UPPER TRIBUNAL (LANDS CHAMBER)

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BLIGHT NOTICE – PRELIMINARY ISSUE – HS2 Phase 2(a) – agricultural unit comprising dwellings, buildings and land owned by different family members but farmed by their limited company – whether family members or limited company entitled to a qualifying interest as owner-occupiers of the unit – ss.151(4)(f), s.164 and s.168(2), Town and Country Planning Act 1990

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

GEORGE MELLOR

MARGARET JENNIFER MELLOR

LUKE MARTIN GEORGE MELLOR

SUSAN JAYNE MELLOR

LUKE MELLOR FARMS LIMITED

Claimants

and

THE SECRETARY OF STATE FOR TRANSPORT

Respondent

Re: Manor Farm, Blithbury,

and Land at Colton,

Staffordshire

Martin Rodger QC, Deputy Chamber President

Determination on written representations

Mr Barry Denyer-Green, instructed by Ansons Solicitors, for the claimants

Mr Stephen Whale, instructed by the Government Legal Department, for the respondents

The following cases are referred to in this decision:

Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd [2020] 1 P&CR 15

Graysim Holdings Ltd v P&O Property Holdings Ltd [1996] AC329

Newnham College v HMRC [2008] UKHL 23

Wheat v E Lacon & Co Ltd [1966] AC 552

Introduction

1.
The Mellor family run an organic dairy farming business at Manor Farm, Blithbury, in Staffordshire across two separate blocks of land. The first block includes Manor Farmhouse, Apple Tree Cottage, farm buildings and approximately 73 hectares of land at Blithbury ("Manor Farm"). The second block comprises 120 hectares of land near the village of Colton to the west of Blithbury ("the Colton land"). The proposed route of Phase 2(a) of the HS2 (West Midlands to Crewe) railway line bisects both blocks of land.

2.
On 12 September 2019 the claimants served a blight notice on the respondent under ss.150 and 158, Town and Country Planning Act 1990 requiring him to purchase the whole of both blocks of land, including the houses and buildings at Manor Farm. The respondent served a counter notice under s. 151(1) of the Act, objecting to the blight notice on grounds under s.151(4)(f) and s.159(1). The first ground of objection challenged the claimants' assertion that their interest in the land comprised in the blight notice is a qualifying interest. The second ground of objection takes issue with the claimants' entitlement to rely on s.158 to include unaffected areas of their agricultural unit in the blight notice.

3.
The claimants referred the respondent's objection to the Tribunal which directed that the question of whether the claimants were the owners of a qualifying interest in the land comprised in the blight notice should be determined as a preliminary issue. The parties agreed that the issue should be considered on written representations which were provided on behalf of the claimants by Mr Barry Denyer-Green and on behalf of the respondent by Mr Stephen Whale.

The relevant statutory provisions

4.
Chapter II of Part VI of the 1990 Act is concerned with land adversely affected by the planning proposals of statutory authorities, referred to as blighted land. By s.150(1) a person entitled to a qualifying interest in a hereditament or agricultural unit the whole or part of which is comprised in blighted land has the right, in specified circumstances, to serve a notice requiring the appropriate authority to purchase that interest.

5.
The categories of qualifying interest to which the right applies are identified in s.149(2) and include an interest in an agricultural unit or part of an agricultural unit which, on the relevant date, "is the interest of an owner-occupier".

6.
"Agricultural unit" is defined in s.171(1) and means land which is occupied as a unit for agricultural purposes, including any dwellinghouse or other building occupied by the same person for the purpose of farming the land.

7.
“Owner-occupier” is also a defined expression. By s.168(2), 1990 Act it means, in relation to an agricultural unit, a person who–

“(a) occupies the whole of that unit and has occupied it during the whole of the period of six months ending with the date of service; or

(b) occupied the whole of that unit during the whole of a period of six months ending not more than 12 months before the date of service,

and, at all times material for the purposes of paragraph (a) or, as the case may be, paragraph (b) has been entitled to an owner´s interest in the whole or part of that unit.”

The reference in s.168(2) to an owner’s interest means a freehold interest or a tenancy with an unexpired term of not less than three years, and the date of service means the date of service of the relevant blight notice (s.168(4)).

