

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

CASE REFERENCE NUMBER: 72/12

**MERVYN LITTLE APPELLANT
AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT**

Northern Ireland Valuation Tribunal

**Chairman: Mr. Alan Reid LL.B
Members: Tim Hopkins and David Rose**

Belfast, 18th April 2019

DECISION

The unanimous decision of the Tribunal is that the Notice of Decision on Appeal of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the property at 35, Annaghilla Road, Ballygreenan, Augher, County Tyrone BT77 OEH as contained in the Notice of Decision dated 3rd December 2012 is upheld in confirmation of the Capital Value of £130,000.00 and the Appellant's Appeal is dismissed.

REASONS

1. Introduction

- 1.1 This is a reference under Article 54 of the Rates (Northern Ireland) Order 1977 as amended ("the 1977 Order").
- 1.2 By a Notice of Appeal dated 17th December 2012 the Appellant appealed to the Northern Ireland Valuation Tribunal ("the Tribunal") against the Decision on Appeal of the Commissioner of Valuation for Northern Ireland ("the Commissioner") dated 3rd December 2012 in respect of the Capital Value of a hereditament situated at 35, Annaghilla Road, Ballygreenan, Augher, County Tyrone BT77 OEH ("the Subject Property").
- 1.3 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 (Northern Ireland) 2007 ("the Rules") and accordingly there was no appearance before the Tribunal by or on behalf of any of the parties.
- 1.4 In the Appellant's Notice of Appeal, the Appellant accepted that the Capital Value of the Subject Property was £130,000.00. The substance of the

Appellant's Appeal was that the Subject Property should be regarded as a house occupied in connection with agricultural land and used as a dwelling of a person whose primary occupation is the carrying on or directing of agricultural operations on that land and that therefore the Capital Value of the Subject Property should be reduced on the basis of the assumption that the Subject Property would always be so occupied and used.

- 1.5 The Appeal was initially listed for hearing by the Tribunal on 21st November 2018. On that occasion the Tribunal had not been provided with a copy of a response submitted by the Appellant on 29th December 2017 to a letter issued by the Respondent to the Appellant on 18th December 2017 but which was referred to in the documentation which had been submitted by the Respondent in support of the Respondent's case. The Tribunal was also concerned that the Appellant might not have had access to copies of various decisions and judgments upon which the Respondent sought to rely (referred to in paragraphs 6.7 and 6.8 of this Decision). The Tribunal therefore ordered that copies of the said decisions and judgments be provided to the Appellant and adjourned the hearing to afford both parties an opportunity to make further submissions in the light of same and to enable a copy of the Appellant's response of 29th December 2017 to be provided to the Tribunal.

2. **The Law**

The relevant statutory provisions are to be found in the 1977 Order, as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). The statutory provisions regarding the basis for valuation are contained in Article 8 of the 2006 Order which amended Article 39 of the 1977 Order and have been fully set out in numerous previous decisions of this Tribunal. The Tribunal does not therefore intend in this decision to fully set out the statutory provisions of Article 8.

3. **The Evidence**

The Tribunal heard no oral evidence but had before it copies of various documents including the following:-

- 3.1 Valuation Certificate issued by the Commissioner of Valuation on 3rd December 2012.
- 3.2 The Appellant's Notice of Appeal dated 17th December 2012.
- 3.3 Letter dated 17th December 2012 from Jim Patton received by the Tribunal on 18th December 2012.
- 3.4 Invoice from NI Water in respect of water charges for non-domestic supply at Annaghilla Road Augher dated 9th August 2012.
- 3.5 Letter dated 20th December 2012 from the Appellant to the Tribunal enclosing copies of invoices in respect of stones and blinding, steeples and alkathene pipe, grass seed and pipe fittings, a gate, strainers and fencing wire.

- 3.6 A document entitled "Presentation of Evidence" submitted on behalf of the Commissioner by Karen McCullagh MRICS of Land and Property Services and received by the Tribunal on 15th August 2018.
- 3.7 The response submitted by the Appellant on 29th December 2017 to the letter issued by the Respondent to the Appellant on 18th December 2017.
- 3.8 Letter dated 28th January 2019 from the Appellant to the Tribunal as received by the Tribunal on 30th January 2019.

All of these documents had been provided to both of the parties who had each been given an opportunity to consider and respond to them before being considered by the Tribunal.

