

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 43/18

MR ALAN WARNOCK – APPELLANT

AND

COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Northern Ireland Valuation Tribunal

Chairman: Mr Francis J Farrelly

Members:

Ms Angela Matthews (Lay)

and

Mr Hugh McCormick MRICS (Valuer)

Date of hearing: 16th September 2020 - via SightLink 16

DECISION

The unanimous decision of the tribunal is that the Decision of the Commissioner of Valuation for Northern Ireland is upheld, and the appellant's appeal is dismissed.

REASONS

Introduction

1. There currently are restrictions on the types of hearings available because of Covid. Mr Warnock (the appellant), by email dated 23 August 2020, indicated he was content for the appeal to be dealt with on the papers. The tribunal sees no injustice in so proceeding.
2. The tribunal members had been supplied with appeal papers in advance of the hearing. The prepared bundle consists of 10 items. On 16 September 2020, the tribunal considered the appeal using video conferencing facilities. The appellant and respondent have not engaged directly in the oral hearing.

The issue

3. The appeal relates to a private dwelling and outbuilding known as Rocklodge, 29 Lindsayville Road, Cookstown, BT80 8UH. Following an inspection on 22 January 2019 by Mr O'Brien BSc, an employee of the respondent, the respondent assessed its capital value at £205,000.
4. There is a statutory presumption in Article 54(3) of the 1977 Order that in an appeal any valuation shown in the valuation list shall be deemed to be correct until the contrary is shown. It is up to the appellant to displace that presumption.
5. In the notice of appeal dated 1 March 2019 the appellant does not challenge the capital valuation. A farmhouse is valued in the same way as any other domestic property. There is a 20% reduction under Article 39 and Schedule 12 of the Rates (Northern Ireland) Order 1977 for a house occupied in connection with agricultural land and used as the dwelling of a person whose primary occupation is the carrying on or directing of agricultural operations on that land.
6. The allowance was not granted because it was not accepted the appellant's primary occupation was carrying out or directing of agricultural operations.

The factual background.

7. We do not have strict proofs of evidence of the underlying facts. However, bearing in mind the nature of this tribunal and the issues involved we approach the appeal based on the undisputed facts indicated in the papers. In summary:
 - (i) The property was acquired by the appellant's family in 1930. It consists of a dwelling house and outbuildings and 12.62 hectares of land. The land encircles the dwelling house and outbuildings. These are accessed from a lane off the county road.
 - (ii) The appellant lives in Enniskillen. He was in full-time employment based in Fermanagh with the Department of Agriculture between 1973 until he retired in 2015. Because of these work commitments the farm fell into some disrepair.

- (iii) The appellant has been letting the land in conacre. Approximately 1% of his income comes from this. The balance is made up of a works pension and the State retirement pension.
- (iv) He would spend several days a week on the farm, staying in the farmhouse. He would tend to occupy the premises more often in the summertime, then spending two or three nights per week. As evidence of his occupation he expended £843 on heating oil and £188 on electricity from April 2019 until March 2020.
- (v) The appellant has engaged in maintenance work on the farm, either personally or organising the carrying out of such work. This includes the repair of fencing, the maintenance of hedges, building repair and general upkeep.
- (vi) For over seven years the appellant participated in the Department of Agriculture's DARD program and the countryside management scheme.

The submissions

8. In a submission dated 11 February 2020 Mr O'Brien, who inspected the property on behalf of the respondent, concluded he was not entitled to the agricultural allowance as his livelihood was not in the main derived from farming. He also states that the appellant's primary place of residence is his home in Enniskillen.
9. In support of the respondent's decision reference is made to several decisions. The first is McCoy -v- The Commissioner of Valuation VR/35/1988, a decision of the President of the Lands Tribunal. There is then the NIVT decision of Mr Little 72/12. The latter in turn refers to several decisions, including that of the Court of Appeal in Wilson -v- Commissioner of Valuation for NI [2009] NICA 30, a decision of the President of the Lands Tribunal in Commissioner for Valuation and Elizabeth Doherty (VT/4/2012.). There is then a further Court of Appeal decision, McCall -v- Rev and Customs Comm. [2009] NICA 12. The latter is of limited value as it is dealing with taxation issue
10. The appellant seeks to distinguish the cited cases from his own situation. Most concerned individuals in other employments whereas the appellant is retired and

whose only occupation is in relation to the farm. He also refers to the fact his acreage is larger than that in the McCoy case.

