

LANARKSHIRE VALUATION APPEAL PANEL

NOTE OF DECISION

And

STATEMENT OF REASONS
RELATIVE TO APPEALS

By

ASDA STORES LTD

relative to

SITE OF 3 ATMs at 51 WATSON STREET,
MOTHERWELL ML11 1YP

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

The appeal subjects are 3 ATM sites located at the Asda supermarket at 51 Watson Street, Motherwell. They are located in a dedicated, detached building some 10m from the supermarket, each assessed at RV £11,300. Asda is the landlord and ratepayer in each case. The respective sites are occupied by RBS, Nationwide and Lloyds as part of national agreements with Asda. A single case was presented.

The valuation of ATM sites is governed by the Scottish Assessor's Association Commercial Properties Committee Practice Note 5 for Revaluation 2010, which comprised Assessor's Production 2. Both parties made reference to this Practice Note in their evidence. The Practice Note sets out *inter alia* the following:-

2.0 Basis of Valuation

These sites are valued on the comparative principle following an analysis of the available rental information. Each ATM site entered in the valuation roll should be valued by application of the matrix detailed at 5.0.

5.0 Valuation Matrix

TRANSACTION BAND	NUMBER OF TRANSACTIONS	2010 NET ANNUAL VALUE
H	75,000 – 99,999	£8,300
I	100,000 – 149,000	£11,250

5.1 General

Following analysis of the available rental evidence, the matrix set out above has been agreed and endorsed by the Inter – Bank Rating Forum (IBRF), the LINK ATM Scheme and the Association for Cash Machine Operators (ACMO).

5.2 Application of the Matrix

The above matrix should be applied to each site having regard to the number of cash transactions carried out in the year 2007 but taking into account any discernible trends in previous years.

The dispute between the parties was with regard to the transaction band to be applied. The band proposed by the Assessor was band I. The Appellants considered the appeal subjects should be banded H.

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

- the commentary contained in Armour Valuation for Rating (5th Edition) (“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 basis of the valuation for the 2010 Revaluation set out in the schedule to the Valuation Timetable (Scotland) Order 1995: valuations are to be made on the basis of the level of rents prevailing as at 1st April 2008 and on the basis of the physical circumstances of the properties as at 1st January 2010.

The Appellants argued that foodstore developments in the relative vicinity have had a detrimental impact on the number of transactions achievable at this site, and that for this reason the level of transactions adopted do not properly reflect the physical circumstances as at 1 January 2010. The Appellants’ alternative RV of £8,300 is based on an adopted number of transactions falling below 100,000 at the physical circumstances date of 1 January 2010.

It was for the Assessor to explain how he had arrived at his valuation. The Assessor had obtained figures from the financial institutions concerned for the number of transactions being carried out at each of the 3 ATM sites at Watson Street, Motherwell for the tone year of 2007. This produced an average of 102,485 transactions. This was up marginally from the previous year by some 3.7% which appeared reasonable to the Assessor in the light of expected annual fluctuations. He therefore adopted this figure for the three appeal sites which placed them in transaction band I at a net annual value of £11,250.

The Committee began by considering the number of cash transactions carried out in the year 2007. The figure of 102,485 was not in dispute. The only figures for previous years was the figure of 98,833 for 2006. The 2007 figure

represented an increase of 3.7%. The Committee agreed with the Assessor that this appeared reasonable in the light of expected fluctuations. There was no discernible trend arising from these. There were small differences between the figures provided by the parties for the subsequent years but both sets of figures showed a drop in the number of transactions for 2008, 2009 and 2010 as compared with 2007. The issue then arose as to whether this was due as the Appellants argued to foodstore developments in the relative vicinity having had a detrimental impact on the number of transactions achievable at this site. This was examined in detail by the Assessor's witness Mr Pacitti who spoke to the investigations narrated by him on pages 4 to 9 of his precognition. The Committee accepted in its entirety the evidence of Mr Pacitti in this regard which was to the following effect.

There was no evidence that opening of the supermarket at Newmains in October 2007 and in Wishaw in November 2007 had any direct effect on the transaction numbers at the appeal subjects. Total transaction numbers in 2008 fell by 2.8%. Mr Pacitti looked at the transaction evidence at both the appeal subjects and elsewhere to establish the reason for this.

