

Appeal No. VA97/4/024

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Mr. Pdraig Dolan t/a Munsboro Equestrian Centre**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: House, Equestrian Centre and Land at Lot No. 16Ab, Townland: Mullymucks, ED:  
Roscommon Rural, Co. Roscommon

Agricultural exemption - Raising of quantum challenged by Commissioner

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Rita Tynan - Solicitor**

**Member**

**George McDonnell - F.C.A.**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 16TH DAY OF APRIL, 1999**

By Notice of appeal dated the 24th day of July 1997 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £49 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal were that "our enterprise is agricultural. We breed our own horses in order to get them ready for sale. The indoor is also used for ewes in bad weather when lambing. We have no riding school. The convent school in Roscommon is used for the english language teaching and students stay with families in the town. The cafeteria is used to entertain foreign customers when buying horses. The squash is closed down".

The relevant valuation history is that at 1995/4 revision, which was requested by the occupier, the rateable valuation was fixed at £49.

This valuation was appealed on the grounds that the hereditament was agricultural.

The Commissioner of Valuation's decision on this appeal was to amend the description of the subject property to "House, Equestrian Centre and Land" with no change to the R.V. of £49.

A written submission on behalf of the appellant was received by the Tribunal on 25<sup>th</sup> February 1998.

This written submission contained inter alia a description of the subject hereditament and copies of accounts relating to the subject prepared by Greg Tansey & Co. These copy accounts comprised a statement of Capital Reconciliation for two years ending 31<sup>st</sup> December 1996 and statements of affairs for the year ending 31<sup>st</sup> December 1994 and 31<sup>st</sup> December 1996.

A written submission on behalf of the respondent prepared by Mr. John Smiley, an Appeal Valuer, was received by the Tribunal on 2<sup>nd</sup> February 1998.

Mr. Smiley described the hereditament and assessed the rateable valuation as follows;

**Non Domestic**

Indoor Arena	9,456 sq.ft.	@	£0.60 =	£5,674
(exc. area in agric use)				
Tack/changing rooms	886 sq.ft.	@	£0.60 =	£ 532
1 <sup>st</sup> Floor Coffee Shop	886 sq.ft.	@	£1.00 =	£ 886
6 Stables	1,647 sq.ft.	@	£0.60 =	<u>£ 998</u>

**Total Estimated Non Domestic NAV £8,000**



Mr. Hughes referred to the photographs in his report. Some of these photographs were of a neighbouring farmer's sheds. Mr. Hughes said these buildings were similar to the appellant's sheds. Mr. Hughes further stated that this neighbouring farmer used his sheds for sheep and cattle and these buildings were exempt from rates.

Mr. Hughes referred to his photograph of the jumping arena at the subject premises. He said that this type of arena, stabling and storage for hay could be seen at many farms, as in recent years, grants from the State had facilitated their construction. Mr. Hughes stated these grants had only become available in the last three years. Grants were paid for horses like headage payments for sheep.

Mr. Hughes stated that the appellant farmed horses in a similar way to the neighbouring farmer who farmed sheep and cattle.

Under cross-examination by Ms. Maguire, Mr. Hughes stated that the appellant fed sixty horses indoors and ten horses were being fed outdoors. He said in further replies that the appellant breeds and deals in horses and he also breaks horses.

Again Mr. Hughes stated that the appellant trains horses. In his replies Mr. Hughes compared the training of horses to the preparation of pure-bred cattle for walking in the show ring.

Mr. Dolan, the appellant, gave sworn testimony. He said he was a farmer who breeds horses and sells them. He said that there was also forty to fifty sheep on his land. He said his farm comprised 89 acres and this land adjoined the arena.

In further testimony Mr. Dolan stated that at any one time there were sixty to seventy horses on the land. They comprised fifteen to eighteen foals born each year, yearlings and two-year-old horses.

Mr. Dolan said that he buys in horses from time to time. He further said that in 1988/1989 he went into sheep farming.