11. In an email response dated 24 June 2020 a member of the respondent's staff continued to maintain the decisions were relevant. They show the determination should be made based on what engages a person's time and attention daily as well as considering income from the agricultural land. At tab 5 of the papers, in response to additional evidence submitted, a member of the respondent's staff accepts that retirement cannot be viewed as an occupation in itself but submits that the decision of McCoy calls for determination on what engages the time and attention of the occupant on a daily basis. Furthermore, the case of Mr Little 72/12 did involve an applicant who was retired and in receipt of a pension who carried out maintenance work in respect of agricultural land let out in conacre. The response refers to the decision as finding that the income from farming was insufficient to be classified as a primary occupation.

12. Paragraph 6.5 of the NIVT decision of Little indicates the respondent had adopted an approach to such claims. It acknowledges many farmers now engaged in agriculture on a part-time basis. The respondent appears to apply a formula whereby for a farm to provide sustainable income it would generally need to be in the region of 40 to 50 acres. Furthermore, part-time farmers expend more than 50% of their time farming. Whilst this may be internal guidance there is no statutory basis for this.

Consideration

13. The tribunal has reached a unanimous decision that the appellant is not entitled to the relief he seeks. However, the tribunal members have arrived at this conclusion for different reasons. To explain our decision, it is necessary to go into this in detail.

14. Schedule 12 of the Rates (Northern Ireland) Order sets out the basis of valuation. Part II relates to Farmhouses. Under this heading the relevant section reads:

The net annual value of a house occupied in connection with agricultural land... and used as the dwelling of a person—

(a) whose primary occupation is the carrying on or directing of agricultural ...operations on that land.

15. This statutory provision requires consideration of several concepts. To help explain we have broken down and underlined parts of the section:

The net annual value of a (i) house (ii) occupied in connection with agricultural land... and (iii) used as the dwelling of a person—

(a) (iv) whose primary occupation is the carrying on or directing of agricultural ...operations on that land.

16. From this, it is necessary to establish that the property is a house. There is no dispute in this appeal that the subject property is a house.

17. The statute links the occupation to a connection with agricultural land. In the present appeal the house is surrounded by agricultural land to which there is a nexus, namely, common ownership by the appellant. The respondent has not disputed the connection between the house and the land. Instead, the focus has been upon the appellant and whether his primary occupation is the carrying on or directing of agricultural operations on that land.

18. It has been necessary to set these matters out in detail to follow the differing approaches of the members of the tribunal.

The majority view

19. The majority takes the view that the appellant was not in occupation of the property as required. The property was clearly not the dwelling of the appellant as his main residence was in Enniskillen. It is for this reason the appeal fails.

20. The majority did find that farming was his sole occupation, he having retired from the civil service. Even though this activity formed a small part of the appellant's income this did not detract from that conclusion. It was pointed out that the farm

which made a loss each year did not mean it could not be considered a primary occupation for a farmer. Consequently, but for the occupation issue he would have succeeded.

The minority view

21. The minority did not take the occupation point. There was a connection between his occupation of the property and agricultural land, namely the surrounding fields he owned. The legislation makes no reference to the need for the property to be a person's main residence. The minority view is that his presence for part of the week amounted to occupation.
22. However, he had not established his primary occupation (meaning employment) was the carrying on or directing of agricultural operations. It was accepted that the issue was not the profitability of the occupation. Rather, on the facts he failed on the 'primary' requirement.

