LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

WOOD GROUP ENGINEERING (NORTH SEA) LIMITED

IN RESPECT OF

(1) OFFICE, SECOND FLOOR LEFT,

(2) OFFICE, FIRST FLOOR,

(3) OFFICE, SUITE T/1,

DUART HOUSE, 3 FINCH WAY,
STRATHCLYDE BUSINESS PARK,
BELLSHILL ML4 3PE

These appeals called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 13th November 2013 and were heard together. Mr Denis Edwards, Advocate, appeared on behalf of the Appellants, instructed by FG Burnett, and Mr Steven Stuart, QC, appeared on behalf of the Assessor.

Appeal (1) is a new occupier appeal for the left hand side of the second floor of Duart House against a net annual value and rateable value appearing on the roll of £158,000. Appeals (2) and (3) are material change of circumstances appeals for the first and third floors of Duart House; the NAV and RV's appearing on the roll are £295,000 and £302,000 respectively. The issue which fell to be determined was whether the three appeal subjects ought to be valued separately or as a single unit of valuation. The parties were agreed that if they fell to be valued separately the values should be £155,000 (not £158,000), £295,000 and £302,000 respectively, however if they fell to be valued as a *unum quid* the value should be £700,000.

There was no dispute as to the facts.

Duart House is a four storey plus basement purpose built office property built in 2007. The basement level of the building comprises a car park and stores, and there is a dedicated car park to the front of

the building. It is located in Strathclyde Business Park, Bellshill and overlooks the A725 Bellshill by-pass.

The Appellants became the occupiers of the first and third floors on 7th November 2011, each (after conversion works to the first floor) comprising open plan offices covering the entire floor plate. The Appellants then became tenants of what had been separate office suites on the left hand side of the second floor which were converted into one open plan office, the Appellants having taken occupation on 16th July 2012.

The layout of each floor was as shown on the floor layout plans produced by the Appellants. The second floor layout included the corridor shown coloured pink on the Appellants' plan. The remainder of the second floor was occupied by the School of Dental Studies, Coatbridge College, and there was an access corridor separating both sets of subjects. There was a cafe in a common area on the second floor. There was a common entrance and reception on the ground floor. The ground floor reception service was supplied by the managing agents. Access between the floors of the building was by means of the common lifts and stairwells at either end of the building. A swipe card security system allowed access in and out of the lifts and stairwells. As the first and third floors were in the exclusive occupation of the Appellants, only their employees could exit the lift or stairwells on those floors. Both parties lodged photographs of the appeal subjects, and the floor plans lodged by the Assessor were marked up to show the location from which each of the Assessor's photographs had been taken.

The first and third floors, each extending to 1760 m2, were held on a single lease between the Landlords and the Appellants. The second floor (part) extending to 830 m2 was held under a separate lease. Both leases had the same expiry date. The common areas of the building were detailed in the lease extracts forming Assessor's productions 4 and 5. These included the ground floor common entrance and reception area, stairwell areas, landing areas, the stairs, all entrance and exit doors, the lifts, lift shafts and lift motor rooms. The lease for the first and third floors gave the Appellants the exclusive right to use 134 car parking spaces in the basement and ground floor level car parking areas, and the lease for the second floor gave the right to use a further 29 car parking spaces.

The Appellants were engaged in a number of projects and worked on different projects across the first, second and third floors. As projects came to an end, the Appellants would re-address the space plan. Employees moved between these very frequently during the course of the day. The reception was on the second floor, and the management team were located there. There were meeting rooms on all 3 floors with a booking system in operation. There were lavatories on all 3 floors. There was a central filing room. The first aid room was on the second floor. There was an integrated IT system.

The Appellants also occupy ground floor suites 8 and 9. These were vacated when the second floor was taken up then reoccupied but they are not concerned in the present appeals. There was also an

overspill car park on the other side of Finch Way which was a separate entry in the roll and did not form part of the appeals.

