

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO REQUEST FOR CITATION

by

HAPPY FEET NURSERY & OUT OF SCHOOL
CLUB LIMITED

for

APPEAL IN RESPECT

47-49 Claude Street, Larkhall ML9 2BU

This was a request under Regulation 8(7) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 for an appeal to be heard.

The terms of Regulation 8(7) are:-

“If an appellant considers that his appeal has not been or is not to be heard within a reasonable period of lodging it, he may request the Committee to hear the appeal within such period as he may specify, being a period not less than 70 days from the date of his request and if the Committee declines to hear the appeal within such a period –

- (a) it shall state its reasons for so declining; and
- (b) the Secretary shall notify both parties accordingly.

The request was made by letter dated 3 October 2012 and subsequent e-mail dated 5 November 2012. The Assessor objected to the Appellants' request by letter dated 25th October 2012.

The request was duly heard by the Committee on 7 November 2012. Mr Patrick Holtz, Business Manager appeared for the Appellant. Mr Iain Newton appeared for the Assessor.

The Appellants were tenants of the appeal subjects. The premises had previously been listed as an office but were now a childcare nursery. This had opened in April 2011. On 25 January 2012 the Appellants had lodged an appeal arising from the change of use of the premises. The appeal had been logged when received but had not been acknowledged by the Assessor until 4 May 2012. The Appellants had then found out through their MSP that the statutory disposal date for the appeal was 31 December 2013 which they considered to be far too long away. They wished the appeal to be heard in February or March 2013.

Mr Holtz contended that there were many MCC appeals lodged by various agents on the grounds of 2008 rental prices being used for the 2010 valuations. He anticipated that most of these would be thrown out due to a recent court judgement. He was concerned that the majority of those appeals were for premises that had already had their revaluation appeals dealt with and argued that these should be put to the end of the queue. He felt that other more pertinent MCC appeals such as his own who had not had a revaluation appeal dealt with should be given priority. He also stated that there had been many revaluation appeals for nurseries over the last 2 years with many being downgraded in value and felt that if the Assessor used the same principle of valuation a suitable value could be agreed. The Assessor already had all the information about their case and similar subjects and seemed to be dragging matters out for no particular reason. He also produced letters from the Assessor and from John Swinney MSP, Cabinet Secretary, to Margaret McCulloch MSP referring to the provisions of Regulation 8(7). The Assessor had argued that this provision only applied in exceptional circumstances but Regulation 8(7) did not say this. This was his first time in business. In his first year he had sustained a substantial loss and the Assessor should weigh this up.

The Assessor maintained that the purpose of Regulation 8(7) is to deal with exceptional circumstances such as where there had been an omission to cite or a failure to cite without good reason, and submitted that this was not the case here.

The appeal had been lodged on 25 January 2012 on the basis that there had been a material change of circumstances affecting the value of the property. The timetable for dealing with appeals was set down in the Valuation Timetable (Scotland) Order 1995. This set down that the last date for disposal of the appeal by the Valuation Committee was 31 December in the third year following the year of revaluation, in this case 31 December 2013. In the Assessor's submission, the timetable set by Parliament had to be accepted as being reasonable.

At this time there were over 9000 outstanding running roll appeals. The disposal of such a large number of appeals required an effective and manageable means of dealing with these. The Assessor's strategy was to group together appeals with common features. The subjects of appeal had been valued using the comparative principle and it would be wrong to list this particular subject in isolation without considering other similar appeals. The Assessor's strategy also involved dealing with revaluation appeals before dealing with running roll appeals. There were no reasonable grounds for the Assessor to depart from his current strategy. The Appellants were essentially saying the valuation was wrong. That was inevitably the case in any appeal and was not a reason for an early hearing. All the appellants in the 9,000 appeals which were outstanding had felt strongly enough to lodge an appeal. It could not be assumed that this appeal would lead to a drop in the valuation. If the Assessor were to hear this appeal first, this would be a breach of good practice and would be to the prejudice of all other appeals. There was no evidence of withdrawal yet as regards the appeals lodged on the basis of the economic downturn, and unless these were withdrawn it would be a matter for the committee to decide if they were without merit.

The Appellants had raised the issue of financial hardship. This was not uncommon. The valuation appeal system was not designed to deal with this. There was however a statutory mechanism for this.

Section 25A of the Local Government (Scotland) Act 1966 as amended provided:-

Remission of rates on account of hardship

25A Every rating authority may, on the application of any person liable to pay any rate levied by the authority, remit payment (in whole or in part) of the rate if the authority are satisfied that –

- (a) the person would sustain hardship if the authority did not do so; and
- (b) it is reasonable for the authority to do so, having regard to the interests of persons liable to pay council tax set by them.

This permitted the rating authority to allow a rebate where the ratepayer would sustain hardship, however the valuation appeal process was not the proper forum for this.

As regards when the appeal was likely to be cited, all of the outstanding appeals would require to be listed for hearing before the end of June 2013. This was because in terms of the Valuation Appeal Committee, etc (Scotland) Regulations 1995, the Assessor or the appellant may make application to the Committee seeking referral of an appeal to the Lands Tribunal, but any such application must be made more than 6 months prior to the disposal date for the appeal, that is, by 30 June 2012.

The Committee having adjourned the hearing to give the matter careful consideration decided to decline to hear the appeal within the period requested by the Appellants. The Committee's reasons for doing so were as follows. The Committee fully understood that it was important to the Appellants to have their appeal heard. However the issue was what constituted a reasonable period and this depended upon an objective assessment of the circumstances. Regard had to be had to the number of appeals lodged with the Assessor and the statutory timetable for dealing with these. In circumstances where Parliament had laid down a timetable for the hearing of appeals, all appeals had to be heard within that timetable. Given the large number of appeals which had been lodged, the Assessor required to adopt an effective and manageable system for dealing with these. The Committee acknowledged that the Assessor had to hear the revaluation appeals first in order to set the tone of the roll before dealing with the running roll appeals. It was a reasonable for the Assessor to adopt the strategy of grouping together appeals with common features, and there was no reason in the present case for the Assessor to depart from this. The Committee considered that the Assessor was correct in his submission that the purpose of Regulation 8(7) was to deal with exceptional circumstances such as where an Assessor through oversight had omitted to cite a particular appeal, or had failed to cite without good reason for doing so. That was not the case here. The Assessor had adequately explained the system in place for the citation of appeals. The system adopted by the Assessor was intended to allow for the proper and efficient management of the appeals process which was in the interests of appellants in general. The citation of this particular appeal would be dealt with by the Secretary in accordance with that system. It would not have been proper for the Assessor assign a lesser priority to running roll appeals where there had already been a revaluation appeal or to appeals which he thought were unlikely to succeed, as the Appellants had suggested. As the Assessor had explained, all of the outstanding appeals including the present appeal would in any event require to be listed for hearing before the end of June 2013.

The Committee also understood the point which the Appellants were making regarding the issue of financial hardship in the early period of a new business, but this could not be addressed in the appeals process and was a matter for the Appellants to raise with the local authority under the relevant statutory provision.

15 November 2012