

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS  
RELATIVE TO APPLICATION

by

B & Q plc

in respect of

RETAIL WAREHOUSE, 2 CALDEEN ROAD,  
COATBRIDGE

The appeal proceeded on the basis of alleged material change of circumstances, being the economic downturn and its consequences. The effective date of the alleged material change was 1 April 2009.

In considering its approach to the matter the Committee had regard particularly to the commentary contained in *Armour on Valuation for Rating* (5<sup>th</sup> Edition) at paragraph 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 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 that affects the value of the appeal subjects.

The burden of proof was on the appellants to satisfy the Committee that a material change of circumstance had occurred (*Armour*, paragraph 3.19). 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 been shown to have taken place and the Committee refused the appeal.

The value entered in the roll for the appeal subjects at the 2005 Revaluation was £1,315,000. The value sought by the appellants effective from 1 April 2009 was £1,280,000 being the value at which the property had been entered in the Valuation Roll as at 1 April 2010.

- The appellants' evidence was that it had been well known within the property profession for some time that the market for large DIY retail warehouses of this type had been in significant decline, that there were statistics in the property press suggesting DIY retailers' average rents had been falling since late 2008 and that the appellants had settled over 70 rent reviews throughout the United Kingdom since September 2005 at no uplift in passing rents.

The appellants' representative drew to the Committee's attention that the Assessor had valued the appeal subjects for the purposes of the 2010 Revaluation Roll at £1,280,000 which was less than the 2005 rateable value of £1,315,000, and that the valuation date for the 2010 rating assessment was 1 April 2008. He asserted that given what he referred to as the well documented market conditions for this type of property, he could not believe that any experienced Chartered Surveyor could seriously suggest that rental levels would have increased between 1 April 2008 and the effective date of 1 April 2010.

Counsel for the Assessor submitted that it was for the appellants to show that as at 1 April 2009 the rental value of the appeal subjects was lower than as at the tone date for the 2005 revaluation, namely 1 April 2003. What was necessary was evidence of a downturn in the general level of rents in comparable property and no such evidence had been produced. The Appellants did have evidence that there had been no uplift in the rents for B&Q but this did not mean that there had been a reduction in value, and in any event this related to the position nationwide. The appellants' argument was misconceived and was a misuse of the revaluation process. Counsel referred to Armour on Valuation (5<sup>th</sup> Edition), paragraph 206 which envisaged a fresh start as against the previous Valuation Roll. He argued that the 2010 Revaluation only had effect from 1 April 2010 and submitted that the appellants were effectively contending that the 2010 Revaluation was a material change of circumstances taking effect in 2009. In essence, the appellant was using the 2010 Revaluation as a substitute for evidence based on rental values. There was no evidence of a reduction in rental values. In any event, the only evidence was of the rateable value for the appeal subjects and this was wholly insufficient.

The Committee considered that the onus was on the appellants to satisfy the Committee that there had been a change of circumstances, that the change was material and that it had had an effect on value. The Committee had to decide whether the appellants had discharged that onus. There had to be clear and positive evidence of such a change, and of

its affect on value. In the valuation of subjects such as these, the best evidence is evidence of an open market transaction relating to comparable subjects concluded at arm's length, and substantially on the terms of the statutory hypothesis, at or near to the valuation date.

The Committee decided that the appellants had failed to discharge the onus under Section 3(4) of the 1975 Act. The evidence which had been led before the Committee was insufficient to support the conclusion that there had been a fall in the rental value of the appeal subjects at 1April 2009. There was no evidence of any comparable case in which there had been a fall in rental value. The Committee agreed with the submission made by Counsel for the Assessor that in essence the appellants were using the 2010 Revaluation as a substitute for evidence based on rental values.

The appellants had failed in this instance to discharge the burden of proof and the appeal accordingly fell to be dismissed.