, fencing, drainage, ditches and harrowing. We accepted Mr Blacklidge's evidence that Mr Gill would be the one to check on his livestock up to 3 times each day when there were new-borns and thereafter once per day, he would also be involved in the movement of stock from one field to another by not only making the decision but physically helping to move the animals using his tractor. The impression we were left with from Mr Blacklidge's description of them "working together" was analogous to a partnership with Mr Gill continuing to farm his land in his own right but also farming with Mr Blacklidge. We accept that part of the work could be described as "maintenance" of the land or keeping the land in good order, but as set out above, we found that Mr Gill's activities went so far beyond this such that to use the term "maintenance" would be an over-simplistic description which does not accurately describe the position. We accepted the evidence of Mr Charnley that Mr Gill cropped areas of the land for grass and reseeded the land; this was supported by the pictures with which we were provided which showed one of the outbuildings full of seed bins. In our view maintenance and keeping the land in good order are part and parcel of running a working farm; an integral part of farming is maintaining the productivity of land and cultivation which we were satisfied Mr Gill did and which falls within the scope of "agricultural activities".

104. In relation to Mr Gill's receipt of Single Farm Payment, we did not find that this assisted us in our application of the relevant legislation to the facts of this case. We were satisfied that it indicated that DEFRA and the Rural Payments Agency considered the land to be a working farm and that Mr Gill was a farmer. However, we attached limited weight to this on the basis that the payments were made without reference to the statutory tests which we must apply in this case and without consideration of the work undertaken by Mr Gill specifically as opposed to the work on the land generally.

105. We did not find the grazing licenses assisted us in reaching our decision. We accepted the evidence of Mr Blacklidge that they did not reflect the reality of the situation to such an extent that he had not even read through the later leases before signing.

106. As regards the land on which Mr Gill cultivated crops, HMRC argued that this was no more than a vegetable patch. We did not agree. In our view this failed to take account of the history of the farm and the evidence that crops had been grown in the past. We took the view that an acre of crops farmed using tractors and similar machinery and sold/exchanged at a local shop goes beyond what would be expected of, for instance, a hobbyist gardener. Moreover, the legislation makes no provision for minimum or maximum requirements of crops produced or activities undertaken. Bearing in mind the comments in *Atkinson* that no special meaning should be given to the words "for the purposes of agriculture" and the Oxford English Dictionary definition which includes "cultivating the soil" and "farming", we concluded that there was no basis upon which this land, and Mr Gill's cultivation and farming of it, should be excluded from the wide scope activities encompassed within the term "agricultural purposes".

107. We were satisfied from the evidence of Mr Blacklidge that the outbuildings were used to house sick animals and pen the animals during movement; activities which involved Mr Gill. The outbuildings, yards and barns were also used to store vehicles, tools and equipment and we were satisfied from the evidence of both Mr Blacklidge and Mr Charnley that the machinery and equipment were used up until Mr Gill's death; Mr Blacklidge described seeing Mr Gill regularly use the various items of machinery and equipment in carrying out work on the farm and this was consistent with Mr Charnley's evidence as to the state of the machines which

indicated use of the machines by Mr Gill up until his death. We noted the letter from Steele & Sons, in respect of the machinery and tools, which opined "*that it is what one would expect to see on the farm of elderly male farmers in the north of England who had suffered the privations of wartime and were not inclined to waste or discard something which might come in useful"*. However, we attached no weight to this opinion which we found to be no more than speculation and contrary to the evidence of the witnesses which we preferred.

