UPPER TRIBUNAL (LANDS CHAMBER)

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UTLC Case Number: RA/52/2017

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – RATEABLE PROPERTY – whether equestrian facilities adjacent to a substantial country house were domestic or non-domestic property – whether they were an appurtenance belonging to or enjoyed with the house – section 66(1)(b), Local Government Finance Act 1988 – appeal dismissed

IN THE MATTER OF AN APPEAL FROM THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

ANDREW CORKISH
(VALUATION OFFICER)

Appellant

and

FIONA BIGWOOD

Respondent

Re: Stables at Bourne Hill House,
Kerves Lane,
Horsham,
West Sussex,
RH13 6RJ

Martin Rodger QC, Deputy Chamber President and Mr A J Trott FRICS
Royal Courts of Justice
on
19 February 2019

Sarabjit Singh QC, instructed by HMRC Solicitors for the appellant
Cain Ormondroyd, instructed by Altus for the respondent

The following cases are referred to in this decision:

Attorney-General ex rel. Sutcliffe v Calderdale BC (1983) 46 P.& C.R. 399

Cadogan v McGirk (1997) 73 P.& C.R. 483

Clymo v Shell-Mex & B.P. Ltd [1963] RA 191

Cornwall v Alexander [2015] RA 504

Evans v Angell (1858) 26 Beav. 202

Levinson v Robeson and Gray [2008] RA 379

Martin v Hewitt [2003] RA 275

Methuen-Campbell v Walters [1979] 1 QB 525

North Eastern Railway Co v Guardians of York Union [1900] 1 QB 733

Seabrook v Alexander [2014] RA 382

Skerritts of Nottingham Ltd v Secretary of State for the Environment [2001] QB 59

Trim v Sturminster RDC [1938] 2 KB 508

Woolway v Mazars [2015] UKSC 53

Introduction

1. Fiona Bigwood is a successful equestrian. She was a member of the British team which won a silver medal in the team dressage event at the 2016 Rio Olympics. Her husband, Anders Dahl, is also an Olympic dressage rider, competing for Denmark. Between 2006 and 2016 the couple lived with their three children at Bourne Hill House, outside Horsham in West Sussex. In 2013 on land adjoining their home the couple built substantial equestrian facilities for their own use, including a stable block with capacity for at least 28 horses, a large indoor arena, and outdoor facilities, all of which they used to train their own horses for international competitions.

2. On 30 October 2013 the valuation officer entered the equestrian facilities at Bourne Hill House in the 2010 non-domestic rating list as stables and premises with a rateable value of £30,000 with effect from 1 March 2013.

3. On 11 February 2015 an agent acting on behalf of Ms Bigwood made a proposal to alter the rating list on the grounds that the rateable value shown in the list by reason of the alteration made by the valuation officer was inaccurate. That proposal was not accepted by the valuation officer as being well founded and it was referred to the Valuation Tribunal for England (VTE) for consideration on appeal. On 12 July 2017 the VTE's President, Mr Gary Garland, determined that the equestrian facilities should be deleted from the 2010 rating list on the grounds that they were domestic rather than non-domestic property.

4. This appeal against the VTE's decision is brought by the valuation officer.

5. At the hearing of the appeal the valuation officer was represented by Mr Sarabjit Singh QC and the respondent by Mr Cain Ormondroyd. We are grateful to them both for their submissions.

The relevant statutory provisions

6. By section 41(1), Local Government Finance Act 1988, the valuation officer for each billing authority is required to compile and maintain a local non-domestic rating list. By section 42(1) the list must include each hereditament situated in the authority's area which is a "relevant non-domestic hereditament" at least some of which is neither domestic property nor exempt from local non-domestic rating and which is not shown in a central non-domestic rating list.

7. By section 64(8) of the 1988 Act a hereditament is "non-domestic" if either (a) it consists entirely of property which is not domestic, or (b) it is a composite hereditament. A hereditament is composite if part only of it consists of domestic property (section 64(9)).

8. It is common ground in this case that Bourne Hill House, the disputed equestrian facilities, and the substantial areas of grazing land and paddocks occupied at the material day by Ms Bigwood and her family are a single composite hereditament. The house itself comprises domestic property, while the grazing and paddocks are exempt from rating. The only issue concerns the status of the equestrian facilities.

9. Section 66(1) of the 1988 Act defines domestic property. The definition is subject to a number of qualifications none of which is relevant to this appeal. In the form in which it existed at the material day, section 66(1) provided as follows:

> "66 – Domestic property
>
> (1) Subject to sub-sections (2), (2B) and (2E) below, property is domestic if –
>
> (a) it is used wholly for the purposes of living accommodation,
>
> (b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,
>
> (c) it is a private garage which either has a floor area of 25 square metres or less or is used only or mainly for the accommodation of a private motor vehicle, or
>
> (d) it is private storage premises used wholly or mainly for the storage of articles of domestic use."

