

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



Neutral Citation Number: [2020] UKUT 6 (LC)
Case No: TMA/261/2019

*TAX – INHERITANCE TAX - agricultural land – valuation under s.190 Inheritance Act 1984
– whether best consideration achieved – residual valuation method – comparable method
preferred - best consideration determined at £645,000*

IN THE MATTER OF AN APPEAL UNDER
SECTION 222 OF THE INHERITANCE TAX ACT 1984

BETWEEN:

THE ESTATE OF DOUGLAS CHARLES
THOMAS (DECEASED)

Appellant

- and -

HER MAJESTY'S REVENUE AND CUSTOMS

Respondent

Re: Land at Ffoy Fach Farm
Heol Llanelli
Pontyates
Llanelli
Carmarthenshire

Peter D McCrea FRICS

Royal Courts of Justice
on
25 September 2019

Ned Westaway, instructed by Brinley Morris Rees and Jones Solicitors, for the appellant

Isabel McArdle, instructed by HMRC Solicitor, for the respondent

Introduction

1. For the purposes of calculating relief against inheritance tax due in respect of land which has been sold by a deceased's estate, section 190(1) of the Inheritance Tax Act 1984 ("the Act") provides that the "sale price" is taken to be the price for which the land is sold or, if greater, the best consideration that could reasonably have been obtained for the land at the time of the sale.

2. In this appeal, the land concerned ("the appeal land") comprises 8.08 acres in the village of Pontyates, near Llanelli in Carmarthenshire. It was owned by Mr Douglas Charles Thomas until he passed away on 9 April 2008. On 5 April 2012 the land was sold by Mr Thomas's estate, off market, to a company owned by Mr Thomas's daughter and son-in-law.

3. The sale price was £500,000, which HMRC considers did not amount to the best consideration that could reasonably have been obtained for the land, instead valuing it at £800,000. The personal representatives of Mr Thomas's Estate ("the appellants") appeal to the Tribunal against HMRC's determination.

4. Ned Westaway of counsel appeared for the appellants, calling Mr Rhodri Poiner MRICS to give expert valuation evidence, while Isabel McArdle of counsel appeared for the respondent, calling expert valuation evidence from Ms Joanne Gaydon MRICS. I am grateful to both counsel for their helpful skeleton arguments and submissions.

5. I inspected the appeal land and the most relevant comparable sites on 2 January 2020.

Facts

6. From a statement of agreed facts, the evidence, and my inspections, I find the following facts.

7. The appeal land comprises 8.08 acres of pastureland to the south of the small village of Pontyates on the B4309 between Carmarthen, nine miles to the north west, and Llanelli which is five miles to the south. It has gated access from Heol Llanelli to the north and is bounded by open farmland to the south and west, and the minor Danybanc Road to the east. At the date of death, it was used for sheep grazing, classified as Grade 3b – moderate agricultural land. The land slopes down from south-east to north-west. I estimate a drop of around 25 metres across the site, which is steeper than 1 in 10.

8. Between 2006 and 2009, the appeal land was the subject of a series of option agreements with the aim of residential development. The original option was granted by Mr Thomas to a company called Strategic Land Options dated 11 January 2006, under which Strategic Land Options had the option to purchase the land at £2.1 million. The option was not exercised, and on 28 July 2008 a second option agreement was granted to Hawkesbury Properties Ltd under which the purchase price was £1.5 million. This was renewed by two further agreements, dated May 2009 and June 2009, in which the purchase price included the provision of a small number of completed units. The final agreement expired in December 2009 when Hawkesbury failed to exercise their option.

9. Hawkesbury had submitted a planning application to the local planning authority, Carmarthenshire County Council, for residential development on 3 October 2007 (S/17408). The development was to be in two phases – the first being 70 units, with a further 30 units to follow in a second phase. The council resolved to grant planning permission for 100 units subject to the completion of an agreement under section 106 of the Town and Country Planning Act 1990. The section 106 agreement was never completed, and the application was withdrawn in July 2011.

10. The valuation date in this appeal is the date of sale, 5 April 2012, at which time the appeal land was zoned for residential development under the Carmarthenshire Unitary Development Plan, with 70 units allocated to it. Under the emerging Carmarthenshire Local Development Plan, which was deposited in 2011 and subsequently adopted on 10 December 2014, 100 units were allocated to the land.

11. On 5 April 2012 the appeal land was sold to Ffoyfach Limited, a company owned by the deceased's daughter and son-in-law, for £500,000. It had not previously been offered on the open market.

Statutory provisions and the valuation question

12. Under section 190(1) of the Inheritance Tax Act 1984, the sale price, which informs the amount of inheritance tax paid, means “in relation to any interest in land, ... the price for which it is sold or, if greater, the best consideration that could reasonably have been obtained for it at the time of the sale”.

