

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

HAPPY FEET NURSERY

and

OUT OF SCHOOL CLUB LIMITED

in respect of

DAY NURSERY, 47-49 CLAUDE STREET, LARKHALL
ML9 2BU

This appeal called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 5 March 2014. Mr Anthony MacIver, Advocate, appeared on behalf of the Appellants and Mr Robin Cleland, Advocate, appeared on behalf of the Assessor.

The appeal subjects were a day nursery at 47-49 Claude Street, Larkhall. They consisted of a single storey detached building with car parking. They had been purpose built as a job centre. They had been leased by the Appellants from 10 December 2010. The rateable value appearing on the roll was £43,000. In the present appeal, the Appellants contended for a figure of £30,250 with effect from 1st April 2012.

The appeal had been brought in terms of Section 3(4) of the Local Government (Scotland) Act 1975 (“the 1975 Act”). The Appellants argued that a material change of circumstances had arisen within the meaning of S37(1) of the 1975 Act, namely, that there has been a relevant decision of a valuation appeal committee the members of which are drawn from the valuation appeal panel serving the valuation area in which the lands and heritages are situated, and also that there has been a decision of that committee which alters the net annual value or rateable value of comparable lands and heritages.

The decision founded upon by the Appellants was the decision by a committee of this Panel in relation to the day nursery at Biggar Business Park, Market Road, Biggar issued on 25 September 2012 (the “Biggar Nursery case”).

The Assessor argued that the Biggar Nursery case did not constitute a relevant decision and that the appeal was accordingly incompetent; and that even if the appeal was competent, this should not be granted on the merits.

The Committee heard the evidence led and submissions made by the parties before adjourning to consider its decision.

In the Committee's view, the decision in the Biggar Nursery case was not a relevant decision. Its reasons were as follows.

The Committee were referred by Counsel for both parties to the commentary contained in Armour on Valuation for Rating, 5th Edition, at paragraphs 3-22 to 3-27 inclusive and to the cases referred to therein. The Committee noted the views expressed in Armour to the general effect that the narrow view, namely, that to be a relevant decision the decision must relate to the particular subjects, has now been discarded, and that there remains a possibility that a more generous interpretation should be given to the broader view, in essence that the expression extended to a decision in principle whose effect is that the method by which the property has been valued is a wrong method.

They took into account the submission by the Appellants' Counsel that the existing decisions were all before the alteration to the definition of "material change of circumstances" introduced by Section 20(b) of the Rating and Valuation (Amendment) (Scotland) Act 1984 Act, namely, the addition at the end of the words "and any decision of that ...committee which alters the gross or net annual value or rateable value of any comparable lands and heritages", that this opened up the door to appeals based on relevant decisions, and that the Biggar Nursery case which altered the net annual value of comparable subjects was therefore a relevant decision. They acknowledged that in that decision the Committee in effect approved the scheme of valuation devised by the Assessor in relation to day nurseries in Lanarkshire.

The Assessor's guidance note which had been produced by both parties set out in paragraph 2.0 the approach to value, namely, that with one particular exception which was not relevant in this case, day nurseries should be valued by the application of the comparative principle.

The rates to be applied were set out in paragraph 3.0 which, so far as material to this appeal, provides as follows:-

"Nurseries situated in properties which, by virtue of their character or location (or both), have an obvious alternative use will have to compete with other potential occupiers. Rental analysis shows that the landlord will expect to receive a rent equivalent to the character of the property. In such situation the property should be valued in line with the prevailing rental levels for the appropriate alternative use. This is most commonly (but not exclusively) to be found in retail, office and industrial type properties/locations.

Outwith these situations a rate of £50 per square metre should be applied to the GEA."

