LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF APPEALS

VR/28 & 30/2000

BETWEEN

MOY RIDING SCHOOL LIMITED &

MARGARET AND DESMOND CORR - APPELLANTS

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Re: 131 & 131(a) Derrycaw Road, Claremont, Dungannon

Lands Tribunal

The Honourable Mr Justice Coghlin

and

Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 29th October 2004 & 7th October 2005

1. The subjects of these appeals are premises ('the premises') that were part of an estate known as the Argory and are leased from the National Trust. They are in a rural area between the towns of Portadown, Armagh and Dungannon. They comprise a private dwelling, stables, indoor and outdoor arenas, an office and tack room, sundry buildings and land. Mr and Mrs Corr and their family ('the Corrs') occupy the dwelling. There is shared use of the other parts; they are used both by the Corrs family business, Moy Riding School Limited ('the School') and by the Corrs for the family's own horses and ponies. The appeal relates to circumstances as they were in the year 2000 and at that time Mr Corr said, and it is not disputed, that the family had a significant number, a total of 17 horses and ponies ('the family's horses'). These are kept for the family's own private enjoyment and hobbies, including breeding and showing.

2. In the Valuation List the dwelling and part of the stables have been treated as a hereditament, which was a private dwelling, occupied by the Corrs. Its valuation is

£300. The remainder, which is used as a riding school or equestrian centre ('the Centre'), has been treated as occupied by the School. It was entered as a separate hereditament in the Valuation List in 1999. Its valuation was £11,300.

3. On the first day of the Hearing Mr Desmond Corr appeared in person for the School and the Corrs. Mr David McAllister BL instructed by the Departmental Solicitor's Office appeared for the Commissioner.

4. Later, the Tribunal invited further assistance on the basis of apportionment and the unit of assessment, and at the resumed hearing, Mr Stephen Elliot BL instructed by Simmons Meglaughlin & Orr appeared for the School and the Corrs.

5. The Tribunal is grateful for the helpful professional assistance it has received.

6. It appears that neither the District Valuer nor the Commissioner was aware of the detail of the tenure arrangements when they made their decisions. Documents of title were produced for the resumed hearing. Although the premises are held under two different titles, the lessees are one and the same, as is the lessor; both leases are between Desmond Corr & Mary Corr as Lessees and the National Trust as Lessors. Broadly speaking one lease ('lease A') relates to the dwelling, together with a yard and outbuildings, the other ('lease B') relates to land including that on which the Centre has been developed. Both are of the same date and duration and, although there are access lanes shared with the Trust, the demises are contiguous. The Lessee's covenants differ particularly in regard to user and obligations to carry out improvements. Later, deeds of variation add an option to extend the terms for eight years and relax the user clause in Lease B. (The rents are agreed to be of no assistance for purposes of the valuation for rating.)

7. Correctly, in the view of the Tribunal, Mr Corr did not pursue his suggestion that riding schools and the Centre in particular, should be rated as farms i.e. agricultural buildings within the meaning of that expression as used in the Rates (NI) Order 1977 ('the 1977 Order') and not treated as rateable at all. The Commissioner refused to treat the school as not rateable but slightly reduced its NAV to £10,850.

8. The Corrs' complaints fall into 3 categories:

(a) The manner in which they and the equine sector generally have been treated
(b) The valuation of the Centre and the indoor arena in particular, and
(c) The sharing of the valuation between the Centre and the private dwelling.

9. Mr Gary Sloan, an experienced Chartered Surveyor, gave expert evidence. Mr Corr did not submit expert opinion evidence. On the first day of the Hearing Mr Sloan was questioned both by Mr Corr and the Tribunal. Mr McAllister BL drew the attention of the Tribunal to a decision Rollins v COV [1988] VR/1/1988 in which the then President Judge R T Rowland QC considered the role of the Tribunal in questioning an expert witness tendered by the Commissioner, in such circumstances. Since that case was decided, both court practice and the role of the expert witness have developed and it is now accepted that the primary duty of the expert is to provide assistance to the Tribunal. The Tribunal should not of course seek to make a positive case on behalf of an unrepresented party. But, in order to achieve justice and fairness, the Tribunal is entitled to ask questions ancillary to a case being made by an appellant and also ask questions required to address other doubts that arise in the course of dealing with the matter.

