

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 20 April 2021

Subjects

Reference Number

**Workshop & Yard (Commercial),
Plot 1, 43B Harbour Road,
Inverness, IV1 1UF**

06/08/375540/0

For the Appellants

For the Assessor

**Mr Peter Pasioka & Mrs Susan Pasioka
for H & M Hydraulic Services Ltd**

Jonathan Murphy, Advocate

INTRODUCTION:-

The Appellants were represented by their Directors, Peter Pasioka and Susan Pasioka. Stephen MacKenzie, MRICS, a Divisional Valuer in the Assessor's Office, gave evidence on behalf of the Assessor.

The rateable value as it appears in the Valuation Roll is £21,000. The Appellants sought to have that reduced to £18,000. The Assessor argued for the rateable value of £21,000 to be upheld.

This Appeal hearing was conducted remotely using the Microsoft Teams video conference platform.

Helpfully, both parties provided written submissions and documentary productions to the Committee's Secretary for distribution to the Committee Members and to each other in advance of the hearing.

APPELLANTS' CASE:-

The Appellants produced and referred to an email they had received from the Assessor's witness, Stephen MacKenzie, dated 25th September 2020. Due to the erection of a firewall within the Appeal Subjects a void was created between it and the outer wall of the building. This left an area of unusable space of approximately 0.6 metres wide which ran the length of the building, some 19 metres. Implying he had not taken the unusable space behind the firewall into account in reaching his original valuation figure of £21,000, Mr MacKenzie stated "I am now of the opinion that the rateable value of this subject would be more appropriately stated at £20,000, rather than the figure of £21,000 at which it currently sits in the valuation roll".

Mr Pasioka advised the Committee that on 19th April 2021, Mr MacKenzie had told him that he was no longer prepared to agree to the rateable value being reduced to £20,000.

The Appellants referred to the requirement placed upon them to create a disable toilet in the Appeal Subjects. The floor area of the toilet was 18 square metres "of space that is not productive".

The Appellants compared the rateable value of the Appeal Subjects with that of the premises they previously occupied at Unit D, 24 Longman Drive, Inverness. The rateable value of those subjects is £15,750. The gross internal area of the Appellants' previous premises was 185 square metres. The gross internal area of the Appeal Subjects is 156 square metres. The figure of 156 square metres was arrived at by taking the void behind the firewall and the area of the disabled toilets out of account.

Mr Pasieka did go on to concede that the yard space available was a relevant factor and that the yard at the Appeal Subject is larger than that at the previous premises.

There are a number of shipping containers situated in the yard. These are used for, variously, office, tearoom and storage accommodation. Mr Pasieka said these were in use only because the Appellants had been unable to develop a floor above the ground floor of the building.

Mr Pasieka concluded his submission by advising the Committee he had no problem with the concept of paying taxes. However, the taxes had to be fair. The rateable value of £21,000 attributed to the Appeal Subjects was appropriate for subjects used for retail, commercial and leisure but not for industrial usage. If he had known the level of rates, he would not have moved to the Appeal Subjects.

In cross-examination it was put to Mr Pasieka that on issues of value, his lack of experience in such matters meant that he could not dispute opinion evidence of value from Mr MacKenzie, a member of RICS who had been a qualified valuer for over a decade.

It was also put to him that business rates relief and COVID grants were irrelevant to matters of valuation. Mr Pasieka seemed to accept that as a general proposition but said that he had been seeking agreement with the Assessor's department that the rateable value should be reduced "to £18,000 for a couple of years then increase it to £21,000".

In response to a challenge of his use of gross internal area as the basis for measuring the Appeal Subjects and comparison subjects, Mr Pasieka explained that is how the measurement had appeared in the advertising material prepared by the surveyor agents who had marketed the property and on the basis of which the Appellants has taken on the lease of the Appeal Subjects.

It was suggested to him that the installation of a disabled toilet and a wheelchair ramp to access the building had increased the rental and therefore rateable value of the Appeal Subjects. Mr Pasieka acknowledged that might be the case but claimed he had put in a concrete ramp out of necessity, not because he had wanted to.

He noted that the floor area of the disabled toilet in neighbouring premises was only one-third of that in the Appeal Subjects. The significance of this, he stated, was “we need usable floor space to make money”.

He stated the Appellants had had to have land decontamination works undertaken. This involved importing hardcore to the site in order to raise the ground level. The neighbouring plot was still contaminated.

ASSESSOR’S CASE:-

Mr MacKenzie produced a nine page statement of evidence accompanied by thirty-six pages of Appendices. As is the norm with such statements, it opened with his professional experience and the “Expert Witness Statement of Truth”.

He went on to explain that the subjects were valued using the comparative method of valuation with particular reference to the established scheme of valuation for industrial/workshop type properties. This applies rates per square metre to the gross external area of buildings, associated land and other pertinents. He referred to Appendices 11 to 16 where there was set out valuation guidance from both the Scottish Assessors Association and the Assessor for Highland and Western Isles.

