Inheritance Tax – Exempt transfers and relief – Agricultural property relief – Farm owned by deceased and let to family farming partnership – Deceased as partner lived in bungalow on the farm until ill-health required him to move to care home – Deceased made occasional visits to bungalow and his possessions remained in it until his death – Whether throughout the seven year period ending with his death the bungalow was occupied by the deceased or another for the purposes of agriculture – No – IHTA 1984 section 117(b). Appeal allowed

FTC/61/2010
[2011] UKUT 506 (TCC)

UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

BETWEEN:

THE COMMISSIONERS FOR HER MAJESTY' S REVENUE AND CUSTOMS

Appellants

- and –

(1) COLIN ATKINSON
(2) PAUL SMITH
(executors of WILLIAM MASHITER ATKINSON deceased)

Respondents

TRIBUNAL: The President, the Hon Mr Justice Warren
Judge Judith Powell

Jonathan Davey instructed by the General Counsel and Solicitor to HM Revenue and Customs for the Appellants

DECISION

The appeal of the Appellants, the Commissioners for Her Majesty's Revenue and Customs IS ALLOWED

REASONS

Introduction

1. This is an appeal against a decision of the First-tier Tribunal (Sir Stephen Oliver QC and Roland Presho FCMA ("**the Tribunal**")) concerning agricultural property relief from inheritance tax. The Appellants ("**HMRC**") were represented by Mr Jonathan Davey. The Respondents ("**the Executors**") were not represented on this appeal. They were deterred from doing so by their concerns about the costs of the appeal, in particular to having to meet the costs of HMRC incurred in this appeal should HMRC turn out to be successful. We have, accordingly, paid particular attention to the submission made on behalf of the Executors to the Tribunal as well, of course, to the decision of the Tribunal finding in favour of the Executors.

2. The appeal to the Tribunal was made by the Executors, as executors of William Mashiter Atkinson deceased ("**Mr Atkinson**") against the decision of HMRC refusing the claim of the executors for agricultural property relief under section 116 Inheritance Tax Act 1984 ("**IHTA**") in respect of Mr Atkinson's bungalow known as Croftlands, Cantsfield, Kirkby Lonsdale, Carnforth, Lancashire ("**the Bungalow**"). HMRC had refused the Executors' claim to relief because they were of the view that the Bungalow was not occupied for the purposes of agriculture for the relevant period required by section 117 IHTA. The Tribunal allowed the Executors' appeal for reasons which we will come to.

3. HMRC appeal on the grounds that the Tribunal erred in law, further or alternatively made a finding of fact that no person acting judicially and properly instructed as to the relevant law could have come to, in holding that the farming partnership, of which Mr Atkinson was a member at all relevant times up to his death, occupied the property in question for the purposes of agriculture for the requisite period. Their submission turns on the issue of the proper construction of the closing words of section 117(b) and their application to the facts.

4. The Tribunal made their findings of fact under the heading "Factual Background". None of those findings is challenged. However, there is some concern that the findings are not, in some respects, as detailed as one might have hoped in relation to the involvement of Mr Atkinson in the affairs of the partnership in the period leading up to his death and in relation to the extent to which he visited the Bungalow in that period. Those findings (which can be set out quite shortly) are as follows:

a. In 1957 Mr Atkinson acquired and began to farm Abbotsons Farm ("**the Farm**"). The Farm included a farmhouse. Overall the farm holding covered 195 acres. On some date (unknown but before 1980) Mr Atkinson entered into partnership with his son Mr Alan Atkinson ("**Alan**"). In 1966, the Bungalow was built on the Farm holding.

b. From then on Mr Atkinson lived in the Bungalow. The farmhouse was occupied by Alan and his wife Margaret.

c. In 1980, Mr Atkinson, Alan and Margaret agreed to become partners to carry on the farming business on the Farm. By a tenancy agreement (covered by the relevant Agricultural Holdings Act) Mr Atkinson granted a tenancy of the Farm to the partners (*ie* himself, Alan and Margaret).

