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Case Number: TC08949

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

Taylor House, London

Appeal references: TC/2021/13531  
TC/2022/02464 TC/2022/02465  
TC/2022/02466

*INHERITANCE TAX – business property relief – whether provision of a “wedding barn” is an investment business – section 105(3) IHTA*

**Heard on:** 5 to 7 June 2023

**Judgment date:** 27 September 2023

**Before**

**TRIBUNAL JUDGE ALEKSANDER**

**Between**

**(1) EVA MARY BUTLER**

**(as personal representative of the free estate of Helen Mary Butler (deceased))**

**(2) JOANNA HELEN BUTLER**

**(as personal representative of the free estate of Helen Mary Butler (deceased))**

**(3) EDWARD HUGH THOMAS**

**(as Trustee of the T R Butler Will Trust)**

**(4) VERNON JAMES ELLIS**

**(as Trustee of the T R Butler Will Trust)**

**Appellants**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Sam Chandler, counsel, instructed by Oury Clark, Solicitors

For the Respondents: Bayo Randle, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

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## DECISION

### INTRODUCTION

1. Helen Butler (“Mrs Butler”) died on 15 May 2015. At her death, she was a member of Tufton Warren Farm LLP (“the LLP”). The only other members were the trustees of her late husband’s will trust (called the TR Butler Will Trust - the “Will Trust”), in which she had a life interest, and which was treated as part of her estate under s49(1) Inheritance Tax Act 1984 (“IHTA”).
2. Immediately prior to her death, under s4(1) IHTA, Mrs Butler was treated for IHT purposes as having made a transfer of value equal to the value of her estate and of the assets held by the Will Trust – including the interests in the LLP held by her and the trustees.
3. Following a claim for business property relief (“BPR”) in the relevant IHT returns, HMRC issued notices of determination in respect of the interest in the LLP on 28 August 2020 (the “Determinations”) on the Appellants. The Determinations state that no part of the LLP’s assets was relevant business property for the purposes of s104 IHTA.
4. On 15 March 2021, the Appellants requested a statutory review of the Determinations. On 28 July 2021, HMRC wrote to the Appellants upholding the Determinations. The Appellants, who are Mrs Butler’s executors and the trustees of the Will Trust now appeal against the review decisions. The inheritance tax in issue is £1,671,235.
5. I heard evidence from (i) Ms Eva Butler (“Eva”), the daughter of Mrs Butler, who was the managing director of the LLP at the time of her death and (ii) Mrs Virginia Woodhouse (“Ginny”), Mrs Butler’s niece, who worked for the LLP as Events Manager from April 2012 to December 2014. They both produced witness statements which were taken as read as their evidence in chief and on which they were cross examined. In addition, two electronic bundles were admitted in evidence, a core bundle of 483 pages and a supplementary bundle of 3729 pages.
6. A witness statement was also provided by another witness (whose wedding took place at Clock Barn in 2014). However, in the period since his witness statement had been prepared and filed, he had changed jobs and moved, and was no longer available to give evidence. In consequence, the Appellants placed no reliance on his evidence.
7. The appeal was allocated to the complex category and the Appellants have elected under Rule 10(1)(c) that these proceedings be excluded from potential liability for costs.

### THE ISSUES IN THE APPEAL

8. Tufton Warren Farm in Hampshire was acquired by Clock Barn Limited (“the Company”) in 1997. In 2005 the assets of the Company (including the farm) were transferred in a reorganisation and became owned by the LLP. The shareholders of the Company have at all material times been the members of the LLP, who hold the shares as LLP property.
9. The LLP’s activities fell into three categories: (i) farming; (ii) commercial lettings; and (iii) a wedding venue business operating from an historic barn on the farm, called Clock Barn (the barn is characterised by a freestanding clock tower with a thatched roof near the entrance).
10. It is not disputed that the LLP was carrying on a business. The dispute concerns whether on 15 May 2015 its activities consisted “wholly or mainly of...holding investments” within the meaning of s105(3) IHTA (the “Investment Exclusion”). If the Investment Exclusion is engaged, then the interests of Mrs Butler’s estate in the LLP are not “relevant business property” within the meaning of s.105(1) IHTA, and are therefore ineligible for BPR.
11. It is common ground that:

(1) The commercial lettings element of the LLP's business is to be characterised as investment activity and that the farming element is non-investment.

(2) The wedding business is the most significant aspect of the LLP's activities. If the wedding business is not wholly or mainly investment activity, then, when considered with the farming element, the LLP's business will not consist wholly or mainly of holding of investments. The Investment Exclusion will therefore not apply, and BPR will be available.

(3) On the other hand, if the wedding business is wholly or mainly an investment activity, then the LLP's business will consist wholly or mainly of the holding of investments. In consequence the Investment Exclusion will apply, and BPR will not be available.

12. The proper characterisation of the wedding business is the single, determinative question that I need to resolve. Is it, as submitted by HMRC, a business that can be characterised as wholly or mainly holding investments, falling within the Investment Exclusion? Or, as submitted by the Appellants, does the package of services and facilities provided by the LLP take the business outside the Investment Exclusion?

#### **BACKGROUND FACTS**

13. I find the background facts to be as follows:

##### **The history of the wedding business**

14. In 2004, Mrs Butler decided to diversify the business of the Company (and subsequently the LLP) away from arable farming (in which she believed that there was no long-term future) and to use Tufton Warren Farm as a prestigious wedding venue. It was a long-term project to change the use of the farm away from agriculture to a wedding venue business.

15. The wedding venue business started in 2004, prompted by the success of Eva's 21st birthday party at Clock Barn. At around the time of the first booking, Mrs Butler was introduced to Country House Wedding Venues ("CHWV"), which manages a directory of independent wedding venues. Mrs Butler entered into a relationship with CHWV in 2004, under which CHWV provided administrative and marketing services and received a commission from the caterer for each wedding they introduced to Clock Barn. Initially there was no formal agreement governing the relationship, but later CHWV asked for an exclusive relationship and a formal written agreement was concluded. Most of the wedding bookings are made through introductions by CHWV, however, the customers contract and pay the Company (acting on behalf of the LLP) directly.

16. Until 2005, Clock Barn was just a bare empty barn. Everything required for a wedding had to be hired by the customer – such as toilets, dance floor, tables, chairs, and caterers. As more weddings took place at Clock Barn, Mrs Butler gained knowledge about managing them, and Mrs Butler was able to provide advice to wedding couples about how their wedding day should flow, what they needed to hire and book, suitable locations for photographs and other practical advice.

17. Between 2005 and 2008 extensive renovations were carried out to the buildings at Tufton Warren Farm, including Clock Barn. In this period, landscaping works were undertaken, with a garden (designed by Mrs Butler) being laid out to one side of the barn, and hedging and shelter belts of trees being planted around the perimeter of the site and along the access road. A commercial kitchen, a preparation room, and toilets were installed in Clock Barn. At the other end of the barn the Stable Room was created as a smaller space. It appears that the kitchen was not fully equipped with pots and pans etc, as Perks would need to bring in their catering equipment for each event.

18. In 2007, the LLP sold most of the land at Tufton Warren Farm. The funds realised from the sale were used to fund the development of the wedding venue business and to pay down loans.

19. In 2008 Mrs Butler applied for retrospective planning consent for change of use from agriculture to a wedding business. Consent was eventually granted in February 2010, subject to a limit of 60 weddings per year. This was subsequently increased in 2015 to 120 weddings per year, and in 2018 to 190 weddings per year. A condition of the 2010 consent was that a new access road had to be constructed. Two of the LLP's maintenance staff are needed to safely manage the flow of traffic for each wedding along the access road and around the site.

20. Planning consent was obtained in 2014 to provide more accommodation to wedding guests on wedding days, and the "Chalk Wall Office" was converted into a honeymoon suite. The farmhouse was converted into a 9 bedroom hotel for wedding guests. Although this conversion was planned during Mrs Butler's lifetime, the conversion was not ready for guests until 2017, after her death.

21. In 2004 there were only three weddings held at Clock Barn. This had grown to 91 weddings in 2015:

<b>Year</b>	<b>Number of weddings</b>
2004	3
2005	12
2006	23
2007	29
2008	51
2009	52
2010	32
2011	43
2012	56
2013	64 (including 2 cancellations)
2014	73 (including 4 cancellations)
2015	95 (including 4 cancellations)

22. In 2005, the LLP employed Agatha and Zbyszek to help with the farm and also to provide help with the wedding business, including cleaning up after events, and providing day-to-day maintenance and general support. After the majority of the arable part of the farm was sold in 2007, the number of weddings increased, and Agatha's and Zbyszek's roles changed into solely working in the wedding business.

23. As described above, in the early years of the business, Clock Barn was just a bare venue. Customers had to hire everything. As more weddings took place at Clock Barn, Mrs Butler gained knowledge about local suppliers, and expertise in how to orchestrate them. She provided advice to customers about what they needed to book, transport to and from hotels, the best locations for photographs – Eva's evidence was that Mrs Butler advised couples on how their wedding day should flow and could answer any little question they had.

24. From 2005 to 2012, Mrs Butler undertook viewings with prospective customers wanting to hire the venue, as well as dealing with correspondence, and planning the wedding day. Mrs Butler, with the help of Agatha and Zbyszek, set up Clock Barn on the wedding day and cleared everything away after the wedding was finished. They would be present throughout the wedding day, and Mrs Butler would ensure that the requirements of the various licences were met, by ensuring that music ceased and the bar closed at the required times, and that everyone had left to allow for the site to be cleaned.

25. Initially, customers could appoint their own choice of caterer. However, from around 2009 customers were required to use the caterer designated by Mrs Butler. This was initially a business called Perks. Perks would use the commercial kitchen that had been installed into the barn, but would bring in the food and other items (such as cooking utensils, linen, china, and cutlery) for each event.

