

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS RELATIVE TO APPEALS

in respect of

JJB Sports per DTZ, 5 Kingsgate Retail Park, Glasgow Road, East Kilbride G74 4UN

Mothercare (UK) Ltd t/a Mothercare World, per Ratesrecovery, 7 Kingsgate Retail Park, Glasgow Road, G74 4UN

Harveys Furnishing Group Limited per Rapleys, 9 Kingsgate Retail Park, Glasgow Road, East Kilbride G74 4UN

Boots UK Limited per Gerald Eve, Unit 6, 11 Kingsgate Retail Park, Glasgow Road, East Kilbride G74 4UN

TK Maxx per Drivers Jonas Deloitte, Unit 5, 10 Kingsgate Retail Park, Glasgow Road, East Kilbride G74 4UN

Marks & Spencer PLC per Philip Long & Co, 15 Kingsgate Retail Park, Glasgow Road, East Kilbride G74 4UN

Halfords per Gerald Eve, 6 Kingsgate Retail Park, Glasgow Road, East Kilbride G74 4UN

Introduction

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

The appeal subjects were all retail warehouses on Kingsgate Retail Park, East Kilbride.

They fell to be valued on the comparative principle. There was no dispute with regards to the reduced areas and additions made for fit out, mezzanine floors, air conditioning and sprinklers. With one exception, dealt with later, there was no dispute with regard to the analysis of rents. The issue in dispute was the shell rate to be applied to the appeal subjects. The Assessor contended for a shell rate of £335m². The Appellants contended for a figure of £300m².

Relevant Law

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 5-25 to 5-26 inclusive and to the cases referred to therein. These included *Dryburgh & Co v Assessor for Strathclyde Region* 1982 SLT 426 and particularly the judgement of Lord Avonside and also *Buckhill Leisure Ltd v*

Assessor for Central Region, March 31 1995, unreported, and *Dunfermline Corporation v Assessor for Fife* 1962 SC321. An Appellant must initially show that there was a case to try. Once that had been done, there was no presumption in favour of the Assessor's proposed valuation. Where a reasonable challenge to the Assessor's valuation had been made, the Committee should not proceed on the assumption that the Assessor's valuations were correct unless the Appellants proved otherwise. The Assessor in these circumstances required to explain his approach to the Committee.

- the commentary contained in *Armour*, paragraphs 2-05 to 2-06 and to the cases and legislation referred to therein: the process of revaluation involved a completely fresh start.
- 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 including the statutory definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956; 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).

Valuation

The issue was the correct value as at the tone date, 1st April 2008. The Appellants argued that this should be determined by reference to the available rental information at or about tone from Kingsgate Retail Park, which was more than sufficient. The Assessor looked at the rents for Kingsgate for the period from May 2003 to March 2005 which were post tone for the 2005 Revaluation and were not used to determine the 2005 rent rate of £300/m², noted they showed a consistent level of value around £335/m², then carried out a relativity exercise for the same genus of subject in East Kilbride and throughout Lanarkshire and noted from this that new rents had not shown a fall in rental rates from 2003 to 2008. There was no presumption in favour of the Assessor's valuation. It was for the Committee to decide which approach was correct.

Rent reviews

The Committee heard that nine of the retail warehouses at Kingsgate were subject to rent reviews between 16th May 2008 and 13th December 2009. In each case, there was an upward only rent review clause and the review had been agreed at nil uplift. These were as follows:-

Rent Review Date	Subjects	Rent pa	Analysed Rent Rate
16/05/2008	Unit 10 – T K Maxx	£345,015.00	£303/m ²
30/11/2008	Unit 14 – Allied Carpets	£305,000.00	£330/m ²
28/02/2009	Unit 16 - Homebase	£750,000.00	£313/m ²
28/02/2009	Unit 5 – JJB Sports	£372,700.00	£335/m ²

28/02/2009	Unit 7 - Mothercare	£466,500.00	£335/m ²
28/02/2009	Unit 6 - Halfords	£311,200.00	£337/m ²
28/02/2009	Unit 9 – Harveys Furniture Store	£310,600.00	£338/m ²
11/10/2009	Unit 11 - Boots	£325,000.00	£353/m ²
13/12/2009	Unit 12 - Argos	£325,552.50	£356/m ²

In or about August 2008, Marks & Spencers agreed to take a lease of Unit 15 at Kingsgate at a rent of £605,000 with entry as at either March or September 2009 for a period of 20 years with a 15 year tenant break option with a 12 month rent free period and a £1.5 million capital contribution to the tenant. The unit had been vacant since Curries had moved out in March 2006. This analysed at £179/m². Whilst this was post tone for the 2010 Revaluation, this was essentially why all the rent reviews were ultimately agreed at nil uplift.