13. As *McCutcheon on Inheritance Tax* points out, “sale price” is a term of art, but it is common ground, at least for the purposes of this appeal, that “best consideration” is equivalent to market value, which section 160 of the 1984 Act defines as “the price which the property might reasonably be expected to fetch if sold in the open market at that time”.

14. Accordingly, I am required to determine the value that would have been achieved for the appeal land on 5 April 2012 had it been openly exposed to the market. The appellant maintains that £500,000 was the maximum value that could have been achieved, whilst HMRC submits that the market value was £800,000.

Evidence

15. There was a degree of common ground between the experts, each of whom approached the valuation exercise using both a market comparison approach, and by undertaking a residual valuation to arrive at land value.

Market comparison

16. Both valuers had regard to a range of transactions on development sites in Wales. Mr Poiner's comparable transactions were as follows:

Site location	Date of sale	Size	Price/Acre
Former nursery, Gorslas, Llanelli, SA14 7HP	“marketed Feb 2012”	“3 ac”	£100,000

Station Road, Upper Brynamman, Ammanford	September 2011	1.5 ac	£36,667
Heal Caemawr, Drefach, Llanelli, SA14 7AG	May 2016	2.1 ac	£85,700

17. During cross examination, Mr Poiner accepted that the sale of land at Station Road, Upper Brynamman was not helpful as a comparable. He had obtained the details of the sale from an auctioneer's website and accepted that he had insufficient evidence for me to place much reliance on it. He considered that the sale would have been carried out in restricted marketing conditions; and he had not had sight of the legal pack and could not confirm that the land was unencumbered by easements or other restrictions. In addition, whilst he had driven up and down Station Road over the years, he had not inspected the land.

18. As regards the land at Drefach, again Mr Poiner accepted that little weight should be placed on the sale as a comparator for the appeal land. The sale took place over four years after the valuation date in this appeal, and again he had few further details of the land to make a useful assessment of its comparability.

19. In addition to the above transactions, Mr Poiner also referred to land at Pontyates, a short distance from the appeal land, which was unsuccessfully offered for auction in September 2017. It was a site of around 2 acres, with outline planning permission, granted in December 2014, for 20 houses. The site was of irregular shape, with access between two houses.

20. Ms Gaydon also referred to the former nursery at Gorslas, together with three other comparable transactions:

Site location	Date of sale	Size	Price/Acre
St Michael's School, Bryn, Llanelli, SA14 9TU	February 2011	9.1 ac	£439,560
Fmr nursery, Gorslas, Llanelli, SA14 7HP	June 2012	4.34 ac	£97,926
Tegfan, Pwll-Trap, Carmarthen, SA33 4AJ	November 2012	3.59 ac	£319,533
Heol-y-Parc, Cefneithin, SA14 7DE	January 2013	3.99 ac	£92,732

21. Ms Gaydon said that Barratt had bought the St Michael's School site at Bryn for £4,000,000 in February 2011, at which time the land was allocated for housing in the Unitary Development Plan. The site is on the outskirts of Llanelli, about 10 miles south east of Pontyates. The land was slightly sloping. Mr Poiner considered the location to be far superior to the appeal land, and the land in question was a continuation of an existing development.

22. The 3.59 acres on the outskirts of the small village of Pwll-Trap, to the west of Carmarthen, had been sold with planning permission for £1,150,000 in November 2012. The site has easy access to the A477, and is approximately 18 miles by road, north west of Pontyates. Again, Mr Poiner thought the location superior to the appeal land, with easy access to the main road network.

23. Persimmon Homes purchased the 3.99-acre site at Cefneithin in January 2013 for £370,000. The land had planning permission for 41 units, of which 10 were to be affordable housing. The purchase included a house – 20 Heol-Y-Park – which was demolished. The greenfield land was mainly level. The site at Cefneithin was within a mile or so of another of

the comparables used by both valuers - the former Wellfield Nursery at Gorslas, some eight miles to the north east of the appeal land. Mr Poiner again thought the location superior, being part of the Cross Hands-Cefneithin-Gorslas high density conurbation. He also considered that an allowance should be made for the value of the existing house.

24. Since both experts considered the former Wellfield Nursery at Gorslas to be the prime comparable, it was the subject of some discussion and analysis at the hearing.

25. Ms Gaydon had the site at 4.34 acres, whereas Mr Poiner thought it was 3 acres. He accepted in cross examination that this might have been the net developable area. But it was agreed that the site sold in June 2012 for circa £100,000 per acre to a Registered Social Landlord, Pennant Homes. The site was unusual in that it was bisected by a stream.