d. In 1994 Mr Atkinson's grandson Gary Atkinson ("**Gary**") was admitted to the partnership. Alan died in 1995. On 11 January 1996, Mr Atkinson, Margaret and Gary entered into a written agreement ("**the Partnership Agreement**"). This recorded that they farmed the Farm as partners under the name W M Atkinson & Son. It provided that the agricultural tenancy of the Farm (which had been granted to Mr Atkinson, Alan and Margaret) was to be a partnership asset; and Mr Atkinson covenanted with the other partners that he would take all such steps as the other partners may require to protect the position of the partners as tenants under the provisions of the Agricultural Holdings Act 1986. Also on 11 January 1996 the tenancy of the Farm was assigned to Mr Atkinson, Margaret and Gary. It is not recorded in the decision, but appears from the Partnership Agreement that the profits were to be shared as follows: Mr Atkinson 1%, Margaret 49% and Gary 50%.

e. In 2002 Mr Atkinson became ill. After some time in hospital he entered a care home where he stayed until his death on 20 October 2006.

f. While Mr Atkinson was staying in the care home, Margaret and Gary attended the Bungalow two to three times a week, collecting the post, dealing with frost and accessing the water supply system. Mr Atkinson remained a partner until his death. He took part in discussions relating to the Farm at least once a week. He occasionally returned to the Bungalow which remained furnished and housed his belongings. (An inventory of the contents of the house was produced for inheritance tax purposes.) No one else resided in the Bungalow during that period and it was exempt from council tax on the basis that Mr Atkinson was resident elsewhere.

g. The Tribunal recorded that it was not in dispute that the Bungalow had at all times constituted agricultural property for the purposes of section 115(2) IHTA standing alone. Nor was it in dispute that Mr Atkinson owned the Bungalow. Nor was it in dispute that Mr Atkinson

remained a partner in the partnership throughout the seven years ending with his death and that as a partner he and the other two partners participated in the rights conferred by the agricultural tenancy. The partnership accounts for the period 12 September 2006 showed the value of Mr Atkinson's interest as being £42,771 (the value of all assets being £491,138). For that period Mr Atkinson's share of profits was £2,305 out of total divisible profits of £77,957. It is not explained in the decision how this figure is to be reconciled with the Partnership Agreement which provided for Mr Atkinson to have a 1% share.

h. The Tribunal also found (at a later stage in the decision, at paragraph 17, when expressing their conclusions) that for the last four years of Mr Atkinson's life the impact of his illness reduced the likelihood of his being able to return and live in the bungalow until it appears to have become necessary for him to stay permanently in the care home. It is not stated by what time this had become necessary.

5. On the basis of those findings of fact, the Tribunal concluded that the partnership was, for the purposes of IHTA, in occupation of the Bungalow up to the date of Mr Atkinson's death and that such occupation "was for the purposes of agriculture in the relevant sense because the bungalow was still used to accommodate the diminishing requirements of the senior partner".

The legislation

6. The relevant provisions of IHTA are these:

a. Section 115 which contains the definition of agricultural property:

"(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 the agricultural land or pasture and the occupation is ancillary to that of the 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".

b. Section 116 which grants relief for agricultural property:

"(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 should be treated as reduced by the appropriate percentage, but subject to the following provisions of this Chapter."

c. Section 117 which contains those conditions:

> "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 death of the transferor, 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."

There is no definition of the word "occupied" nor is any special meaning given to the words "for the purposes of agriculture".

7. Given that it was common ground below and that HMRC do not now seek to argue otherwise, that the partnership was in occupation of the Bungalow up to the date of Mr Atkinson's death, we are concerned with condition (b) rather than condition (a). We are not sure that the common ground is in fact correct and record that we proceed on the basis that it is correct without deciding that the partnership, rather than Mr Atkinson, was in occupation.