The manner in which Mr Corr and the equine sector generally have been treated

10. Mr Corr said that the equine sector as a whole was suffering financially. But any question of whether the equine sector should be entitled to some form of relief from rates is a matter of policy and for the legislature.

11. He questioned why, when others in the equine sector had received sport and recreation relief or exemption, he had not received any such relief or exemption. However, nothing put before the Tribunal about the School and its use of the premises suggests that, on a preliminary view, the School is likely to be entitled to any such relief or exemption.

12. Mr Corr complained that details of many other equestrian centres in the List were incorrect and the standard of investigation and maintenance of the List by the Valuation and Lands Agency ('VLA') was inadequate. He suggested that some equestrian centres may have provided misleading information that had been accepted without question by the Rate Collection Agency ('RCA') and the VLA. He further complained that when he had suggested there were discrepancies in the List

and the VLA had visited other premises to check their assessments, his name had been given as part of the reason for the inspection. He also questioned why the RCA and the VLA had not informed him that he might be entitled to have the indoor arena treated as a separate hereditament temporarily vacant each year (and thereby reduce his rates bill). That appears to have been arranged for the Corrs at a subsequent revision.

13. This Tribunal is not a forum for complaints about the alleged misbehaviour of other ratepayers or the manner in which the VLA or RCA carry out their duties. When the Tribunal suggested to Mr Corr that some other complaints procedure might be appropriate, he replied that he had been told that he could not pursue any other avenue of complaint until he had obtained a decision from this Tribunal. The Tribunal is surprised at this view but if there was any doubt about this aspect of the role of the Tribunal in rating cases, hopefully that is now resolved.

14. Some of these and other complaints have potential consequences for the reliability of the valuation evidence. The Tribunal now turns to that issue.

The valuation of the Centre and the indoor arena in particular

15. Mr Corr suggested that the general level of estimated rental values is unfair to the equine sector generally and in the absence of evidence of actual lettings of riding schools, the entries in the List for riding schools were unsafe. Mr McAllister BL said, and the Tribunal agrees, that the level for any sector is not to be fixed arbitrarily. The best way to achieve a level playing field is for all to be correctly valued and properly charged. Effectively the general level for all sectors is set at the time of General Revaluations. The Commissioner is obliged to give careful consideration to any open market rental evidence and alternative methods of valuation that may help indicate the correct level of rental value on the statutory assumptions. That is the time at which both individual ratepayers and sectors of industry may best make representations about that level. However in this Appeal, which is not in the context of a general revaluation, the Commissioner relies, and is entitled to do so, solely on comparison with other comparable assessments - the tone of the List at the level at which it has settled. Assessments in the List are presumed to be correct. See Article 54 (2) of the 1977 Order, McKeown Vintners v COV [1991] VR/9/1985 and A-

Wear Limited v COV [2003] VR/3/2001. However that presumption may be displaced.

16. In passing the Tribunal notes that neither Mr Corr nor Mr Sloan produced any evidence that would allow the Tribunal to relate receipts from lessons and expenditure into a rent on the statutory assumptions. However the 'Receipts and Expenditure' method addresses these matters and it may be that if there is a lack of open market rental evidence at the time of a General Revaluation, some regard might be had to a valuation using that method.

17. Mr Corr referred to a number of hereditaments and questioned why they had not been included as comparables. Mr Sloan said that his comparables came from a spread of locations with differing proximities to urban centres. He explained that, apart from one, the other hereditaments to which Mr Corr referred had not been included in the List at the relevant time. That one was part of a Leisure and Equestrian Centre valued at £88,000 and treated as exempt and Mr Sloan therefore did not consider it helpful as a comparable. The Tribunal accepts that there was no attempt to be selective in the choice of comparables.

18. Mr Corr was particularly concerned at the pricing that had been attached to the indoor arena. This was £6 per square metre, giving a value of about £8570, and accounted for about 80% of the valuation. He also suggested that insufficient regard had been had to location. In Mr Sloan's report he looked at the valuations of 7 comparables spread around the province. He analysed the pricings of their indoor arenas at between £5 per square metre and £7 per square metre. He attributed the variation in pricing to a reflection of quality and location and concluded that the subject as valued was relative.