Details of his valuation were set out at Appendix 2.

In response to the Appellants' contention that the valuation is high, Mr MacKenzie did not agree. The subjects have been valued using the same established scheme of valuation that has been used throughout the valuation area with particular reference to the rates per square metre applied to the Longman Industrial Estate. This level of value is considered to have been established and accepted by proprietors, occupiers and professional agents through the 2017 revaluation and subsequent appeals process.

The inclusion of the container accommodation into the valuation had been a long-established principle within the scheme of valuation. The containers are heritable subjects and they are considered to enhance the value of the site. He maintained that the additions to value attributed to the containers were, in this case, "modest".

The Small Business Bonus Scheme and Covid-19 Grant Assistance Scheme thresholds of £18,000 were not considerations for the Assessor when determining the rateable value of subjects on the statutory terms.

DISCUSSION & DECISION:-

The Committee understood the motivation of the Appellants in bringing this Appeal. That said, by the conclusion of the hearing, if not before, the Appellants may have begun to realise that qualification for The Small Business Bonus Scheme and Covid-19 Grant Assistance Scheme were issues which were not legally relevant to a proper consideration of the rateable value of the Appeal Subjects. In determining the rateable value of any subjects, it is necessary to determine the annual rental value they would attract, assuming the Tenant bears all costs for repairs and insurance, at the statutory valuation date of 1st April 2015 – Valuation and Rating (Scotland) Act 1956, Section 6.

Understandably, perhaps, the Appellants were exercised by the Assessor's reference to the gross external area of the subjects whereas the surveyors who were advertising the subjects for lease at the time the Appellants took the lease on refer to gross internal area. The need for there to be a uniform basis for the measurement of properties for rating purposes is well recognised. It is well established in rating practice that one looks at the gross external area of the buildings. Reference to gross internal area may perfectly properly appear for other purposes, such as agents advertising subjects for rent.

The Appellants maintained that the disabled toilets took up productive space in the premises and the building of the disabled ramp to access the premises did not add value. The Committee did not agree with this approach. The inclusion of disabled toilets and the provision of adequate disabled access to the premises are understood to be legal requirements. If these facilities were not present then the hypothetical tenant

coming into the premises would have to install them and so the value of the subjects would be less if these if these facilities were not present.

On the same basis, the Committee did not agree with the Appellants contention that their need to carry out decontamination work to the land before taking entry had the effect of depressing the value of the subjects – quite the contrary, the fact that this work has been done enhances the value.

The Committee accepted that the container accommodation was, for the purposes of the exercise of establishing rateable value, heritable in nature and so fell to be included.

Quite properly, at the outset of his cross-examination of Mr Pasieka, Mr Murphy highlighted the relative experience in valuation matters of Mr Pasieka, on the one hand, and Mr Stephen MacKenzie on the other. This, Mr Murphy suggested in his submissions, meant that greater weight should be given to the opinion evidence of Mr MacKenzie than that of Mr Pasieka. As a general proposition, that would be generally accepted. However, it does require the Committee to examine the evidence of professional witnesses with particular care.

In paragraph 2.2 of his witness statement, under the heading of “Expert Witness Statement of Truth” Mr MacKenzie states “I confirm that my statement includes all the facts which I regard as being relevant to the opinions which I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions.” That is one paragraph in a statement of nine pages, accompanied by thirty-

six pages of Appendices, speaking to a valuation figure of £21,000, the figure at which the subjects first appeared in the Valuation Roll.

In the context of matters which might affect the validity of the opinions expressed by Mr MacKenzie in his statement, the Committee considers that Mr MacKenzie ought to have drawn the attention of the Committee to the terms of his email of 25th September 2020 to the Appellants. He did not do so. The Appellants referred to, and lodged a copy of, that email. The opinion of Mr MacKenzie is clearly stated in that email – “..... the rateable value of this subject would be more appropriately stated at £20,000, rather than the figure of £21,000 at which it currently sits in the valuation roll.” That email is not said to be written on a “without prejudice” basis. Nor is there anything in the context of the email suggesting that it was written for the purpose of negotiation. Rather, it contains an expression of opinion of Mr MacKenzie as to the value of the subjects. It was presumably for these reasons that Mr Murphy did not take exception to reference being made to the terms of this email by the Appellants in their submission.

At the end of paragraph 6.6 of his statement, Mr MacKenzie states “It is worth noting that the inverse quantum addition was omitted in error when the subjects were originally valued.” The Committee, however, is not having to look back to what may or may not have been in the mind of Mr MacKenzie when the subjects were originally valued. The Committee need only look back to September 2020 when he was of the view that the subjects were valued at £20,000. Without there being a detailed explanation – which there was not – of how the original valuation of £21,000 was reached and the agreed reduction to £20,000 in September 2020, the Committee is not

satisfied it can properly uphold the Assessor's contention that £21,000 is the appropriate level of value. Therefore, the Committee upholds the Appeal to the extent of reducing the rateable value of the subjects to £20,000.