108. We noted the guidance given by Warren J in the Upper Tribunal in *HMRC v Atkinson* at [21] – [24]:

> "…in the context of the inheritance tax relief for agricultural property in respect of cottages (or indeed any property other than agricultural land), such an extended meaning has to be given to the words if the clear objective of the statutory provisions is to be given effect.
>
> …
>
> [24] In relation to the main farmhouse on a farm, it may be usual that the active farmer, be he the freehold owner or a tenant farmer, will occupy it. In those circumstances, the house will almost certainly be occupied for the purposes of agriculture. It needs to be borne in mind, however, that that will not always be the case. A landowner might let the whole of his farm to a tenant farmer and have nothing do with the farming business carried on. But he might exclude from the tenancy and retain for his own use, the main house, being a house appropriate to the farm as a whole. The retained house would not, in those circumstances, be within the exemption for agricultural property. This is because the house, assuming it is a 'farmhouse' within the meaning of s 115, would not be occupied for the purposes of agriculture, being occupied by the landowner for his own purposes, purposes having nothing to do with the farming business carried on by the tenant farmer. Mr Davey has drawn our attention to the decision in Rosser v IRC [2003] STC (SCD) 311 (Special Commissioner Michael Tildesley) at para 53; on the basis of that decision, it might be argued that the house is not, in fact, a 'farmhouse' because it is not lived in by the farmer. We doubt very much that that is correct but it is not necessary to decide the point."

109. We found that Mr Gill ran a farming business and we were satisfied that this case falls squarely within the category envisaged in *Atkinson* above; Mr Gill occupied the main farmhouse on a farm where he was an active farmer. We found that *Rosser v IRC* [2003] STC (SCD) 311 to which we were referred was distinguishable on its facts; in that case the Special Commissioner concluded that the house was, during the relevant period, a retirement home. For the reasons set out above we were wholly satisfied that Mr Gill did not occupy the house solely as a residence but rather as a dwelling from which he farmed and managed the farm. We were satisfied that Mr Gill farmed day to day as well as retaining overall control and that although others had use of the land, it could not be said that Mr Gill had nothing to do with the farm. To the contrary, we were satisfied that Mr Gill's occupation did not change; he had always been a farmer and although the manner in which he farmed was modified with time and age, he did not cease to become a farmer, his activities did not cease to be "for the purposes of agriculture" nor did they become those of an investor.

110. We considered the evidence regarding the specific tasks done and time taken. The activities were unquantifiable given the seasonal and sporadic nature of some tasks. However, it was clear to us from the evidence that it would be an artificial process to seek to identify different tasks and the time spent carrying out those tasks in order to assess the whether Mr Gill occupied the house for the purposes of agriculture. The evidence left us with the clear impression that Mr Gill tended to all aspects of the farm on a day to day basis. We were satisfied

in those circumstances that Mr Gill occupied the house as a farmer's home from which he worked on the farm. We were satisfied that the objective connection existed and that Mr Gill's occupation of the farmhouse was for the purposes of agriculture.

111. The issue to be determined in relation to the availability of BPR is the characterisation of the services provided by Mr Gill and whether those services were incidental to the business of wholly or mainly holding investments.

112. We have already set out our findings as to whether Mr Gill occupied the farmhouse for the purposes of agriculture and in doing so we have set out our view as to the services provided by Mr Gill. In assessing the nature of the activities carried out we are wholly satisfied that they do not predominate to such an extent that business was one of wholly or mainly of holding the property as an investment.

