

Inheritance Tax Act 1984, s.115(2) – Agricultural relief – "Farmhouse"

THE SPECIAL COMMISSIONERS

EXEC'S OF JOHN SIDNEY HIGGINSON Appellant

- and -

THE COMMISSIONERS OF INLAND REVENUE Respondents

Special Commissioner: MR B M F O'BRIEN

Sitting in Belfast on 3 September 2002

**Christopher McCall, counsel, instructed by L'Estrange & Brett Solicitors,
for the Appellant**

Peter Twiddy of the Inland Revenue, for the Respondents

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DECISION

1. The late Mr J S Higginson ("the Deceased") lived at Ballyward Lodge, Ballyward, Co Down. The residence is set in a landed estate of some 134 acres in all, including 63 acres of agricultural land (described in the Agreed Statement of Facts as "arable", though from the photographs in evidence much, and perhaps most of this was in fact under grass) and 3 acres of formal gardens. The remainder (68 acres) is woodland and wetland around Ballyward Lake, most of which is on the property. There is a gardener's cottage and a gatelodge, and sundry outbuildings used for agricultural purposes. The latter are close to the residence, and some of them form two sides of a yard immediately behind it. These ones appear to be contemporary with the residence; the others were, from their apparent date, probably built by the Deceased early in the period of his ownership.

2. The Revenue accept that the outbuildings qualify for agricultural relief under Chapter II of Part V of the Inheritance Tax Act 1984, together with the land. But the Commissioners have made a Determination to the effect that the residence, Ballyward Lodge itself, is outwith the definition of "agricultural property" contained in section 115(2) as not being a farmhouse "of a character appropriate to the property". It is against that Determination that the Deceased's executors now appeal.

3. Ballyward Lodge is not a typical farmhouse. It was not built as such. It dates from the early years of the nineteenth century, and was originally a hunting lodge. Its façade is in the style of the period, and is very attractive and, indeed, fashionable in the present age. The reception hall is spacious, and the drawing room, library and dining room are all fine rooms; and, in addition to the kitchen, the downstairs accommodation includes a sitting room, bedroom and bathroom for a domestic servant. On the upper floor are five bedrooms, three of which have bathrooms en suite and the other two sharing a fourth. There is a further large

room upstairs. All in all, it is clearly not the style of house in which a typical farmer would live. Indeed, I suspect that up to the First World War it would not have functioned very conveniently as the principal residence even of a 'gentleman farmer', because of the shortage of accommodation for servants. The parties are agreed that the estate agents accurately described the property in the particulars of sale following the Deceased's death as having "enormous potential as a charming family home or as a small active farm".

4. The Deceased was born in 1909 and was 91 years old when he died in November 2002. He was a member of a prominent Ulster linen family but he decided early in life that that business was not for him. Immediately before the Second World War he attended an agricultural college, where he obtained a First Class Certificate in farming. During the War he evidently served in the RAF, eventually becoming a Wing Commander. In 1954 he purchased Ballyward Lodge and he lived there for the rest of his life. Until about 1985 he farmed the land himself, with the assistance of three full-time farm workers : it was a mixed farm with cattle, sheep, pigs and poultry. Having regard to the extent of the formal garden, I suspect (without specific evidence) that the men were not always engaged on strictly farm work. In the middle 1980s the Deceased gave up farming himself (he was then in his middle seventies) and the farmland was thereafter let on conacre terms. During that period the farm buildings were used to a much smaller extent, but the Deceased continued to maintain them to a good standard – renewing roofs and flooring, for example. Indeed it appeared that more money was spent on them than on the Lodge itself.

5. The Deceased was always anxious that the Ballyward Estate should remain unchanged in character after his death. To that end, he entered (in 1990) into an agreement with the Department of the Environment for Northern Ireland which had the effect of making the woodland and wetland areas of nature conservation. And in 1993 he entered into a Deed of Covenant with the National Trust which imposed restrictions affecting substantially the whole property, including the Lodge.

6. I had no evidence about the profitability (or otherwise) of the Deceased's farming activities in the pre-conacre letting period. He did, however, have other resources : at his death his investments and cash alone amounted to nearly £1¼m.

7. The Ballyward estate was inherited by the Deceased's nephew, Colonel Higginson. The Deceased had for long expressed the wish that his nephew should follow in his footsteps and farm the land, and Col. Higginson and his wife seriously considered doing so. A business plan and financial forecast was drawn up to test the economic viability of the venture. That was not deemed to be unsatisfactory; but Col. Higginson received unfavourable advice from the best sources on the question of personal security, in the light of his military career from which he had fairly recently retired. The Ballyward estate was accordingly sold in 2001. It fetched £1,150,000.

8. The Inheritance Tax Act 1984 grants relief (normally 100%) in respect of the agricultural value of "agricultural property". The latter is defined in section 115(2) as:

"Agricultural land or pasture and includes woodland and any building used in connection with the intensive rearing of livestock or fish if the woodland or building is occupied with agricultural land or pasture and the occupation is ancillary to that of the agricultural land or pasture; and also includes such

cottages, farm buildings and farmhouses, together with the land occupied with them, as are of a character appropriate to the property".

9. Mr Christopher McCall QC, who appeared for the Appellants, agreed that there could be agricultural land with an associated house which could not be a "farmhouse" because the land was insufficient for it properly to be regarded as a farm. However, in the present case the Revenue concedes that the Ballyward land did constitute a farm. I gathered from the evidence of Mr Coates (the Revenue's witness from the District Valuer's Office) that he was not entirely happy with that concession, and I have some sympathy with his scepticism. Colonel Higginson's business plan includes a number of projected activities of a non-farming kind : if the farming figures are looked at in isolation (with a share of the overheads) the profitability of the farm as such would seem to be marginal, at best. The limited extent of the land is the most obvious reasons for this. Nevertheless, I must consider the matter on the basis that the land was a 'farm'.

