

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF APPEALS

VR/22/1990

BETWEEN

LECKPATRICK DAIRIES LIMITED - APPELLANT

AND

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

AND

VR/23/1990

BETWEEN

LECKPATRICK DAIRIES LIMITED - APPELLANT

AND

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

**Lands Tribunal for Northern Ireland - The President Judge Peter Gibson QC
and Mr A L Jacobson FRICS**

Belfast - 18th October 1991

These two appeals, which were heard together, concerned the rateability of a store (VR/22/1990) and a weighbridge (VR/23/1990). The District Valuer and the Commissioner of Valuation (on first appeal) had refused to distinguish either hereditament as "Industrial" in the Valuation List. No question was raised as to the quantum which were £7,800 and £40 respectively, and thus the net issue in the present appeal was whether the appeal hereditaments were industrial hereditaments.

The facts in relation to each hereditament were common case and may be briefly summarised:-

1. As far as the store at No 23 Art Road, Artigarvan, Strabane was concerned it was used as a store for dried milk produced in an industrially- distinguished factory approximately 400 to 500 yards away. That factory was separated from the store by open land, a housing estate, a mill and Art Road. The factory owned and occupied by the Appellant produced the milk products which were stored. Some of these milk products

were sold all over the world. Intervention dried milk and packaging materials also were stored there.

The Appellant claimed that the store was functionally an integral part of the industrial dairy, ie that although the factory and the store were two separate hereditaments, the store was so essential in use with the dairy that they should be treated as one hereditament for industrial derating.

2. In so far as the weighbridge at No 25 Art Road, Artigarvan, Strabane was concerned it was used in conjunction with a mill producing animal feedstuffs on the opposite side of Art Road. That mill was owned and occupied by the Appellant although it traded under the name of James Miller and Company. All the animal feedstuffs were transported from the mill by large lorries carrying 20 to 25 tonnes and these were required to be weighed before going out on distribution of the products. The weighbridge was connected by an electric cable under Art Road to the controller's office in the mill complex.

The same arguments were advanced in relation to the weighbridge as to the store; in essence that it was so essential in use to the mill that the two hereditaments should be treated as one for the purpose of industrial derating.

Mr Michael Copeland of Counsel (for the Appellant) submitted:-

1. The ratio in Gilbert v Hickinbottom and Sons Limited [1956] 2QB 40 should be applied. Whilst there are two hereditaments in the Valuation List they are used as a single factory and were so essential in use, the one to the other, that they should be treated as if they were one hereditament for the purposes of determining whether they were an industrial hereditament.
2. He conceded that the Appellant could not make the case that the store was contiguous with the dairy factory, but he did seek to argue that the weighbridge was contiguous with the mill by virtue of the electrical connection under the public road.
3. He further submitted that the case of Belfast Collar Company Limited v Commissioner of Valuation [1960] NILR 198 CA did not apply to the instant appeal because of the definition of "hereditament" in Article 2 of the Rates (Northern Ireland) Order 1977 ("the 1977 Order"), which is in precisely the same terms as the definition of a hereditament

in the General Rates Act 1967 in force in England. The Belfast Collar Company case highlighted the difference between what constitutes a hereditament in England and Wales and Northern Ireland. The now extant Rating and Valuation (Apportionment) Act (Northern Ireland) 1928 in Section 8 defined "hereditament" as "a rateable hereditament as defined in section twelve of the Valuation (Ireland) Act, 1852, and includes any tenement requiring to be valued under the Irish Valuation Acts ...". In the Belfast Collar case the Court of Appeal in Northern Ireland accepted that that definition was in very wide terms and followed the ratio in Switzer and Company v Commissioner of Valuation [1902] 2 IR 275 that there had to be separate entries for each hereditament held on a separate lease.

4. Mr Copeland made the rather surprising submission that the Switzer Case is no longer law and that therefore the Belfast Collar Company Case may be distinguished. He based his argument on the definition of a "hereditament" in Article 2 of the 1977 Order and submitted that this definition swept away the decision in Switzer. He agreed that to avoid the effect of the Switzer Case, section 8 of the Valuation Acts (Amendment) Act (Northern Ireland) 1932 ("the 1932 Act") allowed a fusion of what would have been a series of hereditaments but only if that series consisted of contiguous premises, and he also conceded that there is nothing in the General Rates Act 1967 in England which is to the same effect as Section 8 of the 1932 Act, or its repetition in Article 38(3) of the 1977 Order.

Mr George Brown of Counsel (for the Respondent) submitted:-

1. Article 38(3) of the 1977 Order would be unnecessary if the Switzer Case was no longer law.
2. It would, he said, be somewhat surprising if a definition section swept away a fundamental part of rating law in Northern Ireland.
3. He argued further that -
 - (a) The store was not contiguous to the dairy factory.
 - (b) The weighbridge was not contiguous to the mill citing Burton on Trent CBC v Ind Coope Limited & Thomas (VO) [1961] 8RRC 149 [1961] RVR 310.

