NORTHERN IRELAND VALUATION TRIBUNAL
THE RATES (NI) ORDER 1997 (AS AMENDED)
AND THE VALUATION TRIBUNAL RULES (NI) 2007

CASE REF: 41/14
EILEEN ROARTY - APPELLANT AND
COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT
NORTHERN IRELAND VALUATION TRIBUNAL
DATE OF HEARING: 20th JUNE 2016

CHAIRMAN: STEPHEN WRIGHT

MEMBERS: MR HUGH McCORMICK MRICS AND MR DAVID ROSE

DECISION

The unanimous decision of the Tribunal is that the appeal of the Commissioner of Valuation for Northern Ireland is upheld and the Appellant's appeal is not allowed. The Tribunal recommend that the Appellant considers making a fresh application of appeal to the District Valuer in light of the new information submitted by the Appellant.

INTRODUCTION

Neither the Appellant nor the Respondent attended the Hearing and the appeal was therefore heard by virtue of Rule 11(1) of the Valuation Tribunal Rules (Northern Ireland) 2007 which states "an appeal may be disposed of on the basis of written representations if all parties have given their consent in writing."

THE SUBJECT PROPERTY

The property which is the subject of the appeal is 14 Springfield Road, Londonderry, ("the subject property").

The subject property is a large, detached two storey dwelling which is situated on the outskirts of Derry City, approximately 5 miles from the City Centre. It was constructed in 2014 and has a gross external area (GEA) of 440m^2.

THE BACKGROUND TO THIS APPEAL

The subject property was first valued for rating purposes on 17 March 2014 with a Capital Value of £380,000. The effective date of 17 March 2014 was used for this valuation as it was the date of occupation. A valuation certificate confirming the Capital Value was issued on 29 August 2014.

On 18 September 2014 an Appeal to the Commissioner of Valuation was received.

The Appellant contended that the house was occupied by a farmer and thus was entitled to agricultural allowance pursuant to Schedule 12 Part II of the Rates (Northern Ireland) Order 1977.

On the 15 October 2014 the subject property was inspected.

On the 16 October 2014 the Commissioner of Valuation declined to grant an Agricultural Allowance on the basis that there was insufficient evidence to suggest that it was warranted and accordingly issued a Valuation Certificate.

On 1 December 2014 the Appellant appealed the Commissioner of Valuation's refusal to grant agricultural allowance to the Northern Ireland Valuation Tribunal.

There then followed an exchange of correspondence between the Appellant and The Respondent between the decision of the Commissioner of Valuation and the Appellant up to and until the consideration of this Appeal.

DOCUMENTATION CONSIDERED

The following documents have been considered by the Tribunal:

a) The Notice of Appeal against Valuation for Rating Purposes (Form 3) dated 5 November 2014;

b) A letter from Eileen Doherty dated 5 November 2014;

c) Valuation Certificate issued on 16 October 2014;

d) A document entitled "Presentation of Evidence" by Stephen Stuart BSc MRICS on behalf of the Commissioner for Valuation with attached Appendices of photographs of the subject property and a list of valuations of comparable properties and a Domestic Capital Value of Farmhouse Questionnaire dated 8 October 2015;

e) Correspondence from Eileen Roarty dated 2 February 2016 enclosing a 3 page submission as to why farming is the Appellant's sole occupation, with five attached appendices namely: a letter from Brown and Company Solicitors, Letterkenny dated 2 February 2016; a letter from Drumahoe Veterinary Clinic dated 17 February 2016; the Land Registry Folio for property situate in the Townland of Drumderrydonan in the Barony of Raphoe South, Donegal; aerial photographs of the said lands; payments statement and receipt to Eileen Gallagher Hiltown Upr Corkey Letterkenny with attached map and certificates in Farm Business and animal and Crop Production;

f) Response to submissions by the Appellant dated 2 February 2016 from Stephen Stuart BSc MRICS dated 27 April 2016;

g) Response by Eileen Roarty dated 10 May 2016 to Mr Stuart's observations of 27 April 2016 and attached Business ID number for the Appellant (in her maiden name) Eileen Gallagher of 14 Springfield Road Derry City and a letter from the Department of Agriculture, dated January 2016 relating to Sheep and Goat records and

h) Notice of Hearing dated 23 May 2016.

