

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
IN APPEALS

by

- 1 Trillium Group Ltd relative to
Office, Suites 101/203 & 303 Tryst Road
Cumbernauld G67 1JW
- 2 Telereal Trillium Limited relative to
Office, 3 South Circular Road
Coatbridge ML5
- 3 Trillium Group Ltd relative to
Office, 417 Main Street, Bellshill ML4 1AX
- 4 Trillium (Prime) Properties Ltd relative to
Office, 230 Airbles Road,
Motherwell ML1 3AT
- 5 Trillium Group Ltd relative to
Office, Flemington House, 600 Windmillhill
Street, Motherwell ML1 2AN
- 6 Telereal Trillium Limited relative to
Office, 55/57 Bannatyne Street
Lanark ML11 7JR
- 7 Telereal Trillium Limited relative to
Office, Murray House. The Murray Road
East Kilbride G74 0RT
- 8 Telereal Trillium Limited relative to
Office, Cambuslang Gate, 27B Main Street
Cambuslang G72 7EX
- 9 Trillium Property Services relative to
Office Flat Ground/1
Brandon Gate Building C
5 Leechlee Road
Hamilton ML3 6AU
- 10 Royal Mail relative to
Post Office, 17 Shottskirk ML7 4AB

The 2010 revaluation appeals in respect of the above subjects were heard together. In each case the Assessor argued the Appellants had no capacity to appeal and the appeals should therefore be dismissed.

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 3-03 and 5-11 and to the cases and legislation referred to therein including the provisions of Section 2(1) and 3(2) of the Local Government (Scotland) Act 1975.

This was an unusual set of appeals.

The appeals had all been submitted electronically using the Scottish Assessors Portal Automated Appeals Logging System. The Committee heard a good deal of evidence about how this worked. It allowed appeals to be lodged in bulk by means of a stream of data. Certain fields were mandatory, such as name of the appellant and capacity, others were recommended or optional. When an appeal was submitted, there was then a result notification. The appeal was either validated or the problem field defined. Where the appeal was validated, the Assessor would then write confirming receipt of the appeal.

In the present cases, all the appeals were validated and letters of acknowledgement were received. Curiously, each of the appeals was lodged in the name of Telereal Trillium though in the letters of acknowledgement from the Assessor the Appellant was variously described as Trillium Group Ltd, Telereal Trillium Limited, Trillium Property Services, Trillium (Prime) Properties Ltd and Royal Mail. No explanation was given as to the source of this information. It did not appear to be information in the data provided by the Appellants. In some instances, the Assessor had changed the names on the valuation roll as a result of the appeals and issued fresh valuation notices.

The Committee heard from the Appellants' witness Mr Gordon Martin that Trillium Limited had been formed in 1997 to acquire the Department of Work and Pensions estate. In 1998 it had been given a PFI contract to manage every aspect of the DWP portfolio. In 2000 it had become Land Securities Trillium Limited. In 2007 it had acquired the Royal Mail properties, to manage these on their behalf. It also managed properties for the DVLA, the Royal Bank to an extent and also others. In 2009, Telereal acquired Trillium forming Telereal Trillium. The group had a complex number of organisations. For example, the DWP properties were held by Trillium (Prime) Property Limited and the Royal Mail Properties by Trillium (Nelson) Freehold Limited. Mr Martin stated that Telereal Trillium had full control over the other organisations. It became clear however that Mr Martin did not have full information concerning the detailed aspects of the groups' affairs. He explained that his clients had been very slow in providing information. The Committee were not able to make any judgement concerning the detail of the group's affairs and an objection to the hearsay nature of Mr Martin's evidence in relation to this was sustained.

The Committee heard that as part of a PFI contract Telereal Trillium Limited were employed to act for the DWP in the management of their business rates affairs and that GVA Grimley were the appointed rating consultants for both Telereal Trillium Limited and the DWP. Appellants' Production Number 8 was a letter of authority from DWP addressed to GVA Grimley.

The Assessor accepted that Telereal Trillium Limited were specialist managing agents acting for government departments but argued that they were not proprietors, tenants or occupiers and therefore had no capacity to appeal. Counsel for the Appellants submitted that in some but not all cases Telereal Trillium Limited were proprietors, tenants or subtenants. He accepted that they were not occupiers.

The Assessor had historically accepted the position at face value. However the Appellants' Production Number 7 being a letter from the Assessor to GVA Grimley showed that the issue had been raised by the Assessor as long ago as 20th September 2005 but the letter was endorsed "accepted change by telephone" and the matter did not appear to have been pursued.

