

LANARKSHIRE VALUATION
APPEAL PANEL

NOTE OF DECISION

and

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

CHARLES J DOHERTY

relative to

PUBLIC HOUSE, DOHERTY'S,
33 CASTLE STREET,
HAMILTON ML3 6BU

This appeal called for hearing at a meeting of a Committee of the Lanarkshire Valuation Appeal Panel on 6th September 2017. Mr Geoff Clarke, QC appeared for the Assessor and Mr Stewart Kennedy of PRP, Professional Rating Practitioners, Clyde Offices, Second Floor, 48 West George Street, Glasgow appeared for the Appellant. Preliminary motions were made on behalf of both parties.

Mr Clarke moved under the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 (“the 1995 Regulations”), Regulation 13(2) that the Committee refuse to permit Mr Kennedy to assist or represent the Appellant at the hearing. Regulation 13(1) provides that a party may appear before and be heard by the Committee in person (with assistance from any person he wishes) or he may be represented by any person whether or not legally qualified. This is however subject to Regulation 13(2) which provides that if in any particular case the Committee is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.

Mr Kennedy moved under the 1995 Regulations, Regulation 9(3)(b) that the Committee adjourn today’s proceedings to exclude the Assessor, his staff and representatives from the

hearing, and direct that written submissions be lodged by the Appellant within 7 days. When asked, he made it clear that his intention was that the Assessor should not be allowed to take any further part in the proceedings, and the Committee should reach a decision on the appeal based solely on a consideration of the Appellant's written submissions. Regulation 9 (3)(b) states that the Committee may at its discretion consider (i) any request for postponement or adjournment of a hearing made by a party; and (ii) representations by the other party as to that request; and, if it thinks fit, postpone or adjourn the hearing.

The committee, after giving careful consideration to all of the submissions made, refused the motion for the Appellant and granted the motion for the Assessor. Its reasons for doing so were as follows.

It refused the motion for the Appellant because it was clearly incompetent. Regulation 9(3)(b) gives the Committee the power to postpone or adjourn the hearing of an appeal at the request of a party where it sees fit to do so, but does not give it power to exclude the Assessor or to reach a decision based solely on the Appellant's submissions.

It granted the motion for the Assessor because it was satisfied on the basis of Counsel's submissions that there were good and sufficient reasons for doing so.

Counsel cited the case of *Belhaven Brewery Company Ltd v the Assessor for Highland and Western Isles* [2008] CSIH 3. In his opinion, the Lord Justice Clerk (Gill) stated:-

“[9] A person who is not legally qualified may be allowed to conduct an appeal before a local valuation appeal committee [1995 Regulations, reg 13(1)]. This is a useful provision. It can be helpful to a committee if an appeal is presented by a competent rating surveyor; but problems can arise where an appeal is conducted by a representative who lacks a proper understanding of valuation law and practice and who does not take legal advice...

[17] ...I remind committees and their clerks that regulation 13(2) of the 1995 Regulations provides that if in any particular case the committee is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at a hearing.”

Those remarks were made in the context of a stated case taken by a rating surveyor who had persistently abused the privilege of conducting appeals before committees and in relation to

whom their lordships had had occasion to comment on his conduct towards assessor, committees, and secretaries to committees.

Counsel also cited the case of *Kennedy v Cordia (Services) LLP* [2016] UKSC 6 dealing inter alia with the proper role of skilled witnesses. In their judgement, Lord Reed and Lord Hodge stated:-

“44. ...a skilled person can give expert factual evidence either by itself or in combination with opinion evidence. There are in our view four considerations which govern the admissibility of skilled evidence;

- (i) whether the proposed skilled evidence will assist the court in its task;
- (ii) whether the witness has the necessary knowledge and experience;
- (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
- (iv) whether there is a reliable body of knowledge or experience to underpin the expert’s evidence...

50 The witness’s knowledge and expertise: The skilled witness must demonstrate to the court that he or she has the relevant knowledge and experience to give either factual evidence, which is not based exclusively on personal observation or sensation, or opinion evidence. Where the skilled witness establishes such knowledge and experience, he or she can draw on the general body of knowledge and understanding of the relevant expertise: *Myers, Brangman and Cox v The Queen* [2015] UKPC 40 at para 63.”