THE RELEVANT LAW

The statutory provisions are set out in the Rates (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Rates (Amendment) (Northern Ireland) Order 2006 ("the 2006 Order"). Article 54 of the 1977 Order enables a person to appeal to this Tribunal against the decision of the Commissioner on appeal regarding the capital value.

Schedule 12 Part I of the 1977 Order, as amended, states as follows:

> "7(1) subject to the provisions of this schedule, for the purposes of this Order the capital value of a hereditament shall be the amount which, on the assumptions mentioned in Paragraphs 9-15, the hereditament might reasonably expected to realise if it had been sold on the open market by a willing seller on the relevant capital valuation date.
>
> (2) in estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised. …
>
> (4) in sub-paragraph (1) "relevant to capital valuation date" means 1st January 2005 or such date as the Department may substitute by order made subject to a negative resolution for the purposes of a new capital valuation list."
>
> (7) Article 54(3) of the 1977 Order provides that on appeal any valuation shown in a valuation list shall be deemed to be correct until the contrary is shown. Thus, any Appellant must successfully challenge and displace the presumption of correctness otherwise the appeal will not be successful."

Also of relevance in this appeal is Schedule 12 Part II – 'Farmhouses' which states:

> "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 I) that the house will always be so occupied and used."

Where a property qualifies as a farmhouse, an agricultural allowance is applied, which in effect means the capital value is reduced by 20%.

THE EVIDENCE AND SUBMISSIONS BY THE APPELLANT EILEEN ROARTY

1. Mrs Roarty in her Notice of Appeal and the attached letter of 5 November 2014 sets out her grounds of Appeal namely that she is entitled to Agricultural Relief under Schedule 12 Part II on the following grounds:

    a) That the Appellant occupies the subject property and lands associated with this house with her six children and that her "primary occupation is the carrying on or directing on of agricultural …operations on that land";
    b) The Appellant has no other occupation than farming;
    c) The Appellant contends that under Schedule 12 Part II (a) of the said regulations that she is eligible for agricultural relief;
    d) The Appellant states that she keeps ducks, hens and geese to produce eggs at this address;
    e) The Appellant states she keeps sheep to rear lambs at this address and also breeds ponies and
    f) Finally the Appellant relies on the case of *Elizabeth Doherty and Commissioner of Valuation case reference 15/11*, which held that Elizabeth Doherty, a housewife, who was co-owner of property was entitled to Agricultural rate Relief.

2. Further to these grounds of appeal, in correspondence provided by the Appellant dated 2 February 2016 the Appellant submits at least 19 new points of information including, inter alia, as to how her "primary occupation is the carrying on or directing of agricultural operations on that land" attached to her home at 14 Springfield Road. The Appellant's new arguments are summarised in the paragraphs which follow.

3. The Appellant asserts that farming is her sole occupation, that she has no other occupation either as an employee or self-employed. Further, that she should qualify under schedule 12 in that her "primary occupation is the carrying on or directing of agricultural operations on that land" attached to her home at 14 Springfield Road, and her secondary occupation is directing agricultural operations on her mountain farm at Gaugin Mountain in the Bluestacks in Donegal.

4. She states that she does receive monies in the form of maintenance from her former partner who resides in Donegal but this is not an occupation.

5. She states that she farms for profit a flock of approximately ninety sheep and further that she farms these between her mountain farm of over two hundred acres at Drumderrydonan, Ballybofey, County Donegal and lands at 14 Springfield Road.

6. She encloses a letter from her solicitors, Messrs Browne and Company; dated 2 February which she asserts confirms her ownership of that farm, together with the folio 74689F showing that she is the registered owner of this farm.

7. The Appellant encloses an aerial photograph of the mountain farm at Drumderrydonan which she submits shows that there are no buildings on this farm, nor low land grazing, nor shelter for lambing ewes.

8. The Appellant submits that the farm system she operates is designed to maintain the flock on the mountain for a minimum of seven months of the year at a stocking density of at least one ewe per hectare to be eligible for the EU funded schemes to include Single farm payment, disadvantaged area based scheme and GLAS scheme. She includes a payments statement for some of these schemes in 2011 and submits that with "convergence" of the single farm payment her EU subsidies in total shall increase to over twenty thousand euro by 2017.

9. The Appellant further submits that she manages the flock in three batches of thirty, bringing one batch at a time to Springfield Road for supervision of lambing over the four months of January, February, March and April.

