

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

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in respect of

Shop, 5 Princes Mall, East Kilbride, Glasgow

The appeal proceeded on the basis of an alleged material change of circumstances, being the economic downturn and its consequences. The effective date of the alleged material change was 1st January 2009 when Superdrug and Woolworths in Princes Mall, East Kilbride were said to have closed.

In considering its approach to the matter the Committee had regard particularly to the commentary contained in *Armour on Valuation for Rating* (5th Edition), paragraphs 3-12 to 3-31 inclusive and to the cases and legislation referred to therein including the definition of material change of circumstances contained in Section 20 of the *Rating and Valuation (Amendment) (Scotland) Act 1984* (para 3-27) and the provisions of Section 3(4) of the *Local Government (Scotland) Act 1975*. To be a material change of circumstances the change must be one which affects the value of the appeal subjects.

The burden of proof was on the Appellant to satisfy the Committee that a material change of circumstances had occurred (*Armour*, paragraph 3-19). Having given careful consideration to all of the evidence and submissions, the Committee concluded that no material change of circumstances in terms of the legislation had taken place and the Committee refused the appeal.

The value entered in the roll for the appeal subjects at the 2005 Revaluation was £38,250. The Appellant contended simply that the rates should come down .

The Appellant argued that as a result of the economic downturn his takings had reduced, there has been a reduction in footfall, there had been an effect on the surrounding commercial premises, and a number of applications had been made for reductions in rent by the tenants of other commercial premises. To avoid reductions in rents the owners of the mall had taken certain measures including temporary lets for vacant properties under a licence to occupy rather than a lease and concessions made within the terms of leases, including the reduction of rent for a period. He argued that a material change of circumstances had taken place when Superdrug and Woolworths had closed, but in addition

to that a total of 18 other shops had closed down. He had not lodged any evidence of comparative rents but did intend to rely on the information presented by the Assessor and the schedule of comparisons lodged by the Assessor.

The Assessor produced as Assessor's Production 1 an up to date plan of East Kilbride Shopping Centre. This showed that there were a number of empty shop units but in his view no more than usual. Assessor's Production 2 showed the monthly footfall comparison for the period from January 2008 to February 2010. This showed that footfall had consistently increased until October 2009 since when there had been a decrease except for December. The overall footfall for 2009 had increased by some 700,000. Assessor's Production 3 was a rental analysis for the subjects in Cornwall Way. Units 45-52 Cornwall Way were outside the mall, as were the appeal subjects. The adjusted zone A rate for the 2005 Revaluation for those subjects varied from £340 to £380 per square metre which compared with the rate for Princes Mall which varied from £400 to £700. The rate for the appeal subjects was £400 which was akin to the rate for the other subjects outside the mall in Cornwall Way. This also showed that the shop at 20 Cornwall Way had been the subject of a 5 yearly rent review as at June 2008 when the rent had increased by £5000 from £26,000 to £31,000. The rent for the shop at 18 Cornwall Way had also been increased on review in May 2008 from £26,000 to £28,620. Assessor's Production 4 was a rental analysis for the subjects in Princes Mall. This showed that a new rent of £69,000 had been struck in August 2008 for the shop no.9, which compared with the rent struck in June 1999 of £55,500. The rent struck for the shop no. 21 in December 2008 had been £66,250, which compared with the rent in June 2003 of £59,150. The only recent example of a rent concession in Princes Mall was in relation to the shop at 47 & 49 Princes Mall which on 27th March 2009 had been let for a reduced rental of £30,000, which compared with the rental of £199,150 struck in March 1999. This was an isolated example and the intention had been, if the tenant settled, to negotiate a proper lease. Assessor's production 5 showed how the valuation of the appeal subjects had been arrived at. The rent for the appeal subjects had increased from £39,000 in March 2003 to £42,500 in September 2006. The figure of £39,000, which had been struck close to the tone date of 1st April 2003, was less than the net annual value shown of £38,250. The appellant had lodged an appeal after taking entry to the appeal subjects in April 2007 but after taking advice had withdrawn his appeal.

In his submissions, the appellant suggested that customers were spending less because of the recession and that his trade had been affected by the recent bad weather. The Committee took the view that these matters were not relevant evidence of a material change in circumstances.

In his submissions, counsel for the Assessor argued that the appellant was contending that there had been a material change affecting value since January 2009. In order to succeed, the appellant had to satisfy the committee there had been a change, that it had been material, and that it affected value. The onus was on the party claiming that there had been a change and that onus must be discharged by proper evidence. Falling rents if representing a general change affecting subjects of a particular type could amount to a material change of circumstances. The Committee accepted this as a correct statement of the applicable law. Counsel then went on to contrast this with the evidence before the Committee. There was no evidence demonstrating any trend of falling rents. On the contrary, the Assessor in his

evidence had given specific examples of recent rent increases. There was no evidence of a material decrease in footfall, the Assessor having again provided evidence to the contrary. The Assessor's valuation was supported by the actual rent passing for the subjects. The appellant had agreed to the rent of £42,500 when he took an assignment of the lease in November 2007 and he had withdrawn his appeal against the rateable value. Counsel concluded that on the evidence led before the Committee no material change of circumstances had been demonstrated. The Committee accepted Counsel's submissions and agreed that there was no evidence to support the argument that there had been a material change of circumstances.

The Committee accordingly concluded there had been no material change of circumstances affecting value and dismissed the appeal.