THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

INVERNESS, 10 NOVEMBER 2015

Subjects	Reference Number
Ben View House, Lentran, Inverness, IV3 8RN	**06/29/493040/9**
The Appellant	The Respondent
	The Assessor Represented by Assistant Assessor, Rob Shepherd

DESCRIPTION

The Appeal Subjects are located at Lentran to the West of Inverness, overlooking the Beauly Firth. The house was built in 2013. It is a one and a half storey, detached property comprising, on the ground floor, vestibule, hall, lounge, kitchen/dining room, sun room, office, utility room, bedroom with en-suite shower room, play room, toilet and, on the first floor, gallery, master bedroom (with en-suite bathroom), two bedrooms, another room planned to be a bedroom but which cannot be used as such due to a building control issue and a bathroom. It sits in a plot of approximately 1.37 acres. The property has been placed in Band G. The Appellant contends for Band F.

EVIDENCE FOR THE APPELLANT

The Appellant was represented by her agent. He is a surveyor in private practice in Inverness. He trained in the office of the Tayside Assessor about 20 years ago. He is

in charge of the Inverness and Elgin Offices of the firm for which he works. In that role he is in charge of, and supervises, a significant number of surveyors/valuers.

The Appellant acquired the plot on which the Appeal Subjects sit for a nominal sum from the her father, the owner of the adjoining Lentran Farm of which the plot was previously part. In order to get Planning Permission to build the house which became the Subjects of Appeal, they had to enter into an agreement with the Highland Council and the Appellant's father in terms of Section 75 of the Town & Country Planning (Scotland) Act 1997 (hereinafter referred to as "the Section 75 Agreement"). A copy of the Section 75 Agreement was produced. Evidence for the Appellant was that in terms of the agreement, the Appeal Subjects are tied to the adjacent land of Lentran Farm and vice versa. The house cannot be sold separately from the farm nor the farm sold separately from the house. The Appeal Subjects are deemed to be the farmhouse of Lentran Farm. The farm does not otherwise have a farmhouse associated with it. The effect of the Section 75 Agreement was to create a relationship between the Appeal Subjects and Lentran Farm which he described as the "agricultural tie". Furthermore, the Appellant and her husband were "involved" with four letting cottages situated on the farm. Her husband did the "meet and greet" of guests at the cottages and attended to matters arising during their stays there.

Extracts were produced from the websites of, Pagan Osborne, Solicitors and Orkney and Shetland Valuation Joint Board. A passage from the former, relating to Section 75 Agreements was quoted – "To ensure the Planning Condition is complied with and applies to future as well as the current owners a separate agreement is usually required by the Council. These are sometimes also referred to as Section 50 or Section 75

Agreements, being named after the relevant sections of the Town & Country Planning Acts which applied at the time Planning Permission was granted.

A house with an agricultural tie is much more difficult or, in some cases, more or less impossible to sell on the open market and, even if an agricultural buyer could be found, they are most unlikely to obtain a conventional mortgage for a property with such a restriction on its use. The value of these houses is therefore lower."

From the website of the Orkney and Shetland Valuation Joint Board, the following was relied upon - "Farmhouses, farm cottages, croft houses and houses connected with fish farms are all subject to special provisions. If they are occupied in connection with the farm, croft or fish farm then they will be valued on the basis that their availability is restricted to being used in that way. The intention of these provisions is to recognise that the market for such houses will be restricted. This will generally have the effect of lowering valuations for these dwellings and in particular circumstances such reduction may be sufficient to move a dwelling to a lower valuation Band than that in which it would otherwise be placed."

In evidence in chief to the Committee it was submitted that the Appeal Subjects sit comfortably in Band F. None of the comparables which he produced had the "agricultural tie". Of the comparables produced, of which there were eight in all, some were in Band F, some in Band G.

