

Decision i.c. The Chester Hotel Ltd. v. The Assessor for Grampian.

The appellant was represented by Mr. Peter Henry, fellow of the Royal Institution of Chartered Surveyors who acted as a surveyor-advocate and who gave evidence. The respondent was represented by Mr. Gavin Oag, the Depute Assessor.

Mr. Henry read from a prepared precognition which was made available to the Committee. He took the Committee through the valuation roll history of the subjects 59-63 Queen's Road, Aberdeen from 2010 to date, explaining that the subjects had been 3 villas which had been consolidated into 1 hotel the rateable value (hereinafter "RV") of which had been agreed by the parties with effect from 16<sup>th</sup> July 2014 at £350,000. At that time the hotel had had 50 bedrooms of which 2 were contained in suites so that in accordance with Practice Note 16 of the Scottish Assessors Association for 2010, paragraph 10, they should be reckoned as 4 double bedrooms. Also at that time, there were no office premises within the hotel building as these were situated across the road at 64 Queen's Road which had a RV of £19,750. He said that in 2015, no. 64 had been sold and that the decision to convert 4 bedrooms in the hotel to an office had been taken. The refurbishment had been started by October 2015.

From that stand point Mr. Henry argued that there had been a reduction from 54 rooms to 50. It should be noted that during the evidence the numbers varied but at the conclusion of the hearing a joint minute was lodged by the parties agreeing that the bedrooms had numbered 54 as at 16<sup>th</sup> July 2014 and 50 from 1<sup>st</sup> October 2015, counting in accordance with the practice note as 56 and 52 respectively. He continued that dividing the agreed RV of £350,000 by 54 gave a RV per room of £6,481.48 so that the remodelled hotel with 50 rooms should have a RV of £324,074 which approximated to £324,100. He then referred to his production 8 which was a note of the respondent's working out of the agreed RV of £350,000 prepared by Mr. Dunbar. Mr. Henry then used the respondent's production 8 value attributed to accommodation of 54 rooms to give a value per room of £2,876 being £11,504 for 4 rooms. He then added on £5,712 and £3,568 to reflect the catering and liquor value attributable to 4 rooms giving a total of £20,784. Subtracting that figure from the agreed RV of £350,000 produced a figure of £329,216 rounded to £329,200 as the proposed net annual value.

In cross examination, he said that when the hotel office was at no. 64, the manager had been making 20 trips per day to and fro and would not accept that the agreed RV of £350,000 had been reached with the respondent building in to that figure an allowance for the lack of offices.

In response to members' questions, he said that there had been 100% occupancy sometimes and that it was difficult to quantify the income derived from the use of the 4 lost rooms so that it was easier to deal with the valuation figures. He agreed that the occupancy rates after 2014 could be material. He said that he could not give occupancy or turnover figures for any of the subsequent years. He said that there was no corollary between the value of no. 64 and what is now the hotel office space. He said that the RV of £250,000 referred to the subjects when they had only 46 bedrooms. He quoted a RV figure of £480,000 for the Malmaison Hotel which had 80 rooms.

There was no re-examination.

The respondent's first witness was Mr. Keith Fordyce, a member of the Royal Institution of Chartered Surveyors and a principal valuer of the respondent. He read from a precognition which was available to the Committee. He described the subjects and gave some of its history and the valuation methods that had been used to fix their RV in July 2014 from which the agreed RV of £350,000 was determined taking into account the want of an office within the hotel building. He referred to the grounds of this appeal which he had discussed with Mr. Henry. He said that the respondent accepted the physical change of the loss of 4 bedrooms but that the appellant's approach of reducing the RV by applying the proportion that the 4 lost bedrooms bore to the total number of bedrooms to the agreed RV was flawed as, firstly, it did not take account of the building in to the agreed RV a factor for the lack of office space. Secondly, it did not take account of the fact that a considerable income was derived from functions, as was shown by returns from the appellant. Such returns showed that income streams excluding accommodation were double that of the accommodation income. He opined that hotel residents do not spend double their room cost on food and drink. He added that the appellant's figures did not take account of the 4 lost rooms being just under 7% of the total double bed units and that the unadjusted total figure in production AS 3 was £359,607.

In cross examination he said with reference to production AS 4 that it was not appropriate to reduce the value by four fifty-fourths not only on account that the double bed unit count is 56 but also because the occupancy rate was just over 50%. He pointed out an error in production 8 that £113,661 should be £115,061 which is the figure shown in AS 3 for catering income. He pointed out that the agreed RV of £350,000 had been rounded down from £359,607.

In reply to members' questions, Mr. Fordyce said that the agreed RV had been based on one year's trading figures. He said that the appellant had not presented the appeal using the 2017 trading figures. That information was not available. He said that the agreement on the £350,000 RV had been reached with the respondent calculating that the 4 lost rooms represented 7.5% of accommodation and then halving that figure to take account of an occupancy rate of 50%. He gave the view that the Malmaison Hotel was in the same market as the appeal subjects but it had no function suite and its RV equated to £6,000 per room. The respondent showed the committee plans of the hotel and pointed out the situation of the "lost" bedrooms: they were shown to be in the basement of the hotel and well clear of the public spaces.

