

NORTHERN IRELAND VALUATION TRIBUNAL

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

CASE REFERENCE NUMBER: NIVT 16/11

LIAM BRADLEY – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NI – RESPONDENT

Date of hearing: reconvened 13 February 2013

Chairman - Mr Michael Flanigan

Members – Mr David McKinney and Mr Peter Somerville

DECISION – Please see over

Decision and Reasons

The Hearing

1. Neither the Appellant nor the Respondent appeared and both parties relied on their written submissions only.
2. The subject property (“the property”) in this appeal is situated at 8 Milltown Hill, Warrenpoint, Newry BT34 3QY. The property is owned but not occupied by the Appellant. The property is a single storey detached cottage situate in the middle of a working farm yard.
3. On 14th May 2012, the Commissioner’s decision on appeal confirmed the capital valuation of the property in the sum of £80,000. The Appellant appealed against that decision.
4. The following documents were before the Tribunal;
 - 4.1 Notice of Decision dated 14th May 2012
 - 4.2 Notice of Appeal dated 14th June 2012
 - 4.3 Respondent’s Presentation of Evidence
 - 4.4 Submissions from the Appellant together with photographs
 - 4.5 Correspondence between NIVT and the parties together with replies thereto.

5. Evidence and Submissions

5.1 The Appellant’s appeal as set out in the original Notice of Appeal was that the property should be given a zero valuation and removed from the list as it was an agricultural building. The Appellant submitted that the property was used for storage only and was not occupied as a dwelling house. The Appellant’s written evidence was that the property was solely used for storage purposes and that the various parts of the property were used to store bales of hay, compound feed and pellets, industrial weed killer, grass seed, medicines, animal health products together with ice banks in which semen for artificial insemination were stored. The Appellant submitted photographs showing the location of the property within the farm yard.

5.2 The Respondent in their evidence acknowledged that while the property was positioned in the middle of a working farm yard, it “retains the look and nature of a domestic dwelling both internally and externally”. The Respondent noted that the property claimed to be used as an agricultural store but that on inspection that the use of the property was “not wholly consistent of that of an agricultural store”. The Respondent further submitted that a property that “looks like and has the characteristics of a domestic dwelling” did not fall within the category of an agricultural store within the meaning of the Rates (Northern Ireland) Order 1977 Schedule 1 Paragraph 2. The Respondent submitted photographs of the property including photographs of the interior of the property which showed one of the rooms being used to store hay. The Respondent submitted a schedule of comparable properties in support of the valuation of £80,000 which they had placed upon the property as a domestic dwelling.

5.3 The first issue to be addressed by the Tribunal was whether the subject property was an agricultural building or a dwelling house. At the hearing on 28th January 2013 the Tribunal drafted several questions to be addressed by both parties by way of clarification. The appellant was asked to clarify how long the property had been used for storage, to identify how each of the rooms in the property were used for storage and if any alterations had been made to the property in order to accommodate storage. The Respondent was asked to submit any authority that they sought to rely upon for the proposition that a dwelling house is defined by having a “looks and characteristics of a domestic dwelling” other than being used wholly for the purposes of a private dwelling in accordance with Schedule 5 of the Rates (NI) Order 1977. The Respondent was further asked to clarify upon what basis they had formed the view that the user was “not wholly consistent of that of an agricultural store”.

5.4 The Respondents did not submit any authority to support the proposition that a dwelling house was defined by having the looks and characteristics of a dwelling house. In response to the clarification sought by the Tribunal as to what user of the property was not consistent with that of an agricultural store, the Respondent replied on 15th February 2013 as follows:

“The valuer has confirmed that at inspection some rooms were used to store hay. However, the kitchen remains in the house and this appears to be the reasoning for considering that the use was “not wholly consistent with that of an agricultural store””.

5.5 The Appellant in response to the clarification sought by the Tribunal replied that the property had been used as a store for over 10 years, that there were five rooms in the property and that the rooms were used for storage as follows. The two largest rooms were used for storing bales of hay, another room was used for storing power tools and farm equipment, another was used to store cattle feed and seeds. A central area was used to store veterinary supplies and chemicals together with ice tanks for the storage of semen. The appellant had not made any alterations to the property to facilitate storage.

6. The Legislation.

6.1 The definition of a dwelling house is contained in Schedule 5 of the Rates (NI) Order 1977 ("the Order") which states as follows:-

"a dwelling house" means, subject to paragraphs 2 -5, a hereditament used wholly for the purposes of a private dwelling".

6.2 The definition of an agricultural building is contained in Schedule 1 Article 2 of the Order and states as follows:

"2 (1) In this order "agricultural buildings"

(a) means buildings occupied together with agricultural land and used solely in connection with agricultural operations thereon, or buildings being or forming part of a market garden and used for the purposes thereof....but does not include a building which is a dwelling house".

7 Discussion

7.1 In both the case of a dwelling house and an agricultural building the Order has elected to define dwelling house and agricultural building by reference to their user only. The issue therefore to be determined by the Tribunal was whether there was sufficient evidence of the property being used for agricultural storage that meant that the property should be properly designated an agricultural building notwithstanding the fact that the property had the looks and characteristics of a domestic dwelling.

7.2 The evidence of the appellant was that the premises had not been occupied as a dwelling for over 15 years and had been given over to agricultural storage for over a decade. In their response to the written question raised by the Tribunal the Respondent had stated the only aspect of the property which the Respondent felt was

inconsistent with its use for storage was the continued existence of a kitchen. The evidence of the Appellant was that the kitchen area was used for the storage of medicines and ice banks. The consistent case of the Appellant was that the property was solely used for the storage of a variety of agricultural materials directly related to agricultural operations. No evidence was submitted by the respondent to indicate that there was any other user taking place in the property and in particular there was no evidence that the premises were being used as a dwelling house.

7.3 The Respondents sought to rely upon a decision in *Liggett v Commissioner for Valuation (VT01/08)* (“*Liggett*”) in support of their valuation on the basis that that decision involved similar facts to the incident case. In the case of *Liggett* the property in that case was a detached cottage in a farm yard. The cottage was let out under a tenancy agreement and was occupied by the tenant. The cottage in *Liggett* was used as a dwelling house and no issue as to user or the mutually exclusive definitions contained within Schedule 1 and Schedule 5 of the Rates (NI) Order was raised in that case. The Tribunal distinguished the decision in *Liggett* from the instant case on the facts.

7.4 The question of whether the property was being used as a dwelling or was used solely in connection with agricultural operations was essentially a question of fact to be determined by the Tribunal. Having examined all of the submissions, correspondence and photographs the Tribunal was satisfied that the property was occupied together with agricultural land and was used solely in connection with agricultural operations on the land. The Tribunal held that the property was not being used as a dwelling house and therefore did not satisfy the statutory definition of a dwelling house set out in Schedule 5 of the Order. The tribunal unanimously decided that the property was an agricultural building and that the list should be amended accordingly.

7.5 Having decided the preliminary point in favour of the Appellant the Tribunal was not required to address the evidence of comparable valuations submitted by the Respondent.