26. Between 2009 and 2012, there were usually around 50 weddings per year at Clock Barn. In 2012/13, changes were made to the way in which the business was operated, and the number of weddings increased significantly. Turnover increased from £107,353 for the year ending September 2011 to £358,372 for the year ending September 2015.

27. In April 2012 Ginny joined the business as Events Manager. As the business grew, additional staff were recruited to support Mrs Butler and Ginny, and to manage events. In January 2013, Sarah Light was recruited as Sales Manager. Sarah had previously worked for another wedding venue business. In September 2014 Matilda ("Tilly") Markworth was recruited as sales and admin assistant to work under Sarah. The roles of Ginny, Sarah, and Tilly were similar when it came to showing prospective customers around the venue – but only Mrs Butler and Ginny dealt with difficult or tricky questions. Sarah was responsible for management of social media, and because of her previous experience she came up with ideas to improve the business. Sarah must have left at some point in 2014 or 2015 as she was not included in the list of employees working for the LLP at the time of Mrs Butler's death.

28. Agatha and Zbyszek were present at all weddings, and were responsible for cleaning and setting up the barn and other preparatory work. They were responsible for traffic marshalling and the car park management. During the event, they were on hand to deal with any issues as they arose, and after all the guests had departed, they undertook cleaning and repairs. Towards the end of 2013, Agatha and Zbyszek left, and Justyna Karczewska and Andy Karczewski were recruited in their place. In 2015, Zbyszek returned to help with a busy summer period, and Rafael Petrzelis was recruited as a seasonal worker.

29. Due to a number of complaints by customers about Perks, Mrs Butler's relationship with them broke down and they were replaced in 2013 by Galloping Gourmet ("GG"), a subsidiary of CHWV. On 5 June 2013, the LLP entered into agreements with CHWV and GG pursuant to which they were appointed as exclusive marketing agents and sole caterers respectively for a period ending on 24 June 2024. The commission arrangement with CHWV was changed so that they were paid a 5% commission by the Company (on behalf of the LLP) for each booking, rather than a commission paid by the caterer.

30. On 1 June 2014, the LLP granted GG a ten-year lease of the "Green Barn" which GG had fitted out as a commercial kitchen (it is unclear from the evidence whether the lease was concluded pursuant to an agreement for lease executed around the time of the catering agreement). GG also fitted out the smaller kitchen/prep room in Clock Barn. The Green Barn was ready for use as a catering kitchen around June 2014.

31. Weddings are booked many months in advance, so there was an overlap period during which Perks "finished off" their contracted weddings, and GG gradually took on all new bookings. During this time, Perks were allowed use of the Green Barn kitchen. Perks' final wedding took place in October 2014, and thereafter GG were the sole caterers at Clock Barn.

32. At an early stage in the history of the wedding venue business (it is not clear precisely when) Mrs Butler obtained a premises licence for the sale of alcohol and for music and dancing at Clock Barn. In 2014, Mrs Butler obtained a wedding venue licence (which was dated 21 March 2014), which allowed civil weddings and partnerships to be celebrated at Clock Barn. Both licences are subject to conditions which are considered in more detail below.

33. In May 2014 Mrs Butler was diagnosed with a terminal brain tumour. From mid-2014 her daughter, Eva, became more involved with the wedding business, and would visit Tufton Warren Farm at weekends from her home in London to assist with weddings. At around this time Mrs Butler discussed the future of the business with her family. For various reasons neither Ginny nor Eva's sister wanted to take over the running of the business. Ginny left the business towards the end of 2014, and Eva took over responsibility for the business. In December 2014, Eva was appointed as managing director of the LLP, with responsibility for all of the LLP's activities.

34. Mrs Butler died on 15 May 2015.

35. At the date of Mrs Butler's death, the LLP employed four individuals on a permanent full-time basis: Eva (managing director), Tilly (sales and admin), Justyna (maintenance manager), and Andy (maintenance team member). In addition, two other individuals (Zbyszek and Rafael) were employed as maintenance team members on seasonal contracts.

### **Operation of the wedding business**

36. From around November 2012, due to the expansion of the LLP's wedding team and the deterioration of the relationship with Perks, Mrs Butler introduced the following forms and checklists in order to maintain quality of the business:

(a) The Clock Barn and Perks Event Responsibilities sheet - which set out the demarcation of responsibilities between Clock Barn and Perks;

(b) The Event Checklist - which set out the tasks to be completed by the team member overseeing the event that day (the "venue manager") and the maintenance team (Agatha, Zbyszek, Andy and Justyna) respectively;

(c) The Wedding Day Summary – which provided a complete summary and itinerary of the relevant wedding on that day, including: names, contact numbers, information on the guests with any special needs, number of guests, the set-up of the venue (there were a few different setups of Clock Barn offered to the couple), the suppliers of the day and all relevant timings; and

(d) The Clock Barn Wedding Day Event Pack Front Sheet – this was completed after a wedding and recorded any adverse events that happened on a particular wedding day, the number of vehicles, the regularity of toilet cleaning, etc. This would be completed by the venue manager and filed in the office.

37. The Clock Barn Wedding Day Event Pack comprised the Front Sheet, the Event Checklist, and the Wedding Day Summary. A fresh Event Pack was prepared for each wedding event booked for Clock Barn.

38. Shortly after Ginny joined the LLP in 2012, she prepared a brochure, a copy of which was included in the bundles. The brochure included many pictures of Clock Barn and of some weddings. In addition, the brochure included a list of recommended suppliers (such as florists, photographers, hair and makeup, musicians, discotheques, accommodation, and transport). The brochure also set out some of the restrictions relating to the use of the venue (such as the need for suppliers to have public liability insurance and PAT (electrical safety) certificates and the time by which music and alcohol service must end). Ginny's evidence was that the list of recommended suppliers was the product of significant time spent researching and meeting prospective suppliers. These suppliers would attend open days at Clock Barn during the year.

39. The brochure included the following description of the facilities offered at clock barn:

Licensed for civil wedding and partnership ceremonies for up to 192 guests

Facilities provided for the ceremony  
Private preparation room for the wedding couple  
Pretty garden for drinks reception  
Many photo opportunities both indoors and outdoors  
Up to 192 guests can be seated for dining also suitable for smaller numbers  
Table and chairs are provided  
Dance floor for the evening reception  
Separate room for the quiet area or children's creche

40. In addition, the brochure stated that the Clock Barn team was "more than happy to accommodate your individual ideas wherever possible [...] We are always available to answer any questions." At the back of the brochure were the Company's standard terms and conditions, which were drawn up with the help of CHWV. These are considered in more detail below.

41. A wedding couple would typically be introduced to Clock Barn through the marketing activities of CHWV, through social media channels, or through the LLP's website. CHWV would introduce prospective customers to the business and would arrange a time for them to visit Clock Barn and meet the "wedding team". Almost all prospective customers would visit Clock Barn before making a booking. The wedding team at the start of the business was just Mrs Butler. But the team expanded to include Ginny, Sarah, and Tilly.

42. CHWV would provide the wedding team with some basic information about the prospective customers in advance of the visit – including names, date of the intended wedding, and likely guest numbers. Typically, a number of back-to-back visits would be arranged for a day. On the day of the visits ("showarounds"), Clock Barn would be set up as if for a wedding ceremony or wedding breakfast – lights would be turned on, the barn heated, linen and tea lights would be placed on tables, a dummy cake on a cake table, and background music would be playing. A member of the wedding team would show each prospective wedding couple around the venue, which would take around 45 minutes. During the course of the tour, the couple would sit down with the team member who would talk them through all the aspects of a wedding day, and answer any questions they might have. The couple would be told what is included in the venue fee and how the catering is arranged. At the end of the tour the couple would be asked whether they wanted to make a booking, and any follow-up meetings or visits would be arranged. Subsequent advice might be given on the phone or by email.

43. After the visit, the team would prepare feedback notes, which would be shared with CHWV, and the team would email the customers saying how lovely it was to meet them, and saying that they were welcome to return with family or friends, or ask more questions.

44. CHWV would also follow-up with the prospective customers, sending out booking forms and CHWV's own standard terms and conditions.

45. Often further return visits were organised so that the prospective customers could show their family and friends the venue, and possibly meet suppliers at the venue. Clock Barn would be set up for these visits in the same way as for showarounds. Customers would always be accompanied by members of the LLP's wedding team, who would answer questions and provide advice.

46. It was suggested by Mr Randle to Eva in the course of cross-examination that what customers wanted was the use of Clock Barn and the surrounding grounds for their wedding. Eva's response was that whilst customers wanted the use of the venue, the feedback that they received from customers was that they wanted to know that their wedding would be in safe and



secure hands. Some customers wanted a lot of advice, others did not ask for any. Ginny acknowledged in the course of cross-examination that the LLP team were not wedding planners, and did not book suppliers on behalf of customers.

47. On a booking being made, a deposit would be paid by the customers directly to the Company on behalf of the LLP.

48. Two or three times each year "open days" were organised. Suppliers would be given a stand or table to advertise themselves to customers. These allowed up to 200 prospective customers to see the venue at the same time. From 2014/15 the open days were restructured to be a "venue showcase", and Clock Barn was set up as if an actual wedding was going to take place, and tables would be fully set up by florists and GG with examples of the food which might be supplied on a wedding day, drinks reception, cake, photographers, and musical entertainment. The idea was that prospective customers would be given a realistic interpretation of what their wedding would be like in terms of the setting and atmosphere. All of the LLP's staff would be involved with these days, not only to answer questions from prospective customers, but (for example) to manage car parking and to serve refreshments.

49. After GG took over the catering, food tastings were also arranged. A number of booked wedding couples would be invited to a three or four course meal. Clock Barn would be fully set up to give the impression of a wedding day. The wedding team would be present to meet the couples and answer questions.