The respondent's second witness was Mr. Steven Dunbar, the Assistant Surveyor for Aberdeen City. He had been present throughout the proceedings but no question of reliability of his evidence arose. He said that it was he who had produced production 8 and that he had reached the £350,000 agreed figure there as he had accepted the appellant's argument at that time that as the hotel had no internal office, a hypothetical tenant would need to lose accommodation so that an office could be incorporated. He referred to production 8 pointing out that it had been calculated using a figure of 2 bedrooms being needed to build an office although 4 bedrooms had actually been used. In cross examination he said that further adjustment had also been

made in rounding down from the £352,660 figure in production 8 to £350,000 but that it was fair to take account of the catering and liquor figures too.

Mr. Henry summed up by saying that the agreed RV of £350,000 was in accordance with the tone of the roll and that it was inconceivable that the loss of 4 bedrooms made no difference to value. He said that he was prepared to vary his suggested RV figure to suit the evidence and that applying the figure of £5,546, being twice the figure of £2,773 brought out in production 8 as the drop in value figure per room, to the figure of £329,216 brought out in production 9, showed that there should be a reduction to £334,762 rounded to £334,800.

Mr. Oag submitted that the change spoken to by Mr. Henry does not amount to a change warranting a change in the RV as it is immaterial. Further, the loss of the bedrooms needed to construct an office was reflected in the agreed value. He pointed out that calculating a reduction to reflect the loss of bedrooms using the income streams figures, produced a result virtually the same as that used in production 8 and that the appellant had ignored the occupancy level and non-residential income. He invited the Committee to dismiss the appeal.

The committee considered the evidence about the calculation in production 8 and whether it had taken account of the lack of an office within the hotel about which Messrs. Henry and Fordyce had been in conflict. The Committee preferred the evidence of Mr. Henry in that that calculation had not taken into account the lack of an office within the hotel. However, the Committee took the view that the calculation had taken in to account that 2 bedrooms would need to be removed from the number of rooms available to generate income, as they would need to be converted to an office. That means that the figure of £352,660 appearing in production 8 already took account of the loss of 2 bedrooms. The evidence was clear that 4 rooms had, in fact, been used. The Committee accepted the approach of the respondent to valuing the subjects contained in production AS 3 which brought out a value of £359,607. Even if one adopted Mr. Henry's arithmetical approach to adjust that value to reflect the fact that the agreed RV had assumed the loss of only 2 bedrooms while the loss had, in fact, been of 4, that needed an adjustment to take account of the loss of a further 2 rooms. Using the figure in production 8 of £5,546 the drop in value would be less than 2%. The Committee does not consider that to be a material change.

The Committee has a more fundamental issue with this appeal. The Local Government (Scotland) Act 1975 section 37(1), as amended, provides “‘material change of circumstances’ means in relation to any lands and heritages a change of circumstances affecting their value and” includes various matters listed in the subsection. This appeal has been brought under section 3(4) of that act so that the appellant must prove that there has been a material change of circumstances since the entry in the valuation roll was made. There was no suggestion of error there. As was laid down in the case of the Assessor for Glasgow v. Schuh Ltd. and others, 2012 S.L.T. 903, this Committee must decide (1) whether there had been a material fall in rental values since the entry was made; (2) if so, what caused it; (3) whether the cause constituted a material change of circumstances within the meaning of section 3(4); and (4) if one or more of the causes constituted a material change of circumstances and another or others did not, to what extent the fall in value was caused by the material change of circumstances. For valuing hotels with dining facilities, the

Committee is well aware that that is usually done with reference to turnover. The Committee noted the respondent's evidence that he had not been given the turnover figures for the appeal subjects for the period in question. The committee also noted that the rooms lost from the appeal subjects had been situated in the hotel basement and drew from that that it was likely that the bedrooms there would have been let at the lowest rates in the hotel and that it was likely that their occupancy rate would not have been as high as that of other rooms. In any event, when there was unchallenged evidence that the occupancy rate was only marginally above 50%, it does not follow that turnover in the hotel, far less value, fell by four fifty-fourths when the bedrooms were converted to offices. Thus the Committee took the view that the quality of the evidence to justify a reduction in value was such that a reduction was just not made out. That really disposes of the matter as the other questions flowing from a fall in value do not arise. In passing the Committee notes that Mr. Henry's approach of leading evidence of the reason for a drop in value (being the loss of bedrooms) and then showing how that impacted on value by the application of percentages really put the cart before the horse as the starting point has to be a demonstration that value has fallen. At no time during giving evidence did Mr. Henry show that there had been any change to the turnover let alone material change.

For the reasons given, the Committee dismissed the appeal.