113. We agreed with and adopted the comments of Judge Hellier in *PRs of Grace Graham v HMRC*:

> "We derive the following principles from *McCall* and *George* as to the proper construction of section 105(3):
>
> (1) investment is not a term of art but has meaning an intelligent businessman would give to it; such a person would be concerned with the use to which the asset was being put and the way it was being turned to account. *McCall [10]*
>
> (2) a property may be held as an investment even if the person holding it has to take active steps in connection with it: *McCall [14]* Girvan LJ said in that case that what was clear from the authorities is that a landowner who derives income from land or buildings will be treated as having a business of holding an investment notwithstanding that in order to obtain the income he carries out incidental management and maintenance work, finds tenants and grants leases;
>
> (3) land is generally held as an investment where gain is derived from payments to the owner for the use of the property: (*McCall* [11] *George* [15]);
>
> (4) thus the exploitation of a proprietary interest in land for profit is capable of being an investment activity so that the land is an investment, and part of the business is holding it: the holding of property for letting is generally the holding of it for investment (*George* [18]);
>
> (5) but there is a wide spectrum at one end of which is the exploitation of land by the granting of a tenancy and at the other end of which is the exploitation of premises as a hotel or by a shopkeeper. The land subject to tenancy would generally be an investment and any business encompassing it would therefore include holding investments, but the business conducted at a shop or hotel would not be one wholly or mainly of holding investments: (*George* [12]);
>
> (6) property management is part of the business of holding property as an investment. To this extent investment business activity is not limited to purely passive business. "Management" for these purposes includes the activity of finding tenants and maintaining the property as an investment but does not extend to providing additional facilities whereby the landlord might earn additional fees (e.g. for cleaning and heating) whether or not included in the lease or covered by the rent: *George* [23];
>
> (7) where there is a composite business it is necessary to look at it in the round (*George*[13]);
>
> (8) where there is a composite business the statutory words must be applied as a whole to all the activities: one is not required to open an investment "bag" into which all the activities linked to an investment are placed (because they are ancillary to the

investment) and weigh that against the remainder; instead one looks at the business as a whole (*George* [60]).

We do not think that the appellants have any need to seek to dilute the effect of Henderson J's statement. He makes it clear what he describes is "generally" the case - leaving room for exceptions; and he defines the cases he is dealing with as those where the owning and holding of land is "in order to obtain an income from it", but the essence of the Appellants' argument is that the activities of the business at Carnwethers are such that it is used in major part for the provision of other activities and the income is derived as much from those activities as from the supply of land. Nevertheless we accept that we must be vigilant in having in mind the spectrum and assessing where business lies on that spectrum; and we agree that there is no presumption which requires rebuttal that a business which involves the exploitation of land for profit is mainly an investment business: the facts must be looked at in the round.

To our minds a purposive approach to the construction of any statutory provision is always required, but the purpose must be drawn from the statutory context: some provisions are so prescriptively drafted that they have little purpose but their mechanism although even then particular words may have meanings illuminated by the overall statutory purpose. To our minds the context of "mainly holding investments" is that it sits alongside "dealing in securities…shares land or buildings" which indicates that holding investments is something different from dealing in them but to our minds this looks not to intention but to the objective pattern of use of an investment.

Vigne is also of note for the FTT Judge's criticism at [44] of Henderson J's approach in *Pawson*. Henderson J had asked whether the additional services that had been provided in that case were of such a nature and extent that they prevented the business from being mainly one of holding investments. The Judge in *Vigne* considered that this transposed the statutory test which properly read was "was the business mainly one of holding investments?"; it was not correct to start with the preconceived idea that it was such a business and then to ask whether that preliminary view should be altered.

We agree with the test proposed by the Judge in *Vigne*: namely, that one must ask is the business mainly one of holding investments, but we think that his criticism of the approach of Henderson J is misplaced. If one looks at the components of a business and asks "is this mainly holding investments?" The answer to that question is obtained first by looking at the components and asking in relation to each whether any part of them is the holding of investments or not holding investments, and then secondly by stepping back to look at the whole picture. If at the first stage one identifies an element which has a substantial investment component, the next question is do the other non-investment components outweigh it?. What one is not entitled to do (and was a mistake that Laddie J made in *George*:[60]), is to identify one component - an investment component - and lump with it everything ancillary or incidental to it and then compare that agglomeration with what is left. Each part must be viewed separately and then as part of the whole."

114. We accepted that the income received from the licenses arose as a result of Mr Gill's ownership of land, which we should note had been acquired piecemeal as it became available over the course of many years. However, in our view that is only one factor to take into account when looking at the various components separately and then as part of the whole. We also accepted that property management forms part of a business of holding investment where active steps are taken. However, we do not accept that the maintenance and activities undertaken by Mr Gill were, as HMRC contend, no more than property management and a prudent landowner keeping the land in good order to generate income. As stated above, we were wholly satisfied that even with the component of generating income through grazing, the farming undertaken

by Mr Gill was of such a nature and extent that the business of farming does not lose its characterisation as such.

