LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

DAVIDSON BROTHERS

in respect of

FACTORY, 3 GRAY STREET, SHOTTS AND
STORE, 3A GRAY STREET, SHOTTS

The appeal proceeded on the basis of an alleged material change of circumstances, based on a reduction in the level of rents, a reduction in the level of rateable values, and adverse economic conditions. The effective date of the alleged material change was 1 April 2009.

In considering its approach to the matter the Committee had regard particularly to the commentary contained in Armour on Valuation for Rating (5th Edition) at paragraph 3.12 to 3.31 inclusive and to the cases and legislation referred to therein including the provisions of Section 3(4) of the Local Government (Scotland) Act 1975 and the definition of material change of circumstances contained in Section 37(1) of that Act. To be a material change of circumstances the change must be one that affects the value of the appeal subjects.

The burden of proof was on the appellants to satisfy the Committee that a material change of circumstance had occurred (Armour, paragraph 3.19). Having given careful consideration to all of the evidence and submissions, the committee concluded that no material change of circumstances in terms of the legislation had been shown to have taken place and the Committee refused the appeal.

The values entered in the roll for the appeal subjects at the 2005 Revaluation was £179,000 for 3 Gray Street, Shotts and £110,000 for 3A Gray Street, Shotts. The values sought by the appellants effective from 1 April 2009 were £98,500 and £60,000 respectively, being a 45% reduction.

The appellants raised a preliminary issue. They objected to the assessor's list of comparables. The assessor had provided a list of comparables 21 days before the hearing as he is required to do in terms of Regulation 10(5) of the Valuation Appeal Committee, etc,(Scotland) Regulations 1995 but this consisted of 58 properties and he had not stated which he intended to found upon nor had he provided rental information concerning these when called upon to do so. The appellants conceded that the assessor had complied with the terms of Regulation 10(5) but argued citing the case of Tesco Stores Ltd v Assessor for Fife [2010] CSIH 95, where in an appeal relating to a supermarket in Dalgety Bay in excess of 400 comparisons were put forward relating to subjects in Scotland, England and Wales including DIY stores, furniture stores, chemists and a cinema, that this was contrary to the spirit and intention of Regulation 10. They moved that the assessor should not be allowed to found on any of his comparables.

The assessor opposed the motion, arguing that the situation here was entirely different from that in the Tesco Stores case. The assessor had lodged a list of all industrial properties in Shotts. He had done so in response to the grounds of appeal which were to the effect that there had been reduced rental levels since tone supported by local rents and industrial activity in Lanarkshire. This has been a proper and proportionate response. Comparisons were referred to not just for rental information. Here the purpose was also to consider the appeal history of industrial subjects in Shotts.

After adjourning to consider the appellant's motion, the Committee refused this. In doing so, the Committee adopted the reasoning put forward by the assessor. The Committee agreed that the situation in this case was entirely different from that in the Tesco Stores case. This had been a reasonable response by the assessor to the grounds of appeal which the appellants had seen fit to lodge, and the assessor had adequately explained to the Committee why he had seen fit to furnish the comparisons listed. The Committee did feel however that the parties ought to be more straightforward in their dealings with each other, and that such an approach may well serve to reduce the time taken to dispose of appeals before the Committee.

The appellants' evidence was that there had been a reduction in rents. Four comparable properties were detailed in the appellants' production number 5 which were put forward as similar in location and size to the appeal subjects. The Committee noted that the rent for the subjects at 1 Calderhead Road, Shotts had been struck in December 2006 and had been renewed at the same figure in January 2010. Mr McKaig gave evidence that the rent for Unit 3 Calderhead

Road, Shotts was substantially low and may be questionable. As regards Unit 5, 1 Calderhead Road, Shotts, this had been a short term lease and there was uncertainty over the exact duration and the extent appeared to have been variable. There was no information concerning tone rentals for any of the properties. Mr McKaig did not compare the post tone rents for each property with tone rents but only compared tone rents with 2005 rateable values, arriving at the rent as a percentage of rateable value. He then arrived at an average percentage reduction of 40%. Mr McKaig explained in cross examination that the figure of 45% sought had been his initial analysis, which he considered to be at the top of the range and that he had concluded in production 5 for a figure of 40% which he considered to be not unreasonable. He did not explain how he had arrived at his initial analysis.

Secondly, the appellants referred in support to the 2010 rateable values for the appeal subjects. These were £130,000 and £65,000 respectively, which represented a substantial drop of 28% and 42% respectively on the figures for the 2005 revaluation. These were not conclusive but served to back up a pattern.

