Statement of Reasons

Relative to appeals by

Missiles and Batteries Ltd

In respect of

Factory, Building 3, Centrum Park, 5 Hagmill Road, Coatbridge

This appeal was in respect of the 2010 Re-valuation and called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 20th June, 2012.

Mr Dalton appeared on behalf of the Appellants and Mr Neason appeared on behalf of the Assessor.

Mr Dalton sought an adjournment of the hearing of the appeal to a later date. Mr Neason for the Assessor opposed the appellants' request for an adjournment and moved that the appeals be dismissed in terms of Regulation 10 (3) of the Valuation Appeal Committee, etc. (Scotland) Regulations 1995 on the basis that the appellants had failed to comply with the terms of Regulation 10 (1) and 10(2)(b) of said Regulations.

Regulation 10 (1) provides that;

(1) An appellant shall, not later than 35 days before the date set for the hearing, furnish to the assessor a written statement specifying -
   (a) The grounds for his appeal; and
   (b) if the appeal relates to the valuation entered in the valuation roll, the valuation which the appellant considers should be entered in the roll and the grounds on which that valuation is arrived at.

Regulation 10(2) (b) provides that;

(2)Within 14 days of the receipt of such a statement, the assessor-
   (b) may serve a notice on the appellant requiring him, by a date specified in the notice (being a date not less than 10 days after the service of the notice), to provide written confirmation to the assessor that he intends to proceed with his appeal.

The basis of the Appellants' request for an adjournment of the appeals was that information had been requested from the assessor by email dated 6th June, 2012 from Mr Dalton to Mr Kelly of the assessor's staff. The information requested had not been provided. Mr Dalton was still unclear as to how the assessor had arrived at the rate applied by him in valuing the appeal subjects. Mr Dalton had met with Mr Kelly on three occasions; 17th and 30th May and 1st June. An earlier meeting had been scheduled by had been cancelled at the instigation of the assessor. Mr Dalton had attempted to telephone Mr Kelly to press for a response to his email of 6th June. There had been a difficulty with the Assessor's telephone system which impeded this. He eventually spoke to Mr Kelly on 12th June, 2012. It was only on this occasion that he was advised that the assessor considered that the statement containing his grounds of appeal did not comply and were generic. In addition, it was the assessor's practice that no further discussions would take place with regard to an appeal within 10 days of the date fixed for the hearing of it.

Mr Dalton opposed the Assessor's motion in terms of Regulation 10(3). A statement containing grounds of appeal had been issued on 15th May, 2012. This had been followed by a list of comparisons issued by letter dated 28th May, 2012. He contended that the Regulations did not require a detailed valuation to be produced. He conceded that the form of the statement lodged by him was similar to that lodged in respect of other subjects; however the statement had been tailored to make it specific to the particular subjects. This practice until now had not provoked any challenge. He referred to a decision of the Lothian Valuation Appeal Panel dated 18th June, 2012. This was a case in which the Assessor there, as in the present case, had sought a dismissal of the appeal on the basis of failure to comply with Regulation 10(1) on the basis that the grounds of appeal which had been lodged were generic and did not give sufficient notice to the Assessor of the case to be met be him. The Committee in that case had refused the motion to dismiss the appeal. He contended that, as in that case, discussions taken place between him and Mr Kelly.

Mr Neason opposed the request for a continuation. He stated that on 16th April, 2012 contact had been made with Mr Dalton's office to arrange a meeting to discuss the appeal. This meeting had been scheduled for 10th May which date preceded the last date for the issuing of the statement required in terms of Regulation 10(1). However, that meeting was cancelled by Mr Dalton who had sought an alternative date of 11th May. This was not convenient to the assessor and eventually the meeting referred to on 17th May took place. Mr Neason contended that if the appellants' agent was of the view that there were still issues in contention, then he ought to have complied with the Regulations and prepared a case for hearing by the Committee. The granting of a continuation, given the large volume of appeals to be processed

by the assessor risked jeopardising the meeting of the statutory timetable for the disposal of them.

Mr Neason contended that the letter issued by Mr Dalton on 15th May, 2012 did not comply with the requirement in terms of Regulation 10(1). The letter stated an alternative valuation for the appeal subjects of £100,000, and stated grounds of appeal, videlicet;

"We are also of the opinion that the issued Rateable Value effective from 1 April, 2010 is excessive in light of the following:-

1. Rental analysis of Centrum Park and the immediate area supports a lower rate/m2.
2. Insufficient allowances have been applied to reflect the overall size of the property.
3. Insufficient allowances have been applied to reflect the physical characteristics of the property.
4. Insufficient allowances have been applied to reflect the layout, access and lack of yard to the property.

Should our outline grounds be deemed by the Committee to be inadequate, we hereby serve notice of our detailed grounds, which are:-

1. The industrial and yard rate on this property is excessive in light of the rental evidence by comparison to the valuations of comparable subjects within Centrum Park and the immediate area.