26. Mr Poiner described the site as brownfield, with all mains services connected. In his view the site was better located than the appeal land, being close to Ammanford and the A48 which leads directly to the M4. Ms Gaydon agreed, but thought this advantage was offset by the awkward nature of the site, bisected by the stream.

27. Ms Gaydon said that at the date of sale, a previous planning consent had expired. The site was allocated within the settlement boundary, and planning permission for 53 units including 4 affordable was subsequently granted in December 2012. Her office records showed abnormal costs of £600,000.

Residual method

28. Ms Gaydon referred to the RICS Valuation Information Paper “No 12 – Valuation of Development Land”¹. Introducing the section entitled “Valuing by the residual method”, the paper says this:

“Where the nature of the development is such that there are no (or limited) transactions to use for the comparative method, the residual method provides an alternative valuation approach. However, even limited analysis of comparable sales can provide a useful check as to the reasonableness of a residual valuation.”

29. It goes on to offer the following caution, which is entirely apposite in this appeal:

“The residual method requires the input of a large amount of data, which is rarely absolute or precise, coupled with making a large number of assumptions. Small changes in any of the inputs can cumulatively lead to a large change in the land value. Some of these inputs can be assessed with reasonable objectivity, but others present great difficulty. For example, the profit margin, or return required, varies dependent upon whether the client is a developer, a contractor, an owner occupier, an investor or a lender, as well as with the passage of time and the risks associated with the development.”

30. Both valuers provided basic residual valuations. Mr Poiner had carried out two, based on 70 and 100 units on the appeal land. The planning evidence points to a 100-unit scheme being

¹ This document was in force at the valuation date and at the hearing, but will be superseded by the RICS Guidance Note: “Valuation of Development Property” 1st edition, dated October 2019, effective from 1 February 2020

achievable, subject to negotiations on the level of contributions under section 106 of the Town and Country Planning Act 1990. Mr Poiner accepted in cross examination that there was a strong presumption at the valuation date for a 100-house scheme, subject to the agreement of s.106 terms. In my judgement that is right.

31. In calculating gross development value, Mr Poiner had regard to the sale of various units at Heol Waunhir, Kidwelly – part of a 600-acre development centred around the Ffos Las racecourse – which opened in 2009 and at the time was Britain’s newest racecourse. It is approximately three miles south-west of the appeal land. His 100-house scheme assumed 75 market units comprising: 26 four-bedroomed detached units which would sell at £165,000; 13 three-bedroomed detached units at £145,000; 10 three-bedroomed semi-detached units at £115,000; 9 three-bedroomed terraced units at £105,000; 8 two-bedroomed semi-detached units at £105,000; 9 two-bedroomed terraced units at £95,000. He allocated 25 units to affordable housing, which he valued at £57,500, being 50% of £115,000. His total gross development value was therefore £11,402,500.

32. He assumed a general build cost of £765 per sq metre, which with a contingency of 3%, site works of 8% and professional fees of 7% amounted to £9,159,500. When finance costs of 3%, agents’ and solicitors’ costs of 1% and 0.5% were added, and a developer’s profit of 15% assumed, his total outgoings were £10,922,235, leaving a residual land value of £480,265, say £500,000.

33. Mr Poiner accepted in cross-examination that his calculations contained several errors: he had used the BCIS cost tables for October 2011 and had made some mathematical errors in calculating fees.

34. Ms Gaydon carried out four different residual valuations. For the reasons explained below, it is not necessary for me to outline each of them. In one version, she adopted Mr Poiner’s assumed sale values (whilst not agreeing with them) for the market housing but assumed 80 units. As regards the 20 affordable units, she assumed low cost home ownership of 70% of market value. The remaining 30% was valued by assuming a rent of 2.75%, which she capitalised at 6% to arrive at a total gross development value of £12,718,500 (compared with Mr Poiner’s £11,402,500).

35. Ms Gaydon adopted a similar approach to Mr Poiner to costs but used the BCIS tables for quarter 2 of 2012, which showed a hybrid cost of £699 per square metre. She assumed external works of 15%, contingencies of 2.5%, and professional fees of 6%, and a section 106 contribution of £140,000, based on her discussion with the planning officers.

36. As regards the contributions under section 106 of the 1990 Act, Ms Gaydon said that she had spoken to the planning officer who had told her that as at April 2012, the likely requirements of the local planning authority would have been 20% affordable housing, a public open space contribution of £1300 per unit, no education contribution, and an administration fee of £10,000. She made these deductions in her residual valuations.

37. After finance, marketing and legal fees, a developer’s profit of 18% on the market units and 4.76% on the affordable units, Ms Gaydon arrived at a residual site value of £788,541.