50. Once a booking had been made, the wedding team informed Perks, and the wedding couple would then deal directly with Perks as regards their catering requirements and payment for the catering.

51. As regards the provision of alcohol, the customers could decide whether they wanted Perks to provide the alcohol, or whether they wanted to provide it themselves.

52. After GG took over the catering, these arrangements changed, as is discussed below.

53. Included in the hire of Clock Barn was the hire of furniture (including tables and chairs and garden furniture), dance floor, white bunting, fairy lights, tea light candle holders, chalkboard, and a background music system. The music system played background music in the barn, and had one wireless microphone for announcements and speeches – however it was unsuitable for use with a discotheque or by live musicians.

54. In the lead-up to the wedding day, the wedding team would send the customer the Wedding Day Summary form, which would be partially pre-filled on the basis of the information previously provided by the customer. The form included the following information:

- (a) Contact details for the wedding couple and key members of the wedding party (such as best man, ushers, bridesmaids etc).
- (b) Details of the number of guests (adult, children, disabled) for each of the civil ceremony, the reception and wedding breakfast, and additional evening guests.
- (c) How the furniture would be laid out for the civil ceremony, reception, wedding breakfast etc.
- (d) Whether the customers wanted to use the white bunting, tea light holders, fairy lights, and chalkboard.
- (e) Details of all suppliers (such as: toastmaster, photographer, florist, music, transport, creche).

- (f) Details of the car to be used for collection of leftover items (which would be parked overnight at Clock Barn).
- (g) Timings.
- (h) Arrangements for music during the wedding day.
- (i) Any special requests.

55. Once the Wedding Day Summary Form had been completed and returned, the wedding team would contact all the suppliers to provide them with information on location, who to ask for on arrival, and remind them of their need to provide the LLP with copies of PAT and public liability insurance certificates.

56. The Clock Barn and Perks Event Responsibilities sheet set out the respective responsibilities of Perks and Clock Barn for a wedding event. When GG took over as caterer, its contract with the Company included provisions setting out the respective responsibilities of the Company (which was acting on behalf of the LLP) and GG. However, Eva's evidence was that some of the matters allocated under these documents to GG or to Perks were in practice undertaken by the LLP – notwithstanding the documents allocating the responsibilities otherwise. In particular, the LLP's maintenance team undertook the cleaning of Clock Barn, the gardens and the car park before and after events.

57. On the day of the wedding, the maintenance team would start early in the morning. They would:

- (a) Put away any "showaround" items from any preceding customer visits.
- (b) Clean the barn. Undertake leaf blowing outside and mow lawn. Check the car park is tidy.
- (c) Set up tables and chairs in accordance with the customers' chosen configuration, and put out bunting and tea lights if requested by customers. Laying up the tables with linen, cutlery, decorations was the responsibility of the caterers and other suppliers, as were any other decorations.
- (d) Set up garden furniture.
- (e) Unlock doors and gates, turn on lights, put out signage, turn on hot water and (if necessary) heating, and make sure all lightbulbs are functioning.
- (f) Put out a microphone and test the background music system.
- (g) Check coat rail and hangers.
- (h) Put out entrance mats and umbrellas if the weather was wet.
- (i) Write up the chalkboard and set it up at the entrance.

58. The venue manager would liaise with suppliers delivering or working on the day (such as florists, cake supplier, photographer, musicians/discotheque).

59. The team would put out tissues, glasses and a jug of water on the registrar's table, and glasses and a jug of water in the interview room. One of the requirements of the wedding venue licence was that no alcohol could be consumed before or during the wedding ceremony. So, an hour before the ceremony a check would be made to ensure that food or alcohol were not on display in the ceremony space nor in the interview room.

60. Final checks would be made of the venue, including making sure that the various suppliers had not moved anything and that any mess they may have made had been cleared

away. The first check of the toilets would be made, verifying that toilet paper and hand towels were available. Two members of the maintenance staff would act as traffic marshals.

61. The venue manager would welcome the wedding couple when they arrived. She would also greet the registrar, so that he or she knew who the responsible individual was for the purpose of the wedding venue licence (discussed later), that team member would need to be present throughout the wedding ceremony itself.

62. After the wedding ceremony, the maintenance team would "reset" the furniture for the wedding breakfast.

63. During speeches, if the heating was on, it would be turned off. The heating would be turned back on after the speeches had finished and the microphone would be put away.

64. The maintenance team would check the toilets throughout the event, and empty the ashtrays in the garden. Checks would also regularly be made to ensure that fire exits were clear and that guests had not wandered into any non-public areas. The venue manager would also check that sound limits were observed by the disco or musicians.

65. At dusk the external lights would be turned on, and the garden lanterns would be lit. Any garden games would be cleared away.

66. At the end of the evening, the venue manager would check that last orders at the bar had been announced, and that music and service of alcohol had stopped by 11:30 to comply with the premises licence. The team would guide guests to their cars and other transport (such as coaches to hotels), and marshal traffic off the site. Service providers were responsible for clearing up their own equipment. The caterer would stay to clear up waste and rubbish from the kitchen and bar, catering debris in the garden, as well as clearing any bottles or glasses.

67. Finally, the venue manager would close down the site – locking all doors and gates, turning off the hot water and heating, and turning off the lights.

68. On the following morning, the maintenance team would clean Clock Barn and the garden ready for the next event. If there was a wedding on the following day, the team would need to start work at 5:00am. In addition, they would undertake whatever maintenance was necessary – such as touching up paintwork, replacing bulbs and batteries as needed, spot cleaning textiles, repairing breakages and so on.

69. After the event, the wedding team would send a congratulatory message to the customers, and ask them to leave a review. They would also be asked for feedback, and for permission to use photographs on social media and other marketing materials.

70. Other maintenance work was undertaken on a regular basis between bookings, such as gardening, oiling the dance floor, and window cleaning.

71. After the appointment of GG as caterers in 2013, GG took over many of the functions previously carried out by the wedding team at the LLP. Coincidentally this occurred around the time of Mrs Butler's terminal cancer diagnosis, and she was no longer able to continue to work at the same pace as before. The LLP's team continued to undertake the showarounds and revisits of prospective customers, and continued to provide advice on décor and set up of Clock Barn. Although the LLP team were on site on the wedding day itself, GG gradually took over event management responsibilities on the wedding days. GG would have a "front of house director" who would be responsible for running the event, meet the couple, run the food and drink service, and undertake much of the event management role that the LLP previously fulfilled. GG were in essence providing the venue manager on the day of the event. GG also took the lead on collecting the information about the wedding day from customers, and passed through to the LLP team only the information that was necessary to set up Clock Barn on the

day. This was reflected in the much shorter and more limited wedding day summary form used by the LLP after the appointment of GG. GG also took on the role of obtaining the PAT and insurance certificates from suppliers, and passing these details through to the LLP in advance of an event.

72. The assumption by GG of much of the responsibility for the management of the wedding day itself is reflected in the "Clock Barn Welcome Guide" which says the following:

The Wedding Office

The Wedding Office at Country House Wedding Venues handles our diary and bookings. To check availability and confirm your wedding date, please contact the Wedding Office:

01905 670039

clockbarn@wedding-venues.co.uk

VENUE ENQUIRIES

Helen, Ginny or Sarah at Clock Barn:

07584 XXXXXX

weddings@clockbarn-weddings.co.uk

THE GALLOPING GOURMET EVENTS TEAM

Please address any menu, set-up or wedding day queries to the Events Team from Galloping Gourmet:

020 8916 2146 Option 2

clockbarn@gallopinggourmet.co.uk

Office hours 8:00 am – 4:00pm

Monday, Wednesday, Thursday and Friday

REGISTRAR

The law stipulates that couples must book their own wedding ceremony with the relevant district registrar. Clock Barn falls within the Hampshire District. Please bear in mind that a booking with Clock Barn does not imply a booking with the registrar.

Hampshire Registry Office

01252 317152

LOCAL CHURCHES

For more information on holding your wedding or blessing ceremony in a local church please visit [www.achurchnearyou.com](http://www.achurchnearyou.com) or contact the Wedding Office.

73. Eva's evidence confirmed that the role of the LLP team decreased significantly after the appointment of GG – even though this was not what they wanted. But the LLP team continued to work directly with prospective customers at the showarounds and any subsequent visits.

## **Characteristics of the Wedding Business**

74. During the course of the evidence and submissions of the parties, emphasis was placed on particular aspects of the LLP's wedding business as being factors demonstrating its investment, or non-investment, nature.

### ***Personal service***

75. Great emphasis was placed by the Appellants on the level of personal service and advice given by Mrs Butler and the LLP's wedding team to customers, and the proactive participation of the wedding team on and before a wedding day to ensure the smooth operation of the day.

76. During the showarounds, the LLP's team would often advise the customers about what works well at a wedding, such as for example decoration, layout of tables, and the running of the day. They would be shown an album of photographs (this later took the form of an electronic album on an iPad) to give them ideas of how the venue could look – and which suppliers they might use for a particular style. Mrs Butler maintained relationships with several businesses, and kept a recommended supplier list to share with prospective couples. This list was included in the brochure.

77. If customers were asked about likely costs, the team would give them "ball park" figures for the various items, but would emphasise that the prices would need to be agreed separately by them with each individual supplier. It was the LLP's policy not to get involved with suppliers' pricings.

78. Once a wedding had been booked, a member of the LLP wedding team would contact all of the chosen suppliers to request their PAT and insurance certificates, as well as to tell them about Clock Barn's rules and regulations. The team would liaise with suppliers to ensure that supplies (such as alcohol and the cake) were delivered in time for the wedding and were properly stored. Photographers and discos would often want to visit the venue in advance in order to scope out the best places to set up their equipment. The LLP team would advise on timings for setting up, and how this could best be done without disrupting other aspects of the day.

