CAPITAL GAINS TAX - Private residence exemption - Whether gain on sale of house exempt - Extent of "the permitted area" - Section 222 Taxation of Chargeable Gains Act 1992

THE SPECIAL COMMISSIONERS

DR GEOFFREY JOHN LONGSON Appellant

- and -

VICTOR JOHN BAKER
(HM INSPECTOR OF TAXES) Respondent

Special Commissioner: MR T H K EVERETT

Sitting in London on 3 and 4 April 2000

Mr Ian David Morgan, FCA , of Messrs Morgan & Co, chartered accountants, for the Appellant
Mr A J Martin, HM Inspector of Taxes, for the Respondent

DECISION

Dr Geoffrey John Longson ("Dr Longson") appeals against two assessments to capital gains tax, the first for the year of assessment 1994/95 and the second for the year of assessment 1995/96. The assessments relate to Dr Longson's disposal of his beneficial interest in his former matrimonial home known as Velmead Farm and Stud, Church Crookham, Hampshire ("Velmead Farm") on 15 December 1995 to his former wife.

The date of disposal has been agreed between the parties as 15 December 1995. The question for my determination is agreed as follows:

"What was the extent and location of "the permitted area" of land required on 15 December 1995 for the reasonable enjoyment of the dwelling-house at Velmead Farm as a residence, in regard to its size and character?"

The evidence before me consisted of a memorandum of facts not in dispute supplemented by the oral evidence of Dr Longson. In addition Mr Brynley Powell gave evidence on behalf of Dr Longson as to his opinion concerning the optimum stock level for horses at Velmead Farm. Mr Peter Roger Guy Watson, ARICS, a Principal Valuer in the Valuation Office Agency, gave expert evidence on behalf of the Respondent Inspector. Mr Watson produced photographs and plans to which his report made reference. The reports of Mr Powell and Mr Watson will be available to the Court should these appeals proceed further.

The facts

From the evidence before me I find the following facts:

1. Until the failure of his marriage, some ten years ago, Dr Longson was a keen horseman although he did not come originally from an equestrian family. His interest in horses commenced in the early 1970s when he purchased a pony for his daughter Tanya. At that time Dr Longson and his family were living at Fraynes Croft, Fleet, Hants, a large house with seven bedrooms situated in an area of land amounting to approximately one and a quarter acres.

2. Dr Longson's interest in riding was shared by all his family; his wife, Tanya his daughter, who aimed eventually to become a keen competitor in three day event riding competitions and his son Mark who was to enter the Army via Sandhurst and who was to become polo player.

3. At Fraynes Croft Dr Longson and his family eventually stabled about seven horses in stables which they had built in the grounds of the house. At one and a quarter acres there was insufficient pasture to support so many horses at Fraynes Croft and fields were rented from nearby farmers. Accordingly Dr Longson's horses had to be transported to and from those rented fields in horse boxes. These tasks were undertaken mostly by Mrs Longson.

4. In 1979 Dr Longson was able to sell Fraynes Croft and purchased Velmead Farm for approximately the same price. Velmead Farm possessed stables and the property extended to 7.56 hectares (18.68 acres). The Longsons took with them stables from Fraynes Croft which they had built there and re-erected them at Velmead Farm on a concrete base.

5. The date of purchase of Velmead Farm by Dr Longson and his wife was 17 August 1979. The purchase price was £155,000 and it was occupied as their matrimonial home and was their only or main residence.

6. Velmead Farm is situated in the village of Church Crookham near Fleet in the County of Hampshire. The entrance to the property is via an unmetalled track off Watery Lane.

7. The dwelling-house at Velmead Farm comprised all the buildings round a central courtyard, namely the farmhouse on the west side, the building on the north side, described as an outhouse, and the stables on the east side. Those buildings which, it has been agreed between the parties, comprised the entity of the dwelling, are shown coloured pink on the plan which is marked as exhibit TP1. The full extent of Velmead Farm is shown on the same plan edged red.

8. Velmead Farmhouse is a detached property of considerable character and constructed of brick under a clay tile roof and including original timber framing. The main part of the house is believed to date back to the 16th century and was extended and modernised in the 1950s. It is Grade II Listed.

Mains water, gas and electricity are connected to the property and drainage is to a septic tank.