10. Paragraph 2(1B) of Schedule 6 to the 1988 Act explains how the rateable value of a composite hereditament which includes exempt property is to be determined:

> "The rateable value of a non-domestic hereditament which is partially exempt from local non-domestic rating shall be taken to be an amount equal to the rent which, assuming such a letting of the hereditament as is required to be assumed for the purposes of sub-paragraph (1) above would, as regards the part of the hereditament which is not exempt from local non-domestic rating, be reasonably attributable to the non-domestic use of property."

The reference to an assumed letting is to the assumed letting from year to year on the assumptions in paragraph 2(1) of Schedule 6 to the 1988 Act which are very familiar and need not be repeated.

The relevant facts

11. All of the relevant facts were agreed between the parties in a helpful statement of facts. Alternative valuations of the hereditament were also agreed, to which we refer below, depending on our conclusions on the status of the equestrian facilities. The only evidence we heard was limited to the cross examination of Ms Bigwood by Mr Singh on some small details of her witness statement.

12. On 30 June 2006 the respondent and her husband purchased Bourne Hill House together with its immediate estate of 150 acres and various equestrian and residential buildings. The house itself and the original equestrian facilities were in a dilapidated condition. Those facilities comprised 24 stables, an indoor arena, a hay store and an outdoor exercise area. Other domestic facilities included a lodge cottage and a tennis court. There is a suggestion in planning documents that a building within the stable yard had once been used as a tack shop, during the occupation of a previous owner, when a livery yard was operated from the site (without the benefit of planning permission) but none of the evidence enables us to verify when that use ended.

13. On 1 November 2007 planning permission was granted for an extension to the house, the demolition of the existing stables, the conversion of the building formerly used as a shop into grooms' accommodation, and the upgrading of the equestrian facilities to create a "private equestrian Olympic training yard".

14. The planning permission referred to the permitted use of the buildings and the yard as being for "the personal and private use of the applicant and for employees residing in the buildings" and not "for commercial or competition purposes". The permission was subject to a number of conditions. The grooms' accommodation and the lodge were to be used as residential accommodation ancillary to Bourne Hill House only and were to be occupied by the owners, their family members and employees. The development was to be used only for the training and breeding of competition horses in connection with Bourne Hill House. It was not to be used by visiting members of the public or for the staging of equestrian competitions, the provision of livery services or as a riding school.

15. The work permitted to the house included an extension which accommodates an indoor swimming pool and gym. The house itself comprises ground floor reception rooms, six bedrooms on the first floor, and a games room and a further three bedrooms on the second floor. Although it is clearly a substantial country residence (made larger by extension), from the photographs and video we were shown the house did not appear to be a dwelling built on an especially grand scale. It was not possible for the Tribunal to conduct an inspection of its own, the current owner having refused access, but we were shown an extended piece of film made using a camera mounted on a drone, from which we obtained a very clear impression of the buildings and their relationship to each other, including the interior of the equestrian facilities.

16. As part of the development the original dilapidated stable block was demolished but a barn immediately adjacent to it was retained. The new stables now adjoin the barn and we estimate that at their closest point the stable block is about 75 metres from the house. The stables are separated from the house by a lawn around which stand a number of mature trees; the barn and the tack room also border the same lawn, and are rather closer to the house, so that the buildings form a contiguous group. Direct access between the house and the equestrian facilities is available along informal footpaths running through the trees or by the main drive which enters the estate at the lodge cottage and then forks, with the house, the former shop/grooms' accommodation and the barn straight ahead and the stable block to the left. No fence or other structure separates the stable block from the house and gardens, and the trees which fringe the garden do not conceal the one from the other.

17. The new equestrian facilities have been built to a very high standard. The stable block comprises 28 stables arranged in two wings with a central section on three floors containing three self-contained groom's flats over an entrance area. The entrance area gives access to the stable wings themselves and to a 60m x 20m indoor arena at the rear of the building. The stable block is of brick construction while the arena has low concrete perimeter walls above which the walls are glazed; the upper parts of the arena appear to be metal framed with a tiled roof. The arena is of international competition standard. There is a viewing gallery above the entrance to the stable block allowing views into the arena; the gallery is also sometimes used for family parties. We were not provided with any dimensions for the structure but on the basis that the arena is agreed to be 60m long projecting from the rear of the stable block, we estimate that the stable block

itself if approximately 85m wide. It is undoubtedly a substantial building and has a footprint perhaps four or five times as large as the footprint of Bourne Hill House itself.

18. The facilities are supplemented by three all-weather paddocks, a horse walker and a hay barn used to store hay and to house young horses. The buildings are all served by a single bio-mass boiler located in the barn and burning discarded straw bedding gathered from the stables. Water, electricity and sanitation services are shared between the equestrian buildings and the house, with each service having only one meter.

