

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

1st Access Rentals Ltd

relative to

Yard, Alona House, Greenside, Biggar Road,
Newarthill, Motherwell ML1 5SS

This appeal which was in respect of the 2010 Revaluation was called for hearing at a meeting of the Committee of the Lanarkshire Valuation Appeal Panel on 6 February 2013. Lynn McCallum, Group Financial Controller, appeared for the Appellants. Mr Lander presented the case for the Assessor.

Mr Lander moved that the appeal be dismissed under Regulation 10(3) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) 1995 (S.I. 1995 No 572) on the basis that the Appellants had not complied with the terms of Regulation 10(1) of the 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 into the Roll and the grounds on which that valuation is arrived at.

Regulation 10(3) provides that :-

If an appellant fails timeously to -

- (a) furnish the statement required in paragraph (1); or

the assessor may apply to the Committee to have the appeal dismissed and the Committee may grant that application if it thinks fit.

The Assessor explained that the requirement for grounds of appeal and the Appellants' alternative valuation to be lodged was so that the Assessor had fair notice of the Appellants' case and was not taken by surprise, and so that the general body of ratepayers was not prejudiced as a result. This was of particular importance in times of austerity. In

practice, the ratepayer was given 84 days notice of the hearing and should therefore have sufficient time to prepare for this. Citations for the present hearing had been served on 14 November 2012. The Appellants had failed to lodge grounds and the Assessor had written to the Appellants by letter dated 25 January 2013 advising them he intended to apply for dismissal.

The law on the matter had been clarified in two recent decisions.

In *Tesco Stores Ltd v Assessor for Fife*, 2011 S.C. 316, Lord Hardie stated at paragraph 24 that “Regulation 10 imposes obligations upon both an appellant and an assessor to furnish to his opponent information specified within a designated time scale. The clear intention of Regulation 10 is to require parties to provide their opponent with information specified in the regulation under penalty of the appeal being dismissed if the appellant fails to comply with the regulation and if the assessor seeks dismissal of the appeal for that reason.”

In *Assessor for Lanarkshire v Jane Norman Ltd* [2012] CSIH 50, the Lord Justice Clerk stated in his postscript at paragraph 28 and 29 that “Regulation 19 entitles a Committee, with one exceptional case, to extend the time limit for compliance with the Regulations if it is satisfied that “no substantial prejudice would thereby be caused to either party to the appeal.” In my view, there could be substantial prejudice where the extension of a time limit would inflict additional expense on the other party. Even where there is no such prejudice, the power of the Committee under regulation 19 remains discretionary. A failure to comply with the Regulations, in my opinion, should not readily be excused. It may put the other party at an unfair disadvantage and, where it necessitates an adjournment, may cause expense and inconvenience to the other party, to other appellants whose cases are to be heard along with it, and to the Committee itself. A Committee might justifiably show indulgence to a party litigant who had an imperfect understanding of the Regulations; but in the absence of a cogent justification I can see no reason why it should excuse professional practitioners for a failure to observe them. I remind Committees of their power under regulation 10(3) and of the comments of this court in *Tesco Stores v Fife Ass* (2011 SC 316, at paras [17]-[19], and [24]-[26]).”

In the present appeal, no grounds or alternative valuation had been lodged and the Assessor therefore had no fair notice of the Appellant’s case. Over 7,000 appeals had been lodged which by law required to be disposed of by 31 December 2013. If cases such as the present appeal were to be continued rather than being heard, this would mean this could not be achieved.

The Appellants moved for a continuation of the appeal. The appeal had been lodged some time ago. They had spoken to the Assessor to gain information about what the appeal was about. The Assessor had stated that the information requested was available on line but he would send this out, however this had not arrived. They had appealed because their rates had gone up from £34,000 to £43,000. They had spoken to a lawyer and to a chartered surveyor and there were disputes about how the Assessor had valued a new building. They did not wish to incur professional costs till they knew what they were up against. The Appellants had just made people redundant and before taking advice they had needed the information requested first. They had received the citation but did not receive the Assessor’s letter of 25 January 2013.

The Assessor indicated that a copy of the summary valuation which was available on line had been sent to the Appellants. Although this was a party litigant, there had been complete inactivity on the part of the Appellants and this was a clear case of non-compliance.

The Committee having adjourned to consider the submissions made by the parties took the view that there was a legal obligation on the Appellants to comply with the terms of Regulation 10(1) by providing a statement of grounds for the appeal, an alternative valuation and the grounds on which this had been arrived at. They had failed to do so as a result of inactivity on their part rather than an imperfect understanding of the Regulations and in the circumstances there was no reasonable excuse for the failure to comply.

The Committee accordingly granted the Assessor's motion and dismissed the appeal.

11 February 2013