8.
It can be seen from s.168(2) that to be an owner-occupier a person must satisfy an occupation condition and an ownership condition. The occupation condition must be satisfied in respect of the whole of the agricultural unit. But the ownership condition need not; it is enough that a claimant should have been entitled to an owner’s interest “in the whole or part of that unit”.

9.
Special provisions are also made by s.164 where land is occupied for the purposes of a partnership firm, so that occupation for the purposes of the firm is treated as occupation by the firm and not as occupation by the partners individually, and the definition of "owner-occupier" applies in relation to the firm accordingly.

The facts

10.
The relevant facts are recorded in in a witness statement made by Luke Mellor on 9 October 2020.

11.
The first four claimants are two generations of the same family which has farmed Manor Farm since at least 1948. I will refer to George and Margaret Mellor as Mr and Mrs Mellor and to their son Luke Mellor and his wife Jayne Mellor as Luke and Jayne.

12.
For the purpose of the preliminary issue it is agreed that the “agricultural unit” is the land identified in the blight notice comprising Manor Farm, including the two dwellings, and the Colton land. At the date of service of the blight notice the claimants conducted a dairy farming enterprise across the whole agricultural unit.

13.
Manor Farm was held under eight separate registered titles which include Manor Farmhouse and Apple Tree Cottage. The registered proprietors of six of these, including Manor Farmhouse and its farm buildings, were Mr and Mrs Mellor and Luke. A parcel of bare land was owned by Mr and Mrs Mellor alone and Apple Tree Cottage was owned by Luke and Jayne alone; it is not clear from the evidence which couple occupied which house.

14.
The Colton land was held under five registered titles, three of which were in the names of Mr and Mrs Mellor and Luke while the remaining two were in the names of all four members of the family.

15.
The four family members are members of a partnership, Luke Mellor & Son, on the terms of a deed of partnership executed on 5 August 2019.

16.
All four family members are also directors of the fifth claimant, Luke Mellor Farms Limited ("the Company"), which conducts the farming enterprise on the whole of the unit. The income and expenditure of the farming business are received and incurred by the Company, not the partnership.

17.
The deed of partnership stated that the family members had farmed in partnership "for some time past" and had agreed to enter into the deed to record the terms of the partnership with effect from 6 April 2017. The business carried on by the partnership was to be carried on from "the Farm", meaning Manor Farm and such other places as the partners might decide. Mr and Mrs Mellor were referred to in the partnership agreement as the "Landowner Partners" and were said to hold the Farm on trust for all of the partners as a partnership asset. Apple Tree Cottage is also described as a partnership asset, and as held on trust for all the partners by Luke and Jayne. All items used by the partnership for the purpose of its business, including plant and machinery, livestock and dead stock, and entitlements to agricultural subsidies were also said to be partnership assets.

18.
By a licence agreement dated 10 September 2019 all four family members acknowledged that they had granted the Company a licence, in common with them, to occupy the whole of the land and agricultural buildings at Manor Farm, with effect from 6 April 2017. The licence was to continue until terminated by notice and a fee of £45,000 a year was payable. The Company acknowledged that it occupied as licensee only, that no relationship of landlord and tenant had been created, and that the family members retained "control, possession and management" of the property. The licence did not grant the Company any rights over Manor Farmhouse or Apple Tree Cottage.

19.
By an agreement for sale dated 6 April 2017 the business and assets of the partnership were agreed to be sold to the Company, with the specific exclusion of Manor Farmhouse, Apple Tree Cottage, the farm buildings and 179.82 acres of farmland. The effect of the exclusions was to leave only the Colton land within the terms of the agreement for sale. The transfer date was stated in the agreement to be 6 April 2017, but completion has yet to take place. In his witness statement Luke described the Company as occupying the Colton land and being entitled to acquire the freehold from the individual family members who hold it on bare trust for the Company.

20.
The net effect of these arrangements was that the farming of the land was undertaken by the Company, and not by the partnership.

The issue

21.

The blight notice was given by all five claimants. For the notice to be valid s.168(2) requires the claimants to have been, or to be treated as having been, “owner-occupiers” of the agricultural unit throughout one of the specified periods of six months (it is not suggested that the relevant facts changed in the eighteen months during which the alternative periods fall). That is, they must have occupied “the whole of that unit” and have been “entitled to an owner´s interest in the whole or part of that unit”. The issue for determination is whether the claimants satisfied those conditions on the facts described.

