

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

LIDL UK GmbH

in respect of

SHOP, 177 WINDMILLHILL STREET,
MOTHERWELL ML1 1RY

The appeal proceeded on the basis of an alleged material change of circumstances, being the opening of the Aldi food store at Mason Street, Motherwell. The effective date of the alleged material change was from June 2013.

In considering its approach to the matter the Committee had regard particularly to:-

the commentary contained in *Armour on Valuation for Rating* (5th Edition), paragraphs 3-12 to 3-31 inclusive and to the cases and legislation referred to therein including the definition of material change of circumstances contained in Section 20 of the *Rating and Valuation (Amendment) (Scotland) Act 1984* (*Armour*, paragraph 3-27) and the provisions of Section 3(4) of the *Local Government (Scotland) Act 1975*; to be a material change of circumstances the change must be one which affects the value of the appeal subjects; the burden of proof was on the Appellants to satisfy the Committee that a material change of circumstances had occurred (*Armour*, paragraph 3-19); the best evidence in a case of this nature is evidence of actual rents: *c/f Argos Distributors v Fife Council Assessor* [2010] CSIH 92; a mere fall in turnover can never constitute proof of a fall in value; what the Committee had to consider was whether the hypothetical rent negotiated between a willing tenant and a willing landlord would be lower for the appeal subjects following the opening of the competitor's store and would remain so: *Tesco Stores Ltd v Fife Council Assessor* [2010] CSIH 95.

the opinion of then Lord Justice Clerk in *Assessor for Glasgow v Schuh Ltd* [2012] CSIH 40: in the retail world, change is constant; retailers and shopping centres compete with one another; some shops or centres prosper while others fail; the effect of these changes on individual rentals will be discovered in the course of the Assessor's pre-revaluation survey and will be reflected in the net annual values at which the subjects are assessed in the next revaluation; these are the normal manifestations of the free market in retail; where the rental value of a shop falls in consequence of such changes, the fall cannot constitute a material change of circumstances for the purposes of section 3(4) of the 1975 Act; the distinction between the normal processes of change and the occurrence of significant changes of this latter kind is the key to a proper understanding of section 3(4).

the opinion of the Lord President in *Schuh Ltd v Assessor for Glasgow* [2013] CSIH 93: the system of quinquennial revaluation is based on the principle that the subjects entered in the roll at a revaluation will remain at the same value until the next revaluation, unless a material change of circumstances occurs in the interim; in reality, the rental values of commercial subjects of all kinds may fluctuate constantly throughout the quinquennium; if every downward fluctuation, whatever the cause, constituted a material change of circumstances, the whole basis of the quinquennial revaluation would be undermined;

the opinion of Lord Docherty in the same case: a distinction requires to be drawn between the ordinary processes of change affecting rental values in the intermediate years between revaluations, and material changes of circumstances affecting value within the meaning of S3(4); reductions in rental values which are attributable to the former are not material changes; they do not fall within the ambit of the subsection; on the other hand, reductions in rents not caused by such ordinary processes of change, but caused by extraordinary or exceptional factors such as an abnormal economic crisis, do not fall within its purview and may be material changes of circumstances.

the commentary contained in *Armour on Valuation for Rating* (5th Edition), paragraph 2-15 concerning the date as at which the roll is to be made up: the level of value established for a revaluation continues to rule for all the intermediate years thereafter so that any alterations to the roll require to be made at values no higher than the prevailing tone of the roll: *Local Government (Scotland) Act 1966s.15*.

Having given careful consideration to all of the evidence and submissions, the Committee concluded that no material change of circumstances in terms of the legislation had taken place and the Committee refused the appeal.

The net rateable value entered in the roll for the appeal subjects was £140,000. The Appellant contended for a value of £134,000.

The Committee took the view that the questions to be determined were whether there had been a change of circumstances and, if so, whether the change had been material. The onus was on the Appellants to identify the change of circumstances and the date when this was alleged to have taken place.

The argument taken by the Appellants was succinct: in *Tesco Stores v Fife Assessor*, the court held that the opening of a competitor amounted to a change of circumstances but the Appellant had failed to prove that the change was material in the sense that it affected the value of the subjects; in this instance the range of values agreed in respect of similar discount food stores in Lanarkshire for the purposes of the 2010 Revaluation allowed the Committee to reconsider the appropriate rental values of the premises having regard to the opening of a superior Aldi premises in a superior location; accordingly the dated, smaller subjects located in a peripheral location should no longer be valued at the top of the range of values.

As the Committee understood it, in *Tesco Stores v Fife Assessor*, the court impliedly accepted that a reduction in the rental value of a local shop caused by the opening of a superstore next to it could constitute a material change of circumstances. Here, both shops were similar discount food stores, which were competing in the same market. The subjects were not next to each other but 0.6 miles apart. The locations were different, Aldi being in a town centre location close to Asda, and the appeal subjects being situated in a mixed use area on a main arterial road. The Committee heard that for various reasons the appeal subjects were agreed at the top of the range of values as at the 2010 Revaluation. No evidence was led before the Committee of the effect, if any, that the opening the new store had had on the appeal subjects, or to demonstrate that there had been a fall in rental value of the appeal subjects. The Appellant's case was based on the inference that given that since the tone date when the valuation range had been set, larger and more modern subjects had opened in a more favourable location, the appeal subjects could no longer be said to be at the top of the range. This overlooked the fact that the level of value established for a revaluation continues to rule for all the intermediate years thereafter so that any alterations to the roll require to be made at values no higher than the prevailing tone of the roll: Local Government (Scotland) Act 1966s.15. For this reason it did not follow as the Appellants appeared to suggest, that every time a new discount supermarket opened in the intermediate years between revaluations, it was necessary to compare and contrast the relative merits of existing stores and to realign these within the accepted range of values.

In any event, the circumstances were, in the Committee's view, reflective of the ordinary processes of change in the retail world rather than any extraordinary or exceptional factors.

The Committee agreed with the Assessor's counsel that in order to succeed, the Appellants must prove there had been a change sufficiently exceptional to have a direct effect on the rental value of the appeal subjects. They had failed to do so. There was no evidence to support the argument that there had been a material change of circumstances.

The Committee accordingly concluded there had been no change of circumstances affecting value and dismissed the appeal.

16 December 2013