Submissions

8. Mr Davey starts his submissions in relation to section 117(b) with the meaning of "occupation" and "occupied", words which are not defined in IHTA. He submits that the case-law makes clear that "occupied" is not a term of art. Rather, it is an ordinary English word, the precise meaning of which falls to be determined by reference to the particular context in which it is employed. We agree with that; context is all-important. If authority is needed for that proposition, it is only necessary to refer to the speech of Lord Nicholls in *Graysim Holdings Ltd v P & O Property Holdings Ltd* [1995] WLR 854 (a case concerning a business tenancy renewal under the Landlord and Tenant Act 1954) at 857:

> "… the concept of occupation is not a legal term of art, with one single and precise legal meaning applicable in all circumstances. Its meaning varies according to the subject matter. Like most ordinary English words "occupied", and corresponding expressions such as occupier and occupation, have different shades of meaning according to the context in whey they are being used … In many factual situations questions of occupation will attract the same answer, whatever the context … But the answer in situations which are not so clear cut is affected by the purpose for which the concept of occupation is being used. In such situations the purpose for which the distinction between occupation and non-occupation is being drawn, and the consequences flowing from the presence or absence of occupation, will throw light on what sort of activities are or are not to be regarded as occupation in the particular context."

9. "Occupation" is not, of course, to be equated with ownership. And there are contexts where it is clear that it is not to be equated with legal possession

either; indeed, that may be the usual position. Thus in the context of rating, the owner of an empty house, who is in legal occupation, is not in rateable occupation: see *Westminster City Council v Southern Rly Co* [1936] AC 511 at 529 per Lord Russell.

10. In relation to the requirement that occupation must be for the purposes of agriculture, Mr Davey submits that the particular context in which "occupied" is employed in section 117 makes clear that for a given set of facts to constitute occupancy in the relevant sense, those facts must manifest that the occupancy in question is for a specific purpose, namely agriculture. If this is not the case, then the relief afforded by the legislation will not apply. HMRC's position is reflected in their Inheritance Tax Manual:

> "IHTM24083 – When is property not occupied?
> …
> A person who leaves an agricultural property vacant is not physically in occupation and may not be in occupation for the purposes of agricultural relief, as in the case of Harrold deceased. The period of non-occupation in this case was considerable. It is going to be a question of fact, extent and degree in each case whether the vacating of a property for remedial work, or because of ill health, puts the availability of relief at risk. Thus a necessary absence whilst a building is cleared of rot and re-roofed would normally be disregarded provided that the remedial works are carried out in a businesslike manner. Cases where the owner is absent due to ill health can be contentious and difficult to decide. You will need to ascertain the length of, and reasons for, the absence. …"

11. The reference to Harrold in that extract is to the decision of Mr David Shirley, sitting as a Special Commissioner, in *Harrold and others v IRC* [1996] STC (SCD) 195. In that case, a substantial farmhouse, which had been unlived in for over four years since its purchase by a partnership consisting of the deceased and his son, was the subject of extensive renovations and building works. The arrangement was that the son would occupy the farmhouse but the works were not completed by the time of the father's death and the son had not moved in. Mr Shirley decided that the farmhouse was not occupied because it was not ready for use. It could not therefore be said to have been occupied for the purposes of agriculture in applying the section 117(a) test. For our part, we do not gain much assistance from that decision (which is not, in any case, binding on us).

Discussion

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.

13. In that context, a working farm may include different types of property. It might include some or all of the following: arable fields, fields used for grazing cattle, ancillary woodland (in contrast with commercial forest), a farmhouse, cottages appropriate to the farm, farm buildings (such as storage barns for machinery or fodder, or for housing animals, or milking parlours) and other buildings (such as a farm office). All of those types of property are within the definition of "agricultural property". It is clear we think that each of those types of property is capable of being occupied "for the purposes of agriculture". If that were not so, it would never be possible for that type of property to obtain agricultural relief, but that would make a nonsense of the definition of agricultural property in the context of this relief.

14. So, taking a farm office, it might be asked how it attracts relief, as it must surely do. No physical farming activities take place inside the office, so why is the office occupied for agricultural purposes? One answer, we think, is that the occupation of a farm office to carry out administrative tasks necessary to run the farm is as much for the purposes of agriculture as is the occupation of a field by the grazing of cows in it. Alternatively, the occupation can be seen as ancillary to occupation of the agricultural land and takes its character from the nature of the occupation of that land.

