

LANARKSHIRE VALUATION APPEAL
PANEL

STATEMENT OF REASONS RELATIVE TO
APPEAL

by

SCOTTISH FIRE AND RESCUE SERVICE

in relation to

UAILL TRAINING CENTRE,
WESTBURN DRIVE, CAMBUSLANG
G72 7NA

This appeal called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 18th November 2013. Mr Christopher Haddow, QC, appeared on behalf of the Appellants, and Mr Steven Stuart, QC, appeared on behalf of the Assessor.

The appeal is a running roll appeal. The Appellants are proprietors and the NAV and RV appearing on the roll is £2,000,000. The subjects are valued on the contractor's basis and the issue which falls to be determined is the decapitalisation rate to be applied to the effective capital value. The Assessor has applied 5%. The Appellants contend for 3.33%. The parties are agreed that if the appeal is upheld, the alternative value should be £1,340,000 with effect from 21st May 2012

The decapitalisation rate is prescribed in The Valuation for Rating (Decapitalisation Rate) (Scotland) Regulations 2005 ("the 2005 Regulations"), Regulation 4:-

(a) The decapitalisation rate shall be-

(a) 3.33% in the case of any lands and heritages consisting of any MoD property, church property, or an educational establishment; and

(b) 5 per cent in any other case.

Under Regulation 2(2), "educational establishment" means any lands and heritages which are constructed or adapted for use, and which are wholly or mainly used, for the purposes of-

...(g) any other educational establishment which is managed by a body not established for profit and which provides further education within the meaning of section 1 of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”).

S1(3) of the 1992 Act provides:-

(3) In this Part of this Act “further education” means any programme of learning, not being school education, provided for persons over school age, being a programme falling, for the time being, within section 6 of this Act.

Section 6 of the 1992 Act provides:-

(1) A programme of learning falls within this section if it –

- a) prepares a person for a vocational qualification;
- b) prepares a person for-
 - (i) a qualification awarded by the Scottish Qualifications Authority...

“Vocational qualification” is not further defined in the 1992 Act.

The Appellants’ counsel referred the Committee to the definition of “vocation” in the Oxford English Dictionary, 1989 Edition, of “one’s ordinary occupation, business, or profession”, and of “vocational” as “of, pertaining or relating to, a vocation or occupation”. He took the view that the question in this appeal is likely to be whether what goes on in the appeal subjects is something which qualifies those who receive the training for their ordinary job within the fire station.

The Assessor’s counsel took the view that the emphasis is on whether a qualification is involved. The Assessor’s view was that this meant a course or training which is either evidenced in some way, accredited by the provider or by some external body, or the purpose of which is to obtain some advancement, promotion or increment. That type of training has to be distinguished from training in service, ongoing training or refresher training, where there is no qualification.

Based on the evidence heard and submissions made in the appeal led before it, the Committee preferred the position adopted by the Appellants. Its reasons for doing so were as follows.

The appeal subjects comprise a new purpose built fire and rescue training centre constructed on a brown field site at the Clydemill Industrial Estate, Cambuslang. The Scottish Fire and Rescue Service, who managed the appeal subjects, were not established for profit. The construction of the development had taken place in two stages, firstly, a working fire station, then the training facility. The training facility consists of an academic zone, consisting of an academic building and a practical

facilities building with an eight bay fire appliance garage, and a practical zone, split into three training zones, residential, transport and industrial, which allow the creation of real-life scenarios. The training facility became operational on 21st May 2012. It is concerned with initial training and operational skills development. It currently offers a range of training courses which are set out in the Appellants' Production 3 – Activity Details Report. It is understood that the Scottish Fire Services College in Gullane will close and the new facility at the subjects of appeal will replace this.

The Committee heard that on completion of recruit training, trainee fire-fighters become development firefighters and work towards achieving an SVQ in Emergency Fire Service Operations in the Community. The process takes approximately three years and competence is assessed on actual work-based activities. All station and training centre based training can be used as evidence to demonstrate competency. Assessments also take place, at the training centre, at 12, 24 and 33 month intervals, through what are known as Red, Amber and Green Phased Assessments. When qualification is achieved, the individual becomes a qualified fire-fighter with core skills applicable to all operational personnel. He or she will then undergo continuous training by attending lectures, exercises and practical training sessions to maintain competence and develop core skills to enable them to operate safely and effectively in the workplace.

The subjects of appeal were built for the purpose of providing training centre based training and assessments, and they perform this function. Training to consolidate skills also takes place on evenings, when operational personnel focus on a different subject each month over a three year rolling cycle. Instruction in more technical skills is also provided for staff who undertake specialist duties, such as rope rescue, or water rescue. Driver training also takes place, to drive under blue light conditions or to operate specialist equipment, the aim being to train 60% of eligible personnel. Full details of all training for each individual is recorded electronically.

Without appropriate training, fire-fighters would be unable to function in their occupation. If they are unable to engage in training, this has a range of consequences. If they lose a skill, they need to undergo the complete course again. They may be unable to attend a particular incident.

In order to establish whether in terms of Regulation 2(2) of the 2005 Regulations, the appeal subjects are “wholly or mainly” used to prepare a person for a vocational qualification, the Assessor carried out an exercise which can be seen in Assessor's Production 11. The Production shows a list of courses provided at the training facility and whether the course leads to a vocational qualification. According to the Assessor, the exercise showed that only 23% of the candidate days lead to a vocational qualification, and the bulk of the training which is undertaken is not different from any organisation that undertakes staff training for its own purpose.

