

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS RELATIVE TO APPEAL

by

ICONIC GENTS HAIR

in respect of

SHOP, 8 ELIZABETH COURT, 4 STUART STREET, EAST
KILBRIDE G74 4NG

Introduction

This was an appeal arising out of the 2010 Revaluation. The Appellants' case was presented by Mrs Janice Rodgers. The appeal subjects were a shop forming part of a three storey building built in 1997 comprising 8 shop units on the ground floor with offices and flats on the first and second floors. The net annual value proposed by the Assessor was £11,100. The area of dispute was the appropriate Zone A rate to be applied to the appeal subjects. The Assessor had applied a Zone A rate of £350 per square metre. The Appellants contended for a figure of £300 per square metre.

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 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 commentary contained in *Armour*, paragraphs 2-05 to 2-06 and to the cases and legislation referred to therein: the process of revaluation involves a completely fresh start; comparison with what has gone before is not a relevant ground of appeal.
- the commentary contained in *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* to the effect that the net annual value was the rent at which the land and heritages might reasonably be expected to let from year to year if no grassum or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of

the repairs and insurance and the other expenses if any necessary to maintain the lands and heritages in a state to command that rent; 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 19-07 to 19-12 and to the cases and legislation referred to therein on actual rent as evidence of rental value: the rent payable under an existing lease may be found fairly to represent the rent which a hypothetical tenant might be expected to pay for the subjects, or, it may not. The rent payable under an actual lease of the subjects being valued is simply an item in the evidence which has to be taken into account, an important item in many cases, since it is a rent of the actual subjects being valued, whereas the rest of the evidence will relate to other though comparable subjects.
- the commentary contained in Armour, paragraph 19-21 to the effect that in a valuation carried out under the comparative principal shops must be valued as shops, not as shops from which a particular type of business was carried on.
- the Scottish Assessor's Association Revaluation 2010 Commercial Properties Committee Practice Note 40 on the Valuation of Shops: shops are valued by application of the comparative principle using rates per square metre derived from local rental evidence;
- the Scottish Assessor's Association Revaluation 2010 Basic Principles Committee Practice Note 1 on Adjustment of Rents: what is required in rating is to find the rent at which the hypothetical tenant might reasonably be expected to pay for the subjects. The actual rent for any property may be of significance, but it is not conclusive of value. What has to be established is "a hypothetical level of value" which is derived from analysis of all the rents of comparable properties in a particular area.

The function of the Committee was to ensure that the valuation was correct having regard to the relevant facts and valuation law. If the valuation was correct in law, then the Committee had no discretion to alter it. Particularly, the Committee could not take into account economic factors, in so far as these were not provided for in the relevant law, nor could they take into account any sympathy they might feel for the ratepayer.

Appellants' challenge

For the Appellants, Mrs Rodgers spoke to the Statement of Grounds of Appeal which she produced. This set out in detail the history of the appeal and went on to explain the basis of the appeal. The building at Elizabeth Court in which the appeal subjects were situated and Jacobean House in Glebe Street were part of the same project and were almost a mirror image of each other. In the view of the Appellants there could not be a better subject for comparison, the two buildings form a quadrant around the Council ground, which is now car parking, and are within a stone's throw of each other. There was a difference of £100 in the Zone A rate. The Appellants acknowledged that because there had been a change of ownership and their landlord was charging higher rents than those in Jacobean House that they

would perhaps not be able to negotiate the same Zone A rate and wished the rate to be set at £300psm. This would bring them into line with the shops in Main Street. It would put them on an even pegging with the salon in Jacobean House which is around the same size and within the same age and style of building but which at present pays no rates.

In her submission, Mrs Rodger stated the question was whether the paragraph in the Assessor's Practice Note had been used appropriately. Does it mean area or just row? If it means row, the Appellants accepted the rents though she thought these were high.

Assessor's approach to valuation

The Assessor's approach was as set out in the precognition of the Assessor's valuer Mrs Catherine Cumming who spoke to this at the hearing. The Assessor had considered all the passing rents for the retail units within The Village at or around the tone date of 1st April 2008 when setting the rates. The retail units at Elizabeth Court had been valued on the comparative principle using the zoning method, by analysing the available rental evidence on or around the tone date, and in particular the rental evidence for Elizabeth Court. The Assessor's rental analysis for Units 1-8 Elizabeth Court was set out in Assessor's Production 4. The available rental evidence comprised 2 new lets and 2 reviewed rents in 2008, and 2 reviewed rents in 2007. The shops ranged in size from 31.73 to 52.32 sq m and the rent rates per sq m ranged from £352 to £382 psm. The Zone A rate adopted was £350. Applying this to the reduced area of 31.73 sq m produced a net annual value of £11,100. Assessor's Production 3 showed the appeals history for Elizabeth Court. 5 out of the 8 shops were appealed, 4 by professional agents. One was agreed at a slightly lower figure, due to an error of measurement, one was withdrawn, one was verbally withdrawn and dismissed at the original figure, and one was dismissed at the original figure. The Assessor submitted from this that there had been general acceptance of the £350 Zone A rate. In Assessor's Production 8 the Assessor set out rental information, adopted Zone A rates and an appeal summary for each of the adjacent streets within The Village.

Counsel for the Assessor submitted that the Assessor had discerned different values within different streets. The Assessor had drawn the Zone A rate from rental values for Elizabeth Court as at the tone date. The evidence amply justified this.

Decision and reasons

The Committee felt that Mrs Rodgers was correct to draw attention to the paragraph in the introduction to SAA Practice Note 1 dealing with the adjustment of rents to the effect that what had to be established is "a hypothetical level of value" which is derived from analysis of all the rents of comparable properties in a particular area. As she had said, the question put simply was whether this meant area or just row? In relation to The Village, the Assessor had looked at rental evidence for The Village at or about the tone date of 1st April 2008 and had discerned different rental values for different streets. The Committee accepted that this was not unusual in a town or village location. In relation to Elizabeth Court, the Assessor had analysed the available rental evidence at or about the tone date of 1st April 2008 and had arrived at a Zone A rate which was clearly justified on the basis of the available evidence. This was higher than the Zone A rate arrived at for all other locations in The Village including the shops at Jacobean House which were

very similar but achieved lower rentals. The Committee considered that on the basis of the available rental evidence at the time it was clear that the row of shops comprised within Elizabeth Court fetched higher rentals and that it was therefore appropriate that the comparisons for the appeal subjects should be drawn from the other shops within the row. The Committee were aware that based on the valuation the Appellants would not qualify for 100% rates relief under the current Small Business Bonus Scheme but this was not a factor which could allow the Committee, as a matter of law, to reduce the valuation.

The Committee considered that the Assessor had properly explained his valuation which represented a proper approach to the valuation of the appeal subjects in terms of the relevant SAA Practice Note.

The Committee accordingly supported the valuation put forward by the Assessor and dismissed the appeal.

10 April 2012