

AB/TW

17 May, 2007

**Bell & Bell**  
**Rating Surveyors**  
**52 Old Elvet**  
**Durham City**  
**DI11 3HN**

FAX - 0191-375-7604

Dear Sirs,

**Appellants: Baco Scotland Limited.**  
**Subjects: 2 Little Drum, Cumbernauld**  
**Valuation Appeal Committee Hearing: 16<sup>th</sup> May, 2007.**

I refer to the above. The Committee have now reached a decision in relation to your application for an order under Regulation 11 of the Valuation Appeal Committee (Procedure and Appeals under the Valuation Acts) (Scotland) Regulations 1995 which was heard by them at the hearing on 16<sup>th</sup> May, 2007.

The Committee gave careful consideration to all submissions made by you and the Assessor.

The Committee noted that your application was made for two reasons; firstly, your dealings with the Assessor in relation to these subjects during the 2000 Re-valuation had been "acrimonious and unpleasant" and you considered that you had to be cautious in relation to the present appeals to ensure a "proper approach". The application was necessary, you felt, to protect the Appellants' interests and was a "belt and braces" approach to the appeals by you. Secondly, you had lodged detailed grounds of appeal and had received from the Assessor grounds of appeal which consisted only of a standard letter and grounds together with 459 comparisons. The Assessor's grounds did not provide adequate response to your grounds and the comparisons were excessive in number and the information about them was limited to their reference number in the Valuation Roll which was insufficient to allow you to interpret them in any meaningful way. On 25<sup>th</sup> April, 2005, you stated that Mrs Bell had received a telephone call from Ms Hendry of the Assessor's office who stated that the standard letter was being issued but that more detailed information would follow. You have received nothing further from the Assessor and accordingly lodged your application under Regulation 11. You were asked if the Assessor had complied with Regulation 10 of the Regulations and you stated that in your view he had complied.

In terms of your application, you sought to have the Committee direct the Assessor to: (a) reduce the number of his comparisons, (b) Provide a detailed response to your grounds of appeal and (c) Provide copies of all productions on which the Assessor proposed to found at the Hearing on 30<sup>th</sup> May, 2007. You stated that you had anticipated that your application once intimated to the Assessor would have provoked contact from him with further information. A letter was received dated 14<sup>th</sup> May, 2007 which did reduce the number of comparisons but did not provide any meaningful information in relation to them. It confirmed that the unit price was indeed agreed. However, it did not provide an explanation of how the

2000 Valuation had been arrived at. You stated that you had expected the Assessor to provide an explanation of his valuation and as he had not done so, you indicated that you wished to insist upon your application under Regulation 11.

You stated that you had been involved in a large case in Inverness in which Counsel was instructed and in which an application under Regulation had been made and granted by the Valuation Appeal Committee there. You stated that this case had been a block appeal by a number of Appellants and that it involved complex issues.

You made reference to the case of Drybrough & Co. v Assessor for Strathclyde 1982 SLT 426 and in particular the comments of Lord Avonside at p427 which are set out in Armour on Valuation for Rating at p115. You submitted that this case was authority for the proposition by you that the Assessor had a duty to explain his valuation to you prior to the Valuation Hearing. Although, you conceded that the comments made by Lord Avonside were made following a Valuation Hearing and not in relation to an application under Regulation 11.

You accepted the Assessor's assertion at the hearing that you had in fact received from him, his valuations, areas and plans for the 2005 Re-valuation under cover of his letter to you of 16<sup>th</sup> May, 2005.

You accepted that it was not standard practice to seek to invoke Regulation 11 and that the learned authors of Armour had provided some guidance at paragraph 5-21 on p111 thereof. You accepted that the appeals with which you were concerned were not a block appeal relating to a large number of similar subjects and you did not assert that the documentary evidence was likely to be extensive or complex.

The Assessor opposed your application. He stated that references by you to the 2000 Valuation were irrelevant as the Assessor is not fettered by his approach in previous valuations and each Re-valuation is a fresh start. He asserted that the Assessor had complied with his obligations in terms of the Regulations in relation to the information which he was required to produce. He referred to your letter of 25<sup>th</sup> April, 2005 and contended that in fact you had not complied with the Regulations as that letter did not contain grounds of appeal but only your valuation. As a consequence, the Assessor was unable to respond in the absence of grounds. He asserted and you accepted that Valuations, areas and plans had been provided by him under cover of his letter of 16<sup>th</sup> May, 2005. He stated that also enclosed with that letter was a copy of the 2000 Valuation.

He stated that you had not provided details of any comparisons on which you intended to rely at the Hearing and he asserted that it was not the purpose of Regulation 11 to afford an Appellant the ability to build a case on information provided to him by the Assessor. He made reference to paragraph 5-21 on p111 of Armour as set out above. He stated that the Appeals were simple and were capable of being heard by the Committee and resolved in one day. They were not block appeals or ones where the documentary evidence would be extensive or complex. The issue, as far as the Assessor could determine, was a dispute about areas.

The Committee in determining this application gave very careful consideration to all of the submissions made on behalf of the Appellants and the Assessor. Regulation 11(1) provides:-

11. (1) The Committee may require a party (hereinafter in this regulation referred to as, "the first party"), before such date as the Committee may specify-
  - (a) to provide the other party to the appeal with a written statement outlining the evidence which the first party proposes to lead at the hearing;
  - (b) to furnish the other party to the appeal with a copy of all productions on which the first party proposes to found at the hearing.

It was clear to the Committee in considering the terms of Regulation 11(1) that the power afforded to them under this regulation did not extend to directing the Assessor to (a) reduce his number of comparisons to a realistic and manageable number or (b) provide a detailed response to the Appellants' grounds of appeal, as requested in the Appellants' application.

Further, it was clear that the regulation was not mandatory and that where an application was made under regulation 11(1), a discretion was afforded to the Committee in determining it.

It was the view of the Committee that in framing the Regulations, it had not been the intention that the provision of a written statement of evidence and productions in advance of the hearing would be the norm. If this had been the intention, the requirement for this would have been included in Regulation 10 and would not require a separate application to the Committee. Indeed applications under Regulation 11 were rare.

In determining the application, the Committee had regard to the guidance given in paragraph 5-21 of *Armour on Valuation for Rating*. The intention of the Regulation was to, "enable the economic conduct of appeals particularly in cases where many appellants combine to present a block appeal relating to a large number of similar subjects and cases where the documentary evidence is extensive or complex."

These appeals lodged by the Appellants were not part of a block appeal and there was information placed before the Committee which supported the conclusion that the documentary evidence in the case would be either extensive or complex.

Accordingly, the Committee took the view that there was no merit in the Application and have refused same. The Letter and enclosures dated 30<sup>th</sup> April, 2007 produced by you to the Committee is returned to you.

Yours faithfully

Anne Brophy  
Assistant Secretary