

MUDDY GREEN WELLIES DO NOT A FARMHOUSE MAKE – A LOOK AT THE SPECIAL COMMISSIONER’S DECISION IN THE McKENNA CASE

The availability of Agricultural Property Relief on farmhouses to save inheritance tax has received a considerable amount of attention recently. Readers will be aware of the Antrobus case. Recently the Special Commissioners have decided the case of McKenna which provides further information on the Revenue’s approach to claims for Agricultural Property Relief.

Agricultural property is defined by section 115 (2) as ‘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’. The property referred to is the agricultural property which is primarily the land. Legislation does not define a farmhouse, but the ordinary and natural meaning might be that it is a dwelling for the farmer from which the farm is managed.

ANTROBUS (1)

In the first Antrobus case there were set out the principles which have been established for deciding whether, having established that a particular property was a farmhouse, it was of a character appropriate. It considered the house’s size, content and layout; whether it was proportionate to the requirements of the farming activities; whether an educated rural layman would regard the property as land with a house, or a house with land; and finally whether there was a history of agricultural production associated with the house.

ANTROBUS (2)

In Antrobus (2), the agricultural value of the property was the subject of the Lands Tribunal decision, but for the tax practitioner the interest lay in the Tribunal’s narrow construction of what may constitute a farmhouse in the first place. They suggested that a farmhouse was not only the place in which a farmer lived in order to farm the land, but that the farmer lived there to farm the land ‘on a day-to-day basis’. Thus a so-called ‘lifestyle buyer’ or ‘fiscal farmer’ could not occupy such a house as a ‘farmhouse’.

McKENNA

In the McKenna case the subject of the Commissioner’s deliberations was a rather faded but still splendid seven-bedroom house in Cornwall, described in its sale particulars as ‘an historic and substantial Manor House, Listed Grade II*’, surrounded by 110 acres of what was accepted to be agricultural land.

Following Mr McKenna’s retirement from working in London in 1978 the house became his main home, and when in 1984 the tenancy of the farm ended he and his wife Lady Cecilia agreed that the running of the farm should be carried out jointly by them, though the actual work was contracted out. He obtained a rates reduction on the basis that the house was a farmhouse. Both frequently walked the farm to ensure everything was being done properly, and the farm records and documents were kept by them. By the late 1990’s both were becoming infirm, and responsibility for running the farm gradually passed to their agent. Their green wellies stayed firmly in the cupboard. In 2003,

after the death of her husband, Lady Cecilia entered a nursing home though the house was kept unchanged to ‘await her return’. She died five months after her husband.

WAS IT A FARMHOUSE?

The first issue in the Appeal was whether the house (with its gardens and ancillary buildings) was a farmhouse within the meaning of section 115 (2). It was the Revenue’s case that a farmhouse is a building with a particular function and it was therefore necessary to look at the function the house performed in relation to the agricultural land.

Taking her cue from Antrobus (2) and other cases, the Commissioner concluded that a farmhouse is a dwelling for the farmer from which the farm is managed, and that the farmer of the land is the person who farms it on a day-to-day basis rather than the person who is in overall control of the agricultural business conducted on the land. She also confirmed the principle that, for any property, ‘the status of the occupier is not the test but the proper criterion is the purpose of the occupation of the premises’, but even here if the premises were extravagantly large for that purpose the house might not qualify. The Commissioner decided that in respect of Mr McKenna, he was not the farmer, because, *inter alia*, the farming had been contracted out so that day-to-day farming activity was carried out by the contractor through an agent, and not by the owner.



OTHER MATTERS

Having concluded that the house was not a farmhouse, there was no need to look at the remaining matters, but 'in case she was wrong' she did look at them and expressed her views. On the 'character appropriate' test, she looked at the value of the house in relation to other properties in the area, and also in relation to the profitability of the land, and concluded that it was not a property that would attract demand from a commercial farmer who had to earn a living from the land. If it were a farmhouse, it was not 'of a character appropriate to the property' within the meaning of section 115 (2).

Was it occupied for the purposes of agriculture throughout the period of two years ending with the relevant dates of death within the meaning of section 117 (a)? The Commissioner decided that neither Mr McKenna nor Lady Cecilia were able to engage in farming matters throughout that period of two years by reason, it would appear, of their infirmity or absence.

OUR VIEW

It is important to note that in both Antrobus and McKenna what the Revenue were considering were substantial historic houses (in poor condition) with small landholdings of 123 acres and 110 acres respectively. Both properties were sold, post death, and marketed as grand houses, with some land, rather than as farmhouses. However, it must be the case that whether a particular property is of a 'character appropriate' depends to a significant extent on the acreage of land farmed.

The distinction between the two cases is that in Antrobus the farming was carried out by Mrs Antrobus, whereas in McKenna a farm contractor was used through an agent.

The implications of McKenna seem to be that:

- ▶ It will be difficult to obtain relief if the whole of the farming operation is contracted out. However the terms of contract farming arrangements differ enormously, and it must make sense, where the economic case for contracting is compelling, to continue contracting but give consideration to making such changes as are necessary to maximise the owner's participation in the contract farming process.
- ▶ It seems harsh, to say the least, to penalise farmers who, after many years of farming, become infirm at the very end of their life, and therefore fail the 'occupied for the purposes of agriculture' test. Indeed, perhaps the outcome would have been different had this been the only issue against a successful claim for relief.

It is worth remembering that if the occupiers are in a partnership with others and the house is a partnership asset then, as a matter of law, all of the partners are in occupation. Also in order to secure Agricultural Property Relief on tenanted property, that property has to be occupied for agricultural purposes.

The Revenue also seem to be making a point of distinguishing between those whose sole or main occupation and income stream is from farming, and those with more diverse interests. The tests for what constitutes a farmhouse sit oddly with the income tax treatment of the land owner who contract farms as a trade, and still more oddly with a landowner who limits his use of the land to maintenance sufficient to collect the Single Farm Payment.

Perhaps Antrobus and McKenna are signals of a more general change of approach, and possible reform of the conditions to be fulfilled. What is clear is that even for those who might not be classified as 'lifestyle' farmers, a pair of muddy green wellies outside the front door is just not enough.

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