4. **The Facts**

Based upon the information before it the Tribunal determined upon the balance of probabilities the following facts: -

- 4.1 The Subject Property is a detached rural dwelling constructed prior to 1919. It has a gross external area ("GEA") measuring 165m² and has a garage measuring 51m² and an outbuilding measuring 161.5m². The Subject Property has full oil-fired central heating, mains water, mains electricity and is sewered by means of a septic tank. It is in an average state of repair.
- 4.2 The Subject Property is adjacent to 2.59 hectares of agricultural land owned by the Appellant which is contiguous with the property and is currently let in conacre.
- 4.3 The agricultural land is let by the Appellant to a conacre tenant but the Appellant carries out some maintenance work in respect of the land and is responsible for the expenditure incurred in doing so. As confirmed by the Appellant's response dated 29th December 2017 referred to at paragraph 3.7 above, the Appellant was in receipt of an annual occupational pension income of £12,609.00, an annual state pension in the sum of £7,050.00 and an additional annual annuity of £4,549.00 and his conacre rental income was £800.00 per annum.
- 4.4 The Tribunal had no other information regarding the Title to the Subject Property nor regarding its physical construction and characteristics save as mentioned in the papers before the Tribunal and referred to herein.
- 4.5. The Subject Property had previously been regarded as having agricultural status and as such the Capital Value had been reduced. On 18th October 2012 the District Valuer had issued a certificate amending the Capital Value to £130,000.00 following a valuation of an extension and outbuildings at the Subject Property during the course of which the District Valuer had determined that the criteria for agricultural allowance no longer applied to the Subject Property.

4.6 On 3rd December 2012 following an appeal by the Appellant against the District Valuer's decision, the Commissioner of Valuation had issued the Valuation Certificate, which is now the subject of this appeal by the Appellant to the Tribunal.

5. The Appellant's Submissions

As already noted, the Appellant did not seek to challenge the Capital Value of the Subject Property but made the following submissions in relation to the removal of the agricultural allowance in respect of the Subject Property:-

5.1 The Subject Property is attached to farm buildings used in connection with the Appellant's work in maintaining the farm. The Appellant referred to photographs taken by the Respondent's representative, Karen McCullagh, as confirming the agricultural usage of the outbuildings.

5.2 The Appellant contended that the criteria for agricultural status were still met by him with regard to the Subject Property and sought the reinstatement of the agricultural allowance.

5.3 In support of his submissions the Appellant submitted a letter from the conacre tenant which confirmed that the Appellant was responsible for and carried out all farm maintenance work and paid the water charges. The Appellant also provided copies of the invoices referred to in paragraph 3.5 above. He contended that his farm was registered with the Department for Agriculture and Rural Development and that he had no other employment since retiring from former full-time employment as a Building Control Officer.

5.4 The Tribunal noted that the Appellant also contended in his response of 29th December 2017 to the Respondent that he carried out the following agricultural activities which he said "engage all of my time" –

- Replacing and maintaining fences, gates, etc
- Providing field drainage and maintenance of waterways
- Cutting trees and hedges and reseedling
- Spraying weeds and controlling vermin
- Extending and upkeep of farm laneway and yard
- Re-roofing and plastering walls of farm buildings
- General maintenance and repairs to run-down farm buildings
- Providing adequate insurance cover on all farm buildings and land and agricultural machinery etc
- Paying all water charges to N.I. Water re non domestic supply

6. The Respondent's Submissions

In summary, the following submissions were made on behalf of the Commissioner -

6.1 The Capital Value Assessment of the Subject Property had been carried out in accordance with the legislation contained in the 1977 Order. In particular

as required by Schedule 12 of the 1977 Order regard was had to the Capital Values of other properties in the Valuation List.

