LANARKSHIRE VALUATION APPEAL PANEL

NOTE OF DECISION
and
STATEMENT OF REASONS
RELATIVE TO APPEALS

by

1 JANE NORMAN LTD
Unit LR14, 2 Centre West, East Kilbride G74 1LL

2 RIVER ISLAND CLOTHING CO LIMITED
Unit LR10, 12 Centre West, East Kilbride G74 1LL

3 LA SENZA
Unit LR5, 22 Centre West, East Kilbride G74 1LL

4 SUPERDRUG STORES PLC
Unit LR15B, 3 Centre West, East Kilbride G74 1LL

5 HMV UK LTD
Unit LR15A,1 Centre West, East Kilbride G74 1LL

6 TUI UK LTD
Unit 10A, 10 Centre West, East Kilbride G74 1LL

7 WEST COAST CAPITAL (USC) LTD
Unit LR16, 5 Centre West, East Kilbride G74 1LL

8 STARBUCKS COFFEE COMPANY (UK) LTD
Unit LR7, 18 Centre West, East Kilbride G74 1LL

9 ZARA UK LTD
Unit LR7, UR8 & 9, Centre West, East Kilbride G74 1LL

10 NEXT
Units LSU2 & UR7, Centre West, East Kilbride G74 1LL

11 DUNE
Unit LR11, 8 Centre West, East Kilbride G74 1LL

These were appeals arising out of the 2010 Revaluation. They were heard together.

The appeal subjects were all shop units in Centre West, the last to be built of six linked shopping malls situated within East Kilbride Shopping Centre.

The parties had agreed that the appeal subjects fell to be valued on the comparative principle using the zoning method. They had agreed the reduced floor areas for the appeal subjects, the valuation where applicable for the Upper Mall element, and the quantum of the addition to be made for the benefit of air conditioning. An inconsistency came to light at the hearing over the double mall access to be applied, but the parties involved had already agreed the percentage to be applied in relation to Units LR17, UR8 &9.The issue in dispute was the Zone A rate to be applied to the agreed reduced floor area of the Lower Mall elements of the appeal subjects. The Assessor contended for a Zone A rate of £925. The Appellants contended for a figure of £600.

In considering its approach to the matter, the Committee had regard particularly to:-

- the commentary contained in Armour on Valuation for Rating (5th Edition) ("Armour"), paragraphs 19-01 to 19-37 inclusive and to the cases and legislation referred to therein: the best method of arriving at an estimate of annual value will be by a study of actual rents passing both in respect of the subjects being valued and subjects comparable with them in size, character and location (Armour, paragraph 19-02).

- the commentary contained in Armour , paragraphs 20-42 to 20-44 inclusive and to the cases and legislation referred to therein :shops may be said to provide an outstanding example, in modern practice, of the classic application of the comparative principal; they are valued by reference to the rentals of let shops in the same or similar localities (Armour, paragraph 20-42).

- the definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956

- the commentary contained in Armour, paragraphs 5-25 to 5-26 and to the cases and legislation referred to therein: the onus is on the assessor to justify a proposed valuation when that valuation is challenged by a ratepayer, particularly in a revaluation year (Armour, paragraph 5-25).

The issue was the correct value as at the tone date, 1st April 2008.The appellants argued that this was best determined by reference to the rents from Centre West. The assessor argued that because of the spread of rentals in Centre West which was not reflected in the other Malls, it was necessary to look beyond Centre West to the rents in the other Malls.

The appellants led evidence from both the tenants' professional agents and the landlord's professional adviser concerning the low rental potential of Centre West. Centre West was the newest Mall but age was irrelevant. The appellants argued that with the addition of Centre West, East Kilbride Town Centre was suffering from an oversupply of such units. This might always have been so, but with the opening of Silverburn, it certainly became so. The task was to find out what rent the hypothetical tenant would pay. The best method of doing so was to study the actual rents for the particular subjects and subjects comparative in size and location. Of all the Malls, Centre West was the one with the most ample basket of recent rents. The appellants' evidence comprised in particular the evidence of the landlords' review surveyor, Mr Dryburgh, Mr Rankin's analysis at pages 20 and 22 of GL Hearn's productions, Mr Thomson's view on the post tone rentals and the evidence of the surveyors for each of the appellants. The assessor's witness, Mr Dunsmore had conceded that Mr Rankin's evidence reflected a position which a qualified surveyor was entitled to hold.

