

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

Pam and Peter Williams t/a Juniors

in respect of

Day Nursery, The Nursery, Biggar Business Park,
Market Road, Biggar

This was an appeal arising out of the 2010 Revaluation.

The appeal subjects were a private day nursery at Biggar Business Park, Market Road, Biggar. Brian Haile represented Mr and Mrs Williams who were not present at the hearing. Mr Haile explained that Mr and Mrs Williams had ceased to operate the business of Juniors Nursery from the appeal subjects in March 2011 and he had subsequently taken a tenancy of the appeal subjects. Mr Clelland appeared for the Assessor.

The issue was the correct rateable value as at the tone date, 1st April 2008. At the outset, Mr Clelland made it known that the rateable value being contended for by the Assessor was £16,200 and not figure of £19,200 appearing on the roll. The Appellant contended for a figure of £11,000.

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 19-01 to 19-37 inclusive and to the cases and legislation referred to therein: 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 definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956: the rent at which the lands 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 other expenses, if any, necessary to maintain the lands and heritages in a state to command that rent.
- the commentary contained in Armour, paragraphs 2-05 to 2-06 and to the cases and legislation referred to therein: the process of revaluation involved a completely fresh start and the Assessor is not bound by the levels, methods or schemes of valuation used for the previous roll.
- the commentary contained in Armour, paragraphs 5-31 and to the case of Assessor for Greenock v Inchgreen Amateur Rowing Club 1956 S.L.T. (Notes) 22 referred to therein: the Committee are not entitled to base decisions on such irrelevant considerations as the appellant's financial difficulties.
- the opinion of the Lord President in the case of Assessor for Fife v Mercat Kirkcaldy Ltd and Others [2012] CSIH 67: it is the duty of the Committee to decide appeals on the basis of what the legislation says and not what it would wish it to say; the wording of S3(4) of the Local Government (Scotland) Act 1975 does not extend to the occurrence of a material change of circumstances after the tone date.
- the commentary contained in Armour, paragraphs 5-25 to 5-26 and to the cases referred to therein: an appellant must initially show that there was a case to try; once that had been done, there was no presumption in favour of the Assessor's proposed valuation; 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).

Mr Haile argued that net annual value should be calculated by applying a factor to the nursery's registered capacity. He had carried out an analysis of various day nurseries in Lanarkshire on this basis which he maintained showed the appeal subjects to be out of line and unfairly disadvantaged. He explained that the

rates for the appeal subjects had increased by 58%, that this had a significant influence on the demise of Juniors and was also threatening the viability of his business. He drew a comparison between the appeal subjects and the other two premises in Biggar Business Park which had lower rateable values, were eligible for the small business rates relief and did not pay any rates. He also argued that the rateable value should not have increased by such a large amount when property prices and rental values have fallen so rapidly in recent years.

The Committee agreed with counsel for the Assessor that the scheme put forward by Mr Haile was fatally flawed. It was not based on the statutory hypothesis which, as Mr Haile stated, was concerned with the yearly rent the property could have been let for on the open market on a particular date. It used the net annual value for day nurseries rather than the rental figure for any let subjects. This methodology could not be used because it was open to changes which depended on how the operator chose to run his business. The Committee also agreed that it was settled law that arguments relating to financial viability or the dramatic influence of the economy on property values were not relevant, nor was it relevant to refer to the fact that the rates had risen since the last revaluation,

It was still necessary for the Assessor to explain and justify his valuation. The Assessor had valued the appeal subjects on the comparative principle looking to actual rents passing for day nurseries in Lanarkshire. The Committee agreed with this. The comparative principle of valuation is based on the proposition that a figure of rent which has received wide acceptance on the open market is the best indication of the annual value of the subject to which it relates. Accordingly if at the same date (a) there are in existence subjects which in size, character and location are sufficiently comparable with the subjects to be valued, and (b) these subjects are let upon the statutory terms or at rents which can properly be adjusted so as to represent the rents of those subjects on the statutory terms, then the annual value of the subjects to be valued may be arrived at by a consideration of the rents payable for the comparable subjects. This involves making an analysis of the rents to enable a judgement to be made as to the rent at which the subjects being valued could

have been expected to be let in the open market. Where this method of valuation is possible it will generally provide the most accurate guide to annual value – Armour on Valuation for Rating, Fifth Edition, para 19-19.

The Assessor's witness, Mr Lander, explained that the appeal subjects had originally been valued for the purposes of the 2010 Revaluation at a figure of £19,200. This had been arrived at using the contractor's principle, which involves an examination of the cost of construction and a rate of return on that cost. Most of the nursery appeals had been heard in May this year, and as a result more information about rents had come to light which had enabled the Assessor to value day nursery subjects on the comparative basis. The Assessor's analysis was set out in Production 4. The rents selected were those closest to the tone date of April 2008. This gave a basket of rents, from which the Assessor had derived a figure of £50 per square metre. Only 3 of the rents analysed were below this figure. Appeals had been agreed on this basis by four professional firms. The Committee accepted the Assessor's analysis, which had properly considered open market rentals for comparable subjects at the tone date.

A draft internal guidance note had been produced outlining the results of the rental analysis and recommended approach to valuation. Section 3 of the guidance note stated:-

“Nurseries situated in properties which, by virtue of their character or location (or both), have an obvious alternative use will have to compete with other potential occupiers. Rental analysis shows that the landlord will expect to receive a rent equivalent to the character of the property. In such situations the property should be valued in line with the prevailing rental levels for the appropriate alternative use. This is most commonly (but not exclusively) to be found in retail, office and industrial type properties/locations. Outwith these situations a rate of £50 per square metre should be applied to the Gross External Area.”

The Assessor took the view that the character, nature and location of the appeal subjects is such that it would not have an obvious alternative use which would attract potential occupiers other than day nursery operators.

He had therefore valued these by applying the rate of £50 per square metre derived from his rental analysis to the gross external area as shown in Production 3. The Committee agreed with this approach.

Having carefully considered the evidence led and the submissions made, the Committee reached the view that the Assessor had discharged the onus upon him to explain his approach and justify his valuation. There was no persuasive challenge to the Assessor's approach.

The Committee were accordingly satisfied that the Assessor had adequately explained his proposed valuation which should therefore be upheld.

The Committee accordingly dismissed the appeal.

25 September 2012