

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

HAPPY FEET NURSERY & OUT OF SCHOOL
CLUB LIMITED

IN RESPECT OF

47-49 Claude Street, Larkhall ML9 2BU



This appeal called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 20 March 2013.

Mr Gary Walton appeared on behalf of the Appellants and Mr Brian Gill, Advocate, appeared on behalf of the Assessor.

Mr Gill 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 (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.

Mr Gill informed the committee that a citation had been issued on 21 December 2013. The Appellants had lodged a list of comparisons on 28 January 2013. They had lodged grounds of appeal and an alternative value

on 8 February. The Assessor had no issue with the grounds of appeal. However, as regards the alternative valuation, this was simply a figure with no explanation of the basis on which this had been arrived at. Also, the Appellants then stated that the figure is provided on a wholly without prejudice basis and can be amended at a later date. There was therefore no proper valuation as the figure had been provided on a without prejudice basis. There had therefore been no compliance with Regulation 10 (1).

By letter dated 15 February 2013, the Assessor then provided a written statement of the grounds on which the entry in the valuation roll had been arrived at, and also served a notice under Regulation 10(2)(b) requiring the Appellants, by 6 March 2013 to provide written confirmation of their intention to proceed with their appeal. None was received.

The Assessor then wrote on 11 March 2013 intimating his intention to seek dismissal of the appeal. The Appellants had initially responded saying that they wished to attend before the appeal committee as intimated in their grounds letter, but the grounds letter contained no such statement. They had then stated that it was not the grounds letter but the comparisons e-mail, but there was no such intimation in the comparisons e-mail

Mr Gill submitted that this was simply not good enough. The Appellants' agent well knew or at least ought to have known the procedure set down in the Regulations and the guidance set down by the Lands Valuation Appeal Court in relation to this. The purpose of the Regulations was so that the Assessor knew what he had to prepare for. The Lands Valuation Appeal Court had set down guidance on this in the cases of *Tesco Stores Ltd -v- Assessor for Fife* [2010] CSIH 95 and *Assessor for Lanarkshire Valuation Joint Board -v- Jane Norman Ltd & Ors* [2012] CSIH 50. In the case of *Jane Norman Ltd & Ors*, it had been stated that 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 there was no reason why it should excuse professional practitioners for a failure to observe the Regulations. Where failure to comply necessitated an adjournment this may cause expense and inconvenience to the other party, and to the committee itself. Such conduct would make the statutory deadline impossible to meet if it were to be replicated by all private practitioners.

Mr Walton explained that only 2% of his fee income was derived from cases of this nature. He was mainly engaged as a broker in nursery and care home transactions. He had worked in the Assessor's office from 1997 to 1999 and then in Speirs Gumley till 2002 but had no rating experience since then. Even though there were Regulations in place, there were different practices in place in relation to these. He had recently obtained reductions in 2 rates appeals before the Dundee committee and the issue of a notice under Regulation 10(2)(b) had never arisen.

As Appellants' Production 1, Mr Walton produced the Assessor's curtailment letter dated 28 December 2012. He believed he had furnished to the Assessor his grounds and comparisons. The letter stated that at the

conclusion of discussions, the Appellants would be required to state their intentions with respect to whether or not they would be proceeding to the Valuation Appeal Committee.

As Production 2, Mr Walton produced the Appellants' grounds and comparisons. He stated that further grounds had been lodged within 35 days from the hearing, but he was happy for these to be removed as they had already been covered in the original grounds.

As Production 3, Mr Walton lodged a record of conversations with the Assessor and his appointed valuer. He had started discussions with the Assessor as early as he could. On 5th March, 15 days before the hearing, there was a lack of clarity on the part of the Assessor who was still preparing a report. On 12 March, he received a phone call to advise the Assessor had finally looked at his proposal and was unable to agree this. He was also warned that the Assessor would be looking to have the appeal dismissed.

As Production 3a, Mr Walton lodged an e-mail of 12 March 2013 sent by blackberry in response to the Assessor's warning in which he stated that the Appellants wished to attend before the appeal committee as intimated in their grounds letter. He explained to the committee that the reference to the grounds letter was a mistake and this should have been a reference to the comparisons e-mail.

As Production 3b, Mr Walton lodged a fax received from the Assessor detailing the appeal agreements, which was dated 12 March, after the ten day period during which the Assessor had stated no further discussions would take place. On 15 March, he received a breakdown of the Assessor's valuation over the telephone, which he stated was the first piece of valuation evidence he had received.

As Production 3(c), Mr Walton lodged an e-mail which he had sent to the Secretary requesting a continuation. He considered it sensible to have the case continued, given the confusion over the Regulations.

