

STATEMENT OF REASONS

relative to appeal by

DUNNES STORES (UK LTD)

in respect of

SHOP UNIT MSU-2, ANTONINE SHOPPING
CENTRE, 3A TRYST ROAD,
CUMBERNAULD

This appeal, which was in respect of the 2010 Revaluation, called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 5th September, 2012.

Mr Robb of DTZ appeared on behalf of the Appellants and Mr Cleland, Advocate, appeared on behalf of the Assessor.

Mr Robb sought an adjournment of the hearing of the appeal to a later date on the basis that he had met with a member of the Assessor's staff on 26th July 2012 to discuss the appeal, the Assessor had not intimated to him until 23rd August 2012 that he would defend his published valuation, and Mr Robb had been unable to obtain his clients' instructions in sufficient time to prepare a case for the hearing.

Mr Cleland for the Assessor opposed the appellants' request for an adjournment on the basis that there had been adequate time to deal with the appeal since service of the citation and moved that the appeal 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(2) (b) of said Regulations.

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.

Mr Cleland submitted that the Assessor had written to the appellants by letter dated 2nd August, 2012, a copy of which was produced at the hearing. The letter stated, "In terms of Regulation 10(2) (b) of the above Regulations, I require written confirmation by 22/08/2012 of your intention to proceed with this appeal."

Mr Robb accepted that he received the Assessor's letter but did not respond to this, and confirmed he was aware that this would be a difficulty for him. He argued that if the Assessor did not come back to him to make his position known, he could not tell the Assessor what his intentions were.

Mr Cleland argued that the notice given by the Assessor under Regulation 10(2) served a purpose. It said in effect "Here is how the Assessor arrived at his valuation, do you wish to proceed with your appeal?" The negotiations between the parties were a red herring.

The Committee was satisfied that there had been a failure by the Appellants to comply with the requirement in terms of Regulation 10(2) to provide written confirmation of their intention to proceed with the appeal. The Committee accepted the Assessor's evidence that a written notice had been issued by him dated 02/08/2012 which required written confirmation to be provided by 22/08/2012. The Appellants had not complied. Regulation 10(2) applied even if negotiations were still in progress.

Mr Cleland invited the Committee in the exercise of its discretion to dismiss the appeal. He referred the Committee for guidance to the comments of the Lord Justice Clerk and Lord Hardie in the case of *Tesco Stores Ltd v Assessor for Fife* [2010] CSIH 95, and to the postscript by the Lord Justice Clerk in the case of *Assessor for Lanarkshire Joint Valuation Board v Jane Norman Ltd and Others* [2012] CSIH 50 ("the Centre West case"). The Committee in reaching its decision had regard to this guidance and in particular to the comments of the Lord Justice Clerk in the Centre West case at para 29:-

“A Committee might justifiably show indulgence to a party litigant who had an imperfect understanding of the Regulations; but in the absence of a cogent justification I can see no reason why it should excuse professional practitioners for a failure to observe them. I remind Committees of their power under regulation 10(3) and of the comments of this court in *Tesco Stores v Fife Ass* (2011 SC 316, at paras [17]-[19], and [24]-[26].”

The Committee took the view that whilst the Appellants had offered an explanation as to why they considered a continuation was necessary, no justification had been given for the failure to comply with Regulation 10(2)(b), and that for this reason the appeal should be dismissed.

The Committee accordingly dismissed the appeal.

The Committee were however concerned to note that the Assessor was unaware of the list of comparisons provided by the Appellants. Mr Cleland initially stated on behalf of the Assessor that no comparisons had been received which he submitted was against the spirit of Regulation 10(5), but when Mr Robb produced a copy of a letter dated 1st August under cover of which these had been provided, Mr Cleland conceded that the Assessor had no reason to believe these had not been received and withdrew his submission.

There have also been other instances in recent appeals before the Panel where correspondence has apparently not been received by the Assessor. The Committee are concerned given the importance of compliance with the Regulations to know that the Assessor has in place a robust system to log all incoming correspondence and the Secretary was asked to raise this matter with the Assessor.

7 September 2012