79. If a wedding couple wanted to bring anything electrical of their own on the site, they would need to have it PAT tested, and if it was unsuitable, the team would have to turn down the couple's request and suggest a suitable alternative.

80. On the wedding day itself, the venue manager would be in attendance from before the event started, until after it finished. The maintenance team would be responsible for setting up tables and chairs inside Clock Barn (and resetting them for the wedding breakfast after the wedding ceremony had finished) (however the maintenance team did not set the tables with linen, cutlery, glasses, decorations etc – this was the responsibility of the catering team, the florists and other suppliers). They would also be responsible for setting up (and clearing away) the bunting, the background music system, the tea lights, the outdoor furniture and garden games. The maintenance team would ensure that Clock Barn and the surrounding grounds were clean and tidy and in good repair first thing in the morning on the day of a wedding. They would undertake traffic marshalling when guests and suppliers arrived and left. They were also responsible for cleaning the toilets during a wedding, and clearing ashtrays on the outdoor tables.

### ***Licences***

81. There are two licences relating to the LLP's business.

82. The first licence is the wedding venue licence, which licensed the use of Clock Barn for civil weddings and civil partnership ceremonies. The second licence is a premises licence. This allowed the sale of alcohol, the provision of live or recorded music and dancing.

### *Wedding venue licence*

83. The wedding venue licence was granted with effect from 23 March 2014. Mrs Butler was designated as the “responsible person” under the licence. As the responsible person, she was required to be present "on site" at every wedding from one hour before the ceremony until after it had concluded. The licence allowed for the appointment of appropriately qualified deputies to act in Mrs Butler's place. It is clear from Ginny's witness statement that she would act as a responsible person and there is a reference in minutes of a meeting of 30 July 2014 to Sarah Huckle being added to the list of "Responsible People", and a reference in minutes of a meeting of 19 September 2014 for the guidelines relating to responsible person being sent to Cat Jacobs. Included in the document bundles was a checklist signed by Ginny, Sarah, Eva, and Tilly in November 2014, and by K Lawson, S Huckle and C Jacobs in December 2014, under which they acknowledged their duties as "responsible persons" for the purposes of the wedding venue licence. From other correspondence it appears, and I find, that K Lawson, S Huckle and C Jacobs worked for GG. I find that the duties of being the responsible person at a wedding ceremony were being undertaken by GG individuals from 30 July 2014 (and possibly earlier).

84. The licence conditions required the responsible person, to locate the groom (or first partner) and bring him or her to a room to be interviewed by the registrars. Once the interview had concluded, she had to take the groom to the ceremony room, and then take the bride (or second partner) to be interviewed.

85. After the bride/second partner had been interviewed, the responsible person was required to wait with that person whilst the registrars made their way to the ceremony room. She then had to alert the registrar officiating at the ceremony to when the bride/second partner was ready to enter.

86. If the number of guests warranted it, the licence required the responsible person to provide ushers to control the guests. The ushers were to be under the responsible person's supervision, subject to the overall directions of the registrars. The responsible person and her team were required to be on hand at all times before and during the ceremony to solve any problems that might arise.

87. The terms of the licence required the responsible person to ensure that the couple contacted Hampshire registration service if they had any questions about the ceremony (such as readings, music, and extra words), any unusual requests (such as having an animal deliver the rings, sand ceremonies, candle lighting, breaking glasses, or ring warming), any unusual decorations (such as structures or statues), garden ceremonies, or any other "registration matters". The conditions go on to state that because the law governing civil marriage is complex, it is important that "venues do not attempt to answer any questions about registration matters, including the content of the ceremony."

### *Premises licence*

88. A premises licence was obtained at an early stage in the life of the wedding business. The premises licence authorised Clock Barn to be used for the performance of live and recorded music, for dance, and for the sale of alcohol. The licenced hours for music were from 11:00 to midnight, for dance were from 18:00 to midnight, and for the sale of alcohol from 11:00 to midnight (with a requirement that the last sale to be at 23:30). The licence conditions required regular electrical safety assessments and fire certificates. Staff were required to be trained on the serving of alcohol and in spotting unruly behaviour.

89. Mrs Butler was the "designated premises supervisor". The licence did not require her to be present at Clock Barn whilst licensed activities were undertaken (even though she was required to hold a "personal licence"). Instead, the licence required that every supply of alcohol must be made or authorised by a person who holds a "personal licence". Whoever was

undertaking the catering would provide the personal licence holder. This would be someone from Perks, and then, when GG took over the catering, one of the GG team would hold a personal licence and take on the responsibility for supervising the sale of alcohol. Eva obtained a personal licence in 2014 when she joined the business full-time.

### ***Clock Barn building and its grounds***

90. In addition to the Clock Barn building, the LLP also provided customers with the use of its tables and chairs, its background music system, white bunting, tea light holders, chalkboard and stand, outdoor furniture (such as outdoor tables, chairs, and umbrellas), garden games (such as croquet).

91. Fairy lights were permanently installed in Clock Barn.

92. During the course of an event, the maintenance team would arrange for outdoor lanterns to be lit at dusk, and for the lighting in the barn to be dimmed.

93. As part of the improvements made between 2005 and 2008, shelter belts of trees and hedgerows were planted around the boundaries and along the new access road. A garden was laid out to one side of Clock Barn, which was designed by Mrs Butler. There are photographs of the garden, which shows that part is gravelled, and the rest is laid to lawn. There are shrubs planted around the perimeter, with a couple of benches set in arbours amongst the shrubs. A number of large pots planted with, what appear to be, Buxus balls are set around the gravelled area. Part of the garden was set aside for children's play and garden games (such as croquet).

94. Fields, with views of the surrounding countryside, form part of the wider grounds and these are used for photographs of the wedding couple.

### ***Maintenance***

95. Clock Barn and its grounds are maintained to a high standard. In addition to the setting up (and tidying away) the furniture, and general cleaning, the maintenance team also undertook other cleaning, repairs and maintenance. This included spot cleaning fabrics, maintaining and oiling the dance floor, and gardening.

96. Particular attention needed to be paid to the dance floor, and part of the work of the venue manager was to ensure that DJs and musicians did not damage the floor with their equipment.

97. In relation to the garden in addition to the usual maintenance tasks of weeding and mowing the lawn, often things were left behind and needed to be stored, and confetti, cigarette butts, and litter would need to be cleared away. Outdoor furniture would need to be set up and tidied away after a wedding.

98. In the event of a power cut, there was a standby generator which the maintenance team could start.

99. The heating system involved blowing warm air through vents in the barn walls. From time to time problems arose, which Mrs Butler resolved with the help of the maintenance team.

### ***Marketing and sales***

100. Most of the marketing and sales work was undertaken by CHWV. However, the LLP maintained a social media presence, which would be updated with photographs and posts following every wedding and open day. Copies of letters from satisfied customers would also be uploaded (in all cases with the relevant consents).

101. A wedding brochure was prepared by Ginny.

### ***Contracts and arrangements***

102. There are a number of contracts and non-contractual arrangements in place.

103. Some of the activities of the LLP are conducted on its behalf by the Company. In particular:

- (a) Its main role was as collection agent for the LLP. It received payments from clients (deposits and balance payments) and accounted to the LLP for those monies.
- (b) It also contracted with clients, obtained licenses, and entered into certain contracts with third parties, including Galloping Gourmet and CHWV (though in terms of other contractual arrangements, the LLP employed staff directly).

#### *Customers*

104. Customers of the LLP enter into two contracts. The first agreement is subject to the terms and conditions set out in CHWV's booking form, and the second agreement is subject to the terms set out in the back of the LLP's brochure.

105. The relevant provisions of the CHWV terms with customers are as follows:

##### 1. Our Services

1.1 Once we have located a Venue for you we shall, subject to availability, secure a Booking on your behalf but you must appreciate that the Booking will be on the basis of a direct contract between you and the Venue. The Venue will refund the deposit should the Venue cancel your arrangements.

##### 2. Booking

2.1 Upon our locating a Venue for you with which you are satisfied we will ask you to complete a Booking Form. This must be completed and returned to us together with the deposit and we shall use reasonable endeavours subject to availability to secure a Booking for you and will confirm either by e-mail or post that we have done so or that we have been unable to do so. We recommend that you do not formalise other wedding-related arrangements until you have received confirmation from us.

[...]

##### 6. Additional Services/Facilities

6.1 The deposit and balance payments will be applied solely towards the cost of hiring the Venue and include no other services or facilities. Should you require any extra facilities at the Venue other than those which the Venue has indicated it will provide, you must discuss this direct with the Venue. We accept no responsibility whatsoever for the standards of facilities at the Venue.

[...]

##### 8. In-house/Exclusive Contractors

8.1 You are responsible for making yourself aware of any requirement to contract with exclusive caterers, operators at the venue, and their terms and conditions of business, including any minimum charges.

[...]

106. The relevant provisions of the LLP's terms are as follows:

##### 1. THE AGREEMENT

1.1 - Clock Barn Ltd ("the Estate") agrees subject to the terms set out herein, to make available the Premises (as defined in clause 3 below) to the Hirer ("the Hirer") for the Event specified on the Booking Form ("the Event").

1.2 - By signing the Booking Form the Hirer:



- a) Accepts these Conditions;
- b) Agrees that no booking is binding upon the Estate until it has received a signed copy of this Agreement from the Hirer together with the non-refundable Facility Fee Deposit and the Estate has accepted the booking in writing;
- c) Agrees that no variation of this Agreement is binding on the Estate unless in writing and signed on behalf of it.

## 2. DEPOSIT AND PAYMENT

2.1 - The non-refundable Facility Fee Deposit is due with the booking form. The balance of the Facility Fee is due 8 weeks before the Event Date.

2.2 - If the signed copy of this Agreement is submitted within 12 weeks before the Event Date it must be accompanied by payment of the Facility Fee in full.

