

Statement of Reasons

Relative to appeals by

Scottish Enterprise

In respect of

Warehouse, Unit 1, 1 Phoenix Crescent, Bellshill.

Warehouse, 2 Caledonian House, Phoenix Crescent, Bellshill

Warehouse, 3 Phoenix Crescent, Bellshill,

These appeals which were in respect of the 2010 Re-valuation, called for hearing at a meeting of a committee of the Lanarkshire Valuation Appeal Panel on 20<sup>th</sup> June, 2012.

Mr McKaig appeared on behalf of the Appellants and Mr Neason, appeared on behalf of the Assessor.

Mr McKaig sought an adjournment of the hearing of the appeals to a later date. Mr Neason for the Assessor opposed the appellants' request for an adjournment and moved that the appeals be dismissed in terms of Regulation 10 (3) of the Valuation Appeal Committee, etc. (Scotland) Regulations 1995 on the basis that the appellants had failed to comply with the terms of Regulation 10 (1) and 10(2)(b) of said Regulations.

Regulation 10 (1) provides that;

- (1) An appellant shall, not later than 35 days before the date set for the hearing, furnish to the assessor a written statement specifying -
  - (a) The grounds for his appeal; and
  - (b) if the appeal relates to the valuation entered in the valuation roll, the valuation which the appellant considers should be entered in the roll and the grounds on which that valuation is arrived at.

Regulation 10(2) (b) provides that;

- (2) Within 14 days of the receipt of such a statement, the assessor-

(b) may serve a notice on the appellant requiring him, by a date specified in the notice (being a date not less than 10 days after the service of the notice), to provide written confirmation to the assessor that he intends to proceed with his appeal.

The basis of the Appellants' request for an adjournment of the appeals was that there had been no substantive discussions with the Assessor prior to the date fixed for the hearing of them. This had arisen due to a combination of factors; a meeting had been arranged for 29<sup>th</sup> May, 2012 but which was cancelled by Mr McKaig as he required to attend at a funeral. A further meeting was arranged for 1<sup>st</sup> June 2012 but again cancelled by Mr McKaig but in the hope that the appeals could be discussed by telephone. There had been a difficulty with the Assessor's telephone system which impeded this and the member of the Assessor's staff dealing with these cases was absent from business due to illness. Mr McKaig did concede that he anticipated that the Assessor would have made alternative arrangements for discussion. Matters were compounded further still by Mr McKaig becoming unwell. The Assessor's practice was that he will not enter into discussions with regard to any appeal within 10 days of the date fixed for hearing of it.

Mr McKaig opposed the Assessor's motion in terms of Regulation 10(3). He contended that the Regulations did not require a detailed valuation to be produced; all that was required was that the grounds should be sufficiently full of all grounds on which the entry was to be challenged. He made reference to paragraph 5-19 of *Armour on Valuation for Rating* which he stated supported this view. Whilst conceding that he had used standardised grounds of appeal those which had been lodged by him had been made specific to the particular subjects and were sufficient to identify the grounds on which the Assessor's valuation was challenged. He referred to a decision of the Lothian Valuation Appeal Panel dated 18<sup>th</sup> June, 2012. This was case in which Mr McKaig had been involved on behalf of appellants where the Assessor there, as in the present case, had sought a dismissal of the appeal on the basis of failure to comply with Regulation 10(1) on the basis that the grounds of appeal which had been lodged were generic and did not give sufficient notice to the Assessor of the case to be met by him. The Committee in that case had refused the motion to dismiss. Mr McKaig acknowledged that this decision was at best persuasive and not binding of the Committee hearing the present appeals. He contended that had discussions taken place then the issues in dispute would have been identified and possibly narrowed. He was aware that the Assessor was relying on the case of *Tesco Stores v The Assessor for Fife* [2010] CSIH 95 and *The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others* [2012] CSIH 50. Mr McKaig considered that the first case was distinguishable from the present appeals because in that case the appellants'

professional agent had been criticised for lodging of 400 comparisons. That was not the case here where there were only seven grounds of appeal.

Mr Neason stated that the appellants' grounds of appeal were lodged by letters dated 16<sup>th</sup> May, 2012. These letters were in identical terms, save for the alternative valuations for each of the appeal subjects, and stated seven grounds of appeal, videlicet;

1. Incorrect areas have been adopted in the valuation;
2. An excessive basic rate has been used in arriving at the assessment;
3. Insufficient recognition has been made of the age and quality of the subjects;
4. Erroneous quality and other additions have been applied to the base rate;
5. Various items of plant and machinery have been erroneously included within the valuation;
6. Insufficient recognition has been taken of the actual rent passing on the subjects and other comparable subjects;
7. Insufficient recognition has been made for the specific location of the subjects.

The respective alternative valuations of £85,000, £55,000 and £80,000 for the each of the appeal subjects were stated.

