

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS RELATIVE TO APPEAL

by

TAYHILL LIMITED

in respect of

SHOP, 11 BROOMKNOLL STREET, AIRDRIE

This was an appeal arising out of the year 2005 Revaluation. Shortly after the commencement of the hearing, the Assessor advised that he was now contending for a reduced net annual value of £9,000.

The Assessor had valued the appeal subjects on the comparative principle. 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. The proper application of the principle requires the existence of subjects which in size, character and location are sufficiently comparable with the subjects to be valued, and which are let on the statutory terms or at rents which can properly be adjusted so as to represent the rents of those subjects on the statutory terms. If these conditions are satisfied, 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 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. 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. There was no dispute over the area of the subjects, Mr. Gibson’s approach being based on the appropriateness or otherwise of the overall approach taken by the Assessor.

Mr. Gibson contended that the approach of the Assessor was unfair and grossly prejudicial in that small shops were treated far less fairly than other subjects, particularly supermarket-type shops. Mr. Gibson referred to the report ‘The Effect of Supermarkets on Existing Retailers’ produced for the Federation of Small Businesses (Scotland) and dated December 2006, a copy of which he produced at the hearing. Mr. Gibson also referred to the Local Government in Scotland Act 2003 (“the 2003 Act”) and particularly to the part dealing with Best Value and the Best Value Guidance produced by the Scottish Executive, a copy of which Mr. Gibson also produced.

Mr. Gibson argued that the Valuation and Rating (Scotland) Act 1956 was archaic and incompatible with current legislation i.e. the 2003 Act. Every town centre in Scotland had vacant property and Airdrie could be described a desert in this regard with the exception of the retail parks. The empty shops were caused by punitive rates. The Council was duty-bound to give Best Value. The supermarkets were competing with small shops and selling the same products but were being treated more favourably. Small businesses had a place in the High Street and the archaic legislation of the 1956 Act was inappropriate for modern Scottish

society. The report from the Federation of Small Businesses showed a fall in turnover of between 25% to 75% in respect of small shops. The Committee had it in its hands to do something to counterbalance the position by using the 2003 Act.

Mr. Gibson sought a value for the appeal subjects which reflected the reduction of 25% to 75% produced by the report or alternatively would accept a figure based on a Zone A rate of £155, which was the lowest of the Zone A rates used by the Assessor in respect of the shops in Broomknoll Street.

While Mr. Gibson's attack on the valuation was couched in these fundamental terms, he also, largely by way of cross-examination, made certain specific challenges of the Assessor's application of the comparative principle to the appeal subjects. These are dealt with below.

First, the Committee had to decide which of the approaches to the valuation was correct. While the Committee understood and to some extent had sympathy with Mr. Gibson's comments on the decline of small businesses in traditional shopping streets, the Committee had no hesitation in supporting the valuation approach taken by the Assessor by valuing the appeal subjects on the comparative principle.

The Assessor is under a duty to value subjects to enable him to make up the valuation roll. The Assessor is obliged to comply with valuation law and practice. The Rating and Valuation (Scotland) Act 1956 remains in force and the provisions used by the Assessor have not been repealed or varied by the 2003 Act nor has the approach which the Assessor requires to take to the statutory provisions been altered by the 2003 Act. The 2003 Act does not deal with valuation for rating except to the extent of the specific changes made in Part 5, none of which applies to the circumstances of this appeal.

The Best Value provisions of the 2003 Act places all local authorities including joint boards under a duty to secure Best Value in terms of continuous improvement of performance and functions such as services. This

does not vary to the principles and practice to be used by a joint board in carrying out its functions to value subjects for rating.

The report of the Federation of Small Businesses (Scotland) assesses the impact of supermarket development on the vitality and viability of town centres. It does not draw any conclusions or make any recommendations in relation to valuation for rating. It looked at three locations in Scotland, none of which is within the valuation area of Lanarkshire Valuation Joint Board.

There is nothing in either the 2003 Act or the report which alters the obligation of the Assessor to value the appeal subjects in the traditional manner, nor gives power to the Committee to alter a valuation carried out in the traditional manner, provided the valuation exercise has been carried out properly and has been adequately explained to the Committee.

As this was a revaluation appeal, there was an initial onus on the Assessor to defend his valuation before the Committee. The Committee had to consider whether or not this had been discharged.

The Assessor had analysed the rents of eight let shops in Broomknoll Street. All of these were properly comparable with the appeal subjects. All had passing rents fixed reasonably close to the tone date of 1st April, 2003. All were let on full repairing and insuring terms.

These produced analysed adjusted rent rates ranging from £23 to £317 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. Consideration of the remaining rent rates had resulted in a spread of Zone A rates 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.

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. Mr. Gibson had not given any specific evidence in support of his suggested rate of £155 per square metre. This rate had been applied only to the shops on the poorer west side of the street, which were also further away from Stirling Street than the appeal subjects.

Some support for the Assessor could be drawn from the fact that the values of all the 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.

Mr. Gibson felt that the valuations of nearby supermarkets and retail parks should have been taken into consideration. However, the Assessor was correct in saying that these were not comparable subjects and would not have been valued on the same basis as the appeal subjects and other small shops in Broomknoll Street. The existence of these subjects and their effect on the rental market would have been reflected in the rents passing for the shops in Broomknoll Street.

Mr. Gibson was of course correct in saying that the photographs used by the Assessor, being current, did not always accurately reflect the appearance of the subjects as at the date the rents were stuck, but it was not clear to the Committee that this had any significance in considering the overall effect of the evidence. The

photographs were used simply to provide a general indication of the location and style of the comparison subjects.

The Assessor had discharged his duties in valuing the appeal subjects properly and had explained his valuation to the satisfaction of the Committee. There was no persuasive challenge to the Assessor's approach. The appeal could not succeed.