LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

1) Bank of Scotland in respect of Bank, Unit 6, West Burnside Street, Kilsyth

2) NHS Lanarkshire in respect of Shop, 50 Netherton Street, Wishaw

1 Bank, Unit 6, West Burnside Street, Kilsyth

Mr Clarke for the Assessor argued that the appeal should be dismissed. The argument presented was as follows. This was a bank unit. It had been valued as a shop. The shops were zoned in the usual way and a Zone A rate had been arrived at for the shops. The grounds lodged in this case were completely generic. The case had originally been cited for 22nd June, 2011 but had been continued to the hearing on 7th September and from then until today. On 27th or 28th August Mr McKaig had met with a member of staff in the Assessor's Office. Mr McKaig had not provided details of the rents. He had not given any grounds of appeal. The Assessor did not know what was wrong with the Zone A rate and had no idea of the rent passing. There was simply no excuse.

Mr Clarke referred to the Judgment of Lord Hardie in Tesco Stores Ltd v Assessor for Fife [2010] CSIH 95. The relevant passage was a paragraph 24:- "The clear intention of Regulation 10 is to require parties to provide their opponent with information specified in the regulation under penalty of the appeal being dismissed if the appellant fails to comply with the regulation and if the assessor seeks dismissal of the appeal for that reason. … Again the intention of these provisions is to ensure that each party is provided with sufficient information by the other party about comparisons upon which

the other party proposes to found at the hearing."

Mr Clark submitted that the rationale adopted with regard to comparisons should *a fortiori* apply to generic grounds of appeal. To give grounds for any situation was not compliance, otherwise an appellant might argue absolutely anything. What was required was to say for example that the Assessor's areas were wrong or that the rents didn't establish the Zone A rate adopted. These were the sort of grounds that the regulations sought.

Mr Clarke referred to Regulation 10 which used the word "specify". This was a well recognised word in legal circles and its meaning here was clear. You had to give sufficient notice of the case to answer. Lord Hardie had made it clear that specific comparisons were required. It was not therefore sufficient to have grounds of appeal with a generic wording covering everything. The Assessor's schemes of valuation were now published and there was therefore no excuse as might have been the case in the past for saying that the Assessor had not explained his position.

The Assessor had written to the appellants on 3rd May stating that their ground were generic and did not comply. The Assessor still did not know what the appellants were saying was wrong with the Assessor's valuation.

With a shop, this would be zoned and the situation would usually be simple. The Assessor would make reference to a basket of rents. However, here he had no idea what argument might be made by the appellants and given the current budget cuts and restraints on resources the Assessor was accordingly moving that the appeal should be dismissed.

Mr. McKaig opposed the Assessor's motion. He produced the original grounds lodged in this case. He explained that when he had tried to contact the Assessor's Office the assistant who had originally dealt with this was no longer with the Assessor and he was unable to make contact with anyone to discuss this. He had been advised someone would contact him. He then contacted the Assessor's Office and it took him 2 weeks just to get to know who would be dealing with the appeal. He had brief discussions with a member of the Assessor's staff and the relevant issues were passed to the

Assessor.

The grounds were in accordance with the 1995 Regulations. The issue was the extent to which the grounds should be detailed. He stated that the Regulations had been made in 1995 and there had been 3 or 4 revaluations since then. Only this year had the Assessor seen fit to challenge the style of grounds which they had consistently used.

He then referred to the decision of this Committee in Posta Limited v. TNT and R D Harrison on 18th May this year. On the second page paragraph 4 he noted that the Assessor had advised that of 265 appeals cited 100 had failed to comply with the Regulations. He suspected many of these were lodged by professional agents. He submitted the Assessor was wrong in re-interpreting the Regulations. The issue was whether there was sufficient notice of the case to answer. Mr Clarke had given a good description of the background. The process for comparative valuation is a standard one. For example, there was a practice note for shops and also a practice note for banks but they were both very similar. If these involved simple issues it would be a surprise if the grounds were different for the majority of comparative subjects. He took the view that the grounds lodged were sufficiently detailed for comparative subjects and did comply. If during the hearing an appellant were to raise an issue which was not covered by the grounds, then the Assessor could submit a motion to prevent evidence being led and that those issues should not be put before the committee for decision.

The Regulations were not detailed. The grounds lodged were more than specific. Details of the issues arising were given in the course of negotiations with the Assessor e.g. specific rental analysis etc. The detail should accordingly have been discussed. There was no need to specify this either at day 1 or day 35. Discussions were without prejudice and therefore matters were not agreed until the appeal had been fully resolved. If negotiations were to break down then the Assessor would normally defend the original valuation.

These were not catch-all grounds, they were appropriate. There were other grounds which could have been included. The grounds lodged were consistent with what other Assessors are accepting. He produced an example of grounds lodged for Glasgow, though he accepted that every Assessor was independent.

Mr Clark had suggested that this was a simple shop appeal. It was necessary to consider the implications for a complex valuation involving say 40 issues. Was every single issue to be identified? For his part, he thought it was sufficient simply to give fair notice to the Assessor. He made reference to Armour at paragraph 5.19:-

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"In the first place the appellant is required not later than 35 days before the date fixed for the hearing to furnish to the Assessor a written statement of the grounds for his appeal and specify his proposed alternative valuation. The statement 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. In the second place, the Assessor for his part is required within 14 days of the receipt of such statement to furnish the appellant with a written statement of the grounds on which the entry in the Valuation Roll is arrived at. This obligation only arises if the appellant has sent his statement and it has been received by the Assessor. Again a simple statement should suffice provided it gives a sufficiently clear indication of the basis of valuation. Mere reference to the principle of valuation applied would usually not suffice. On the other hand, a lengthy explanation is inappropriate and impractical".

