

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

CNC INVESTMENTS LIMITED

in respect of

GYM, 19B Forth Walk, Cumbernauld

The appeal proceeded on the basis of an alleged material change of circumstances, namely the opening of the Antonine Centre in 2007, with an effective date of change as at 1 April 2008 ie the beginning of the rating year in which the appeal was made.

In considering its approach to the matter the Committee had regard particularly to the commentary contained in *Armour Valuation for Rating* (5th Edition) at 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* 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 Committee also had regard to *Armour*, paragraph 19-21 on comparable subjects and the case of the *Assessor for Lothian -v- The Ministry of Defence, The Army Careers Office* decided by the Lands Valuation Appeal Court on 2nd December 2009 which was cited by the Assessor.

The burden of proof was on the Appellants 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 circumstance had been established to the satisfaction of the Committee and the Committee refused the appeal.

The net annual value of the appeal subjects entered in the Valuation Roll at the 2005 revaluation was £11,100. This comprised a rate per square metre of £40 with a fit out rate of £10. The value sought by the Appellants' agent was £25 per square metre producing an alternative valuation of £5,550.

The Committee accepted the Assessor's submission that the onus of proof that a material change of circumstances had taken place had not been discharged by the Appellants. The change of circumstances which had taken place was

likely to affect shops but not gyms. The Committee accepted this because shop trade depends on footfall but that did not necessarily follow in relation to gym trade. The Appellants did not seek to discharge the onus of proof incumbent upon them by leading evidence of, for example, a reduction in rental values arising from the change of circumstances or a reduction in turnover but attempted to rely on the fact that the Assessor had reduced the values for other properties and sought to argue by analogy that a reduction was also appropriate in this case. The Committee did not accept this to be the case, taking the view that the gym fell into a different genus of subject, the value of which would be affected by different factors. The value of the gym for rating purposes would not necessarily be affected by a change in footfall, and in any event the Committee was not satisfied that there had been any decrease in footfall in Forth Walk. The Committee in reaching this decision was entitled to rely upon the authority cited and also on its own knowledge in relation to matters of this nature.