LANDS TRIBUNAL FOR NORTHERN IRELAND

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

VT/4/2012

BETWEEN:

COMMISSIONER OF VALUATION

Appellant

and

ELIZABETH DOHERTY

Respondent

PART II

COGHLIN LJ

[1] This is an appeal by the Commissioner of Valuation ("the appellant") from a decision of the Northern Ireland Valuation Tribunal ("the VT") issued on 27th April 2012 as a consequence of which the Tribunal was satisfied that Elizabeth Doherty ("the respondent") was a person whose primary occupation was that of carrying on farming operations and that, as a result, she was entitled to rating relief measured by a 20% allowance applied to the capital value of the house in which she resided. Mr Donal Lunny appeared on behalf of the appellant while the respondent was represented by Ms Maria Mulholland. I am grateful to both counsel for their well prepared and thoughtful written and oral submissions.

The Factual Background

[2] The respondent is the co-owner, with her husband, of a dwelling house at 37 Ballymaleddy Road, Comber, County Down. At that location she also owns some 2.34 hectares of contiguous agricultural land which is only accessible via a laneway across the front of the house. The respondent retired from part-time work as a family support worker in 2002 and she has let the lands in conacre for the grazing of animals since 2005. The respondent's husband is a Charity Worker earning a modest income which is partially used to supplement the respondent's income from the conacre letting.

[3] The respondent is a registered farmer with the Department of Agricultural and Rural Development ("DARD"). She derives an income from the lands of approximately £1,000

per annum made up of £480 in respect of rent, a Single Farm Payment of £117.75 and harvesting of wood used to fuel the house heating system £400. The yearly outgoings for the farm are approximately £136 to include insurance and maintenance costs. The respondent estimates that she requires approximately £5,000 per annum "to live in" and, consequently, she relies on approximately £4,136 from her husband's income. Apart from the farm income and support from her husband, the respondent also has a relatively substantial fund of capital currently held within a Savings ISA account together with a Fixed Term account.

[4] The land let by the respondent in conacre consists of three fields and is used by a neighbour for the purpose of grazing horses. The respondent carries out or directs the following operations on or in respect of the lands:

(i) Hedge cutting.

(ii) Weed cutting.

(iii) Pruning and removing trees.

The respondent's evidence was that the removal and cutting up of trees was mostly a winter activity carried out by herself and her son. This could be relatively heavy work and some trees had to be physically pulled up. Hedge cutting is carried out by a contractor retained by the respondent at appropriate times. Weed cutting is primarily a summer activity with particular regard to identifying, removing and preventing the return of ragweed. Briars were inspected on a daily basis and cut back as required.

(iv) Checking and renewing post and wire fencing.

It was of particular importance to ensure that the foundations of that part of the fencing running along a riverbank did not become eroded. The horses tended to rub against fence posts sometimes necessitating their replacement.

(v) Checking and renewing drains and ditches.

It was important to check the open ditches and drains in order to ensure that they were kept clean. This is a task that requires particularly close and regular attention during bad weather.

(vi) The annual negotiation and renewal of public liability insurance.

(vii) Arranging the letting of the land and liaising with the conacre tenant.

The respondent conceded that this did not tend to be particularly time consuming since the tenant was a neighbour and the terms of the letting remained virtually the same from year to year.

(viii) Administration of farm business including, for example, dealing with DARD circulars and annual applications for cross-compliance.

The full data sheet in support of the application for Single Farm Payment required the respondent to walk the land in order to ensure that the claim was valid and to give a cross-compliance undertaking to keep the land in a good agricultural state. The relevant documentation requires to be carefully read each year owing to increasing, complexity and variation in detail.

[5] The respondent gave her evidence in a straightforward forthright manner without exaggeration. Overall, she estimated that she would spend approximately two 8 hour days a week on average upon her agricultural activities. To some extent the work was seasonal and she found herself working until late at night approximately 3-4 days a month. The respondent informed this Tribunal that she also carried out relevant paperwork for her mother in respect of the approximately 80 acres that she lets in conacre.