The point was then taken by the Assessor in a running roll appeal relating to Murray House, 7 Murray House, East Kilbride, one of the present appeal subjects before the Panel on 7th February this year but that appeal had been withdrawn.

The matter had now been brought before the Committee. However the Committee was not able to determine the full facts given the incomplete nature of the information placed before it. The lack of information was perhaps surprising. S3 of the Local Government (Scotland) Act 1975 makes provision for the Assessor for each valuation area to send to each person who is a proprietor, tenant or occupier of lands and heritages which are included in the valuation roll a valuation notice setting forth the details of the relevant entry in the roll. S7 of the Lands Valuation (Scotland) Act 1854 allows the Assessor to call upon any person, being a proprietor or reputed proprietor or tenant or occupier within his area for a return containing such information as may reasonably be required for the purpose of enabling him to value the lands and heritages of which such person is proprietor or reputed proprietor or tenant or occupier. The Committee was not told whether these powers had been used here. It did not appear to have been envisaged when the Valuation Appeal Committee etc (Scotland) Regulations 1995 were drawn that this aspect would be problematic. In relation to appeals lodged by way of notice all that was required was that the particular lands and heritages in respect of which the appeal is made be specified (Regulation 2). In an appeal by electronic communication, it was also necessary to specify the name, postal address and postcode of the appellant and where an agent is acting the

agent's particulars. In neither case was it necessary to specify the capacity in which the appeal was taken. The Assessor had seen fit to alter the names appearing in the valuation roll following submission of some of the appeals but took the view for the purpose of these appeals that it was for the Appellants to supply him with evidence of their interest in the various properties which were the subject of appeal. The Appellants were not able, as they ought to have been, to give an informed and comprehensive account of the Trillium group's affairs in so far as relevant to the point at issue.

In circumstances where the Committee did not have full information on the basis of which to make its own judgement, the Committee was left to decide between two competing sets of submissions.

The Assessor citing Armour at paragraph 5-11 and S3(2) of the Local Government (Scotland) Act 1975 submitted that it was fundamental that in order to lodge a valid appeal an appellant must have received a valuation notice and be either proprietor, tenant or occupier. Counsel for the Appellants argued that it did not end there. This was an administrative procedure and by analogy with Lord Kilbrandon's reasoning in National Commercial Bank of Scotland v Assessor for Fife 1963 SC at p205 the Committee had a discretion in cases where as in the present case there had been an understandable and excusable error which had caused no prejudice to the other party, and on this basis the appeals should be allowed to proceed. He also cited Tesco Stores Ltd v Assessor for Fife LVAC 10.12.10 referring to the opinion of Lord Hardie at para 26 and suggested the Assessor's remedy was to require the Appellant to respond and if necessary to draw the matter to the attention of the Committee prior to the hearing, but the Committee noted that the Assessor already had available to him the powers under S7 of the 1854 Act. He argued that the appeals were valid because GVA Grimley were acting with the authority of the occupiers, but if it were necessary to amend, he did so.

The Committee had some sympathy with the Appellant's argument. On the evidence before the Committee appeals lodged in the name of Telereal Trillium, had apparently been lodged and had gone ahead under various related but different names, in circumstances where it was unclear where the information for these other names had come from. The valuation roll had also been altered. S2(1) of the Local Government (Scotland) Act 1975 as amended by the Rating and Valuation (Amendment) (Scotland) Act 1984 Sch 2, para 13 did enable the Assessor to alter the roll to give effect to changes in the proprietor, tenant or occupier of lands and heritages but it was not clear what change had taken place here. The Committee's view was that it was difficult to see how the Assessor was prejudiced other than in the sense of having to deal with these additional appeals in circumstances where he accepted that GVA Grimley were acting as specialist managing agents and had authority to pursue the appeals albeit they had done so in the wrong name. There was a single address for all companies within the Trillium group, namely Bastion House, 140 London Wall,

London to which all valuation notices had been sent. If the appeals were not allowed to proceed the Appellants would be denied a right of appeal as it was too late to amend. The Committee also heard evidence that in appeals relating to Scottish Government quangos, the Assessor had allowed these to proceed on the basis of letters of authority. The approach adopted by the Assessor was inconsistent in this respect. In the particular circumstances, the Committee was prepared to accept that there had been an excusable error on the part of the Appellants, and it took the view that there had been no prejudice to the Assessor resulting from this.

For these reasons, it sustained the Appellants' submissions concerning the validity of the appeals and allowed these to proceed.