

THE GRAMPIAN VALUATION PANEL

MORAY VALUATION APPEAL COMMITTEE

9th April 2018

At a meeting of the Valuation Appeal Committee held at Elgin on 22 March 2018, the Committee considered an appeal by Lloyds Banking Group against the 2017 revaluation of the bank premises at 90 High Street, Elgin at a value of £67,500.

The appellant was represented by Mr Stewart QC. He led evidence from one witness, Brian Rogan MRICS, who adopted a precognition which was circulated to the respondent and the committee together with a document entitled Appendices which contained various productions to which reference was made in the precognition. Mr Stewart in his final submission circulated a written outline of his case to the respondent and to the committee. He made reference to various authorities and produced copies of each.

The respondent was represented by Mr Gill Advocate. He led evidence from one witness, James Andrew Barron BLE MRICS, who adopted a precognition which was circulated to the appellant and the committee members together with a list of Productions to which reference was made in the precognition. He too made reference to various authorities and produced copies of each.

The Appellant's Case

Mr Rogan's evidence was that the approach taken by the respondent, namely to value the subjects based on two distinct elements, a "hybrid approach" was incorrect. The respondent had measured the ground floor on a zoning basis as retail premises and measured the upper floors on a net internal area basis, as office premises.

In his evidence Mr Rogan criticised the respondent's approach on the basis that there is exclusive inter connection between the ground and upper floors and therefore the overall unit of assessment 'unum quid' is what should be valued and not two separate elements on offer to the office and retail rental markets.

In the opinion of Mr Rogan the premises must be looked at and valued in its actual state, upon which he expands in his precognition and with regard to the level of demand for the subjects in its current configuration as a whole, not with regard to demand for two individual premises that are only notional and that currently do not exist.

Mr Rogan's evidence at 2.24 of his precognition was that the subjects of appeal are undoubtedly in the nature of retail premises and used as a retail branch, not an administrative office therefore a retail approach to ancillary accommodation on the upper floor should be adopted as per the SAA Practice

Note for valuation of banks. He contrasted this from the Assessor's approach which he understood to be:- (1) what would the ground floor subjects be reasonably expected to let for in their own right; (2) what would the upper floors reasonably be expected to let for if separately let as offices; and (3) subtract 15% quantum to the overall value.

In Mr Rogan's evidence this approach by the Respondent does not meet the statutory hypothesis as it is not what the subjects as a whole would reasonably be expected to let for.

The correct approach to the valuation of the property, according to Mr Rogan, is as set out in the calculation shown at paragraph 2.9 of his Precognition which reflects that a retail approach should be taken to the measurement of all three floors in line with the SAA Practice Note for Valuation of Banks.

Thereafter, according to Mr Rogan, by applying the reduction factors and quantum allowance which the said Practice Note prescribes and applying a poor layout allowance (at a level which Mr Rogan felt was appropriate) the actual value ought to be entered as £47,000.

Mr Rogan then expanded on his calculations narrated at paragraph 2.9 of his precognition to explain how he arrived at the figure of £47,000. He made reference to the retail market in Elgin which he summarised in paragraph 2.14 of his precognition, namely that the need for physical floor space had diminished at tone date and the market at tone date for new bank premises was weak. Further to this the market for retail premises generally in Elgin at tone date was also very weak. He demonstrated the fact that the proposed extension of the St Giles Centre has not commenced despite receiving planning permission in 2013. There was and still is a lack of active requirements for Elgin from national retailers and some are due to remove from Elgin in the next few years. Poundworld and Semichem have closed this year being an indication of the market.

Mr Rogan drew the committee's attention to comparable rental evidence and he made reference to appendix 4 of his productions which was a list of high street units with their rental analysis. Mr Rogan distinguished the entries in respect of the premises 85 High Street occupied by Highland Mobiles then Crafted ; 76 High Street occupied by Vapourized; 79 – 83 High Street occupied by Poundworld. In his Precognition he expands on his analysis of these properties at 2.19 and includes a further comparison, namely Unit 1 St Giles occupied by Brighthouse. He placed particular emphasis on the relevance of Unit 1 St Giles and 76 High Street, Elgin.

Mr Rogan stated that in his view, in Scotland, the hierarchy of evidence when deciding on market rental values is as follows:- (1) open market lettings; (2) rent reviews (if not a nil uplift); (3) expert determinations; (4) lease renewals; (5) arbitrations.

