

Statement of Reasons

relative to appeals

by

Maration Limited, Appellants

In respect of

Various subjects, Regents Way, Hamilton

Agents: Colliers International

At a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 9th June, 2011, consideration was given to applications for re-instatement of the above appeals which had first called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 18th May, 2011 and which, on the motion of the Assessor, had been dismissed in terms of Regulation 10 (3) of the Valuation Appeal Committee, etc. (Scotland) Regulations 1995 on the basis that the appellants had failed to comply with the terms of Regulation 10 (2) (b) of said Regulations and also in terms of Regulation 15 on the basis that the appellants had failed to attend at the appeal hearing.

Mr C. Haddow Q.C. appeared on behalf of the appellants and submitted that the appellants' agent, Mr Steven Dalton of James Barr, Chartered Surveyors, had been present at the appeal hearing on 18th May, 2011, in relation to another appeal which had proceeded to a hearing, but he had departed before these appeals were called. Mr Dalton had not anticipated that the appeals would be called for hearing on 18th May as on 16th May, 2011 an email had been sent by him to Mr Steven Lander, a divisional valuer with the Assessor, withdrawing the appeals. Mr Haddow stated that it was his understanding that the Assessor did not dispute the receipt by him of this email but rather that it could properly be considered as a withdrawal in terms of the Regulations.

The terms of the said email, inter alia, were as follows:-

"From: Steven Dalton

Sent: 16 May, 2011 14:26

To: 'Lander, Steven

Subject: RE: Regent Way

Steven,

I can confirm that I have recommended to my client the withdrawal of our appeals relating to Regent Shopping Centre, Hamilton and although I have yet to receive a response, I see no difficulty in obtaining their instructions. The only issue that remains outstanding is 46 Regent Way, occupied by WH Smith. I understand an appeal has also been lodged by the tenant's agent, GL Hearn, and they plan to present a case before this week's Committee Hearing. Accordingly, although we withdraw our appeal on behalf of the landlord, we respectfully request that this should have no bearing on the case to be heard before the Committee.

I trust that this email will allow you to proceed and remove our appeals from your list of citations.

Regards,

Steven"

In terms of Regulation 5 (1) of said Regulations, the Assessor is obliged to advise the Secretary to the Valuation Appeal Panel of a withdrawal of an appeal. Whilst the Assessor considered that the email of 16th May, 2011 purporting to withdraw these appeals did not comply with the Regulations, he did not advise the appellants' agents of his view. Accordingly, they had no reason to anticipate that the appeals would be called for hearing on 18th May, 2011 as they thought they had withdrawn them.

In terms of Regulation 5 (3) of said Regulations, it is permissible to intimate withdrawal of an appeal by means of electronic communication using the method set out in Regulation 5 (8) which provides as follows;

5 (8) The method of appeal is to send the electronic communication to an address published by the assessor for the purposes of this paragraph, and an electronic communication under this paragraph must-

- (a) be capable of being accessed by the recipient;
- (b) be legible in all other material respects; and
- (c) be sufficiently permanent to be used for subsequent reference.

Mr Haddow submitted that the said email had complied with this Regulation. He submitted that the Assessor ought to have intimated to the Secretary that these appeals had been withdrawn.

In relation to their failure to comply with Regulation 10 (2) (b) of said Regulations, Mr Haddow submitted that the appellants had not complied as they anticipated withdrawing the appeals.

Mr Haddow stated that he understood that the Assessor's position was that the email did not amount to a proper withdrawal of the appeals firstly because it was not signed and secondly because it was a conditional withdrawal. He submitted that in terms of Regulation 5 (8) the email did not require to be signed. Further, the email was not a conditional withdrawal as it did not require the fulfilment of any condition for the appeals to be withdrawn. It sought to prevent the withdrawal of them prejudicing an outstanding appeal in relation to one of the subjects which had been lodged by the tenants of those subjects. Mr Haddow argued that whether the withdrawals could be referred to in relation to this other appeal was an argument to be had in relation to that other appeal. He argued that the email had amounted to an unambiguous withdrawal of the appeals and ought to have been treated as such by the Assessor and intimated accordingly to the Secretary.

The appellants' agents sought to have the appeals re-instated and then treated as withdrawn because to have it recorded that they had been dismissed could have potential professional repercussions for them.

Mr S. Stuart Q.C. appeared on behalf of the assessor. He stated that the assessor accepted that the appellants' agent, Mr Dalton had been present at the hearing on 18th May, 2011. However, the assessor was not aware of the reason for his attendance at the hearing. Mr Dalton had departed after the hearing of another appeal which had been proceeded on that day and which had been continued.

Mr Stuart stated that the issue was whether the email which had been sent by the appellants' agents on 16th May, 2011 was properly made in terms of Regulation 5 (8). He stated that this email had not been sent to any email address published by the assessor but rather to Mr Lander's email address. He contended that the terms of this email were unclear and that the assessor was concerned that the email was a conditional withdrawal of the appeals. The withdrawals were not unqualified and were not in proper form.

He emphasised that for the appeals to be re-instated the appellants required to satisfy the committee that they had a reasonable excuse not only in relation the dismissal for non attendance at the appeal hearing but also in relation to their failure to comply with Regulation 10 (2) (b). They have failed to provide written confirmation of their intention to proceed with the appeals and had offered no reasonable excuse for their non compliance.

The Committee, after giving careful consideration to all of the submissions made, were satisfied that the appellants had a reasonable excuse for both their non attendance when the appeals were called for hearing on 18th May, 2011 and their failure to comply with the notice which had been served on them by the assessor in terms of Regulation 10 (2) (b). The appellants had sought to withdraw the appeals by email dated 18th May, 2011. The assessor had not advised

them that he did not consider that these purported withdrawals were not, in his view, in proper form. It was perverse to think that in these circumstances the appellants' would have cause to consider that the appeals would be called for hearing and that their attendance at the hearing was therefore necessary. They had not complied with Regulation 10 as they intended to withdraw the appeals.

Turning to the terms of the email, the Committee were of the view that the email was not clear in its terms; one hand it stated that a recommendation of withdrawal had been made by the agents to the appellants and instructions were awaited and but also asked for the appeals to be removed from the list for hearing. The committee were of the view that the assessor was correct to refuse to treat this email as withdrawal. However, it would have been of assistance had his view been communicated to the appellants' agents and perhaps action could have been taken by the agents to clarify the appellants' position.

The committee have accordingly granted the applications for re-instatement. The appeals will require to be listed again for hearing; however, if it is the intention of the appellants to not to proceed with these appeals but to withdraw them then their agents are now able to intimate withdrawal of them, in clearer terms, to the assessor.