10. She explains that during these four months she is supervising lambing on a 24 hourly basis at Springfield Road, assisting hogget's giving birth, applying iodine to navels of lambs, treating ewes for various periparturient illnesses such as twin lamb disease and milk fever, applying rubber rings to tails of lambs, vaccinating those lambs for clostridial diseases, feeding supplementary concentrates to ewes and roughage to the flock. She explains that invariably there will be lambs who need stomach tubed and supplementary bottle feeding; Lambs who are premature are brought indoors to specially designed pens in the house for resuscitation under an infra-red lamp. The Appellant further explains that these activities take place in the land attached to the house, and that she has, lights set up from the house during darkness.

11. The Appellant submits that anyone visiting Springfield Road during one of those four months would find at least thirty or so ewes having given or about to give birth, during the other eight months of the year they will find her sheep dog Moss and very few sheep maybe just the rams. Such is the nature of this traditional type of flock management.

12. The Appellant further explains that, as one batch of ewes and lambs are being prepared to be returned to the mountain the next batch about to give birth are brought down for a few weeks to a field she has rented from the Sisters of Mercy immediately alongside her land at Springfield Road. They are then brought into the land, which she owns, which she refers to as the lambing paddock, for 4-6 weeks when the last lambed batch is moved back to the mountain. Weak ewes are retained for several weeks extra. The flock are marked, vaccinated for pasteurella, clostridial diseases, dosed for liver fluke and stomach worms before being sent back to the mountain. The Appellant encloses a receipt for the rented field for last year's rent for 700 pounds.

13. The Appellant contends that for the remaining eight months of the year her farm is managed as all mountain farms are in the British Isles, nature is left to itself.

14. She explains that she musters the entire flock on a day in early August on the mountain to clip, then dip and mark and release rams to one batch of ewes.

15. She explains that on a day in late September she moves rams out to the second batch of ewes.

16. She continues that, in a date around Halloween she musters the flock again to tag the lambs, sell the cull ewes, ram lambs and any ewe lambs she is not keeping for replacements. She moves all the rams to the third batch of ewes.

17. She explains that, in an average year, she has three full days' work on the mountain and six other visits, collecting batches of ewes to be lambed on the low land and delivering same back.

18. She further explains, that in contrast she has four months of intensive work on the low land lambing paddocks at 14 Springfield Road, and hence that her primary occupation is the four months' work "carrying on or directing of agricultural operations on that land" attached to her home at 14 Springfield Road, her secondary occupation is directing agricultural operations on my mountain farm at Gaugin Mountain in the Bluestacks in Donegal. Before she moved to Springfield Road she carried out the 4 months' work at her former lambing paddock at Corkey, Letterkenny, Co Donegal.

19. The Appellant explains that whilst the majority of her land is on the mountain, the majority of her time in her occupation as a farmer is spent "carrying on or directing of agricultural operations on that land" at Springfield Road. It is the work carried out on this lowland that enables her to draw down the subsidies and have stock for sale.

20. The Appellant explains that visitors are welcome to observe between the four lambing months that there is always at least thirty ewes in the lambing paddock at the house.

21. Finally the Appellant states that she studied Agriculture at Ballyhaise Agricultural College, Cavan and provides the originals of certificates awarded to her in Farm Business and Animal and Crop Production in 2007 and that she holds a flock number and business number for the lands at 14 Springfield Road under her maiden name of Eileen Gallagher.

THE EVIDENCE AND SUBMISSIONS OF THE RESPONDENT

1. The Respondent refers to his presentation of evidence and attached schedule of comparable evidence and the photographs of comparable properties.

2. The Respondent gives history of the property as set out in the background to this appeal above. A brief history of the recent rating cases on the subject property is as follows:-

3. The Respondent refers to the ground of appeal namely the Appellant should be entitled to agricultural allowance, and sets out the relevant legislative provisions regarding farmhouses being found in Schedule 12 Part II of the 1977 Order.

4. Mr Stuart the Chartered Valuation Surveyor, in his presentation of his evidence on behalf of the Commissioner, explained that he interviewed the Appellant at appeal stage. He observed a small amount of land held with the dwelling. He states, *"It is essentially a paddock to the side and rear of the hereditament".* He explains that, as part of the Appeal to the Commissioner of Valuation, he supplied the Appellant with a Domestic Capital Value of Farmhouses form to complete (also known as an Agricultural Allowance form). He encloses this completed form with his submissions (at Appendix 3).