15. Similarly, it might be asked how a cottage on the farm attracts relief. Consider a farm cottage which is the home of an employed agricultural worker and his family. Clearly a cottage is not itself used for agricultural purposes in an ordinary sense. No farming activity at all takes place in the cottage; and, in contrast with the farm office where the office activities are directly concerned with the activities on the agricultural land, the actual use of the cottage is essentially private to the worker and his family and has nothing to do with farming activities. The cottage is, in reality, a facility provided to the worker by the farmer no doubt for the convenience of both of them.

16. There cannot, however, be any doubt that a farm cottage is capable of attracting relief; if this were not possible it would again make a nonsense of the definition of agricultural property, the second part of which definition expressly includes cottages and other buildings as are of a character appropriate to "the property" (that is to say the agricultural land or pasture and other property (such as ancillary woodland) mentioned in the first part of the definition). In the example, provided that there has been the requisite period of occupation required by section 117(b), relief should be available when a transfer of value occurs.

17. Of course, a farm cottage does not necessarily attract relief. Suppose that a cottage, whilst remaining of a character appropriate to the agricultural land within the farm, is temporarily let for a period of, say, 1 year to a person

having nothing to do with agriculture. The cottage would not then be occupied 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.

20. A similar analysis applies, we consider, to any other employee engaged in the farming business. It is well-arguable – we do not need to decide the point – that a farm cottage occupied by a full-time book-keeper working in an office on the farm should count as occupation for the purposes of agriculture as

much as the occupation of a cottage by an agricultural worker who drives tractors or supervises the milking of cows.

21. This approach, we are bound to say, does not reflect the most natural meaning of the words "occupation for the purposes of agriculture"; but 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.

22. Staying for the moment with the situation of a cottage occupied by an employee under a tenancy, questions may arise about what happens if there is a temporary period of non-occupation or occupation for a purpose other than agriculture. As the passage from the Tax Manual recognises, the vacating of a property does not necessarily lead to a loss of relief: vacating a property may mean that the usual occupant is no longer in physical occupation but does not mean that there is no occupation for the purposes of agriculture within the meaning of the legislation. Thus if a tenant goes on holiday, or goes into hospital for a minor operation with every expectation of returning to work, and is absent for 2 weeks, it could not sensibly be suggested that he had ceased to be in occupation. If he has a family who remain in the cottage, it is clear to us that, in the context of this particular legislation, their occupation is to be treated as his occupation. And even if the tenant has no family, this is just the sort of case where the continued presence of furniture is enough to continue the occupation of the tenant. In such cases, we consider not only that the tenant remains in occupation but that his occupation continues to be for the purposes of agriculture.

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.

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 section 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 Inland Revenue Commissioners* [2003] STC (SCD) 311 (Special Commissioner Michael Tildesley) at paragraph 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

25. We now turn to the position in the present case. In accordance with the approach which we have described, it is necessary to decide whether the use, such as it was, by Mr Atkinson of the Bungalow in his last years had some objective connection with the agricultural activities on the farm. For the whole of the 7 year period before his death (the period relevant to section 117(b)), Mr Atkinson was a partner in the farming partnership with Margaret and Gary. The agricultural tenancy of the farm (including the Bungalow) was partnership property. Mr Atkinson occupied the Bungalow; he clearly did so without objection from Margaret or Gary although we do not know whether it was a term of the Partnership Agreement that he should be permitted to do so. Until he went into the care home and even after that, Mr Atkinson remained a partner. He did not, we of course infer, carry out any physical farming activities after he had gone into the home, but there was no finding that he had ever done so. There is a finding that he took part in discussions relating to the Farm at least once a week. It is necessarily implicit that most of these discussions did not take place at the Bungalow: he only occasionally visited it but the discussions took place once a week (although we note that the Tribunal do not say that this went on right up to the time of Mr Atkinson's death and we cannot read the decision as finding that Mr Atkinson took part in discussions up to that time). It is possible that discussions did take place on some or even all of the occasions when Mr Atkinson visited the Bungalow. There is no finding of fact that any discussions needed to take place there rather than anywhere else. We do not know if there was any evidence before the Tribunal about that. It seems to us to be unlikely that there was any such evidence since, if there had been, the Tribunal would surely have said rather more than they did about the discussions which took place. But whether that is right or wrong, it is not for us to speculate. The Executors have, for perfectly understandable reasons, decided not to appear on this appeal. One of the consequences of their decision not to appear is that they have not been able to draw to our attention evidence, if there was any, about these discussions and in relation to which the Tribunal might have made further findings of assistance to the Executors' case. We cannot take that matter any further.

