

**LANARKSHIRE VALUATION APPEAL
PANEL**

**STATEMENT OF REASONS RELATIVE TO
APPEALS**

by

**DAVID WARNOCK and DOROTHY NOBLE
(2 appeals) and DOBBIES GARDEN
CENTRES PLC (1 appeal)**

in respect of

**Garden Centre, Sandyholm Garden Centre,
Crossford, Carlisle**

The three appeals in respect of the above subjects were heard together. Mr Warnock and Mrs Noble had lodged two appeals. The earlier was a Revaluation appeal against a value of £179,000 and the later a Running Roll appeal against a value of £229,000 effective from 1st April 2005 which had been issued following on alterations to the appeal subjects. Dobbies Garden Centres plc had lodged a Running Roll appeal as the new proprietors of the appeal subjects with effect from 9th April 2008 in respect of a valuation of £267,000 effective from 1st May 2007. This entry has been occasioned by further alterations to the appeal subjects.

In effect, the first valuation had been superseded by the second. At the hearing the Assessor spoke to a value of £222,000 effective from 1st April 2005 and a value of £258,000 effective from 1st May 2007. The alternative values contended for by the Appellants were respectively £152,000 and £168,000.

There was, helpfully, a significant degree of agreement between the parties.

There was agreement that the subjects should be valued on the comparative basis as set out in *Armour on Valuation for Rating* (Fifth Edition) at paras 19-19 *et seq.* No rents were available and it was agreed that comparison would be by way of comparison with other valuations (para 19-28). There was agreement that the use of comparison evidence drawn from outwith the valuation area was competent (para 19-33) and both parties sought to rely to a considerable degree on such comparisons.

There was agreement that the Committee should look in respect of all three appeals at the level of rents current as at the tone date of 1st April 2003.

There was also agreement that the valuation should be carried out in accordance with the finalised version of the Scottish Assessor's Association Practice Note 26 ("the Practice Note") for the valuation of garden centres as at the 2005 Revaluation.

The Assessor and the agent for the Appellants had also helpfully spent considerable time agreeing the areas of the various constituent parts of the appeal subjects.

The specific issues for decision by the Committee in relation to the valuation effective from 1st April 2005 were:

- The classification of the appeal subjects in terms of para 2.4 of the Practice Note.
- The rate per square metre to be applied in terms of para 2.6 of the Practice Note.
- The correct building relativities in terms of para 2.5 of the Practice Note, in respect of various parts of the appeal subjects.
- Whether or not a layout allowance, whether by way of end allowance or otherwise, was appropriate.

There was also a more general point placed before the Committee. The Practice Note in its original form had shown a fixed rate of £40 per square metre for subjects falling within Class 2 (as contended for by the Assessor). The Practice Note had subsequently been amended to allow a range of values from £35-£38 for subjects falling within Class 2. The Assessor had not issued an amended valuation notice giving effect to this amendment. The Assessor had dealt with the appeal lodged by the appellants and in doing so had carried out a detailed examination of the valuation in the course of which he had applied the rate per square metre of £38 but had also carried out other, largely upwards, alterations in respect of various parts of the appeal subjects. While this had resulted in the Assessor contending for the lower figure of £222,000 in place of £229,000, a straightforward substitution of £38 per square metre for the earlier figure of £40 per square metre would have produced a lower value of £217,500. It was argued that this was the appropriate course for the Assessor to take and that the Assessor should not have otherwise revisited the valuation.

In relation to the appeal against the entry effective 1st April 2007, all of the foregoing points were also in issue and the treatment of some of the further alterations to the appeal subjects and particularly the relativity figures used in respect of these elements were also in dispute.

The Committee dealt with the issues as follows:

Classification

The Committee had to decide whether the appeal subjects should be valued in Class 2, as sought by the Assessor, or Class 3, as sought by the Appellants. The relevant section of the Practice Note (para 2.4) reads as follows:-

“Class 2

This Class will include a number of the older subjects. Subjects tend to be purpose built, modern, of good quality and have good finishes.

Class 3

These are subjects that have evolved to become good quality garden centres with a mixture of building construction but of good quality and include horticultural standard greenhouses.”

The appeal subjects contained elements which would have supported placement in either Class. It was, for example, accepted by the Appellants that part of the appeal subjects (what they described as building A) was of sufficient quality to fall within Class 2. The narrowness of the decision on classification was emphasised by the fact that the rate per square metre selected by the Appellants as appropriate to their classification of the appeal subjects in Class 3, £35, was also the rate per square metre appropriate to the lowest quality of subject falling within Class 2.