Mr Rogan made reference to appendix 5, an email which endorsed this view, which email was sent from his colleague Craig McDonald who heads the CBRE Lease Advisory Team and who is an independent expert in rent review disputes.

Applying the hierarchy, Mr Rogan stated that there are numerous lettings in the vicinity of the property, as shown in appendix 4. Most are either the result of not a nil uplift rent reviews which in his view ought to be disregarded or lease renewals which in his opinion should be afforded little weight in ascertaining what the net annual value of the subjects were at the tone date. The said entries which he distinguished, were, he said, new open market rental evidence transactions at or about the tone date in Elgin town centre and they provided the cogent primary evidence of a rental rate that is achievable in the locality, and which demonstrated that the figure he sought to justify reflected the terms of section 6 of the Valuation and Rating (Scotland) 1956 Act, namely:-

“... the rent at which the lands and heritages might reasonably be expected to let from year to year if no grassum or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the lands and heritages in a state to command that rent”.

Furthermore, Mr Rogan made reference to a sale and lease back agreement which related to the particular subjects of appeal, and the valuation for rental purposes undertaken at that time. In his evidence, the detail of this transaction was relevant.

In submission the appellant's position was that the rateable value should be based on a unum quid basis calculated with reference to the current state of the property, level of demand and comparative new open market letting evidence in the vicinity (to include the sale and lease back agreement). He reiterated the said relevant comparisons. The valuation rates of these new lettings range from £203 per square metre to £311 per square metre. Accordingly, taking the factors stated by him into account he concluded that a rate of £275 per square metre should be applied to the appeal subjects as a whole.

The Respondent's Case

The evidence of James Barron was that he was defending the respondent's value of £67,500. He explained that the valuation of the subjects is by way of a comparative method employing a hybrid approach to account for the physical characteristics and use of the ground and upper floors. He made reference to production AS1 which contained a full valuation.

Mr Barron agreed with the appellant that the statutory basis for determining the net annual value of any property was contained in section 6(8) of the Valuation and Rating (Scotland) Act 1956 which defines the Net Annual Value as the rent at which the lands and heritages might reasonably be expected to let from year to year. It was a matter of agreement by parties that the tone date for the current valuation roll in force from 1 April 2017 is 1 April 2015 and therefore the net annual value for any property shown on the roll is based on its hypothetical rental value as at 1 April 2015.

Mr Barron gave evidence regarding the physical circumstances of the subjects of the appeal and essentially disagreed with Mr Rogan's evidence in relation to the second floor of the premises which

according to the appellant's agent's grounds of appeal is stated as storage only. Mr Barron narrated that upon inspecting the subjects in February 2018 the use of the second floor was not only that of storage but the area was described by members of the bank staff as being used for larger meetings. At the time of inspection by the respondent the area was set out with desks, tables and chairs together with audio visual equipment and in addition there were welfare and toilet facilities to service the area.

Mr Barron then made reference to the respondent's comparisons and drew the committee's attention to production AB4 and AS7. He identified and made reference to each of the eight transactions in the 2013 to 2015 time period used in the analysis in production AS7, namely:- (1) 79 – 83 High Street occupied by Poundworld; (2) 80 High Street occupied by Carphone Warehouse; (3) 85 High Street occupied by Crafted; (4) 89 High Street occupied by Murray Orthodontics; (5) 102 High Street occupied by PDSA; (6) 124 High Street occupied by Holland and Barrett; (7) 157 High Street occupied by Card Factory and (8) Unit 22 St Giles Centre, High Street leased by Barclays Bank.

He stated that both himself and an agent representing the wider group of agents acting on behalf of rate payers in the vicinity had analysed the rents and as a result of the analysis it was concluded by both parties that the appropriate basic rate for this locality is £325 per square metre.

Mr Barron dismissed the reference Mr Rogan made in his evidence of the sale and lease back agreement in respect of the premises on the basis that the two parties to the agreement were both parts of the Lloyds Banking Group and that the transaction was part of a much larger reorganisation of the way Lloyds Banking Group held and occupied their assets. He supported this by making reference to another sale and lease back type transaction in the same area at 110 High Street, Elgin. If that transaction were to be analysed it would be found to produce a rate of £563 per square metre whereas a similar analysis for the sale and lease back for this property at 90 High Street, Elgin produces a rate of £128 per square metre. Set against the agreed basic rate of £325 per square metre in this locality the sale and lease back agreements demonstrate that they are not accurate indicators of the level of rental value. Mr Barron used the expression that sale and lease back arrangements are "all over the place".

