

LANARKSHIRE VALUATION APPEAL PANEL

NOTE OF DECISION

and

STATEMENT OF REASONS

RELATIVE TO APPEALS

by

- 1 THE CO-OPERATIVE GROUP, Office, 70 Grayhill Road, Cumbernauld
- 2 GAS SENSING SOLUTIONS LTD, Office, 60 Grayhill Road, Cumbernauld

These were appeals arising out of the 2010 Revaluation. They were heard together.

The appeal subjects were both two storey office buildings within a mixed industrial/office development in the Westfield area of Cumbernauld. There were other developments in close proximity with similar layouts which were built at the same time.

There was no dispute between the parties that the appeal subjects fell to be valued on the comparative principle. The issue in dispute was the rate to be applied. The Assessor contended for a rate of £100 psm. The Appellants contended for a figure of £80 psm for Number 70 and £62.50 psm for Number 60 from 1st April 2010, or alternatively a rate of £34 psm for both. It was unclear whether the Appellants intended that the alternative rate should apply from 1st April 2010 or from 1st October 2010.

In considering its approach to the matter, the Committee had regard particularly to:-

- the commentary contained in *Armour on Valuation for Rating* (5th Edition) ("Armour"), paragraphs 19-01 to 19-37 inclusive and to the cases and legislation referred to therein: the best method of arriving at an estimate of annual value will be by a study of actual rents passing both in respect of the subjects being valued and subjects comparable with them in size, character and location (paragraph 19-02); it is well settled that the actual rent passing under a lease is not now, since the 1956 Act, conclusive or determinative of the annual value of the subject (paragraph 19-07)

- the definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956
- the commentary contained in Armour, paragraphs 5-25 to 5-26 and to the cases and legislation referred to therein: the onus is on the assessor to justify a proposed valuation when that valuation is challenged by a ratepayer, particularly in a revaluation year (Armour, paragraph 5-25).

It was for the Assessor to explain how he had arrived at his valuation. Counsel for the Assessor explained that under Section 1(1) of the Local Government (Scotland) Act 1975 the Assessor had an obligation to make up a valuation roll in each year of revaluation. The basis of the valuation for the 2010 Revaluation is set out in the schedule to the Valuation Timetable (Scotland) Order 1995. The Assessor had approached his valuation on the statutory basis. Valuations are to be made on the basis of the level of rents prevailing as at 1st April 2008 and on the basis of the physical circumstances of the properties as at 1st January 2010. The valuations had taken place on the comparative basis. The Assessor had looked at rents for comparable subjects around the tone date including the appeal subjects. He had listed as comparisons rents from Grayshill Road, Mollins Court and Deerdykes View. He had looked at rents from February 2007 to August 2008. He had analysed these. As there were 5 rentals in 2008, he had concentrated on those. These were shown in Assessor's Production No. 3 and gave a spread of rental rates from £83 to £111. He had taken the view that the rent of £83 was slightly out of line and had selected £100 for the rate as at the tone date.

The Appellants' rental evidence was shown in Appellants' Production No.4. This listed the 7 office units in Grayshill Road. Mr Muir of Colliers in his evidence expressed the view that one fundamental and imperative rent is the rent passing on the appeal subjects at No. 70 Grayshill Road. He contended that comparison with nearby estates should be avoided as the rent for 38 Grayshill Road, which had been let in November 2007 at an analysed rent rate of £97.48 was out of line with the passing rent for No.70 Grayshill Road and rents struck for Units 60 (5th March 2010 – analysed rate £58.28) and 46 Grayshill Road (1st October 2010 – analysed rate £34.01) which demonstrated a significant downturn in rentals since the let of Unit 38.

The Committee considered whether the subjects at Mollins Court and Deerdykes View were proper comparisons. It decided that they were. As the Assessor had said, they were of similar size and appearance, were built at the same time, had the same industrial and office mix and were at the same location. There was no basis for the Appellants' contention that only the office units within Grayshill Road were truly comparative.

The Committee considered that the Assessor had properly explained his valuation which was soundly based on comparative evidence whereas the Appellants had focused largely on the rent for the appeal subjects. They also agreed with the Assessor that the rents for Unit 60 and Unit 46 Grayshill Road were too remote to be of relevance in determining the rateable value as at the tone date.

The Committee then went on to consider the argument taken that there had been a material change of circumstances since the tone date which the Assessor must give effect to in terms of Section 2(1)(d) of the 1975 Act. The Committee

carefully considered the submissions made by Counsel for both parties. The Committee accepted the submission made by counsel for the Assessor that in Section 2(1)(d) of the 1975 Act the words "alter the roll" had to mean an alteration to the values in the 2010 Roll and it was necessary that values should have been determined. As counsel had said, this was quite clear from the terms of Section 1(2) of the Act which states that subject to any alterations to the valuation roll made under this section and Section 2 of the Act, every valuation roll shall remain in force until it is superseded by a new valuation roll. It was the 2010 Roll as made up with values fixed on the basis of tone date rentals which thereafter may be subject to alteration. The Committee agreed with the Assessor that the appeal subjects were correctly valued at tone at a rate of £100 psm.

The Committee noted the submission made by counsel for the Appellant that if a reduction in value is not achieved under this revaluation appeal under Section 3(2) of the Act due to the dates of the rental evidence then there is the danger that rental evidence will be disregarded completely having not been considered at revaluation or at the 2010 MCC as the rentals are before the 2010 Roll came into force.

The Committee were aware of the observation by Lord Milligan in *Assessor for Grampian v Barclays Menswear Enterprises Ltd*, in the context of new subjects appearing in the roll, that it might be possible to construe Section 3(4) as providing that there could be held to have been a material change of circumstances where the change started between tone date and entry date but was not sufficiently established by entry date to justify assessment at entry date lower than tone value.

The Committee recognised that by analogy it might be argued that, evidence of a fall in value between the tone date and the date the roll came into force taken together with evidence of a continuing fall in value after the date the roll came into force may be relevant and sufficient to establish a material change of circumstances since the entry was made, but reserved its view on this as this was a revaluation appeal, not a material change appeal, and the point was not pertinent to the appeal presently before the Committee.

The Committee accordingly supported the rate of £100 put forward by the assessor and dismissed the appeals.

6 March 2012