

NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NORTHERN IRELAND) ORDER 1977 (AS AMENDED) AND THE
VALUATION TRIBUNAL RULES (NORTHERN IRELAND) 2007

CASE REFERENCE NUMBER: 30/14

ADAM COCHRANE

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

Northern Ireland Valuation Tribunal

Chair: Ms. Monica McCrory

Members: Mr. Tim Hopkins FRICS and Mr. Alan Martin

Hearing 22nd June 2015

DECISION

The unanimous decision of the tribunal is that the Commissioner of Valuation for Northern Ireland's Decision of Appeal is upheld and the appellant's appeal is dismissed.

REASONS

Introduction

1. This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977, as amended ("the 1977 Order").
2. The appellant by Notice of Appeal dated 10th October 2014 appealed against the decision of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 15th September 2014 in respect of the valuation of a hereditament situated at 8 Windmill Road, Ballykeel Edenagonnell (Hillsborough) Hillsborough BT26 6LT ("the property") wherein the Commissioner had declined to amend the valuation list for the property, confirming the capital value at a figure of £100,000.

3. The parties to the Appeal had indicated that they were each content that the Appeal be disposed of on the basis of written representations in accordance with Rule 11 of the Valuation Tribunal Rules (NI) 2007 and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.

The Law

4. The statutory provisions are set out in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The tribunal does not intend in this decision fully to set out the statutory provisions of Article 8 of the 2006 Order which amended Article 39 of the 1977 Order as regards the basis of valuation; these provisions have been fully set out in earlier decisions of the tribunal.

THE EVIDENCE

5. The following documents were before the Tribunal;
 - Notice of Appeal dated 10th October 2014.
 - The Commissioner's Decision on Appeal dated 15th September 2014.
 - Respondent's "Presentation of Evidence" dated 7th January 2015.
 - Correspondence from the Appellant and date stamped received by the Tribunal on 21st October 2014 with pay slip and four colour photographs attached.
 - Completed application form by the Appellant entitled Domestic and Capital Value of Farmhouses dated 3rd September 2014.
 - Correspondence from the Appellant dated 25th January 2015.
 - Correspondence from Nicola Stewart MRICS on behalf of the Respondent dated 11th February 2015.

The Subject Property

6. The property is described in the Respondent's Presentation of Evidence as a post 1990 detached property having a gross external area (GEA) of 85.28 m² and a 28m² detached garage. The capital value was assessed at £140,000.00 and the district valuer reviewed the valuation to £100,000.00 to reflect the removal of the garage from the assessment and the fact the property was originally an outbuilding converted to a family home. No explanation or rationale was given for this reduction but rather it was stated as a matter of fact. The decision of the Commissioner of Valuation dated 15th September 2014 confirmed no change to the capital valuation of £100,000.00 and confirmed agricultural allowance not granted.

THE APPELLANT'S CONTENTIONS

7. The appellant questioned how the property had been valued as it does not have the benefit of planning permission.
8. The appellant went on to submit that agricultural relief should have been applied to the property and the valuation should be £80,000.00 by reason of the following:
 - a) He has a 2.4 hectare horticultural business producing 6-8 year old native species trees.
 - b) The horticultural business is his primary occupation and his employment as a lorry driver supplements his income as the tree growing business has taken time to supply a suitable product for the market.
 - c) He divides his working time equally between his horticultural business and as a lorry driver.
 - d) His lorry driving and forklift qualifications and experience will enable him to transport the trees to his customers.
 - e) He earns 40% of his income from the horticultural business.

THE RESPONDENT'S CONTENTIONS

9. The respondent, in summary, made the following points:-
 - a) The appellant's primary occupation is a lorry driver as it provides him with the majority of his income.
 - b) The appellant spends 40 hours per week as a lorry driver which is typical full-time employment.
 - c) The valuation has been assessed in line with the capital assumptions as per Schedule 12 of the Rates (NI) Order 1977 paragraphs 9-15 and having regard to the assessment of comparable properties already in the Valuation List.
 - d) That the property had mains electricity and water supply and adequate sewage disposal and had not been made aware of any issues with these services.