Counsel made the point that whilst Mr Kennedy may be an experienced business person, he had no professional qualifications. As a matter of evidence, he was not entitled to express an opinion as a skilled witness. The Committee agreed with this.

Mr Kennedy was asked by the Panel whether he felt he had a proper understanding of valuation law and practice. His response was that he had 6 years’ experience in the field acquired during the course of his occupation.

Counsel referred the Committee to the Assessor’s Production 1. This took the form of a spreadsheet showing an analysis and history of appeals lodged by PRP after 15th March 2017 and cited for 6th September 2017. Of the 27 appeals lodged, Mr Kennedy had yesterday withdrawn from the agency in 4, and had withdrawn all but 1 of the remainder. In relation to 16 subjects, previous appeals lodged by rating surveyors had been agreed, withdrawn or

dismissed in absence. In relation to 5 subjects, previous appeals lodged by Mr Kennedy had been withdrawn or dismissed in absence.

He also referred the Committee to the Assessor's Production 2. This took the form of a spreadsheet showing an analysis and history of appeals lodged by PRP after 15th March 2017. Of the 102 appeals lodged, 56 had thus far been withdrawn. Most of the appeals had been lodged on grounds of error, but the nature of the error was not specified, and as a result the alleged error could not be readily verified by the Assessor. In Counsel's submission, the public purse could not afford to investigate all these appeals, given the significant cost incurred in each appeal.

Counsel also referred the Committee to the Assessor's Production 3. This consisted of 3 decisions taken by other Panels in appeals presented by Mr Kennedy. Counsel submitted that these decisions demonstrated that Mr Kennedy does not understand the principles on which valuation law is based. The Committee agreed with this. Mr Kennedy had also presented an appeal before a committee of this Panel in an appeal which had turned on the basic principle that you should value as you devalue, which Mr Kennedy did not appear to know. In two other cases which were identical to the one which had been heard and decided, he had not withdrawn the appeals until shortly before the date set down for hearing of the appeals when the Assessor had made known his intention to make the same motion which he had made today.

Counsel also referred the Committee to the Assessor's Production 4. Productions 4a and 4b consisted of newspaper articles concerning Mr Kennedy's former business affairs. Mr Kennedy described these as tabloid trash. He submitted that he had no convictions for fraud, and Counsel did not take issue with this. Production 4c comprised a report from a website called DueDil which disclosed that Mr Kennedy had been disqualified from acting as company director for a period of 11 years, 11 months and 29 days. Mr Kennedy did not take issue with this. Counsel submitted that trust was a vital component in the process of dealing with valuation appeals, and that in his submission, Mr Kennedy was not a fit and proper person to appear before the Panel.

The question for the Committee to decide was whether in this particular case it was satisfied that there were good and sufficient reasons for it to refuse to permit Mr Kennedy to assist or represent the Appellant at the hearing. The Appellant did not attend the hearing, but Mr

Kennedy produced mandates dated 13th March and 13th July 2017 signed by the Appellant. The appeal had been lodged on grounds of material change of circumstances. The committee were variously informed that the licence had been lost, withdrawn or transferred in January 2012, and that an MCC appeal lodged by rating surveyors in April 2015 when the property ceased to sell food had been settled at a reduced rateable value.

The Committee were satisfied that in an appeal of this nature, problems would inevitably arise if the appeal were conducted by a representative who lacked a proper understanding of valuation law and practice and who did not take professional advice. The Committee were satisfied based on Counsel's submissions that Mr Kennedy lacks a proper understanding of valuation law and practice, and has previously abused the privilege of conducting appeals before committees.

On this basis, the Committee accordingly granted the motion for the Assessor, refused to permit Mr Kennedy to assist or represent the Appellant at the hearing, and postponed the hearing of the appeal so that intimation of the Committee's decision could be made upon the Appellant to give him an opportunity to arrange alternative representation.

11th September 2017