In the early 1990's grants from Bord Failte became available for agri-tourism. The purpose of these grants was to develop holiday business.

Mr. Dolan said that he had facilities for selling horses and he hoped to increase his income from the provision of holiday amenities.

Mr. Dolan said he got the grant in 1991/1992 and it amounted to £57,500. This amounted to 50% of the relevant expenditure. There was a stipulation in the provision of the grant that the facility would be inspected by the Irish Association of Riding and Equestrian Schools.

When this organisation approved the facility it was then registered with Bord Failte. An indoor arena and carpark had been constructed on foot of the grant and this arena was used in connection with the holiday enterprise but also in connection with the breaking of horses.

Mr. Dolan said the holiday enterprise was not a success. Bord Failte did not market it properly according to Mr. Dolan and it did not provide him with finance for marketing.

Mr. Dolan said he then started a riding school at the premises. This ceased operations at the end of 1993. Mr. Dolan said that he got less than £5,000 a year from the riding school and the insurance for the school cost £4,995.00.

Mr. Dolan put in evidence an extract from his cashbook, which he had prepared himself. This document covered the years 1992, 1993 and 1994. This document showed income from the arena for the said years in chronological order as being £5,160, £6,678 and £2,334. The insurance cost for each year was £4,995.00. Mr. Dolan said these figures from his cash book had been accepted by the Revenue Commissioners.

Mr. Dolan said that since 1994 his wife operated a holiday package scheme for students. This scheme begins in July and ends in the middle of August lasting in all for seven weeks. The students are accommodated with local families. They study English and participate in other cultural activities. Mr. Dolan said his connection with this enterprise was the provision of horses. He said that the students went pony trekking outside Roscommon town and they also ride the horses outside the arena on his farm. Mr. Dolan said that while these other activities were being carried on at his farm he never ceased dealing in horses.

In his evidence Mr. Dolan referred to the breaking of horses. Horses were usually broken at three years of age. Horses that had been broken received a better price. Mr. Dolan said that

after he had broken the horses he did some hunting with the horses and then sold them. Again Mr. Dolan compared the schooling of horses to the preparing of purebred cattle for showing in the ring.

Mr. Dolan referred to the entry for Munsboro Equestrian Centre in the Irish Field Directory for the years 1995, 1996 and 1997. He said this was a free advertisement inserted by Bord Failte. The same advertisement was repeated each year. He said the advertisement was inserted this year even though he had told the Irish Field Directory that he was no longer in this business. Mr. Dolan said the entry in the Irish Field Directory was inaccurate as it listed two employees who no longer worked for him.

Mr. Dolan referred to the notepaper headed "Munsboro Equestrian and Leisure Centre" which had been mentioned in the respondent's written submission. He said it was part of the conditions attaching to the agri-tourism grant that an operator had appropriately headed notepaper. He had ordered 5,000 sheets of such notepaper. He now used the notepaper for dealing with his customers in Europe. Horse dealers were sometimes the object of suspicion by these customers and the headed notepaper helped to re-assure his customers as to the bona fides of his business.

Under cross-examination by Ms. Maguire, Mr. Dolan said they had seventy one horses, which included 15/18 foals, 14 yearlings and 18 two year olds. He said they did not buy in any foals this year but they might buy 7/8 foals.

Under further cross-examination Mr. Dolan accepted that the extracts from his cashbook were not audited accounts. Ms. Maguire put it to Mr. Dolan that his cash book extracts did not show the proceeds of his horse sales.

Ms. Maguire put it to Mr. Dolan that the respondent had excluded 788 sq.ft. from the indoor accommodation as being in agricultural use. In reply Mr. Dolan stated that all the covered accommodation was in agricultural use. He said he was in the same business as any farmer. He breeds horses and brings them on. He then trains the horses and sells them. In further replies Mr. Dolan said the indoor arena was used for training and showing of horses.