THE TRIBUNAL'S DECISION

10. In these matters there is a statutory presumption that, on appeal, any valuation shown in a valuation list with respect to a hereditament (in this case the property) shall be deemed to be correct until the contrary is shown. Thus, any appellant must successfully challenge and displace the presumption of the correctness, otherwise the appeal will not be upheld.
11. Looking at the general approach taken by the respondent to the valuation of the property, the tribunal saw nothing to suggest that the matter had been dealt with in anything other than the prescribed manner provided for by Schedule 12 of the 1977 Order.
12. The Tribunal is bound by Schedule 12, paragraph 15 of the 1977 Order and to assume that there has been no relevant contravention of any statutory provision, requirement or obligation which would affect the capital value of the hereditament. Therefore the Tribunal must assume the property has the necessary planning permission and that the property has a value. It is noted the appellant produced no alternative valuation evidence of his own and did not challenge the respondent's comparables.
13. The question to be determined by the Tribunal was essentially whether the property qualified for agricultural relief. In order to obtain agricultural relief for the property the appellant had to establish that the property satisfied the provisions of Schedule 12 part 2 of the 1977 Order which states:-
 - 1) The net annual value of a house occupied in connection with agricultural land or a fish farm and used as the dwelling of a person –
 - a) whose primary occupation is the carrying on or directing of agricultural, or as the case may be, fish farming operations on that land; or
 - b) who is employed in agricultural or, as the case may be, fish farming operations on that land in the service of the occupier thereof and is entitled, whether as tenant or otherwise, so to use the house only while so employed, shall so long as the house is so occupied and used, be estimated by reference to the rent at which the house might reasonably be expected to let from year to year if it could not be occupied and used otherwise than as aforesaid.
 - 2) The capital value of a house occupied and used as mentioned in paragraph 1 shall be estimated on the assumption (in addition to those mentioned in part 1) that the house will always be so occupied and used.
14. There have been a number of decisions addressing the question as to how to determine a person's primary occupation, namely:
 - a) McCoy –v- The Commissioner for Valuation VR/35/1988

b) Ian Wilson –v- The Commissioner for Valuation (2009) NICA 30

15. In the cases of McCoy and Wilson, as in this case, the appellants had two occupations, one of which was farming. The court stressed the need for the Tribunal to objectively examine the facts and in the Wilson case McCloskey LJ stated “the crucial question for the tribunal is whether the facts found by it would support a conclusion that the ratepayers primary occupation is farming. This behoved the tribunal to stand back and to consider, in a balanced and evaluated fashion, whether, having regard to the facts found, the ratepayers livelihood “is in the main derived from farming” (per Judge Rowland QC in McCoy –v- Commissioner for Valuations (VR/N/1088) -6. Objectivity is the very essence of this exercise”.
16. It is acknowledged by the Tribunal that the appellant is registered as a part-time farmer (DARD registration no: 638037). The application for agricultural allowance completed by the appellant stated that he spent 50% of his time working as a farmer and the remaining 50% of his working time in his other job as a lorry driver.
17. The appellant produced a wage slip in respect of his employment as a lorry driver with Allen Logistics NI Limited evidencing a 40 hour week. There was no evidence before the Tribunal detailing what works/tasks were carried out by the appellant and what engaged his time on a daily basis in conducting his horticultural business.
18. The agricultural allowance application form stated the appellant earns 40% of his gross income from farming. The only evidence of earnings before the Tribunal was a wage slip in respect of the appellant’s employment with Allen Logistics NI Limited. There was no evidence of income earned from the horticultural business. The appellant submitted by letter dated 25th January 2015 that his income was dependent on how much money he re-invested in the business and he listed capital expenditure made by him in machinery and stock. There was no supporting evidence of income or expenditure in relation to the horticultural business. Indeed there was an acceptance by the appellant that he had just taken over the business and could not submit accounts.
19. The tribunal having objectively examined the facts and all of the evidence and the arguments in this case finds that there is insufficient evidence to support the appellant’s submissions that his primary occupation is farming and therefore the property is not one that qualifies for agricultural relief.
20. Accordingly the tribunal’s unanimous decision is that the Commissioner’s Decision on Appeal dated 15th September 2014 is upheld and the appeal is dismissed.

**Ms Monica McCrory, Chair
Northern Ireland Valuation Tribunal**

Date decision recorded in register and issued to parties - 6th July 2015