19. Mr Corr also suggested that the indoor arena was unfairly valued in comparison with the outdoor arena because the indoor arena was valued at £6 per square metre, the outdoor at only 30p per square metre and yet the charge he could sustain for a riding lesson was the same whether indoor or outdoor. He explained that outdoor exercise is preferred and the value of indoor arenas lies only in their use during the winter. He did however accept that having the indoor arena was important for the school

and added value because it permitted lessons to be given all year round and not just in good weather, perhaps for 6 months only.

20. Mr Corr had referred to an arrangement whereby apparently the RCA and the VLA may treat an indoor arena as a separate hereditament temporarily vacant for part of each year thereby reducing the rates bill. But, if for all practical purposes buildings such as these are used only on a seasonal basis, they presumably would command only a rent in the market that reflects that characteristic of limited valuable use, and should be valued at a figure reflecting that essential characteristic and that is not unfair (See the seaside cases e.g. Mayor etc of Southend-on-Sea v White (1900) 65 JP 7 and Gage v Wren (1903) 67 JP 32). What would be unfair is that if they were, as a matter of course, also treated as vacant during the 'off season' that would appear to give a double discounting for seasonal use. If occupiers have not challenged assessments because they knew that their 'headline' rates liability would be ameliorated by an artificial device that treated them as vacant seasonally, that may affect the helpfulness of evidence about those indoor arenas, which are treated as separate hereditaments, as comparables.

21. However even if little weight is attached to valuations in such circumstances, within the evidence in this case there was only one comparable that was an indoor arena treated as a separate hereditament. Although the Tribunal has some concern about this aspect, it accepts that on balance the valuation of the school was supported by Mr Sloan's analysis of the comparables.

The sharing of the valuation between the Centre and the private dwelling

22. The question for the Tribunal is to what extent the Corrs should be treated as occupying the premises as a private dwelling. That is important because there is a substantial difference in the relative amounts of rates charged.

23. Having had the benefit of seeing the title documents, at the resumed hearing Mr McAlister BL suggested that the two parts held under the two leases A & B should be treated separately (the Title option). Although it was not suggested as part of the original appeal, Mr Elliot BL suggested that the two parts could be seen as a single unit and their uses apportioned under Article 44 (the Single hereditament option).

24. The unit of assessment is a matter of legal principle with origins in practical necessity. In Ireland in the 19th Century, for example, the water rate was payable by each landlord, not each tenant; there was a 'statutory right of deduction' whereby the rates burden had to be apportioned between each and every tenant and landlord; and the rights and liabilities of voters and jurors could be affected (see Switzer & Co v The Commissioner of Valuation [1902] 2 IR 275). These practical requirements may have long gone but the underlying legal principle of this strict approach that each part held under a separate title should be treated as a separate hereditament remains. In Northern Ireland it was endorsed by the Court of appeal in Belfast Collar Company Ltd v Commissioner of Valuation [1960] NI 198. The position differs from that in England and Wales.

25. Article 38(3)(a) of the Rates (NI) Order 1977 ('the 1977 Order') modifies the requirement for such individual assessments. It provides at (3):

> "… the Commissioner, or the district valuer with the approval of the Commissioner, may, if he thinks it proper to do so having regard to the circumstances of the case,—
>
> > (a) value contiguous hereditaments in the occupation of one and the same occupier as a single hereditament, notwithstanding that they are held under different titles;
> >
> > (b) where a hereditament comprises two or more parts capable of separate occupation, although in the same occupation, value the several parts as separate hereditaments;
>
> and where hereditaments or parts of a hereditament are valued as mentioned in sub-paragraph (*a*) or (*b*), they shall be treated as a single hereditament, or, as the case may require, as separate hereditaments, for all the other purposes of this Order."