19. Up to 38 horses were kept on the estate once the equestrian facilities were completed. These were competition horses of different ages and at different stages of their training, breeding stallions, broodmares, foals and retired horses. Some on-site breeding took place and two of the stables were large foaling boxes. Apart from a few horses belonging to grooms, all of the horses were owned by Ms Bigwood and her husband.

20. Ms Bigwood explained that neither she nor her husband had ever traded from the premises and regarded themselves as strictly private riders with no professional or business element to their equestrian activities. They did not make a living from those activities and any prize money associated with the events in which they participated was nominal. They did buy, breed and occasionally sell horses, but these were for their own and their family's use. This evidence was not challenged.

21. Ms Bigwood told us that she competed five or six times a year, taking one or two of her horses to competitions held in different parts of Europe. Apart from riding in competitions and her family commitments her main interest is in training dressage horses, a time-consuming process taking four to six years of training before a young horse is ready to compete, with many proving unsuited. The couple employed five grooms while they lived at Bourne Hill House, one of whom acted as a yard manager, and an additional groom to travel with them during the competition season. The grooms also competed using their own horses, although not at the same level.

22. Successful horses tend to have a career of six to eight years after which Ms Bigwood's preference is to keep them in retirement rather than selling them on. The exception was her Olympic horse, Tilly, which she sold to a fellow rider in 2017 when she and her husband moved from Bourne Hill House.

23. The purchaser of the house also has equestrian interests, and has extended the outdoor arena. We were shown a planning officer's report prepared in connection with that extension in which the officer noted that (in planning terms) the principle of keeping horses for private enjoyment but not for commercial purposes was an established use "within the residential curtilage" of the house.

24. Considerable interest was shown by the valuation officer in the subject of commercial sponsorship and Ms Bigwood was cross-examined on that topic. We are satisfied that she received no significant sponsorship at the material day in 2013 but that, when her participation in the British Olympic team was confirmed, she and the other members of the team received small donations of sundry items such as horse blankets, bandages or fly sprays from equestrian suppliers. The value of these items did not exceed about £400 a year. A manufacturer of horse

saddles also lent Ms Bigwood and her husband three saddles for use at the Olympic Games, but they had no commercial sponsorship contracts. We do not consider that the very modest level of sponsorship received by the couple has any bearing on the issues in this appeal.

25. Mr Singh also referred in his written submissions to capital gains tax computations submitted on behalf of Ms Bigwood in 2017 following the sale of Bourne Hill House. These were said to demonstrate that, for capital gains tax purposes, the equestrian facilities were not required for the reasonable enjoyment of the house. Ms Bigwood was not cross-examined about those computations and we do not regard them as relevant to the issues in this appeal.

The respondent's proposal to alter the list

26. After the stables were entered in the 2010 list by the valuation officer's notice Ms Bigwood was approached by a rating agent. On 11 February 2015 that agent submitted a proposal to alter the list. The proposal described the occupier as "Fiona Bigwood T/A Stables Bourne Hill", but we are satisfied that the suggestion that Ms Bigwood was engaged in any form of trading activity at her home or stables was a misconception on the part of the agent.

27. Paragraph 4(1) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 specifies the circumstances in which a proposal may be made to alter a rating list. The Regulations were amended in 2017, but we are concerned with their form in 2013. One ground, in sub-paragraph (d), is that the rateable value for a hereditament shown in the list by reason of an alteration made by a valuation officer is or has been inaccurate. An alternative ground, in sub-paragraph (h), is that a hereditament shown in the list ought not to be shown there.

28. By regulation 6(1) of the 2009 Regulations a proposal must identify the respects in which it is proposed that the list be altered, and must include a statement of the grounds for making the proposal. Where the proposal is made because of the suggested inaccuracy of the list by reason of an alteration made by a valuation officer it must also include a statement identifying the alteration in question.

29. The proposal submitted on Ms Bigwood's behalf was solely on the basis that the rateable value shown in the list by reason of the alteration made by the valuation officer was inaccurate. The proposal did not seek the deletion of the entry from the list.

Agreed valuations

30. The parties agreed different valuations of the hereditament depending on our conclusions on the extent of non-domestic use. The appropriate frame of reference is paragraph 2(1B) of Schedule 6 to the 1988 Act since it is agreed that this is a non-domestic hereditament which is partially exempt. The rateable value of the hereditament on the statutory hypothesis, is therefore equal to the rent, as regards the part of the hereditament which is not exempt, reasonably attributable to the non-domestic use of property.

31. The parties agreed that if all of the equestrian facilities are to be regarded as non-domestic, as the valuation officer contends, the rateable value of the hereditament should be £34,750. That

figure would be reduced to £30,000 if six of the stables are properly treated as domestic (because they provided facilities for the children's horses and their riding lessons, or for the family parties which were sometimes held in the viewing gallery). It was suggested that if the Tribunal took the view that a different proportion of the facilities was domestic then we should allow the parties the opportunity to try to reach agreement on the valuation consequences. We were content to proceed on that basis.

