

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPLICATION

by

HEWDEN STUART

in respect of

OFFICE, 1 ELLISMUIR WAY, UDDINGSTON

The hearing was a preliminary one to decide the initial validity of the appeal.

The Assessor challenged the validity of the appeal on the grounds that the last day for lodging such an appeal was 30 September 2010 and that the appeal had been received on 1st October 2010. The appeal was accordingly 1 day late.

The Appellants' agents, Fairhurst Estates Ltd, acknowledged that the last day for lodging an appeal was 30 September 2010 but argued that this had been due to a problem with the agents' broadband which was outwith the agents' control.

The law in relation to the Committee's discretionary powers in relation to late appeals is clearly set out in *Armour on Valuation for Rating* (5th Edition) at paras 5-15 and 5-16 and the cases referred to therein. Put shortly, the provisions contained in the Valuation Order are directive and regulatory of procedure. Literal compliance is not to be demanded if the effect would be to perpetrate manifest injustice. The Committee required to consider whether the failure to comply has been caused by excusable mistake or some cause over which he who has failed has no control. The Committee are also required to consider whether there are any exceptional circumstances justifying a waiver of strict compliance with the time limits.

The Committee also required to consider whether or not there would be any substantial prejudice to the Assessor. As the Committee understood it, there was no argument in this case that there would be such prejudice to the Assessor if the Committee accepted that the appeal had been validly lodged.

The Appellants were represented by Richard Sellers, an Associate Director of Fairhurst Estates Ltd. Mr Sellers explained that his company had been instructed to act for the Appellants at the beginning of August.

They had been instructed in relation to the rating appeals in late August or early September. They were aware of the deadline for lodging appeals but were not in the habit of lodging blanket appeals. There were 5 sets of premises in Scotland. After investigation, appeals were lodged for three of these on 23rd September and for the fourth on the morning of 29th September. In relation to the present appeal subjects, the rateable value was less than the passing rent. For this reason Mr Sellers initially thought it was not worth lodging an appeal. This information was checked with their clients whose property manager did not get back to him to explain the reason for this until 30th September. The decision was then taken to lodge an appeal.

The appeal was keyed in at or about 4:30 pm that afternoon. The other appeals had been lodged in the same manner. Mr Sellers was aware that a record of appeal was generated automatically, but rather than waiting for this he simply assumed it had gone. He was not in the office the next day. When he returned to the office on Monday 4th October he found the e-mail by way of record of appeal in his inbox timed at 11:31 on 1st October 2010. He immediately rang the Assessor's office then to clarify the position. When he received the citation for the appeal, but not before this, he discussed the possible causes with his IT consultants. They suggested that this might be the result of a broadband change on the afternoon of 29th September which may have taken 24 or 48 hours to complete, with the result that the e-mail may have sat in the server overnight. Mr Sellers was not aware of any other instances of delayed transmission at the time of the changeover. He was aware that the appeal could have been faxed.

It was argued for the Appellants that this had been a recent instruction with limited time, and the delayed submission of the appeal was due to circumstances outwith their control. The Committee were aware that there could be circumstances where an appeal had been received after the last day for lodging appeals and it would be appropriate for it to exercise its discretion to allow the appeal to be received late. In *National Commercial Bank of Scotland Limited v Assessor for Fife 1963 S.C.197* the Appellant had posted the letter of appeal before the last day for lodging appeals and the letter of appeal would have been received timeously in the normal course of post but was delayed because the Appellant had taken the precaution of sending it by registered mail. However in the view of the Committee, there was a very significant difference between the two situations.

In the circumstances of the present case there was no excusable mistake on the part of the Appellants or the professional agents acting on their behalf. The explanation put forward was that there was an issue with the IT system of the Appellants' agents which was outwith their agents' control. However, the set-up of their own IT system was a matter which ought to have been within the control of the Appellants' agents. The decision to lodge the appeal was made at the last minute. The Appellants agents knew that the appeal had to be

received that day. They were aware that an acknowledgement ought to have been generated automatically if the appeal had been received. The Appellants' agents did not wait to check that the record of appeal had been received. Had they done so, they would have realised if there was a problem and could have submitted the appeal by fax. After the difficulty came to light, they did not follow the matter up immediately with their IT consultants with a view to obtaining a detailed assessment of what may have happened and had only done so relatively recently. The evidence concerning this presented to the Committee was vague and uncertain. There were no exceptional circumstances justifying a waiver of strict compliance with the time limit.

The Committee accordingly did not feel that this was a suitable case in which to exercise its discretion to allow the appeal to be received late and refused the appeal.