

## TWO CASES ON THE ‘CHARACTER APPROPRIATE’ TEST

James Henderson<sup>1</sup>

One of the conditions which must be satisfied in order for property to qualify for agricultural property relief is that it is “agricultural property”. Under section 115(2) Inheritance Tax Act (“IHTA”) 1984:

*“...agricultural property means agricultural land and 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”.*

There has been comparatively little learning on when a farmhouse will be said to be of a ‘character appropriate’ to agricultural property. However, in 2002 two different Special Commissioners released decisions on this issue on the same day. Both cases concerned houses with about 130 acres of land. One house qualified for the relief, the other did not.

### ***Lloyds TSB as personal representative of Rosemary Antrobus deceased v IRC*** [2002] STC (SCD) 468

This case concerned a farmhouse known as Cookhill Priory, a six bedroom country house which was an original Tudor building with Georgian and twentieth century additions. It had two drawing rooms, a ‘great hall’, a wood panelled dining room and a kitchen. There was a chapel adjacent to the house, but this had been used for many years for agricultural purposes and was agreed to be agricultural property. The house was surrounded to the rear and sides by farm

---

<sup>1</sup> Pump Court Tax Chambers, 16 Bedford Row, London WC1R 4EB Tel: +44 (0)274148080; Fax: (020) 7414 8099; E-mail: [jhenderson@pumptax.com](mailto:jhenderson@pumptax.com)

buildings and a concrete apron joined the rear of the house to these buildings and to the drive.

The Special Commissioner (Dr Nuala Brice) summarised the principles which she considered had been established for deciding whether a farmhouse is of a character appropriate to the property: ‘first, one should consider whether the house is appropriate by reference to its size, content and layout, with the farm buildings and the particular area of farmland being farmed (see *IRC v Korner* 1969 SC (HL) 13); secondly, one should consider whether the house is proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question (see *Starke v IRC* [1994] STC 295, [1994] 1 WLR 888); thirdly that although one cannot describe a farmhouse which satisfies the ‘character appropriate’ test one knows one when one sees it (see *Dixon v IRC* [2002] STC (SCD) 53); fourthly, one should ask whether the educated rural layman would regard the property as a house with land or a farm (see *Dixon*); and, finally, one should consider the historical dimension and ask how long the house in question has been associated with the agricultural property and whether there was a history of agricultural production (see *Dixon*)’.

The Special Commissioner concluded that, on all these tests, Cookhill Priory was a farmhouse of a character appropriate to the property. On the first, third and fourth questions she was assisted in her conclusion by the expert evidence of Mr Clive Beer of Savills who, amongst other things, gave extensive evidence on comparable properties in the area.

### ***Higginson v IRC* [2002] STC(SCD) 483**

In this case, the Special Commissioner (Mr BMF O’Brien) described the property under consideration as follows:

‘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’.

The Inland Revenue contended that the house was a dwelling attached to a farm, but not a farmhouse. In accepted that contention, the Special Commissioner stated that the object of the relief was to facilitate the continuance of the farming after the death of the farmer: the unit of property for the purpose of section 115(2) must be an agricultural unit- “that is to say, that within the unit the land must predominate”, and any qualifying cottages, farm buildings or farmhouses must be ancillary to the land.

He accepted that where there was a farm, one would ordinarily expect to find a farmhouse ancillary to the land. However, he thought the most significant fact in the case of Ballyward Lodge was the price obtained on the sale not long after the death: the price of £1 million would represent an appalling investment in terms of yield from that farm. The conclusion was therefore that the house predominated and that this was a case of a house with farmland going with it (and not vice versa). It was not therefore a “farmhouse” within Section 115(2).

### **Brief Comment**

Income tax cases, although not of direct assistance in the construction of section 115(2) IHTA (see *Dixon v IRC* [2002] STC (SCD) 53 at page 59) suggest that “farmhouse” simply connotes the building used by the person running the farm (see *Lindsay v IRC* 34 TC 289 at page 292 per Lord Carmont; endorsed in *IRC v John M Whiteford & Son* 40 TC 379 at page 383). Furthermore, the Oxford English Dictionary gives as the principal definition of “farmhouse” “*the chief dwellinghouse attached to a farm*”. Accordingly, in the author’s view, it is important, as the Special Commissioner did in *Antrobus*, to distinguish the questions of whether the property is a farmhouse and whether it is of a character appropriate to the property. Emphasis on the ‘character’ of the farmhouse requires the sort of broad approach adopted by that Special Commissioner rather than an over-emphasis on the house price. In the author’s view the more recent case of *Rosser v IRC* STC (SCD) 311 does not take this issue any further.

It is understood that the *Antrobus* litigation is continuing. However, this is not by way of a Revenue appeal to the High Court but in the Lands Tribunal where the ‘agricultural value’ of the land for the purposes of section 116 IHTA is to be determined.