115. We noted the comments in *IRC v George* [2004] STC 147 (CA) at [60];

> "The section does not require the opening of an investment "bag", into which are placed all the activities linked to the caravan park, including even the supply of water, electricity, and gas, simply on the basis that they are "ancillary" to that investment business. Nor is it necessary to determine whether or not investment is "the very business" of the Company. The statutory language does not require such a definitive categorisation. In the present context, it gives insufficient weight to the hybrid nature of a caravan site business, as I have explained. The holding of property as investment was only one component of the business…"

116. As set out earlier in this Decision, the time spent hedge-cutting, harrowing, fixing fences and hedges, digging out and clearing ditches, rolling the fields, mole trapping, ensuring grass was eaten down or grown, herding, lookering and husbandry duties is unquantifiable. However, the tasks taken together were, in our view, substantial. The outbuildings were used as farm buildings, for storing equipment used for agricultural activities. We concluded that these activities were not carried out to obtain income and could not be regarded as a business of holding investments; the farming work was done to maintain the business of an active working farm.

117. The issue of where a particular business falls within the spectrum is a question of fact and degree which requires a qualitative assessment of the facts as found. Whilst we found the authorities cited by the parties helpful in providing guidance, each case must be decided on its own facts. It was clear to us from the evidence that Mr Gill was not a landowner holding an investment in respect of which he carried out incidental work; an intelligent businessman would view the asset as a farming business being turned to account by the day to day farming carried out by Mr Gill with the additional component of some investment income being received; the existence of that component, namely receiving income by the use of land, does not automatically exclude it from relief. In our view, in looking at the components of the business and then at the whole picture the statutory requirements of either "wholly or mainly" are not satisfied. Although it may be said that the investment component is not insubstantial, we were satisfied that the non-investment components of running a working farm outweigh it such that the holding of property as investment was not the main component of the business. This was not a business of holding the property as investment with the provision of additional services incidental to that business.

118. On our reading, the authorities have recognised the distinction between a business of holding an investment, intended to be excluded from relief, and the running of a business such as farming; this is reflected in the comments of Deeny J in *McCall and Keenan*:

> "However, if one applies the maxim *noscitur a sociis* then one can see the possibility that Parliament intended a business more akin to one dealing in and holding securities, shares or properties in a portfolio to be excluded from this form of business relief rather than as here, the management by a widow with a single farm business, which might otherwise be inherited intact by a daughter or son."

119. This appeared to us to reinforce the point made by the UT in *Hanson* at [40]:

> "…we would agree that <u>one of the purposes</u> of the relief is to facilitate the continuance of the farming after the death of the farmer. But that is manifestly not its only purpose…"

(emphasis added)

120. If one were to take a purposive approach in this case it seemed to us that there could be no doubt that the facts of this appeal fall within the latter category described by Deeny J. We were satisfied that the work carried out by Mr Gill was neither incidental nor "maintenance" in the limited sense that HMRC seek to apply; although income was derived from payments for use of the land, in our view the business was that of continuing the farm as a working farm. In those circumstances, on the balance of probabilities, we concluded that the business carried out did not consist of wholly or mainly of holding investments.

CONCLUSION

121. In summary, for the reasons set out above we have concluded as follows:

(a) The house at Woodlands Farm is a farmhouse and constitutes "agricultural property" within the terms of s115(2) as at the date of Mr Gill's death;

(b) Mr Gill occupied the house and other buildings at Woodlands Farm "for the purposes of agriculture" throughout the period of two years leading up to his death;

(c) The business carried on by Mr Gill was "relevant business property" as it did not consist "wholly or mainly of…making or holding investments".

122. The appeal is therefore allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

123. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JENNIFER DEAN
TRIBUNAL JUDGE

RELEASE DATE: 28 OCTOBER 2019