

FIFE VALUATION APPEAL COMMITTEE

NOTE OF DECISION

And

STATEMENTS OF REASON

Relative to Appeal by

STARBUCKS AND H & M HENNEZ & MAURITZ UK LTD

Date: 11 October 2018

Subjects

127 Market Street, St Andrews, KY16 9PE (Starbucks Coffee Co UK Ltd) and 137 – 141 Market Street, St Andrews, KY16 9PF (H & M Hennez & Mauritz UK Ltd)

Reference Number:

**For the Appellant:
Brian Gill, Advocate**

**For the Respondent:
Mr Dunlop, Advocate**

These conjoined Appeals were heard at the above Hearing of the Fife Valuation Appeal Committee. Mr Gill, Advocate represented the Appellants. Ken McCormack of Montagu Evans, 302 St Vincent Street, Glasgow, gave expert evidence for the Appellants. Mr Dunlop, Advocate represented the Assessor. Brian Smith gave expert evidence for the Assessor.

Subjects

The scope of this conjoined Appeal was effectively in respect of the zone A rate of £650.00 which had been applied by the Assessor and whether or not that was correct and justified by the rental evidence for this location in Market Street, St Andrews. The Appellant contended that the zone A rate should be reduced from £650.00 to £600.00 in respect of each of the subjects of Appeal which are located on the north side of Market Street.

It had been agreed by the parties prior to the Hearing that the reduced zone A area in respect of 127 Market Street ("the Starbucks shop") was 102.34 metres squared, quantum was nil, and the Allowance for the interrupted frontage at the property was 2.5% and in respect of 137-141 Market Street ("the H & M shop"), the reduced zone A area was 314.7 metres squared, quantum was 16% and the Allowance was nil.

Evidence for the Appellant

Ken McCormack of Montagu Evans' expert gave evidence. The main points are summarised as follows:-

- In respect of the H & M shop, the Assessor was defending a valuation NAV/rateable value of £171,000.00 with effect from 1 April 2017. Your proposed valuation NAV/rateable value was £158,000.00 with effect from 1 April 2017.

- In respect of the Starbucks shop, the Assessor was defending a valuation NAV/rateable value of £64,750.00. You were proposing a valuation/NAV/rateable value of £59,500.00 with effect from 1 April 2017.
- The H & M shop has been on a 10 year Lease with 5 year reviews from August 2010 at a passing rent of £170,000.00 with a one year rent free period. The 2015 rent review was not implemented by the Landlord and the rent remained at £170,000.00.
- In respect of the Starbucks shop, it was let from 31 October 1986 on a 35 year Lease with 5 year reviews. The reviewed rent in November 2011 was £65,000.00 and it remained at that level in the 2016 review.
- Your position was that the zone A rate in respect of these properties should be reduced to £600.00 which would be in line with the south side of Market Street. Initially the zone A rate of £650.00 had been proposed by the Assessor in respect of both sides of Market Street. However, following Appeals lodged and discussions with the Assessor earlier this year, the zone A rate was reduced from £650.00 per square metre to £600.00 per square metre for the shops on the south side of Market Street. The Assessor was however maintaining the rate of £650.00 in respect of the shops on the north side of Market Street. You didn't think there should be any difference between the two sides of the street. You had thought your clients would pay equal rents for either side of the street and that there would be no real difference in footfall on either side and that both sides would attract the same types of traders (i.e. both national and independent retailers with the rent being similar on each side of the street, depending on the size of the shop).
- You emphasised that what is required in rating is to find the rent which the hypothetical tenant might be expected to pay for the subjects. The actual rent for any property may be of significance but was not conclusive. What had to be established was a "hypothetical level of value" which is derived from analysis of all of the rents of comparable properties in a particular locality. You indicated that your "Appendix 4" (copy of Assessor's analysis supplied on 22 June 2018) was the information which you had received previously from the Assessor in respect of the various rents for the property in Market Street. You had however been provided with an updated version of that table by the Assessor's Office late on Friday afternoon (21 September 2018). Although you had considered that briefly, you had not done so in detail and your main presentation/submission had been based on the original Schedule as per Appendix 4. That said, you did not ask the Committee to disregard the updated Schedule which had been provided to you.
- In determining the zone A rate, the Assessor had to value to the "tone date", namely, 1 April 2015 for the 2017 revaluation. The best evidence to use in the analysis is rental information which is as close as possible to the tone date.
- On looking at the rent analysis, you calculated the average of rents for south Market Street to be £594.09 and for the north to be £650.00. Quantum and inverse quantum then had to be taken into account. It could be seen that the Assessor had applied an addition for inverse quantum to the valuations of 120, 123 and 125 Market Street who calculated a rental rate of £462.00 in respect of 20 Market Street, £591.00 in respect of 123 Market Street and £740.00 in respect of 125 Market Street. This was 30/40% higher than the 5% allowance. You argued that these shops were so small (all below 30/40 square metre) that they should be disregarded as they were not comparable to the subjects of Appeal.
- This led you to adopt revised figures in respect of the average rents for each side of the shop. You calculated the average rent for the south side of Market Street would now be £632.45 (although that would increase to around £650.00 taking into account the revised rental figures which had been provided to you by the Assessor on 21 September 2018). You calculated the average rent for north Market Street as