The parties’ submissions

22.
The claimants’ case has evolved over time. In the blight notice itself it was said that the whole of the farming enterprise of the Mellor family was run through the Company and personally by the family members in partnership. Manor Farm was said to be split over several titles “however it is all included within the Mellor family farming partnership”. The Colton land was also split over a number of titles and was described as being farmed by the Company as beneficial owner. The application of the facts to the statutory conditions was not spelled out clearly and it appeared at that stage to be possible that the partnership was responsible for farming Manor Farm while the Company farmed the Colton land.

23.
The claimants’ statement of case was no clearer. Both Manor Farm and the Colton land were described as being farmed by the claimants as part of their dairy farming business, without differentiating between the Company and the family members. It was said to be “self-evident” that the individual claimants were in occupation of both Manor Farm and the Colton land, but in relation to Manor Farm reliance was also placed on deemed occupation by all of the partners by virtue of s.164, which was said to “confirm occupation by all of the individual claimants by providing that where, as here, … an agricultural unit is occupied for the purposes of a partnership, occupation is deemed to be that of the partnership and not of the individual members”. The Company’s beneficial ownership of the Colton land was said not to affect the position as far as freehold ownership was concerned. Nor did its licence to occupy the Manor Farm land “affect the claimants’ position”.

24.
In his submissions on behalf of the claimants Mr Denyer-Green referred first to what it means to be the occupier of land for the purpose of s.168(2). He cited authority in support of the proposition that the meaning of occupation in a statute depends on the factual and legal context in which the expression is used; it involves some degree of both physical presence on and control of land but need not connote exclusive occupation.

25.
Graysim Holdings Ltd v P&O Property Holdings Ltd [1996] AC 329 concerned the qualifying condition in s.23, Landlord and Tenant Act 1954, that business premises must be “occupied by the tenant … for the purposes of a business carried on by him”. Lord Nicholls said (at 334) that the concept of occupation is not a legal term of art and that “like most English words ‘occupied’, and corresponding expressions such as occupier and occupation, have different shades of meaning according to the context in which they are being used.”

26.
In Newnham College v HMRC [2008] UKHL 23 Lord Walker said at [39] that ‘occupation’:

"…is in general taken to import an element of physical presence and some element of control over the presence of others. But these generalities are strongly influenced by the statutory context and purpose."

27.
More recently, in Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd [2020] 1 P&CR 15, having referred to Graysim and to Newnham, Lewison LJ described the words occupier and occupation as "intensely sensitive to context" (at [45]). He also considered that, in an appropriate context, more than one person may simultaneously be an occupier of the same property, depending on their respective degrees of control. He referred to Wheat v E Lacon & Co Ltd HL [1966] AC 552, a case concerning the Occupiers Liability Act 1957, where Lord Denning said at 581A:

"There is no difficulty in having more than one occupier at the same time."

28.
I did not understand Mr Whale to disagree with any of these propositions. Nor did he dissent from the claimants' general submission that, where a statute is capable of more than one interpretation, the Tribunal should prefer the interpretation which interferes least with private property rights (or which provides the most effective relief where such interference is inevitable). He nevertheless challenged the claimants' ability to satisfy either part of the definition of owner-occupier.

29.
The claimants' primary case on the occupation condition was that all four family members occupied the whole of the agricultural unit. The fact that the business was conducted through the Company, which had a non-exclusive licence to occupy Manor Farm, did not mean that Mr and Mrs Mellor, Luke and Jayne were not also in occupation. Clause 2.1 of the 2019 licence recognised that occupation by granting the Company rights "in common with" the family members. Additionally, the family members were the sole directors and shareholders of the Company which could only occupy land and conduct its business through natural persons, such as its directors and servants, who physically perform the activities which amount to occupation.

30.
Mr Denyer-Green also pointed out that the arrangements adopted by the claimants were not at all unusual. An agricultural unit run by different generations of the same family might typically be expected to occupy land owned by different family members conducting their enterprise through a limited company.

