

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

CASE REFERENCE NUMBER: NIVT 8/19

MS ANN O'PREY – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Michael Flanigan LLB

Members: Mr Chris Kenton FRICS and Mr David Rose

Date of hearing: 24 September 2020

DECISION

Introduction

1. The appellant and respondent both attended a remote hearing, gave evidence and submitted evidence, and the Tribunal is grateful for the submissions from both parties.

2. The subject property (“the property”) in this appeal is 43D Rubane Road Kircubbin, County Down BT22 1AT. The property which is owned and occupied by the appellant and her husband James O’Prey comprises a dwelling house with garden and outbuildings. The property is located within the family farm of which 14.7 hectares are around the property and a further 15.6 hectares of land are located approximately a mile away. Mr and Mrs O’Prey trade as the O’Prey Farm. In addition they are the sole shareholders and directors of a construction company called O’Prey Developments Ltd.

3. The appeal is against the decision of the Commissioner of Valuation dated 28th May 2019 whereby the appellant’s application for agricultural relief was declined and the capital value of the property upheld in the sum of £250,000.

4. 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:-

(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 as 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.

5. In order to assess the appellant's application for agricultural relief the respondent invited the appellant to submit answers to an eight point questionnaire which was directed at establishing the nature and extent of agricultural operations in which she was engaged, and further to establish how much of her income was derived from farming.
6. On the basis of the answers to the questionnaire, the respondent has refused the application for agricultural relief on the grounds that the appellant's primary occupation was not farming.
7. Since the respondent accepted that the appellant occupied the property with the lands the question which fell to be determined by the Tribunal was whether the appellant was a person whose primary occupation was carrying on or directing farming operations on that land.

8. The appellant's evidence was that the farm handles an average of 150 beef cattle which are allowed to graze and build up weight, "being finished off on the land" before going to the abattoir. Cattle would be taken to the abattoir when ready. The number of cattle being transported to the abattoir would vary depending upon when they were ready, and this could involve at times transporting cattle several times per month, and at other times once per month. There was no dairy element to the farm. The evidence of the appellant was that Mr O'Prey was engaged in a certain amount of farm work every day, and that the farm took precedence over the company.
9. In relation to O'Prey Developments Ltd the appellant's evidence was that it was a general construction business, which was run on a daily basis by Mr O'Prey from office premises adjacent to the property and rented from the farm. The business had survived the economic collapse of 2008 but still carried historic debt from that time. Mr O'Prey was assisted in running the business by his two sons but would still have to go out visiting sites "trouble shooting". Mr and Mrs O'Prey are the sole directors and shareholders. The directors drew modest directors' salaries from the company in the sum of £23,878 in 2018.
10. The question of how to determine whether someone's primary occupation is farming has been addressed in a number of decisions:
 - 10.1 McCoy v The Commissioner of Valuation VR/35/1988,
 - 10.2 Ian Wilson v the Commissioner of Valuation (2009) NICA 30
 - 10.3 Lewis v Tudge (VO) LT.4RRC 336 (1959)
11. In both the McCoy and Wilson cases the appellants each 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 Northern Ireland Court of Appeal examined the issue in the case of Wilson. 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).

12. In the Wilson decision Higgins LJ proposed that a tribunal should ask itself the following question:-*“Upon what business is the ratepayer normally engaged every day? 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.”*
13. McCloskey LJ sought to achieve the same objective determination of material facts, posing the question in a different manner: *“the crucial question for the tribunal is whether the facts found by it would support a conclusion that the ratepayers primary occupation is farming. This behoved the tribunal to stand back and to consider, in a balanced and evaluated fashion, whether, having regard to the facts found, the ratepayer’s livelihood “...is in the main derived from farming” (per Judge Rowland QC in McCoy v Commissioner of Valuations (VR/ N/1988) P6. Objectivity is the very essence of this exercise”.*
14. The case law referred to above has resulted in slightly different phrases, however all of the case law requires the Tribunal, when dealing with an appellant with two occupations, to establish objective facts upon which to determine which of an appellant’s two occupations the primary one is.
15. The objective facts established by the Tribunal from the written submissions, accounts, and oral evidence were as follows:

The O’Prey Farm

- 15.1 The farm had a turnover in sales of £202,585 from approximately 150 cattle.
- 15.2 It showed a net profit of £15,387.
- 15.3 It had no employees

O’Prey Developments Ltd

- 15.4 The Company had a turnover of £3,980,780 from approximately 15 sites.
- 15.5 It showed a net profit of £181,216.

15.6 It had 20 employees.

Decision of the Tribunal

16. There are few farmers who can make a living from farming alone and many small farmers by necessity take up additional part time, or indeed full time employment. The agricultural relief for which the appellant applied is only available if the appellant's primary occupation is farming.

The test set out by McCloskey J directs the Tribunal to an essentially economic test: - Is an appellant's main income derived from farming? Higgins J invited the Tribunal to take a broader view of the appellant's activities, and to establish which of the two occupations is paramount, i.e., which is more important.

The Tribunal was satisfied that Mr O'Prey spent a great deal of time in farming, and could readily accept that there would be occasions, particularly if animal welfare was involved, when the farm would take precedence over the company. The assessment of the Tribunal was that the type of farming in which the appellants were engaged was less demanding than some others such as dairy production. The Tribunal noted that Mr O'Prey managed the farming side of things largely single handedly.

The Tribunal is not bound to determine the question of which occupation is primary by reference to income alone but on this occasion the difference between income levels and profitability between the farm and the company was very great, and this was for the Tribunal the determining factor in this appeal.

Even if the alternative broader approach is taken, any reasonable assessment of the objective facts led to the conclusion that the more important enterprise was the building company.

When the Tribunal compared the two occupations, the respective number of employees and their relative profitability, the Tribunal was not satisfied on the objective facts that the appellant's primary occupation was farming.

17. In view of the foregoing the appeal is refused.

Signed: Mr Michael Flanigan LLB – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 8 October 2020