

LANARKSHIRE VALUATION  
APPEAL PANEL

NOTE OF DECISION

and

STATEMENT OF REASONS  
RELATIVE TO APPEAL

by

Sadie Costello t/a Gingers Hair &  
Beauty Salon, 75 Lauchope Street,  
Chapelhall, Airdrie ML6 8SW

This appeal called for hearing at a meeting of a Committee of the Lanarkshire Valuation Appeal Panel on 3<sup>rd</sup> May 2017. Mr Steven Lander appeared for the Assessor. The Appellant had engaged Mr Stewart Kennedy of Professional Rating Practitioners (PRP), Clyde Offices, Second Floor, 48 West George Street, Glasgow G2 1BP to represent her. Neither the Appellant nor her representative Mr Kennedy attended the hearing.

At 16:23 on 2<sup>nd</sup> May 2017, Mr Kennedy had sent an email to the Panel Secretary requesting that the hearing of the appeal be postponed, in the following terms:-

Dear Mr Graham

I refer you to the above noted appeal calling before the Lanarkshire Valuation Appeal Committee tomorrow.

I would be obliged if you would pass this email to the Committee to consider the postponement of this case until the 14 June 2017 sitting.

I have returned today from two weeks annual leave and I am unable to attend the hearing or arrange for a third party to attend on behalf of the appellant as I operate as sole practitioner and neither have the resources or manpower afforded by the public purse to the Assessor. In the circumstances I would request the Committee consider under Section 9(3)(b) of The

Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 to postpone the hearing of this case.

In consideration of its decision I would respectfully request the Committee take full account of the postponement of proceedings by the Lanarkshire Valuation Committee on three separate occasions in the cases of 7 Main Street, East Kilbride, 9 Stuart Street, East Kilbride and 97-99 Almada Street, Hamilton from December 2016 to March 2017. I am sure you will be able to assist the Committee as to the facts in these matters if the members of the Committee have changed. On each of three occasions the Assessor for Lanarkshire confirmed he had not prepared his case the Committee having consider matters agreed to postpone the hearings. It is this very same consideration, to ensure a balance of convenience, is afforded to the appellant that I request this postponement and to ensure justice is being seen to be done on a level playing field.

Yours faithfully

Mr Kennedy's email was placed before the Committee, who also heard submissions from Mr Lander, who opposed the motion for postponement.

Mr Lander made a number of points.

He referred to the last minute nature of the request. The appeal had been cited on 8<sup>th</sup> February 2017.

He highlighted that 2 previous appeals lodged by Mr Kennedy had been adjourned until the hearing on 14<sup>th</sup> June 2017, and for this reason, this was already going to be a busy day.

The Assessor had contacted Mr Kennedy's office on 16<sup>th</sup> February 2017 and followed this up by letter on 17<sup>th</sup> March 2017 asking that he arrange an appointment to discuss the appeal. On 29<sup>th</sup> March 2017, Mr Kennedy had lodged grounds of appeal based on error, specifically that the toilet should have been excluded from the valuation, and had intimated that the Appellant intended to proceed with her appeal. There had been no further contact until the Assessor had received a copy of the request for postponement.

The reason given in the email for the postponement was that Mr Kennedy who was a sole practitioner had just returned from two weeks annual leave and was unable to attend or arrange for a third party to attend on behalf of the Appellant. Mr Lander submitted, and the Committee agreed, that Mr Kennedy should have made any request for postponement well in advance of the hearing, and in any event, had had ample time to arrange for alternative representation. He referred to a previous decision on 7th September 2011 relating to 103 Main Street, Wishaw where the Committee had taken a similar view.

As regards the last paragraph of Mr Kennedy's letter, referring to postponements granted in other appeal proceedings earlier this year involving Mr Kennedy, Mr Lander explained that the reasons for this centred round a lack of clarity in the grounds of appeal, and a lack of agreement in relation to factual matters, which resulted in directions being made by the Committee in advance of the hearing dates. In the knowledge of what had happened in these cases, which were taken on similar grounds, Mr Kennedy might have been expected to make contact with the Assessor to discuss these appeals. Instead, there had been a lack of engagement. Mr Lander submitted that Mr Kennedy was not acting in a professional manner in the best interests of his client, and had shown a lack of respect in relation to his obligations to the Committee.

Mr Lander also referred to the postscript by the then Lord Justice Clerk Gill to the decision of the Lands Valuation Appeal Court in the Jane Norman case, though the Committee considered that this related to the situation where there had been a failure to comply with the regulations rather than, as here, a request for a continuation. He went on to explain that there were a substantial number of running roll appeals to be dealt with this year at the four hearings which remained. There were also a substantial number of revaluation appeals which had thus far been lodged. He explained that since 15<sup>th</sup> March this year, Mr Kennedy had lodged 102 running roll appeals, all of which would need to be dealt with by 31<sup>st</sup> March 2018. There was therefore a substantial body of work to be dealt with, and to seek to continue an appeal where there had been ample opportunity to discuss this, in the Assessor's view, showed a flagrant disregard by Mr Kennedy of the obligations incumbent upon him as a professional agent.

He moved that the Committee should refuse the motion for continuation, and dismiss the appeal.

The committee, after giving careful consideration to the submissions made by both parties, and in exercise of its powers under the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, Regulation 9(3)(b), did not see fit to allow the request for continuation. It considered that any request for postponement should have been made at an early stage, that there were good reasons for the postponements granted in the other appeals referred to whereas no proper reason had been given for the postponement of the present appeal, and that there had been a clear lack of engagement on the part of Mr Kennedy who did not appear to have acted in the best interests of his client.

As the Assessor was ready to proceed with the appeal and the Appellant was neither present nor represented, the Committee dismissed the appeal.

4<sup>th</sup> May 2017