31.
Mr Whale submitted that the occupation condition was not satisfied because none of the five claimants occupied the whole of the unit. In particular, Mr and Mrs Mellor occupied one of the two houses, and Luke and Jayne occupied the other; neither couple occupied the other couple's house, and nor did the Company (whose licence extended only to the land and agricultural buildings).

32.
Mr Whale also questioned whether the Company was in occupation of the Colton land. The claimants' case was that the members of the family hold the legal estate in the Colton land on bare trust for the Company and that it has occupied the land pursuant to the 2017 agreement since 6 April 2017.

33.

In response to the suggestion that each dwelling was occupied by only two of the four individual claimants, and that neither dwelling was occupied by the Company, Mr Denyer-Green made two points.

34.
First, a limited company can only occupy land through its directors and servants. Its directors may reside in two dwellings, but they are all directors of the Company. As with most family farming enterprises, the conduct of the business did not cease at the entrance to the farmhouse. The absence of an express licence in relation to the two dwellings did not prevent the company being the occupier of the whole of the unit for the purpose of the dairy business it carries on through its directors.

35.
Secondly, the effect of the respondent's representations would be that in the common situation of an agricultural unit containing dwellings occupied by agricultural workers, the occupation condition could never be satisfied. That outcome would be avoided if the words "occupier" and "occupation" were given a meaning that has regard to the factual and statutory context. The dwellings may be occupied residentially by the agricultural workers, but they can also be occupied by the owner of the whole unit for the purposes of s.168(2).

36.
It was eventually agreed that occupation by the partnership was irrelevant, although the parties gave different reasons. Initially the claimants had run an alternative case relying on s.164(2) of the Act which treats occupation for the purposes of the partnership firm as occupation by the partnership and not by the individual members of the partnership. But in further submissions Mr Denyer-Green expressly abandoned reliance on s.164(2) and submitted that the partnership was not in occupation for any purpose. The respondent acknowledged that occupation for the purposes of the partnership would fall to be treated as occupation by the firm, and not by any one or more of the partners individually. But it was pointed out that the partnership was not a claimant and it was said that whether or not it met the s.168(2) tests was therefore irrelevant.

37.
As for the ownership condition, in the respondent's statement of case it had been said that because none of the five claimants individually, nor all of them jointly, owned the whole of the agricultural unit they were not owner-occupiers, either individually or jointly, but that suggestion was not pursued. To demonstrate satisfaction of the ownership condition the claimants relied only on the fact that each of the family members has an owner's interest in part of the agricultural unit. It did not make any difference that none of them owned all of the land. That was not disputed by the respondent in submissions.

38.
The claimants did not rely on the Company's beneficial interest in the freehold of the Colton land by virtue of the uncompleted agreement for sale of 6 April 2017. The Company was entitled to call for a transfer of the land, but until it did so the freehold remained vested in the four family members. It followed that the Company did not have an owner's interest. The respondent agreed, acknowledging that all four family member were entitled to an owner's interest in parts of the agricultural unit, but that the Company did not own the freehold or have a tenancy of any part of the unit, so it was not entitled to an owner's interest.

Conclusions

39.
I am satisfied that the blight notice was not valid for the following reasons.

40.
Although the blight notice was given by five persons, the four family members and the Company, the respondent appeared to accept that for it to be valid it was not necessary for all five claimants to satisfy the conditions for being an owner-occupier. None of the argument was concerned with the form of the notice and I will assume for the purpose of the preliminary issue that a blight notice given by A and B can be valid even if A alone is the owner-occupier of the whole of the land comprised in the notice (in which case B's participation in giving the notice would simply be redundant).

41.
It has also not been suggested by the claimants that their blight notice could be treated as partially valid if some of those who gave it were found to be owner-occupiers in respect of some of the land included in the notice. The notice requires the respondent to purchase the whole of the agricultural unit, and it will stand or fall in relation to the whole unit.

42.
There is of course no reason why more than one person may not be an owner-occupier in relation to a single hereditament or agricultural unit. By s.6, Interpretation Act 1978, unless the contrary intention appears in any Act words in the singular include the plural and vice versa. If an agricultural unit is owned and occupied jointly by two people, they would jointly be owner-occupiers and could jointly serve a blight notice.