26. From our discussion above, it will be apparent that we do not consider that the use of a dwelling house – whether the main farmhouse or an agricultural worker's cottage – can be occupation for the purposes of agriculture only if the occupant is engaged in physical agricultural work. Just as use of a farm cottage by an agricultural worker or even perhaps by a full time book-keeper working in the farm office can be seen as occupation for agricultural purposes, so too the use of the Bungalow by Mr Atkinson before his move to the care home and when he was an active partner in the farm business can be seen as occupation for agricultural purposes. That would be so were it correct that Mr Atkinson, rather than the partnership, was in occupation (just as the agricultural worker, rather than his employer, in the examples we have given is, we consider, in occupation of the cottage). The position is *a fortiori* if, as was common ground, the partnership, rather than Mr Atkinson, was in occupation. Accordingly, we see no reason to doubt that, immediately prior to Mr Atkinson's move to the care home, the Bungalow was occupied for the purposes of agriculture.

27. The Executors asserted before the Tribunal that the occupation of the partnership of the Bungalow did not cease when Mr Atkinson moved to the care home. The Bungalow remained furnished and Mr Atkinson's possessions, remained there. Margaret and Gary visited 2 or 3 times a week in order to collect post and deal with frost and the water supply. Mr Atkinson himself returned occasionally – how often does not appear from the Tribunal's decision nor does it appear when the last visit was made. Accordingly, it is said that the partnership did not cease occupation and that, in the context, the occupation was for the purposes of agriculture. What else could it be for? it might be asked.

28. In order for there to be occupation of the Bungalow for the purposes of agriculture once Mr Atkinson had gone into the care home, there still needs to be found some relevant connection between the use of the Bungalow and the activities on the rest of the Farm. Even assuming (which seems inherently unlikely and the findings of the Tribunal do not make clear) that Mr Atkinson was playing as full a role in the management of the partnership after his move to the care home as he had when an active partner living at the Bungalow, we find it very difficult to see how that connection can be made out in the period leading up to his death. The justification for finding that connection while he resided at the Bungalow was the same as, or very similar to, that found in the cases of the agricultural worker living in a cottage on the estate or a farm owner or manager living in a farmhouse. But once Mr Atkinson had ceased to reside at the Bungalow, we do not consider that those factors can be prayed in aid to establish the connection the need for which we have identified. Once the Bungalow was no longer his residence there would have to be some other relevant connection between his use of it and the farming activities.

29. It is, we think, important not to attach undue weight to the occupation being that of the partnership rather than Mr Atkinson. In point of fact, when Mr Atkinson still lived at the Bungalow, it was he, not the partnership, who was in

physical occupation and the partnership's occupation, such as it had, was through him. We must not lose sight of the fact that the function of the Bungalow was to provide a home for Mr Atkinson, not to provide accommodation for some purpose of the partnership. It might be said, as a general point, that a building such as the Bungalow, just like a farmhouse, might be used to some extent for the purposes of the farming business and not solely as a residence, for instance, the farm office might be in the building. But there is nothing in the present case to suggest – and it does not appear to have been argued before the Tribunal – that the Bungalow was ever in fact used for any purpose other than as a residence for Mr Atkinson. There is no evidence to suggest that the Bungalow was ever used for such a purpose and, certainly once Mr Atkinson had gone into the care home, it would not have been open to the Tribunal on the evidence recorded by them in their decision, to have concluded that it ever was used other than as a residence for Mr Atkinson. The only basis on which it could be concluded that the Bungalow was occupied for agricultural purposes up to the time of Mr Atkinson's death is that the use which he himself made of it maintained the necessary connection which we have described above. It cannot, in our view, be suggested that the partnership occupied the Bungalow for agricultural purposes on the basis that it could have, but did not, use the Bungalow as an office or for some other farm-related purpose.