2. Under the Valuation Timetable (Scotland) Order 1995, there has been a change having regard to the physical nature of the property and its location as at 1 January 2010.

3. The Assessor has failed to alter the Roll under Section 2 (1)(d) of the Local Government (Scotland) Act 1975 to give effect to an alteration in the value of the lands and heritages which is due to a material change of circumstances."

Mr Neason contended that this statement did not provide details of the grounds on which the alternative valuation was arrived at and therefore it did not comply with the Regulations. There was no detail provided in relation to the alleged material change. The Assessor's view was that the grounds of appeal were generic and not sufficiently detailed to provide the Assessor with fair notice of the appellants' case. He explained to the Committee that there had been 271 appeals cited for hearing on 20th June. It was correct that the assessor adopted a practice of not discussing appeal in the period of 10 days immediately preceding the date fixed for the hearing of it. However, it should be noted that citations were issued with 84 days notice which provided ample opportunity to fully discuss cases. He further submitted that it was clear from Regulation 10(1) that the grounds for the appeal mentioned in Regulation 10(1)(a) required to be in writing

and any discussions between the parties did not cure any deficiency in the statement required in terms of Regulation 10(1).

The Assessor argued that whilst the grounds of appeal lodged might be in similar terms to those which have been lodged in previous cases and in other valuation areas without challenge, this did not mean that they should be allowed in the present appeal. It was a sloppy practice which should stop.

The Assessor referred to two cases; Tesco Stores Ltd v The Assessor for Fife [2010} CSIH 95 and The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others [2012] CSIH 50, both decisions of the Lands Valuation Appeal Court which he submitted supported his submission. In the case of Tesco Stores Ltd v The Assessor for Fife; as stated supra, a professional agent on behalf of the appellants had lodged in terms of Regulation 10(5) a list of comparisons of 400 subjects located throughout Scotland and England and of different classifications to those subject of the appeal. He had then not relied upon any of them at the hearing of the appeal. It was said on behalf of the appellants' agent that the lodging of such a comparison list was common practice. Their Lordships were unimpressed and stated that if correct then the practice should cease.

In a postscript to the case of The Assessor for Lanarkshire Valuation Joint Board -v- Jane Norman Ltd and others, their Lordships noted that the Committee which had heard the original appeal had found that the ratepayers had failed to comply with Regulation 10(1). However, the Committee had refused the Assessor's motion to dismiss and had continued the appeals and ordained the ratepayers to comply with the said Regulation. Their Lordships opined that a failure to comply with the Regulations should not be "readily excused." Latitude might be afforded to a party litigant but not to a professional practitioner.

In addition, the assessor, in terms of Regulation 10(2) had written to Mr Dalton requiring from him written confirmation the appellants' intention to proceed with the appeal. No written confirmation had been received. This was necessary to avoid needless expense on the part of the assessor in preparing cases if the appellant did not intend to proceed with it. Accordingly, the assessor sought dismissal of the appeal on the basis of non compliance with this requirement.

The Committee, after giving careful consideration to all of the submissions made, were of the view that the letter lodged by Mr Dalton dated 15th May, 2012 did not comply with Regulation 10 (1). The Committee was satisfied that the statement referred to in that Regulation required to be in writing and to set out firstly the grounds of appeal, an alternative valuation and grounds on which that alternative valuation is arrived at. The letter lodged contained grounds of appeal which detailed the ways in which the appellants considered the Assessor's valuation to be flawed; it stated an alternative valuation. However, it did not provide the necessary grounds on which the valuation had been arrived at. The grounds of appeal were clearly distinct

from the grounds founding the alternative valuation and it was in this regard that the statement was deficient. Further as the requirement is for a written statement, discussions between Mr Dalton and the assessor did not cure any such deficiency.

The Committee did not consider the decision of the Lothian Valuation Appeal Panel to be of assistance and were not bound by it.

Whilst the case of Tesco Stores Ltd v The Assessor for Fife did not consider Regulation 10(1) but rather Regulation 10(5), their Lordships' view of common practice which was not compliant with requirement in terms of the Regulations was helpful. The present case is in point, as the statement lodged was clearly a standard statement and more care requires to be given to ensure that such statements are sufficiently detailed in each case.

Further, the Committee was satisfied that there had also been a failure to comply with the requirement of Regulation 10(2)(b) to provide written confirmation of an intention to proceed with the appeal. There was no indication from Mr Dalton that such confirmation had been sent; the Committee accepted the importance of compliance with this provision as stated by the assessor. There are a large number of appeals to be processed and disposed of within the statutory timetable. It is necessary for the assessor to be aware of which appeals are proceeding to ensure an efficient use of public resources in the preparing only those which are to proceed.

The Committee, mindful of the postscript to the case of The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others, decided to refuse the motion of the appellants for an adjournment of the appeals and granted the motion for the Assessor.

The appeal has accordingly been dismissed.