43.
It is nevertheless essential that both of the conditions which must be satisfied for a person to be an owner-occupier must be satisfied (or treated as satisfied) by the same person or persons. It is clear from s.168(2) that an owner-occupier is a person who satisfies both the occupation requirement and the ownership requirement. Where a blight notice is given by joint owners, they must both satisfy both requirements. A blight notice cannot be given jointly by A and B on the basis that A alone satisfies the occupation condition and B alone satisfies the ownership condition.

44.
In my judgment by the end of the argument that was what the claimants' case amounted to. Mr Denyer-Green sought to combine occupation of the whole unit by the Company with ownership of different parts of the unit (amounting in aggregate to the whole) by the individual family members. That is not what section 168(2) requires.

45.
The ownership condition is agreed to be satisfied by all four of the individual claimants, but it was not argued by Mr Denyer-Green that it was satisfied by the Company. All agree that the agreement for sale of 6 April 2017 has not yet been completed and has not yet vested a freehold interest in any part of the agricultural unit in the Company.

46.
It is therefore necessary for at least one of the individual claimants to satisfy the occupation condition, that is, at least one of them must have occupied the whole of the agricultural unit during the whole of a period of six months ending on or not more than 12 months before 12 September 2019.

47.

The obstacle which the claimants face is that it is agreed that Mr and Mrs Mellor did not occupy the house in which Luke and Jayne lived, and that Luke and Jayne did not occupy the house in which Mr and Mrs Mellor lived. Even if all four were in occupation of the remainder of the unit in their capacity as directors of the Company, it would necessarily follow that neither couple could claim to have occupied the whole of the agricultural unit.

48.
Mr Denyer-Green tried to find an answer to this problem in the status of each family member as a director of the Company. The Company carried on its activities through its directors and so, he argued, the directors must be regarded as being in occupation of everything of which the Company is in occupation. But that is to equate the directors with the Company when, in law, they are separate persons. It is true that a limited company can be regarded as occupying land by virtue of the activities undertaken on its behalf by human agents (or by the presence on the land of goods belonging to it). But that does not mean that a person can be treated as being personally in occupation of land simply because a company of which he is a director is in occupation.

49.
Thus, even if it were to be accepted that the Company was in occupation of the house in which Luke and Jayne live, and from which they conduct the business of the Company, I do not accept that that would entitle Mr and Mrs Mellor to say that they too were in occupation of Luke and Jayne' house because they were directors of the Company. Nor would Luke and Jayne be entitled to say that they occupied the house in which Mr and Mrs Mellor live by virtue of activities of the Company carried on from it. At most the Company may have been in occupation of both houses through the presence of its directors, but the individual directors cannot claim to have occupied each other's houses by the same route.

50.
I should add that there is nothing in the evidence to suggest that either couple has any physical presence in or control over the house occupied by the other couple.

51.
How the occupation of farm cottages by employees might affect the operation of the blight notice regime in relation to other agricultural units may need to be worked out in other cases, but it does not affect the proper construction of the Act or its application in this case.

52.
The position would have been different if the business on the whole of the agricultural unit had been carried on by the partnership. In that event s.164(2) would have enabled the occupation of any part of the agricultural unit by an individual partner to be treated as occupation by the firm. The firm would thus have been the occupier of Manor Farmhouse and Apple Tree Cottage, as well as of the rest of the unit. A partnership firm has no separate legal personality and the four partners would themselves have been able to satisfy the occupation requirement by virtue of s.164(2). They would also have satisfied the ownership condition because some parts of the Colton land are jointly owned by all four family members.

53.
But this solution is not available to the claimants. They have chosen to organise their affairs to take advantage of the benefits available to companies. Mr Denyer-Green placed no reliance on section 164(2) and submitted in the clearest terms that the partnership was not in occupation of any part of

the agricultural unit for any purpose. The evidence provided by Luke in his witness statement makes that clear.

Disposal

54.
For these reasons I find that the none of the claimants were “owner-occupiers” of the agricultural unit throughout either of the periods of six months specified in s.168(2). The blight notice was accordingly invalid, and I uphold the Secretary of State’s objection to it.

Martin Rodger QC,

Deputy Chamber President

6 September 2021