

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEALS

by

J D WEATHERSPOON plc

in respect of

- (1) THE CLYDSDALE INN, 15 Bloomgate, Lanark
- (2) THE WISHAW MALT, 66 Kirk Road, Wishaw
- (3) THE BRANDON WORKS, 52 Merry Street, Motherwell
- (4) THE VULCAN, 181 Main Street, Coatbridge
- (5) THE ROBERT HAMILTON, 12 Bank Street, Airdrie

These appeals, which were in respect of the 2010 Revaluation called for hearing at a meeting of a Committee of the Lanarkshire Valuation Appeal Panel on 21 November 2012.

Mr Paul Lejkowski appeared on behalf of the Appellants and Mr David Coombe, appeared on behalf of the Assessor.

Mr Lejkowski sought a continuation of the hearing of the appeals to a later date. Mr Coombe for the Assessor opposed the appellants' request for a continuation 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) 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.

The basis of the Appellants' request for an adjournment of the appeals was that the parties had been in discussion but there was a fundamental difference of opinion in the respective parties' approach to the valuation and they had been unable to agree matters. Counsel for JD Weatherspoon, Christopher Haddow, had been unavailable for the hearing and a continuation had been sought.

Mr Lejkowski opposed the Assessor's motion in terms of Regulation 10(3). He explained that the appeals were originally listed for hearing on 13 June 2012. Grounds together with alternative valuations had been submitted by e-

mail on 25 April 2012 and no objection was taken by the Assessor at this point. The appeals were then continued pending the outcome of a Lands Tribunal case which was due to be heard at the end of August. The cases were then relisted for hearing on 21<sup>st</sup> November 2012. Grounds and alternative valuations were then lodged on 7 September 2012 in exactly the same terms as previously. The Assessor now contended that the grounds were generic. However the appeal subjects were public houses. It was inevitable that grounds of appeal for public houses would have a certain amount of terminology in common. The alternative values had been arrived at based on turnover of the appeal subjects and turnover of comparable units in the vicinity. On 4 October 2012, seven weeks ago, he had met with Mr Wilson at the Assessor's office and had outlined his grounds, alternative valuations and comparisons. Matters had been fully discussed with the Assessor with a view to reaching agreement. He appreciated the view taken by the Assessor, but his own conduct in arranging an early meeting showed he had acted responsibly and had made a genuine effort to resolve the appeal. The grounds which he had lodged were only an issue in Lanarkshire. These were accepted everywhere else in Scotland. As regards the decision in the Phoenix Crescent appeals referred to by the Assessor, in that case discussions had taken place quite late on whereas he was in the habit of going in to see the Assessor at an early stage as had been the case in the present appeal.

Mr Coombe submitted that Regulation 10(1) of the 1995 Regulations required certain information to be supplied. Its purpose was so that the Assessor was given fair notice of the Appellants' case, and to ensure he was not taken by surprise with consequent prejudice to the general body of ratepayers. The purpose of Regulation 10(2) (b) was to ensure the Assessor only had to prepare for those appeals which were going ahead with consequent saving to the public purse. Regulation 10(3) allowed the Assessor to apply to the Committee to have an appeal dismissed if an appellant failed timeously to provide the required information. The importance of compliance with these requirements had been emphasised in the case of *Tesco Stores v The Assessor for Fife* [2010] CSIH 95 and in the postscript to *The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd and others* [2012] CSIH 50.

The citation had been served on 29 August 2012. The grounds and alternative valuations were provided on 7 September 2012. These were in identical terms and generic in nature. A letter to this effect had been issued on 9<sup>th</sup> September 2012. A meeting had then taken place on 4 October 2012. The Appellants' agent had been advised of the Assessor's position and had been invited then to submit proper grounds, which he did not do. The fact that discussions had taken place with the Assessor did not cure the deficiency. As regards the lodging of the same grounds previously to which no exception had been taken, this did not matter. The timetable had started afresh when the case was recited. The Appellants' agents had lodged generic grounds, and they had not explained the alternative valuations which had been lodged. This was not the first time this situation had arisen involving this particular firm. Appeals relating to three properties in Phoenix Crescent, Bellshill had been dismissed for similar reasons on 20 June this year. There were over 9000 appeals lodged in Lanarkshire which required to be dealt with by 31 December 2013. The Assessor had originally intended to cite these at the rate of 250 per hearing but was now citing them at the rate of 600 per hearing to ensure the effective disposal of all outstanding appeals. What had happened here if repeated could cause the whole appeals system to grind to a halt. It was important to set a precedent and the appeals should be dismissed.

The Committee, after giving careful consideration to all of the submissions made, were of the view that the letters lodged by Mr Lejkowski on behalf of the appellants dated 7 September, 2012 did not comply with Regulation 10 (1). 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. The Assessor had not addressed the Committee in any detail on how he considered these to be deficient. 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.

Further as the requirement is for a written statement, the discussions between Mr Lejkowski and the Assessor did not serve to cure any such deficiency.

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 requirements in terms of the Regulations was instructive. The present case is in point, as the statements lodged were clearly standard statements and more care requires to be taken to ensure that the statements are sufficiently detailed in each case.

The Committee considered whether to exercise its discretion under the Regulations, but having regard to the suggestion in the postscript to the case of *The Assessor for Lanarkshire Valuation Joint Board against Jane Norman Ltd* and others that failure by a party to comply with the Regulations should not readily be excused, particularly in cases where a party is professionally represented and where excusal would result in a continuation which, as the Committee accepted would be the case in the present appeals, would cause additional expense and inconvenience to the Assessor, decided to refuse the motion of the appellants for an adjournment of the appeals and granted the motion for the Assessor.

The appeals have accordingly been dismissed.

26 November 2012