The accommodation in the farmhouse comprised the following:

Ground floor : study, living room, dining room, kitchen, breakfast/diner, rear lobby and utility room, hallway, cloakroom and toilet

First floor : five bedrooms one box room, three bathrooms

The gross external area of the farmhouse is approximately 310 square metres (3,337 square feet).

The outbuildings at Velmead Farm comprised the following:

1. Single storey brick and tile stable block

2. Substantial brick and tile stable block with 13 loose boxes and store

3. Domestic garage with hay loft above

4. and 5. Two single storey timber/felt stable blocks with four loose boxes each towards the south-east corner of the property (known by the Longsons as "the OK Corral").

9. During the Longsons' ownership of the property Dr Longson arranged for the erection of an Atcost steel framed barn building clad with corrugated asbestos, used as an indoor riding school. The property also possessed two hay barns and a timber stable block together with a mound constructed in order to enable Tanya in particular to gain experience with her horses of mounting and descending such a feature, as required at some competition courses.

10. After the failure of his marriage, Dr Longson moved out of Velmead Farm during 1990 but Mrs Longson continued to live there until 23 December 1999.

11. Pursuant to a conditional agreement made on 5 April 1995, Dr Longson disposed of his beneficial interest in Velmead Farm to his wife. That agreement was subject to the decree nisi of divorce between Dr Longson and his wife being made absolute. Following the Consent Order of Judge Plumstead on 7 December 1995, this occurred on 15 December 1995, which date is agreed between the parties as being the date of disposal of Velmead Farm for the purposes of these appeals.

12.. Pursuant to the conditional agreement made on 5 April 1995 the price payable for the asset was £1,250,000, subject to a price adjustment formula. In the event however, instead of the operation of the price formula, the consideration was amended by a compromise agreement made on 16 March 1998 between Dr Longson and his former wife to the fixed amount of £2,750,000 which is the agreed consideration between the parties to these appeals.

13. Normally this Tribunal is not concerned with the effects of extra-statutory concessions operated by the Inland Revenue, but in these appeals the Inland Revenue accept that Dr Longson is entitled to the benefit of extra-statutory concession D6 both in respect of the gain accruing on the disposal of his interest in the dwelling-house and the land occupied and enjoyed with that residence as its garden or grounds up to the permitted area. Accordingly, it is common ground in these appeals that Velmead Farm was deemed to be the only or main residence of Dr Longson until 15 December 1995 notwithstanding the fact he did not live there between 1990 and 1995.

14. On 16 March 1998, Mrs Longson disposed of her freehold interest in the entire property of Velmead Farm to Martin Grant Homes Ltd, pursuant to an agreement providing for completion in three stages. By the date of the appeal

hearing most of the land comprising Velmead Farm had been covered with new residential development and the indoor riding school, the two hay barns and the timber stable block together with the mound had been removed from the site. The dwelling-house comprising the buildings coloured pink on exhibit TP1 remain although it is believed that the new owners may wish to convert some of the stables and outbuildings to dwelling accommodation.

15. Mr and Mrs Bassett, from whom Dr and Mrs Longson purchased Velmead Farm in 1979 had used Velmead Farm for breeding Welsh Ponies. After their sale of Velmead Farm to Dr and Mrs Longson in 1979 Mr and Mrs Bassett agreed with their Inspector of Taxes that the permitted area of Velmead Farm for the purposes of the predecessor of section 222 of the Taxation of Chargeable Gains Act 1992 was 2.31 acres.

The evidence of Mr Powell

16. Mr Powell has no formal qualifications but he has been involved with horses all his life and has represented Great Britain internationally as an eventer for 28 years. He competed at Badminton and other eventing competitions between 1972 and 1988 and since 1984 he has trained both horses and riders.

17. Taking into account stocking requirements generally at Velmead Farm where the land was of fairly poor quality, he stated that his considered opinion was that whilst there was stabling for 12 or 13 horses at Velmead, "the optimum stocking level consistent with basic horse care and effective pasture management was no more than 8 horses."

18. In giving his opinion Mr Powell made it plain that he had known Velmead Farm for many years, both in the ownership of Mr and Mrs Bassett and during the ownership of the Longson family. He came to know the Longson family in the early 1970s whilst they were living at Fraynes Croft.

The evidence of Mr Watson

19. Mr Watson made his detailed inspection of the property only recently after the departure of Mrs Longson, although he viewed the property from outside, over the fence, in 1997. He was unable to give evidence as to the use of the property on 15 December 1995, the agreed date for disposal.