2.3 - All payments must be made in sterling by BACS, bank transfer or cheque.

## 3. THE PREMISES

The areas to which the Hirer and his guests, contractors and his or their employees are permitted for the duration of the Event to have access (“the Premises”) comprise the following:

3.1 - Clock Barn, the lavatories and kitchen.

3.2 - The garden to the west of the Clock Barn.

3.3 - The small barn room to the north of the Clock Barn.

## 4. THE NATURE AND PURPOSE OF THE EVENT

4.1 - The Hirer warrants that at the time of completing the Booking Form, the Hirer will provide accurate and complete information to the Estate as to the nature and purpose of the Event, including drawing to the attention of the Estate any potential feature or characteristic of the Event that might pose a special risk of any kind to the Premises.

4.2 - The Hirer undertakes that the Hirer, (including for this purpose any person or organisation on whose behalf the Hirer may be hiring the Premises) and any visitors to the Premises during the Event will only use the Premises for the nature and purposes identified on the Booking Form.

4.3 - The Hirer (including his guests, contractors and his or their employees) may not without the written consent of the Estate

4.3.1 - Exhibit for sale goods and services or charge or sell tickets at the door.

4.3.2 - Use the name of Clock Barn or its logo or details in any advertising or publicity.

## 5. CATERING

5.1 - If the Hirer requires catering at the Event, the Hirer may only engage a caterer approved in writing by the Estate (“the Caterer”).

5.2 - The Hirer undertakes to ensure that the Caterer complies fully with the rules and any other requirements set out in these Conditions.

5.3 - The Estate makes no representation and gives no warranty as to the quality or extent of the services provided by the Caterer or the suitability of the Caterer for the Hirer of the Event and is not an agent for the caterer.

## 6. DURATION OF THE EVENT

6.1 - The Hirer and any visitors to the Event may have access to the Premises only between the hours of 10.00 am and 12.00 midnight on the day of the event.

6.2 - The finishing times of 11.30 pm for dance music and alcohol service, and 12 midnight for the Event are strict and of the essence. Accordingly the Hirer undertakes to ensure that all visitors to the Event leave by 12.00 midnight.

## 7. RISK OF DAMAGE TO THE PREMISES

7.1 - The Hirer will take all reasonable care to ensure that the Premises (including but not limited to all the plants therein) are not damaged in any way during or as a result of the Event.

7.2 - No smoking is permitted in any part the Premises other than in any garden area included in the hire. The Hirer will ensure that visitors to the Event (including the Caterer and any other contractors) do not smoke in any part of the Premises other than such garden area.

7.3 - Without prejudice to the Hirer's obligation to comply with the rules and to ensure that the Caterer does likewise, the Hirer will ensure that the Premises are left in the same condition at the end of an Event as before an Event.

[...]

107. In addition to the terms set out in the LLP's brochure, a separate Venue Location Fees sheet sets out what is included in the scope of the LLP's facility fee (and a similar list is included in a sheet of FAQs):

Exclusive hire of the Barn from 10am – 11:30pm	Cake table
Exclusive hire of the Clock Barn garden	Garden furniture
Amazing locations for photos (adjacent field and driveway)	Garden lanterns
Facility for civil wedding	On-site car parking and coach park
Chairs and tables for up to 192 guests	Cloak rails and hangers
Dancefloor	Toilets
Complimentary Wi-Fi	Heating system
Atmospheric lighting including fairy lights	Complimentary white bunting
Wireless microphone for speeches	Complimentary tea light holders
Background music system	Highchairs (max 4)
Private Bridal Room	DVD player in the Stable Room
Full working kitchen	Free access for set up the day before (subject to availability)
Bar area	Easel board and stand

Sofas and comfy seats in the  
Stable Room

Children's cushions in the  
Stable Room

108. Although clause 2.1 of CHWV terms refers to the deposit being paid to CHWV, in practice all deposits and balance payments were made directly to the Company.

109. The example of an invoice issued by the Company to customers provided in the bundle gives as a description of the service offered as "Use of Clock Barn for a wedding on [date]". The Company ledger has a similar description: "Use of Clock Barn for wed".

#### *Caterers*

110. Customers contract directly with the catering firm (Perks or GG) for the provisions of catering services.

111. In addition to the customers' contracts with the caterer, there are arrangements in place between the LLP and the caterers setting out the basis of their relationship and how a wedding is managed on the day.

112. There was never any formal agreement in place between the LLP and Perks during the time that they were the sole suppliers of catering services to customers of the LLP. There was an understanding that Perks would pay a commission to CHWV of £230 (ex VAT) for each booking made at Clock Barn – and this arrangement is footnoted in the LLP's brochure.

113. There was also the Clock Barn and Perks Event Responsibilities sheet which set out the respective responsibilities of the LLP and Perks for events:

#### Clock Barn

- Set up the furniture for each event
- Remove any alcohol from the Bridal room one hour before the civil ceremony
- Turn kitchen gas on/off when required
- Turn the hot water on/ off when required
- Clean the Barn thoroughly after each event
- Reset the Main Barn banqueting furniture after a ceremony ready for Perks to lay up
- Ensure that last bar orders is announced by the DJ
- Lock the microphone away after speeches
- Liaise with the Band/ DJ to ensure they set up at the correct time
- Monitor sound levels throughout the event
- Deal with any lost property
- Ensure that the toilets are checked and stocked throughout the event
- Manage the heating temperature within the Barn
- Carry out a fire briefing with the catering manager before each event
- Fully lock up the Barn at the end of each event
- Greet the client on arrival and introduce the catering manager
- Ensure that parking is only in the car parks except for loading/unloading
- Say goodnight to client(s) and guide them to their taxi/coach

- Organise taxi pick ups
- Set up and take down the garden furniture for each event

#### Perks Catering

- Set up of all of the dining tables (including the client's favours, namecards etc.)
- Liaise with the client with regards to receiving any pre wedding deliveries (alcohol, favours and table decorations).
- Provide a qualified personal licence holder for each event
- Ensure all licensing conditions behind the Bar are met
- Ensure that the Bar is shut promptly at 11:30pm
- Inform the venue manager when the Band/ DJ arrive to set up
- Ensure a qualified first aider is on site throughout each event
- Provide their own first aid kit, fire blanket
- To ensure that ALL accidents are reported to the Venue Manager and logged in the CB accident book
- Ensure that a jug of water and glasses are set up within the Bridal Room and another on the Ceremony Table
- Set up the wedding cake
- Ensure that all kitchen and Bar rubbish/ waste and recycling is removed at the end of each event and put in the correct bins
- Ensure that the kitchen is left clean and tidy at the end of each event
- Manage the lock box/ car procedure at the end of each event, ensuring that all of the client's belongings are placed in the correct location
- Collect any glasses/ bottles from guests as they leave
- Clear and clean up outside immediately after a BBQ & Hog Roast
- Clear all catering debris from the garden area

114. When Perks are replaced by GG as the sole caterers, the Company entered into an agreement with GG which set out the terms on which GG were given sole rights to provide catering services at Clock Barn. The agreement is dated 5 June 2013 and appoints GG as the sole providers of catering and the other specified services at Clock Barn for a period ending on 24 June 2024. The relevant provisions of the agreement are as follows:

#### **4. GG's obligations**

GG will:

- 4.1. provide the Services for all weddings and events taking place at the Venue as set out in Schedule 1 - Services.
- 4.2. maintain such standards of service as reasonably required by [The Company ("CB")].
- 4.3. meet all of the required health and safety regulations and requirements and all other applicable statutory codes, standards and practises associated with providing the Services.

4.4. liaise with CB in order to review the provision of the Services and where appropriate to make reasonable adjustments to the Services in order to meet the reasonable needs of CB.

4.5. not conduct business in any venue within ten miles of the Venue which might damage CB's business

4.6. not without the consent of CB in writing during the currency of this Agreement, either of its own accord or in connection with or on behalf of any other person, firm or company, solicit or entice away from CB any person who at the date of such termination is employed by CB whether or not any such person would commit a breach of his or her contract of employment by reason of leaving such employment.

4.7. make good any damage caused to the Venue by GG to CB's reasonable satisfaction and/or pay full compensation to CB in respect of any damage caused to the Venue that is not made good and any loss caused to the Venue due to any damage by GG in the course of providing the Services and provide proof of insurance to cover such damage caused with CB's interest noted therein.

4.8. Provide public liability insurance of £10m in any one instance.

## **5. CB's obligations**

CB will:

5.1. not carry on or permit or suffer any person or entity other than GG to carry on any catering or bar business or provide the Services for any events taking place at the Venue.

5.2. provide access to the areas of the Venue as may be reasonably required by GG for fulfilment of the Services.

5.3. be responsible for those areas set out in Schedule 2 - The Venue Owner Responsibilities.

5.4. maintain the full premises licence and compliance with and responsibility for fire and other health and safety regulations.

5.5. continue to run the Venue as a wedding venue for at least the period of this Agreement and use reasonable efforts to maximise the number of wedding bookings.

5.6. notify GG in writing of any failure by GG to meet its obligations as set out in paragraph 4 and (if remediable) allow GG reasonable time, up to a maximum of 60 days, to remedy any such failures.

5.7. will not conduct business within a ten mile radius of the Venue which damages in any way GG's business.

5.8. not without the consent of GG in writing during the currency of this Agreement either of its own accord or in connection with or on behalf of any other person, firm or company, solicit or entice away from GO any person who at the date of such termination is employed by GO whether or not any such person would commit a breach of his or her contract of employment by reason of leaving such employment.

[...]

