
LANARKSHIRE VALUATION APPEAL
PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

ROSS SCOTT & GORDON LIMITED

in respect of

SHOP, 11 BROOMKNOLL STREET, AIRDRIE

There was some discussion during the course of the hearing as to the basis on which this appeal had been taken.

The background to matters was as follows.

An appeal had been taken arising out of the year 2005 revaluation. The appeal had been taken by the tenants at that time, Tayhill Ltd, who had been represented at the hearing in February 2007 by Mr Gibson. The Assessor had contended for a reduced net annual value of £9000 and this had been upheld by the Committee. In June 2009, the present Appellants, Ross Scott & Gordon Ltd had taken a lease of the subjects and had lodged an appeal. The appeal had been set down for hearing on 17th March 2010 but had been postponed. No grounds of appeal had been lodged. The appeal had been recited for 8th December 2010 but had then been rescheduled for 15th December because of the winter weather.

The Committee were informed by Counsel for the Assessor that no grounds had been lodged within the period set down in Regulation 10(1) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 (the "Regulations"), which regulated procedure before the Committee, that is, not less than 35 days before the date set for the hearing, but on 23rd November 2010, grounds of appeal had been lodged late by e-mail in the following terms:-

“We will be going the lease which was for £5k at then tone date and of course the localised issues, empty premises and the cartel operated by the council, anti-competitive rent structure and apportionment of equation. Where is info required?”

The appeal had been marked as a new tenant appeal and after hearing the evidence given by Mr Gibson who represented the Appellants in his capacity as an officer of the company, Counsel for the Assessor expressed concern about the introduction of evidence relating to new rentals from which it now appeared this was a material change of circumstances appeal and asked the Committee to confine its considerations to the new tenant appeal and to exclude any consideration of a change of circumstances appeal.

The initial question for the Committee to decide was therefore the basis on which the appeal had been taken. If the appeal was a new tenant appeal then the relevant issue was whether the subjects had been correctly valued as at 1st April 2003 being the tone date for the 2005 revaluation. If the appeal was a material change of circumstances appeal the relevant issue was whether since the tone date there had been a change of circumstances affecting value. The appeal form was not produced but the Committee accepted Counsel's submission that the appeal had been marked as a new tenant appeal, the grounds of appeal were wholly unclear and that there was nothing in these about material change of circumstances.

Given this, the issue for the Committee was whether the appeal subjects had been correctly valued by the Assessor as at the tone date for the 2005 revaluation. The onus was on the Assessor to justify and explain his approach.

The Assessor had valued the appeal subjects on the comparative principle. The Committee agreed with this. The comparative principle of valuation is based on the proposition that a figure of rent which has received wide acceptance on the open market is the best indication of the annual value of the subject to which it relates. Accordingly if at the tone date (a) there are in existence subjects which in size, character and location are sufficiently comparable with the subjects to be valued, and (b) these subjects are let upon the statutory terms or at rents which can properly be adjusted so as to represent the rents of those subjects on the statutory terms, then the annual value of the subjects to be valued may be arrived at by a consideration of the rents payable for the comparable subjects. This involves making an analysis of the rents to enable a judgement to be made as to the rent at which the subjects being valued could have been expected to be let in the open market. Where this method of valuation is possible it will generally provide the most accurate guide to annual value – Armour on Valuation for Rating, Fifth Edition, para 19-19.

The net annual value of subjects is defined in Section 6(8) of the Valuation and Rating (Scotland) Act 1956 as ‘the rent at which the lands and heritages might reasonably be expected to let from year to year if no

grassum or consideration other than rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the lands and heritages in a state to command that rent.'

The appeal subjects are a single-storey shop, one of a number of generally similar shops in Broomknoll Street, Airdrie, a street of shops and other uses, close to Airdrie Cross. Mr Gibson made the point that the photograph which comprised the Assessor's production 2 was out of date but the Assessor explained that this was an indicative photograph which was intended to represent only the character and form of the appeal subjects. In his production 3 the Assessor had analysed the rents of eight let shops in Broomknoll Street. These were all the rents the Assessor had been able to obtain details on. These shops were properly comparable with the appeal subjects, had passing rents fixed reasonably close to the tone date of 1st April, 2003, and were all let on full repairing and insuring terms.

These produced analysed adjusted rent rates ranging from £23 to £307 per square metre. Two of the rent rates, £23 for Number 10 and £65 for Number 4 Broomknoll Street were significantly out of line with the other rents, and were not considered proper open market rents, for reasons explained by the Assessor. The Assessor had correctly disregarded these. As regards the odd numbers 1, 9 and 11, there was a spread of rent rates which had caused the Assessor to look more deeply at the figures. There was a relationship between the tenants and the owners of number 11. The owners were a family trust. A member of the family was an officer of the tenant company. This suggested the rental might not be at arm's length. Less weight should therefore be given to this. The Committee agreed with this.

