LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

W H SMITH

in respect of

SHOP, 46 REGENT WAY, HAMILTON ML3 7DX

This was an appeal arising out of the 2010 Revaluation, heard on 25 September 2013. Mr Christopher Haddow QC represented the Appellants. Mr Steven Stuart QC appeared for the Assessor.

The appeal subjects had been valued by the Assessor at a figure of net annual and rateable value of £300,000. At the hearing, the Assessor spoke to a reduced value of £290,000, resulting from a revision to the reduction factor applied on the first floor accommodation, adjusted from 12.5% to 10%. The Appellants contended for a figure of £220,000.

The appeal subjects comprised a shop unit located at 46 Regent Way, Hamilton within the Regent Shopping Centre. The Appellants are tenants. The Centre is anchored by the largest unit, Marks & Spencer which has a Gross Internal Area (GIA) of 5,604m2. Most of the shops in the town centre have been valued on the zoning principle, but the five largest shops have been valued on an overall basis.

The Assessor had carried out his valuation of the appeal subject using the zoning principle. This was as shown in Assessor's Production 6. A zone A rate of £925/m2 had been applied to a reduced area of 361.87m2. An addition had been made for air conditioning to an area of 814.18m2 at a rate of £7/m2. An allowance of 13.75% had then been applied to reflect quantum. The resulting figure of £293,621 had been rounded down to £290,000.

The Appellants' alternative valuation was as shown in the Appellants' Production 6. The figure of £220,000 was put forward as being fair and reasonable. This had been shown on both an overall and on a zoning basis.

On an overall basis, an overall rate of £175 psm had been applied to an agreed Gross Internal Area (GIA) of 1251m2. The resulting figure of £218,925 was rounded up to £220,000. On a zoning basis, the zone A rate of £925 had also been applied to a reduced area of 361.87m2. An allowance of 35% had then been made for quantum. An addition had

been made for air conditioning to an area of 814.18m2 at a rate of £7/m2. The resulting figure of £223,273 was rounded down to £220,000.

The Committee noted from the valuations put forward that the parties were in agreement as to the reduced area and zone A rate in any valuation by application of the zoning principle, and on the GIA in any valuation on an overall basis.

Before the Committee, the primary, but not the only question raised, was whether the appeal subjects fell to be assessed by application of the zoning principle or on an overall basis. Counsel for the Appellants expressed the issue more broadly. He submitted that any method of valuation was only a means to an end, namely the fair distribution of the rateable value of all Scottish subjects, and in particular the fair distribution of rateable value between the shops in the Regent Way Shopping Centre in Hamilton. The comparative principle fell to be applied, using a basket of rents. The appeal subjects ought to be valued as a shop. Shops did not become a different genus because of size. The question for the Committee was how do you reach a fair valuation? In Counsel's submission, the answer had been given by the Lands Valuation Appeal Court in the case of Textstyle World v Assessor for Strathclyde Region 1995 SC 588. The question in that case was whether the appeal subjects should be valued as a shop or as a retail warehouse. Lord Mulligan said that as there would be borderline cases, in order to provide equity between ratepayers, there should be no great difference between the annual value of premises falling just on one side of the line as against that of those falling just on the other. Effectively, the court was saying whichever approach you use, step back and take a look. He argued the Assessor had not done so.

The Appellants contended that the rateable value of the appeal subjects was excessive by comparison to the rateable values of comparable properties in Hamilton Town Centre. In particular, they contended that in approaching the valuation of two otherwise almost identical units (W H Smith and Boots), logic dictates that the larger of the two should carry a higher rateable value.

The Committee noted that the appeal subjects, valued by the Assessor at £290,000 on a zoning basis, had a GIA of 1252m2, whereas Boots, which adjoined WH Smith and was the smallest of the shops valued on an overall basis, had a GIA of 2152m2 and was valued at a figure of £236,000. The Committee acknowledged that this appeared to be out of kilter.

They went on to consider the Appellants' approach to valuation.

The Appellants' witness, Mr Rankin, gave evidence that if we "stand back and look", then it is clear that the rateable value on W H Smith should be assessed at a level that is no higher than that of Boots, which is more than 70% larger, and no lower than Units 50 and 39, which were smaller. The Committee understood the point he was trying to make but considered that the best evidence of value was that of adjusted rental from a basket of comparable rents rather than

other rateable values. In coming to his alternative valuation, Mr Rankin had looked to rental evidence around tone. He felt that the best evidence was the October 2006 rent review on Woolworths (Unit 29) (£350,000pa/GIA 3319sm) and the December 2008 rent review on Dorothy Perkins (Unit 50) (£162,000pa/GIA 1030m2) (although the Committee noted that according to the Assessor's evidence the Dorothy Perkins date of review was 24 December 2004).