Under further cross-examination Mr. Dolan referred to the grant he had received from Bord Failte. He said his agri-tourism business must continue to the end of 1998 otherwise the grant would have to be repaid. The agri-tourism business now consisted of the seven-week summer holiday period for foreign students. He said that £5,000 to £7,000 was made from this business.

Mr. Smiley gave sworn testimony. He outlined the valuation history of the subject hereditament. He said at no stage was there a request by the appellant for a reduction in quantum.

In further testimony Mr. Smiley said that 788 sq.ft. had been excluded from the indoor accommodation as being in agricultural use in connection with sheep.

Mr. Smiley referred to a conversation he had with Mr. Dolan at appeal stage. Mr. Dolan said he bought in foals and bred some of his own. Mr. Dolan said he then schooled the horses and sold them for show jumping and hunting. Mr. Smiley said that in this same conversation, Mr. Dolan told him that each year he bred 6 to 18 foals and he purchased 15 to 20 foals.

In further testimony Mr. Smiley said that he considered the core activity carried on at the subject hereditament was the training of horses for re-sale and therefore rateable. He said the primary purpose of the appellant was not breeding horses.

Mr. Smiley said he had asked Mr. Tansey the appellant's accountant for audited accounts. He had not received the itemised accounts he had requested.

Under cross-examination by Mr. Short, Mr. Smiley did not agree that breeding and selling of horses was the primary activity carried on at the subject hereditament.

Mr. Short put it to Mr. Smiley that breeding horses exempts the subject from rates and was analogous to the exempted properties such as mushroom production facilities, piggeries and hatcheries.

Under further cross-examination Mr. Smiley did not agree that the appellant was engaged in horse husbandry or horse farming. Mr. Smiley stated that the appellant was in the business of

training horses and running a riding school. These activities were rateable according to Mr. Smiley.

Mr. Short asked Mr. Smiley did he see any non-exempt activities on his visits to the subject hereditament. In reply Mr. Smiley said he saw a car-park there and the property was close to Roscommon town.

Mr. Short put it to Mr. Smiley that due to commercial reasons the appellant's non-agricultural enterprise had failed and he was a sheep and horse farmer. Mr. Smiley refused to agree with this proposition.

In his legal submissions Mr. Short said the appellant's premises were exempt from rates pursuant to Section 14 of the Valuation (Ireland) Act 1852.

He referred to *Samuel Nixon –v- Commissioner of Valuation* 1980 I.R., 340. There poultry houses were held to be farm buildings within the meaning of Section 14 of the 1852 Act.

Again Mr. Short referred to *Cork County Council –v- Commissioner of Valuation VA88/340*. In that case the Valuation Tribunal decided that buildings used for the intensive production of pigs were exempt.

Mr. Short referred to *Cork County Council –v- Commissioner of Valuation VA88/348* which repeated the statement of the Supreme Court in the Nixon case that dealt with the meaning of “farm ..... buildings” in Section 14 of the Valuation (Ireland) Act 1852.

Mr. Short referred to *Rina Myers t/a Rockland Stables –v- Commissioner of Valuation VA94/1/013* where the Tribunal found that stables which had been constructed before the riding school activity had commenced, and whose use had not changed significantly, should retain their agricultural exemption from rates.

Mr. Short also referred to *John Dunne –v- Commissioner of Valuation VA93/2/054*. Here the Tribunal stated that planning permission for a particular use is not necessarily a decisive factor in relation to whether a person is in rateable occupation for a particular use. In the subject case the grant was for an arena / riding school but Mr. Short said evidence given by



the appellant showed on the balance of probability that commercial activity had not superseded farm use.

Mr. Short referred to *International Mushrooms Limited –v- Commissioner of Valuation VA92/6/047*. In that case the appellant had obtained grants from the I.D.A. and was held by the Tribunal to be exempt from rates under the agricultural exemption. Mr. Short also referred to *Wexford Harbour Embankment Company –v- Commissioner of Valuation VA95/1/103*.

