

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEALS

by

(1) First Scotrail Limited; and

(2) Thomas Collins t/a Bean2Cup Ltd.

in relation to

Kiosk, Croy Station, Constarry Road, Croy, Kilsyth

G65

These appeals were called for hearing at a meeting of the Committee of the Lanarkshire Valuation Appeal Panel on 8th May 2013. David Rutherford appeared for Scotrail. Mr Thomas Collins appeared personally. Mr Brian Gill presented the case for the Assessor.

Mr Gill 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.

Mr Gill explained that a citation had been issued to Mr Rutherford on 13th February 2013. This contained a link to the Scottish Government website where guidance on appeal procedure can be found. On 20th February 2013, the Assessor issued his appeals procedure letter which in particular made clear the need to comply with Regulation 10(1). Under the heading “Information to be furnished by appellants in relation to the appeal”, this reminded appellants that “grounds

of appeal should be submitted timeously in accordance with the provisions of the above regulations (*not later than 35 days before the date set for the hearing*)." It also stated that "in order that there is no doubt as to the particular case which I must answer you should provide grounds of appeal, an alternative value and the basis thereof specific to the subjects of appeal at this time." The last date for lodging grounds of appeal was 3rd April 2013.

On 10th April 2013, Mr Rutherford sent a letter to the Assessor in which he enclosed a list of comparable properties which he believed supported a true rateable value of £800. There were however no grounds and no specification of how the alternative valuation had been arrived at. The list of comparable properties made reference to a 2010 passenger survey, but did not contain any rental information. It did not amount to compliance. On 1st May 2013, the Assessor wrote to both Mr Rutherford and to Mr Collins stating they had not complied and seeking confirmation that the appeal is now withdrawn and notifying them of his intention to move for dismissal of the appeal for failure to comply with Regulation 10(1).

By letter dated 2nd May 2013, Mr Rutherford wrote stating he considered the rateable value to be excessive, which did not give grounds for the appeal, and with an alternative valuation of £1000, but with no proper basis for this.

By e-mail dated 5th May 2013 and received by the Assessor on his return to business on 7th May 2013, Mr Collins had provided what were at least embryonic grounds of appeal relating to the size of the kiosk, but with no explanation of his alternative valuation. This had been the first written contact from Mr Collins, in effect the day before the hearing.

Mr Gill submitted that it was clear there had been no compliance. Regulation 10(3) therefore applied. The issue was how the Committee should exercise its discretion. He submitted that this must be exercised with a view to the purpose behind the Regulations, which was to ensure the Assessor was not unduly burdened, knowing which appeals were settled and which appeals required to be met at the hearing. There were some 3,000 appeals outstanding which were being cited 600 per hearing. The volume was unprecedented. In 2012, there had been some 1400 appeals over 5 courts. This year, there had been some 5,000 over 8 courts. If appellants were permitted to flout the Regulations in this way, the process would grind to a halt and the statutory deadline for disposal of appeals would not be met.

In the postscript to the case of Assessor for Lanarkshire Valuation Joint Board v Jane Norman Ltd & Ors [2012] CSIH 50, the Lord Justice Clerk had given clear guidance as to how a Committee should exercise its discretion at paragraph 28 and 29. "A failure to comply with the Regulations, in my opinion, should not readily be excused.... 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 Assessor at paras [17]-[19], and [24]-[26]."

There must be a good reason for the Committee to exercise its discretion. Here, there was no such excuse. Mr Rutherford's excuse was that he was a first time appellant, and Mr Collins had referred to confusion of the process, whereas there had been a complete failure on his part to comply.

Finally, there was a question of consistency in the light of a previous decision by the Committee to dismiss in the case of KMS Kiosk.

Mr Rutherford apologised on behalf of himself and Mr Collins for their failure to comply. He explained that he was a first time appellant in that he had never had cause to appeal the rateable value on any railway premises in 27 years. He had spoken at length to Mr Reynolds in the Assessor's office prior to the expiry of the 35 day deadline for grounds and the Assessor was well aware of the grounds of appeal. On 10th April 2013, he had submitted a list of comparable properties to the Assessor on an A3 sheet and this had been photocopied as A4. He had realised then that he should have submitted grounds. On 13th April 2013, he had then provided his written submissions to the Secretary. He accepted that in many appeals there could be long and complex evidence. However, this was a railway storage cupboard, 6 feet by 6feet. It was very simple, there were no complex arguments.

Mr Collins stated that his position was more or less along the same lines. He had been confused and overwhelmed by the process. He had thought that Scotrail were dealing with it. When asked when he realised there was a difficulty, he answered just a few weeks ago, when he received an e-mail from Mr Rutherford and had agreed that they should deal with the matter for him.

The Committee having adjourned to consider the submissions made, took the view that the Appellants were obliged 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. This had to be done in writing. Mr Rutherford and Mr Collins had both failed to read or at least to follow the information given in the citation and the Assessor's curtailment letter. As a professional practitioner, Mr Rutherford ought to have been aware of the Regulations in any event. Both had failed to comply with the Regulations in that they had not provided a statement of grounds, an alternative valuation or the grounds on which this had been arrived at. The Committee considered in relation to each appeal whether it should exercise its discretion to excuse the Appellant for his failure to do so and extend the time for compliance. The Committee was unanimous in its decision that at the hearing Mr Rutherford had not put forward a cogent justification for his failure to comply. It was not enough for him to say he had never had to lodge a rating appeal before. By a majority of 4 to 1, the Committee decided that Mr Collins had not put forward a reasonable excuse. He appeared to have done nothing about the appeal until he had been contacted by Mr Rutherford. The dissenting member felt that Mr Rutherford had dealt with the matter for Mr Collins in the capacity of landlords' agent rather than as a professional agent and Mr Collins should therefore be shown indulgence.

The Committee accordingly granted the Assessor's motion under Regulation 10(3) and dismissed both the appeals.

13th May 2013