

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

POWERLEAGUE FIVES LTD

in respect of

SPORTS CENTRE, THE PITZ, 67B BOTHWELL
ROAD, HAMILTON ML3 9DW

This was an appeal arising out of the 2010 Revaluation, heard on 12 June 2013. Mr Christopher Haddow QC represented the Appellant. Mr Brian Gill, Advocate, appeared for the Assessor.

The parties were agreed that the valuation of the appeal subjects if these were to enter the roll was £52,500, and that if only the first floor clubhouse were to enter the roll, the value should be £7,300. The Appellants, however, submitted that the appeal subjects should not be entered in the roll by virtue of S19 of the Local Government (Financial Provisions) (Scotland) Act 1963, which provides as follows:-

“19. (1) Subject to subsections (1A) and (1B) below, lands and heritages which consist of a park vested in or under the control of –

(a) a local authority; or...

and any building comprised in any such park which is used for purposes ancillary to those of the park, shall not be entered in the valuation roll.

(1A) Subsection (1)(b) above does not apply to a park from which the local authority derives a net profit.

(2) In this section the expression “park” includes any recreation ground or pleasure ground.”

The Assessor submitted that Section 19 did not apply and the appeal subjects should enter the roll, or at least the first floor clubhouse should.

Having carefully considered the evidence led and the submissions made, the Committee reached the view that the Assessor’s primary position was to be preferred. The Committee’s reasons were as follows.

The Committee agreed with Counsel for the Assessor that the appeal subjects did not satisfy the test in S 19. S 19 applied inter alia to lands and heritages which consisted of a park vested in a local authority, and “park” was defined to include any recreation ground or pleasure ground. The appeal subjects, known locally as The Pitz, were vested in South Lanarkshire Council (SLC) who as statutory successors to Hamilton District Council were the landlords under a 99 year lease between Hamilton District Council and Anchor International Ltd. They comprised a recreational facility consisting of 10 all weather floodlit 5 – a – side football pitches with an ancillary pavilion containing reception, changing and shower rooms and a licensed bar and catering facilities , and car parking for 81 cars. In terms of the lease, the tenants were to pay a ground rent, currently £12,000 per annum, and were to be solely responsible for maintaining the facility, including the cost of repair and renewal of the metal railing along the north – western boundary with the industrial estate. The Committee noted the terms of a letter from SLC’s Operations Manager dated 16 April 2013, being part of the Appellant’s Production 2, which was not challenged in this respect, which stated that SLC had no expenditure costs against the leased area. SLC received an income of £12,000 per annum from the appeal subjects against which it had no expenditure costs, and accordingly derived a net profit from this. The appeal subjects did not therefore satisfy the test in S19 (1A).

In reaching its decision, the Committee also considered the argument taken by the Appellants, in effect that the appeal subjects should still be considered as part of the park from which the ground lease had been given off.

The Committee noted that the extent of the public park known as Bothwell Road Park, May Street Park or New Park, variously shown on the Assessor’s Production 5 “Location Plan – Entrances to Bothwell Road Park” and the Appellants’ Production 14, being an extract from SLC’s Asset Management Register, had been significantly eroded in recent years. As well as the ground on which the appeal subjects had been built, a large area of ground had been used for the construction of Holy Cross High School, an area adjoining the appeal subjects which had formerly been a Council depot for the construction of the Newberry Rooney Centre, a day care centre for the elderly, along with a parking area for the Centre, a road had been formed leading to Holy Cross High School and the Newberry Rooney Centre, and also the Lodge at what had formerly been the main entrance to the park had been renovated and was now the offices of a private company.

The facilities in the public park comprised a war memorial, bandstand, children's play area and open spaces. There was no relationship between those and the appeal subjects. There were separate accesses and separate car parking. Vehicular access to the public park was by means of New Park Street and the car park shown in Assessor's Production 10C. Vehicular access to the appeal subjects was by means of Bothwell Road and the car park shown in Assessor's Production 10 and 10A. The public park could be accessed from the appeals subjects by means of the road or track shown in Assessor's Production 10B, which was a designated core path, but this did not appear to be used much. The sign at the entrance to the appeal subjects, shown in Assessor's Production 7A, related only to the appeal subjects and gave no indication of the existence of the public park. At the New Park Street entrance, the only sign was for the Newberry Rooney Centre. There were no signs from one to the other. The reality of the situation was that the public park was a convenient location for the facility, as also for Holy Cross High School and the Newberry Rooney Centre.

The Committee did not consider the appeal subjects to be *unum quid* with the public park. The appeal subjects were situated in a corner of the park. Its use as a football facility was not related to the public park. It was a private facility. SLC had no involvement in its operation. Whilst there was no physical boundary between the appeal subjects and the public park, the appeal subjects were separately occupied under the ground lease. There was very little interdependence between the appeal subjects and the public park. Clause Sixth (2) of the lease provided that the tenants, if requested to do so by the landlords, shall make at least one of the football pitches and the changing and shower facilities in the pavilion available without charge for use during the day by such local community body as the landlords shall nominate. In practice, one of the pitches was made available for use during the day until 4:30 by local children, who would put their bags down at the side. The Committee also heard evidence that members of the public were allowed to use the toilets if they asked, and that at least on occasion the door facing the pitches giving direct access to the changing/shower area was left open, but the use other than by customers of the facility did not appear to the Committee to be significant.

In reaching its decision, the Committee also had regard to the cases of *Assessor for Ayrshire v Troon Town Council* 1964 SC 424 and *Hamilton District Council v Assessor for Strathclyde Region* 1986 SLT 370. The Committee took the view that people came to the facility to use this rather than the public park, though some might use the public park as

well, and it found that the football facility was a substantial attraction in its own right, and as such, served its own purposes and not those of the public park.

The Committee considered the use of the building comprising the pavilion was ancillary to the purposes of the football facility and did not find it necessary to consider whether the use of the building was ancillary to the purposes of the public park. Had it been necessary for it to do so, it would have taken the view that although the upper floor was also marketed and used as a venue for parties, that use was ancillary to recreational use in circumstances where the income from functions accounted for 10 to 20% only of the total income generated for the property.

The Committee accordingly dismissed the appeal leaving the appeal subjects on the roll but substituting for the value appearing on the roll the figure of £52,500.

22 July 2013