Having given careful consideration to all of the evidence, and particularly the oral evidence given at the hearing, the report from GVA Grimley contained within section 4 of the Appellants’ Productions and the comparison evidence, the Committee concluded that the appeal subjects were appropriately placed in Class 2. They were purpose built. They were modern – the oldest part of the subjects had been built in 1985 and formed a relatively small part of the whole. By far the largest part had been built since 2000. The

Committee considered the subjects for the main part to be of good quality and have good finishes. The Assessor was correct in suggesting that the word “evolved” used in relation to Class 3 subjects was not appropriate to the history of the appeal subjects, which had expanded dramatically in the years immediately prior to the date of the valuation.

The Committee considered after careful consideration of the evidence and particularly the comparison evidence, all the terms of the Practice Note, that the Assessor’s rate of £38 per square metre was well chosen.

The Committee then dealt with the relativities in respect of the various parts of the appeal subjects where these were in dispute. The Committee notes below each of the areas where these relativities were in dispute, showing opposite these, first, the percentage sought by the Appellants, followed by the percentage sought by the Assessor, followed by the decision of the Committee. For the sake of convenience, the Committee has attached to each of the areas the lettering used by the Assessor in his Production 11.

Relativities		Appellants	Assessor	Decision of Committee
Canopy Area	C	60	100	100
Mezzanine		60	70	60
Extended canopies D,E,F		60	115	115
Sales Canopies	G	30	45	45
Sales Office	H	100	125	125
Canopy ext	J	30	40	40
New entrance	L	60	100	60
Link building	M	30	100	30
Old entrance	K	30	40	30
Kitchen extension	I	100	125	125

The Committee’s reasoning for the percentages selected was as follows:-

Canopy Area (C)

The Committee felt that the description “Canopy Area” was somewhat misleading. This area was a typical standard glasshouse building of the type frequently seen in good quality garden centres and the Committee saw no reason for it to be valued at other than 100%.

Mezzanine

This area had a very low wall head and was reached by a significant open stairway. The level of 60% proposed by the Appellants was more appropriate.

Extended Canopies D, E, and F

These were superior areas. They were not standard glasshouses. They had higher wall heads and were of portal steel framed construction with roofs and walls infilled with glass giving a clear floor space not impeded by columns. It was appropriate to value them at a higher rate than 100% and the rate selected by the Assessor, 115%, was eminently reasonable.

Sales Canopies G

Although as the Appellants suggested there was significant comparison evidence to show canopies valued at 30%, this was not universal. Para 2.5(d) of the Practice Note suggested that these areas would normally be valued at 40-50% assuming similar quality to main sales glasshouse. They were of a similar quality to the sales canopies C which the Committee regarded as being representative of the main sales glasshouse of the appeal subjects. Similar canopies at Silverbirch Garden Centre, which the Committee felt represented a very good comparison subject to the appeal subjects being the physically closest garden centre of a generally similar quality (although not quite so high), had been taken at 40% which the Committee felt was also appropriate here.

Sales Office H

This was of significantly superior construction and merited being taken at 125%.

Canopy Extension J

This was taken at 40% for the same reason as that given in relation to the sales canopies G.

New Entrance L

This had no heating and was more appropriately taken at 60% as suggested by the Appellants.

Link Building M

This had no heating or lighting and was more like the type of canopy to which a rate of 30% had been applied in relation to comparison subjects.

Old Entrance K

This was a simple canopy and again should be taken at 30%.

Kitchen Extension L

This should be taken at 125% for the same reason as sales office H.

In dealing with all of these matters, the Committee considered all of the evidence and kept particularly in mind the relevant parts of the Practice Note.

The Committee then considered the question of the layout allowance. The Committee accepted that the site was disadvantaged by the various alterations in levels, but did not feel that it was as significantly disadvantaged as suggested by the Appellants. It was certainly not any more disadvantaged than Silverbirch Garden Centre where a similar allowance (although there described as a rounding down) had been given. The Committee felt that an allowance was appropriate but that the correct level was 2½ %. This should be applied as an end allowance. The Assessor was correct in saying that the Practice Note made no difference to such an allowance. In the view of the Committee, however, this did not include the making of such an allowance in appropriate circumstances and the rounding down of the Silverbirch valuation appeared to be exactly that by a different name.

The Committee gave careful consideration to the argument that the Appellants were entitled to a pro rata reduction to a value of £217,500 as a direct consequence of the alteration to the Practice Note deleting the fixed rate of £40 per square metre and substituting a range between £35 and £38 per square metre for subjects falling within Class 2.