The case law

23. We have had the benefit of the case law provided. Unfortunately, none of this is directed towards occupation of the property but instead focuses upon the work undertaken.
24. The Court of Appeal decision in Ian Wilson -v- The Commissioner of Valuation [2009] NICA 30 helpfully reviews the authorities. It refers to the decision of Gammans v Parsons (1953) 46 R&IT 527. This decision is particularly of interest given the differing approaches of the present tribunal members to occupation. The appellant there was a solicitor who practised in Portsmouth and who usually resided in Southsea. He owned a farm of 900 acres in Hampshire and visited it two or three times per week. He directed agricultural operations there which were carried out by five employees residing in tied houses on the farm. During school holidays he and his family resided on the farm. He claimed that the farmhouse was the dwelling-house of a person (himself) who was always primarily engaged in carrying out agricultural operations on the farm.

25. The judgment does not directly go into the issue of occupation. The Lands Tribunal the President (Sir William FitzGerald) said that the object of the statute was to extend relief to those whose livelihood was in the main derived from farming, then a precarious occupation. In rejecting the claim for relief, the President observed that the solicitor was actively engaged in practice and that the farming operations were of secondary importance to him so far as his livelihood was concerned. During the short judgment the President stated:

“In our view, the necessary qualification for the relief provided by the section is a personal one, and we must decide whether the ratepayer is in fact carrying on or directing agricultural operations on the land occupied with the dwelling-house and, if so, whether he is primarily so engaged. There is no doubt that he is engaged in directing agricultural operations, but, as we have indicated, the question as to whether he is primarily so engaged rests on facts which are peculiar to him personally. The extract does not go into any discussion of the fact his primary residence was elsewhere.

26. The remaining cases also are dealing with the concept of primary occupation or employment. In McCoy v Commissioner of Valuation VR/35/1988 His Hon Judge Rowland QC at page 6 of his decision stated:

“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 the Appellant “What is your job? What engages your daily time and attention? Upon what business are you normally engaged every day?” ... The purpose of this legislation is to extend relief to those whose livelihood is in the main derived from farming; but those not dependent upon farming, even though engaged therein, would be denied relief by inserting the word “primarily”.

27. Going back to Wilson -v- Commissioner of Valuation for NI [2009] NICA 30 at para 17 Higgin LJ states:

...The inclusion of the word 'primarily' anticipated that some homeowners with agricultural land may make their livelihood in other ways and was intended to limit the class of owners entitled to relief. It could never be the case that the ratepayer could by his own preference determine whether he was entitled to relief or not. Clearly an objective test, as envisaged by His Honour Judge Rowland QC, is the appropriate test to apply and subjective matters are not relevant.... The function of the decision-maker (whether Commissioner or Tribunal) is to ascertain the facts, drawing any appropriate inferences at that stage and to state them clearly. Having done he should stand back and consider those facts and ask whether, objectively, the ratepayer's livelihood is in the main derived from farming.

Para 18. It is a matter of looking at the individual circumstances and asking objectively "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?". An objective inference must be drawn from the established facts which are personal to the respondent so far as his livelihood is concerned.

Conclusions

28. The reference is to a person whose primary occupation is the carrying on or directing of agricultural operations on that land is a matter of fact. All members of the tribunal accepted the test was not purely monetary. It is not simply a matter of balancing income from various sources. This could cover the situation of an individual who spent most of his time farming but had other employment which produce a greater profitable income. We all acknowledge he does carry out repairs on the farmland as described and that he has been on the countryside management scheme. We have had regard to the appellant source of income, the time spent on the farm and what he does in relation to farm operations.
29. The majority take the view the only occupation the appellant has is that of farmer. Consequently, his primary occupation was the carrying on or directing agricultural

occupations. However, the appeal failed because he had not shown he used and occupied the dwelling house as meant under Schedule 12.

30. The minority felt he did occupy the property and there was a connection with the land. However, he did not satisfy the 'primary occupation requirement' and his employment. The minority preferred to consider the notion of 'primary occupation' in the context of what takes up a person's time rather than a literal view of employment. There is then the time factor. Allied to this is the fact that his principal place of residence is in Enniskillen. He indicated he spends 2 to 3 days per week in the summer months on the subject property. This is distinct from a purely monetary approach. The appellant has indicated only 1% of his income is produced by the lands. As stated, income is not determinative but is a factor to be taken into account.

Signed: Mr Francis Farrelly – Chairman

Northern Ireland Valuation Tribunal

Date decision recorded in register and issued to the parties: 18 November 2020