The rental evidence for new lettings and uplifted reviews was contained in GL Hearn's productions at page 22. This was to be preferred to the assessors' production 2a which had several fundamental errors. This was as follows:-

1. Unit LR2A - Early Learning Centre

The assessor had analysed the rent at £601 per square meter using the figure of £130,000 in the lease, which had never been paid. If the rent actually passing of £63,600 was used, this gave an analysed rate of £294.

2. LR7 – Starbucks

The assessor had analysed the rent at £597. In doing so, the assessor had been unaware of the capital contribution of £110,000 made by the landlord or of the 6 month rent free period. The appellants' figure of £425 was to be preferred.

3. LR14 – Jane Norman

The rental had been increased on review by 2.5% but this had been the only increase. The appellants' evidence was that the tenants had not taken advice on this and a commercial decision had been made by their CEO to settle the review quickly.

4.LR6 – Louche T/A Joy

The analysed rate of £305 was agreed.

5. LR4B - Premaman

Here the Assessor's figure had been £460 whereas the appellants' analysed rate had been £573. The difference was because this had been a stepped rent.

6. LR20C - Internationale

The assessor's analysed rate had been £324 whereas the appellants' figure had been £207. The assessor's figure was based on the interim rent in 2007 but by July 2009 the rent passing had been reduced to £50,000 giving an analysed rate of £207.

7. LR12 – Teddy Mountain

The appellants' analysed rate was £468.

8. LR 9 – Limetree

The appellants' analysed rate was £633. From the assessor's rent analysis, the previous tenant had been Faith, the analysed rate being £788.

9. LR13 - Zero & Zero

This appeared on the assessor's rent analysis. The rent struck at November 2007 had been £120,000 though the rent actually passing had been £60,000. The analysed rate therefore fell to be reduced from £1126 to £563.

Some of the rental evidence was after the tone date but it all told the same story. With the exception of the rent review for Jane Norman, these figures did not support the assessor's figure of £925. The appellants' figure of £600 was to be preferred.

The assessor acknowledged that the appropriate Zone A rate would normally be determined by an analysis of the rents in the Mall concerned with checks against the others. He argued that the difficulty here was the massive spread between the highest and lowest rents. In many cases the rent which was actually paid bore no relation to what was in the lease and there was a prevalence of turnover rents. There were other factors at play.

The assessor led evidence that the landlords contemplating the sale of the Centre by Scottish Retail Property Limited Partnership to Propinvest Limited which took place on 18 June 2007 would clearly be seeking to fill the voids. Then in October 2008, the Propinvest portfolio was reportedly close to administration, being in breach of its covenant. This was a factor which could well influence the landlords' letting strategy and probably did so. A landlord in that position would be less able to fund incentives. It was a more likely strategy for a landlord in that position to offer lower start up rents. The lower rentals started in the period 2007/2008 when the financial difficulties were mounting. This raised concerns over the reliability of the rents. The assessor's production 8, described as the landlords' rental schedule for Centre West Mall, gave the landlords' estimate of full rental value analysed to Zone A rent rates, which supported the assessor's valuation.

Neither the assessor nor the appellants offered any alternative valuation. There was no evidence to support any other figure. The committee were asked to decide as between the two competing sets of submissions.

The Committee by a majority of 4 to 1 decided in favour of the appellants. The assessor had not adequately explained his valuation. He had not properly explained how he had arrived at the proposed Zone A rate. The rental evidence did not support this. It accepted the appellants' submission that against the rental evidence for Centre West the assessor sought to rely upon material drawn from the internet and speculation in relation to the sale of the town centre based on hearsay and valuation evidence which in effect was no more than a set of sales particulars. The assessor had suggested that the rental spread in Centre West was because of the steps taken by the landlords to fill Centre West when the Centre was sold, however the sale was of the other parts of the Centre as well. On the evidence, supply exceeded demand, Centre West was the least attractive of the Malls, this had a low rental potential and market leading retailers had been able to get into certain units for low rents. This certainly gave rise to a situation where subjects of different value were in close proximity but no submission had been made to the committee for some sort of shading to be made.

The Committee considered the assessor's argument that the principle of discard was perfectly reasonable, that as an alternative he had looked at the Zone A rates for the other Malls and had derived from this an analysis of rents which showed a much narrower range. The majority of the Committee took the view on the basis of the evidence heard that it was not appropriate to discard rental evidence of new lets which was consistent in showing a fall in rental values.

The dissenting member of the Committee agreed with the assessor that given the spread of rentals it was necessary to have regard to the wider scene given the close proximity of the other parts of the centre, that some of the appellants' evidence was after the tone date and the appellants' approach was unsound as they had not adopted the figure they had arrived at.

The Committee accordingly supported the Zone A rate of £600 put forward by the appellants.

4 October 2011