

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

ASDA STORES LTD

in respect of

Site of ATM - Lloyds, 51 Watson Street, Motherwell

Site of ATM - Nationwide, 51 Watson Street,
Motherwell

Site of ATM - RBS, 51 Watson Street, Motherwell

The Assessor made a preliminary motion that the appeal should not be heard. The argument which he anticipated the Appellants were to present was that as a result of the opening of three supermarkets in the surrounding area there had been a fall in the number of customers at these ATM's after the tone date of 1st April 2008 but before 1st January 2010. The Assessor did not consider this to be appropriate because this was an appeal against rateable value, not a material change of circumstances appeal.

The Committee having adjourned to consider the point did not accept that the appeal should not be heard. There were two reasons for this.

Firstly, whilst the Committee noted the Assessor's attack on the relevancy of the Appellants' case as this was currently being argued, they did not agree that the Appellants' case was necessarily irrelevant even if the Assessor was correct in his argument.

Secondly, the Committee decided that although this was not a case of material change of circumstances, it was nevertheless desirable that both the facts and the law should be fully developed before it (*Assessor for Inverness-shire v Caledonian Associated Cinemas*, 1959 S.L.T. 281).

The Assessor in his submission referred to the terms of the Schedule to the Valuation Timetable (Scotland) Order 1995:-

“Valuations were to be made on the basis of the level of rents prevailing as at 1st April in the year which is 2 years prior to a year of revaluation, and on the basis of the physical circumstances of properties as at 1st January in the year of revaluation.”

He submitted you must value heritage in its actual physical state at the time of the valuation, and according to the use to which it is then devoted. Physical circumstances were limited to the physical circumstances of the appeal subjects. Factors pertaining to rent were governed by tone date. If after tone values had gone down, the Assessor did not require to apply 20/20 foresight. Rent post tone was not relevant unless it informed the position at tone. You could not argue change of circumstances in a revaluation appeal; it would be normal to lodge a material change appeal with the revaluation appeal.

The Committee reserved its decision on the Assessor's submission that in so far as the Appellants were seeking to argue that the opening of other supermarkets in other towns was relevant to the physical circumstances of the appeal subjects this was not apposite.

The Committee also reserved its decision on the Appellants' submission to the effect that S1(6) of the 1975 Act was relevant in the circumstances of the present case. This was to the effect that the Assessor had power, in respect of material change of circumstances, to alter entries before the roll came into force.

The Committee were aware of the decision in *The Sports Shop (Fife) Ltd v Assessor for Grampian Region* referred to in *Armour* at paragraph 3-45 in which the view that a level of value lower than that at tone could only be reflected if there was an appeal made upon the basis that there had been a material change of circumstances was not supported by the Assessor on appeal. The Committee also took note of the passage also in *Armour* at paragraph 3-45 to the effect that a particular difficulty is likely to arise if there has been a marked drop in rental values between the "as at" date for valuation and the date the roll came into force, and the reference therein in the accompanying foot note to S1(6)(c) of the 1975 Act .

The Committee accordingly felt it necessary to reserve its decision with regard to both this and the other matters raised by the parties until the evidence had been taken and such further submissions as the parties may see fit to make had been heard.

29 September 2011