

LANARKSHIRE VALUATION
APPEAL PANEL

NOTE OF DECISION

and

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

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This appeal had already called for hearing at meetings of a committee of the Lanarkshire Valuation Appeal Panel on 14th December 2016 and 1st February 2017, and called again on 8th March 2017 and 15th March 2017. Mr Stewart Kennedy, a principal in Professional Rating Practitioners, Glasgow, represented and gave evidence on behalf of the Appellant, who was not present at the hearing. Mr Gary Bennett BSc MSc AEA (Cert-Scotland) MRICS IRRV (Hons), Assessor for Lanarkshire Valuation Joint Board, appeared personally, and led evidence from his witness Renzo Pacitti BSc MRICS.

The appeal proceeded on the basis that the valuation contained an error in terms of Section 2 (1) (f) of the Local Government (Scotland) Act 1975 and particularly that the error was one of measurement, survey or classification or clerical or arithmetical error. The onus lay on the Appellant to establish the existence of an error which fell within one of the classes of error set out in Section 2 (1) (f). Had there been such an error the Assessor would have been required in terms of Section 2 (1) (f) to alter the Roll to correct the error. The Assessor did not accept the existence of an error in the valuation, and the matter therefore fell to be determined on appeal by the committee.

The committee considered that the proper approach in considering the appeal was to decide first of all whether or not there was an error in the valuation and, if there was such an error, whether or not that error was an error of measurement, survey or classification or any clerical or arithmetical error.

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

- to the commentary contained in Armour, paragraphs 3-34 to 3-42, and to the cases and legislation referred to therein;
- to the dictum of the Lord President, then Lord Justice Clerk Gill, in *The Trustees of the National Gallery of Scotland v Lothian Assessor* [2010] CSIH 94: section 2(1)(f) applies to errors on matters of objectively ascertainable fact; questions of opinion and law belong in a different conceptual world; it would subvert the whole system of quinquennial valuations if S2(1)(f) provided a right of appeal on such grounds at any time while the Roll was in force.

The appeal had been lodged on 26th February 2016. The value appearing on the 2010 valuation roll was NAV/RV£12,400. The Appellant contended for an alternative valuation of NAV/RV£11,300, which would attract a higher percentage by way of rates relief under the Small Business Bonus Scheme.

The subjects of appeal are an older style shop located within a former domestic dwelling set within a stretch of 9 shops located on the main thoroughfare through East Kilbride village. It had been valued by applying the comparative principle using the zoning method.

All of the evidence in the case was heard on 8th March 2017. At the outset, Mr Kennedy accepted the Assessor's measurement of 41.48m² for the reduced area of the appeal subjects used at the 2010 Revaluation, and the parties agreed that the only issue between them was whether the staff toilets fell to be included in the valuation.

Mr Kennedy also took exception to the Assessor's Productions 10(b) to (d) and made a motion to be allowed to lodge further productions in response. These were decisions in 3 other appeals taken on grounds of error by Mr Kennedy which had been unsuccessful. Mr Kennedy felt these were intended to call into question his professional competence, but the committee declined to allow him to lodge further productions at that stage of the proceedings, leaving him to cross-examine the Assessor's witness as he saw fit.

At the end of that day, the appeal was adjourned, because of the lateness of the hour, until 15th March 2017, for the parties to make their submissions. Before submissions were heard at the adjourned hearing, Mr Kennedy again asked to be allowed to make a further motion, but the committee declined to allow him to do so at that late stage.

The Appellant's agent, Mr Kennedy, lodged a considerable number of productions to which he spoke at length, but the essential elements of the case taken by him were as follows. The Assessor had a statutory duty to make up the Valuation Roll. In order to do so, he had to apply a consistency of approach. As Assessor for Lanarkshire Valuation Joint Board and as a Member of the Royal Institution of Chartered Surveyors, he was bound to apply the RICS Code of Measuring Practice (6th Edition). According to Mr Kennedy, this meant that in arriving at Net Internal Area, staff toilets should be excluded. Mr Kennedy produced evidence that this was the practice followed by the Assessor in Renfrewshire, Lothian, Central Scotland and Ayrshire.

The Assessor's response to this was that the Code was merely guidance, and that the important point was not which approach was adopted but rather whether there was consistency of approach. At the 2010 Revaluation, following the Staff Guidance Note on Valuation of Unit Shops, the Assessor had not excluded the toilet in the calculation of the reduced area. The Guidance Note was intended to ensure that all shops throughout Lanarkshire are measured to a common standard. The underlying principle here was that you must value as you devalue. You cannot derive a Zone A rate/m² using reduced areas including toilets and then value the subject using reduced areas excluding the toilets. If at the 2010 Revaluation, the Assessor had removed the toilet areas from the reduced areas, this would have produced a higher Zone A rate/m². The Assessor felt this showed Mr Kennedy's unfamiliarity with rating matters.

The Assessor highlighted that there had been over 4,000 appeals since 2010 involving shops, the majority with professional representation, and not one other agent had taken the point raised by Mr Kennedy. He also explained that in the knowledge of the inconsistencies which exist in property measuring standards, the RICS with others is working on international property measuring standards but the process has not even begun as yet.

The Committee accepted the Assessor's submission that the Code was merely guidance. It did so because the Code is expressly stated to be a Guidance Note providing guidance to Members of the RICS, which Members were not required to follow.

The Committee accepted the Assessor's submission that the cardinal principle was that you must value as you devalue. This is set out in "Rating Valuation Principles and Practice Third Edition by Patrick H. Bond and Peter K. Brown at paragraph 7.11 dealing with rental analysis:-

"Having adjusted the rents to accord with the terms of rateable value, the valuer will then need to analyse the rent to some common unit of comparison. The unit adopted will vary according to the type of hereditament and local practice but the unit of devaluation must be the same as that used in valuation and the maxim "as you devalue so you must value" is fundamental to the process."

The Committee accordingly had no difficulty in reaching the view that there was no error of any kind in the valuation. Accordingly, section 2(1)(f) was not engaged.

In any event, the Committee acknowledged that the Assessor was correct in his submission based on decision of the Lands Valuation Appeal Court in the case of *The Trustees of the National Gallery of Scotland v Lothian Assessor* and the dictum of the then Lord Justice Clerk Gill that which of the two alternative approaches was to be adopted was a matter of opinion. Section 2(1)(f) applies to errors on matters of objectively ascertainable fact; questions of opinion and law belong in a different conceptual world; and it would subvert the whole system of quinquennial valuations if S2(1)(f) provided a right of appeal on such grounds at any time while the Roll was in force.

The committee accordingly granted the motion of the Assessor and dismissed the appeal as being incompetent.

The committee also noted that Mr Kennedy seemed unclear as to the function of the committee. Valuation appeal panels and committees are constituted (under the Local Government etc. (Scotland) Act 1994 section 29(1)(a)) for the purpose of hearing and determining appeals and complaints under the Valuation Acts. The function of the committee is accordingly to determine the valuation issues arising between the parties. In his submissions, both written and oral, he asked the committee to make various findings, in the event that the committee were to find in favour of the Appellant on the issue between the parties in the present appeal, which for the reasons already set out, it did not. It should however be noted in any event that the

performance by the Assessor of his statutory duties is not in itself a matter which is competently before the committee.in the context of a valuation appeal. The committee does not have the general supervisory jurisdiction of the Court of Session to order specific performance of a statutory duty.

30th March 2017

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