He went on to say these devalued to £189 and £105 respectively. The Committee were unclear about the methodology of devaluing the rent for Dorothy Perkins when it did not appear to be in dispute that these subjects fell to be valued by application of the zoning principle rather than on an overall basis, but in any event they noted that Mr Rankin had confused himself by devaluing not the rent but the rateable value. The correct figures would have been £105 and £157 respectively. Mr Rankin then went on to interpolate the figures he had arrived at, using the WH Smith GIA of 1251sm, which he said gives an overall valuation rate of £181psm. The Committee noted that in fact, using the corrected figure of £157 instead of £189, the correct interpolation would be £152psm. On the basis that the location of large retail units such as the Primark property at 29 Quarry Street, Hamilton is invariably less location sensitive than smaller retail units, Mr Rankin then devalued that property (£241,000psm/1381m2) to an equivalent rate of £174.50. He took the view that the appropriate rate for W H Smith should be derived by reference to the above and should fall within the parameters of established value levels. He believed that an overall rate of £175psm producing a rateable value for the appeal subjects of £220,000 is fair and reasonable. However, if the appropriate rate for the appeal subjects were to be arrived at in this way, the rateable value produced would be considerably lower than £220,000, in the order of £190,000. This would have been lower than the figure of £195,000 for Dorothy Perkins, which Mr Rankin had stated the value for the appeal subjects should not fall below.

Even if Mr Rankin's calculations had been correct, in order to arrive at the figure of £220,000, a quantum allowance of 35% would have been required. The Committee agreed with counsel for the Assessor that there was no local evidence to justify this in circumstances where the allowance for Primark was only 15% and for Dorothy Perkins 12%. It was simply a means to an end. On the overall basis, the rate that Mr Rankin had selected of £175 was 60% above the rate of £110 for the other large shops. It was effectively inverse quantum, which as Counsel for the Assessor had said, you did not get.

The Committee felt that Mr Rankin had in effect picked a figure out of thin air, then set out to develop a rationale for this. Unfortunately, he had confused rateable value with rent and had *per incuriam* arrived at a figure which was lower than the figure he had chosen and outwith the parameters which he had put forward.

For these reasons, the Committee did not consider Mr Rankin's alternative value to be properly calculated or credible.

The Committee then went on to consider the Assessor's approach to valuation.

The Committee agreed with Counsel for the Assessor that there were only two possible bases of valuation of the appeal subjects: they either fell to be valued as a shop under SAA Practice Note 40, or as a large shop under SAA Practice Note 37. Categorisation was dealt with in Practice Note 37, Paragraph 4 which provided *inter alia*:-

4.1 There is no fixed starting point in terms of size that dictates when a "standard" shop becomes a "large" shop. Frequently this decision will depend upon the particular size and style of the unit in comparison with its neighbouring properties. Supply and demand conditions can also have an effect. Wherever possible local rental evidence should be considered.

4.2 Where no local evidence exists it is suggested that stores which are more than 5 times the norm size of neighbouring shops (in terms of reduced area) may be considered for treatment as a large shop. This will generally include stores that are over 1,850m2 GIA in outlying areas and small towns.

The Assessor argued that in the present case there was local evidence. He addressed this using the criteria set out in Paragraph 4 above.

Size and style

He suggested that the five large shops within the town centre which had been valued on an overall basis had different physical properties from the appeal subjects. All were over 2000m2 GIA; with the exception of Bairds, had individual floor plates in excess of 1,000m2; and each had a first floor area of similar size to their ground floor area. These were quite different from the appeal subjects, being some 1,000 m2 less than the smallest of these, with a significantly smaller first floor area. The appeal subjects were similar to Primark at 29 Quarry Street, Hamilton which the Committee had decided were correctly valued on a zoned basis, and the next largest in size, Dorothy Perkins, had also been valued on a zoned basis with end allowances to reflect its awkward layout.

Supply and demand conditions

The Assessor argued that there was a different rental market for smaller shops such as the appeal subjects with a larger number of tenants, greater demand and higher rents.

Local rental evidence

This had been analysed by the Assessor in his Productions 4 and 5. The Assessor had applied a rate of £910 with an adjustment for quantum. This was out of step with the rent now being paid for the appeal subjects, but was not out of line with the other rental evidence in 2004, or with rents struck in 2006/07 closer to tone. However if this were to be analysed on an overall basis as shown in the Assessor's Production 5, it was out of line, being more than double the rent rate of the larger shops valued on an overall basis.

Counsel for the Assessor argued that though Boots had a lower rateable value than the subjects of appeal, this could be explained in the light of the above factors. He took on board the opinion expressed in the Textile World case, but felt that there the court was never given an explanation of why there was a difference, whereas in the present appeal there is a clear justification for the difference.

The Committee were satisfied the Assessor had adequately explained in terms of the relevant Practice Note the basis upon which he had applied his chosen method and that he had soundly applied this, and considered that the Assessor's approach to valuation was to be preferred to that of the Appellants, which for the reasons explained it found to be untenable, being neither properly calculated nor credible. The Assessor undoubtedly has a duty to ensure his valuation is correct. This is the duty of fairness to all ratepayers imposed on the Assessor by the Lands Valuation (Scotland) Act 1854. Whilst the Committee had doubts about the fairness of the Assessor's valuation when compared to the valuation of adjoining unit occupied by Boots, the Committee were bound to acknowledge that the Assessor had adequately explained his valuation and no properly calculated or credible challenge to this had been put forward by the Appellants.

The Committee accordingly dismissed the appeal.

7th November 2013