In discussion with the Assessor's valuer, Mr Bethune, it had been conceded a reduction in the value of the Appeal Subjects for Council Tax purposes was due under

Regulation 3 of the Council Tax (Valuation of Dwellings) (Scotland) Regulations 1992 (hereinafter referred to as "the 1992 Regulations"). Mr Bethune claimed such a reduction had been applied but he declined to tell the Appellant what the extent of that reduction was. Nonetheless, according to the Appellant, taking into account the effect of the Section 75 Agreement would reduce the value for Council Tax purposes by 50%. This rendered reasonable his contention that the property should be placed in Band F.

In cross-examination, the Appellant's agent stated he was not familiar with the valuation basis for Council Tax purposes as laid down in the 1992 Regulations or the assumptions which underpinned that basis.

He did not know what the Appeal Subjects might have been worth in 1991, the valuation date for Council Tax. He stated that, on the hypothesis that the Appeal Subjects were not affected by the Section 75 Agreement, D M Hall, Surveyors, had valued the property for him at £400,000.

He had been unable to arrange a "traditional" mortgage for the property because of the Section 75 Agreement. Instead he had required to seek out and obtain what he described as a "commercial loan". He could not say what particular aspect of the Section 75 Agreement had put off those institutions who might otherwise have offered a "traditional" mortgage.

He said he did not know if a planning based restriction such as that represented by the Section 75 Agreement was a relevant consideration when valuing a property for Council Tax purposes.

When asked about the applicability of the three subsidiary valuation assumptions referred to in Regulation 3 of the 1992 Regulations (printed in full below), he claimed sub-paragraph:-

(i) Did apply;

(ii) Did not apply;

(iii)Did apply.

to the Appeal Subjects.

Elaborating on his answer in relation to sub-paragraph (i) he stated the land of the adjacent Lentran Farm was worked by his father-in-law. He drove a tractor on the farm occasionally. That meant the Appeal Subjects were occupied in connection with the farm.

Finally, under cross-examination, he conceded the Appeal Subjects may be at the higher end of Band F (contrary to what he had said in his evidence in chief).

EVIDENCE FOR THE ASSESSOR

Angus Bethune, MRICS, a valuer in the Assessor's Inverness Office, gave evidence on behalf of the Respondent. He spoke to the Appeal Subjects being entered on the Council Tax List on 13 January 2014 with an effective date of 11 November 2013.

The Appeal Subjects were enhanced by the large size of the site, 1.37 acres, and the good outlook from the site over the Beauly Firth. Having regard to the comparisons which he, Mr Bethune, had produced and also those produced on behalf of the Appellant, in his view the Appeal Subjects fell comfortably within Band G. In his view it was not a marginal case.

He had not taken account of any effect of the Section 75 Agreement on the value of the Appeal Subjects because there was no requirement for him to do so in terms of the 1992 Regulations.

However, he had taken account of the agricultural aspect of the occupancy of the subjects in terms of Regulation 3. The established rate of discount in value for this purpose was 10% in this valuation area. He stated a discount of this level had previously been endorsed by Committees of this Panel. Applying that discount in this case still left the subjects in Band G.

Under cross-examination, Mr Bethune conceded that if account was taken of the thickness of the walls on the Appeal Subjects, a design feature which reflected modern building standards for insulation, the useable internal area of the house was some 8% less than the gross external area. He pointed out, however, that gross external area is the methodology used for valuation of all properties for Council Tax purposes.

Mr Bethune's opinion was that in 1991 values, the property would be worth £130,000 to £140,000. Applying the agricultural allowance of 10% still left the property comfortably in Band G, the lower end of which, in 1991 terms, was £106,000.

Mr Bethune explained that the agricultural allowance of 10% was well recognised although in some instances it could go up to 12.5%. If it had been applied in this case at the higher rate it would still not have been significant to the Band into which the Appeal Subjects fell to be placed.

Under further cross-examination Mr Bethune conceded he had declined to disclose to the Appellant in previous discussions the amount of the agricultural allowance. He was unable to explain why he had declined to do so even although the amount of the discount was well settled.

