

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

SODEXO LIMITED

relative to

OFFICE, 2ND FLOOR, 2 BUCHANAN GATE,
STEPPS, GLASGOW

By letter dated 17 January 2012 the Appellants had, through their agents, GL Hearn, submitted an application for continuation of the hearing of the appeal by the Valuation Appeal Committee from 1 February 2012 until after the Lands Valuation Appeal Court gives its decision in the Overgate case, failing which for referral of the appeal to the Lands Tribunal for Scotland for determination in terms of Regulation 4 of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 (“the Regulations”). The Assessor by his letter of 25 January 2012 opposed both the proposed continuation and proposed referral to the Lands Tribunal. The Appellants made further submissions in an e-mail dated 27 January with relative attachments

The Committee on 1 February 2012 heard Mr James Neason on behalf of the Assessor in support of the Assessor’s position in relation to the continuation. Mr Neason informed the Committee that there were 13 subjects at the locus. 8 appeals had been lodged, of which 6 had settled and 2 were outstanding. He also spoke to the arguments taken by the Assessor in his correspondence. Mr Niall Rankin on behalf of the Appellants had informed the Committee that he did not intend to appear. His correspondence had been placed before the Committee. The Committee was mindful that, in terms of Regulation 5(2) of the Regulations, the Committee could not hear oral argument in relation to the application for referral to the Lands Tribunal.

After careful consideration, the Committee on 1 February 2012 refused the application for continuation.

The Committee agreed with the Assessor that the Committee was not bound by a decision of the Dundee Valuation Appeal Committee, and that there were significant differences between the present appeal and the Overgate appeal. The Committee noted from the terms of the decision in the Overgate appeal that a material change of circumstances appeal had been lodged under section 2(1)(d) of the Local Government (Scotland) Act 1975 in relation to the level of values used to create the valuation roll for the 2005 Revaluation, the Assessor had acknowledged that a material change of circumstances had occurred which affected values and had accordingly reduced the valuations of the appealed units to reflect these changed circumstances. In relation to the subjects with which the present appeal was concerned no material change of circumstances appeal had been taken.

The Appellants' agents in their subsequent e-mail dated 27th January 2012 also made reference to the decision of the Fife Valuation Appeal Committee in the Mercat Appeals heard on 6th and 7th October 2011 but these appeared to be material change appeals not revaluation appeals.

The Committee did not accept that there would be any prejudice to the Appellants if the appeal were dealt with prior to the Lands Valuation Appeal Court decision. If the Appellants had taken the view that there had been a fall in value during the currency of the 2005 Valuation Roll it would have been open to them to lodge a material change appeal. They did not do so. It would be open to them to take such arguments as they saw fit before the Committee. If at any stage the Lands Valuation Appeal Court makes a relevant decision or a decision which alters the value of any comparable lands and heritages then the Appellants will be able to bring an appeal on grounds of material change of circumstances.

The Committee subsequently dealt with the application for referral of the appeal to the Lands Tribunal. This had been made solely on the basis that the appeal fell within category (c) of Regulation 5(1) namely that the law applicable to the case is uncertain or difficult to apply. The Appellants did not suggest that the appeal fell within category (d) namely that the case raised a fundamental or general issue likely to be used as a precedent in other cases. The Appellants listed the specific legislation which they considered was uncertain or difficult to apply. They made no detailed submission as to the reasons for this. The Assessor had addressed the ground put forward in his letter of 25 January 2012 and the Committee after consideration accepted the Assessor's arguments. This was a revaluation appeal, not a material change of circumstances appeal. In the Overgate case, the Tayside Committee had reached its decision in circumstances where a material change of circumstances appeal had been lodged under section 2(1)(d) of the Local Government (Scotland) Act 1975 in relation to the level of values used to create the valuation roll for the 2005 Revaluation, the Assessor had acknowledged that a material change of circumstances had occurred which affected values and had accordingly reduced the valuations of the appealed units to reflect these changed circumstances. There had been no such prior appeal nor any such acknowledgement in the present case. There were significant differences between the present appeal and the Overgate appeal. For this reason it did not follow that the law was uncertain or difficult to apply in the present case as a result of the decision in the Overgate appeal. The Appellants made no particular submission concerning the Mercat appeals. In so far as what the Appellants wished for was a change in the law, as the Assessor had submitted a wish for reconsideration of the law was not the same as uncertainty or difficulty applying it (*Edinburgh International Conference Centre v Assessor for Lothian Valuation Joint Board*, Lands Tribunal for Scotland, September 19, 2008).

The Committee accordingly refused the application for referral to the Lands Tribunal.

6 February 2012