£634.13 (although indicated that would be around £654.00 taking account the revised figures provided). You concluded that in either event, there was no real difference between the rates applied on the north side and the south side of Market Street and effectively you thought the rate on the north side should be reduced to £600.00 per square metre to bring it in line with the agreed rate for the south side.

- Substituting the zone A rate of £650.00 for £600.00, you calculated that the rateable value for the H & M shop should be £158,000.00 and the rateable value for the Starbucks shop should be £59,500.00. You felt that that was a fair reflection of the property for rating purposes based on the rental evidence within the immediate area.

Evidence for the Respondent

Evidence from the Assessor's Service was given by Brian Smith for the Assessor's Service who provided various productions which were referred to during the Hearing.

With regards to the Starbucks shop, an entry was made in the valuation roll with effect from 1 April 2017 at a rateable value of £66,750.00. The end allowance percentage had been agreed as 2.5% due to the interrupted frontage, and the reduced area was agreed being amended from the figure used at re-valuation and accordingly, the Assessor was now speaking to a revised rateable value of £64,750.00 (previously £66,750.00).

In respect of the H & M shop, the entry was made in the valuation roll with effect from 1 April 2017 at a rateable value of £172,000.00. A total reduced area of 314.70 had been agreed. The quantum had been agreed at minus 16% having been amended from the figure used at the re-valuation. As a consequence, the Assessor spoke to a revised assessment of a rateable value of £171,000.00 (previously a rateable of £172,000.00). It was accepted that both sides of Market Street had previously had a zone A rate of £650.00 at re-valuation but that the shops on the south side had been subsequently reduced to £600.00 as a result of appeal discussions. The Assessor contended however that the local rental evidence supports a £650.00 rate on the north side of Market Street, and also pointed out that the £650.00 rate had been agreed with 8 professional ratings agents in the disposal of their re-valuation appeals. Furthermore, the 2011 and 2016 rental agreements for the Appeal subjects support the £650.00 zone A rate.

The Assessor was not persuaded that the small shops referred to by the Appellant, one of which seemed to have a low rental rate and one had a high rental rate, should be excluded. The Assessor did accept that it was an approach that one could adopt, ie looking at "outliers" taking them out of the calculation but the Assessors had not done so in this case.

Reference was made to the comparators (page 43 of the Assessor's productions for North side of Market Street, St Andrews, and page 60 for South side of Market Street, St Andrews). The Assessor indicated that in their negotiations in respect of the South Street, they had focused on the 4 properties, namely, 100, 120, 124 and 144 Market Street. They had not included the rental for the properties at 118 and 104 Market Street which were approximately 2 months later. They accepted that it would have been harder for them to justify a rate of £600.00 when including those later rents. The Assessor had felt at the time when negotiating the south side that the rental didn't support £650.00. The Appellants in those cases were looking for a reduction to £550.00 and it was agreed to settle at £600.00. The average rent of the 4 which were considered, which were closest to the tone date, was £578.54. It was accepted that if the smaller unit was excluded, that would be £636.98 but the Assessor was not persuaded that was necessary. It was accepted that Podofit rent of £539.35 at the time had influenced the Assessor's decision in those negotiations. The

Assessor was treating the post tone rents (for Greggs and Holland and Barratt) with some caution.

Submissions for Appellant

The Appellant's Counsel referred the Committee to various parts of Armour in respect of rating and evidence. North and south of Market Street were comparable and the Assessor had obviously thought so at the time of the re-valuation. It was also clear that they were both considered as one precinct at the time of the re-valuation. You did not think it was a question of the Assessor saying that £600.00 had been a bad deal on the south side of Market Street, such that said deal could be case aside if the Assessor could justify a rate of higher than £600.00 on the north side of Market Street. You still maintained that the 3 smaller shops should be excluded because they were outliers.

Decision

The Committee was satisfied that the appropriate zone A rate for the north side of Market Street was £650.00. That was supported by the average rental figures. These rental figures did not provide support for the £600.00 figure. The Committee, however, did have sympathy with the proprietors of the shops on the north side given that the south side rate had been reduced to £600.00 and it was not necessarily thought by the Committee that the rental figures supported that low rate for the south side.

Accordingly, the Committee dismissed the Appeal.