LANDS VALUATION APPEAL COURT

[2021] CSIH 9
XA42/20

Lord Justice Clerk
Lord Malcolm
Lord Doherty

OPINION OF LADY DORRIAN, THE LORD JUSTICE CLERK

in the appeal by

CARLTON ROCK LIMITED

First Appellant

and

THE STRATHGLEN TRUST

Second Appellant

against

GRAMPIAN ASSESSOR

Respondent

and

in the appeal by

GRAMPIAN ASSESSOR

Appellant

against

LLOYDS REGISTER EMEA

Respondent

For the First and Second Appellants in the West End appeals and for the Respondent in the Prime Four appeal: Haddow QC; Brodies LLP
For the Respondent in the West End appeals and for the Appellant in the Prime Four appeals: Gill; Gillespie MacAndrew LLP

2 February 2021

[1] I agree with the opinion delivered by Lord Doherty and with his Lordship's suggestion as to the disposal of these appeals. I also agree that opinion should be reserved on the issue of the constructions of s 15 for a case arises where its determination is required. It is generally better to examine such matters in a context in which they are directly relevant.

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OPINION OF LORD MALCOLM

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For the Respondent in the West End appeals and for the Appellant in the Prime Four appeals: Gill; Gillespie MacAndrew LLP

2 February 2021

[2] I agree with the opinion delivered by Lord Doherty and with his Lordship's suggestion as to the disposal of these appeals.

LANDS VALUATION APPEAL COURT

[2021] CSIH 9
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Lord Justice Clerk
Lord Malcolm
Lord Doherty

OPINION OF LORD DOHERTY

in the appeal by

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For the First and Second Appellants in the West End appeals and for the Respondent in the Prime Four appeal: Haddow QC; Brodies LLP
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2 February 2021

Introduction

[3] These three appeals concern offices in Aberdeen. The first appellant is the proprietor of an office at 28 Albyn Place. The second appellant is the proprietor of an office at 74 Carden Place. They appealed to the valuation appeal committee ("the committee") against the net annual values which the assessor entered in the roll for those subjects at the 2017-18 revaluation, namely £357,000 for 28 Albyn Place and £97,500 for 74 Carden Place. That valuation roll came into force on 1 April 2017. Both offices are in the West End of Aberdeen (which is delineated on assessor's production AS1). The third appeal relates to a lower ground and ground floor office in a new office development at Unit 11 Kingswells Causeway, Prime Four Business Park, Kingswells. Kingswells is on the western fringe of Aberdeen, about 6 miles from the city centre. It lies very close to, and is on the eastern side of, the A90 western distributor road ("the bypass"). Kingswells is about 2-3 miles from Westhill, which is to the west of the bypass. Lloyds Register EMEA ("Lloyds") is the tenant and occupier of Unit 11. The assessor entered Unit 11 in the valuation roll as a new entry (exercising his power under the Local Government (Scotland) Act 1975, s 2(1)(b)) with effect from 1 September 2017 with a net annual value of £1,210,000. Lloyds appealed against that value. The committee referred to the first two appeals as "the West End appeals" and it referred to the third appeal as "the Prime Four appeal".

The West End appeals

Background

[4] The West End is near the city centre and it is a popular and prestigious location for commercial and professional offices. For the most part, offices in the West End of Aberdeen

are contained within traditional granite buildings. They are categorised by the assessor as being (i) general office stock, or (ii) quality refurbished or modern office stock. They benefit from better car parking than city centre offices. General office stock tends to be less than 500m² gross area (only 19 of 336 such offices in the West End were more than 500m²). Of the 36 refurbished/modern offices in the West End, 23 were larger than 500m².

Valuation Timetable (Scotland) Order 1995

[5] Section 13 of the Valuation and Rating (Scotland) Act 1956 authorises the Secretary of State (since devolution, the Scottish Ministers) by order to prescribe *inter alia* "the date on which or the period within which any notice requires to be given or any other thing requires to be done for the purposes of the Valuation Acts…". Several Orders have been made in the exercise of that power. The Order currently in force is the Valuation Timetable (Scotland) Order 1995 (as amended) ("the 1995 Order"). Articles 2 and 3 and the Schedule provide:

> "**2. Interpretation**
>
> In this Order-
>
> '*year*' means a period of 12 months beginning with 1st April;
>
> '*year of revaluation*' means the year 2017-18 and each fifth year thereafter.
>
> **3. Prescribed dates**
>
> In relation to a valuation roll which comes into force on or after 1st April 1995, the date on which, or the period within which, any notice requires to be given, or any other thing requires to be done, for the purposes of the Valuation Acts, on or after the coming into force of this Order shall be, in respect of the notice or other thing mentioned in column 1 of the Schedule to this Order, the date or period set out in column 2 of that Schedule.
>
> …

SCHEDULE

Column 1	***Column 2***
Valuations to be made on the	1st April in the year which is 2

basis of level of rents prevailing as at	years prior to a year of revaluation.