The Relevant Statutory Framework

[6] In order to obtain agricultural relief for the property in which she resides the respondent had to establish that the property satisfied the relevant provisions of Schedule 12 Part II of the Rates (NI) Order 1977 ("the 1977 Order") which state as follows:

> "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 and 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."

[7] It appears that, historically, the policy of Land and Property Services ("LPS") has been to apply rate relief in the form of a percentage allowance to property that is considered to be a farmhouse in order to reflect the fact that the traditional farmhouse typically would be a large two storey detached house located beside a working farmyard and be surrounded by its farmland. Such a "holding" is considered to be an entity in itself and could not be easily sold as separate lots. The assumption applied is that a prospective purchaser would bid less for such a house since they would be required to take on the land as well as the house. The relevant allowance also reflects the fact that living in a rural area comes with certain nuisance factors including noise, smell and traffic disruption to allow

movement of animals or equipment. Such factors are reflected in the allowance of 20% which is applied to the capital value.

[8] The appellant has suggested that there may have been some focus on houses "tied" to the land by those responsible for the legislation. Schedule 14 of the Notes on Clauses for the Rates (Northern Ireland) Order 1972 ("the 1972 Order") refers to farmhouses at Part II in the following terms:

> "Part II re-enacts the existing protection for occupiers of farmhouses whose livelihood derives from agriculture in areas where rents are influenced by market considerations such as high amenity value. The farmhouse 'tied' to land together with certain farm labourers houses will therefore be assessed by reference to rents restricted the level appropriate to the agricultural industry. In purely rural areas the differential between farmhouses and non-farmhouses will be much less than in the proximity of holiday resorts and urban developments."

Whatever the particular focus, the underlying policy would appear to be the protection of farming operations by affording a degree of rate relief.

The Application for Relief

[9] After making enquiries as to whether she was entitled, the respondent applied to the Commissioner for relief on 1st September 2011. The Commissioner refused to extend agricultural relief to the respondent and the respondent appealed to the VT. The respondent conducted her application and subsequent appeal to the VT without legal assistance and the VT considered only the written representations of both parties and did not receive any oral evidence. The appeal hearing took place on 5th April 2012.

[10] The VT delivered a reasoned decision on 27th April 2012. After a careful review of the relevant authorities the VT rejected submissions advanced on behalf of the appellant that the respondent's administrative functions were insufficiently physical to constitute agricultural operations and that the area of land in question was too small to attract agricultural relief. The VT concluded that the objective facts confirmed that farming was the respondent's sole occupation producing her sole source of income and that, in such circumstances, it was satisfied that she was a person whose primary occupation was that of carrying on farming operations and that she was entitled to the agricultural relief sought.

[11] The appellant sought leave from the President of the VT to appeal that decision to this Tribunal in accordance with Article 54A of the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order") and Rule 4 of the Lands Tribunal Rules 2007. The President determined that a point of substance had been raised on behalf of the appellant and, accordingly, granted the appropriate leave.

The Party's Submissions

[12] Mr Lunny on behalf of the appellant drew the attention to the Tribunal to the leading decisions in McCoy v Commissioner of Valuation VR/35/1988 and Wilson v Commissioner of Valuation [2010] NI 48. He also referred to the Canadian case of Northern Trust Company v Eckert [1942] 2 WWR 382 and Pimm v Port (Estates Gazette Digest of

Cases [1965] 11). Mr Lunny submitted that a number of key principles may be distilled from such authorities:-

(a) "Occupation" is not a technical term. It must be given its ordinary meaning. It does not equate with "job" and, as a result, a role that may not traditionally have been recognised as a "job" (such as that of "housewife" or "househusband") may properly be recognised as an "occupation".

(b) The focus, when determining a person's "primary occupation" should be upon that which engages a person's time and attention on a daily basis.

(c) Engagement of a person's daily time and attention is a necessary ingredient of any alleged primary occupation, even if it is contended that a person has only one occupation.

(d) The source(s) of a livelihood may be a relevant factor in determining that person's primary occupation, particularly if she or he has more than one occupation. However, it cannot be determinative of the question.