The Assessor in his approach to valuation highlighted that the Appellants do not have separate exclusive stairs or lifts between the floors of which they are in occupation. In order to move between the floors they must leave their lands and heritages and access common stairs or lifts before re-entering the lands and heritages under their occupation. On the second floor they must also use a common corridor in order to do this. The common areas, which included the stairs, lifts and second floor corridor remained at all times under the regulation and control of the landlord. As there is no exclusive interconnection between the floors the Appellant occupies, the Assessor believed the subjects of appeal are correctly entered in the valuation roll as three separate entries and do not form a *unum quid*. The fact that other subjects in Lanarkshire have been made *unum quid* is not in question as each case of *unum quid* requires to be considered on its own merits. The Assessor did not produce at the hearing a list of comparisons but made reference to Fleming House, Cumbernauld, where various suites occupied by North Lanarkshire Council had been separately entered in the roll and an appeal with a view to amalgamation of the entries had been withdrawn. He also referred to a decision of Lanarkshire Valuation Appeal Panel on 26th September 2012 in relation to 23 Napier Road, Cumbernauld.

The Appellants in their approach to valuation put forward that occupiers of larger subjects, whether single or several, from a single landlord, were in a stronger position to negotiate a lower rental rate or increased incentives. This was similar to the discount for bulk purchases. There was an advantage to the landlord in terms of reduced administration and also in that tenants of larger subjects were likely to be financially more stable. This equated to a reduction in rateable values, reflected in the quantum allowance given by assessors. There should be a discount regardless of whether the tenant occupied one, two or more floors. As regards access between the floors by means of the common parts, the security access system meant that only the Appellants could access floors one and three from the lifts and stairwells. In the Appellants' Schedule of Comparisons, which was intended to show what the Appellants' witness Mr Scott Strachan MRICS described as the almost universal practice of assessing offices on consecutive floors in a modern office block as *unum quid*, reference was made to subjects in Lanarkshire including floors 2&3 Avondale House, 7 Phoenix Crescent, Strathclyde Business Park, Bellshill, occupied by Scottish Power, and Plaza Towers floors 3, 4 & 5, 65 The Plaza, East Kilbride, occupied by HM Revenue & Customs, which had been assessed as *unum quid* and where access between floors was through the common parts.

Counsel for the Appellants submitted that the two and a half floors forming the subjects of appeal were properly to be valued as a *unum quid*, and that this was the correct approach applying the usual rules of valuation law. The cardinal rule was that the unit of valuation cannot exceed the unit of

occupation. Here the Appellants occupied two and a half floors. Whether the subjects were a *unum quid* was a question of fact and degree. The starting point is a proper assessment of fact. The tests which are to be applied are not tick box rules, it is an exercise of expert assessment rooted in a true assessment of the facts. What on the facts constitutes the curtilage the ratepayer actually occupies?

Counsel expressed the view that this was borne out with refreshing clarity in the case of *Woolway (VO) v Mazars* [2013] EWCA Civ 368, in which the English Court of Appeal, affirming the decision of the President of the Upper Tribunal (Lands Chamber), held that two floors in a multi storey office building separated by other floors in different occupation fell to be treated as a *unum quid*. Whilst this was different from the present appeal, relating to floors 2 and 6 in the building, there were similarities in that access between floors was by means of the lift or stairs which were comprised in the common parts.

In Armour, Chapter 10, what was and was not *unum quid* was to be established on common law principles. Woolway also emphasized the importance of the geographic test but suggested that the rules were there to assist rather than to bind. It was necessary to look at the facts and adopt a commonsense approach. In the present appeal to disaggregate was to defeat the geographical approach, which was the starting point and end point in this case. The case was referred to by the authors of Armour, who did not say that the approach taken was not normal, does not follow established principles, or does not apply in Scotland.