5. He further states, *"At the time of inspection, the Appellant was unsure about the exact acreage held. I measured the field using aerial mapping to be 2.9 acres. I was also informed that the Appellant might rent more land in the future. The Appellant included this additional land in the returned agricultural allowance form, even though at the time of inspection this land had not been let. The future intentions of the ratepayer to occupy additional land cannot be considered, as it might never materialise. Furthermore, the valuation certificate must reflect the state and circumstances at the time of District Valuer's certificate, as it is the District Valuer's decision that was appealed initially to the Commissioner of Valuation. Thus, at that time the Appellant held 2.9 acres of land*."

6. At the time of the inspection on 15 October 2015 he stated that *"There is no farm number or business ID for the lands in question. The Appellant owns a small number of wild fowl and three sheep".*

7. On 16 October 2014 the Commissioner of Valuation declined to grant agricultural allowance and issued a Valuation Certificate valuing the capital value of the subject property at £380,000. Stating the *"Property is not considered Agricultural-Limited."*

8. The Respondent refers to the Appellant's reliance on the case of *Elizabeth Doherty v The Commissioner of Valuation*. This is a Lands Tribunal decision where a retired person was granted Agricultural Status on a property adjoined to circa 6 acres of lands, which they let in conacre and managed. Each application for agricultural allowance must be considered on its own merits.

9. The Respondent submits that in *Doherty*, the question of how to determine whether someone's primary occupation is farming has been addressed in a number of decisions referred to in paragraph 14 of the Judgment of Coughlin LJ, namely: *McCoy v The Commissioner for Valuation VR/35/1988*, *Ian Wilson v the Commissioner of Valuation (2009) NICA 30 and Lewis v Tudge (VO) LT.4RRC 336 (1959).*

10. Mr Stuart comments that 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 the primary one was. 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) paragraph 34 of the Judgment.

11. Mr Stuart submits that in the *Wilson* decision, Higgins LJ proposed that a tribunal should ask itself the following question (at paragraph 18 of the Judgment): *"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."*

12. Mr Stuart further submits that in the case of *Wilson*, 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 ratepayer's 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 main derived from farming" (per Judge Rowland QC in *McCoy v Commissioner for Valuations (VR/N/1988)* page 6, paragraph 39). "*Objectivity is the very essence of this exercise."*

13. In *Wilson* the Tribunal took the view that the question of what engaged a person's time every day was appropriate when trying to determine which of two occupations was the primary occupation, but that the question posed by McCloskey LJ was the appropriate one when dealing with a retired person who had no other occupation other than farming, such as in the instant case.

14. The Tribunal followed the decision in *Lewis v Tudge (VO) LT.4RRC 336 (1959*), that retirement could not be treated as an occupation in itself.

15. The Tribunal in that case did not accept the Respondent's submission that administration, insurance, and letting of the land were insufficiently physical in order to constitute an agricultural operation. Farming in the modern era involves a considerable degree of administration in order to comply with issues such as EU regulations and traceability. It did not seem to the Tribunal right to introduce a physical element into the term *"farming operations"* which was not contained in the legislation and which fails to recognise the reality of farming as presently conducted.

16. The Tribunal rejected the submission that there was an area of lands which should be treated as *de minimus* for farming purposes and noted that the Appellant was a registered farmer for the lands she held and that she had been in receipt of a single farm payment in respect of her holding since the introduction of the scheme.

17. Mr Stuart further submits that having accepted the decision in *Lewis*, that retirement was not an occupation in itself, the Tribunal in the case of *Doherty* found that in this case the objective fact was that farming was the Appellant's sole occupation which produced her sole source of income.

18. In those circumstances the Tribunal was satisfied that the Appellant was a person whose primary occupation was that of carrying on farming operations and that she was entitled to the agricultural relief sought.

19. The Respondent asserts that there are a number of fundamental differences between the *Doherty* case and that of the Appellant, namely:

    - Unlike *Doherty*, the Appellant is not a registered farmer and does not have a Farm ID / Business ID for the lands in question.

    - The Appellant does not receive a single farm payment for the land.