38. I am not persuaded by the very basic residual method adopted by either valuer. As the RICS paper confirms, the end result depends heavily on the assumptions made and choices of

input. Ms Gaydon's four valuations, all made with plausible but untested assumptions, produced a land value varying from £602,550 to £1,115,902. Mr Poiner's approach, which might be neutrally described as short, made bald assumptions as to a number of factors, which when adjusted have a significant effect on the end value. Changing his assumed contingency from 3% to 5% for instance, reduces the resulting land value to just under £300,000 – a drop of nearly 40%.

39. The residual method might have been of assistance to me had the various inputs been the subject of more research and analysis, which could only really have come from a properly worked up scheme, based on a detailed assumed planning permission, with input from engineers as to site levels, and the costs of drainage and retaining walls, among many other factors. As it is, I place very little weight on the residual valuations.

Conclusions

40. What can be deduced from the other evidence? The unexercised option agreements are of limited utility. They give evidence of developer interest in the appeal land during 2006 and 2009, and a willingness to invest in applications for planning permission, but otherwise they demonstrate only that a developer was not, in a better market, prepared to pay the amounts reserved in the agreements.

41. I am satisfied that planning permission would have been granted for 100 units at the valuation date and accept Ms Gaydon's evidence as to the likely level of section 106 contributions. I make no adjustment for these in comparing the application land with the comparable sites.

42. I place no weight on Mr Poiner's sites at Station Road, Upper Brynamman, and Heal Caemawr, Drefach both of which he conceded were of little use in the valuation of the appeal land.

43. I also take little from Mr Poiner's comparable site in Pontyates, offered to the market without success. I inspected the site, which is at the other end of the village. Access to it is limited, between two houses, and the site itself is awkwardly shaped, and wooded. I noticed in looking at the Local Plan that it has been deallocated for housing.

44. Having inspected the locations, I agree with Mr Poiner that the land adjacent to St Michael's School is in a far superior location to that of the appeal land, being close to Llanelli and a few minutes' drive away from the M4. Similarly, Pwll-Trap is a short distance from the A40, with easy access to Haverfordwest and Carmarthen. I do not derive much assistance from either transaction.

45. That leaves the two sites at Gorslas (£97,926 per gross acre in June 2012), and Cefneithin (£92,732 per gross acre in January 2013).

46. From my inspection of the site at Gorslas, I did not consider the fact that it was bisected by the brook to be a particular handicap. The smaller section, off Cross Hands Road, does slope down away from the road, but some of the units have been built on the roadside, and the small number behind them are themselves on (admittedly now) level plots. The larger portion of the site, accessed from Cefneithin Road, is level. Whilst I accept that some landscaping and flood protection work would have been necessary, the fact that the site is split is not, to my

mind, itself an impediment. A shrewd developer could finish one portion and market it as complete, while continuing construction on the other portion. In my judgment the sloping nature of the appeal site is as much, if not more, of an obstacle to development. I accept Ms Gaydon's assumed area of 4.34 acres as the gross site area, which I assume includes the stream. That may have depressed the value which might be assumed per net developable acre, but neither party analysed it on that basis and, as I have indicated above, there was common ground on the rate per acre for the purpose of analysis.

47. As for the site at Cefneithin, this is broadly comparable, but the inherent value of the existing house when the site was acquired might have been an inflating factor in the price achieved. But both sites are in a superior location to the appeal land. I agree with Mr Poiner that the Cross Hands-Cefneithin-Gorslas high density conurbation, closer to the main road network would generate higher land values than Pontyates.

48. I bear in mind that, while sloping, the appeal land is of regular shape, and has the benefit of facilities of the village of Pontyates. However, the absence of facilities is not in itself prohibitive to development - I inspected the development at the Ffos-Las racecourse, and was struck by its isolated location.

49. Ms Gaydon did not adjust for quantum but Mr Poiner did take such an adjustment into account. - I do not consider that there would be any particular quantum allowance between four acres and eight acres - nor did they adjust the comparable sale prices for time or market conditions, and in the absence of specific evidence I do not do so.


50. Having considered all the evidence, and having inspected the appeal site and relevant comparables, in my view the value of the appeal site at the valuation date was £80,000 per gross acre, which for 8.08 acres is £646,400, say £645,000.

Determination

51. I therefore allow the appeal in part and determine that the best consideration that could reasonably have been obtained for the appeal land on 5 April 2012 would have been £645,000.

52. The appeal was heard under the Tribunal's simplified procedure. Neither party claimed its costs, and I therefore make no order for costs.

Dated: 10 January 2020



Peter D McCrea FRICS FCIArb