The Committee considered the exercise to be flawed in that it considered not whether the course leads to a vocational qualification but rather whether the course leads to an accredited vocational qualification. Had the legislature intended to restrict the definition in S6(1) of the 1992 Act to a programme of learning which prepares a person for an accredited vocational qualification, or a qualification accredited or awarded by the Scottish Qualifications Authority, it could easily have said so in those terms. Whilst the Committee could accept that a qualification was more than just participation in a course, it agreed with the submission made by the Appellants' counsel that looking at S6(1) the question at issue was whether on the evidence what goes on in the subjects of appeal is something which qualifies those who receive the training for their ordinary job within the fire station. It considered the answer to that question to be yes. Whilst the quality and consistency of the training received was clearly relevant, and whilst a course of training by a provider accredited by a qualifications authority might more readily be regarded as providing that quality and consistency, the legislation did not say that to be an education establishment all training provided must be accredited. In any event, accreditation would relate to the course rather than its participants, and there was no suggestion on the part of the Assessor that only accredited courses followed by an examination in which candidates achieved a certain standard could be said to be a qualification. The Committee accepted that the training provided at the appeal subjects did qualify those who received this for their ordinary job within the fire station in that without the training they received, they would be unable to function in their occupation.

The Assessor in his evidence acknowledged that if a course at the appeal subjects is attended by trainees they can use the training towards the SVQ Emergency Fire Services: Operations in the Community; and the appeal subjects were also the awarding centre for certain operational skills development courses, and were accredited, for example, by the RYA, in relation to others. However most of the other forms of training, such as for instance the evening training provided to all personnel, although not accredited, were in the committee's view also necessary to ensure they maintained the skills and knowledge to deal safely with the range of incident types they may attend and to fulfil their role as fire-fighters. The Committee could especially see how driver training to drive fire appliances to operational incidents under blue light conditions was necessary to prepare participants for a skill set without which the service would be unable to function. The specialist skills which were required in rope rescue or water rescue stations were essential to those in stations which dealt with that type of incident. The quality and consistency of the training provided had not been called into question. A personal development record system had been set up to record the details of the training given to each staff member. In the particular context of the fire and rescue service, the Committee did not agree with the view put forward by the Assessor that this was merely on the job training of a type which was typical in most areas of work, and could not be seen as any form of vocational qualification.

The Assessor in his evidence recognised that the Scottish Fire Services College in Gullane is accredited by the Scottish Qualifications Authority which quality assures qualifications offered in Scotland by approving awarding bodies and accrediting their qualifications, and that the appeal subjects are working towards the same accreditation. He appeared to concede that in the event accreditation was achieved by the appeal subjects, the Assessor would need to look at this again. The Committee could not see how the programme of learning provided by the appeal subjects, which in the particular context of the work of the fire and rescue service, qualifies those who receive this to carry out activities without which they could not function in their ordinary job, could only be construed as coming within the wording of the statute if it was accredited, when the statute did not say this.

The Committee accordingly granted the appeal.

Whilst it was for the Committee to reach a decision in the appeal presented to it, the Committee had reservations about certain aspects relating to the conduct of the appeal.

The Assessor in his Production 10 narrated that the issue of the decapitalisation rate appropriate to a Fire Brigade Training Centre had been discussed at a meeting of the Public Buildings Committee of the Scottish Assessors Association, and that as a result the Assessor had taken the stance which he had in the present appeal. He conceded however that the scenario presented then did not correctly reflect the facts in the present appeal.

Production 10 stated that the issue was further clouded by the fact that there were similar establishments in Scotland where local assessors had applied the higher rate and some the lower rate. Reference was made at the hearing to the Scottish Fire Services College in Gullane, to the Scottish Police College, Tulliallan, and to the Police Training and Recruitment Centre, 319 Eaglesham Road, East Kilbride where the lower rate had been applied, but there was no mention at the hearing of subjects where the higher rate had been applied.

At the hearing, as a preliminary matter, the Assessor objected to the introduction of 319 Eaglesham Road as a late comparable, and indicated that he would object to any evidence led concerning this. After hearing submissions, the Committee upheld the Appellants' contention that Regulation 10(5) related only to subjects which are to be used as comparables in a valuation based on the comparative principle and does not include subjects whose treatment is referred to as examples or precedents of a method of valuation. Given that the SAA consideration of the decapitalisation rate had been raised by the Assessor as relevant to this appeal, the Committee also felt it appropriate that all relevant aspects should be considered, though in the event no evidence was led before the Committee concerning the other establishments referred to beyond the fact that the lower decapitalisation rate had been applied both in 2005 and 2010. The Committee did not consider as well founded the submission by the

Appellants' counsel that the matter fell to be determined according to the tone of the roll set by the treatment at the 2010 revaluation of the other establishments referred to, but did consider that in so far as the stance taken by the Assessor reflected a change of policy on the part of the SAA in relation to the matter at issue, this ought in fairness to those having an interest to have been considered at the time when the SAA Public Buildings Committee Practice Note 10 Fire Stations was being drawn up for the purposes of the 2010 Revaluation.

The Assessor had carried out the detailed exercise shown in the Assessor's Production 11, but did not let the Appellants see this prior to the hearing. At the hearing, the Appellants raised issues concerning whether the exercise was based on the most up to date information provided by them and concerning the arithmetic used by the Assessor, which although they did not affect the outcome of the appeal, could have been fully and properly addressed between the parties if the Assessor, as he ought to have done, had exhibited this to the Appellants prior to the hearing.

26 November 2013