LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

Bunzl Disposables (UK) Ltd.

in respect of

Workshop, 23 Napier Road, Cumbernauld G68 0EF

This appeal which was in respect of the 2010 Revaluation was called for hearing at the meeting of a Committee of the Lanarkshire Valuation Appeal Panel on 26th September 2012. Avril Elliott of Matheson C S, Edinburgh appeared for the Appellants. Steven Stuart QC presented the case for the Assessor.

The Appellants argued that the appeal subjects at 23 Napier Road, Cumbernauld, with a proposed rateable value of £32,750, and the subjects at 19 Napier Road, Cumbernauld, with a proposed rateable value of £31,250, which had been cited for hearing on 5th December 2012, should be valued as a *unum quid* with a combined rateable value of £55,000. The Assessor opposed this, but agreed that the rateable value of the combined subjects, if these were to be valued on a *unum quid* basis, would be £55,000. The Appellant agreed the values as issued if the subjects were to be valued as separate units.

The appeal subjects comprised two adjacent industrial units in a terrace of three with a common yard to the front.

The Appellants argument was as follows. The subjects were occupied under a single lease with effect from 1st April 2010, were contiguous, had the same occupier, the same staff, and carried on the same activity, being used by the Appellants as a regional storage and distribution centre. As a matter of commonsense, they should be valued as a *unum quid*. They did not have interconnecting doors. The Appellants had considered putting these in, but did not wish to spend money on this during a recession. The office and toilet accommodation had been removed from unit 23, which indicated the units were being used together. The Assessor was inconsistent in his approach. Units 2-8, Tollpark Place, Cumbernauld which consisted of 4 contiguous units which were held on separate leases and had a brick wall between units 2 and 4 were valued by the Assessor as a *unum quid*. The lease of the appeal subjects was in terms which were consistent with this argument. "Premises" meant the subjects described in Part 3 of the Schedule. This referred to Units 19/23 Napier Road, Cumbernauld shown outlined and hatched green on the plan. In Part 2 of the Schedule, the common parts were defined as the development under exception of the lettable units including as the common parts inter alia the service roads and service yards. In Part 4 of the Schedule, the rights granted included inter

alia the right to use the service road and service yards forming part of the common parts for the purpose of the delivery and unloading of goods to the Premises, but in such a manner as to ensure that no obstruction or other inconvenience to other occupiers or users of the development is caused at any time. The Appellants therefore had a right to use the service yard and could move across this from one unit to the other. The Appellants position was supported by consideration of Armour, Chapter 10 in its entirety.

The Assessor argued that the appeal subjects were physically separate with no internal connection. The occupation of one unit did not rely on the other unit as both were used as storage. There was no external signage or other indication to the effect that both units were part of one overall unit. The Assessor's information was that the electricity was separately metered (but the Appellants' information was that there was a separate supply to each unit). The units had been leased separately till 1st April 2010 when a new single lease was produced. That there was one lease was a factor, but this was not determinative. Both units were capable of being let separately. In terms of Clause 8.14.1.1 of the lease, the common parts were at all times to be subject to the exclusive control and management of the landlord. In order to access the other unit you had to go out into the common yard and walk round, albeit only for a short distance. The landlord had complete control of the common yard, which was clearly not included within the let area. The tenant only had a right of access over this. No part of the yard was delineated for the exclusive use of the tenant.

Counsel for the Assessor reviewed the authorities cited in Armour, paragraph 10-08 to 10-14, with particular reference to the cases of Bank of Scotland v Assessor for Edinburgh (1891) 18R.936 (No 117), Burn Stewart Distillers plc v Assessor for Lanarkshire Valuation Joint Board [2001] R.A. 110 ("Burn Stewart"), and Davidson Brothers (Shotts) Limited v Assessor for Lanarkshire Valuation Joint Board, Lands Tribunal for Scotland Unreported January 27, 2011 LTS/VA/2008/265 &266. In the ordinary case whether separate buildings, or parts of buildings, should be entered in the roll as a *unum quid* falls to be decided primarily from the geographic standpoint. Applying the geographical test, these were two distinct units which were physically separate. The only connection was through land which had not been let to the tenant and was under the control of the landlord. By contrast, the units at Tollpark Place included within the subjects of let the yard area at the front which meant that it was possible to move from one unit to another through ground which was let to the tenants. Whilst there was a clear inter-relationship between the units at Napier Road, each could operate independently without the other. The fact that there was the same occupier carrying out the same business carried little weight. Where the geographical test does not provide a clear solution, it was necessary to have regard to the whole facts and circumstances, including the actings of the ratepayers and their intentions as manifested by such actings. In two cases, the decision had turned on the intention of the tenant to let out part of the property. There was no such intention here. The actings of the tenants in using both units for the same business just went back to the functional test.

The Committee carefully considered the evidence and submissions put to it. By a majority of three to one the Committee decided in favour of the Assessor.

There was no real dispute between the parties on the evidence, the issue was whether as a matter of valuation law and practice the units were correctly valued as separate units or as a *unum quid*. Both parties argued on the basis of the

lease terms effective from 1st April 2010. The majority of the Committee agreed with the submission made by Counsel for the Assessor and adopted this for the purpose of its decision. Applying the geographical test there was a clear result, that is, that these were two separate units. The only connection was through land which had not been let to the tenant and was under the control of the landlord. The Scottish authorities did not support an approach placing emphasis on whether separate subjects are in the same occupation and occupied as part of an integrated business: Burn Stewart.

The dissenting member took the view that the lack of any internal communication was not a relevant consideration because the lease allowed a degree of external connectivity in keeping with the size of the premises and did not hinder the functionality of operations therein. The lease expressly prevented nuisance by other users in the common area, allowing the users of these two units unhindered access.

The appeal was accordingly dismissed.

2 October 2012