32. Finally, if the only non-domestic parts of the facilities are the hay barn and all-weather paddocks (which are somewhat separated from the house on the further side of the stables and in-door arena) the hereditament would have a rateable value of £3,000.

33. Although there was no formal agreement to that effect we did not understand there to be any dispute that, if the approach of the VTE was correct, and the hereditament included only domestic and exempt property, it would not have a rateable value.

34. Despite the agreement of values for different parts of the hereditament both parties approached the principal issue in the appeal by reference to the whole of the facilities and no substantial argument was directed towards differentiating between them.

Issues

35. The first issue raised in the appeal is whether the proposal is apt to permit a challenge to the inclusion of the hereditament in the rating list (i.e. a challenge under regulation 4(1)(h)) or whether it is framed in such a way as to permit the Tribunal to consider only the rateable value shown in the list (i.e. a challenge under regulation 4(1)(d)). We consider that in the circumstances of this case that issue is insignificant, and by the end of oral argument we understood both parties to agree. Even if the VTE was technically incorrect to order the deletion of the hereditament from the rating list, it would still be necessary to determine whether the respondent's proposal to reduce the assessment in the rating list to £1 was well founded. Whether the hereditament is omitted from the list altogether or appears in it at a nominal value of £1, is a matter of no importance.

36. Having regard to the various elements of the definition of "domestic property" in section 66(1) of the 1988 Act, the real issue in the appeal is whether the equestrian facilities at Bourne Hill House are domestic property and therefore not rateable, or whether they are non-domestic property which falls to be rated. That turns on whether the facilities are a "yard, garden, outhouse or other appurtenance belonging to or enjoyed with" Bourne Hill House. It is agreed that Bourne Hill House is used wholly for the purposes of living accommodation, and it was not suggested on behalf of Ms Bigwood that the equestrian facilities were, or included, a yard or outhouse. The question was whether they came within sub-section (1)(b) as being an "appurtenance belonging to or enjoyed with" the house.

37. In argument the parties addressed the issue of whether the equestrian facilities are an appurtenance by reference to the following agreed questions:

(a) are the equestrian facilities within the curtilage of the house?

(b) if they are, are they prevented from being an appurtenance if their use is non-domestic?

(c) is the use of the equestrian facilities domestic or non-domestic?

Appurtenances

38. The word "appurtenance" is a legal term used in conveyancing and in property statutes and is not often encountered in everyday speech. It is derived from the same Latin root as the more familiar word "appertain" meaning to relate to or to be associated with, and (without attempting a comprehensive definition) in general it connotes property which belongs to or goes with a house, flat or other building. Originally appurtenances were rights, such as rights of way, or fishing rights, or rights of common, which were enjoyed with land, but even in the technical language of conveyancing the word was flexible enough to carry an enlarged meaning if the context required.

39. Although the word once had a strict meaning which could not include land and was confined to incorporeal rights, in *Methuen-Campbell v Walters* [1979] 1 QB 525, 534G Goff LJ pronounced that strict meaning dead and said it had been replaced by another, which he explained by saying that "all that passes on a demise as appurtenant is that which would pass without express mention". Goff LJ took that explanation from the judgment of Sir John Romilly MR in *Evans v Angell* (1858) 26 Beav. 202.

40. While a Victorian conveyancer might immediately have appreciated what would or would not be taken to be included with a house even though it was not expressly mentioned in a lease or conveyance, the explanation leaves something to be desired in the twenty-first century when modern conveyancing practice includes digital mapping and compulsory land registration. In *Methuen-Campbell v Walters* Roskill LJ suggested at 539E that the meaning of "appurtenances" depended on the context in which it appeared. The general concept is clear enough, namely that an appurtenance is something which is so closely associated with the principal subject matter of a lease or conveyance, physically and functionally, that it can be regarded as "part and parcel" of it, so that a reference to the principal subject would be understood as including the appurtenance. That general concept is illustrated by three decisions of the Court of Appeal.

41. In *Trim v Sturminster RDC* [1938] 2 KB 508, the legislative context was section 188(1) of the Housing Act 1936 which defined "house" as including "any yard, garden, outhouses and appurtenances belonging thereto or usually enjoyed therewith", and the question was whether ten acres of land let with a cottage was an appurtenance of the cottage. Slesser LJ explained why it was not, at 515-516, as follows:

> "… it is now beyond question that, broadly speaking, nothing will pass, under a demise, by the word "appurtenances" which would not equally pass under a conveyance of the principal subject-matter without the addition of that word, that is to say, as pointed out in the early case of *Bryan v. Wetherhead*, that the word "appurtenances" will pass with the house, the orchard, yard, curtilage and gardens, but not the land. That view, as far as I understand the authorities, has never been departed from, except that in certain cases it has been held that the word "appurtenances" may also be competent to pass incorporeal

> hereditaments. Certainly, no case has been cited to us in which the word "appurtenance" has ever been extended to include land, as meaning a corporeal hereditament, which does not fall within the curtilage of the yard of the house itself, that is, not within the parcel of the demise of the house."