Mr Neason contended that these statements did not provide details of the grounds on which these alternative valuations were arrived at and therefore did not comply with the Regulations. The Assessor's view was that the grounds of appeal were generic and not sufficiently detailed to provide the Assessor with fair notice of the appellants' case. He further submitted that it was clear from Regulation 10(1) that the grounds for the appeal mentioned in Regulation 10(1)(a) is separate and distinct from the grounds on which the alternative valuation is arrived at which is required in terms of Regulation 10(1)(b).

He stated that in or about April, 2012 contact had been made with Mr McKaig's office to arrange a meeting to discuss the appeals but Mr McKaig had failed to revert so that no meeting took place before the last date for the lodging of the statement required by Regulation 10(1). Mr Neason conceded that there had been a difficulty with the Assessor's telephone system but this had not prevented the discussion and resolution of other appeals. In any event, the statement required by Regulation 10(1) was a statement in writing. Accordingly, had discussions taken place this would not have cured the deficiency in the statements which had been lodged. The Assessor argued that whilst the grounds of appeal lodged might have been lodged in previous cases and in other valuation areas without challenge, this did not mean that they should be allowed in the present appeals. It was a sloppy practice which should stop.

The Assessor referred to three cases; Tesco Stores Ltd v The Assessor for Fife [2010] CSIH 95 and The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others [2012] CSIH 50, both decisions of the Lands Valuation Appeal Court and a decision of the The

Highland and Western Isles Valuation Appeal Panel dated 31<sup>st</sup> May, 2012 all of which he submitted supported his submission. In the case of Tesco Stores Ltd v The Assessor for Fife; as stated supra, a professional agent on behalf of the appellants had lodged in terms of Regulation 10(5) a list of comparisons of 400 subjects located throughout Scotland and England and of different classifications to those subject of the appeal. He had then not relied upon any of them at the hearing of the appeal. It was said on behalf of the appellants' agent that the lodging of such a comparison list was common practice. Their Lordships were unimpressed and stated that if correct then the practice should cease.

In a postscript to the case of The Assessor for Lanarkshire Valuation Joint Board -v- Jane Norman Ltd and others, their Lordships noted that the Committee which had heard the original appeal had found that the ratepayers had failed to comply with Regulation 10(1). However, the Committee had refused the Assessor's motion to dismiss and had continued the appeals and ordained the ratepayers to comply with the said Regulation. Their Lordships opined that a failure to comply with the Regulations should not be "readily excused." Latitude might be afforded to a party litigant but not to a professional practitioner.

In the decision of The Highland and Western Isles Valuation Appeal Panel, the Committee had heard an appeal in which Mr McKaig was the professional agent on behalf of the ratepayer. In that case, Mr McKaig had lodged grounds of appeal which were in almost identical terms to that lodged in the present case. The assessor had moved for dismissal of the appeal on the basis that there had been failure to comply with Regulation 10(1) as the grounds of appeal were generic. The Committee agreed that the grounds of appeal were generic and failure to comply prevented the assessor from properly preparing his case and having to prepare his case from all possible forms of attack with no real knowledge of whether they will be advanced and that was a waste of public money.

The Committee, after giving careful consideration to all of the submissions made, were of the view that the letters lodged by Mr McKaig on behalf of the appellants dated 16<sup>th</sup> May, 2012 did not comply with Regulation 10 (1). The Committee was satisfied that the statement referred to in that Regulation required to be in writing and to set out firstly the grounds of appeal, an alternative valuation and grounds on which that alternative valuation is arrived at. The letters lodged contained grounds of appeal which detailed the ways in which the appellants considered the Assessor's valuation to be flawed; they stated alternative valuations. However, they did not provide the necessary grounds on which these valuations had been arrived at. The grounds of appeal were clearly distinct from the grounds founding the alternative values and it was in this regard that the statements were deficient. The Committee noted that the reference by Mr McKaig paragraph 5-19 of Armour was in fact a reference to the grounds of appeal, the full reference being, "Provision is made in the Procedure Regulations for an exchange of information on the basis of each side's case. 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 sufficiently full to give warning to the Assessor of all the grounds on which the entry is to be challenged”

Further as the requirement is for a written statement, discussions between Mr McKaig and the Assessor, had they taken place, would not have cured any such deficiency.

The Committee did not consider the decision of the Lothian Valuation Appeal Panel to be of assistance and was not bound by it.

Whilst the case of Tesco Stores Ltd v The Assessor for Fife did not consider Regulation 10(1) but rather Regulation 10(5), their Lordships’ view of common practice which was not compliant with requirement in terms of the Regulations was helpful. The present case is in point, as the statements lodged were clearly standard statements and more care requires to be given to ensure that the statements are sufficiently detailed in each case.

Further, the Committee was satisfied that there had also been a failure to comply with the requirement of Regulation 10(2)(b) to provide written confirmation of an intention to proceed with the appeal. There was no indication from Mr McKaig that such confirmation had been sent.

The Committee, mindful of the postscript to the case of The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others, decided to refuse the motion of the appellants for an adjournment of the appeals and granted the motion for the Assessor.

The decision of The Highland and Western Isles Valuation Appeal Panel accorded with the Committee’s view in the present case.

The appeals have accordingly been dismissed.