Counsel submitted that the cases relied on by the Assessor were not a good guide,

Bank of Scotland v Assessor for Edinburgh (1891) 18 R.936 (No117) did state the law on its own facts, but there the two units were being used for separate functions. Here, the function was the same. Employees moved between floors, and the IT was integrated. It was unrealistic to view the unit of occupation as anything else other than the two and a half floors.

As regards the decision of the Panel relating to 23 Napier Road, Cumbernauld, this was an application of the decision in the Bank of Scotland case. The reality was that these were separate units. There was no interconnecting doors and the units could only be accessed externally. Here there was no internal connection between floors, but it was a misconception in the context of a modern office block that there needed to be.

As regards *Burns Stewart Distillers Ltd v Lanarkshire Assessor* [2001] R.A. 110, the decision was that where there was a clear geographical separation, this had to receive effect unless it was part of a larger identifiable unit. Here the appellants were the main occupier, the floors were part of the same unit, and the business operated on an integrated basis. The Assessor maintained the floors could be separately let. This ignored the geographical reality. It was not appropriate here. Woolway allowed

the valuer to decide what the unit of occupation is. According to Armour, para 10-13, the proper use of this test was emphasized in *Assessor for Fife v NCB* 1963 S.C. 84: "If there is otherwise some good reason for taking a building out of unit, the fact that it could not be let separately might have a decisive effect; but the mere fact that a building could be separately let is not of much significance".

This was the Appellants Glasgow office. It was a single unit of occupation. The Assessor's position was internally inconsistent because the car parks had been treated as part of the unit of valuation. The Assessor was prepared to accept these as *unum quid,* so why not contiguous floors?

There should be some equivalence between rent and rateable value.

Counsel for the Assessor submitted that to determine the correct unit of valuation, *unum quid* or separate entries, the Committee should correctly apply Scots law, which was well settled. The matter had to be approached from the geographical standpoint. This was clear from *The University of Glasgow v Assessor for Glasgow* 1952 S.C.504. It was a matter of fact, but it fell to be determined by the application of certain tests. The primary test is what is the geographical entity? Armour para 10-09 referred to older cases, but these set out clear principles to be applied. It was clear from *Bank of Scotland v Assessor for Edinburgh* that there had to be some internal communication. Armour 10-09A dealt with the functional test, but there was no need to deal with this here. Armour at p257 was a summation of the Scottish authorities taken from Burns Stewart:-

"In other words, we consider that the overall tenor of the Scottish authorities does not support an approach placing emphasis on whether separate subjects are in the same occupation and occupied as part of an integrated business."

This was not the same approach as in the Woolway case.

Other parts of the decision in Burns Stewart were also relevant:-

"We consider the emphasis on the geographical test is an aspect of recognition that lands and heritages are physical subjects. The underlying purpose is to provide a proper basis for a tax on property, not a tax on persons or businesses. ...On the other hand, we are satisfied that the fact that certain heritable subjects function together as one business will, by itself, be insufficient to demonstrate they are to be regarded as *unum quid* in any physical sense."

In Armour, para 10-13, capacity to be separately let is also a relevant factor. Here, there were separate leases for floors 1 and 3, and the part of floor 2, with different rental provisions. The subjects were patently capable of separate let. There was a clear separation between floors, and access was by way of lift or common stairs not under the control of the appellants. There was a further factor relating to the 2nd floor. This was accessed by the common corridor shared with the tenants on the other side.

The treatment of the car parks was not contrary to the Assessor's position. The car parking was not part of the premises let, there was a right to use certain spaces. A pertinent does not need to be contiguous to the principal subject.

The Napier Road, Cumbernauld decision was in effect a horizontal example of what is happening here on the vertical plane. Separate entries were appropriate.

Fairness was dealt with in terms of quantum allowance.

Regardless of any difference in practice between valuation areas, one must determine what is *unum quid* by applying the established legal principles.

