

LANARKSHIRE VALUATION
APPEAL PANEL

NOTE OF DECISION

and

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

BSB STRUCTURAL LTD
PER PROFESSIONAL
RATING PRACTITIONERS,
CLYDE OFFICES, SECOND
FLOOR, 48 WEST GEORGE
STREET, GLASGOW G2 1BP

relative to

YARD, UNIT 29
FLEMINGTON
INDUSTRIAL PARK, 1
ROBBERHALL ROAD,
MOTHERWELL, ML1 2NT

This appeal was lodged on 29th March 2017. A citation was issued on 28th June 2017 and the appeal called for hearing at a meeting of a Committee of the Lanarkshire Valuation Appeal Panel on 20th September 2017. Mr Geoff Clarke, QC appeared for the Assessor. The Appellants were neither present nor represented. The appeal had been lodged on behalf of the Appellants by Stewart Kennedy of Professional Rating Practitioners.

Mr Clarke moved under the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 (“the 1995 Regulations”), Regulation 13(2) that the Committee refuse to permit Mr Kennedy to assist or represent the Appellants at the hearing. Regulation 13(1) provides that a party may appear before and be heard by the Committee in person (with assistance from any person he wishes) or he may be represented by any person whether or not legally qualified. This is however subject to Regulation 13(2) which provides that if in any particular case the Committee is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent a party at the hearing.

This was one of 19 appeals lodged by Mr Kennedy left on the list for this hearing. 37 other appeals lodged by Mr Kennedy and cited for this hearing had already been withdrawn. Counsel set out the background to matters. Across Scotland, Mr Kennedy had lodged many appeals as agent for appellants though he had no qualifications in the field of valuation. There was a similar pattern of behaviour across a number of valuation areas. He would lodge hundreds of appeals, refuse to lodge proper grounds, negotiate fiercely, then not turn up at the hearing or withdraw the appeals the day before. This resulted in a significant cost to the public purse.

Counsel made reference to the Assessor's Production 6, being a decision of a committee of this Panel on 6th September 2017 in an appeal in which the same motion being made by Counsel in this appeal had been upheld. In that appeal, Mr Kennedy had seen fit to attend and oppose the motion.

Reference was made in that appeal to two decisions, which Counsel considered were also relevant to the present appeal. In one of these, *Kennedy v Cordia (Services) LLP* [2016] UKSC 6, the Supreme Court decided that anyone can give lay evidence, but to give opinion evidence, you need to be an expert, otherwise you are usurping the function of the court. Counsel expressed the view that it was difficult to see how the presentation of an appeal by a paid agent can be anything other than an expression of opinion. The Committee agreed that as a matter of evidence, Mr Kennedy was not entitled to express an opinion as a skilled witness.

Reference was also made in that appeal to the decision of the Lands Valuation Appeal Court in *Belhaven Brewery Company Ltd v the Assessor for Highland and Western Isles* [2008] CSIH 3 in which the Lord Justice Clerk (Gill) stated that problems can arise where an appeal is conducted by a representative who lacks a proper understanding of valuation law and practice and who does not take legal advice, and reminded committees and their clerks of the power contained in regulation 13(2) of the 1995 Regulations. Those remarks were made in the context of a stated case taken by a rating surveyor who had persistently abused the privilege of conducting appeals before committees and in relation to whom their lordships had had occasion to comment on his conduct towards assessors, committees, and secretaries to committees. Counsel submitted that Mr Kennedy, who for his part had no professional qualification, was not entitled to express an opinion, and was not a fit and proper person to appear before the

Committee. The issue before the Committee was whether there were good and sufficient reasons why Mr Kennedy should not be permitted to represent the Appellants in the present appeal. Counsel submitted that there were good and sufficient reasons, based on Mr Kennedy's lack of professional expertise, his lack of demonstration of trust and reliability, conduct on his part unbecoming of someone who holds himself out as an agent, a consistent lack of any merit in appeals presented by him, and a potential lack of proper authority.

Counsel addressed the Committee on the other productions lodged by the Assessor. Production 1 took the form of a spreadsheet showing an analysis and history of appeals lodged by PRP after 15th March 2017 and cited for 20th September 2017. Production 2 took the form of a spreadsheet showing an analysis and history of appeals lodged by PRP after 15th March 2017. In Counsel's submission, the information contained in these spreadsheets demonstrated that Mr Kennedy appears to be lodging large numbers of appeals which have no merit. Production 3 consisted of Section 2(1)(f) decisions (on grounds of error) by other valuation appeal committees involving Mr Kennedy. In Counsel's submission, these decisions demonstrated that there had been no merit in these appeals, largely because Mr Kennedy did not have an understanding of the principles on which valuation law is based. Counsel also referred the Committee to the Assessor's Productions 4a, 4b and 4c which related to Mr Kennedy's previous business affairs and, in Counsel's submission, were to be taken into account when considering the issue of whether he was a fit and proper person to conduct valuation appeals.

Counsel conceded that as the Assessor had not investigated the present appeal, he could not say it had no merit, but this was the inference to be drawn from the fact that Mr Kennedy had not seen fit to attend at the hearing.

As noted, the question for the Committee to decide was whether, in this particular appeal, it was satisfied that there were good and sufficient reasons for it to refuse to permit Mr Kennedy to assist or represent the Appellant at the hearing. The appeal had been lodged on grounds of error. The Committee were satisfied that in an appeal of this nature, problems would inevitably arise if the appeal were conducted by a representative who lacked a proper understanding of valuation law and practice and who did not take professional advice. The Committee were satisfied based on Counsel's submissions that Mr Kennedy lacks a proper understanding of valuation law and practice, and has previously abused the privilege of conducting appeals before committees.

On this basis, the Committee accordingly granted the motion for the Assessor, refused to permit Mr Kennedy to assist or represent the Appellant at the hearing, and postponed the hearing of the appeal so that intimation of the Committee's decision could be made upon the Appellants to give them an opportunity to arrange alternative representation.

22nd September 2017