

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

Alistair McLeod and John Burke

in respect of

Shop, 13 Tay Walk, Cumbernauld

The appeal proceeded on the basis of an alleged material change of circumstances, being the commercial shift of businesses ie businesses closing and moving from Tay Walk, Cumbernauld affecting the rental and turnover potential of the appeal subjects. The effective date of the alleged material change was 1st April 2009.

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 (para 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). 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 adjusted rateable value entered in the roll for the appeal subjects was £16,200. This was as a result of an alteration in the roll made by the Assessor with effect from 1st April 2008 made as a result of a material change of circumstances caused by the opening of the Antonine Centre as mentioned below. The value sought by the Appellants was a value under £15,000.

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 Appellants argued that although the rateable value of the appeal subjects had been reduced by the Assessor from £23,750 to £16,200 with effect from 1st April 2008, the figure of £16,200 was not wholly accepted by them as the correct figure. The Committee did not agree with this given they had withdrawn their appeal against that alteration. The Appellants argued that the rateable value as adjusted was disproportionate to comparable properties in the surrounding area. Properties in Tay Walk had a higher rateable value than properties in Forth Walk and Etrick Square, which was admittedly the case. This meant that bigger shops had a smaller rateable value. Seven shops in Tay Walk had either closed or closed and moved, though the Committee noted that even although the bank had moved the lease was still in existence, and some of the shops had been vacant for some time. The Appellants maintained that there had been a decrease in footfall, however the Committee was not satisfied that the appeal subjects were dependent to any significant extent on footfall and no evidence was led of a decrease in turnover for the appeal subjects. There was no evidence of a drop in rental values for those shops which were let. The Committee took the view that there had been no further change of circumstances since 1st April 2008, and that in any event there was no change affecting value.

The Committee agreed with the argument taken by the Assessor that the reduction in the rateable value of the appeal subjects when the entry was altered to £16,200 with effect from 1st April 2008 was made to reflect the opening of the Antonine Centre, and on the basis of the evidence presented today the consequences of this had been taken into account. The Appellants had appealed the entry but had then withdrawn their appeal. The present appeal having been lodged on 30th September 2009, the onus was on the Appellant to satisfy the Committee that a material change of circumstances had taken place since 1st April 2008. However the factors argued in support of the appeal were the same factors which had been in issue when the reduction had been made. These were the working out of the likely effects of the opening of the Antonine Centre and did not relate to any fresh change of circumstances. The Assessor's productions 1 and 2 set out the differential rates between Forth Walk and Tay Walk and the reasons for this were well established. This was the lowest value area on the basis of rental evidence. The Landlords had agreed the value of various subjects outwith Forth Walk and had argued the rate for Forth Walk should be less than £100 per square metre, but the Committee had refused the appeal. There were good reasons for the differential based on the rental evidence and the agreed reductions.

The Committee also accepted the argument taken on behalf of the Assessor that the point taken by the Appellants in relation to the use made of the rear access was not relevant to an appeal taken on the basis of a material change of circumstances. It had not been suggested that there had been any change.

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