42. In the context of rating, whether something is an appurtenance was said by the Court of Appeal in *Clymo v Shell-Mex & B.P. Ltd* [1963] RA 191 to depend on the particular facts and circumstances of each case. *Clymo* concerned a petrol storage depot with an office, garage and pumps all within a ring fence which also enclosed two small open spaces, one with petrol storage tanks beneath it and the other used for storage of barrels. The issue was whether the open spaces were appurtenances of the buildings. Upjohn LJ declined to offer a definition of "appurtenances" which he referred to as "one of the oldest words in use in the history of English law", but he derived assistance in understanding its meaning from a passage in *Shepherd's Touchstone* quoted in *Stroud's Judicial Dictionary* to the effect that "a grant of a messuage" (i.e. a lease of dwelling with its associated outbuildings) or a grant of "a messuage with the appurtenances":

> "… doth pass no more than the dwelling house, barn, dovehouse, and buildings adjoining, orchard, garden, and curtilage, i.e. a little garden, yard, field, or piece of void ground, lying near and belonging to the messuage and house adjoining to the dwelling house, and the close upon which the dwelling house is built, at the most."

This passage again makes clear that, in conveyancing documents, a reference to a house "with the appurtenances" did not add to what would have been understood simply by an unqualified reference to the house itself. It also provides examples of the type of ancillary buildings which would be understood to pass with the house without being separately mentioned, such as a barn, dovehouse and "buildings adjoining" the house. Finally, it explains the limited extent of the land which would also pass without mention, namely its orchard, garden and "curtilage" which it explains comprises "a little garden, yard, field, or piece of void ground, lying near and belonging to the messuage and house".

43. The question in *Methuen-Campbell v Walters* was whether the tenant of a leasehold house who was entitled to acquire the freehold of the house under the Leasehold Reform Act 1967, was also entitled to acquire the freehold of an area of rough pasture or paddock which was included in the property demised by the same lease. The paddock was physically separated from the garden of the house by a wire fence, in which there was a disused gate. The 1967 Act entitled the tenant to acquire the "premises", defined to include the house itself and appurtenances let with the house, but the Court of Appeal held that the paddock was not an appurtenance.

44. At 535G Goff LJ rejected a submission on behalf of the tenant that an appurtenance was "anything used and occupied with, or to the benefit of, the house either as a matter of convenience or as an amenity". That would be inconsistent with the Court of Appeal's decision in *Trim.* He considered that the outcome depended on the answer to two questions, the first of law, namely whether the piece of land in question satisfied the concept of being an appurtenance, and the second of fact, namely whether on the facts it ought to be regarded as an appurtenance.

45. Roskill LJ also considered that the word did not signify the residential unit as a whole and that, in the context of the 1967 Act, appurtenances should be treated as synonymous with the curtilage of the house.

46. Buckley LJ considered that where the word "appurtenances" was used in a context which showed that it was not intended to have its original strict meaning:

> "[it] will not be understood to extend to any land which would not pass under a conveyance of the principal subject matter without being specifically mentioned, that is to say, to extend only to land or buildings within the curtilage of the principal subject matter."

Buckley LJ proceeded to consider what is meant by the "curtilage" of a property (543F to 544D). It was not sufficient that two pieces of land had been conveyed or demised together, nor that they had been occupied together, nor that the enjoyment of one was advantageous or convenient or even necessary for the full enjoyment of the other. For one parcel of land to fall within the curtilage of another:

> "the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole."

47. It is apparent from these authorities that land (as distinct from buildings) which is not part of the garden of a house will not be regarded as an appurtenance unless it is within the "curtilage" of the house. Although all three authorities concerned open ground of one sort or another, rather than land on which buildings or other structures had been erected, the same approach has also been applied in such cases. This can be seen clearly in the decision of the Court of Appeal in *Cadogan v McGirk* (1997) 73 P.&C.R. 483 (an enfranchisement case in which it was held that an attic storeroom on the sixth floor of a block of flats was an appurtenance of a flat on the second floor).

48. In *Martin v Hewitt* [2003] RA 275, a case under section 66 of the 1988 Act, the Lands Tribunal (George Bartlett QC, President) held that boathouses on Lake Windermere, which were separated from the houses belonging to the ratepayers by a public highway and by intervening land belonging to third parties, were not appurtenances of those houses and were rateable as non-domestic property. Having reviewed the authorities and noted that the 1988 Act adopts the same wording as had been used in the Housing Act 1936, considered in *Trim*, the Tribunal concluded that:

> ""Appurtenance" in s.66(1)(b) was not intended to encompass land or buildings lying outside the curtilage of the property referred to in s.66(1)(a)."