There was no dispute in the present appeal over the rationale behind the scheme, the issue was rather which of the options set out in paragraph 3.0 as to the rates to be applied should be used here. The Assessor argued that

there was an obvious alternative use as an office whereas the Appellants argued that because the appeal subjects were situated in a mixed area, the rate appropriate where there was no alternative use should apply. It was clear to the Committee therefore that there was no issue of principle in the decision in the Biggar Nursery case which if applied in the present case would serve to resolve the point at issue. The appeal, if competent, turned not on the decision in the Biggar Nursery case but on the view taken by the Committee on the basis of the evidence presented in the appeal before the Committee as to which of the options set out applied. For this reason, the Committee decided that the Biggar Nursery case was not on any view a relevant decision within the meaning of Section 37(1) of the 1975 Act as amended.

In case the Committee were incorrect in this, they went on to consider the merits of the appeal, and in doing so decided that the appeal could not in any event succeed. In reaching this decision they adopted the reasoning put forward by the Assessor's counsel.

The onus is on an Appellant seeking to establish that a material change of circumstances has taken place to prove change there has been a change affecting value. There had been two previous nursery appeals concerning the Assessor's guidance note, firstly in the Biggar Nursery case, where the committee had decided that in circumstances where the subjects had been purpose built as a nursery there was no obvious alternative use, and secondly, in relation to Papillion Nursery, Eurocentral, Holytown where the committee had decided that in circumstances where the subjects were situated in the ground floor of a four storey office block that there was an obvious alternative office use.

In the present appeal, the Appellants accepted the Assessor's scheme of valuation for nurseries in Lanarkshire but took issue with whether an alternative use was available. As already noted, Paragraph 3.0 of the guidance note provides, with one exception which was not relevant in this case, that outwith the situations outlined in the first paragraph of the note, a rate of £50 per square meter should be applied to the GEA. In the Biggar Nursery case, there was no alternative use and the argument taken was in essence that the same should apply here. If an alternative use can be shown to be available, the appeal must fail.

The Committee accepted the Assessor's evidence that the alterations carried out to convert the subjects from a job centre to a day nursery were restricted to a reconfiguration of internal lightweight partitions and the creation of 3 small toilet areas, and that because of the number of windows the space could be reconfigured in a number of ways. They agreed with the Assessor that in circumstances where there had already been a prior alternative use as an office, the Appellants' argument was bound to fail. They did not consider the distinction drawn between class 2 and class 4 office use for planning purposes to be material to their decision.

The Committee did not agree with the Appellants' interpretation of the Assessor's scheme of valuation for day nurseries. The Appellants considered that the scheme provides that where children's daycare nurseries are located in a mixed location, then the valuation rate to be applied for the 2010 Revaluation is £50 per square metre. The Appellants accordingly considered this was the rate per square metre which should be applied to

the appeal subjects. The Committee agreed with the Assessor that the scheme did not provide that all day nurseries in mixed areas were to be valued at £50 psm, but rather that that only applied where there is no obvious alternative use to the subjects. It was not in dispute that the subjects were in a mixed use area, but regard also had to be had to the character and location of the subjects. The Committee agreed with the Assessor that given the location of the appeal subject and the fact that the subjects had previously been used as an office, there was an obvious alternative use and the subjects should be valued on that basis.

.The Committee also considered whether this was fair given the obvious difference which this made to the valuation in the present case. However, they accepted the evidence of Mr Pacitti that in order to give effect to the rating hypothesis the Assessor had to shadow the market. The Assessor had satisfied the committee that the property was situated within an area of Larkhall seen as a commercial business location where other properties such as surgeries were also valued at office levels of value, and that the appeal subjects should also be valued on this basis.

The Assessor had been consistent in his approach. Big Bird Nursery, 51 Machan Road, Larkhall which was located in former office premises had been valued on same basis. The day nurseries at Burngreen Lodge, 12 Burngreen, Kilsyth and 65 Rodger Drive, Rutherglen had been valued at £50psm because they had no obvious commercial letting potential. It was clear from the Assessor's Summary Valuation Sheet that Greenapple Day Nursery at 18 Clydesdale Street, Hamilton had been valued by the Assessor as an office, and that it was incorrect to suggest this had been valued using the £50 rate.

The Appellants had therefore failed to discharge the onus upon them to prove there had been a change affecting value

The Committee accordingly dismissed the appeal.

19 March 2014