Thirdly, reference was made to production 4 comprising statistical results for average industrial availability and industrial take up in Lanarkshire which Mr McKaig said showed supply had increased and take up had decreased, which was supportive evidence of downward pressure on rents.

The assessor's witness, Mr Hainey, drew to the Committee's attention that the appellants' comparisons were all situated in Centrelink 5, which was part of the former Cummins diesel engine factory. This was an unusual property which had been purpose built for the original occupants. It was a listed building. As a result there had been difficulties in subdivision, and they were peculiar the way they had been fenced off using moveable steel fencing. This was reflected in Unit 5 where there had been a problem establishing the extent and period of occupation. There was a requirement for consents for any change of use and there had been problems over maintenance.

The assessor had used as comparisons 4 industrial properties in various locations within Shotts. Assessor's production 6 was a post 2005 revaluation tone date rental analysis for those subjects, which included tone and post tone rentals. These were admittedly smaller in size than the appeal subjects. It showed there was either no change or an increase in rental values, there was certainly no fall.The assessor had also adopted a different approach to the valuation of

industrial subjects for the 2010 Revaluation. Assessor's productions 7 and 8 were copies of the assessor's guidance notes for the 2005 and 2010 revaluations. In 2005 the Assessor had adopted a basic lamp-post rate and then made additions and deductions from this. This had been complex and cumbersome. In 2010 the approach had been based on classification information, the intention being to value individual properties in an individual area. In particular, offices and yards were treated differently.

In his submissions Counsel for the Assessor stated that there were a number of strands to the appellants' case. The main thrust was a comparison of post tone rental figures with the relevant rateable values in 2005 showing the rent as a percentage. However in order to succeed the appellants had to establish there had been a fall in the rental value of the subjects. In order to do so it was necessary to compare post tone rents with tone rents, that is, to compare rents with rents. The appellants had not produced evidence of tone rentals. They could not therefore establish a fall in post tone rental values which they required to do in order to succeed. The Committee agreed with this.

In the Committee's view, the rental evidence provided by the appellants at page 18 of the appellants' productions did not establish that there had been a fall in rental values with effect from 1/04/2009. Whilst the Committee had some reservations over the suitability of the assessor's comparisons, they acknowledged that these did not show any fall in rentals either.

The Committee also took the view that the statistics on industrial availability and take-up did not demonstrate a fall in rental values. They did not isolate the position in Shotts. There were also significant variations in the figures both up and down. During the period from May 2008 to May 2009 the figures showed an increase in take up. Take up was at its highest during the period September to November 2009.

The appellants' solicitor- advocate, Mrs Cullen, in her submissions conceded that the rental evidence produced was thin. The Committee considered it to be insufficient. Mrs Cullen submitted that taken along with the evidence of reduction of rents contained in the appellants' spreadsheet and the change in levels of industrial availability and take up, the reduction in the rateable values of the appeal subjects in the 2010 revaluation was significant and supported the appellants' case. It was however Mr McKaig's evidence that the substantial drop in 2010 rateable values for the

appeal subjects was not conclusive but backed up a pattern. There was no suggestion by the appellants that the 2010 revaluation itself amounted to a material change of circumstances. The Committee decided that neither the rental evidence nor the statistics results produced by the appellants showed that there had been a reduction in rents. The rents had stayed the same. The appellants' evidence was based not on a comparison of tone and post tone rentals but instead took the form of a calculation showing that the rents for the appeal subjects were less than the figures arrived at by the assessor in the 2005 revaluation. As Counsel for the assessor pointed out, it was necessary to compare rents with rents.As regards the issue of the 2010 Revaluation, Mrs Cullen argued that evidence of a change in rateable values between revaluations could be taken into account where there was a significant difference in value. Counsel for the assessor submitted that the 2010 revaluation could not amount to a material change of circumstances because it only took effect from 1st April 2010.You could look at it but it was of limited value. However in the absence of any proper rental evidence showing a reduction in rents, it was not necessary for the Committee to consider this issue in reaching its decision in the present case.

The onus was on the appellants to satisfy the Committee that there had been a change of circumstances, that the change was material and that it had had an effect on value. The Committee had to decide whether the appellants had discharged that onus. There had to be clear and positive evidence of such a change, and of its affect on value.

The Committee decided that the appellants had failed to discharge the onus under Section 3(4) of the 1975 Act. The evidence which had been led before the Committee was insufficient to support the conclusion that there had been a fall in the rental value of the appeal subjects at 1April 2009.

The appellants had failed to discharge the burden of proof and the appeal accordingly fell to be dismissed.

29 September 2011