10. Given that the property constituted a farm, Mr McCall contended:

- On the facts, the house and land was acquired by the Deceased for the purpose of running the property as an active farm, and he did so for many years. The property was a self-sufficient agricultural holding and a single entity : this is not a case of a holding of farmland with a house, the enjoyment of which was separable from the land, nor a case of residential property to which the farmland provided some sort of circumstantial or environmental backcloth;

- The holding was such as permitted the house and land together to be enjoyed as an active farm unit, and there was no other farmhouse. Any such house must automatically be a "farmhouse" and proportionate in size and nature to its land;

- The 'appropriate character' requirement must be approached objectively. It would be beside the point to consider whether it is appropriate that a farmer should live in a house of such enviable style as Ballyward Lodge.

The Inspector, Mr Twiddy, drew my attention to two dicta in reported cases as throwing light on the approach to be taken in considering the 'appropriate character' requirement. The first was that of Blackburne J in *Starke v IRC* [1994] STC 295 at pp.298j-299 where he said:

"... farmhouses ... will constitute 'agricultural property' if used in connection with agricultural land or pasture provided that they are of a character appropriate to such agricultural land or pasture (that is, are proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture concerned) ..."

(emphasis supplied). The second came from *IRC v Korner* [1969] 1 WLR 554, a case on the definition of "farm land" in the Income Tax Act 1952 (which then included "the farmhouse" without further qualification). On p.560 Lord Upjohn, speaking generally without reference to that particular case, said that the question whether a house could properly be described as "the farmhouse" for the purposes of the definition:

"... is a matter of fact to be decided in the circumstances of each case, and I would think that to be "the farmhouse" for the purposes of the section it must be judged in accordance with ordinary ideas of what is appropriate in size, content and layout, taken in conjunction with the farm buildings and the particular area of farmland being farmed, and not part of a rich man's considerable residence ..."

Mr Twiddy contended that Ballyward Lodge should be regarded as a dwelling attached to a farm, but not, on a 'reasonable man' test, a 'farmhouse' in the relevant sense. The Deceased did not need the farm, although he used the land for farming. He enjoyed living at the Lodge which was of considerable size : the farm land was limited in extent. By any ordinary standard, Ballyward Lodge was never a "farmhouse".

11. In their joint statement of issues, the parties seek a decision as to the test to be applied in operating section 115(2). To my mind, the circumstances of each case are likely to differ so much that a single test suitable for all would be difficult to identify.

12. In approaching section 115(2) I bear in mind that this is an Inheritance Tax and I have no doubt in my mind that the object of the relief in question is to facilitate the continuance of the farming after the death of the farmer. While farming by the predecessor is doubtless a precondition, it does not, by itself, bear the weight which Mr McCall puts upon it.

13. While I accept Mr McCall's view that the land and the house in the present case formed a unit, the house being integral thereto, I am of the clear opinion that for the purposes of section 115(2) the unit must be an agricultural unit : that is to say, that within the unit the land must predominate. As Morritt L J said in *Starke* ([1995] STC 689 at p.694h) "It is as though the draftsman had started with the land and then dealt with what should be treated as going with it". For present purposes any qualifying cottages, farm buildings or farmhouses must be ancillary to the land.

14. I also accept that where there is a farm one would ordinarily expect to find a farmhouse ancillary to the land. In the present case, however, the single most significant fact is the price which was obtained on the sale not long after the Deceased's death.

15. I was not at all surprised to hear from the Appellants' estate agent, who had the conduct of the sale, that the house was the most difficult aspect in the negotiations. Plainly, a figure in the neighbourhood of £1m for the property as a whole was being looked for. Quite apart from the fact that such a figure would be beyond the means of many who might otherwise show an interest, it would represent an appalling investment, in terms of yield from that farm. I am driven to the conclusion that within this particular unit it is the house which predominates, and that what we have here is a house with farmland going with it (and not vice versa). Ballyward Lodge was not therefore a "farmhouse" within the meaning of the subsection – I might almost say, irrespective of the concluding words. In my view, these words are an echo of Lord Upjohn's words in *Korner* cited earlier, and operate not so much as a condition to be met as a farmhouse, but rather as an indication of what is actually meant by "farmhouse" in this context.

16. For that reason, I uphold the Determination.

17. I will add one thing more because subsection (3) of section 115 was briefly mentioned in argument. Although I am not concerned with any valuation question, I doubt whether that subsection would, in any event, have much bearing on this case. The parties have agreed that there was some difference between the agricultural and open market values of the property, but I do not

believe that it can have been substantial. First (as the parties recognise) the open market value already reflects the restrictive effects of the Deceased's agreements with the Department of the Environment and (especially) the National Trust, and the statutory notional restrictive covenant may not depreciate the value much further. My second reason would be applicable to other cases of this sort. A property may command a high price in the open market because of potential for development; and subsection (3) clearly caters for that situation. But it seems to me that the notional restrictive covenant would have much less of a depreciatory effect in a case where the property has a value greater than ordinary not because of development potential but rather because of what I might call "vanity value" on account of its site, style or the like. In the light of my decision the point is, of course, academic.

B M F O'BRIEN

SPECIAL COMMISSIONER