He also referred to the terms of the LVAP Website. This made it clear that proceedings were of a less formal nature than those of a court. What the Assessor was requesting were grounds which were detailed, elaborate and formal. He had been a practising surveyor for 25 years. Nowadays there was always Counsel on one or both sides. He cautioned the committee to accept his submission on what were appropriate grounds of appeal.

2 Shop, 50 Netherton Street, Wishaw

The issue for decision in this case and the arguments taken were similar to those in the preceding case.

The Assessor's position was as follows. This shop was in a hospital. Appeals had been lodged by BNP Paribas for this shop and another. Mr McAlpine of that firm had said that both appeals were to be withdrawn. Mr McKaig had said that Mr McAlpine had no

right to do that. That may well be the case within BNP however the Assessor did not need to enquire whether an agent had authority. The Assessor accepted that a verbal withdrawal was not binding the fact there had been a verbal withdrawal in this case made the case all the stronger.

The grounds in this case were also generic. The rent for the shop was quite complex. It was a basic rent and then a turnover payment over £50,000. When asked for details, the Appellants' agents had produced a spreadsheet but no annual return. Mr Clarke argued that the Assessor as a public figure had no grounds indicating that these were special subjects, nor did he have proper figures.

In the Tesco case at paragraph 6 it was stated that "Mr Ferrier admitted that he had not seen the primary documents from which these figures were derived; nor had he seen any detailed business accounts for that period. On this basis, the committee could expect more and would be entitled to say we want the primary figures.

This was a worse case than the first one as there were no apposite grounds and no proper figures. The Assessor again moved for dismissal.

Mr McKaig in reply lodged the correspondence with the Assessor concerning grounds of appeal. Dealing with the issue of the verbal withdrawal, there had been internal confusion within his firm. Mr McAlpine had not been allocated this case but had been dealing with other properties in the area. The appeal had only been withdrawn verbally, not in writing, and this was not binding.

As regards the rent, he had never been asked for this information; he had offered it to the Assessor. A meeting had taken place. Within an hour of the meeting the Assessor had contacted his client. If information was required then professional etiquette was to go back to the agent, not directly to the client. Alternatively, the Assessor could have issued a rental return and this had not been done.

As regards the appeal grounds, this was a shop in a hospital but it was initially appropriate to look at shops locally. On 18th August he had sent an e-mail to the Assessor saying that in this case he intended to rely on the actual rent. This was within the 35 day period but his opinion had changed and he given the Assessor notice of that. To clarify, the spreadsheet had been passed on to him by his clients. He had not altered

this in any way. The grounds lodged were sufficient.

Decisions and Reasons

The Committee carefully considered the issues raised in each case.

In considering its approach to the matter, the committee has regard particularly to the commentary contained in Armour paragraph 5-19 and to the cases and legislation referred to therein.

The Committee agreed with the Assessor that the rationale adopted by Lord Hardie in the case Tesco Stores Ltd v Assessor for Fife decided last year with regard to specific comparisons should *a fortiori* apply to grounds of appeal. It did not accept however that where ground of appeal were generic it necessarily followed that there was non-compliance nor that where there was non-compliance an appeal necessarily fell to be dismissed.

Generic grounds may or may not give sufficient notice of an appellant's case. This had to be looked at in relation to each case.

Under Regulation 10(3) where an appellant does not comply with Regulation 10(1), the Assessor may apply to the Committee to have the appeal dismissed and the Committee may grant that application if it thinks fit.

Armour paragraph 5-19 stated that on the Assessor's application the Committee may dismiss the appeal. An alternative might, in appropriate circumstances, be to adjourn the case to enable proper notice to be given. The appellant may seek recall by the Committee of its decision to dismiss the appeal. The Committee has power to extend time limits provided that no substantial prejudice would thereby be caused to either party in the appeal, and it may do so even although the time limit has already expired before an application for an extension is made.

In the first case, the shops were zoned in the usual way and the Zone A rate arrived at.

The issue was whether the Assessor had been given fair notice of the grounds of appeal. The Assessor maintained that he did not know from the grounds of appeal lodged what argument might be made by the Appellants. The Appellants maintained that the detail of the appeal would have been discussed with the Assessor and there was accordingly no need to specify this within the statutory timetable. The Committee took the view that in the present case the Appellants ought to have lodged better and more specific written grounds in order to give fair notice of their case to the Assessor and that it was not enough to say that the Assessor ought to have been aware of these as a result of discussions which had taken place between the parties on a without prejudice basis.

In the second case the Appellants were seeking to rely on the actual rent but there were no specific grounds to that effect. Again, the Committee took the view that the Appellants ought to have timeously lodged better and more specific written grounds in order to give fair notice of their case to the Assessor.

The Committee took the view therefore that the Appellants had not complied with the Regulations in either case. The Committee were not asked to exercise their power to extend the time limit but in the circumstances of these cases they did not see fit to dismiss the appeals. Instead they adjourned these and made an order ordaining the Appellants to lodge further and better grounds specifying the basis for their appeals not less than 35 days before the date set for the adjourned hearings.

29 September 2011