    - Elizabeth Doherty was a retired person.

    - The Appellant's land is not let in conacre (Thus management and a reliable income are limited).

- The quantity of stock held by the Appellant, is relatively modest and could not reasonably be expected to form an income or sustain the Appellant.

- In *Doherty* evidence was provided showing a detailed breakdown of the accounts derived from the lands. No such evidence has been provided by the Appellant in this case.

- Elizabeth Doherty was also able to provide a breakdown of the physical agricultural and administrative duties carried out on the land. The same has not been provided in this instance.

20. Mr Stuart, for the Commissioner for Valuation, submitted that, in his view, three sheep, a limited amount of wild fowl and the small acreage are insufficient to sustain the Appellant. They are more in the nature of a hobby farm and may well be kept for a reward other than financial gain. He states *"Having regards to all of the facts and information provided, I do not consider that it has been shown that the Appellant's livelihood is in the main derived from farming. Accordingly, agricultural allowance has not been granted."*

21. Mr Stuart continues that, based on the facts and the arguments forwarded by the Appellant, he feels that there is insufficient evidence to support the submissions that her primary occupation is farming. Therefore, he considers the property does not qualify for agricultural allowance.

22. Mr Stuart on behalf of the Commissioner for Valuation Having regard to the particular attributes of the subject property compared to those of the comparables and on the basis of the legislation as set out above that he is the opinion that a reasonable assessment of the Capital Value of the subject as at 1 January 2005 is £380,000.

23. Mr Stuart states that applying the statutory test as directed by Schedule 12, when carrying out a revision of the Valuation List, it is a requirement to have regard to other Capital Values in the List. He has considered the Capital Value assessments of other properties as set out in Appendix 2 of the Respondent's bundle.

24. Mr Stuart concludes that the valuation has been assessed in accordance with the provisions of the Rates (Northern Ireland) Order 1977. The Capital Value, as assessed (£380,000) is considered fair and reasonable in comparison to similar properties. Agricultural allowance is not considered warranted.

RESPONSE TO THE APPELLANT'S ADDITIONAL INFORMATION DATED 2 FEBRUARY 2016

1. The Valuation Commissioner in response to the Appellant's additional information dated 2 February 2016 states:

- The Appellant has supplied new information, which represents a change in the state and circumstances since the date of the District Valuer's certificate.

- In *Marks & Spencer plc v The Commissioner of Valuation VR/30/1986* it was confirmed that a District Valuer's certificate must reflect the state and circumstances of the subject hereditament at the date of issue of the certificate.

- The current arrangement of bringing sheep from a farm in a different jurisdiction to the subject property was not raised on application to the District Valuer or during the subsequent Appeal to the Commissioner of Valuation.

- Mr Stuart contends that the change in circumstances cannot be reflected as part of this Appeal; rather the Appellant should make a fresh application to the District Valuer in order to be considered for an agricultural allowance based on the new circumstances described in the Appellant's letter of 2 February 2016.

- Mr Stuart further states that if the Tribunal does not accept that the new information represents a new set of circumstances, he offers the following comments in relation the letter of 2 February 2016.

- The historical background of the Agricultural Allowance has been described by Lord Justice Coughlin in *Doherty*:

  "historically, the policy of Land & 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." (emphasis his)

- The information confirms that the Appellant's farm is located in a different jurisdiction (Ballybofey, County Donegal), which is over an hour away from the subject property. The hypothetical purchaser would have no reason to bid less for the subject property, as they would not be required to take on the agricultural farm in Ballybofey.

- Only the activities carried out in this jurisdiction can be considered in deciding whether or not the Appellant is entitled to agricultural allowance on the subject property i.e. the activity carried out on the 3 acres next to the house. No DARD farm number or businesses ID have been provided for the land at 14 Springfield Road and the Appellant is not in receipt of any EU Grants or single farm payments for this land. The absence of this information would suggest the Appellant is not a recognised farmer in this jurisdiction.

- In the decision of *Lewis* (in which agricultural allowance was declined) the Lands 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.".

This statement equally applies to the subject property and in view supports a view that agricultural allowance is not applicable.

- At the time of the inspection there were no agricultural buildings at the subject property. In respect of the comments on supervising lambing at the property between January and March, I have no reason to doubt this, however, I am aware that it is highly unusual to lamb outdoors during colder weather particularly January and February.