26. Where a hereditament is not used wholly for the purposes of a private dwelling Article 44 (2) provides for an apportionment of the valuation of a single hereditament on the basis of use:

> " (2) Where a hereditament, though not a dwelling-house, is used partly for the purposes of a private dwelling, the net annual value of the hereditament shall be apportioned by the Commissioner or the district valuer between the use of the hereditament—
>
> > (a) for the purposes of a private dwelling; and

(b) for other purposes,

and the apportionment shall be shown in the valuation list."

27. Article 27 defines a private dwelling by reference to Schedule 5. It is a negative test to be applied when determining the extent of the hereditament that is to be treated as used wholly for the purposes of a private dwelling. Schedule 5 paragraph 3 of the 1977 Order provides:

> "3. A hereditament shall not be deemed to be used otherwise than wholly for the purposes of a private dwelling by reason of either or both of the following circumstances—
>
> (a) that it includes a garage, outhouse, garden, yard, court, forecourt or other appurtenance which is not used, or not used wholly, for the purposes of a private dwelling;
>
> (2) that part of the hereditament, not being a garage, outhouse, garden, yard, court, forecourt or other appurtenance, is used partly for the purposes of a private dwelling and partly for other purposes, unless that part was constructed, or has been adapted, for those other purposes."

28. The two parts are contiguous hereditaments held under leases from one and the same lessor.

29. There were two possible occupiers of the premises or parts of the premises; one was the Corrs and the other was the School. But where premises are in use and there are competing possibilities for occupier, there is a presumption:

> "The issue of occupation may be and often is a pure question of fact, but in this case it is a question of mixed law and fact or a question of legal inference from the facts. The Lands Tribunal, as it seems to me, has failed to give weight to the prima facie legal inference to be derived from the fact of the owner being in possession."
>
> Per Holroyd Pearce, LJ
>
> Solihull Corporation v Gas Council [1961] All ER 542 at 548.

And:

> "The premise which [the Lands Tribunal] should have started from was that this was a building to which the board not only had a title, but of which they were, in fact, in possession. Title, of course, in matters of rating, is from one

> point of view quite unimportant; one can occupy if one has no title at all; but, where there is a competitor, matters of title often become extremely important."
>
> Per Harman LJ at 550

The Decision was affirmed in the House of Lords ([1962] 1 All ER 898). Later, in Southwark London Borough Council v Briant Colour Printing Co Ltd [1977] RA 101 at 115 CA Buckley LJ said:

> "[Where] all that is known about a hereditament is that it is in use –i.e. that it is in some kind of occupation – then, in the absence of countervailing evidence, the natural inference on the balance of probabilities is that it is the owner who is using it."

30. It was suggested and not disputed that the School had funded to some extent the building of the indoor arena. But there was no evidence of any lease or licence of any part of the premises from the Corrs to the School; the Corrs retained ownership. The School appears to have been the vehicle through which the Corrs provided paying riding lessons but there was no evidence of any formal arrangement at all between them. There was no evidence adduced to show that the Corrs had so divested themselves of their independent control of any part of the premises that they had ceded control to the School.

31. The Tribunal concludes that these are two hereditaments in the occupation of one and the same occupier and held under leases from one and the same lessor.

32. When the Commissioner separated the premises (that is what he thought at the time to be the hereditament) into two hereditaments, it was suggested that he had relied on Article 38(3)(b). If so he must have concluded that the two parts were in the same occupation.

33. The next question is whether Article 38(3)(a) should be applied to bring these contiguous hereditaments together as a single hereditament. Clearly, if so, the resulting hereditament is not used wholly for the purposes of a private dwelling but Article 44(2) may be applied. That article provides for an apportionment of the valuation of such a hereditament on the basis of uses for purposes of a private dwelling and other purposes.

34. Article 38(3)(b) enables a division to be made to overcome the difficulty created by the decision in Leader v Commissioner of Valuation [1937] NI 57. That case concerned a vacant house on a farm and it was held that there could not be a separate valuation of part of what is already a unit of valuation even where that part is vacant. The Tribunal has reservations about the extent to which sub-paragraph (b) should be used in these circumstances in combination with sub-paragraph (a) to deconstruct and reconstruct occupied hereditaments in a manner that is quite different from their immediate contracts of tenure. That was one perhaps unforeseen effect of the 'As Valued' option (the Commissioner had not seen the title documents).

