

Statement of Reasons
relative to appeals by
Posta Limited in respect of
Shop, 23/25 Cadzow Street, Hamilton
And
TR & N Harrison Limited in respect of
Shop, 32/34 Cadzow Street, Hamilton

These appeals which were in respect of the 2010 Re-valuation, called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 18th May, 2011.

Mr Nigel Thomson, agent for the appellants, sought to have the appeals continued as it was apparent, due to the pressure of other business before the Committee, that it was unlikely that the appeals would be disposed of.

Mr Stuart on behalf of the assessor opposed the continuation sought and moved that the appeals be dismissed in terms of Regulation 10 (3) of the Valuation Appeal Committee, etc. (Scotland) Regulations 1995 on the basis that the appellants had failed to comply with the terms of Regulation 10 (1) of said Regulations.

Regulation 10 (1) provides that;

- (1) An appellant shall, not later than 35 days before the date set for the hearing, furnish to the assessor a written statement specifying -
 - (a) The grounds for his appeal; and
 - (b) if the appeal relates to the valuation entered in the valuation roll, the valuation which the appellant considers should be entered in the roll and the grounds on which that valuation is arrived at.

The appellants had sent a letter to the assessor dated 27th February, 2011 which was received by him on 2nd March, 2011 in which it was stated:-

“In accordance with the procedural timetable, we advise that our reasons for believing that the Valuation Roll entry is inaccurate in connection with the above noted appeal are that the assessment is excessive and incorrect having regard to a proper analysis of the relevant rental evidence of comparable property in the locality or elsewhere and to our reference data.”

An alternative Rateable value was also stated.

On 24th March, 2011 the assessor responded to the appellants stating that he did not consider that the letter issued by the appellants complied with the Regulations as in his view it did not contain grounds for the appeal nor the grounds on which the alternative value had been arrived at. The assessor requested that the appellants comply with the Regulations. Nothing further was received from the appellants.

Mr Stuart contended that the purpose of the Regulations is to afford the assessor fair notice of the alternative valuation proposed by the appellants so that he is not surprised by it at the hearing of the appeal. The letter issued by the appellants was very general in its terms and contained generic grounds. There was nothing specific to the particular subjects under appeal and there were no grounds set out demonstrating how the alternative valuation had been arrived at. The assessor had not been given fair notice of the case to be answered. 265 appeals had been cited for hearing at this particular meeting. 100 of the appeals so cited were appeals where the assessor was of the view that there had been a failure to comply with Regulation 10. The assessor had not prepared for the hearing of these appeals. There was 11,000 re-valuation appeals to be disposed of by December, 2013. Non compliance with the Regulations caused potential delay to the efficacious disposal of appeals within the statutory timeframe set down.

Mr Stuart made reference to the case of *Tesco Stores Limited v the Assessor for Fife* which was a decision of the Lands Valuation Appeal Court issued on 14 December, 2010. He made particular reference to the Opinion of Lord Hardie at paragraph [24]. This appeal concerned the requirement, contained within Regulation 10(5), on each party to an appeal to provide to the other details of the properties on which they intend to rely by way of comparison at the appeal hearing. The appellants’ agents in that particular appeal had issued a schedule containing in excess of 400 entries relating to subjects in all parts of Great Britain. The court determined that this was contrary to the spirit and intention of the Regulation 10.

Mr Thomson on behalf of the appellants contended that the terms of the letter lodged by him dated 27th February, 2011 in respect of both appeals complied with the requirements set out in Regulation 10 (1). He made reference to *Armour on Valuation for Rating*, at paragraph 5.19 wherein it was stated that the written statement required by Regulation 10 (1), “need not be

elaborate but should be sufficiently full to give warning to the assessor of all the grounds on which the entry is to be challenged.”

Mr Thomson contended that there had been no prejudice to the assessor; the assessor had made his valuation and was content and able to speak to it at the hearing. He stated that it was a matter of analysis of the rent, the size of the unit and that the terms of his letter made this sufficiently clear. The statement by him in his letter to “reference data” related to the physical dimensions and circumstances of the appeal subjects and the assessor would be aware of that.

The Committee, after giving careful consideration to all of the submissions made, were not satisfied that the letter issued in respect of each appeal dated 27th February, 2011 amounted to compliance in terms of Regulation 10 (1). They accepted the assessor’s contention that the terms were very general and the grounds therein generic. It did not provide the assessor with fair notice of the appellants’ case which would allow the assessor to make proper inquiry and preparation for the appeal hearing. However, any such prejudice to the assessor could be corrected by allowing the appeals to be continued and requiring the appellants to now comply with the terms of Regulation 10 (1). Whilst the Committee accepted the comments and concerns made by the assessor with regard to the volume of appeals to be disposed of by December, 2013 and the need for these to be dealt with efficiently in order for this to be achieved with the allotted time, the Committee considered that it would be perverse to dismiss these appeals where it was evident that even if the appellants had complied with the terms of Regulation 10 and both parties had prepared their case for hearing, the appeals would not have been heard due to the pressure of other business before the Committee and would have in all likelihood been continued to another date. In these particular circumstances, the Committee determined to afford the appellants a further 21 days within which to lodge the written statement required in terms of Regulation 10 (1) and to continue the appeals to a later date for hearing.