

Statement of Reasons

Relative to appeal by

Abbey Motors

In respect of

Garage, Block 1, Unit 5c,  
251 Low Waters Road,  
Hamilton, ML3 7QN

This appeal was in respect of the 2010 Re-valuation and called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 15<sup>th</sup> May, 2013.

Mr Chiesa appeared on behalf of the appellants and Mr Clelland appeared on behalf of the assessor.

Mr Clelland for the assessor 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. Mr Chiesa sought an adjournment of the hearing of the appeal to a later date. Each party opposed the motion made by the other.

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 Clelland for the assessor stated that the appellants had lodged grounds of appeal in compliance with Regulation 10(1) on 3<sup>rd</sup> April, 2013. The assessor, in turn, had served a notice

upon the appellants in terms of Regulation 10(2) (b) on 15<sup>th</sup> April 2013 to which a response was required in terms of that Regulation by 1<sup>st</sup> May 2013. No response was received. The assessor acknowledged that discussions had taken place between Mr Chiesa and a member of the assessor's staff with regard to the appeal but contended that these discussions were distinct from the procedural requirements upon the appellants as set out in the Regulations.

Mr Clelland referred to the case of The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others [2012] CSIH 50 a decision of the Lands Valuation Appeal Court which he submitted supported his submission. In a postscript to this case at paragraphs [26] to [29] Lord Justice Clerk Gill noted that the Committee which had heard the original appeal had found that the ratepayers had failed to comply with Regulation 10(1). However, the Committee had refused the assessor's motion to dismiss and had continued the appeals and given the appellants further time within which to comply with the said Regulation. Lord Justice Clerk Gill opined that a failure to comply with the Regulations should not be "readily excused." Latitude might be afforded to a party litigant but not to a professional practitioner.

Mr Clelland also made reference to two previous decisions of Committees of the Valuation Appeal Panel; Nursery, 47/49 Claude Street, Larkhall and Shop Unit MSU-2, Antonine Shopping Centre, 3A Tryst Road, Cumbernauld. In the first case, the committee had granted a motion by the assessor for dismissal for failure by the appellants in that case to comply with Regulation 10(1) and 10(2)(b). In the second case, the committee had granted a motion by the assessor for dismissal for failure to comply with Regulation 10(2) (b).

Mr Clelland stated that there were around 3,000 outstanding appeals listed for hearing and which required to be disposed of before the end of the year and around 700 appeals listed for each hearing date. The granting of a continuation, given the large volume of appeals to be processed by the assessor risked jeopardising the efficient and expedient processing of all appeals. Mr Clelland was aware that Mr Chiesa had suffered some ill health but, whilst sympathetic, the fact remained that Mr Chiesa was a professional agent who was well aware of the requirements of the Regulations and the view taken by the assessor in relation to strict compliance with them.

Mr Chiesa confirmed that he was conversant with the requirements of the Regulations and accepted that he had failed to formally respond to the notice issued by the assessor in terms of Regulation 10(2). However, he emphasised that he was not known to be cavalier in his approach to compliance with the Regulations; he was generally diligent and his practice was to hand deliver letters to the assessor to ensure compliance. However, in this particular case, he had had discussions with a member of the assessor's staff in relation to the appeal. These

discussions, he felt, had proceeded well and the member of the assessor's staff seemed sympathetic to the appeal. Mr Chiesa was confident that agreement would be reached without the need for the appeal to proceed to a hearing. He was astounded when he was then advised by the member of the assessor's staff with whom he had been dealing that the assessor intended to seek dismissal of the appeal due to Mr Chiesa's failure to respond to the notice which had been issued by the assessor to him. He stated that he had told the assessor's staff member that he would be proceeding to the hearing before the committee if agreement was not reached with regard to the appeal.

The Committee gave careful consideration to all of the submissions made. It was accepted by Mr Chiesa that he had failed to comply with the requirement of Regulation 10(2)(b) to provide written confirmation of an intention to proceed with the appeal. The Committee accepted the importance of compliance with this provision as stated by the assessor. There are a large number of appeals to be processed and disposed of within the statutory timetable. It is necessary for the assessor to be aware of which appeals are proceeding to a hearing to ensure an efficient use of public resources in the preparing only those which are to proceed.

The Committee, mindful of the postscript to the case of The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others, decided to refuse the motion of the appellants for an adjournment of the appeals and granted the motion for the assessor.

The appeal has accordingly been dismissed.