

Statement of Reasons

relative to appeals

by

Co-op in respect of shop, 68/64 Burnbank Centre, Hamilton;

Sequence UK in respect of office, 71 Cadzow Street, Hamilton;

Holland & Barratt in respect of Shop, 9 Duke Street, Hamilton;

Co-op in respect of shop, Mill Road, Hamilton;

Greggs in respect of shop, 1A New Cross Centre, Hamilton;

Bon Marche in respect of shop, 12A New Cross Centre, Hamilton;

Peacocks in respect of shop, 12B New Cross Centre, Hamilton;

Dunfermline Building Society in respect of bank, 57 Quarry Street,
Hamilton;

Santander in respect of bank, 122 Quarry Street, Hamilton;

Co-op in respect of office, 214/208 Quarry Street, Hamilton;

Greggs in respect of shop, 7 Quarry Street, Hamilton;

Tui in respect of shop, 35 Quarry Street, Hamilton;

Vodafone in respect of shop, 126 Quarry Street, Hamilton;

Tui in respect of shop, 89 Quarry Street, Hamilton;

Nationwide Building Society in respect of bank, 16 Regent Way,
Hamilton;

Thorntons in respect of shop, 26 Regent Way, Hamilton;

Signet in respect of shop, 11 Regent 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 Peter Muir of Colliers International 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 Muir 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 one of his colleagues, Brian Rogan, to 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 were as follows:-

"From: Rogan, Brian

Sent: 16 May, 2011 16:26

To: assessor@southlanarkshire.gov.uk

Subject: Withdrawal of appeals cited for 18th May Hearing

Attachments: 18th May Withdrawals.xls

Dear Sirs,

Please accept this email as withdrawal of the Colliers appeals listed on the attached schedule which are due to be heard on 18th May.

These appeals are withdrawn strictly without prejudice to our 2010 Material Change appeals lodged against these subjects.

Kind regards,

Signed Brian Rogan."

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 outstanding appeals in relation to the same subjects which had been lodged on the basis of a material change of circumstances. Mr Haddow argued that whether the withdrawals could be referred to in relation to these other appeals was an argument to be had in relation to those other appeals. 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 Muir had been present at the hearing on 18th May, 2011. However, he was not aware of the reason for his attendance. Mr Muir had departed after the hearing of another appeal had been brought to a conclusion of the day.

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 whilst the assessor had a published address for the making of appeals, he did not have a published address for withdrawals. Further the assessor was concerned that the email were conditional withdrawals 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' attendance at the hearings could have been considered by them to be 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 unequivocal in its terms; it had been sent to an email address published by the assessor. There was no requirement in terms of the said Regulations for the email to be signed. The question of whether the withdrawals could be prevented by the appellants from being referred to in other pending appeals was a question for the committee in dealing with those appeals. The committee were of the view that the email sent by the appellants' agents ought to have been treated by the assessor as a withdrawal of these appeals.

The committee have accordingly granted the applications for re-instatement and thereafter have treated the appeals as having been withdrawn.