[13] Mr Lunny argued that the test applied by the VT for the purpose of determining the respondent's "primary occupation" was defective in two significant respects, namely:

(i) The VT had wrongly focused upon the source of the respondent's income to the exclusion of any adequate consideration of what occupied her time and attention upon a daily basis. It had also omitted to take into account the extent to which the respondent was dependent upon her husband for her living expenses.

(ii) It would appear that the VT had concluded that the administrative tasks performed by the respondent came within the definition of "agricultural operations on the land" and, if so, it had been wrong to do so.

In the circumstances, Mr Lunny submitted that the respondent's role as a housewife was the activity primarily engaging her daily time and attention and that it was through that role that she derived the significantly greater share of her income.

[14] On behalf of the respondent Ms Mulholland accepted that the key question of issue in this appeal was whether the primary occupation of the respondent constituted the carrying on or directing of agricultural operations pursuant to Schedule 12 Part II of the 1977 Order. She suggested that the objective behind Schedule 12 Part II was to provide rate relief to those engaged in such operations as part of a wider agricultural policy aimed at protecting and supporting the farming sector in Northern Ireland. Ms Mulholland submitted that the essential principle to be derived from authorities such as McCoy and Wilson was that objectivity was the essence of the exercise and there was a need for the Tribunal to stand back, draw any appropriate inferences and reach a conclusion as to what engaged the daily time and attention of the ratepayer, what was her job, was her livelihood in the main derived from farming. In her submission the facts of the particular case and the inferences to be reasonably drawn therefrom should lead the Tribunal to conclude that the respondent's only occupation was that of farmer. She drew the attention of the Tribunal to

the decision in Lewis v Tudge [1959] 4 RRC 336 as authority for the proposition that, in itself, retirement could not be treated as an occupation.

Discussion

[15] The approach to determining whether a person's "primary occupation" was agricultural operations in accordance with Part II Schedule 12(a) of the 1977 Order was considered by a distinguished past President of this Tribunal, Judge Rowland QC, in McCoy v The Commissioner of Valuation for Northern Ireland (VR/35/1988). After referring to the earlier decisions in Scott v Billett Vol 1 RRC (1956/57) page 29 and Gammons v Parsons 46 R and 1.T 527 the President articulated an appropriate test in the following terms at page 5 of his decision:

> "The Tribunal accepts that the term 'occupation' has not got a technical meaning; therefore it must be given its ordinary meaning which is that which engages the time and attention of a person. Faced with the task of applying the ordinary meaning of the phrase 'primary occupation' to the facts as found the Tribunal must stand back and ask in an objective way, as a reasonable onlooker might ask of the Appellant 'What is your job? What engages your daily time and attention? Upon what business are you normally engaged every day?' If the answer to those questions is 'I have two occupations, farming and the Civil Service' then the further question must be asked – which is paramount or more important or in short which of them is primary? Once again an objective inference must be drawn from the facts which are peculiar to the Appellant personally so far as his livelihood is concerned."

[16] The approach by Judge Rowland QC was approved by all three members of the Court of Appeal in the subsequent decision of Wilson v The Commissioner of Valuation [2009] NICA 30. At paragraph [39] of his judgment McCloskey J said:

> "The second part of the exercise to be performed by the tribunal in this type of case is, however, of a character significantly different from its initial, fact-finding task. Having found the facts, it is incumbent on the tribunal to form an evaluative judgment, based on the material facts which it has found. At this – the second – stage, the subjective claims and assertions of the ratepayer are no longer relevant. The crucial question for the tribunal is whether the facts found by it would support a conclusion that the ratepayer's primary occupation is farming. This behoved the present tribunal to stand back and to consider, in a balanced and evaluative fashion, whether, having regard to the facts found, the ratepayer's livelihood '... is in the main derived from farming' (McCoy v Commissioner of Valuation [VR/35/1988], per Judge Rowland QC). Objectively is the very essence of this exercise."