- The definition of agricultural Land is *"any land used as arable, meadow or pasture ground <u>only</u>*" (emphasis added). The Appellant has clarified that sheep remain on the land for just four months of the year. The land is therefore available for other uses throughout the remainder of the year. Mr Stuart refers to an attached photograph at end of his response, which shows full size gaelic/rugby posts erected in the same field. In my opinion this is fatal to any application for agricultural allowance as it proves the land is not used <u>only</u> for arable, meadow or pasture ground. Accordingly it cannot be defined as agricultural land under the statutory definition.

- It remains my opinion, that Agricultural Allowance is not considered warranted in this instance.

<u>THE RESPONDENT'S RESPONSE TO THE APPELLANTS SUBMISSIONS DATED 2 MAY 2016</u>

1. On 10 May 2016 the Appellant responded to these arguments by stating the following:

- I note my farming circumstances have not changed and does not merit a fresh application.

- I have merely provided more detail in written evidence as requested as to how I have been farming at Springfield Road over the past four years this was available at the original inspection.

- I note my flock number is 771153 and business ID is 656852 see attached partial photocopy of correspondence at Appendix V of the Appellant's bundle.

- I note the confident assertion on behalf of the Respondent that I do not hold these.

- It is not a requirement to draw EU subsidies to be *"a farmer"*, nor to have a primary occupation of carrying on or directing agricultural operations.

- I note the comments on lambing patterns, which are irrelevant to this case.

- I note the lack of veterinary or agricultural qualifications of the witness providing these sweeping assertions.

- If the comments on my farm systems were relevant to this case I would retain an agricultural consultant or veterinary surgeon to confirm that sheep indeed lamb between January and May in the northern hemisphere, both indoors and outdoors whether it is cold or warm.

- Some breeds like Dorset horn lambing throughout the year, other sheep "sponged " with progesterone lambing as early as November. However given that I have noted the same car on several occasions in April parked outside my ground photographing the sheep (one of the photographs having been recently submitted ,note the wet ground and my new fencing posts).

- I am confident that it is now accepted that I lamb ewes at 14 Springfield Road.

- The argument tendered in relation to the football posts is inadmissible in that it is a new argument, and thus a new submission and not a response to my previous comments.

- I note the football posts were present during the inspection in 2015 and did not merit a comment at any stage in the past.

- Nevertheless I shall deal with this argument if the tribunal finds it admissible.

- They are present from when my property was owned by the neighbouring secondary Thornhill college school and are now redundant. Thornhill College having erected new full sized posts in the field across the road.

- Having calculated the surface area they occupy, it is less than one thousandth of a per cent of the pasture.

- I calculate their usefulness as scratching posts for the sheep outweigh this loss of grass.

- There is a significant cost including insurance to be incurred in removing them to no appreciable benefit. They serve no other purpose.

- I can if required provide confirmation from Thornhill College, City of Derry rugby club and the Derry GAA county board that they no longer use those posts for sports games. Any knowledge of zoonotic disease would inform a sports person that grounds being grazed cannot be insured to be utilised for sports.

- As stated previously the bulk of the sheep are moved off the pasture from May but a few rams are always held back to be grazed and built up for the tupping season they and the land are tended to in the absence of the ewes.

- As stated previously my application is based on my assertion that my *"primary occupation is the carrying on or directing of agricultural, (or as the case may be, fish farming) operations on that land"*. My primary occupation is the three to four months of intensive farming on that land at Springfield Road and eight to nine months as the case may be of

less intensive works on that land. My secondary ancillary occupation is four to five days' work on the upland land in Donegal."

2. The Appellant has furnished a partial copy of flock number is 771153 and business ID is 656852 under her maiden name of Eileen Gallagher relating to the subject property and a copy of correspondence to Eileen Gallagher dated January 2016 from the Veterinary Service, Food Animal Information Support Unit, Department of Agriculture and Rural Development in respect of the Sheep and Goats (Records, Identification and Movements) Order (Northern Ireland) 2009.

3. The Respondent declined to respond further having set out his reasons in his submissions of 27 April 2016.

OBSERVATIONS

1. The Tribunal's function is to determine an Appeal against the Commissioners of Valuations refusal to grant Agricultural Allowance to the subject property on foot of an inspection made by the District Valuer on the subject property on 15 October 2014 and the issue of a Certificate of Valuation on 16 October 2014.