The Assessor had not been made aware of any other leases. Consideration of the remaining rent rates had resulted in a spread of Zone A rates in Broomknoll Street from £300 to £155 all as set out in Assessor's production 4, and explained by the Assessor's witness in his evidence. The shops nearest Stirling Street, a better shopping street, had higher values than those further away from Stirling Street. The shops on the east side of Broomknoll Street had generally higher values than those on the west side. This distinction was supported by the rental analysis which showed the shops on the east side of the street as having higher values and was supported by the physical situations of the two sides of the street, the east having a larger range of shops, uninterrupted by the lane and public house which broke up the continuity of shops on the west side.

The Assessor's approach was set out in the Assessor's production 6. The whole of the appeal subjects fell within Zone A. To achieve the figure of £9,000 contended for, the Assessor had applied a Zone A rate of £180 per square metre to a reduced area of 52.98 square metres producing a value of £9,536. A 5%

reduction had been applied because of a lack of rear access and the resultant figure of £9,059 rounded down to £9,000.

Having considered the position carefully, the Committee considered that the Assessor's choice of a rate of £180 per square metre for the appeal subjects was appropriate having regard to its location and physical relationship to the other shops.

Some support for the Assessor could be drawn from the appeal history set out in the Assessor's production 5 which showed that the values of all the other shops in Broomknoll Street had been acquiesced in, having either not been appealed or having had appeals withdrawn at the Zone A rates used by the Assessor.

In the case presented, the Appellants were seeking a 25% reduction in the rateable value because there had been a 30 – 40% fall in the income stream within the community. Mr Gibson contended that Airdrie had struggled to survive. It had become a red light area with a brothel and ladies arrested at the traffic lights. It was affected by the drug trade. There was no infrastructure support. Premises were continually broken into and there were many vacant shops. In June 2009 the Appellants had acquired a full repairing and insuring lease for the period of 18 months thereafter 3 months rolling at an agreed rent of £4500. Their neighbour, Victor Harris, was now renting out Number 7 Broomknoll Street at a lower rent than 10 years ago. Remax had acquired a 12 month full serviced lease of 13 Broomknoll Street in February 2010 at £6400 representing a 35% reduction on the previous card shop rental. The shops left were mainly charity shops which did not pay rates, sunbed shops, bookies, opticians, and estate agents. The town centre was in a pathetic state. A superstore had opened up 500 yards from the town centre with 800 parking spaces but they couldn't make a go of it and had closed down. People could get trains to Glasgow or travel to the Fort or other retail parks, which was not good for the carbon footprint. His local MSP was trying to regenerate the area. Whilst the Committee sympathised with the social and economic arguments which Mr Gibson made these were not arguments which could allow the Committee as a matter of law to reduce the Assessor's valuation given the basis on which the appeal had been taken.

Mr Gibson argued that 2003 did not relate to 2009 and this was not a fair representation. He had produced at the hearing evidence which post dated the 2005 revaluation, but the Committee could not as a matter of law take this into account. As new tenants the Appellants had the same right of appeal as they would have had if notice of a relevant entry in the Roll had been sent to them, but the right of appeal was against the 2005 revaluation. The rateable value for the purposes of the 2005 revaluation was based on the rental value as at the tone date namely 1st April 2003 and not June 2009 as Mr Gibson has contended. The Committee's duty by law was to consider whether the assessor had correctly valued the subjects as at the tone date.

Mr Gibson also raised various procedural issues which he considered had given rise to unfairness.

He wished the Assessor to lead but the Committee after hearing the parties decided that the appellants should be asked to give their evidence first, as it was entitled to do under Regulation 14 of the Regulations.

He considered it to be unfair that the Assessor should be allowed to lead evidence from his witness without having given the Appellants prior notice of his intention to do so. The Assessor submitted that he entitled to do so under Regulation 14 of the Regulations. The Committee agreed with this.

He took issue with the engagement of Counsel by the assessor. The Assessor was entitled to instruct Counsel to represent him where he saw fit to do so under Regulation 13. The citation issued to the Appellants stated that at the hearing an appellant may appear in person or be represented by an advocate or solicitor or, with leave of the Committee by any other person.

The secretary explained to Mr Gibson that he could if he wished make a motion to adjourn the hearing to enable him to instruct legal representation. Mr Gibson did not wish to do so but the Committee at his request adjourned the hearing to enable him to consider his position in relation to the Assessor's intention to lead evidence. When the hearing resumed, he still maintained this was unfair but accepted under extreme reservation that Counsel for the Assessor should be allowed to present the Assessor's case.

The Committee took the view for the reasons given that there had been no unfairness to the Appellants in the conduct of their case.

The Committee were satisfied that the Assessor had discharged his duties to value the appeal subjects properly and to explain his valuation. There was no relevant challenge by the Appellants. The Committee refused the appeal.

29th December, 2010.