

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS  
RELATIVE TO APPEAL

by

MARC SNEDDON and GRAHAM SPENCE t/a  
Baguette Express

in respect of

SHOP, 25 QUARRY STREET, HAMILTON ML3 7AW

The Appellants were represented by Graham Spence. There was initially some uncertainty over whether the appellants had intended to appeal on grounds of material change of circumstances and/or to lodge a revaluation appeal against the 2010 revaluation. This appeal proceeded on the basis of an alleged material change of circumstances, namely a drop in foot fall and a change in the landscape of the street as a result of closures. The effective date of the alleged material change was 1 April 2009.

In considering its approach to the matter the Committee had regard particularly to the commentary contained in *Armour on Valuation for Rating* (5<sup>th</sup> Edition) at paragraph 3-12 to 3-31 inclusive and to the cases and legislation referred to therein including the provisions of Section 3(4) of the Local Government (Scotland) Act 1975 and the definition of material change of circumstances contained in Section 37(1) of that Act.

To be a material change of circumstance the change must be one which affects the value of the appeal subjects, though this may include movements in rents or the general level of valuations since the date of the last revaluation.

The background to matters was that as a result of a number of appeals which had been lodged the Assessor had carried out a review of the rateable values in the whole of Quarry Street based on rentals struck since the 2005 revaluation and had established that parts of the street had changed in value with effect from 1 April 2008. The Assessor had however taken the view that there had been no change in value in relation to this particular part, which was at the north end of the street.

The burden of proof was on the Appellants to satisfy the Committee that a material change of circumstances had occurred and this must be discharged by proper evidence (*Armour*, paragraph 3 – 19).

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The rateable value entered in the roll for the appeal subjects at the 2005 revaluation was £14,400. This had not changed as a result of the review carried out by the Assessor as at 1<sup>st</sup> April 2008. The Appellants were looking for an unspecified reduction.

The Appellants' had taken entry in August 2008. Their case was based on a drop in foot fall and a change in the landscape of the street as a result of closures. Mr Spence stated that there were now twenty five empty units. The rents being asked for were not being obtained and there was a 25% unoccupancy. The Appellants had been unable to pay their rent and had reached a private and confidential agreement with their landlord. They were not making a penny. The Assessor had been selective in the list of comparisons which he had produced. There was always a higher and lower end for valuations and the Assessor should have erred on the side of selecting the lower end. The valuation for the Appellants' shop should therefore change to the lower end of the scale. The Appellants' takings had reduced from £4000 to £2000 per week due to the drop in foot fall. Also there had been no Christmas displays this year. Numbers were dwindling, there were now no shop fittings taking place and less occupancy therefore less customers. Mr Spence did not accept that there was any tendency for people to move from Regent Way past his shop to the new retail centre. Only one new retail unit had gone in on Castle Street and nobody walked to the retail park to buy large goods. There were 4 empty shop units within a 30 second walk from the appeal subjects. The immediately adjoining shop had reopened as Santa's Grotto, which would only be temporary.

The Assessor's evidence was based on his productions 2 and 3. Production 2 was a map showing Quarry Street and the surrounding streets. The Assessor stated that the movement of pedestrians in the Town Centre had changed. There had previously been a circular flow from Regent Way to Quarry Street to Duke Street and then back to Regent Way, though since the new town square had been formed pedestrians moved from Regent Way to Quarry Street and then dispersed to Cadzow Street, Castle Street and the retail park. The Zone A rate arrived at in the 2005 valuation namely £275 per square metre had not changed for the north end of Quarry Street as a result of the review in 2008. The Zone A rate for this following the 2010 valuation had increased to £340 per square metre.

Production 3 gave the same information in tabular form. The figures had been arrived at on the basis of new rentals struck during the period from 2005 to 2008. There were six new rents of which four were greater than the Zone A rate of £275 and two were less.

The same exercise had been carried out in relation to rental values from 1 April 2008. For this particular section there was only one new rent. A rent of £176 per square metre had been struck in 2009 for the shop at number 14, which was below the Zone A rate.

The Assessor had tried to find more evidence by looking at shops in Cadzow Street. A rental of £226 per square metre had been struck last month for 22/18 Cadzow Street. This was higher than the 2005 Zone A rate of £200 for that street which suggested that rents might not be falling.

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The Assessor also looked at the position with regard to rentals at the south end of Quarry Street. The Zone A rate on the middle section of the even side of Quarry Street had been reduced to £325 per square metre. There were two new rents one of which was above this and one below. The new rent for number 50 was £475 per square metre which was substantially over the rate adopted. This tended to show that rental values were the same or had increased. The Assessor's Production 2 also gave the 2010 revaluation figures for the north end of Quarry Street, Cadzow Street, Keith Street and Castle Street which showed a slight rise. The Assessor acknowledged that these values had not yet been tested but had been included as secondary evidence to show that as at the tone date rental values had increased slightly. Rateable values to the north generally had increased and there were no falls.

The Committee agreed with Counsel that the critical issue in this case was whether there had been a fall in the general level of rental values for this section of Quarry Street. They agreed with Counsel's submission based on Armour, paragraph 3-14 that it was not sufficient for the Appellants to prove that the rent of the appeal subjects had gone down, the reduction must relate to a general fall in rental values. Here the appeal subjects seemed to be unaffected. Counsel also made the point that the rentals for the appeal subjects and various other subjects at the north end of Quarry Street were at a higher level than the Zone A rate of £275 set in 2005 and confirmed in 2008. It was then necessary to look to the position post 2008. In this section of Quarry Street there was one rental reduction. On the other side of the street there was one increase and one reduction. He argued that taken as a whole there was insufficient evidence to establish a general reduction. The Committee agreed with this.

The Committee accordingly dismissed the appeal.

29 December 2010