- 6.2 With regard to farmhouses or other dwellings located on or near farms, the Capital Value of a house occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation is the carrying on or directing of agricultural operations on that land should be determined on the assumption that the house will always be so occupied and used.
- 6.3 Historically, Land & Property Services had applied a 20% allowance to the Capital Value of any house which was occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation was the carrying on or directing of agricultural operations on that land.
- 6.4 It was now accepted that many farmers were engaged in agriculture on a part time basis and did not derive their entire income from agriculture particularly where this is on a relatively small holding or in circumstances where the holding has been let to a conacre tenant with the owner of the holding (and occupant of the related dwelling) carrying out maintenance duties only.
- 6.5 It was the Respondent's evidence that Land & Property Services, in considering the application of an agricultural allowance for valuation purposes on a dwelling in the Valuation List applied the following principles:-
- For a farm to provide a sustainable income it would generally need to be in the region of a 40 to 50 acres;
 - With regard to part-time farmers, those who spend more than fifty percent of their time farming would receive an allowance whilst those who spent less than fifty percent of their time engaged in farming would not receive the agricultural allowance.
- 6.6 With regard to retired persons with no other occupation but who solely undertook maintenance duties of land whilst the Respondent accepted that maintenance of the land could amount to an agricultural operation this would generally take up less time than engaging in the rearing of animals or the growing of crops directly.
- 6.7 The Respondent referred the Tribunal to the Lands Tribunal case of *McCoy v The Commissioner of Valuation for Northern Ireland (VR/35/1988)* in which the then President of the Lands Tribunal expressed the view that when addressing the question of a person's "primary occupation" in the context of agricultural relief, the court should determine what engages a person's time and attention on a daily basis. The Respondent contended that this test had been subsequently endorsed by the Court of Appeal in *Wilson v The Commissioner of Valuation for Northern Ireland [2009] NICA 30* and by the President of the Lands Tribunal in *The Commissioner of Valuation for Northern Ireland v Elizabeth Doherty (VT/4/2012)*. In the Doherty case, the President of the Lands Tribunal, Coghlin L. J. noted that cases on this issue

were “likely to be highly fact specific and dependent upon (their) own particular factual circumstances”.

- 6.8 The Respondent also referred the Tribunal to the decision of the Northern Ireland Court of Appeal in the case of *McCall v Revenue & Customs Commissioners* [2009] NICA 12. The Appellant in that case had been engaged in agricultural maintenance operations on some thirty-three acres of agricultural land and the court concluded those maintenance operations required less than two hours work per week on the part of the Appellant in that case. The Respondent contended that in this case the Appellant, Mr Little, was only involved in maintenance operations with regard to some 6.5 acres.
- 6.9 The Appellant was not in receipt of single farm payments.
- 6.10 The Appellant’s maintenance operations on the lands were infrequent and certainly did not engage his time on a daily basis and therefore could not be regarded as constituting his primary occupation.
- 6.11 Whilst the outbuilding at the property was used to store agricultural equipment, it also stored a motor home and other domestic items including an oil tank and was therefore not used solely in connection with agricultural operations and therefore should be considered as a domestic outbuilding.
- 6.12 Mr Little’s own confirmation with regard to his respective annual incomes from pensions, annuity and conacre rental income as referred to at paragraph 5.4 above demonstrated that agricultural activity was not the Appellant’s sole or primary source of income and as such agricultural allowance should not be granted in respect of the Subject Property.

7. The Tribunal's Decision

- 7.1 The sole matter for determination by the Tribunal was the question of whether or not agricultural allowance should be applied to the Capital Value of the Subject Property.
- 7.2 Schedule 12 of the 1977 Order details the assumptions which should be made in assessing the amount which the Subject Property might reasonably have been expected to realise if it had been sold on the open market by a willing seller on the relevant antecedent valuation date (“AVD”) which in this case is 1st January 2005. In addition to the assumptions set out in Part 1 of Schedule 12, Part II of Schedule 12 makes provision for an additional assumption in respect of a house occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation is the carrying on or directing of agricultural operations on that land. Where those criteria are met, an additional assumption is to be applied namely that the house will always be so occupied and used. In those circumstances the Capital Value will be reduced typically by an amount of 20% to reflect those circumstances.

- 7.3 The Tribunal has carefully considered the evidence placed before it by the parties concerning the extent of maintenance work carried out by the Appellant on his agricultural lands adjacent to the Subject Property which are farmed by his conacre tenant. The Tribunal has also considered the amount of income received by the Appellant out of the agricultural lands in comparison to the Appellant's other income. Having done so, on the balance of probabilities, the Tribunal is not satisfied that the Appellant's primary occupation is the carrying on or directing of agricultural operations on the lands and therefore is satisfied that agricultural allowance should not be applied in respect of the Capital Value of the Subject Property.
- 7.4 Having considered the evidence, including the photographs presented in evidence, the Tribunal was also satisfied on the balance of probabilities that the outbuilding adjacent to the Subject Property is used for domestic purposes and is therefore properly regarded as a domestic outbuilding.
- 7.5 Accordingly, the unanimous decision of the Tribunal is that the decision on appeal of the Commissioner of Valuation for Northern Ireland in respect of the valuation of the Subject Property as contained in the Notice of Decision dated 3rd December 2012 in the sum of £130,000.00 is upheld and the Appellant's appeal is dismissed.

Signed: Mr Alan Reid, Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to parties: 25th April 2019