As Production 3(d), Mr Walton lodged the Assessor's letter of 18 March to the Secretary which made reference to ongoing discussions when in fact no discussions had taken place. He submitted that it was for the Committee to decide why there had been a lack of dialogue on the part of the Assessor until after 6th March. In his view, the Assessor had not conducted the case in the spirit of the Regulations or in accordance with the procedure set down in his curtailment letter. He had never received any formal notice from the Assessor, and he considered the Assessor had not complied because he still had not received the Assessor's breakdown.

As Production 4, Mr Walton produced a copy of Regulation 19 which gave the committee power to extend the time appointed for the doing of any act provided it was satisfied that no substantial prejudice would thereby be caused to either party to the appeal. In his submission, the only prejudice to the Assessor was as a result of the additional grounds he had lodged, which he had now withdrawn. If the committee were to allow an extension,

there would be more running roll agreements which would help boost the Assessor's case. If the committee were to allow an extension he would wish this to be for as short a time as possible, and he was ready to proceed now.

As regards the postscript in the case of *Jane Norman & Ors*, he took the view that these were general comments which alluded to the conduct of the professional agents in that particular case. The court was merely reminding committees of their discretionary powers. There was a good justification for the failure to comply in this case. He had not received the Assessor's letter asking him to put this in writing and had followed the terms of the Assessor's curtailment letter which made no reference to a written statement.

Mr Walton acknowledged that he had not set out the grounds on which his alternative valuation had been arrived at but submitted that there was no requirement for this in the Assessor's curtailment letter. He had given the Assessor this information verbally during the course of discussions. He was unable to elaborate on his submission that written confirmation of the intention to proceed with the appeal had been provided in the grounds letter. The bottom line was whether his clients should be penalised. Their business was an asset to the local community and they had been waiting two years for their appeal to be heard. They should be given a fair hearing.

Mr Gill submitted that the Lands Valuation Appeal Court had gone out of its way to provide guidance to committees. In the *Jane Norman* case, the court had made it clear that there had to be cogent justification to excuse professional practitioners for a failure to observe the Regulations. The circumstances in the present case were far from that. It was the agent's professional responsibility to comply with the Regulations, and if he was not familiar with the Regulations, he should not be taking on work of this nature. Reference had been made to the Committee's discretion to grant an extension of time under Regulation 19, but it was the exercise of exactly that discretion with which the court's guidance had been concerned.

The Committee, having adjourned to consider the parties' submissions, decided that the appeal should 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 as the Assessor had asked, and that the Appellants' request for an extension of time should be refused.

The Committee found that the Appellants had failed to comply with the terms of Regulation 10(1) in that they had failed to specify the grounds on which their alternative valuation of £25,000 was arrived at. In terms of Regulation 10(1) this required to be specified in writing. This had not been done. It did not accept the Assessor's argument that as the alternative valuation had purportedly been provided on a without prejudice

basis, it was not a proper valuation, and it noted that the Assessor had then seen fit to furnish in response to the Appellants a statement under Regulation 10(2)(a) without appearing to take exception to this.

The Committee found that the Appellants had failed to comply with the terms of Regulation 10(2)(b) in that they had failed to provide written confirmation to the Assessor that they intended to proceed with their appeal. It accepted the Assessor's submission that in response to the Appellants' grounds of appeal the Assessor had sent the Appellants a written statement of the grounds on which the entry in the valuation roll was arrived at and notice in terms of Regulation 10(2)(b) requiring them by 6 March, being a date not less than 10 days after service of the notice, to provide such written confirmation, and that no written response had been received. It considered it to be likely that the Mr Walton would have received this, and it could find nothing in the Appellants' list of comparisons which made good his omission to provide this.

The Committee was asked by the Appellants to exercise its discretion under Regulation 19 to extend the time limits for compliance. In considering whether or not to exercise its discretion, the Committee had regard to the guidance given by the Lands Valuation Appeal Court in the postscript to the Jane Norman appeal at paras 26-29. In the present case, the committee were not being asked to show indulgence to a party litigant who had an imperfect understanding of the Regulations, but to a professional practitioner who, as counsel for the Assessor had submitted, knew or ought to have known the Regulations. Mr Walton had very candidly stated that he did not deal on a regular basis with rating appeals, but in the Committee's view this did not amount to a cogent justification which would have excused the failure to observe the Regulations which the committee found to have taken place.

The Committee noted the history of delay on the part of the Assessor disclosed in the Appellants' Production 3 and expressed concerns arising from this but considered that this did not offer any justification for the failure on the part of the Appellants' agent to comply with the Regulations. The Committee also took note of the point made by Mr Walton concerning the terms of the Assessor's curtailment letter in relation to when an appellant would be required to state his intention to proceed to committee. The Committee acknowledged that this might well create confusion in the mind of a party litigant but felt that it ought to have been clear to a professional practitioner such as Mr Walton that this did not override the time limits set out in the Regulations.

The Committee accordingly dismissed the appeal.

25 March 2013