49. We were also referred to a number of authorities concerning the meaning of the word "curtilage" in the context of legislation governing listed buildings. We need refer only to two.

50. In *Attorney-General ex rel. Sutcliffe v Calderdale BC* (1983) 46 P.& C.R. 399 a terrace of 15 four-storey cottages was held to be within the curtilage of a listed mill, to which they were connected by a bridge and therefore protected by the listing. Stephenson LJ identified three relevant considerations for the purpose of section 54(9) of the Town and Country Planning Act 1971, namely: the physical layout of the listed building and the structure; their ownership, past and present; and their use or function. He concluded on the facts that the terrace in question "remains so closely related physically or geographically to the mill as to constitute with it a single unit and to be comprised within its curtilage."

51. *Skerritts of Nottingham Ltd v Secretary of State for the Environment* [2001] QB 59 concerned the question whether a stable block was within the curtilage of a hotel, which was a listed building; if the stable block was within the curtilage it would fall to be treated as part of the listed building for the purpose of Part I of the Planning (Listed Buildings and Conservation Areas) Act 1990. The stable was a substantial L-shaped building on two floors which was located about 200 metres from the main listed building. The only question for the Court of Appeal was whether, as the deputy judge had held, the relevant planning guidance applied by the inspector was incomplete in failing to confine the curtilage of a listed building to a small area around the building. Robert Walker LJ, with whom the other members of the Court agreed, considered that the authorities did not justify such a limitation. In the context of Part I of the 1990 Act "the curtilage of a substantial listed building is likely to extend to what are or have been, in terms of ownership and function, ancillary buildings" (67D). By their nature these were likely to be within a relatively limited curtilage but the concept of smallness was too relative to be helpful. In reaching that conclusion he noted that stables and other outbuildings are likely to be included within the curtilage of a mansion house.

The appeal

52. On behalf of the appellant Mr Singh QC submitted that for any premises to be an "*appurtenance*" belonging to or enjoyed with property used wholly for living accommodation they had to satisfy two requirements. First, the premises must fall within the curtilage of the living accommodation, and secondly the use of the premises "must not be essentially non-domestic".

53. It was submitted by Mr Singh that the words appurtenance and curtilage were synonymous. We doubt that is justified, and in any event as the statute refers to "appurtenance" it is neither necessary nor desirable to substitute a different expression, even if the two are synonymous. Both *Methuen-Campbell* and *Trim* were concerned with areas of undeveloped land, rather than land on which buildings had been constructed. In neither case was the issue whether two buildings occupied together were such that one was an appurtenance of the other, but was rather whether a paddock or yard occupied with a house or buildings was an appurtenance of the house or buildings. As the passage from *Shepherd's Touchstone* cited by Slesser LJ in *Trim* illustrates, the curtilage of a house generally refers to yards or other unbuilt areas in proximity to the house (although it is not uncommon to refer to a structure being "within the curtilage" of a listed building).

54. In *Skerritts* Robert Walker LJ considered that "not even lawyers can have a precise idea of what "curtilage" means" and said that the word was not a term of art. The considerations which are relevant to determining whether a structure is within the curtilage of a listed building have been developed in a particular context, which is different from that of the 1988 Act. While we

have found the discussion in the listed building cases informative we do not consider it safe to substitute a different word used in a different context when considering whether the equestrian facilities in this case are appurtenances of Bourne Hill House for the purposes of rating. The better approach, as urged by the Court of Appeal in *Clymo v Shell-Mex* at 202, is that "the question to be answered is whether the land is properly to be described as an appurtenance in all the circumstances of the case". In considering that question we take into account the nature and function of the buildings and other facilities themselves, their proximity to each other, and the general layout of the site.

55. Mr Singh suggested that the size of the equestrian facilities was relevant but not determinative of whether they were an appurtenance of the house. He described the main stable building as enormous, and as "dwarfing the house". If that observation was intended to refer to the height of the two buildings we do not think it is an accurate description, although we agree that the stable block is a very much bigger building and that its size is a relevant consideration. But there is no rule that a large building, such as a barn or stable, cannot be appurtenant to a smaller building, such as a house. As *Skerritts* demonstrates, size is not determinative of whether one building is within the curtilage of another, and we suggest that the same is true when considering whether one building is appurtenant to another.

56. Nor can we agree with Mr Singh's suggestion that the stables are "an entirely standalone facility, with separate access and parking areas". The house and equestrian buildings have common services, including the bio-mass boiler, and they are approached down a common drive from the main road, which divides shortly before it reaches the buildings. It is necessary to take into account the characteristics of each of the group of buildings and their setting, but we do not consider it significant that there is more than one area where vehicles can be parked, nor did we receive any evidence about which vehicles were parked in which areas.