## **Schedule 1 - Services**

GG will manage and provide the following Services at the Venue:

1. entering into agreements directly with Clients for the provision of food beverage and related service
2. catering and bar sales and services for all events taking place at the Venue
3. provision of all portable or removable catering and bar equipment, excluding fixtures and fittings and furniture
4. provision of all table cloths, napkins, crockery, cutlery and glassware
5. management and running of any bar facilities and management of cellar services
6. communication and consultation with clients to establish menus, timings, numbers and other catering and event requirements, including dealing with all catering enquiries, whether in person, by email or by telephone
7. employment of the necessary, permanent event management staff based at the Venue required to fulfil the Services
8. staffing of all events including waiting staff, bar staff, front of house director, chefs and kitchen staff
9. setting up chairs and tables for each catered event, as required and clearing chairs and tables and any left over items after each catered event into the designated storage areas in order to facilitate access for cleaners
10. laying tables before events with cloths, napkins, crockery, glassware, cutlery and any table favours as directed by clients along with any other items which may need setting out or arranging in the Venue.
11. payment for the following expenses related to the Services (either directly or, where services are shared, on a proportionate basis):
  - 11.1. heat, light, power, telephone and broadband used in the kitchen, bar and agreed office space including business rates and any other directly attributable charges which may be payable upon presentation of an invoice for the above from the Venue Owner.
  - 11.2. all costs directly incurred by GG in the course of providing the Services including the cost of food, drink and bar supply purchases, table linen, cutlery, crockery, glassware, waiting staff, catering staff, bar staff.
12. cleaning and maintenance of the kitchen, bar and office areas occupied by GO
13. cleaning and maintenance of the extraction systems and gas ovens in the kitchen where appropriate
14. organisation of wedding open days and wedding promotional events, if any, at the Venue in conjunction with CB
15. providing a maximum of 4 at-cost events for CB each year
16. management (but not payment of) the post-event venue cleaning where necessary
17. Health & Safety compliance at the Venue including fire risks, assessments and compliance and food and environmental health licences provided that GG's responsibilities will be limited to those areas of the Venue in which it provides the Services and that CB will be a responsible person as defined in the Regulatory Reform (Fire Safety) Order 2005 and will be responsible for maintaining any fire safety systems and exits at the Venue.

## **Schedule 2 - The Venue Owner Responsibilities**

CB will be responsible for the management and running of the wedding venue and payment of the related expenses, including but not limited to the following:

1. provision of all required chairs and tables in the Venue
2. regular inspection of the venue, grounds and facilities for damage and wear and tear, including decoration, structure, services, electrical systems, lighting, driveways, access ways
3. any maintenance, repairs or improvements reasonably required to maintain the Venue in good condition
4. payment of post-event venue cleaning for all areas, with the exception of those kitchen, bar and office areas used by GG for the provision of the Services
5. provision cleaning products and equipment as required by any venue cleaners including lavatory consumables
6. health and safety compliance at the Venue, including fire risk assessments and compliance and premises licence
7. provision of a suitable kitchen space to GG with sealed, washable floors and walls, gas, electricity, water and waste services as required to install the necessary catering equipment (such as shall be indicated on a service plan provided by GG) and a suitable ventilation/extraction system that meets all applicable regulations (such a system to be cleaned and maintained by GG)

115. Although the schedules to the agreement provided that GG would undertake post-event cleaning at the cost of the Company, and that GG would set up tables and chairs, in fact the LLP maintenance team continued to undertake this work.

116. In addition, the LLP leased the Green Barn to GG until 24 June 2024 under a lease dated 1 June 2014 at an annual rent of £18,500 (which is index linked). The Green Barn was close to Clock Barn, and was fitted out as a commercial kitchen by and at the expense of GG. GG allowed Perks the use of the Green Barn kitchen during the overlap period.

### *CHWV*

117. When CHWV were first engaged there was no formal agreement put in place with them, other than an arrangement that Perks would pay them a commission of £230 (plus VAT) for each event taking place at Clock Barn.

118. When GG were engaged as sole caterers in the place of Perks, the Company (acting on behalf of the LLP) also entered into an agreement with CHWV for the provision of marketing and management services. The agreement is dated 5 June 2013 and lasts until 24 June 2024. Instead of the caterer (now GG) paying commission to CHWV, the agreement provides that commission will be paid by the Company. The commission is set at 5% (plus VAT) of the total fee paid by a customer for the hire of Clock Barn.

119. The relevant provisions of the agreement with CHWV are as follows:

#### **4. CHWV's obligations**

CHWV will:

- 4.1 Advise CB on all aspects of the marketing and management of the Venue including the services specified in this clause 4 ("the Marketing Services").

4.2 advertise the Venue for weddings and carry out administration of all the wedding viewings and bookings at the Venue.

4.3 promote the Venue through its selected marketing channels that may change from time to time such as the [www.wedding-venue.co.uk](http://www.wedding-venue.co.uk) web site, telephone enquiry centre, online and offline marketing, social media and email and through its database of potential Clients.

4.4 build, host, administrate, and maintain a website for marketing wedding events at the Venue. URL owned by CB but used by CHWV. Such use does not give CB or CHWV any rights over the other's name under the laws of trademark or any other intellectual property laws nor does either CB or CHWV have the right to apply for registration of any of the other trademarks, domain names or designs.

4.6 promptly deal with all enquiries from Clients or potential Clients prior to their weddings relating to booking the venue either by telephone, email or internet and supply the information required by clients to make bookings.

4.7 periodically review and discuss with CB a list of prices for the hire of the Venue.

4.8 collect the agreed Venue fee deposits and balances from Clients on behalf of CB and maintain all appropriate records and regularly inform CB of such fee deposits and balances and forward all such monies received by CHWV to CB promptly.

4.9 use reasonable endeavours to maximise the number of wedding bookings at the Venue through the promotion of the Venue as set out in clause 4.3 with a minimum of fifty weddings per annum from 2015.

4.10 advise CB on the on-going operation and maintenance of the Venue in particular with regards to maximising the number of bookings resulting from enquiries from potential clients.

4.11 warrant to CB

i. to perform within the parameters of any Service Level Agreement in place between the parties.

ii. to conduct all business with reasonable care and skill in connexion with the venue.

4.12 CHWV not to conduct any business, excluding the marketing of any venues as a listing, within a 10 mile radius of the Venue which might damage CB's business.

## **5. CB's obligations**

CB will:

5.1 refer any inquiries about weddings at the venue from whatever source to see edge WV.

5.2 not to conduct any business within a 10 mile radius of the venue which might damage CHWV business.

5.3 continue to run the Venue as a wedding venue for at least the period of this Agreement.

5.4 use reasonable endeavours to maximise the number of wedding bookings at the Venue.



5.5 upon receipt of the deposit as cleared funds from a Client pay to CHWV  
5% plus VAT of the total fee payable by a Client for the hire of the venue.

120. Although the agreement with CHWV refers to clients paying CHWV – and CHWV then making a corresponding payment to the Company, in fact customers paid the venue fee (deposit and balance payments) directly to the Company.

## **THE LAW**

### **Statutory provisions**

121. The provisions governing BPR are set out in s104 IHTA, which is as follows:

#### **104.The relief.**

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

(a) in the case of property falling within section 105(1)(a) or (b) or (bb) below by 100 per cent;

(b) in the case of other relevant business property, by 50 per cent ;

but subject to the following provisions of this Chapter.

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

122. "Relevant business property" is defined in s105, the relevant provisions of which are as follows:

#### **105.Relevant business property.**

(1) Subject to the following provisions of this section [...] in this Chapter "relevant business property" means, in relation to any transfer of value, -

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

[...]

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

123. Section 106 IHTA provides that property is not relevant business property if it is not owned by the transferor throughout a period of two years immediately prior to the transfer of value.

124. It is not disputed that:

(1) A business or an interest in a business held for two years before the transfer (in this case, Mrs Butler's death) is relevant business property;

(2) In determining the value liable to IHT, the value transferred by a transfer attributable to relevant business property will be reduced by 100%;

(3) However, a business or an interest in a business will be excluded from being relevant business property if the business consists wholly or mainly of "making or holding investments" – in other words the Investment Exclusion to which reference is made at [9] above.

125. It is not disputed that the fact that some of the activities carried on by the LLP were carried out by Company on its behalf, has no impact on the claim for BPR. The Appellants' primary case is that the Company was acting as agent on behalf of and at the direction of the LLP. In any event the Company was a fiduciary (see *McCall v HMRC* (2009) TC 990). I find that the activities of the Company therefore fall to be attributed to the LLP for BPR purposes.

### Case law

126. The legal principles applicable to the construction of s105(3) have been considered twice by the Courts of Appeal in England and Northern Ireland. The first was in *George v IRC* [2003] EWCA Civ 1763, and the second in *McCall and others v HMRC* [2009] NICA 12. There are three decisions of the Upper Tribunal that are relevant to the construction of s105(3): *HMRC v Personal representatives of Pawson* [2013] UKUT 50 (TCC), *Brander v HMRC* [2010] UKUT 300 (TCC) and *HMRC v Personal representatives of Vigne* [2018] UKUT 357 (TCC). I was also referred to one decision of the High Court, an income tax case, *Webb v Conelee Properties* [1982] STC 913, and a number of first-instance decisions of the Special Commissioners and the FTT, namely *Martin v IRC* [1995] STC (SCD) 5, *Trustees of David Zetland Settlement v HMRC* [2013] UKFTT 284 (TC), *Green v HMRC* [2015] UKFTT 33 (TC), *Executors of Marjorie Ross v HMRC* [2017] UKFTT 507 (TC), *Personal representatives of Graham v HMRC* [2018] UKFTT 306 (TC), and *Executors of Cox v HMRC* [2020] UKFTT 442 (TC).

