

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

Tom Super Printing & Supplies Ltd

relative to

27/31 Castle Street, Hamilton ML3 6BU

This was a running roll appeal brought under Section 3(4) of the Local Government (Scotland) Act 1975 on the grounds that a material change of circumstances had taken place since the entry was made in the roll. The rateable value of the appeal subjects for the purposes of the 2010 Revaluation had been set following appeal at £34,250. Mr Tom Super, company director, appeared for the Appellants, and Mr Brian Gill, Advocate, presented the case for the Assessor.

In considering its approach to the matter, the Committee had regard particularly to the commentary contained in *Armour on Valuation for Rating* (5<sup>th</sup> Edition) ("Armour"), paragraphs 3-12 to 3-31 inclusive and to the cases and legislation referred to therein including the provisions of Section 3(4) of the Local Government (Scotland) Act 1975 and the definition of material change of circumstances contained in Section 37(1) of that Act. The onus was on the Appellants to satisfy the Committee that a change in circumstances had taken place which affected the value of the subjects and this required to be done by way of proper evidence.

In terms of Section 3(4) of the 1975 Act, there must be a change of circumstances that has "materially reduced the extent to which beneficial occupation of the lands and heritages can be enjoyed." This means that the Committee can take account of a reduction in the extent to which the beneficial occupation of the subjects can be enjoyed only if that reduction is one that can be shown to have affected the value of the subjects, even though the Appellant cannot prove the precise extent to which the value has been reduced. Having given careful consideration to all of the evidence and submissions, the Committee concluded that no material change of circumstances in terms of the legislation had been shown to have taken place. The Committee were satisfied that the existence of the works amounted to a change of circumstances in that there had been a reduction in the beneficial occupation of the subjects, but did not consider that the reduction had been shown to have affected the value of the subjects. The change of circumstances in respect of which the reduction was sought was temporary and consisted of works by Scottish Water to upgrade the sewer leading to Cadzow Burn which runs down Castle Street, Hamilton by installing an underground machine chamber and building some kind of housing on the surface. The approximate site of the works were as shown coloured red on the Assessor's Production 1, and were situated opposite the appeal subjects and Doherty's public house at 33 Castle

Street, Hamilton. The Committee were not provided by either party with full information concerning the nature and duration of the works, but from the limited information made available it appeared that the works had begun in September 2010; the site had been fenced off from then until March 2011; the works had been expected to last four months or so but had run on longer than expected; they had involved the use of heavy plant; the heavy works stopped in January or February but the fencing had remained until March 2011 when paving and other works were completed; the nature and location of the fencing was as shown on the two poor quality photographs produced by the Appellant and in the four photographs comprising Assessor's Production 2; whilst the fencing was in place there was a restricted walkway as shown in the photographs leading to the appeal subjects and the adjoining public house, but the appeal subjects were not obscured by the fencing and remained visible to passers-by; and the restricted vehicular access allowed in Castle Street was largely unaffected by the works. The proprietor of the Doherty's public house had not seen fit to lodge an appeal, nor had an appeal been taken in relation to any other affected property except for Dazzle with Ink Spot, 44-46 Castle Street, Hamilton which was also occupied by the Appellants.

The Committee acknowledged that on the evidence a change of circumstances of a transient nature had taken place. There had clearly been some disturbance during the period of the works but the evidence had been vague. The issue for the Committee to determine was whether the change of circumstances was material in terms of the legislation in the sense of having reduced the value of the subjects. Mr Super did not set out to present any evidence of the affect of the change on the value of the subjects, but when asked whether he had any such evidence he produced to the Committee an e-mail with its attachments sent to the Assessor on 6<sup>th</sup> February 2013. This comprised monthly management accounts for the months ended 31<sup>st</sup> August 2010 to 30<sup>th</sup> April 2011 and also the profit and loss account for the business for the year ended 30<sup>th</sup> April 2011. These appeared to relate to both Ink Spot and Dazzle with Ink Spot. The management accounts had been annotated to show the percentage change in retail sales for each month compared to the same month in the previous year. The annotations noted a fall of 8.27% in August 2010, 14.85% in September 2010, 19.38% in October 2010, 31.91% in November 2010, 24.58% in December 2010, 12.46% in January 2011, 3% in February 2011, a rise of 1% in March 2011 and a rise of 9% in April 2011. The profit and loss account showed a fall in turnover of 2.5% on the previous year. However, the Committee agreed with Counsel for the Assessor that the monthly figures provided could not of themselves establish an effect on value as the variance shown could have been due to other causes such as the admitted trend of declining retail sales in Hamilton town centre, there was nothing to compare these with, and retail sales were only one aspect of the business carried on by the Appellants from the appeal subjects, the other aspects such as production sales, commercial sales and on-line sales being less likely to have been affected by any decline in footfall.

The Appellants were seeking a reduction in value at 15%, or such other reduction as the Committee saw fit but there was no evidence before the Committee to justify this or any lesser figure. There was no proper evidence of a fall in turnover during the period referable to the disturbance, and there was no evidence to support the conclusion that the alleged fall in turnover had caused the rental value of the appeal subjects, on the statutory hypothesis, to fall by 15% or by any other percentage. There was no evidence that in any specific comparable case, a similar level of disturbance had caused a fall in rental value. The Assessor presented to the Committee evidence of other instances where

reductions had been given for disturbance, namely, in relation to the works in 1999 to upgrade the Regent Way Shopping Centre, where with one exception, a 5% allowance had been made, and to the works in 2009 in Princes Street, Edinburgh forming part of the Edinburgh tramway project, where a 20% allowance had been made. The Committee agreed with Counsel for the Assessor that the works in Castle Street, Hamilton were in no way comparable to either of those. The Committee could see the Appellants' point that in relation to the works in Regent Way those affected would derive benefit on completion of the works whereas they would not, but the scale of the works there had been of a different order.

The Appellants' argument had in effect been that the circumstances were such that as a matter of commonsense they must be entitled to some reduction in their rateable value. The Committee did not accept this. The evidence provided concerning the nature and effect of the disturbance had been vague. There was no proper evidence of a fall in rental value. The Committee decided that the Appellants had failed to discharge the onus upon them under Section 3(4) of the 1975 Act in that the evidence before the Committee was insufficient to support the conclusion that there had been a fall in the rental value of the appeal subjects.

The appeal accordingly fell to be dismissed.

25 March 2013