

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

C & H CHILDCARE LTD

in respect of

NURSERY, UNIT 1, FORREST GATE,
UDDINGSTON G71 5PG

This was a new occupier appeal made under S3(2A) of the Local Government (Scotland) Act 1975 concerning an entry in the valuation roll for the nursery at Unit 1, Forrest Gate, Uddingston. As such, the Appellants had the same rights to appeal as would have existed under the 2010 Revaluation except that if the appeal was successful, it could be effective only from the date when the Appellants became the occupier. The grounds of appeal put forward were however based on material change of circumstances.

Mr Gordon Bavaird attended for the Appellants, and Mr Steven Stuart QC presented the case for the Assessor.

In a new occupier appeal, the burden of proof is as set out in paras 5-25 and 5-26 of Armour on Valuation for Rating (5th Edition). Where a reasonable challenge to an Assessor's valuation has been made, the Assessor requires to explain his approach to valuation. To the extent that such an appeal proceeds as a material change of circumstances appeal, the burden of proof is on the ratepayer to establish that a change of circumstances affecting value had taken place.

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

- to the commentary contained in Armour on Valuation for Rating (5th Edition), paragraphs 3-12 to 3-31 inclusive and to the cases and legislation referred to therein including the definition of material change of circumstances contained in Section 20 of the Rating and Valuation (Amendment) (Scotland) Act 1984 and the provisions of Section 3(4) of the Local Government (Scotland) Act 1975: to be a material change of circumstances the change must be one which affects the value of

the appeal subject; the system of quinquennial revaluation 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 change must be an exceptional and extraordinary event rather than part of the normal processes of change; section 3(4) is accordingly severely limited in its scope;

- to the commentary contained in Armour, paragraphs 17-11 to 17-19A, and to the cases and legislation referred to therein including the definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956: net annual value is arrived at based on the rent which the hypothetical tenant would pay to the hypothetical landlord for a lease on the statutory terms of the subjects, where the occupier is assumed to be a possible tenant;
- to the commentary contained in Armour, chapter 18, and to the cases referred to therein: subjects are to be valued in their actual state, but in a consideration of the hypothetical transaction to which Section 6(8) of the Valuation and Rating (Scotland) Act 1956 refers, the potential of the subjects for another use will be relevant to the extent that it would influence the rent at which the subjects would be let.
- to the commentary contained in Armour, paragraphs 3-44 to 3-45 and to the cases and legislation referred to therein including the provision for valuation according to the tone of the roll contained in Section 15 of the Local Government (Scotland) Act 1966.

The appeal had been lodged on 24th February 2016. The Assessor was defending a valuation of NAV/RV £62,250. The Appellants contended for an alternative valuation of NAV/RV£42,500.

The subjects of appeal are situated within part of the ground floor of a modern purpose built office pavilion located within Tannochside Business Park. The actual use of the subjects is a children's nursery but these had been valued on the basis of the alternative use as an office.

The case put forward for the Appellants was that lease of the previous occupants had expired in September 2015. An attempt was made for transfer of the business as a going concern but no agreement was reached and the business ceased to operate until a new licence was granted. By April 2016 when the new business opened, all the parents had found alternative child care. By then, a new child care centre for afterschool care had opened in the business park which had been a large part of the previous business. Also, the rules of the

scheme for the government partnership for early education and child care for 3-5 year olds insist that the nursery must be operating for one year, and the scheme only commences once a year in August resulting in a 16 month loss to the nursery as children in this age group had to attend other nurseries in the scheme to receive the subsidy. The rent agreed with effect from April 2016 was £42,500, which the Appellants considered should reflect the rateable value.

The appeal was against the entry currently in force. The issue before the committee was accordingly whether the Assessor had correctly valued the appeal subjects when he made that entry, and if so, whether a material change of circumstances had since taken place.

There was no doubt in the minds of the committee on the basis of the evidence presented by the Assessor that the subjects had been correctly valued at the 2010 tone date, and as the committee understood the Appellants' position, this was not being challenged. The potential of the subjects for office use would clearly influence the rent at which they would be let, and on the basis of the evidence set out in the Assessor's production 9, the rent rate of £115 m² agreed in settlement of the 2010 revaluation appeals throughout the business park including the for the subjects of appeal was in keeping with rent rates at tone.

The Committee then went on to consider whether on the evidence presented by the Appellants there had been a change of circumstances which had affected the value of the appeal subjects.

The Appellants made reference to the reduced level of rent passing under the lease, with effect from 21st April 2016, namely, £42,500. The Assessor was however able to show in his production 11, being a rental analysis of the business park at the 2017 tone date, that this was comfortably above the rent rates achieved for the office users within the business park. He concluded therefore that while there had undoubtedly been a fall in rental levels, this was indicative of the general decline in the rental market for offices within the business park, and was not attributable to the opening of the competing nursery. The committee agreed with this.

The committee also considered the relevance of the other factors put forward by the Appellants. The Assessor argued that these were not relevant as what was being valued was the premises and not the business. The committee agreed with this also. Net annual value is arrived at based on the rent which the hypothetical tenant would pay to the hypothetical landlord for a lease on the statutory terms of the subjects. The Appellants are assumed to be a possible tenant. The factors put forward related to the Appellants and

the profitability of the particular use which they made of the appeal subjects, rather than to the premises themselves.

The Committee carefully considered the evidence and submissions put forward by the parties. It concluded that the Assessor had properly explained his valuation and that no material change of circumstances had taken place.

The Committee accordingly dismissed the appeal.

9th November 2016