2. The Appellant, in addition to her written submission, has furnished a volume of additional information and evidence which was not made available to the District Valuer prior to the issuing of the Valuation Certificate on 16 October 2014 and most of this additional information was served subsequent to the Notice of Appeal lodged by the Appellant on 5 November 2014.

3. The Respondent contends that the Appellant has supplied new information, which represents a change in the state and circumstances since the date of the District Valuer's certificate and refers to the case of *Marks & Spencer plc v The Commissioner of Valuation VR/30/1986* in which it was confirmed that *"a District Valuer's certificate must reflect the state and circumstances of the subject hereditament at the date of issue of the certificate"*. The current arrangement of bringing sheep from a farm in a different jurisdiction to the subject property was not raised on application to the District Valuer or during the subsequent Appeal to the Commissioner of Valuation. Mr Stuart contends that the change in circumstances cannot be reflected as part of this Appeal but rather that the Appellant should make a fresh application to the District Valuer in order to be considered for an Agricultural Allowance based on the new circumstances described in the Appellant's letter of 2 February 2016. The Tribunal concur with this view particularly in light of the volume of new information provided post the Valuation Certificate being issue. Therefore in relation to this Appeal the Tribunal have concluded that the correct procedure is to examine the evidence on which the decision as it relates to the state and circumstances of the subject hereditament at the date of issue of the certificate was made.

4. In light of the reliance of both parties on the case of *Elizabeth Doherty and Commissioner of Valuation* I now set out in some detail the reasoning of the Tribunal in respect of this case, and in particular, the ruling of Coughlin LJ.

5. The facts of this case were that Elizabeth Doherty owned some 2.34 hectares of contiguous agricultural land, which was only accessible via a laneway across the front of the house. Mrs Doherty retired from part-time work as a family support worker in 2002 and

she let the lands in conacre for the grazing of animals from 2005. Mrs Doherty's husband was a Charity Worker earning a modest income, which was partially used to supplement her income from the conacre letting. In making his finding of fact Coughlin LJ made the following remarks at paragraphs 3 – 5.

"[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."

At paragraph 15 Coughlin LJ states:

[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."*

At paragraph 20 of the Judgment Coughlin LJ states:

> *"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."*

6. In distinguishing the case of *Doherty* from *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* 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."

7. 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."*

In rejecting the Appeal of the Commissioner of Valuation Coughlin LJ concluded at paragraph 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."*

8. Schedule 12 Part II of the 1977 Order dealing with Farmhouses states:

> 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 (emphasis mine).

9. On the evidence and information available to the District Valuer at the time of the valuation**,** the Tribunal concur with Mr Stuart, that in his view, three sheep, a limited amount of wild fowl and the small acreage are insufficient to sustain the Appellant and that they are more in the nature of a hobby farm and may well be kept for a reward other than financial gain. Having regards to all of the facts and information provided that the Valuer, it has been shown that the Appellant's livelihood is in the main not derived from farming on that land. Accordingly, agricultural allowance was not granted.

10. The Tribunal refer to the historical background of the Agricultural Allowance Coughlin LJ in Commissioner of Valuation in *Doherty* comments at paragraph 7 of the judgment:-

> *"historically, the policy of Land & 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."* (emphasis mine).

11. The Tribunal agree that only the activities carried out in this jurisdiction can be considered in deciding whether or not the Appellant is entitled to Agricultural Allowance on the subject property i.e. the activity carried out on the 3 acres next to the house. At that time of the valuation there was a negligible amount of livestock and farming activity. Further there was no DARD farm number or businesses ID had been provided for the land at 14 Springfield Road and the Appellant was not in receipt of any EU Grants or single farm payments for this land. The absence of this information provided a basis for the valuer to conclude that the Appellant was not a recognised farmer in this jurisdiction.

12. The Tribunal have concluded, based on the facts and the arguments forwarded by the Appellant at the time of the Valuation, that there is insufficient evidence to support the submissions that the Appellant's primary occupation in connection with the subject property was farming. Therefore, the subject property does not qualify for agricultural allowance.

VALUATION

1. For the purposes of assessment the relevant capital valuation date is 1 April 2005. Paragraph 7(2) of the 1977 Order makes clear that, in estimating the capital value of a hereditament for the purposes of any revision of a valuation list, regard shall be had to the capital values in that valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value has been revised ("the tone of the list").