127. The FTT in *Graham* helpfully summarised at [56] the principles to be derived from *George* and *McCall* as regards the construction of s105(3) as follows:

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

(7) where there is a composite business, it is necessary to look at it in the round (*George* [13]);

(8) where there is a composite business, the statutory words must be applied as a whole to all the activities: one is not required to open an investment "bag" into which all the activities linked to an investment are placed (because they are ancillary to the investment) and weigh that against the remainder; instead one looks at the business as a whole (*George* [60]).

128. As regards the decisions of the Upper Tribunal, I derive the following principles as regards the construction of s105(3):

(1) The owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity. Such an investment may be actively managed without losing its essential character as an investment (*Pawson* [42]);

(2) Consideration needs to be given to activities of the business over a sufficient period (*Brander* [73(iv)]). In *Martin* the period considered by the Special Commissioner was three years, reflecting the term of the lettings, and in *Zetland* the FTT considered a period of five years (which was the period agreed by the parties);

(3) The test is not the degree or level of activity, but rather the nature of the activities that are carried out (*Pawson* [48]);

(4) Activities that naturally fall on the "investment" side include finding occupants, making the necessary arrangements with them, collecting rent, undertaking repairs, redecoration, and improvements, maintenance of the garden and grounds and keeping them tidy, insurance (*Pawson* [43]);

(5) The need to constantly find new occupants falls on the investment side of the line (*Pawson* [49]);

(6) Additional services such as the provision of a cleaner/caretaker, space heating and hot water, television and telephone, replenishment of cleaning materials, welcome pack, and laundry services are not to be regarded as part of the maintenance of a property as an investment. But in any normal case, an "actively managed" property letting business will fall within the Investment Exclusion because of the "mainly" condition. (*Pawson* [45]);

(7) The characterisation of services is unaffected by whether a separate charge is made for them (*Pawson* 45]);

(8) No single factor is conclusive as the Tribunal needs to look at the business in the round. In looking at the question in the round it is not appropriate in every case to compartmentalise the business and attribute management and maintenance activity either to investment or to non-investment as an ancillary activity (*Brander* [73(v) and (vii)]);

(9) There is no "bright line" between businesses that qualify for BPR and those that do not (*Vigne* [37]);

(10) In *Vigne*, the Upper Tribunal cited the observation made by Briggs LJ in refusing permission to appeal to the Court of Appeal in the *Pawson* case. Briggs LJ said that:

[...] there is no presumption that requires to be rebutted, that a business, which consists of the exploitation of land for profit, is an investment business. Of course it must be looked at in the round.

However, I agree with the comments made by Judge Hellier in *Graham* at [71] that the criticism in *Vigne* made of Henderson J's decision in *Pawson* is misplaced:

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

129. In *Martin* Special Commissioner Oliver QC decided that certain core activities were all "part and parcel of the business of making or holding investments." Consequently, the Investment Exclusion was engaged. The activities identified were:

- (1) activities directed at making investments which is to say finding tenants, negotiating rent, granting of leases and dealings with surrenders and assignments;
- (2) compliance activity which the landlord will have to carry out to comply with the terms of the lease including external repairs; and
- (3) activities that are "incidents" of the business of holding investments which includes management activities such as dealing with complaints, advertising and interviewing prospective tenant.

The Special Commissioner held that as the activities were more connected to the lease and related to the property ownership, they were in the nature of investment activity. However, this approach was criticised by Carnwath LJ (as he then was) in *George* at [27] in relation to any additional services provided, which he held should be characterised in terms of the nature and purpose of the activity, rather than whether they are provided under the terms of the lease.

130. Many of the decisions to which I was referred are highly fact-specific, but they do give a flavour of the kind of activities which fall on the investment and non-investment side of the Investment Exclusion line. Many relate to holiday accommodation, but none are concerned with event or wedding venues.

131. *Pawson* concerned holiday cottages. I refer to the services provided to occupants at [120 (4) to (6)] above. The Upper Tribunal, allowing HMRC's appeal, held that the Investment Exclusion applied.

132. *Brandon* concerned a Scottish estate. The FTT found that the preponderance of the activities of the business were trading and so the Investment Exclusions did not apply. The Upper Tribunal dismissed HMRC's appeal against the FTT's decision.

133. *Vigne* concerned a livery stable business, in which the business provided (and administered) worming products, provided hay in winter, cleared manure from the fields, and undertook a daily general check of the horses. The FTT held that the Investment Exclusion did not apply, and the Upper Tribunal dismissed HMRC's appeal against the FTT's decision.

134. *Zetland* concerned an office block where offices were let out on short term lets (it appears to be what is now be called a flexible office space). The Tribunal held that the landlord sought to increase their return by providing a flexible management, shorter leases, and the block included tenants who provided the other tenants with café facilities, gym and a hair dressing salon. There was a monitored cycle rack. In order for tenants to feel part of a larger community there were communal social activities where tenants were introduced to each other, and the

landlord was helpful in accommodating flexibility by providing services for expanding space, movement, and alterations. However, the Tribunal held that the reality was that most of these activities generated rental income, and that the Investment Exclusion was engaged. The income from the cycle rack and gallery as well as the coffee shop, hairdressing salon and gym were all rental income. The tenants rented office space in a large building. They were some services which were provided over and above that which was required to be provided. This included cleaning of the common parts, post sorting and delivery, Wi-Fi, security, reception, free food and drink at socials, and gift vouchers. The Tribunal held that security was not something which is over and above a landlord's responsibility (especially in London and where a building is open late at night and early morning). However, these do not tip the balance in favour the Settlement nor were they sufficient to rebut the "mainly" investments argument.

135. *Green* concerned holiday lettings. The FTT found that the business was marketed by a brochure and on a website, and that the owner dealt with the bookings and correspondence. The price paid by guests included the provision of linen, towels, electricity, kitchen equipment, household furniture, Wi-Fi, and a welcome pack. A caretaker could be contacted in an emergency, but rarely was. There was in addition expenditure on repairs, maintenance and cleaning. The tribunal concluded that the services provided in addition to the provision of the use of the premises, were "relatively minor and ancillary to the provision of accommodation". In consequence the Tribunal held that the Investment Exclusion applied.

136. *Ross* concerned holiday flats (and two staff cottages). The FTT found that the services provided to guests were above the standard level for a self-catering cottage and included arrangements with a nearby hotel and an on-site caretaker. The FTT noted that the level of service was more extensive than the services provided in *Green*, but it rejected a submission that the extent of the services changed the nature of what was being carried on from something which was more than the mere renting of land. The FTT found that what guests wanted was access to a property to call their own in a beautiful part of Cornwall to enjoy for a specific period. The FTT held that the essence of the business was the renting of land, and that the investment exclusion applied.

137. *Graham* is another holiday cottage decision of the FTT. The FTT held that more was provided in the way of services to guests than was provided in *Ross* and in *Green* – namely a pool, a sauna, a games room, bicycles and golf buggy (a payment was required for the use of the bicycles or the buggy), a guest lounge (with a collection of books and an open fire (in season)), laundry room, a prize-winning garden, food (guests were provided with home-made bread and marmalade, wine, teas/coffee/milk, toiletries, cleaning materials), and personal help and assistance lavished on guests by the owner. Barbeques and cream teas were organised in each main holiday season, and guests were encouraged to take produce from the garden (herbs, tomatoes, fruit). The local Co-op would deliver shopping, and the staff would put this into the guests' fridges if they were out. The owner would also buy fresh fish for guests from the quay (at the cost of the guests). The FTT did not regard these services as merely ancillary to the use of the flat. The FTT found that an intelligent businessman would regard this case more like a family run hotel than a second home let out in the holidays. It concluded that this was an exceptional case which "just [fell] on the non-mainly-investment side of the line."

138. *Cox* concerned a large property divided into holiday flats. The administration tasks to run the business included marketing, managing bookings, bookkeeping, cleaning and maintenance. Cleaning included routine cleaning of each flat and the common parts. Linen was supplied for each holiday flat, and had to be laundered. Heating was turned on (depending on the season), and there were routine checks of bulbs, fire alarms, boilers and gas appliances. Rubbish needed to be sorted for recycling, and cleaning supplies were purchased in bulk. Great pride was taken with the garden, which involved bedding planting, pruning, fertilizing, and weeding. The owner

was apparently obsessed with the quality of the lawn, and could be seen on his hands and knees weeding the grass. The owner and his wife lived in one of the flats, and they were available to guests 24/7. Additional facilities and services available to guests included a bookcase in the hall with books and DVDs, sport equipment (racquets, golf clubs, fishing equipment), use of the garden (with summer house, garden furniture and barbeque), toiletries, basic food and consumables (tea/coffee/condiments, silver foil and cling wrap, cleaning materials), Wi-Fi, games and puzzles. The owner would transport guests to and from the local station if they did not have a car. The owner would also make recommendations for local attractions and restaurants, and make bookings at restaurants and golf courses. The FTT held that the business fell "firmly on the investment side of the line".

## **DISCUSSION**

### **Period to be reviewed**

139. The case law requires me to consider the activities of the LLP in the round and over an appropriate period.

140. Mr Chandler submits that this period should reflect the exponential growth in the business from around 2011, and submitted that I should consider the business over a five-year period from then until Mrs Butler's death.

141. However, I agree with Mr Randle that there was a fundamental change in the nature of the business when GG were engaged as caterers, and GG took over many of the functions that had hitherto been undertaken by the LLP team. I therefore find that the period over which I should consider the LLP's activities should be from when GG were fully engaged in the business at Clock Barn. This would be some time after the 5 June 2013 agreement was signed, to reflect the initial teething and bedding-in period, when GG became responsible for managing wedding days and providing the venue manager.

### **Broad spectrum**

142. The case law recognises that there is a broad spectrum of activities relating to the exploitation of land. In the case of holidays, this spectrum ranges from the bare letting of furnished accommodation to the provision of a room in a hotel. The cases also indicate that there is no easy bright line that divides businesses that qualify for BPR and those that do not.