[17] Both the case of McCoy and that of Wilson involved the Tribunal comparing the agricultural operations carried by the applicants with their other full-time employments. In McCoy, the applicant worked as an Executive Officer in the Department of the Health and Social Services based in Omagh performing a 42 hour week while Mr Wilson was a qualified surveyor who worked a 37 hour week as an Assistant Director in Lisburn City

Council's Environment Services Department. As noted earlier the applicant in this case retired from her part-time employment in 2002. In Lewis v Tudge (Valuation Officer) (LVC/1859/1958) the Lands Tribunal in England and Wales considered the case of a retired chartered surveyor who occupied a dwelling house in connection with 1¼ acres of fruit garden and 2½ acres of rough pasture. In the course of delivering its decision the Tribunal recorded that:

> "... The question is whether Mr Lewis, a retired practitioner, is 'primarily engaged' in carrying on or directing agricultural operations on the associated land. Having regard to his retirement from practice it cannot be said that his concern with the agricultural operations on the land is subordinate or ancillary to any other occupation, for I do not think that 'retirement' can be said to be in any sense an occupation in itself."

Ultimately the appeal in that case was rejected because of the limited operations performed by the appellant and the location of the relevant premises. The Tribunal concluded:

> "This is not an agricultural holding in the usual sense of the term, and it would not appeal to the agriculturalist, whose primary concern was the making a living therefrom, and although within the terms of the section the hereditament may qualify as an agricultural dwelling-house, it would on that account command no less rent than properties without associated land, for it occupies a favourable position among other private dwelling-houses of similar class."

[18] Mr Lunny drew support for his submission that being a "housewife" was the appellant's primary occupation from the decision of the Alberta Supreme Court in Northern Trust Company v Eckert (Western Weekly Reports) 1942 Volume 2 page 382 in which Ewing JA, delivering the majority judgment, expressed the view that "no housewife" would be prepared to admit that her housewifely duties did not engage her time and attention. He then went on to observe:

> "In the present case Mrs Eckert has at all times material derived her living from her status as a wife and the performance of the duties incident to that status. During the past 13 years she has gotten no returns from the farm. The most she hopes for is that when the farm is paid she will get some money out of it. But she owes more now under her purchase agreement than she did in 1927. If a person has two occupations one from which he continuously derives his living and one which continuously yields no returns whatever these circumstances furnish strong evidence that the former and not the latter is his principal occupation."

It is interesting to also note the dissenting judgment of Ford JA in that case who expressed a somewhat different view of "housewife" as an occupation. At page 386 he said:

> "Furthermore, it is not suggested that a married woman living with her husband cannot be a farmer entitled to make a proposal and I am of the opinion that the work of a wife or 'housewife' is not an 'occupation' contemplated by the definition as one which may be considered in competition with that of farming or

> tillage of the soil as being the principal occupation of one who admittedly is farmer. It might as well be said that a widow, a farmer, who by reason of ceasing to be a 'housewife' has become the housekeeper of herself and her children is, because she does not live on the farm she operates, denied the benefit of the remedial Act in question because she devotes more time to her household duties than to her farm. Surely the fact that while a wife she relies on her husband's support, her other 'occupation' being unprofitable, cannot be a factor in considering whether there are two occupations or which the principal or which is secondary."

[19] In Pimm v Port (VO) (Estates Gazette Digest of Cases 1965 page 11) a member of the Lands Tribunals of England and Wales had to consider the case of a house occupied by Mrs Pimm for keeping about 80 laying hens and a number of fruit trees on an area of land somewhat less than .25 of an acre. Since Section 2(2) of the Rating and Valuation (Apportionment) Act 1928 specified that "agricultural land" to which it applied must exceed one quarter of an acre Mrs Pimm's appeal failed upon that ground alone. However, the member went on to express the view that:

> "Mrs Pimm is clearly occupied in agricultural operations but I think it is at least doubtful if that can be said to be her primary occupation. Her primary occupation would seem to be that of housewife. It cannot be said that she is employed in the agricultural operations as servant of Mr Pimm and can only use the house while so employed."

While, strictly speaking, such remarks were probably *obiter*, the member did express the view that this was a further ground for failure of the appeal.