4. Moreover he submitted that the appeal hereditaments were each capable of separate occupation, and that the decision in Belfast Collar Company case should be followed.

DECISION

Mr Copeland quite properly and formally conceded that the store was not contiguous with the dairy factory; although not formally conceding that the weighbridge was not contiguous with the mill by virtue of the electric cable under the public road (Art Road) connecting it with the mill complex. The Tribunal considers that the decision in Burton on Trent CBC v Ind Coope Limited & Thomas (VO) [1961] 8RRC 149 [1061] RVR 310 is decisive on this issue and thus finds that the weighbridge is not contiguous with the mill complex.

Turning to the more important question of whether the decision in the Switzer case had been swept away by the definition of "hereditament" in Article 2 of the 1977 Order. The Tribunal first sets out those parts of the Order which it considers relevant to this appeal. They are as follows:-

Article 38(2) of the 1977 Order

"Subject to any regulations under Article 37(4), to paragraph (3) and to any other statutory provision, every hereditament shall be separately valued."

Article 38(3) of the 1977 Order

"Notwithstanding anything contained in paragraph (2), the Commissioner, or the district valuer with the approval of the Commissioner, may, if he thinks it proper to do so having regard to the circumstances of the case -

- (a) value contiguous hereditaments in the occupation of one and the same occupier as a single hereditament, notwithstanding that they are held under different titles;
(the Tribunal's underlining)
- (b) where a hereditament comprises two or more parts capable of separate occupation, although in the same occupation, value the several parts as several hereditaments;

and where hereditaments or parts of a hereditament are valued as mentioned in subparagraph (a) or (b), they shall be treated as a single hereditament, or, as the case may require, as separate hereditaments, for all the other purposes of this Order."

Article 2 of the 1977 Order

"In this order -

"hereditament" means property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list;"

Mr Copeland had argued that the definition of hereditament in Article 2 was now on all fours with that in the General Rates Act 1967 at present in force in England, and differed from the definition of "hereditament" then in force at the time of the Belfast Collar Company Case. When pressed upon the point by the Tribunal he conceded that there was nothing remotely similar to Article 38(3) in the English 1967 Act. He could give no reason why Article 38(3) was required if the decision in Switzer & Company v Commissioner of Valuation [1902] 2 IR 275 had been swept away. The Tribunal simply cannot agree with Mr Copeland's analysis of the effect of the definition of "hereditament" in the 1977 Order and is of the view that Article 38(3)(a) is directly aimed at the difficulties which ensued both in Ireland (and later in Northern Ireland) as a result of the Switzer decision. Article 38(3)(a) re-enacts Section 8 of the 1932 Act with one amendment, which refers to contiguous hereditaments "held under different titles" instead of "held under two or more immediate lessors under different contracts of tenancy". The decision in Switzer has not been swept away. It remains an integral part of rating law in Northern Ireland.

It seems clear that in the present appeal the Commissioner of Valuation exercised the discretion given to him by Article 38(3)(b) of the 1977 Order to value the store and the weighbridge as separate hereditaments rather than as a single hereditament for they are held under one fee simple title in Folio 33409 County Tyrone.

The Tribunal further points out that Article 38(3) of the 1977 Order provides that the division into two hereditaments shall have effect for the other purposes of the 1977 Order. This leads the Tribunal to Schedule 2 of the 1977 Order which deals with "Definitions relating to

Industrial Hereditaments". As neither hereditament in the instant appeal is per se a factory and therefore, prima facie, an industrial hereditament, the Tribunal is only concerned with Schedule 2 paragraph 3, which reads

"Where two or more properties within the same curtilage, or contiguous to one another are in the same occupation and, though treated for any reason as two or more hereditaments for the purposes of valuation and rating, are used as parts of a single mine, quarry or factory, then, for the purposes of determining whether the several hereditaments are industrial hereditaments, they shall be treated as if they formed parts of a single hereditament comprising all those hereditaments."

The store simply cannot be considered to be within the same curtilage as the Dairy Factory, being about one-quarter of a mile away and being divided from the Dairy by an area of open land, an estate of houses and the Mill complex. Nor can it be considered to be contiguous to that Dairy.

So too with the weighbridge for a public road separates it from the Mill and it cannot be considered to be within the same curtilage. Nor, following the Burton-on-Trent Case, can it be considered to be contiguous by virtue of the electric cable under the road.

Accordingly both appeals must fail and the Tribunal makes no change to the entry in the Valuation List for either Appeal (VR/22/1990 and VR/23/1990).

Having heard the parties the Tribunal awards the measured sum of £250.00 to the Respondent.

ORDERS ACCORDINGLY

**The President, Judge Peter Gibson QC
and Mr A L Jacobson FRICS**

29th November 1991

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

Mr Michael Copeland of Counsel (instructed by Messrs Thomas Elliott and Son, Solicitors) for the Appellant.

Mr George Brown of Counsel (instructed by the Crown Solicitor) for the Respondent.