143. I suggested to the parties that a corresponding spectrum existed for event venues – ranging from the hire of a community or village hall at one end of the spectrum, to a fully-serviced conference venue at the other end. In the case of the community hall, there might be a kitchen, and some tables and chairs, and it may have wedding and event licences. There may also be a caretaker who undertakes some basic cleaning, and an administrator who may be able to recommend suppliers who have previously worked at the hall – but the wedding couple would need to engage all the suppliers themselves. At the other end of the spectrum, the fully-serviced conference venue may be able to provide a complete wedding event package.

144. The issue to be resolved in this case is where on that spectrum does the LLP's business fall – and does it consist wholly or mainly of holding investments?

### **No presumption**

145. I was cautioned by Mr Chandler that I should make no presumption (that would need to be rebutted) that a business which consists of the exploitation of land for profit is an investment business (see the comments of Briggs LJ quoted in *Vigne*). But, as I state above, I agree with the comments of Judge Hellier in *Graham* that the criticism made by Briggs J of Henderson J's decision in *Pawson* must be seen in context. I first need to consider each of the elements of the LLP's wedding related business, and consider which concern the holding of investments, and which do not. I then need to stand back and look at the whole picture.

## Key elements of the business

146. Mr Chandler submits that the hiring of the site to customers was merely one aspect of the wedding business carried on by the LLP. The LLP also provided a meaningful package of additional services and facilities. The preponderance of these services and facilities are such that the LLP's wedding business falls a considerable distance away from the investment end of the spectrum, and is much closer to (what I have described as) the provision of a fully-serviced conference venue.

147. I address the various facilities and services provided by the LLP and The Company as follows:

(1) *Clock Barn.* The terms of the agreement concluded by customers with the Company is that the Company would, in consideration of the payment of the facility fee, "make available" the premises to the customer for a specific period. The premises include Clock Barn itself (including the toilets and the kitchen within the barn), the garden, and the Stable Room. The facility fee is the only fee paid by customers to the Company. The terms of the agreement that customers have with CHWV is that their payments are applied solely for the hire of the venue, and include no other services or facilities (other than those specified by the Company). I note that the example of an invoice issued to customers describes the services offered to customers as "use of Clock Barn for a wedding", and the Company's corresponding ledger entry has a similar description. I find that the fee is paid primarily for the use of Clock Barn, its garden and grounds – in other words the use of a pretty building in a scenic location. This places the business as being primarily one of holding Clock Barn and the surrounding grounds as property held as an investment.

(2) *The wedding venue licence and the premises licence.* These required the presence of a designated person and a personal licence holder – and these roles were undertaken by Mrs Butler and Ginny. The designated person (or their deputy) would need to meet the local authority registrar on their arrival, and undertake many functions before and during the wedding ceremony. However, I have found that the role of personal licence holder was always undertaken by someone from the catering team, and never by a member of the LLP staff. As regards the designated person role, after the appointment of GG as caterers, this role was undertaken by a GG member of staff.

(3) *Catering.* This is possibly the largest expense incurred in relation to a wedding. Although the customers were required to use Perks and later GG, the customers contracted separately with the caterers, and paid the caterers separately for the catering services.

(4) *Regulatory compliance.* Under the terms of the premises licence and as a commercial space, Clock Barn had to meet various regulatory requirements relating to health and safety. The LLP team ensured that suppliers bringing equipment into Clock Barn (such as musicians and discotheques) had PAT and public insurance certificates. Logs were kept of checks made. However, I find that many of these requirements fall on the landlord of any commercial property, and are not peculiar to Clock Barn, and are part and parcel of a business of holding investments. As regards obtaining copies of PAT and insurance certificates, these were sought by GG after they took over the catering, and GG passed copies to the LLP.

(5) *Furniture.* Included in the hire were tables and chairs, a cake table, highchairs, garden furniture, bunting, tea light holders and some other furnishings. Most of these are required for any event venue. Whilst an analogy with a holiday letting is imperfect, I note

that typical furnishings provided with a holiday letting have generally been found not to be a major part of a holiday letting business.

(6) *Provision of equipment, heating, and technical support.* Included in the hire of Clock Barn were a background music system, a wireless microphone, and a TV with DVD player in the Stable Room. These were all set up by the LLP's maintenance team. There was a standby generator which could be used in the event of a power cut. The heating was turned off during speeches, and turned back on afterwards. I find that the provision of heating and lighting is a necessary part of the provision of any wedding venue. The provision of the other facilities and services are of less importance, but on balance do not form part of a business of holding investments.

(7) *Fully working kitchen.* The kitchen (as installed between 2005 and 2008) formed part of the premises hired to the customer (Perks needed bring their own catering equipment for each event). After GG are appointed as caterers, they leased and fitted out the Green Barn as a commercial kitchen. I find that the LLP never provided a fully working kitchen – rather it supplied a kitchen which was not fully equipped as part and parcel of the property itself. This falls within the business of holding investments. But, critically, after GG were appointed, the LLP no longer provided any kind of kitchen, as the commercial kitchen was provided by GG in the Green Barn that they leased. They also fitted out the kitchen space in Clock Barn.

(8) *Dance Floor.* The hire of Clock Barn included the use of the dance floor. I agree with Mr Chandler that this does not form part of a business of holding investments.

(9) *Advice to customers.* The LLP's wedding team showed prospective customers around Clock Barn (often more than once) and provided advice on what worked best at Clock Barn for weddings, and helped customers with solving their problems. Showing customers around Clock Barn and organising open days involved considerable work for the LLP, and the evidence was that the compilation of lists of recommended suppliers also involved a lot of work. However, I note that the terms of the wedding venue licence prohibited the LLP team from providing any advice relating to the wedding ceremony itself. And some of the work relating to advice, open days, and show arounds formed part of the marketing of Clock Barn to prospective customers, and so would at least in part be an aspect of finding customers and arranging contracts with them – which would form part of the business of holding investments. I note that in *Cox*, notwithstanding that the business not only made recommendations to customers, but undertook bookings on their behalf, nevertheless the FTT found that BPR was not available.

(10) *Co-ordination with suppliers.* The LLP team contacted suppliers booked by their customers before events, to make sure that the supplier was aware of the requirements of the venue, and (where relevant) obtain PAT and insurance certificates. On the day of the wedding, the team would meet the suppliers when they arrived, and supervise their setting up (so that, for example, musicians and DJs did not damage the dance floor). However, following the appointment of GG, much of this work transferred to GG, and GG passed over to the LLP copies of the PAT and insurance certificates.

(11) *Installing and reconfiguring furniture and facilities.* Before each event, the maintenance team would set up the bare tables and chairs, garden furniture, bunting and the wireless microphone. After the wedding ceremony, the team would reconfigure the furniture for the wedding breakfast and party. The team would then put the furniture away after the event. I agree with Mr Chandler that this activity is not part of a business of holding investments.



(12) *Traffic marshalling.* In *Zetland*, the FTT held that that it would be difficult to classify security as something which is over and above a landlord's responsibility, especially where a building is open late at night. In many respects the provision of traffic marshalling at the beginning and end of the wedding event has some similarities to the provision of security. The marshalling is undertaken to ensure the safety of everyone arriving and leaving the event, and to ensure that the movement of vehicles is done safely and without conflicts. I find that the provision of traffic marshalling is, at least to some extent, an aspect of a business of holding investments.

(13) *Cleaning and maintenance.* Ensuring that – prior to an event - Clock Barn and its surroundings are in a clean state, in good repair, and fit to be used for the purpose for which it is hired by a customer, must form part of the business of holding investments. The cleaning of Clock Barn during and after an event was not the sole responsibility of Clock Barn. The caterers would clear up the table settings, plates, cutlery, glasses, and catering debris, they were also responsible for cleaning the kitchen and bar. Suppliers would clear their own equipment. However, I find that cleaning and supplying the toilets, and clearing ashtrays by the LLP was not part of a business of holding investments.

(14) *The garden.* The garden and grounds provide an attractive setting for a wedding. However, they are not prize-winning of the kind in *Graham*. The level of attention paid to them is not comparable, for example to the attention that was paid to the lawn in *Cox*, where the FTT held that BPR was not available. I find that the provision of the garden was an aspect of a business of holding investments.

(15) *General supervision.* Whilst some level of supervision of a wedding event was undertaken by the LLP through the provision of venue manager, this role was undertaken by GG after they were appointed as caterers.

#### **THE BUSINESS AS A WHOLE**

148. Stepping back and looking at the business as a whole, I find that the Clock Barn business has always fallen on the village or community hall side of the spectrum, and away from the fully-serviced conference venue. Before the appointment of GG as caterer, the level of business activities undertaken by the LLP may have been of more significance, but I find that it still fell to be treated as a business of holding investments.

149. I find that at no point did Clock Barn provide amenities and services that went significantly beyond the amenities that are provided in a property held predominantly for investment purposes. I find that such of the amenities and services that were provided by the LLP were not exceptional in their nature. The fact pattern in this case contrasts, for example, with the fact pattern in *Graham*, where the FTT found that the amenities provided went far beyond a typical furnished holiday let.

150. After the appointment of GG, the level of non-investment activity undertaken by (or on behalf of) the LLP reduced significantly. Whilst the LLP continued to provide some amenities and services which were not of an investment character, I am in no doubt that once the transitional period was over, and Perks was no longer involved in the catering, the non-investment activities of the LLP relating to the wedding business became quite small.

151. When I step back and look at the business as a whole, I find that the wedding venue business of the LLP was predominantly for the purpose of holding its property as an investment.

## **CONCLUSION**

152. I find that the wedding venue business (and therefore the business of the LLP as a whole) was wholly or mainly for the purposes of holding its property as an investment. Accordingly, there is no entitlement to BPR.

153. The appeal is therefore dismissed.

## **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

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

**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**Release date: 27 September 2023**