35. As valued, not surprisingly, the Commissioner's division did not coincide with the boundary between the two leases A and B. Correctly in the view of the Tribunal he treated use of part of a stable block that was used as stabling for the family's horses, as use for purposes that are those of a private dwelling. It was suggested that strictly, to decide which stables should be treated as included with the private dwelling and which should not, it would be necessary to identify which defined area, which distinct part of the stables, held the family's horses and which area or part held the school horses. The Commissioner did not define any clear dividing line between the hereditaments and, in regard to the stabling only, adopted a commendably pragmatic approach by treating an undefined 50% of it as part of the private dwelling. That allowed more flexible use of the stabling than would be possible if a particular area was confined to the family's own horses. But that was not sufficient to reflect the use of other parts of the premises that also were used to a degree by the family's horses, as use for purposes that are those of a private dwelling.

36. It was suggested that treatment as two hereditaments effectively permitted only spatial division. As valued the dwelling was treated as wholly a private dwelling and Article 27 applied to that hereditament rather than Article 44. Having regard to Schedule 5, the Commissioner did not consider that there was any provision for inclusion of any part of the indoor arena with the private dwelling for 3 reasons:

    (a) The arena was built and operated by the School as a commercial venture;
    (b) The primary use of it could not be considered as ancillary to the occupation of the private dwelling; and
    (c) The primary use of any distinct part of it could not be considered as ancillary to the occupation of the private dwelling.

In regard to the Title Option Mr McAlister BL suggested that no use in connection with the family's horses should be treated as use for the purposes of a private dwelling, as the stables would not be appurtenances to a dwelling house (see Schedule 5 paragraph 3). He said that the use by the Corrs of all the land outside the dwelling house and yard etc, encompassed by lease B, was no different from use by any other member of the public. It is unnecessary to decide these points. But if the Commissioner is correct, the consequences of the adoption of any exclusively spatially-based approach is artificial and unfair in that it cannot reflect in the valuation the degree of shared use of some parts.

37. Having regard to the applicable legal principles and supported by the reasons based mainly on fairness set out above the conclusion of the Tribunal is that the 'Single hereditament' option should be adopted. These are contiguous hereditaments in the occupation of one and the same occupier, the Corrs, and held under leases from one and the same lessor. Article 38 (3) (a) should be applied to bring them together as a single hereditament.

38. That is an alteration the district valuer might have made, a decision the Commissioner might have made and therefore a decision that the Tribunal may make (see Article 54 of the 1977 Order).

39. Mr Corr suggested that as the valuation of the stable block had been apportioned 50-50 on the basis of commercial and private occupation the same apportionment should be applied to the indoor arena as the use of that was shared between the family and the school. But it is clear that whether or not he was correct to do so, the Commissioner had chosen the List option and his intention was to divide the hereditaments spatially not to apportion uses. The Tribunal accepts that the apportionment of the stable block does not provide a direct guide for the treatment of the indoor arena or any other part.

40. At the risk of stating the obvious, the Tribunal reminds the parties that it is Article 44 that applies, not Schedule 5, and the criteria are different. Just like the many other mixed hereditaments, there should be an apportionment of the whole on the basis of use for the purposes of a private dwelling and use for other purposes. Such

apportionment may include spatial considerations but is unlikely to be based exclusively on them.

41. This distinction between apportionment on the basis of 'use' and spatially on the basis of 'parts' is well established in the industrial relief cases. The discussion regarding the 'stage 2' and 'stage 3' tests in Samuel Stevenson v Commissioner of Valuation [1992] NILR 258 CA (which refers to Ulster Television Ltd v Commissioner of Valuation [1981] NILR 101 CA and 122 HL) may be helpful.

42. The parties are invited to agree an apportionment.

ORDERS ACCORDINGLY

20th January 2006

The Honourable Mr Justice Coghlin and
Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances

First Day – Appellant appeared in person.
Second Day - Mr Stephen Elliot BL instructed by Simmons Meglaughlin & Orr appeared for the Appellants.

Mr David McAllister BL instructed by the Departmental Solicitor's Office appeared for the Respondent.