Assessor's Production 5b was a graph showing the cumulo monthly transaction for the appeal subjects. This showed a broadly similar pattern for each of the 6 years figures depicted. Each year there is a 3 month consecutive drop off from October to December. Instead of a steeper fall, the graph for October to December 2007 when the new supermarkets opened shows the smallest fall in any of the 5 years shown. The number of transactions in November and December 2007 when the new supermarkets opened were higher than the corresponding months in 2006 when there were no competition issues.

Mr Pacitti also examined in Assessor's Production 6 transaction movements at Asda, Palace Grounds Road, Hamilton, and in Assessor's Production 7 transaction movements for all Nationwide Building Society ATM sites located at Asda supermarkets which were trading for at least 1 year prior to January 2007. These also showed a fall in the period 2007 to 2008 in keeping with that seen at the appeal subjects.

Mr Pacitti also analysed in Assessor's Production 5b, the effect on transaction movements at the appeal subjects following the opening of the new supermarket in North Road, Bellshill in November 2009. This shows the drop from November to December seen in other years, but significantly there is more of a drop from October to November ie before the new store opened. The fall is also similar to that in October to December 2010 when no competition issue existed.

Mr Pacitti also analysed the reason for the drop of 12.75% in transactions between the tone year of 2007 and 2010. Returning to Assessor's Production 6, he noted a similar fall of 11.38% over the same period at Asda, Palace Grounds Road, Hamilton which had suffered no competition issues during the period. Assessor's Production 8 relating again to Nationwide Building Society ATM's in the UK and Scotland also served to confirm that the changes over this period seen at the appeal subjects are simply part of the general trend towards lower transaction levels.

Mr Pacitti also makes the point that before the opening of Asda, Morningside Road, Newmains and Tesco, Belhaven Road, Wishaw, Wishaw already had two supermarkets, being those at Tesco, Main Street, Wishaw and Morrisons, Kirk Road, Wishaw. Similarly, before the opening of Tesco, North Road, Bellshill, Bellshill was already well served by a Morrisons Supermarket and a Sommerfield Supermarket. He also notes that the Appellants did not lodge an appeal against the Motherwell Asda upon the opening of any of the 3 new supermarkets which they claim have had a detrimental impact on the number of transactions achievable at the appeal site. The Committee considered both of these points to be relevant.

The Committee also had regard to the decision in the case of Campsie Spring Scotland Limited v Assessor for Dunbartonshire, Argyll and Bute Valuation Joint Board RA 401 referred to by Counsel for the Assessor, which was a case to do with the valuation of bore holes. In that case, the Lands Tribunal stated: "We are satisfied that in attempting to strike a proper figure as at April 1993 there can be no justification for direct reference to figures which could not have been available to the hypothetical parties at that time." The Committee accepted Counsel's submission that on this basis the transaction numbers for late 2008 to 2010 in the present cannot form the basis of rent valuation at tone. They also agreed with Counsel's submission that the case of Cromarty Firth Port Authority v Assessor for the Highland and Western Isles Valuation Joint Board VA 2009 107 referred to by the Appellants was not relevant as this was a case concerning the application of the revenue principle where it is standard practice to look at revenue over an extended period.

The Appellants' argument was that the level of transactions adopted do not properly reflect the physical circumstances as at 1 January 2010. However, based on the evidence given by Mr Pacitti, the Committee did not accept that the food store developments referred to had had a detrimental impact on the number of transactions achievable at the appeal site. It was not necessary therefore for the Committee to consider whether in the event that it had, then that would have been part of the physical circumstances of the appeal subjects.

The Committee considered the Appellants' submission that this was a borderline case but did not consider this to be relevant in circumstances where there was no discernible trend arising from the previous year and nothing to suggest that the 2007 figures were unreliable.

The Committee considered that the Assessor had properly explained his valuation which represented a proper application of the valuation matrix set out in the relevant SAA Practice Note.

The Committee accordingly supported the valuation put forward by the assessor and dismissed the appeals.

4 April 2012