57. Mr Singh also placed reliance on the absence of what he called "historical congruity" between the equestrian facilities present at the material day and the house. The equestrian facilities had been purpose built after the house had been purchased. That is true as a statement of fact, and no doubt in the context of a listed building it is a matter of some importance, but we do not regard it as of particular significance in this case. The current facilities replaced a previous substantial stable block containing stalls for 24 horses. It is said that these were used to some extent for commercial purposes with a tack shop and a livery yard. The evidence on that use is limited to a reference in a 2007 planning document which provides no indication when the buildings were last used for those purposes. We consider that the only relevant time to which we can have regard, both in principle and on the state of the evidence, is the material day, 1 March 2013.

58. Referring to *Trim* and *Methuen-Campbell* Mr Singh suggested that the question whether an ancillary building would have passed under a conveyance of the 'principal' building without express mention should not be determined by the standards of modern conveyancing, but on the basis of a pre-1925 conveyance. The VTE had been informed that the 2016 transfer of the estate did not make separate mention of the equestrian facilities, and had relied on that fact in coming to its conclusion that they were appurtenant to the house. We agree with Mr Singh that that is not a relevant consideration since the transfer is likely to have been of a registered title, delineated by a plan, and in any event, was of the whole estate rather than the house alone. We find it more difficult to accept Mr Singh's assertion that it was "inconceivable" that the

equestrian facilities would have passed in a hypothetical pre-1925 conveyance of the house without being mentioned, given their sheer size and the other features on which he relied. Careful conveyancing would probably have prevented that question arising, but whether the facilities would have passed without mention depends on whether they are appurtenant property, which is the matter in issue.

59. What is appurtenant to a building, including a house, or within its curtilage, will depend to some extent on the house or building itself. The listed mill in *Calderdale* was obviously of sufficient size that a terrace of 15 cottages could fall within its curtilage. The "principal mansion house" in *Skerritts* was of a size and quality that the substantial stable block situated 200 metres away was not prevented from being within its curtilage. In *Skeritts* Robert Walker LJ referred with approval to the view of Nourse LJ in *Dyer v Dorset CC* [1989] 346, 358, that "the curtilage of a mansion house [was] an area which no conveyancer would extend beyond that occupied by the house, the stables and other outbuildings, the gardens and the rough grass up to the ha-ha, if there was one". In general, therefore, stables are a category of building which falls readily within the scope of appurtenant property.

60. What was said by Mr Singh to differentiate the stables in this case from other stables was their size, both in absolute terms and in relation to the size of the house, their exceptional quality, the extremely professional manner in which they were run, including the number of people employed there, and the professionalism of Ms Bigwood and her husband who cannot be said to have used the facilities simply for their own recreation.

61. We do not consider that these characteristics prevent the stable block and indoor arena, large though they are, from being "intimately associated" with Bourne Hill House so as reasonably to be regarded as "part and parcel" with the house and as constituting an integral whole with it and the other buildings around it. Having satisfied ourselves that stables, as a type of building, are capable of being appurtenant property we have reached the conclusion that, on the facts of this case, these stables and other equestrian facilities are appurtenances for the following reasons.

62. No fence or other barrier separates the equestrian buildings from the house, and together with the barn and groom's accommodation they are all grouped around the lawn. They are not divided from each other by the trees which grow between them, and the visual impression we formed was rather that the whole group is enclosed within a wider boundary of trees, including behind the house and on the far side of the stable building. The glazed walls of the arena moderate the impression it presents by allowing views through to those boundary trees. Access to the whole group is by the common drive and the fact that this divides in the immediate vicinity of the buildings does not separate them from each other.

63. The stable and arena building is large, but so too is the house. We do not consider the building is so large, or so much larger than the house, that it cannot be said to be appurtenant to it. Substantial equestrian facilities have previously been held to be appurtenant to large houses in rural locations, as in the case of *Seabrook v Alexander* [2014] RA 382, a decision of the VTE, in which stabling for 20 horses, together with an indoor arena and a 20 by 50 metre manege, all adjoining a farmhouse somewhat smaller than the extended Bourne Hill House, were held to be domestic property as they were, individually and as a group, appurtenant to the house. We were also shown the decision of the VTE in *Cornwall v Alexander* [2015] RA 504 in which a large

barn had been converted for use as stables holding 40 horse boxes, a horse walker and a tack room. The barn had been used for the business of racing stables, but when the business was discontinued and the whole hereditament was sold the barn was held not to be appurtenant to a house of much more recent construction which was subject to a planning restriction that it be used only by a person managing the racing stables. These cases establish no principle, but simply illustrate the different factual situations in which the same questions may have to be addressed.

