

Lanarkshire Valuation Appeal Panel

Secretary to Panel
Stewart Graham, LL.B. (Hons)
My Ref: SG/MM
Your Ref:

Almada Chambers
95 Almada Street
Hamilton ML3 0EY
Tel: 01698 282158
Fax: 01698 891144

24 March 2010

The Assessor
Lanarkshire Valuation Joint Board
North Stand
Cadzow Avenue
Hamilton ML3 0LU
BY POST AND FAX: 01698 476010

Dear Sir

Valuation Appeal Hearing: 23 March 2011

Portman Travel

Subjects: Unit 1, Floor 8, Plaza Tower, East Kilbride; Unit 3A Floor 8, Plaza Tower, East Kilbride;
Unit 4, Floor 8, Plaza Tower, East Kilbride

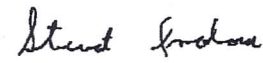
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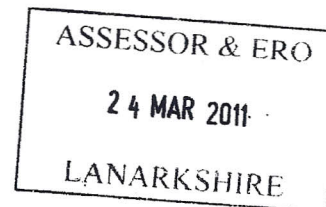
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I refer to the above appeal which called for hearing on 23 March 2011.

The Valuation Appcal Committee refused the appellants' motion for a continuation and decided to dismiss the appeal. I enclose a statement setting out the Committee's decision and the reasons for this.

Yours faithfully


Stewart Graham
Secretary



LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEALS

by

PORTMAN TRAVEL LTD

in respect of

- (1) OFFICE, PLAZA TOWER, UNIT 1, FLOOR 8,
THE PLAZA, EAST KILBRIDE, GLASGOW
- (2) OFFICE, PLAZA TOWER, UNIT 3A, FLOOR 8,
THE PLAZA, EAST KILBRIDE, GLASGOW
- (3) OFFICE, PLAZA TOWER, UNIT 4, FLOOR 8,
THE PLAZA, EAST KILBRIDE, GLASGOW

The appellants' agent, Mr Rogan of Colliers International, did not attend the hearing.

He had sent a letter by fax to the Panel Secretary the previous morning requesting that the Committee grant a continuation of these cases but did not inform the Panel Secretary that he did not intend to appear and consequently the Panel Secretary had no information concerning the reason for his non appearance. The Panel Secretary placed before the Committee a copy of Mr Rogan's letter dated 21 March 2011 setting out the reasons for which a continuation was being requested. These were in essence that there had been a problem which meant that at the moment the appellants' agent could not be shown the rental and marketing evidence from the Plaza Tower which would be the starting point for him leading a full and proper case. He was therefore limited at the moment to hearsay evidence and evidence of the Assessor's actions arising from the 2010 Revaluation. He wished to have the opportunity to have the benefit of complete information in order to fully analyse it and put a proposed alternative valuation with effect from 1 April 2009 before the Committee.

Counsel for the Assessor opposed the application for a continuation. He did so on that basis that where an appeal had been lodged on the grounds of material change of circumstances then the appellants should have the necessary information before them before advancing the appeal and certainly before proceeding to a hearing. In this case the grounds of appeal which had been lodged were generic although the Assessor was aware that the case was one of material change of circumstances on the basis of the economic downturn.

Counsel maintained that it was wholly unacceptable for the appellant's agent to put in a letter to obtain a continuation in order to seek evidence or information which the agents should have had already.

He also argued that the effective date of the alleged material change of circumstances was 1 April 2009. The negotiations taking place between the landlord and tenant related to the expiry of the current leases and to discussions about revised rentals. These were of no relevance to the circumstances as at 1 April 2009.

There was therefore no proper basis at all for the motion.

He also argued that this placed additional pressure on the Assessor's resources and also on the Committee. There were a very considerable number of appeals outstanding both in relation to the 2010 Revaluation and also relating to material change of circumstances, hearings had to be scheduled for these and if cases had to be continued on spurious grounds, then this added to the pressure.

Whether or not there was a good reason for the agent's inability to appear, he should have made alternative arrangements for the appellants to be represented. He asked the Committee to refuse the request for a continuation.

After deliberation, the Committee adopted Counsel's submissions and for those reasons refused the request for a continuation.

Counsel accordingly made a motion for the Committee to dismiss the appeal under Regulation 15(1) of the Valuation Appeal Committee, etc. (Scotland) Regulations 1995 on the ground that the appellant had failed to appear or be represented at the hearing of his appeal and also under Regulation 10(3) on the ground that the appellant had failed to lodge within the time allowed a written statement properly specifying the grounds for their appeal in terms of Regulation 10 (1).

