

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 14 February 2019

Subjects	Reference Number
Health Centre, Davidson's Drive, Thurso, Caithness, KW14 7AF	01/01/200012/1
Surgery, Etc, Janet Street, Thurso, Caithness, KW14 7AR	01/01/434045/6
Princes Street Surgery, 69 Princes Street, Thurso, Caithness, KW14 7DH	01/02/664123/2
Health Centre, Martha Terrace, Wick, Caithness, KW1 5EL	01/05/558050/5
Health Centre, Shore Road, Dornoch, Sutherland, IV25 3LS	02/03/735042/2
Golspie Health Centre, Fountain Road, Golspie, Sutherland, KW10 6TH	02/08/028055/6
Surgery, North Road, Ullapool, Ross-shire, IV26 2XL	03/01/070410/4
Health Centre, Auchtercairn, Gairloch, Ross-shire, IV21 2BP	03/03/028680/8
Medical Centre, School Road, Strathpeffer, Ross-shire, IV14 9AG	03/06/079120/8
Surgery, Station Road, Fortrose, Ross-shire, IV10 8SY	03/15/755085/7
Health Centre, Bridgend, Alness, Ross-shire, IV17 0UN	03/22/019800/5
Health Centre, Kilmore, Teangue, Isle of Skye, IV44 8RQ	04/04/024560/1
Health Centre, Fancy Hill, Portree, Isle of Skye, IF51 9BZ	04/06/052855/9

Surgery, 22A Abban Street, Inverness, IV3 8HH	06/03/005028/2
Dental Surgery, 22A Abban Street, Inverness, IV3 8HH	06/03/005029/9
Clinic, 24 Abban Street, Inverness, IV3 8HH	06/03/005032/3
Surgery, Ballifeary Lane, Inverness, IV3 5PW	06/06/058055/7
Surgery, 10-12 Crown Avenue, Inverness, IV2 3NF	06/09/146042/6
Surgery, Burnfield Medical Practice, Harris Road, Inverness, IV2 3PF	06/10/372050/4
Health Centre, Ardlarach, 15 Culduthel Road, Inverness, IV2 4AG	06/11/141018/1
Health Centre, 43 Southside Road, Inverness, IV2 4XA	06/11/731050/8
Health Centre, 18 Southside Road, Inverness, IV2 3BG	06/11/731080/7
Clinic, Temple Crescent, Inverness, IV2 4TP	06/12/778111/0
Aird Medical Centre, Ferry Road, Beauly, Inverness-shire, IV4 7EA	06/27/302100/9
Doctors Surgery, Assynt Road, Inverness, IV3 8PB	06/30/025250/7
Clinic Keppoch Road, Culloden, Inverness, IV2 7LL	06/36/460068/3
Surgery, Keppoch Road, Culloden, Inverness, IV2 7LL	06/36/460070/0
Aviemore Health Centre, Muirton, Aviemore, Inverness-shire, PH22 1SY	07/04/161625/0

**Surgery, Gynack Road, Kingussie,
Inverness-shire, PH21 1ET**

07/07/120002/1

For the Appellants

For the Respondent

WYM Rating

The Assessor

The Committee required to consider an application for referral to the Lands Tribunal on behalf of the Appellants in these cases. The Assessor intimated opposition to the referral applications.

The application relied on Regulation 5(1)(a) and (b) and (d) of the Valuation Appeal Committee, Etc (Scotland) Regulations 1995 (“the 1995 Regulations”). The relevant parts of that Regulation are:-

“5(1) where an application under Regulation 4(1) has been made, and it appears to the Committee that –

- (a) The facts of the case are complex or highly technical;
- (b) The evidence to be given by expert opinion is complex or highly technical;
- (c) Not applicable;
- (d) The case raises a fundamental or general issue likely to be used as a precedent in other cases; or
- (e) Not applicable

the Committee shall refer the appeal to the Tribunal for determination, and the Secretary shall notify the parties accordingly.

In support of the grounds of referral set out in paragraph (a) and (b) the appellants submitted “it is unclear if the Assessor will wish to rely on rents derived under the NHS Rent and Rates Reimbursement Scheme. If they do then this section will apply.

The rents under that Scheme are not considered to be open market, and complex and expert evidence is required to explain the background and make-up of these rents. This was central to the English case referred to above (RA/31/2012). For clarity, it is not the analysis of such rents to arrive at rental rates that is complex, etc but the actual make-up of rents and how they are arrived at.”

In response, the Assessor stated, “The Valuation Appeal Committee are well used to considering evidence of the type in question and have done so in the past in Highland & Western Isles and elsewhere. The facts of the cases are not particularly complex and well within the scope of a Valuation Appeal Committee. Guidance as to how to proceed can be found in the material and case law referred to by Mr McKaig.”

Having considered the submissions made by the parties, the Committee conclude a *prima facie* case for referral had been made out on behalf of the Appellants. The requirement for “complex and expert evidence to explain the background and make-up of rents” was not addressed and/or challenged, in terms, by the Assessor.

The Committee did not consider a valid case for referral under paragraph (d) had been made out.

However, the Committee did hold a case for referral under paragraphs (a) and (b) had been made out and so granted the applications for referral to LTS.

NOTE:-

These Appeals were due to be heard by the Committee on 14 February 2019. The Appellants' agent sent two e-mails to the Secretary on 30 January 2019. Each e-mail referred to all of these Appeals. In the first e-mail the agent asked for all of the Appeals to be continued from 14 February 2019 to a later date. In the second, he asked for the Appeals to be referred to LTS. It is the application in the second e-mail with which this Minute deals. In that e-mail the agent referred to the LTS referral application as being "a protective application". He stated "in the event that a continuation is granted this referral application can be deemed withdrawn".

The juxtaposition of an application for continuation with an application for referral to LTS, expecting the former to be considered before the latter, infers an interpretation of the effects of the 1995 Regulations with which this Committee does not agree.

As soon as the LTS referral application was received by the Secretary – the e-mail making the application for referral was received 24 minutes after the e-mail intimating the continuation request – the referral application had to be considered by the Committee first.

In terms of Rule 5(2) and (3) the Committee has 42 days to decide the referral application and has a further 14 days to intimate its decision to parties. Rule 5(4) provides that, unless with the agreement of both parties, where the referral application is refused, the Hearing shall not take place less than 35 days after the intimation of the decision to refuse the application in terms of Rule 5(3).

In opposing the application for referral, the Assessor intimated he was not prepared to agree to waive the 35 day minimum period of notice of a new hearing date in the event of the refusal of the referral application by the Committee. So, irrespective of what the position of the Appellants might have been on that point – and their agents' referral application was silent on it – it would not have been possible for the case to proceed to a Hearing on 14 February 2019. The question of a continuation therefore did not arise.

In all cases where Committees of this Panel have extant simultaneously a continuation request and a LTS referral request in respect of the same Appeal, the Committee will consider itself bound to deal with the referral application first. Agents who might be inclined to lodge both types of application expecting the continuation application to be considered first, may care to bear this in mind.