

VAC – 1/6/06

STATEMENT of REASONS

Re

APPEALS

In respect of

Workshop, Unit 4, Orbiston Business Park, 347
Orbiston Street, Motherwell ML1 1QW

And 23 other Appeals as listed on the schedule
hereto

The one firm of Chartered Surveyors acted as agents in respect of all 24 appeals.

The Assessor had initially taken the view that no timeous appeal had been lodged in respect of any of the 24 appeals. At the commencement of the hearing, the Assessor conceded that he now accepted that a timeous appeal had been lodged in respect of one of the appeal subjects, a quarry at Dunduff Quarry, Lesmahagow (appellants, Patersons of Greenoakhill Limited) and the hearing accordingly proceeded in respect of the remaining 23 subjects.

All 23 subjects were in an identical position. The application of the Valuation Appeal Committee etc. Regulations 1995 (Regulation 2 (1) and Regulation 3 (1) and (2)) and the Valuation Appeal Timetable Order of 1995, Article 3, was to the same effect in each appeal namely that the last date for lodging an appeal in writing was 30th September 2005. It was agreed that no such appeals had been lodged by that date. The appellants were asking the Committee to exercise its discretion as set out in *Armour on Valuation for Rating* (Fifth Edition) at para 5 - 16 to allow the appeals to be regarded as timeous. All appeals had been received by the Assessor for the first time on 19th January 2006. The appeals had been received on that date by email from the appellants' agents. It was accepted by the Assessor that an appeal lodged by email would be accepted as being an appeal in writing. The appellants' agents stated that they had composed and attempted to send an email to the Assessor on 26th September 2005, but that it had not been received. The Assessor had been very careful in his evidence and submission neither to accept nor deny that the appellants' agents/...

agents had unsuccessfully attempted to send the email on 26th September 2005 with attached covering letter of appeal and schedule of the properties concerned. The Assessor was neutral on this point. The Committee felt that it could not properly consider the matter without first deciding whether or not it accepted that an unsuccessful attempt had been made to send the email on 26th September 2005. After careful consideration on this point the Committee concluded that, while it was no doubt the intention of the appellants' agents that such an email should be composed and sent, the Committee was not satisfied on a balance of probabilities that they had in fact actually composed and attempted to send an email which failed to reach its destination.

There was agreement between the parties that the email which the appellants' agents said they had sent had not been received by the Assessor. Even if there had been no such agreement the Committee was persuaded by the assiduous attempts that the Assessor had made to trace such an email that one had not been received. In the experience of the Committee it is very unusual for an email which has been sent properly addressed to the correct email address, not to be received by the intended recipient without the sender being aware of the failure. Where an email is not delivered, for whatever reason, there is normally an error message alerting the sender to the problem. There was no such message here. These factors pointed strongly to the probability that the email had not in fact been sent.

The Committee would have expected the agents for the appellants to have been able to produce an email log demonstrating that the email had been sent (or that, at the very least, they had attempted to send it). No such log was produced. The Committee could not accept the suggestion made by the appellants' agents that their email systems' records could not be investigated beyond a three month period.

Email systems can and frequently do ask for a read receipt in respect of important emails. The appellants' agents acknowledged that their employee who had been charged with sending emails including the "missing" email had been instructed to request read receipts. This had not been done. Such a receipt would not only have avoided the situation in which the appellants found themselves but the failure to implement the system as instructed pointed to unreliability on the part of the person who, it was claimed, had transmitted the undelivered email.

On a balance of probabilities, the Committee could not be satisfied, for the reasons given, that the email had in fact been sent (or that an attempt to send it had been made).

On that basis, the Committee did not consider that this would be a proper case in which to exercise its discretion. There had been a series of failings on the part of the appellants' agents. The appellants had intended to compose and send an email on 26th September, had failed to do so, had failed to put in place the system it had intended whereby a read receipt was obtained for such emails, and had not noticed this at the time and had not made any attempt to check for receipts, whether by email or post until the middle of January 2006, even though the appellants' agents were fully aware that the last date for lodging an appeal was 30th September 2005.

The discretion available to the Committee to waive a failure to comply with the time limits should be used where the failure to comply has been caused by excusable mistake or by some cause over which he who has failed had no control. The time limits should not be lightly disregarded (*National Commercial Bank of Scotland Limited -v- Assessor for Fife 1963 SC 197*). Here, there was in fact a series of mistakes all in respect of matters which were within the control of the appellants' agents. The delay in lodging the appeal was considerably greater than that in the case of *National Commercial Bank of Scotland -v- Assessor for Fife* and there was a considerable delay in the appellants' agents realising that the appeal had not been lodged timeously. The Tribunal did not consider that in all the circumstances the mistakes of the appellants' agents were excusable.

For the sake of fullness, even if the Committee had found that there had been an unsuccessful attempt to transmit the email on 26th September 2005, the Committee would still not have felt it appropriate to exercise its discretion to waive compliance with the time limits. The appellants' agents would still have failed to put in place a proper system to obtain a read receipt (which they themselves knew was a reasonable step to take) and to have a proper system in place to check for acknowledgement of appeals. There would still have been a significant delay in the picking up of the fact that the appeal had not been received timeously.

The Committee was aware that it could have used its discretion only provided that no substantial prejudice had been caused to the Assessor. Here there was no specific prejudice to the Assessor, only a general prejudice to the efficient operation of the Assessor's procedures for handling appeals. Had the other conditions for the appeals being successful been present, the Committee would not have refused the appeals on the grounds that there would have been significant prejudice to the Assessor by admitting them.