The argument of the Assessor was that the Assessor had a responsibility to ensure that the value of the appeal subjects was correct. When that value was challenged by way of an appeal, the Assessor had a duty to examine the make-up of the valuation in detail and, if the Assessor felt that errors, even though these were errors of judgement within his own department, had been made, the Assessor has a duty to correct these. This is what he had done. In considering this point, the Committee was perturbed by the disclosure that the Assessor had not taken steps to revise the valuations of garden centres where the Assessor had applied a rate of £40 per square metre and the valuation had not been appealed. These valuations remained in the roll at the original figure of £40 per square metre and the Assessor had not as yet taken any steps to correct these valuations notwithstanding the change in the Practice Note. The Committee felt that this was contrary to the way in which the Assessor had explained how he saw his duty in relation to the appeal subjects. After careful consideration, however, the Committee concluded that the Assessor's position in relation to the appeal subjects was correct. He did have a duty to ensure that the valuation was correct. This is a duty of fairness to all ratepayers imposed on the Assessor by the Lands Valuation (Scotland) Act 1854. The Appellants, having lodged their appeals, were entitled to propose detailed alterations to various elements of the valuation, as they did at the appeal hearing. It would be wrong if the Assessor, having discovered what he genuinely believed were errors in his valuation of parts of the appeal subjects, could not seek to have these amended. In this regard the Committee rejected the suggestion which was implicit in the Appellants' position, that the Assessor's proposed changes to the parts of the valuation which he sought to increase, did not genuinely represent the Assessor's professional judgement but rather represented a desire to maintain the value of the subjects by offsetting the reduction in the rate per square metre by increasing other parts of the valuation.

While having no direct bearing on the Committee's decision in these appeals, the Committee trusts that the Assessor will revisit the valuations of the subjects to which the rate of £40 per square metre still applies as a matter of fairness to the particular ratepayers involved.

In relation to the entry effective from 1st May 2007 all of the foregoing apply. In addition, a number of building relativity issues arose in relation to the additional alterations which had been carried out and the

Committee sets out below how it dealt with these in similar fashion to how it dealt with the relativities for the earlier valuation (the lettering being by reference to Assessor's Production 14) as follows:

Relativities		Appellants	Assessor	Decision of Committee
New Canopy	N	30	35	35
Kitchen/office extension				
I.1		100	125	125
Stores	O	25	50	50
Café extension	J	30	125	125

The new canopy was enclosed on one side meriting the higher rate proposed by the Assessor. _

The stores were of a portal frame construction and even though un-serviced merited a value of 50%.

The kitchen/office extension merited the figure of 125% for the reasons set out in relation to the earlier valuation.

The café extension consisted of an alteration in the existing canopy to allow the seating under the canopy to be enclosed within the café/restaurant rather than on the patio outwith the café/restaurant. Effectively it now formed part of the café/restaurant which was a superior modern building valued at 125%.

It emerged during the hearing that the area I.1 had been omitted from the Appellants' valuation of the entry effective 1st May 2007. Had the Committee agreed in its entirety with the proposed valuation of the appellants of £168,000, the value of this area would have required to have been added.

The resultant values applying the decision of the Committee are, for the entry effective 1st April 2005 £220,582 less 2½% end allowance, £215,067 rounded down to £215,000 and the entry effective 1st May 2007, £256,600 less 2½% end allowance, £250,185 rounded down to £250,000. The effective date of the change in value in respect of the last appeal is 9th April 2008, being the appropriate date in terms of the Local Government (Scotland) Act 1975 Section 2(2)(cc) being the date on which the Appellants became proprietors of the appeal subjects.

For the sake of fullness the Committee would note that the Assessor in the course of the hearing sought to make use of turnover figures for the appeal subjects. Turnover is referred to in para 2.7 of the Practice Note where it is described as a possible “aid in the valuation process”. The Practice Note makes it clear that within individual classes it is anticipated that relativities will be determined by reference to location and physical characteristics of the property rather than by turnover. The Assessor felt, however, that turnover could be used as a check to his valuation. He had sought turnover figures from the Appellants. These had not been produced and the Assessor had not invoked his statutory powers to obtain them. The Assessor did attempt, however, to rely on the extract from the Herald Newspaper set out in his Production 9 which advised by para 6 that “Sandyholm had sales of £5.8 million during 2007”. This was objected to on behalf of the Appellants and the Committee upheld that objection. The turnover figure for 2007 could not have been known when the value was being made up and was too far removed from the tone date to be relevant. There accordingly was no turnover evidence before the Committee.