Mr Barron summarised (paragraph 7.0) the appellant's grounds of appeal as:- (1) the £67,500 assessment as too high; (2) the hybrid approach to the valuation is incorrect; (3) that an internal sale and lease back transaction represents the open market rent for the subjects; (4) that rents at a shop unit in the St Giles Centre and another rent at a shop a little further along the High Street form the most relevant valuation evidence and (5) that a zone A rate of £275 is the appropriate rate to be applied to the valuation of the subjects of appeal.

Mr Barron's summary of the Assessor's position is:-

(1) the valuation of the subjects on a hybrid approach ensures that the valuation of the upper floor offices is in line with other upper floor office accommodation in the locality;

- (i) It was denied that this is an incorrect approach to the upper floors as there are three separate stairwells serving the upper floors;
- (ii) Two of these stairwells are situated at the front of the building directly on to the High Street frontage;
- (iii) Both of these stairwells have doors that exit directly on to public lanes and would require no structural alteration to allow occupation of the upper floors by a third party;
- (iv) The rear stairwell serving the rear most upper floor part of the property also has a doorway leading directly on to a public lane and again would require no structural alteration to allow direct access to the upper floor offices.

(2) It was accepted that a layout allowance should be granted to the rearmost upper or first floor area which is the only area affected by layout deficiencies.

(3) It was denied that the most relevant valuation evidence for the appeal subjects are the leases of Unit 1 St Giles Centre, High Street, Elgin and 76 High Street, Elgin;

- (i) It was pointed out that these transactions are only two pieces of evidence from a much larger basket of rents that inform the level of rental value in this location.

Mr Barron criticised the comparison, namely the shop Unit 1 St Giles Centre, Elgin and shop 76 High Street, Elgin on the basis that Unit 1 St Giles Centre fronts the High Street, has access on to the upper mall of the shopping centre and the occupiers benefit from the advantages of the covered mall and the services this provides. They also have use of the private service areas provided by the centre such as the covered and secure loading area and the internal service passages to their stock areas. A considerable service charge is levied by the shopping centre on these properties served by the mall and service areas. Mr Barron concluded that this places this comparison in a completely different market sector to the subjects of appeal.

With regards to the evidentiary worth of the shop at 76 High Street, Mr Barron noted that the rent was struck some eleven months after the tone date and that it must also be regarded as one piece of evidence in a larger basket of rents that inform the level of rental value in this location. An example of this is a rental transaction at 80 High Street (Carphone Warehouse) next door to 76 High Street and nearer to the subject of appeal. There was an extension to the lease agreed for this property in November 2015 at a rate of £356 per metre square. This piece of evidence he concluded was closer to the tone date than that referred to by Mr Rogan and forms part of the wider evidence used in agreeing the £325 per square metre basic rate with the other agent acting for a number of local retailers.

Mr Barron made reference to the appellant's comparisons in the context that only a few actually provide rental evidence relative to the tone date and that those have all been included in the agreed group of rents analysed by the agents and the assessor which resulted in the amended basic rate now accepted by all other appellants in the locality.

Mr Barron then summarised his conclusion as follows:-

The basic rate has been reduced to £325 per square metre. He was satisfied that this rate is reflective of the rental evidence for this locality at the tone date. He thought it relevant and of weight that this amended rate was recommended and accepted by all agents involved in this diet of appeals with the exception of Mr Rogan in this one property.

He discounted the relevance of the sale and lease back transaction on the basis that it was not an arms length open market letting and furthermore it dated from late 2016 some 20 months after the tone date for the 2017 revaluation.

He had no doubt that the correct approach to the valuation of the property is on a hybrid basis to ensure uniformity with stand alone upper floor offices, the first and second floors of the subjects should be valued using a Net Internal Area Approach at a rate/square metre in line with the other commercial offices in central Elgin. He stated that this approach was supported by the analysis of the rents for banks elsewhere in Grampian.

In conclusion his amended valuation resulting in a net and rateable value of £67,500 reflects all the factors pertinent to this case and represents a fair assessment for the subjects of appeal, fully reflects the nature, extent and use of the subject and is consistent with the valuations of comparable subjects.