30. Were the matter for us, we would have no hesitation in concluding that the partnership ceased to occupy the Bungalow for the purposes of agriculture when Mr Atkinson moved to the care home with no reasonable prospect of ever returning home. We reach that conclusion assuming that Mr Atkinson continued to play a significant and active role in the partnership rather than simply having regular discussions – being kept informed perhaps – with Margaret and Gary about the business. That assumption seems to us, as we have said, to be inherently unlikely and if it is unjustified, our conclusion is all the stronger.

31. But the matter is not entirely for us. The Tribunal reached the opposite conclusion and we can only interfere with that if they made an error of law, including in that concept arriving at a decision of fact which no tribunal, properly directed, could properly have reached.

32. The Tribunal reached their conclusion for the following reasons:

    a. They identified the function of farm cottages (including the Bungalow in that concept) as being to accommodate people engaged in the relevant agricultural activities. They recognised that that function must be performed throughout the 7 year period but said there is nothing in the Act that prescribes that the accommodation of such people is to be continuous.

    b. Further, they noted that the Act does not provide in what right the person in question (*ie* the person engaged in the agricultural activities) is accommodated in the cottage; it could be the farm owner occupying

as such, it could be an employee accommodated under a licence or it could be a partner in the farming business accommodated by agreement between the partners. The reference in subsection (b) of section 117 to the property in question being occupied "by him or another" indicates as much.

c. The Tribunal stated that the occupation referred to in section 117(b) is the occupation of the three partners, Mr Atkins, Margaret and Gary as tenant under the agricultural tenancy of the Farm holding. They then stated that throughout the period of the partnership the entire holding, the Bungalow included, was, occupied for the purposes of the partnership's farming activities. The residential buildings, *ie* Abbotsons Farmhouse and the Bungalow were used by the partnership to accommodate the partners. For twenty-two years from the time the Bungalow was built it housed Mr Atkinson. For the last four years of Mr Atkinson's life the impact of his illness reduced the likelihood of Mr Atkinson being able to return and live in the Bungalow until it appears to have become necessary for him to stay permanently in the care home. But he continued to participate in partnership matters and his possessions remained in the Bungalow; and from time to time he visited the Bungalow. The partners chose to notify the local council that the Bungalow was not lived in. Otherwise they did nothing with the Bungalow to alter the state of affairs that had subsisted throughout the partnership.

d. Occupation by the partnership continued until Mr Atkinson's death; it was occupation for the purposes of agriculture in the relevant sense because the Bungalow was still used to accommodate the diminishing needs of the senior partner.

e. The Tribunal saw the circumstances of the present case as broadly the reverse of those in *Harrold*. In contrast with that case, the Bungalow, as the Tribunal put it, "has been occupied by the partnership and had been used to provide accommodation for one of the partners; and nothing was done during Mr Atkinson's life to terminate that occupation".

f. The essential reasoning thus appears to be that Mr Atkinson resided in the Bungalow before he went into the care home. While he was resident there, the Bungalow was occupied for the purposes of agriculture, the occupation being that of the partnership. Nothing was done, once he went into the care home, to bring an end to his right of residence under the Partnership Agreement or otherwise. The partnership continued to occupy the Bungalow and did so for the purposes of agriculture.