Where there is clear Scots authority, this should be followed. Woolway was an English case, albeit from the English Court of Appeal. Counsel understood permission had been sought to appeal this to the Supreme Court. It was appropriate for the Lands Valuation Appeal Court to decide what to make of that case. The decision was on the particular facts found by the Tribunal. It did not consider there was any error in the Tribunal's reasoning. The decision was reached in particular on the fact that floors 2 and 6 were in the occupation of the appellants for the purposes of their business. There was a stress on the purposes for which the ratepayer occupies the premises. In Scotland, one looks at the nature of the subjects.

Woolway places stress on premises held for common purposes. Can you ring around them on a map? However this does not tell us anything about the occupation of the individual floors. Woolway is a decision from a different legal system. The Committee can have regard to it, but it carries less weight. Whilst the decision appears to be applying the geographical approach, it is not in accordance with the approach taken in the Scots cases. No weight is given to the requirement to obtain access through the common parts. It should not be followed. It does not sit well with established Scottish approach dealing with the primacy of geographical test and taking into account whether subjects are capable of being separately let.

The Committee carefully considered the evidence and submissions, and reached the view the Appellants' position was to be preferred. The Committee accepted that if there was clear Scottish authority, then this it should follow this. It did not think that there was. This appeared to have been recognised by the authors of Armour who had included in Chapter 10 of the August 2013 update, at page 255 a paragraph on offices consisting of one or more floors in a multi storey office building. There they put forward the view that where several consecutive floors are occupied by the same tenant it is normal for them to be the subject of a single entry, with any consequent quantum factors applied to the combined valuation. The Committee agreed with this approach, which appeared to be

consistent with the approach which the Assessor had taken in relation to floors 2 &3, Avondale House, Strathclyde Business Park, Bellshill and floors 3,4 and 5, 65 The Plaza, East Kilbride.

This differed somewhat from the position in the present case where the appeal subjects, whilst on three consecutive floors, namely floors 1, 2 and 3, occupied part only of the second floor.

The authors then went on to narrate the decision in Woolway to which reference has already been made, dealing with a particular case where there were two floors separated by other floors in different occupation, in which the court concluded that these fell to be treated as a *unum quid*. As noted by the authors, the court in reaching its decision relied on the geographical test and did not give any weight to the functional test. The Committee felt that this was consistent with the dictum of Lord Keith in the University of Glasgow case that in the ordinary case... the question of whether separate... parts of a building should be entered in the roll as a *unum quid* falls to be decided primarily from the physical standpoint. This was in accordance with the established Scottish approach.

The Committee agreed with counsel for the Appellants that whether the subjects were a *unum quid* was a question of fact and degree. The starting point is a proper exercise of the Committee's fact finding role. The Committee carefully considered the facts of the case as set out earlier. It acknowledged that access between floors could only be obtained by means of the common parts. It did not consider that this was unusual in a modern office block and did not consider this precluded valuation as a *unum quid* of the consecutive floors occupied by the Appellant in circumstances where on the basis of a common sense assessment of the facts there was a clear impression of a single unit of occupation within a single modern office block. It took into account that there was a common corridor on the second floor but noted there was an inconsistency of approach on the part of the Assessor as in the appeal relating to Office, Strathmore House, East Kilbride on 16th November 2011 the Assessor had treated as a *unum quid* various rooms on the first floor which were serviced by a common corridor used by occupiers of other offices within the building and, at times, members of the public. Applying the geographical test to the particular facts and circumstances of this case, the Committee considered that the subjects were properly valued as a *unum quid*, and that in reaching its decision it was entitled to have regard to the English Court of Appeal decision in Woolway on a matter in relation to which there was no clear Scottish authority relating to subjects of this nature and to conclude that in the circumstances of the present appeal it need not take a different view because the unit of occupation comprised part only of the second floor.

The Committee had no difficulty in distinguishing this decision from its decision in relation to 23 Napier Road, Cumbernauld in circumstances where the units in that case were separate but adjoining industrial units with no interconnecting doors.

The Committee accordingly granted the appeal. 26th November 2013