The Decision

The Committee, after careful consideration of the evidence led by both sides, uphold the appeal and they impose a rateable value of £51,500.

The reasons for the Decision

The Committee rejected the Assessor's approach to valuing the subjects on a hybrid basis. The Committee preferred the approach taken by the appellant, namely to value the property as an unum quid.

Section 6 (8) of the Valuation and Rating (Scotland) Act 1956 defines the net annual value as "the rent at which the lands and heritages might reasonably be expected to let from year to year if no grassum or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the costs of the repairs and insurance and the other expenses, if any, necessary to maintain the lands and heritages in a state to command that rent".

In characterising the property for the purposes of valuation for rating, the Committee considered the use of the property as well as its physical characteristics. The evidence of the appellant was that the

use of the subjects is retail ie banking and that is the relevant use for valuation purposes. The Assessor's evidence is that the ground floor use of the building is retail ie banking but that the first and second floors of the building are used as office accommodation and accordingly should be valued on the basis of office accommodation.

The Committee considered carefully not only the existing use and the actual state of the building but also the facts and circumstances relating to the premises.

It was not in dispute that the building as a whole is occupied by the Bank of Scotland. Mr Rogan's verbal evidence which was not disputed by the Assessor is that the building as a whole is classed as retail premises for planning purposes. The Assessor's view was that the three fire exit doors and stairs could be used to access the first and second floor office space and that this could be done simply by changing doors rather than requiring structural alterations. Whilst the Committee accepted that such alterations may not be structural, nonetheless they could be onerous and expensive. The ground floor banking hall would require to be separated from the stairwells and office entrances in such a way that they were secure from the banking hall. At least one of the fire exits would have to be retained for use by the bank or it would have none. Furthermore to use the second floor as an office in the modern day would almost certainly require the formation of a kitchen area.

Mr Barron did not disagree when asked by the Committee, that planning and fire regulations would require to be addressed if the upper floors were to be treated as offices capable of separate occupation.

The Committee concluded that the property has the characteristics of a bank with ancillary accommodation above and it could not be physically separated into distinct office and retail accommodation without considerable work and change of planning use. The first and second floors do not comprise stand alone upper floor offices.

The Committee did not consider the appellant's evidence in relation to the sale and buy back agreement held any weight or relevance in their decision.

The Committee carefully considered the comparison rental analysis advanced by both sides. The Committee took into account the comparisons as adminicles of evidence. The Committee preferred the comparisons distinguished by the appellant rather than those distinguished by the Assessor. In particular the committee considered the comparison subjects at Unit 1 St Giles and 76 High Street to be most relevant taking into account the submissions regarding those subjects advanced by Mr Rogan, particularly regarding the physical state of those subjects in comparison and contrast to the subjects of appeal..

The Committee having rejected the Assessor's hybrid approach to valuation and having found favour with the appellant's unum quid approach to valuation then considered the valuation of £67,500 assessed by the respondent.

The appellant's opinion of value is contained at paragraph 2.41 of Mr Rogan's written precognition. The respondent's opinion of value is contained in the document headed "Revised Valuation of Subjects of Appeal Bank, 90 High Street, Elgin" production AS1.

Neither party took objection to the other side's calculation of the area square metreage.

The Committee accepted all the evidence put forward which convinced the Assessor to reduce the basic rate from £350 to £325. This rate by the Assessor's admission is for a class one shop and an adjustment accordingly must be made and is made by the Committee to take account of the fragmented frontage and the internal layout and finish. The Committee did not agree with Mr Rogan that in all the circumstances the appropriate rate should be £275 per square metre. They concluded that the appropriate rate should be £300 per square metre.

It is the Committee's understanding that the allowance of 9.5% for quantum given by Mr Rogan is in line with the Assessor's own allowance so a deduction of 9.5% is then applied by the Committee for quantum followed by a further allowance of 2.5% which is an allowance put forward by both sides for the overall layout of the building.

The Committee therefore accept the reduced area to be 195.10 square metres at a rate of £300 per square metre. This reduced area multiplied by the rate determined by the committee of £300 gives a figure of £58,530 from which is deducted a quantum allowance of 9.5%, making a figure of £52,970 from which is deducted a poor layout allowance of 2.5% to arrive at a rateable value for the property of £51,645 which the Committee have rounded down to £51,500.