Appellants' approach

The Appellants argued that there could be no increase in rental levels because the landlords had been unable in each review to get above the rental being paid; and the fact that the landlords could not achieve a higher rental at the tone date suggested that they were not in a position even to achieve the rent then paid. It was important to bear in mind that the TK Maxx rent review as at 16th May 2008 was very close to the tone date of 1st April 2008. The Appellants were not relying on one rent but TK Maxx was a clear focus and indication of this. There was no evidence available at Kingsgate to justify the increased rate proposed by the Assessor. It was misconceived and wrong to look at the rents achieved for the units in 2003/05 which were remote from the tone date. The evidence should come from Kingsgate Retail Park rather than other retail parks. The comparative evidence was of little value. Coatbridge was a long way away and Hamilton was of no direct relevance: the information was not clear, there was no indication of what rents had been reviewed. There could have been any manner of reasons why the 2005 material change of circumstances appeals lodged had been withdrawn.

Assessor's approach

The Assessor argued that he had justified his valuation. He had looked at the basket of rents. He had discarded Marks & Spencer which was out of kilter. He had used the rents prevailing at tone in the absence of new rents. The Assessor's evidence showed a pattern of increase in rental values. The only difference was TK Maxx, which he considered had been wrongly analysed by the Appellants. What the Assessor had then done given the nil uplift had been to carry out a relativity exercise. This showed that there had been no general fall in rental levels for this type of property in East Kilbride or in Lanarkshire. The Assessor was entitled to have regard to subjects anywhere in his area. 2005 material change appeals lodged for subjects in Kingsgate had been withdrawn. This was the prime retail park in Lanarkshire and achieved the highest rental values.

Decision and reasons

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The Committee was aware that more weight is attached to evidence of open market lettings than agreements reached between valuers on rent reviews. It took the view that although there was no evidence of new rentals at Kingsgate Retail Park at or about the tone date, the evidence in the form of the rent reviews was sufficient. The Committee preferred the approach taken by the Appellants to that taken by the Assessor in reaching his valuation. It was incorrect for the Assessor to have regard to the rents achieved for the units in 2003/05. They were remote from the tone date. The fact that these were not taken into account for either the 2005 or the 2010 Revaluation did not matter. Whilst the TK Maxx review was the closest to the tone date, this and the other rent reviews had all resulted in a nil uplift. On the evidence, this was because of the Marks & Spencer's rent, which whilst not relevant for the purposes of the 2010 Revaluation, appeared to have led the landlords and tenants' agents to agree the rent reviews at nil increases. There was no evidence of increased rental at Kingsgate as at the tone date. There was no need to look at rentals in other locations. On the Assessor's evidence, each park had been valued using the rents passing in that particular location. The purpose of the relativity exercise carried out by the Assessor was to check his valuation but the Committee considered the Assessor's approach to the valuation which he had made was incorrect and in any event did not consider the relativity exercise to have been sufficiently detailed.

There was a disagreement between the Assessor and the Appellants over how the rent for TK Maxx fell to be analysed for the purposes of the 2010 Revaluation. The wording of the lease was that fines or premiums were to be disregarded and the effect on the rent of the absence of any fine or premium was also to be disregarded. This meant that for contractual reasons the analysis adopted by the Appellants was correct. The Assessor's witness Mr Costello appeared to concede this in cross-examination.

Counsel for the Appellants asked the Committee to note his objection to the fact that the Assessor's comparisons outwith Kingsgate had not been put or at least put in sufficient detail to the Appellants' witnesses, though this did not affect the decision taken by the Committee for the foregoing reasons in the present appeals. He also raised, but did not seek to insist upon, an issue over the form of the Assessor's witness's precognition, though the witness had in any event given his evidence under oath.

The Committee accordingly preferred the approach taken by the Appellants and granted the appeals.

9 January 2011