64. More important than the size of the facilities is their function of accommodating horses belonging to the owners of a private family home, which they keep for their own and their family's pleasure including for competition. We do not regard that function as different in kind from stables attached to a house belonging to any other equestrian enthusiast and used by their family. The facilities at Bourne Hill House may not lawfully be used, and were not in fact used, for any commercial purpose or to provide facilities for visitors.

65. As Mr Singh rightly submitted, what makes these facilities stand out is their quality and the success which has been achieved by their owners. We do not regard the first as requiring that they be treated differently from more modest stables, nor does the number of staff employed by Ms Bigwood and her husband, which is dictated by the number of horses kept and the training and care required to prepare them for competition. As for the dedication, success or "professionalism" of the couple, we do not regard those as relevant considerations separate from the quality of the facilities themselves. Non-domestic rates are a tax on property, not on the activities conducted from property, and the relative success of the owner of the property in pursuing those activities should not, we consider, be relevant to the basis on which the property itself is assessed.

66. We received very little evidence about provenance, but it is clear that Bourne Hill House has enjoyed the use of substantial equestrian facilities for a considerable time. The buildings demolished to make way for the current facilities were not new and have been replaced by buildings fulfilling the same purpose, albeit at a higher level. No historical discontinuity prevents the modern facilities from being regarded as appurtenant to the house (although, as we have explained, we regard that as a consideration of less importance than in the context of listed buildings).

67. It was urged on us by Mr Singh that even if the equestrian facilities were within the curtilage of the house, they ought not to be treated as an appurtenance of the house unless they satisfied an additional requirement, namely that the use made of them must not be "essentially non-domestic". He gave as an example a small doctor's surgery situated in the immediate grounds of a doctor's house which he said would obviously not itself be domestic property under section 66(1)(b). We accept that there are likely to be some buildings which, by reason of a distinct use unconnected to the use of the dwelling within the curtilage of which they stand, ought not to be classed as domestic, even if, but for that use, they would be regarded as appurtenances. But that is because of the well-established principle that buildings used for wholly different purposes ought to be treated as separate hereditaments even where they are in single occupation.

68. In *Woolway v Mazars* [2015] UKSC 53 the Supreme Court accepted that the primary test for identifying a hereditament was geographical rather than functional, but nevertheless

acknowledged the continuing part which a functional test could properly play. At [6] after reviewing a number of authorities Lord Sumption explained:

> "These cases establish that the primary test is geographical, but that a functional test may in certain cases be relevant either to break up a geographical unit into several subjects for rating purposes or to unite geographically dispersed units in *unum quid*. By far the commonest application of the functional test is in de-rating cases. In these cases, the functional test serves to divide a single territorial block into different hereditaments where severable parts of it are used for quite different purposes. Thus a garage used in conjunction with a residence within the same curtilage will readily be treated as part of the same hereditament, whereas a factory within the same curtilage which is operated by the same occupier may not be."

70. The test to be applied in determining whether the different parts of a single property in one occupation ought nevertheless to be regarded as separate hereditaments is whether those parts are used for wholly different purposes. The leading authority is *North Eastern Railway Co v Guardians of York Union* [1900] 1 QB 733, 739. Had it been necessary to decide whether a station hotel was a separate hereditament from the rest of the station Channell J said he would have been inclined to find that it was because "the hotel and the railway station are used for wholly different purposes."

69. Mr Singh's argument that there was a separate requirement of "essentially non-domestic use" appeared to us to be a re-run of the argument rejected by the Lands Tribunal (HHJ Huskinson) in *Levinson v Robeson and Gray* [2008] RA 379, to the effect that the reference to "a yard, garden, outhouse or other appurtenances" in section 66(1)(b) of the 1988 Act must be taken to be qualified by the words "wholly used for domestic purposes" in section 66(1)(a). In *Cornwall* (to which we refer in paragraph 63 above) the VTE, despite being bound by *Levinson*, suggested that it may not have been correctly decided. We are not considering an appeal from the VTE's decision in *Cornwall*, which is a decision on its own facts having no status as a precedent for other cases. We need therefore say no more than that we disagree with the reasoning in paragraphs 33 and 34 of the VTE's decision, which is inconsistent with the decisions of the Court of Appeal we have already reviewed and unnecessary having regard to the principle in the *North Eastern Railway* case.

70. In any event, we do not agree that the equestrian buildings at Bourne Hill House fall to be treated differently because of any non-domestic use being made of them. Despite their scale they are buildings of a type commonly treated as appurtenant to a substantial country house, and were used by the householders as an adjunct to their home for non-commercial purposes. Were there to be any separate requirement, which we are satisfied there is not, we would not consider them incapable of being described as "essentially domestic".

Disposal

71. For these reasons we are satisfied that the President of the VTE came to the correct conclusion in this case and we therefore dismiss the appeal.

Martin Rodger QC
Deputy Chamber President

A J Trott FRICS
Member, Upper Tribunal Lands Chamber

21 June 2019