In summary Mr. Short said that the appellant's business was agricultural in nature. Mr. Short did not accept that a distinction could be drawn between the breeding and the buying and selling of horses. There was some commercial activity on the appellant's property namely the short seven week holiday activity to the extent that it occurred on the property.

In her legal submissions Ms. Maguire said the Nixon case referred to farm buildings used in connection with farming.

In this case there was a conflict of evidence as to the amount of horses bought in. The evidence produced by the respondent was to the effect that the number of horses bought in was equivalent to the number of horses born on the farm. This makes the enterprise a commercial one such that the indoor arena was used for training and schooling these horses.

Ms. Maguire referred to Heinz Surenmann t/a Tomgar Stud -VA95/1/012. This judgment of the Tribunal was authority for the proposition that training of purchased horses would constitute an activity outside the area of agricultural exemption in the valuation code.

Ms. Maguire said other aspects of the appellant's activity indicated its commercial nature. There was the holiday business in the summer. There was the appellant's entry in the Irish Field Directory, which did not say he operated a stud farm. He had a coffee shop on his premises for potential buyers. He had received a substantial grant for agri-tourism.

Ms. Maguire said that in summary the appellant operated a commercial enterprise in the buying, training and selling of horses. In the summertime there was also the holiday business.

Counsel for both sides then dealt with the issue as to whether the Tribunal should hear arguments about quantum.

Mr. Short said that arguments about quantum are an alternative plea and that as a matter of justice he should be afforded an opportunity to make this plea if the appellant failed on the exemption issue. He said he would not be running the issue on the day and the respondent would get the appellant's written submission before the resumed hearing.

Ms. Maguire referred to the case of *Topline Fashions - VA92/3/012*. In that case the Tribunal did not allow in hearing a new ground of appeal which had not been raised at First Appeal stage. Ms. Maguire stated that the respondent had only got notice of the quantum issue this week.

The Tribunal, after a short adjournment, held that the raising of the issue of quantum at this stage, constituted a new ground of appeal which, in accordance with accepted practice, the Tribunal will not admit. The Tribunal referred to the decision in *Pettitt -v- Commissioner of Valuation VA95/5/015* where the inflexibility of that rule was modified to allow the admission of new grounds in exceptional circumstances. The Tribunal found that this appeal did not come into that category. The Tribunal indicated that a fresh revision of his premises could be sought if the appellant wished to challenge the quantum.

### **Determination**

The Tribunal has considered the written submissions and the evidence offered by both the appellant and the respondent. The Tribunal has also considered the legal submissions of the appellant and the respondent.

The key evidential issue to be resolved here is the amount of horses bought in by the appellant. There is a clear conflict on this between the evidence given by the appellant and that given by Mr. Smiley.

The onus is on the appellant to prove his case. Where a conflict of evidence arises, further corroborating evidence is needed to resolve the issue. The Tribunal notes that for the revision year in issue, 1995, no itemised and/or audited accounts were produced by the appellant. In

this respect the appellant gave evidence that he farmed sheep. However no financial details whatsoever of this enterprise were put in evidence by the appellant. There was therefore insufficient evidence to corroborate the appellant's statements as to the amount of horses he had bought in and thereby satisfy the onus of proof which he is obliged to discharge.

The evidence that the summer holiday business benefited the appellant was also unchallenged

Again the evidence established that the substantial grant the appellant had received from Bord Failte had not been repaid. A repayment would have to be made if the business for which it had been granted had ceased to exist.

Accordingly on the evaluation of the evidence the Tribunal finds that the appellant buys in for re-sale as many horses as he breeds for sale. The Tribunal further finds that when the training and re-sale of bought in horses is added to the holiday business, the primary business activity of the appellant is commercial.

Accordingly the Tribunal finds that the commercial activity of the appellant brings the subject hereditament outside the exemption granted to agricultural buildings.

The Tribunal therefore affirms the decision of the Commissioner of Valuation and determines the subject premises not to be exempt from rates and to have a rateable valuation of £49.