

LANARKSHIRE VALUATION
APPEAL PANEL

NOTE OF DECISION

and

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

CARLO ERNESTO GUIDI

relative to

PUBLIC HOUSE, GUIDI'S,
DEEDES STREET, AIRDRIE
ML6 9AF

This appeal called for hearing at a meeting of a Committee of the Lanarkshire Valuation Appeal Panel on 13th December 2017. This was an appeal arising out of the year 2017 Revaluation. The appeal had been lodged by Mr Stewart Kennedy of PRP, Professional Rating Practitioners, Clyde Offices, Second Floor, 48 West George Street, Glasgow acting as agent for the Appellant. The appeal had been cited for hearing on 7th March 2018. There have been instances where Mr Kennedy has lodged appeals without having authority to do so. A preliminary hearing had accordingly been set down for today at which the Appellant had been cited to attend personally with his agent. The purpose of this hearing was to enable the committee to have the Appellant confirm in person that Mr Kennedy had authority to act on his behalf. Neither the Appellant nor his agent attended the preliminary hearing. Mr Steven Lander appeared for the Assessor.

Mr Lander 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.

The committee, after giving careful consideration to all of the submissions made by Mr Lander granted the motion for the Assessor because it was satisfied on the basis of the Assessor's submissions that there were good and sufficient reasons for doing so in this appeal.

Mr Lander reminded the Committee that this was not the first time that such a motion had been made. Similar motions had been made by the Assessor and upheld by a Committee of the Panel on 6th September and 20th September this year.

In support of the Assessor's motion, Mr Lander referred to various Productions.

Production 2 was an analysis and history of appeals lodged by PRP after 15th March 2017. During the period from 15th to 31st March 2017, Mr Kennedy had lodged 105 running roll appeals. Of these, 6 were material change of circumstance appeals and the remainder were appeals on grounds of error. There were instances where Mr Kennedy had already lodged previous appeals on grounds of error for the same subjects, some as many as twice before. In various instances, appeals had previously been taken unsuccessfully by professional rating surveyors who were members of the RICS. Only 2 had been taken on grounds of error and these had been withdrawn. Out of the 105 appeals lodged by Mr Kennedy, 99 had been taken on grounds of error. The nature of the error was not specified. The Assessor submitted that this was not the conduct of someone who was acting in a professional manner in the best interests of his clients. It required significant resources on the part of the Assessor to investigate these appeals, and this threatened to undermine the whole appeals system.

Production 3 served to demonstrate Mr Kennedy's lack of understanding of valuation law and practice. This comprised 3 committee decisions.

1. 7 Main Street, East Kilbride was a decision of this Panel in an appeal on grounds of error from which it was clear that Mr Kennedy had failed to understand fundamental valuation principles, and that he was also unclear as to the function of the Committee. He had stated that he was self-taught and had no professional training. He had then gone on to lodge a further 99 appeals on grounds of error, many of which were at or about the thresholds for Small Business Bonus Scheme. In none had the error been specified. He had clearly lodged

as many as possible before the roll had closed. He did not appear to have surveyed the properties before lodging the appeals as he was not in a position to specify the nature of the error.

Productions 3b and 3c were decisions of other Panels relating to 13 Byres Road, Glasgow and Taylors Hotel, Kilwinning. Again, these were unsuccessful appeals on grounds of error. In the Assessor's view, these showed either a lack of understanding on the part of Mr Kennedy or that he simply did not care. Mr Kennedy hoped that the Assessor would make concessions concerning net annual value for the sake of peace, which was a futile strategy as the Assessor is obliged to defend a valuation where it is appropriate to do so.

Production 4a was a decision of the Lands Valuation Appeal Court ("LVAC") in *Belhaven Brewery Company Limited v The Assessor for Highland and Western Isles* [2008] CSIH 3. This set out the legal background for the Assessor's motion. In his decision the then Lord Justice Clerk, Lord Gill, reminded 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 the hearing. Mr Lander quoted from paragraphs 9, 16 and 17 of the judgement of the Lord Justice Clerk.

Paragraph 16 sets out the Assessor's duty to defend his valuation:-
"But [the agent's] undertaking will not affect the waste of the time of assessor's, committee members and clerks that is caused by the hopeless appeals that he takes to local committees and the pointless cases that he requires them to state. It may be that he hopes that in such cases assessors will concede reductions in NAV for the sake of peace. If so, that is a futile strategy. When a hopeless appeal is taken to a committee, the assessor does not have the option that would be available to a private litigant of compromising to save time, trouble and expense. If the Assessor is satisfied that his valuation is sound, it is his duty to defend it. If he were not to do so, or were to compromise the case for the sake of peace, he would be in breach of his duty of fairness to other ratepayers."

Production 4b was a minute of meeting of the Lothian Committee where in 2 appeals, similar motions had been granted.

Production 4c was a decision of the Moray Valuation Appeal Committee in which the committee had been referred to 3 LVAC decisions where reference was made to the lodging of hopeless appeals and a cavalier attitude on the part of the agent concerned. In the Assessor's submission, there were similarities with the present case where Mr Kennedy had shown a cavalier and disrespectful attitude in lodging blanket appeals at the limit of the relief scheme.

Production 4d were the decisions of this Panel already referred to taken on 6th and 20th September this year in a total of 20 appeals where motions made under Regulation 13(2) were granted.

Production 5 was the decision of the Supreme Court in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6 to the effect that before expert opinion evidence is admissible, the court must be satisfied as to the expert's qualifications. Mr Lander quoted from the judgements of Lord Reed and Lord Hodge at para 41:-

“Unlike other witnesses, a skilled witness may also give evidence based on his or her knowledge and experience of a subject matter, drawing on the work of others, such as the findings of published research or the pooled knowledge of a team of people with whom he or she works. Such evidence also gives rise to threshold questions of admissibility, and the special rules that govern the admissibility of expert opinion evidence also cover such expert evidence of fact.”

Mr Lander made the point that as Mr Kennedy was not a qualified surveyor or a member of the RICS, he was not entitled to give opinion evidence on matters of valuation law and practice.

Mr Lander also made the point that in valuation appeals trust was paramount. Appellants were entitled to expect a fair hearing, and there needed to be trust between the Assessor and Appellants' agents. This was not possible given Mr Kennedy's background. He made reference to Productions 6a – d. Productions 6a and 6b were articles concerning Mr Kennedy from the Daily Record dated 1st July 2012 and subsequently updated, and from the Sunday Herald dated 5th November 2013, both relating to a Ponzi scheme. Production 6c was an extract from DueDil narrating Mr Kennedy had been disqualified on 16th October 2013 from acting as a company director for a period of almost 12 years. Production 6d was an article from the Daily Record dated 3rd November this year reporting Mr Kennedy's

conviction on charges of fraud and assault. The Assessor submitted that Mr Kennedy was not a fit and proper person to represent appellants at appeal hearings.

In the light of all the information provided, the Assessor invited the Committee to grant the Assessor's motion

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 Committee were satisfied based on the Assessor'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. The Committee were also aware from its own knowledge of instances where Mr Kennedy had lodged appeals without authority, and had offered no explanation for this.

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. The appeal will no longer call on 7th March 2018, and the Appellant will receive a fresh citation in due course.

13th December 2017

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