

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO REQUEST

by

MONARCH RETAIL LIMITED T/A TEXSTYLE
WORLD

for

APPEAL CITATION IN RESPECT OF

1 Birkenshaw Trading Estate,
Birkenshaw, Uddingston

This was a request under Regulation 8(7) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 for an appeal to be heard.

The terms of Regulation 8(7) are:-

“If an appellant considers that his appeal has not been or is not to be heard within a reasonable period of lodging it, he may request the Committee to hear the appeal within such period as he may specify, being a period not less than 70 days from the date of his request and if the Committee declines to hear the appeal within such a period –

- (a) it shall state its reasons for so declining; and
- (b) the Secretary shall notify both parties accordingly.”

The request was made by the agents by letter dated 4th July 2011. The initial request was for the appeal to be dealt with” in not less than 70 days from the date of the application”. It was received during vacation. The first meeting of the Panel thereafter was scheduled for 7th September 2011. The request was then revised asking that the matter be considered on 7th September 2011 on the basis that if the Committee so decided, the appeal would be cited for hearing on 16 November 2011.

The request was duly heard by the Committee on 7th September 2011. Mr Allan Lapsley appeared for the Appellants in place of Mr Paul Birch who was on holiday. Mr Stuart, Advocate appeared for the Assessor.

The request was that the two outstanding appeals for the subjects be considered at the same Panel hearing. The appeals currently outstanding were described by the Appellants as (a) the revaluation role appeal with effect from 1 April 2010; and (b) the material change of circumstances relating to the letting of the subject property from 20 July 2010 for

a term of 3 years. It became apparent during the course of the hearing that the only appeal lodged by the Appellants was a new occupiers' appeal.

Mr Birch had lodged written representations on behalf of the Appellants in the following terms:-

BACKGROUND

- (a) The subject property had been occupied by Texstyle World FADS Limited and that company went out of business in 2009.
- (b) The subject premises were marketed by the Landlord with the benefit of the full Texstyle World fit-out. Monarch Retail Limited agreed terms to lease the subject property for three years from 20 July 2010 to 20 July 2013.
- (c) Monarch Retail is a small business but not a small business as defined for the Small Business Bonus Scheme. The rateable value for the subject property is considerably more than £25,000.
- (d) The subject property is the largest single enterprise taken on by Monarch retail and a loss making outlet in the subject premises could not be allowed to continue.

LETTING TERMS

- (e) The lease entered into by Monarch Retail provides for the first 6 weeks to be rent free, next 20 weeks at £75,000 per annum, next 26 weeks at £150,000 pr annum, second year at £175,000 and third year at £200,000.
- (f) The average rent over the 3 year term is £159,615 per annum.

RATEABLE VALUE AND RATES PAYABLE

- (g) The subject rateable value from 1 April 2010 is £316,000 as increased from £281,000 prior to the date of revaluation.
- (h) The rate payable on £316,000 at 43.3p in the pound equates to £136,828 per annum. Therefore the actual rate payable is close to being as much as the rent payable and the actual rate payable is a substantial overhead for the Appellant's business.

TIMING

- (i) On 6 June this year Mr Birch spoke with Russell Hewton at the Assessor's Office who advised him that there were no resources available to deal with the subject appeal and this should be dealt with no later than 2013.
- (j) The subject lease is to expire on 20 July 2013. Prior to that date the Appellant has to make a decision whether or not to remain in occupation of the premises. The appellant's decision will be substantially influenced by whether the subject property is trading at a profit or a loss and in order to make this calculation the Appellant needs to know the exact amount of rates payable as a substantial business overhead.
- (k) In the event that the Appellant is unable to make a decision whether or not to remain trading six months prior to the lease expiry date it would be usual for the landlord to fix a board to the subject property and market this from 20 January 2013.

FINANCIAL OVERHEAD

- (l) It has already been demonstrated that the rate payable is a substantial part of the running cost for the subject property. Indeed in the current financial climate it is not unreasonable to think that the landlord might accept a rent reduction to persuade the tenant to remain in occupation from 20 July 2013.
- (m) The Appellant is unable to assess the accurate overhead for the subject property until the rating appeal is dealt with and resolved. In such circumstances the Appellant can only assume that the current level of rates will continue to be payable, when making a decision or whether to vacate when the current lease expires on 20 July 2013 and whether to close the store prior to that date.
- (n) In the event that the Appellant vacates the subject property the rating authority will have a reduced rates receipt for an unoccupied property.