Counsel referred to the generic nature of the grounds submitted which were set out in paragraph 4 of the agent's letter of 3 February 2011 in the following terms:-

"The valuation proposed is incorrect and bad in law. The valuation does not take into account full and proper analysis of relevant rental evidence, including incentives if applicable to each comparative subject. In addition, additional factors relevant to the valuation of each property have also been incorrectly accounted

for including other relevant transactions and cost information, as appropriate, prevailing for similar subjects."

These did not amount to proper compliance with Regulation 10(1). The appellants had no basis for pursuing the appeal.

The appellants had said they would be relying on the 2010 Revaluation though in Counsel's submission this was wholly irrelevant.

The default on the part of the appellants went beyond that.

They had lodged a schedule of comparisons. This contained 492 comparisons relating to various different types of property, though admittedly all in Lanarkshire. The observations of the Lord Justice Clerk in *Tesco Stores -v- Assessor for Fife* delivered on 14 December 2010 were entirely apposite. This was an abuse of Committee procedure. The submission of a list of comparisons like this would entitle the Committee to rule that it did not qualify under Regulation 10(5,) and on that view, to refuse to allow the party submitting it to find on any comparisons at all.

There were two further authorities which also served to highlight the difficulties being faced by Assessors.

The first of these was *Noble -v- The Assessor for Grampian Valuation Joint Board 2004 S.C. 383*. In this case also there had also been a request for a continuation and a failure to appear. The continuation had been refused and the appeal dismissed. There had been an attempt to reinstate and a hopeless appeal had then been taken to the Lands Valuation Appeal Court. In his judgment the Lord Justice Clerk sympathised with the Committee and its Secretary who had extended every consideration to the appellants. It was within the discretion of the Committee not merely to grant or refuse the motion; but to refuse even to entertain it (reg.9(3)(b)). The plain truth was that the appellants' agent chose to absent himself from the hearing in the knowledge of the risk that involved. A valid reason was given for refusal of the motion and after this the dismissal of the appeals for want of insistence was the only decision that the Committee could have taken.

The second case was *Belhaven Brewery Company Ltd -v- Assessor for Highland and Western Isles 2008 S.C. 288*. This concerned Regulations 13(1) and (2). The agent's conduct in this and other cases was considered to constitute an abuse of process. Reference was made to the waste of the time of assessors, committee members and clerks that is caused by hopeless appeals.

Counsel also referred to a decision of the Highland and Western Isles Valuation Appeal Panel issued on 22 February 2011, again involving a dismissal of a case under Regulation 10(3). In that case the same agents as in the present case had lodged grounds of appeal in identical terms to the present case and had then failed to attend the hearing. The Assessor moved for dismissal on grounds of non compliance on the basis that the Assessor had not been given fair notice of the appellants' case. The appellants' agents having elected not to attend the hearing and thereby deprive themselves of the opportunity to respond to this and any other motion made by the Assessor, the Committee were required to consider the motion without having the benefit of a contradictor and saw fit to grant the motion. The practice did not comply with the letter or the spirit of Regulation 10(1).

Counsel accordingly made the following submissions:-

- 1 There had been a failure on the part of the appellants' agent to attend and move the motion or to cover the eventuality that the motion might be refused. The conduct of the appellants' agent showed a complete disregard to both the Assessor and the Committee. Dismissal was appropriate and the only proper outcome.
- 2 There were no proper grounds of appeal under Regulation 10(1) and the appeal should accordingly be dismissed under Regulation 10(3). The grounds of appeal were hopeless and no evidence had been produced in support of these. This was an abuse of process. There was a clear abuse of process in relation to the comparisons which had been lodged. In Counsel's submission there was an abuse of process in the way in which these appeals had been conducted or not conducted and these agents had already had a significant number of appeals dismissed before the Committee. Forty cases had been dismissed at the appeal hearing on 9 March 2011, 96 cases at the hearing on 16 March 2011 and at today's hearing 66 appeals lodged by these agents had been withdrawn. He moved for dismissal for non attendance under Regulation 15(1) and for non compliance under Regulation 10(3). He also asked the Committee if it were minded to dismiss the appeal to make findings on these matters in its decision and make reference to the authorities cited as these matters were of serious concern to the Assessor.

After deliberation, the Committee made it clear that they fully took on board the Assessor's concerns and that the Committee would be entirely prepared in an appropriate case to adopt Counsel's reasoning as drawn from the three authorities referred to. However, the Committee took the view in this particular case that

whilst the actings of the agents had been inept and lacking in courtesy, there was no blatant abuse of process. The appellants' agents had formed the view that it would be in their interest to produce rental and marketing evidence and had yesterday written asking for a continuation to obtain this, which for the reasons given the Committee had refused.

The Committee agreed that the statement of grounds lodged was inadequate and there was therefore no basis for the appeal and for this reason and also on the basis of the agent's non appearance sustained the Assessor's motion to dismiss the appeal.