[20] As Higgins LJ observed in Wilson at paragraph [17] of his judgment:

> "Undoubtedly the objective of Article 39 and Schedule 12 of the 1977 Order remains as it was under Section 72 of the Local Government Act 1929, to provide relief to those engage in agricultural operations."

It is important to bear in mind that each case is likely to be highly fact specific and dependent upon its own particular factual circumstances. The agricultural operations under consideration in this case consist of conacre lettings. As Gibson LJ observed in his comprehensive review of the relevant historical background when delivering judgment in Taylor (Merchants) Ltd v Commissioner of Valuation [1981] NI 236 conacre letting is a system of agricultural land tenure peculiar to Ireland that grew out of the social and economic condition of agricultural peasants in Ireland more than 100 years ago. While the conditions responsible for its development undoubtedly have changed beyond recognition over the years, it cannot be doubted that conacre remains a familiar and widely employed form of agriculture operation throughout Ireland which the legislature has accepted should be afforded a degree of rate relief. Partly for historical reasons conacre lettings may vary significantly in terms of area. The lands concerned in this case are significantly greater in area than those which were the subject of the decision in Pimm v Port and, unlike Northern Trust Company v Eckert, the operations have continued to provide the respondent with an income, albeit one that is relatively modest.

[21] I am satisfied on the basis of the evidence given by the respondent that most of the time spent by her upon agricultural operations consists of physical activity. However, I also accept that the administrative duties about which she gave evidence properly fall to be considered as part of her agricultural operations insofar as they are ancillary to and necessary for the management of the lands in order to effectively produce an income in the current legislative and regulatory climate. Both the physical work and the ancillary administrative duties are carried on by the respondent and this would appear to make this case quite different from that of Parker-Gervis and Another v Lane (1973) RA page 202 which concerned a secretary and bookkeeper who lived in a house on the relevant estate purely as a location in which to process and record the wages records and some 2,000 bookkeeping entries relating to sales, purchases, invoices and follow-up correspondence. As Sir Michael Roe QC, President, noted in the course of the Lands Tribunal decision in that case "agricultural operations on that land" required the occupier to be primarily engaged in physical not secretarial operations.

[22] I am not attracted to the submission advanced by Mr Lunny that the respondent's primary occupation is that of "housewife" in respect of which she is paid by her husband. Earlier in this judgment I have referred to the differences that I consider to distinguish the respondent's case from that of Mrs Pimm and Mrs Eckert and it seems to me that, in 2014, the dissenting judgment of Ford JA expressing the opinion that the work of a wife or "housewife" was not an "occupation" contemplated by the relevant statutory definition in the latter case is also consistent with the policy of the 1977 Order. In my view it is also more consistent with modern perceptions of personal relationship involving co-habitation. The distribution of domestic tasks within such relationships may vary enormously depending upon the changing roles and circumstances of the participants. I doubt very much as to whether, when she was still working as a part-time care worker, the respondent would have been perceived as having three occupations and yet there was no indication of any significant change in her domestic activities after her retirement from employment as a care worker. This is not a case similar to McCoy or Wilson where there were two occupations in competition one of which required the claimant to perform a structured working week. There was no evidence that the respondent had to perform set tasks or put in a specified number of hours in order to receive from her husband the funds necessary to make up her living expenses. There was no evidence that her domestic activities in any way impinged upon her ability to perform her agricultural operations and, indeed, her reference to "sometimes working late into the night" gave the clear impression that, on fairly frequent occasions, domestic activities assumed a lower priority. The concept of a "*primary* occupation" connotes importance as well as time and I am satisfied that the respondent would postpone any domestic activity in order to deal with a pressing need for attention to her agricultural work. "Retirement" could not be said in any sense to be an occupation for Mr Lewis nor could it be so conceived of in the case of the respondent. In the circumstances, I am not persuaded that, presumably, the same domestic duties performed by the respondent prior to her retirement could somehow become transformed into an "occupation" post-retirement. In my view, after she retired, the agricultural operations performed by the respondent constituted, in practical terms, her sole and, therefore, her primary occupation in accordance with the policy of the legislation.

[23] Accordingly, for the reasons set out this appeal must be rejected.

21st March 2014