2. Applying the statutory test, as directed by Schedule 12, when carrying out a revision of the Valuation List it is a requirement to have regard to other Capital Values in the List. The Tribunal considered the Capital Value assessments of other properties as set out in Appendix 2 of the Respondent's bundle. The subject property was valued at £380,000 having a GEA of 440m^2. An analogous property, namely, 9 Manse Farm with less GEA of 366m^2 had a Capital Value of £360,000.

3. The Tribunal have concluded that a Capital Value, as assessed for the subject property at £380,000, is considered fair and reasonable in comparison to similar properties.

OTHER OBSERVATIONS

1. In relation to the matters raised by the Appellant, whilst this comment is obiter and not part of the actual decision, the Tribunal note that a substantial quantity of additional and relevant evidence and information has been made available since the issuing of the Valuation Certificate by the District Valuer and the Notice of Appeal to Appeal to this Tribunal.

2. At paragraph 4 of Mr Stuart's response dated 27 April 2016, (to the additional information furnished on the 2 May 2015) he has stated that the *"Appellant should make a fresh application to the District Valuer in order to be considered for an Agricultural Allowance based on the new circumstances described in the Appellant's letter of 2 February 2016".*

3. In a note dated 10 May 2016 the Appellant rejected this offer stating, *"I note my farming circumstances have not changed and do see any merit in a fresh application. I have merely provided more detail in written evidence as requested as to how I have been farming at Springfield road over the past four years this was available at the original inspection."* Whilst not expressing any view on the veracity of the additional evidence and information. It is the view of the Tribunal that there is clearly additional evidence and information to be considered and tested by the Commissioner for Valuation.

4. In light of this judgment the Appellant may wish to re-consider whether it is appropriate to make a fresh application.

DECISION OF THE TRIBUNAL

1. The Assessment of the Valuation of property is based on Statute as set out in Schedule 12 of the 1977 Order. Article (7) (2) states, *"in estimating the capital value of the hereditament for purposes of any revision of a valuation list, regard shall be had for the capital values in the valuation list of comparable hereditaments in the same state and circumstances as the hereditament whose capital value is being revised."*

2. In the case of *Marks & Spencer plc v The Commissioner of Valuation VR/30/1986* the President of the Lands Tribunal for Northern Ireland Judge Peter Gibson QC stated "*Each of the District Valuer's Certificates must of necessity conform with the general principle (agreed by both the M and S and the Commissioner) that the Certificate must reflect the state and circumstances of the revised hereditament at the date of that Certificate. As the Lands Tribunal stated in VR/12/1982 Northern Ireland Transport Holding Co Ltd v The Commissioner of Valuation for Northern Ireland "Under that rule [ie rebus sic stantibus] it is not permissible to assume the circumstances differ from actualities, relating whether to natural or physical facts or to legal rules and rights".(emphasis mine)*

3. On the evidence available to the District Valuer at the time of the issuing of the Valuation Certificate, the Tribunal holds that the subject property does not attract an Agricultural Allowance in that, given the negligible amount of livestock, it cannot be shown that there is sufficient evidence. The facts of this case can be distinguished from the case of *Elizabeth Doherty v The Commissioner of Valuation*. The hypothetical purchaser would have no reason to bid less for the subject property as there is no land, described as a "Holding" by Coughlin LJ, which they would be required to take on with the house. Therefore, the agricultural allowance described by Lord Justice Coughlin in *Doherty* does not apply to 14 Springfield Road, Londonderry. Instead, the property should be valued in line with comparable properties in the same state and circumstances as the subject property.

4. The Tribunal is very grateful to both the Appellant and the Respondent for the time and effort they have expended in preparing their detailed and helpful submissions. In this case the Tribunal did not find that the Appellant had produced sufficient evidence to displace the statutory presumption that, *"any valuation shown in the valuation list with respect to a hereditament shall be deemed to be incorrect until the contrary is shown"*.

5. The Tribunal's unanimous decision is that the decision of the Commission for Valuation is correct and the Appellant's appeal is dismissed.

Signed: Stephen Wright
Chairman of Northern Ireland Valuation Tribunal
Date Decision Recorded in Register issued to Parties: 16 November 2016