CONCLUSION

- (o) The Appellant's concern in this matter is not simply that of an occupier wanting to know the certain amount of rates payable against the business. The amount of rates payable is material to the Appellant's decision whether or not to remain trading from the subject premises.
- (p) The Appellant has demonstrated the importance of this matter by making a direct approach to Alex Neil MSP who has in turn contacted John Swinney MSP and Government Minister.
- (q) It is fully recognised that the Assessor's Office is busy and it is more efficient for the Assessor to deal with all appeals on the same estate or shopping parade at the same time.
- (r) The decision for the Committee to take is whether every rating appeal should be dealt with in a three or four year timescale as determined by the Assessor or whether an individual Appellant has the right to challenge the Assessor's timetable and seek an earlier decision on the rating Assessment which is material to the future running (or not) of the Appellant's business.

Mr Lapsley addressed the Committee on those representations. He maintained the Appellants had the right to challenge to seek an early decision. The request was triggered by the new lease, effective from 20 July 2010. It was unreasonable and against the interests of natural justice to have delay in the matter being decided.

Counsel for the Assessor argued that the Appellants' case was not made out.

He referred to the terms of Regulation 8(7) which states that where an appellant considers that his appeal has not been or is not to be heard within a reasonable period of lodging it, he may make a request to the Committee.

Here, the appeal had been lodged in November 2010. The issue was what constituted a reasonable period and this depended upon an objective assessment of the circumstances. Regard had to be had to the number of appeals lodged with the Assessor and the statutory timetable for dealing with these.

The timetable was set down in the Valuation Timetable (Scotland) Order 1995. This set down that the last date for disposal of the appeal by the Valuation Committee was 31st December in the third year following the year of revaluation, in this case 31st December 2013. In his submission, the timetable set by Parliament must be deemed to have been reasonable.

As to the number of appeals lodged, to the end of September 2010, 7506 revaluation appeals had been lodged. By the end of August 2011, 2500 appeals had been dealt with, leaving 4973 outstanding. In addition to this, there were 5636 running roll appeals.

The disposal of such a large number of appeals required an effective and manageable means of dealing with these. There were 2 aspects to this:-

- 1 Appeals with common features were grouped together.
- 2 It was necessary to address the revaluation appeals first.

The intention was that retail warehouses would be dealt with as a group. This was considered good practice and to the benefit of the ratepayer. It allowed ratepayers and their representatives to pool information and resources in preparation and presentation of any case they wished to present. The Committee would then set the tone rate as a result of the appeals which came before it. Revaluation appeals would be dealt with first, then running role appeals. It was in the interests of all appellants that matters should be approached in this way. Some of these appeals would be dealt with later this year, others in 2012. There were also other appeals for this estate, and these would be dealt with starting in the spring.

The matter was not a simple case of dealing with one appeal. It was not possible to determine a single appeal in isolation in advance of the others. Inevitably reference would be made to other subjects for which there are outstanding appeals. The revaluation appeals required to be dealt with first with the benefit of full rental information.

The purpose of Regulation 8(7) was to deal with exceptional circumstances such as where an Assessor through oversight had omitted to cite a particular appeal, or had failed to cite without good reason for doing so, say because of the revaluation workload. That was not the case here.

One aspect of the Appellants' argument was that a decision on rateable value was material to the Appellants decision as to whether to continue with the lease. The issue was therefore one of financial hardship. This was understandable and there were a number of such appeals. There was however a statutory mechanism for this.

Section 25A of the Local Government (Scotland) Act 1966 provided:-

Remission of rates on account of hardship

25A Every rating authority may, on the application of any person liable to pay any rate levied by the authority, remit payment (in whole or in part) of the rate if the authority are satisfied that –

- (a) the person would sustain hardship if the authority did not do so; and
- (b) it is reasonable for the authority to do so, having regard to the interests of persons liable to pay council tax set by them.

The Appellants should accordingly approach the rating authority. The matter was one for them in the exercise of their discretion.

The Committee having adjourned the hearing to give the matter careful consideration decided that the Assessor was correct in his submission that the purpose of Regulation 8(7) was to deal with exceptional circumstances such as

where an Assessor through oversight had omitted to cite a particular appeal, or had failed to cite without good reason for doing so, say, because of the revaluation workload. That was not the case here. The Assessor had adequately explained the system in place for the citation of appeals. The system adopted by the Assessor was measured and reasonable and in the interests of appellants in general. The citation of this particular appeal would be dealt with by the Secretary in accordance with that system. The timetable within which the Assessor, the Secretary and the Panel required to perform their duties was a matter for the legislature.

The Committee understood why it was important to the Appellants that their appeal should be heard but in so far as this was for reasons of financial hardship this was a matter for the Appellants to raise with the local authority under the relevant statutory provision.

The Committee accordingly declined to grant the Appellants' request.

12 September 2011