

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

PEGS (GLASGOW) LTD

in respect of

SHOP, 33 ST JAMES AVENUE, EAST KILBRIDE
G74 5QD

This was a new occupier appeal. As such, the Appellants had the same rights of appeal as would have existed at the 2010 Revaluation except that if the appeal were successful, it could be effective only from the date on which the Appellants became the tenants.

The Appellants were represented by Mr Stephen Murdoch, and Mr Brian Gill, Advocate, appeared for the Assessor. The Assessor had revised his valuation from £18,300 to £16,900. The Appellants were contending for a figure of £8,800.

In considering its approach to the matter, the Committee had regard particularly to:-

- the commentary contained in Armour on Valuation for Rating (5th Edition) ("Armour"), paragraphs 19-01 to 19-37 inclusive and to the cases and legislation referred to therein: the Assessor is required to explain his scheme of valuation (Armour, paragraph 19-01); the best method of arriving at an estimate of annual value will be by a study of actual rents passing both in respect of the subjects being valued and subjects comparable with them in size, character and location (Armour, paragraph 19-02); the categories of heritage for the purposes of the application of the comparative principal are of a general nature and are not to be minutely subdivided: shops are valued as shops, not as particular types of shop (Armour, paragraph 19-21);
- the definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956 to the effect that the net annual value was "the rent at which the lands and heritages might reasonably be expected to be let from year to year if no grassum or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of the rates and insurance and the other expenses if any, necessary to maintain the lands and heritages in a state to command that rent".

- the provisions of Article 3 and of the Schedule to the Valuation Timetable (Scotland) Order 1995 to the effect that for the purposes of the 2010 Revaluation, valuations are to be made on the basis of the level of rents prevailing as at 1 April 2008, and on the basis of the physical circumstances of properties as at 1st January 2010.

Properties in the valuation roll are revalued periodically, normally every five years. The system is based on the principle that subjects entered in the roll at a revaluation will remain at the same value until the next revaluation, unless a material change of circumstances occurs in the interim. The function of the Committee is to ensure that the valuation is correct having regard to the relevant facts and valuation law. If the valuation is correct in law, then the Committee have no discretion to alter it. Particularly, the Committee cannot take into account social or economic factors, in so far as these are not provided for in the relevant law, nor can they take account of any sympathy which they may feel for the ratepayer.

This appeal was a new occupier appeal not a material change appeal and the Committee could not take into account any evidence suggesting that the rental value of the appeal subjects or of other properties within the development had fallen since the tone date.

It would be incorrect in law to value shop premises by reference to the particular nature of the business carried on in them and to make an allowance for inconvenience resulting to the occupier solely because of the nature of his trade. This mean the Committee could not have regard to whether or not the Appellants' business was well suited to a standard retail unit or whether this might have been better located elsewhere.

The appeal turned largely on whether the Assessor had used the correct comparisons in arriving at his valuation. The Appellants asked why they had been rated at £200 psm when other shops in the development such as the shops at 8 and 10 St James Avenue which they thought were better located had been rated at £100psm. They could understand why takeaways and chain shops should pay rates at a higher rate but this was a first business venture for the Appellants. When taking on the lease they had not realised they would need to pay separately for water and waste. Also, the shop was not visible from the main roads, the development was unfinished, businesses were now closing, there were empty units and the landlords were having to reduce the rent.

It was for the Assessor to justify his valuation. The Assessor had valued the appeal subjects on the comparative basis. He had carried out a rental analysis for the purposes of the 2010 Revaluation which was set out in his Production 6. The primary evidence in setting the basic rate of £200 psm had been the rent struck for 1 St James Court in June 2008. The other rental evidence was post tone, having been struck in 2009/10. This had been used to substantiate the 2008 level of value. This showed levels of value of between £188psm and £335psm which supported the rental rate of £200psm. The analysis included the shop units numbers 15-31 and 35-41 which were of a similar nature situated alongside the appeal subjects.

The Assessor argued that the shops at 6B, 8, 10 and 12 St James Avenue were located in basement locations accessed from the rear of other units, and did not have full retail style frontages. The analysed rent rates for Unit 12 fixed as at 28 August 2012 was £121.49, and for Unit 8 fixed as at 1st June 2013 was £98.32 psm, demonstrating a lower level of value. These with other similar properties had been valued at £100 psm.

The Committee agreed with the Assessor that Units 6B, 8, 10 and 12 could not be accepted as valid comparisons. They were different from the standard shop units, being at basement level, accessed from the rear of other units, less prominent and lacking retail style frontages. In any event, the rents which had been struck for these were well after the tone date. Whilst the Committee did have some reservations about the use of the rent struck for 1 St James Court as the primary evidence in setting the basic rate of £200 psm given its more prominent location, it acknowledged that the basket of rentals from 2009 for the other retail shop units 15-21 and 31-41 St James Avenue was in line with this and accepted the proposition put forward by counsel on the authority of Armour at p35 that the requirement to value as at the tone date does not exclude the possibility of using evidence of rents from a later date if it serves to show what the position was as at the tone date. All of the comparable shop units had been valued by the Assessor at the basic rate of £200 psm, there had been acquiescence in the Assessor's value by professional agents acting for ratepayers and the Appellants had done nothing to show why a different treatment was appropriate for the appeal subjects. The Committee could understand that it did not assist the Appellants' business that they had takeaway premises on either side which did not open until they were shutting, but this was not relevant for valuation purposes. Similarly, if rents were being reduced and some businesses were about to close, this was not a relevant consideration in this type of appeal. Whilst the Committee understood the difficult financial situation in which the Appellants found themselves, they were bound to apply the relevant law and could not base their decision on feelings of sympathy for the ratepayer.

The Assessor had then applied the reductions appropriate in terms of paragraph 8.0 of the Assessor's Staff Guidance Note to reflect the lack of wall finishes and central heating within the appeal subjects, reducing the basic rate by 7.5%.

Having carefully considered the evidence led and the submissions made, the Committee reached the view that the Assessor had discharged the onus upon him to explain his approach and justify his valuation. There was no persuasive challenge to the Assessor's approach.

The Committee were accordingly satisfied that the Assessor had adequately explained his proposed valuation which should be upheld.

The Committee accordingly dismissed the appeal.

27 February 2014