33. We comment on paragraphs a. to e. of the preceding paragraph in the following paragraphs.

34. As to a., the first sentence is uncontroversial as far as it goes although we have explained at paragraph 19 above that it is not the whole story. There has to be in addition an objective connection between the use made of the property, the Bungalow in the present case, and the agricultural activities on the farm. Ordinarily, the fact that the person accommodated is working on the farm is enough for reasons which we have already given. But in the present case, it is not obvious how the use made of the Bungalow by Mr Atkinson once he had moved to the care home in any way assisted the conduct of his activities in respect of the partnership or even how there was any convenience to him or to the partnership business in his retaining his possessions in the Bungalow, especially once any realistic possibility of return to the Bungalow to live had come to an end.

35. The second sentence is, we think, to make the point (with which we agree) that continuous residence is not necessary in all cases. Tenants or other occupiers can take holidays or be temporarily absent from home for health reasons without thereby ceasing to occupy their home for the purposes of agriculture. That is not to say, and the Tribunal did not say, that gaps in the accommodation of the resident can be ignored however long and for whatever reason.

36. As to b., we agree.

37. As to c., the first sentence was common ground and we have already made some observations about it. The conclusion identified in the second sentence is, so far as we can see, based solely on the matters set out in the remainder of paragraph c. As to those matters, the Tribunal noted that it had become necessary for Mr Atkinson to remain permanently at the care home; in other words, the stage had been reached where there was no realistic possibility that he would ever return to the Bungalow to live. This is an important factor to which it appears that the Tribunal attached little weight; although they mentioned it as a fact, they did not discuss the impact of this factor.

38. Thus, in commenting in relation to the use of the Bungalow that "Otherwise they [the partners] did nothing with the bungalow to alter the state of affairs that had subsisted throughout the partnership" the Tribunal appear to be diminishing the impact of the factors which they had identified and appear to suggest that there was really not much difference in the nature of the occupation of the Bungalow. For the purposes of section 117, however, we see the impact of Mr Atkinson's move to the care home as having great significance; and even more significance is to be attached to the eventual situation when any hope of a return to the Bungalow had gone.

39. As to d., this encapsulates the Tribunal's reason for their conclusion. The Bungalow may, to some limited extent, have remained in the occupation of the partnership. Mr Davey would say that it was in fact not occupied at all; we do not agree with that and clearly it was not unoccupied in the way that an entirely empty and perhaps derelict cottage can be said to be unoccupied. The Bungalow was habitable and Mr Atkinson's possessions and furniture

remained there. Mr Davey is correct insofar as the Bungalow was not occupied as a dwelling: it was certainly not the dwelling of anyone other than Mr Atkinson and it is not easy to see how it could sensibly be described as his dwelling. But that does not mean it was not occupied for any purpose. The Tribunal use the word "accommodate" but they clearly did not intend the use of that word to imply that they considered Mr Atkinson to be using the Bungalow as his dwelling. Such a conclusion would have been contrary to the findings of fact which they did make.

40. The question in the present case, however, is whether the Bungalow was occupied for the purposes of agriculture. And it is here that the Executors' case, and the reasoning of the Tribunal, fails to stand up to close examination. The only reason, on the findings which appear in the Tribunal's decision, why the Bungalow was occupied (by the partnership) for the purposes of agriculture when Mr Atkinson actually lived there was his use of the Bungalow as a dwelling in connection with the agricultural purposes to which the Farm was put. The Bungalow was used as Mr Atkinson's home consistently with the purpose of such a dwelling *ie* to provide living accommodation. As we have said, there is a precise analogy here with the position of a cottage occupied by an agricultural worker or a farmhouse occupied by a farmer or manager as we have already discussed. Ultimately, Mr Atkinson did not live in the Bungalow and the partners arranged the Council Tax position in respect of the Bungalow on that very basis. Once he ceased to live there, the primary purpose of the Bungalow – and the one and only purpose which justified the conclusion that its use was occupation for the purposes of agriculture – ceased to be fulfilled. Accordingly, it does not follow from the proposition that "the bungalow was still used to accommodate the diminishing needs of the senior partner" that the continued limited use of the Bungalow by Mr Atkinson was occupation for the purposes of agriculture. The question is where the line is to be drawn.

