

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPLICATION

by

JULIE CULLION t/a JULIE FERRIE

in respect of

SHOP, 162/164 MERRY STREET,
MOTHERWELL ML1 1NA

The hearing was a preliminary one to decide the initial validity of the appeal.

The Assessor challenged the validity of the appeal on the grounds that the last day for lodging such an appeal was 30 September 2010 and that the appeal had been received on 2 February 2011. The appeal was accordingly 4 months late.

The law in relation to the Committee's discretionary powers in relation to late appeals is clearly set out in *Armour on Valuation for Rating* (5th Edition) at paras 5-15 and 5-16 and the cases referred to therein. Put shortly, the provisions contained in the Valuation Order are directive and regulatory of procedure. Literal compliance is not to be demanded if the effect would be to perpetrate manifest injustice. The Committee required to consider whether the failure to comply has been caused by excusable mistake or some cause over which he who has failed has no control. The Committee are also required to consider whether there are any exceptional circumstances justifying a waiver of strict compliance with the time limits.

The Committee also required to consider whether or not there would be any substantial prejudice to the Assessor. As the Committee understood it, there was no argument in this case that there would be such prejudice to the Assessor if the Committee accepted that the appeal had been validly lodged.

The Committee were aware that there could be circumstances where an appeal had been received after the last day for lodging appeals and it would be appropriate for it to exercise its discretion to allow the appeal to be received late. In *National Commercial Bank of Scotland Limited v Assessor for Fife 1963 S.C.197* the

Appellant had posted the letter of appeal before the last day for lodging appeals and the letter of appeal would have been received timeously in the normal course of post but was delayed because the Appellant had taken the precaution of sending it by registered mail.

However the circumstances of the present case were very different. The Appellant had initially written by letter received on 3rd November 2010 to apply for small business rates relief. She had then written by letter received on 2nd February 2011 to lodge a revaluation appeal. The Appellant appeared personally before the Committee and explained in detail her personal and financial circumstances. Whilst the Committee had every sympathy for the difficult circumstances in which she found herself, this was not a situation where it would have been appropriate for the Committee to exercise its discretion. The failure to comply with the time limit had been as a result of an understandable oversight on the part of the Appellant but the discretion available to the Committee by law did not allow it to excuse the error.

In the circumstances, the Committee accordingly required to dismiss the appeal.

12 September 2011