SUBMISSIONS FOR THE APPELLANT

The Appellant's agent submitted that in his view this was a marginal case but that the Appeal Subjects properly fell at the top end of Band F. The Assessor's valuation was overstated and failed to take account of factors such as the lack of a garage and the cost of landscaping the garden ground and the effect in value of the Section 75 Agreement.

SUBMISSIONS FOR THE ASSESSOR

The basis for the valuation of subjects for Council Tax purposes is set out in Regulations 2 and 3 of the Council Tax (Valuation of Dwellings) (Scotland) Regulations 1992.

Regulation 2 – "Valuation of Dwellings"

(1) For the purposes of valuations under Section 86(2) of the Local Government Finance Act 1992, the value of any dwelling shall be taken to be the amount which the dwelling might reasonably have been expected to realise if it had been sold in the open market by a willing seller on 1 April 1991, having applied the assumptions mentioned in paragraph (2) below and, where applicable, the additional assumption mentioned in sub-paragraph (a), (b) or (c) of paragraph 1 of Regulation 3 below as the case may be.

(2) The assumptions referred to in paragraph (1) above are –

(a) that the sale was with vacant possession;

(b) that the dwelling was sold free from any heritable security;

(c) that the size and layout of the dwelling, and the physical state of its locality, were the same as at the time when the valuation of the dwelling is made or, in the case of a valuation carried out in connection with a proposal for the alteration of a valuation list, as at the date from which that alteration would have effect;

(d) that the dwelling was in a state of reasonable repair;

(e) in the case of a dwelling the owner or occupier of which is entitled to use common parts, that those parts were in a like state of repair and the purchaser would be liable to contribute towards the cost of keeping them in such a state;

(f) in the case of a dwelling which contains fixtures to which paragraph (4) below applies, that the fixtures were not included in the dwelling;

(g) that the use of the dwelling would be permanently restricted to use as a private dwelling; and

(h) that the dwelling had no development value other than value attributable to permitted development.

(3) In determining what is "reasonable repair" in relation to a dwelling for the purposes of paragraph (2) above, the age and character of the dwelling and its locality shall be taken into account.

(4) This paragraph applies to any fixtures which –

(a) are designed to make the dwelling suitable for use by a person who is physically disabled; and

(b) add to the value of the dwelling.

3. (1) The additional assumptions referred to in regulation 2(1) above are –

(a) if the dwelling is, at the time when the valuation of it is made –

(i) occupied in connection with agricultural lands and heritages;

(ii) used as living accommodation by a person engaged primarily in carrying on or directing agricultural operations on those lands and heritages or employed as an agricultural worker thereon; and

(iii) suitable in character and size for such use in connection with those lands and heritages;

that the dwelling could not be occupied and used otherwise than as stated;

In the absence of any reference in the Regulations to a title restriction such as that imposed by the Section 75 Agreement, it was not something which the Assessor was entitled to take into account in assessing value for Council Tax Banding purposes.

On the contrary, the assumption imposed by Regulation 2(2)(a) was that the property could be sold with vacant possession.

The Assessor accepted an agricultural allowance ought to be applied in this case in terms of Regulation 3. An allowance of 10% was applied. That was the level approved in two cases previously heard by Committees of this Panel – the cases of E Walker heard on 5 May 1995 and C Baird heard on 12 October 1995. In his submission this allowance reflected the fact the occupancy of the house was connected with the adjacent farm. It had nothing to do with the Section 75 Agreement.

Based on the comparables and the evidence of Mr Bethune, the value of the property for Council Tax purposes fitted comfortably in Band G and the effect of the application of the 10% agricultural allowance was not sufficient to reduce it to Band F.