41. Indeed, to ask whether the Bungalow "accommodated" some "needs" of Mr Atkinson is, in our view, to adopt a wrong test about what it is to occupy for the purposes of agriculture. There still has to be a connection between the "need" which was "accommodated" and the farming business itself. Accepting as we do that use of the Bungalow as a dwelling by Mr Atkinson could amount to occupation for the purposes of agriculture the relevant need accommodated before his move to the care home was that for a dwelling. After his move that need no longer existed and the Tribunal did not address what we have identified as a requirement to find a connection (which we accept would be a question of fact) between the needs accommodated at that stage and the farming business. Instead, using seductive language, they effectively equated the "needs" of Mr Atkinson as similar to the "needs" which he had when he was a partner living in the Bungalow describing them as simply "diminishing needs". It is possible that some need with the necessary connection could have been accommodated (such as the need for an office) but the findings of fact about the use actually made of the Bungalow

(see paragraph 4f above) suggest strongly that there was no such use in fact. The Tribunal's approach, it seems to us, does not reflect a realistic assessment of the significant change which came about when Mr Atkinson first moved to the home and cannot begin to withstand analysis in relation to the situation once it had become clear that he could never return to the Bungalow to live. Before the move, just as with an agricultural worker using a cottage on the farm as a dwelling or a farmer similarly using a farmhouse, Mr Atkinson's use of the Bungalow can be seen as connected with the activities of the Farm so that the Bungalow would properly be seen as being occupied for the purposes of agriculture. Once Mr Atkinson had moved to the care home on a permanent basis then he ceased to need the Bungalow as his dwelling; rather, the retention of his furniture there was a convenience to him not in any way connected with the Farm or the partnership business. The fact that he remained a partner does not mean that the Bungalow continued to be occupied (if it was occupied at all) for the purposes of agriculture. This is not to say that the day on which Mr Atkinson moved to the care home, the partnership, through his use, ceased to occupy the Bungalow for the purposes of agriculture. If there was a reasonable prospect, when he moved, that he would return in the foreseeable future, it might well be possible to conclude that the Bungalow remained occupied for the purposes of agriculture. But that is not the present case which is one where for over 4 years the Bungalow was not Mr Atkinson's residence and where, before the end of that period, there ceased to be any possibility of his returning there to live.

42. As to e., we can accept that different considerations apply when (as in *Harrold*) the question is whether occupation of a property has even commenced and when (as in the present case) the question is whether occupation has ceased or, if it has not, whether it remains as occupation for the purposes of agriculture. But the fact identified by the Tribunal that nothing had been done by the partnership to terminate Mr Atkinson's occupation is, as we see it, quite beside the point. The question is not whether the partnership had taken any action to terminate Mr Atkinson's occupation; it is whether the events on the ground brought about a situation under which Mr Atkinson no longer occupied the Bungalow for the purposes of agriculture.

43. In our judgment, the Tribunal failed to apply the correct approach and to ask the correct questions. The correct approach is to identify what does and what does not amount to a sufficient connection between the use and occupation of the property in question (the Bungalow in the present case) and the agricultural activities being carried on on the agricultural property (the Farm in the present case); and to ask whether the facts give rise to a sufficient connection. If the Tribunal had adopted that approach it could, in our judgment, have come to only one conclusion, namely that the Bungalow was not immediately before Mr Atkinson's death, occupied for the purposes of agriculture and had not been so occupied since, at latest, it had become apparent that he would never be able to return there to live. In particular, neither the occasional attendance of Margaret and Gary at the Bungalow to

deal with post or frost, nor the fact that some of Mr Atkinson's belongings and furniture remained at the Bungalow, can be said to constitute occupation for the purposes of agriculture throughout the seven years prior to Mr Atkinson's death.

Conclusion

44. On their primary findings of fact and in the light of the applicable law, only one conclusion was open to the Tribunal, namely that the Bungalow was not occupied for the purposes of agriculture for the entirety of the period required. Accordingly, the appeal of HMRC is allowed.

Signed

Mr Justice Warren, Chamber President Judge Judith Powell

RELEASE DATE: 31 October 2011