LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

By

PHILIP & MARTIN CURLE t/a CURLE PROPERTIES

in respect of

SHOP, 38 ALEXANDER STREET, AIRDRIE ML6 0BA

This was a running roll appeal heard on 6 November 2013. Mr Philip Curle appeared for the Appellants. Ian Newton appeared for the Assessor.

The appeal subjects comprised a shop at 38 Alexander Street, Airdrie. The Appellants are the proprietors. The 2010 Revaluation was agreed with rating surveyors acting for the Appellants at £12,500. The appeal was a material change of circumstances appeal under S3(4) of the Local Government (Scotland) Act 1975. The Assessor had reached agreement with the Appellants to split the entry into two separate entries with effect from 1 September 2013. The Appellants maintained the entry should be split with effect from 9 April 2013.

The appeal subjects comprise a two storey end terrace front building and adjoining single storey rear building. They operate as a car accessories shop, trading as Overdrive, and a cycle shop, trading as Curle Cycles. Overdrive occupies the ground floor of the front building and extends to the raised access right hand side section of the rear building. It is accessed through a main door on Alexander Street. Curle Cycles occupies the left hand side of the raised access rear building as well as the first floor of the front building, access being from a door on the gable of the end terrace. The only toilet facilities are those within Curle Cycles.

The Committee heard a good deal of evidence concerning the background to matters.

In essence, the physical situation within the appeal subjects as at 9 April 2013 and also as at 29 August 2013 is as shown in the photographs being Assessor's Productions 4.2, 4.3 and 4.4. A lateral stud partition wall had been erected between the left and right hand sides of the raised access rear area, with the gap left between the units closed off with an MDF door, with the result that the two units remained interconnected.

The physical situation as at 1 September 2013 is as shown in the photographs being Assessor's Productions 4.5 and 4.6 which although taken on 1st October 2013 were acknowledged by the Assessor to reflect the position as at 1 September 2013 when the erection of a full height stud partition wall partition between each unit was completed, with the result that there was no internal communication between the units.

Overdrive and Curle Cycles were separate businesses, but during the period in question when there was still a door between the units, shop staff routinely passed through the door going between both shops. Both shops were managed by the same manager. The gap between the units had been left for convenience as the businesses were on the market for sale. The toilet in Curle Cycles was used by the staff in Overdrive. The option of building a new toilet block to the rear had been considered but not carried through. The units share one meter for gas and one for electricity.

The Assessor referred the Committee to Armour on Valuation for Rating (5th Edition) ("Armour"), paragraphs 10-07 to 10-15, dealing with the issue of "What is the unit of valuation?". He drew the Committee's attention to passages from the cases of *Davidson Brothers (Shotts) Ltd v Assessor for Lanarkshire Valuation Joint Board*, Lands Tribunal for Scotland Unreported January 27, 2011 LTS/VA/2008/265 & 266 citing *Burns Stewart Distillers plc v Assessor for Lanarkshire Valuation Joint Board*, [2001] R.A. 110, *Bank of Scotland v Assessor for Edinburgh* (1891) 18R.936 (No117) and *Assessor for the County of Fife v General Accident , Fire & Life Assurance Corporation Ltd* [1969] RA.454.

In considering its approach to the matter, the Committee had regard particularly to the Commentary contained in Armour and to the cases referred to therein. There are no exhaustive rules for all cases, but some broad principles can be discerned which may be of assistance as guides towards the solution of the problem of what is the unit of valuation in a particular context. In the ordinary case, the question whether parts of a building should be entered in the roll as a

unum quid falls to be decided primarily from the geographical standpoint. The common enclosure in many cases supplies a useful test, by which it may be possible to decide whether the subjects should be regarded as a single unit or whether the subjects are so physically distinct that they cannot be regarded as one unit. Where subjects are within a common enclosure, it may nevertheless be possible to identify a sufficient degree of structural separation to justify separate entries. The presence or absence of internal communication between two premises forming part of the same building is a consideration to be taken into account. If parts are separately occupied then there must be separate entries for the separate subjects in accordance with the rule that the unit of valuation cannot exceed the unit of occupation. Although the application of the geographical test will in many cases provide a clear answer, this test, though paramount, is not to be regarded as the sole test. An important consideration in deciding whether subjects which are physically disconnected should nevertheless be treated as a *unum quid* may be whether the association between the alleged accessory and principal is necessary for the use of the subjects. The functional test may also be applied so as to exclude part of a geographical unit where it is used for a separate purpose. In cases where the geographical test does not provide a clear solution, it may be necessary to have regard to the whole facts and circumstances, including the actings of the ratepayers and their intentions as manifested by such actings.

In the present appeal, the Appellants' intention had been to separate the units so as to take full advantage of the Small Business Bonus Scheme. However because the businesses were on the market the proprietors had left a gap between the units for the sake of convenience whilst they endeavoured to effect a sale and until they found a buyer or buyers whose intentions were known. From a geographical standpoint, the Committee felt that until the physical separation of the units had been completed by the removal of the door and the erection of the partition, the degree of interconnectivity between the units was such that they should continue to be treated in valuation terms as a single unit. Until that point they could not be considered to have been separately occupied.

In his submission to the Committee, Mr Curle did not appear to argue that the work which had been carried out on 9 April 2013 was sufficient in law to separate the units. He was more concerned to take issue with what he described as the massive delay on the part of the Assessor. He argued that throughout the matter which he had hoped to resolve a year earlier he had taken advice from the Assessor expecting to be able to rely on this and had acted upon this but the Assessor had kept asking for something else to be done. The Assessor for his part maintained that it was not his

function to give advice to appellants. The Committee could understand the point Mr Curle was seeking to make but it was their duty to determine the correct unit of valuation, not to determine the extent of the Assessor's public duties. The Committee decided that until the door had been removed and the separation had been completed by the erection of the partition the Assessor had been correct to continue to treat the shops as a *unum quid*.

The Committee accordingly dismissed the appeal.

11 November 2013