DISCUSSION AND DECISION

The issues which arose in the course of this Appeal were:-

1. Did the terms of the Section 75 Agreement impact on the valuation of the Appeal Subjects for Council Tax purposes?
2. Did the application of a 10% agricultural allowance have the effect of reducing the Appeal Subjects to a Band F listing?
3. Otherwise were the subjects properly placed in Band G?

1 – Section 75 Agreement

The Appellant's agent contended that because of the Section 75 Agreement the house and the neighbouring farm could not be sold independently of each other (save in circumstances where he and his wife on the one hand, or his father-in-law on the other hand as owner of the farm, became insolvent. In those circumstances the third party in the Agreement, the Highland Council, expressly waived the provision that the two lots could not be sold independently). This restriction impacted negatively and significantly on the value of the Appeal Subjects for Council Tax purposes.

He prayed in aid the extract he produced from the website of Pagan Osborne, Solicitors. The section to which he referred is reproduced above. The Committee considered such material to be of doubtful relevance. It was a statement of opinion from an anonymous source within, or on behalf of, a firm of solicitors. That opinion was not capable of being tested because no-one from that firm was present at the Hearing to speak to it and be the subject of cross-examination on it. In any event, it appeared to be an opinion as to the effect of a Section 75 Agreement on property valuations in general rather than with particular reference to valuation for the purposes of Council Tax.

He appeared to be suggesting the extract he produced from the Orkney and Shetland Valuation Joint Board and which is also reproduced above, assisted his submissions as regards the Section 75 Agreement. In the opinion of this Committee that extract had nothing to do with Section 75 Agreements. The Committee regarded that extract in a similar light to the one from Pagan Osborne, Solicitors in terms of its relevance to these proceedings. It was a statement of opinion from an unidentified author. For the same reasons set out above, the value of this opinion was not capable of being tested.

That said, however, and unlike the extract from the Pagan Osborne site, the quotation seemed to the Committee to relate specifically to the potential impact of Regulation 3 of the 1992 Regulations on valuation for Council Tax purposes. As a general statement of the possible effect of the application of that Regulation it was one with which the Committee would not demur.

The Committee took the view the existence of and the terms of the Section 75 Agreement were not relevant to the question of the valuation of the Appeal Subjects for Council Tax Banding purposes.

2. Agricultural Allowance

It was not a matter of dispute that an agricultural allowance should be given in this case under Regulation 3. Mr Bethune accepted that the Appellant had asked for, but had not been told until the Hearing, the extent of that allowance. Given Mr Bethune's evidence that the amount of the allowance was well settled and so could not be said to be confidential, it was not clear to the Committee why the amount of the allowance had not been shared previously in discussions with the Appellant. Disclosure of it previously may not have resulted in matters being settled by negotiation short of a Hearing, but the chances of achieving a successful outcome to such negotiations cannot have been improved by the withholding of this information from the Appellant.

The Committee took the view that a 10% agricultural allowance under Regulation 3 was appropriate to this case.

3. Correct Banding

Where the evidence of the Appellant's agent and Mr Bethune was divergent on the general issue of valuation, the Committee preferred the evidence of Mr Bethune. He has been a valuer in the Assessor's Office in Inverness for many years. He is experienced in the matter of valuation of properties for Council Tax Banding purposes. The Appellant's agent, on the other hand, although he had trained in the Assessor's Office in Tayside some 20 years ago, did not profess to have recent professional experience of valuation for Council Tax purposes. Indeed, in cross-examination, he conceded he did not know the basis of the valuation or the associated assumptions, all as set out in Regulations 2 and 3 of the 1992 Regulations.

The comparables produced by the Appellant were a mix of Band F and Band G. Those produced by the Assessor were all Band G.

In the Appellant's Agent's evidence the property should be in Band F, albeit marginally. Mr Bethune opined the property was comfortably in Band G, even after the application of the allowance.

The Committee preferred the evidence of Mr Bethune and so, for all the reasons stated, refused the Appeal. The Appeal Subjects therefore remain in Band G.