20. Mr Watson’s conclusion was that the "permitted area" should be 2.61 acres as outlined in blue on exhibit TP1. He excluded the area formerly occupied by the indoor riding school.

21. When considering the property he viewed the buildings as buildings, disregarding their present use as stables and other equestrian uses, as in Mr Watson’s view the buildings were useable for other purposes. In coming to that conclusion he undertook comparisons with a variety of properties in the immediate area of Velmead Farm some of which had buildings which were formerly stables and which had been converted to other uses.

The Statutory provision

22. Section 222 Taxation of chargeable Gains Act 1992 provides, where relevant, as follows:

"222. -(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in -

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership being, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.

(2) In this section "the permitted area" means, subject to subsections (3) and (4) below, an area (inclusive of the site of the dwelling-house) of 0.5 of a hectare)

(3) In any particular case the permitted area shall be such area, larger than 0.5 of a hectare, as the Commissioners concerned may determine if satisfied that, regard being had to the size and character of the dwelling-house, that larger area is required for the reasonable enjoyment of it (or of the part in question) as a residence.

(4) Where part of the land occupied where the residence is and part is not within subsection (1) above, then (up to the permitted area) that part shall be taken to be within subsection (1) above which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence."

Conclusions

23. Mr Morgan, who appeared for Dr Longson has emphasised the "equestrian" character of Velmead Farm. He has likened the property to a "hunting box", despite the fact that hunting boxes were not occupied throughout the year and as such they were never main or only residences.

24. In stressing the equestrian character of Velmead Farm Mr Morgan has been looking at the entire property encompassing 7.56 hectares (18.68 acres). But looking at the statutory provision in the shape of section 222 I am required to look at the dwelling-house, which in this appeal has been agreed to include not only the farmhouse but stables and an outhouse. Those buildings are shown coloured pink on exhibit TP1.

25. The statute requires me to look at the dwelling-house and determine the area of land which is "required for the reasonable enjoyment" of the dwelling-house as a residence, having regard to "the size and character of the dwelling-house". Accordingly I am not permitted to take into account the particular requirements of the owner of the dwelling-house: it is the house to which I must look and not the wishes, desires or intentions of any particular owner of the house.

26. Mr Morgan has sought support from the case of Green v Commissioner of Inland Revenue 56 TC 10. In that case Mellville House in Ladybank, Fife, Scotland was set in 15 acres of land and there was no dispute between the parties concerning the permitted area. However, Melville House was a very different property from Velmead Farm. Melville House contained 33 sizeable rooms of which approximately 18 were bedrooms and some of the reception rooms were of very large proportions. The floor area of the main block amounted in all to 23,674 square feet. Looking at these facts it is not altogether surprising that the Inland Revenue did not seek to contend that Melville House required less than 15 acres of land as its permitted area.

27. The main dispute between the parties in these appeals concerns the meaning of the word "required" to be found in section 222(3). Mr Martin, who appeared for the District Inspector sought support from the case of Newhill Compulsory Purchase Order, 1937 Payne's Application [1938] 2 All ER 163. That case concerned public health and an attempted compulsory purchase order by a local authority. The headnote of the case reads as follows:

"For the purpose of building houses, a local authority made an order for the compulsory purchase of a field some 70 yds distant from a mansion, and mainly used for pasturing stock. The field had also been used from time to time for the festivities of local societies, and the children of the village were allowed to play there at such times. It was contended that the land was part of a park, garden or pleasure ground, or was otherwise required for the amenity or convenience of the mansion; -

HELD: the land in question was not part of any park, garden or pleasure ground, nor was it required for the amenity or convenience of the mansion, and the order was properly made."

In his judgment Du Parcq, J said at page 167:

