

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: 54/13

NOEL MCELROY– APPELLANTS

AND

**COMMISSIONER OF VALUATION FOR NORTHERN IRELAND –
RESPONDENT**

Northern Ireland Valuation Tribunal

Chairman: Mr Michael Flanigan

Members: Mr Philip Murphy and Mr Alan Martin

Belfast, 27th November 2014

DECISION

Decision and Reasons

1. Neither the appellant nor the respondent appeared and both parties relied upon written submissions only
2. The subject property (“the property”) in this appeal is 21 Carrickyheenan Road Brookeborough, County Fermanagh. The property is owned and occupied by the appellant, together with a farm of 45.45 hectares, 35 of which are contiguous with the property.
3. The appeal is against the decision of the Commissioner of Valuation dated 25th February 2014 whereby the appellant’s claim for agricultural relief was declined and the capital value of the property upheld in the sum of £85,000.
4. The Tribunal examined and took into account all of the papers including the parties’ written submissions, and the replies to the Farmhouse Questionnaire.
5. 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 Rates (Northern Ireland) Order 1977 which states as follows:-

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 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.

6. The property had been valued by the respondent at £95,000 reduced by 10% for the proximity of agricultural buildings resulting in a net valuation of £85,000.
7. The appellant works the farm of land around the house together with an additional 10 hectares nearby and had sought agricultural relief which would have resulted in an allowance of 20%.
8. The question of how to determine whether someone's primary occupation is farming has been addressed in a number of decisions:
 - 8.1 *McCoy v The Commissioner for Valuation VR/35/1988.*
 - 8.2 *Ian Wilson v the Commissioner for Valuation (2009) NICA 30*
9. Each of these cases involved appellants who had two occupations, one of which was farming, and the question for the court was which of the two occupations was the primary one. The Court of Appeal in Northern Ireland examined the issue in the case of *Wilson v the Commissioner of Valuation (2009) NICA 30*. In that case Mr Wilson worked as a civil servant on a full time basis but also expended a large amount of time on his farm. The Court of Appeal repeatedly stressed the need for the tribunal to objectively examine the facts and to then "*make a determination based on an objective assessment of the material factors*" (Girvan LJ).
10. In the *Wilson* decision Higgins LJ proposed that a tribunal should ask itself the following question: "*Upon what business is the ratepayer normally engaged in everyday? If the answer to that question is "I have two occupations", then the further question must be asked which is paramount or more important in other words which is primary.*"
11. The Tribunal sought to apply the test set out above to the objective facts before it.
12. The objective facts established from the papers are that the appellant is a fulltime civil servant working a 37 hr week. His job provides for a pension and promotion and whilst he has some flexibility in working hours his civil service job takes precedence over his farming.
13. The Tribunal examined the appellant's questionnaire which included details of the apportionment of time and income between the appellant's two occupations. The appellant claimed that 55.6% of his time was spent in farming and that his 37 hour per week represented 44.4% of his time spent. These figures meant that the appellant was claiming to regularly work an 83 hour week.

14. The appellant in a letter of 16th August 2014 had set out his position in some detail. In response to the issue of which job was more important he replied as follows. "I do not think about the civil service when I am farming. As to availability I have to be available round the clock for farming and only 37 hours for the civil service".
15. The Tribunal found that the facts in this appeal were very similar to those in the Wilson decision even to the size of the farms. The appellant in the Wilson case was a full time civil servant, a job with a pension and potential for promotion and which took precedence over the appellant's farming activities. In that case the Court of Appeal had determined that the question which of two occupations was the primary one had to be addressed by reference to objective factors only and had refused to allow the agricultural relief.
16. There can be little doubt that farming is very important to the appellant, however being available to work on the farm when the need arises is not the same as being engaged in agricultural operations. The objective facts were that the appellants "nine to five" job to use a standard description was that of civil servant and it took precedence over farming. The assessment of the Tribunal was that on the objective facts the appellant's primary occupation was within the civil service and not agriculture.

Appeal dismissed by unanimous decision.

Chairman: Michael Flanigan



11th December 2014