"That leaves only the question as to whether it was required for the amenity of the house of the convenience of the house and there, whatever the local authority may have done or fail to do, the Minister has formed the opinion, as I understand Mr Wrigley's affidavit, that the land was not required either for the amenities or for the convenience of the house. I call attention to the word "required". The use of it raises a question of fact which is necessarily a difficult one. Again I do not wish to repeat myself, but one has to remember that it is pleasant, and, one may say, both an amenity and a convenience, to have a good deal of open space round one's house, but it does not follow that that open space is required for the amenity or the convenience of the house. "Required," I think, in this section does not mean merely that the occupiers of the house would like to have it, or that they would miss it if they lost it, or that anyone proposing to buy the house would think less of the house without it than he would if it was preserved to it. "Required" means, I suppose, that without it there will be such a substantial deprivation of amenities or convenience that a real injury will be done to the property owner, and a question like that is obviously a question of fact. The Minister having made up his mind about it, as far as I can tell, on proper materials, and without misdirecting himself as to the true point at issue, it is not for me to interfere, when there are no materials upon which I can interfere. Nobody, whatever their views on subjects such as this, can help having some sympathy with a gentleman who finds that there is to be some interference with an old property, an ancestral home, and one which, according to his evidence - which I have not the slightest reason to doubt - he has occupied, as his forebears have occupied it, not only to his own enjoyment, but also with an eye to the happiness and enjoyment of his poorer neighbours. I, of course, cannot allow myself to be influenced by consideration such as that, however, and I suppose that it is impossible for the local authority or the Minister to be influenced by considerations such as that, if they feel, as I must assume that they have felt, that there are over-riding considerations of public welfare."

28. Mr Morgan has criticised the Inland Revenue's reliance upon Newhill and has referred me to Re Ripon (Highfield) Housing Order, 1938. Applications of White and Collins [July 15 1939] All England Law Reports annotated [Vol.3]. However the Ripon case is of little assistance as it was concerned principally with deciding

whether or not some land included in the compulsory purchase order by Ripon Borough Council was or was not part of the park of Highfield, a large house.

29. Mr Morgan has submitted that in section 222 the word "required" means "called for". Whereas Mr Martin, for the Inspector, has submitted that the meaning of the word required is very close to "necessary". That is the view also taken by Mr Watson, whose evidence I accept.

30. I also accept the evidence of Mr Powell, but regard it as irrelevant, as he was looking at the whole property of Velmead Farm as an "equestrian property".

31. In my judgment it cannot be correct that the dwelling-house at Velmead Farm requires an area of land amounting to more than 18 acres in order to ensure its reasonable enjoyment as a residence, having regard to its size and character. It is a sizeable property but nowhere near as large as Melville House, the property which was considered in the case of Green.

32. I note from the evidence that Dr and Mrs Longson were able to stable seven horses at Fraynes Croft in Fleet for a considerable time prior to 1979. It may have been inconvenient for them to have to shuttle their mounts to and from neighbouring fields rented to them by farmers and it was obviously much more convenient for their purposes to have a considerable area of land amounting to over 18 acres available to them when they moved to Velmead Farm, but it does indicate that such a large area of land is not necessary or vital when stabling horses at a property. Mr Watson has found during his survey of neighbouring properties other residences which have stables and small areas of land and it has not been suggested that such properties were unsaleable.

33. I have come to the conclusion that it may have been desirable or convenient for Dr Longson to have a total area of 7.56 hectares to enjoy with Velmead Farm, but such an area is not in my judgment required for the reasonable enjoyment of Velmead Farm as a residence having regard to its size and character.

34. As a closing comment I note that the builders who acquired Velmead Farm and who have caused houses to be erected over most of the land have not sought to demolish the farmhouse and I have little doubt that in due course it will have a purchaser or purchasers.

35. It has been agreed between the parties to these appeals that the capital gains assessment for 1994/95 should be discharged as it is now common ground between them that the disposal of Velmead Farm took place during the year 1995/96 . Accordingly, at the request of the parties I discharge the assessment for 1994/95.

36. The appeal against the assessment for 1995/96 fails and I uphold the submission of Mr Martin for the Respondent Inspector that the permitted area for the

purposes of section 222 should be the area outlined in blue on exhibit TP1 amounting to 1.054 hectares (2.61 acres), as determined by Mr Watson.

37. I adjourn this hearing to enable figures to be agreed between the parties and on their being reported to me, I will determine the assessment formally.

T H K EVERETT
SPECIAL COMMISSIONER

Released :- 8th May 2000

SC 3121/ 99

Authorities cited but not mentioned in the Decision

Varty v Lynes 51 TC 419

Vesty & Others v Commissioners of Inland Revenue 54 TC 503

Markey v Sanders 60 TC 245

Sharkey & Another v Secretary of State for the Environment & Another [1991] RVR 55, [1990] 45 EG 113, [1991] JPL 564

Goodwin v Curtis 70 TC 478

Strick v Regent Oil Co Ltd 43 TC 1