…

Valuations to be made on the basis of the physical circumstances of properties as at	1st January in the year preceding a year of revaluation.

…"

Accordingly, for the 2017-18 revaluation valuations were to be made on the basis of the level of rents prevailing as at 1 April 2015 and on the basis of the physical circumstances of properties as at 1 January 2017. The West End appeals turn upon the proper interpretation and application of those provisions of the Schedule.

The hearing before the committee

[6] It was common ground before the committee that as at 1 April 2015 the West End rental evidence supported the rate of £250 per m^2 which the assessor had applied to general office stock and the rate of £275 per m^2 which he had applied to refurbished/modern offices; and that the rental evidence for modern offices in the city centre supported a rate there of £225 per m^2. However, the ratepayers maintained that by 1 January 2017 office rents had fallen because of a downturn in the economy (and, in particular, in the oil price), and because by then there was an oversupply of office accommodation in the wider Aberdeen area. The oversupply arose because of a combination of new speculative office developments and a decline in demand. The ratepayers argued that the direction in the 1995 Order that valuations be made on the basis of the physical circumstances of the properties as at 1 January in the year preceding a year of revaluation (ie in this instance, 1 January 2017) required the assessor to take account of not just the physical features of each of the appeal subjects at that time, but also the physical circumstances of their surrounding locality. Their

expert witnesses suggested that it was possible to identify a diminution in rents for West End offices between 1 April 2015 and 1 January 2017; and that it was also possible to "disaggregate" that diminution so as to separate a part attributable to the oversupply of offices from the remaining part which was attributable to other factors. Thus, the argument ran, when valuing the appeal subjects it was necessary to adjust the rates of £250 and £275 downwards to reflect the oversupply at 1 January 2017 because those circumstances would have reduced the level of rents prevailing at 1 April 2015 had the circumstances existed at that time. For his part the assessor maintained that he required to apply the level of rents prevailing as at 1 April 2015, and that any reduction in rents after that date was just ordinary economic change. On a proper construction of the Schedule to the 1995 Order he had to have regard to the physical circumstances of the appeal subjects as at 1 January 2017, which included the physical circumstance of their immediate locality. However, there had been no material change to the physical circumstances of the subjects or their locality between 1 April 2015 and 1 January 2017. If more offices were vacant on 1 January 2017 than on 1 April 2015 that reflected a drop in demand associated with ordinary economic change.

[7] The committee dismissed the West End appeals. It held that the locality of each of the appeal subjects was the West End, and it accepted that the West End was a distinct rental sub-market. It considered that the direction in the 1995 Order that valuations be made on the basis of the physical circumstances of properties as at 1 January 2017 required the assessor to look only at the physical circumstances of the appeal subjects, and not at the physical circumstances of their locality. Accordingly, even if there was an oversupply of offices in the locality by 1 January 2017 that was not something which the assessor was directed to take into account. The committee placed some reliance on observations which had been made in two decisions of the Lands Tribunal for Scotland, *Cairngorm Chairlift Co*

Ltd v *Highland Region Assessor* 1995 SLT (Lands Tr) 35 and *Campsie Spring Scotland Limited* v *Assessor for Dunbartonshire, Argyll & Bute Valuation Joint Board* [2000] RA 401.

[8] Nevertheless, the committee thought it appropriate to indicate what it would have done had it been right to have regard to office oversupply as at 1 January 2017. In order to identify the drop in West End rental levels at that date it selected five rents for West End offices struck between three months before and three months after 1 January 2017. Four were for general office stock which had been valued at £250 per m^2 and one was for a refurbished office which had been valued at £275 per m^2. It concluded that the average of the five rental rates (£177.40 per m^2) was just over 30% lower than the average of the rates which the assessor had applied to the 5 subjects (£255 per m^2). It reasoned that part of the decline was due to the existence of an oversupply of office accommodation, and that a portion of that part of the decline was caused by the appearance on the market of new build city centre offices, outwith the West End, at the Capitol, Silver Fin and Marischal Square developments. None of those developments had been completed as at 1 January 2017, but the committee took the view that advance marketing of them contributed to the oversupply which existed on that date. Applying its judgement, the committee would have disaggregated the element of oversupply caused by the addition of the new accommodation and treated it as a change in the physical circumstances of the appeal subjects. As a result, it would have adjusted the rate applied to 74 Carden Place from £250 to £225 and the rate applied to 28 Albyn Place from £275 to £250, giving reduced net annual values of £89,500 for 74 Carden Place and £284,250 for 28 Albyn Place.

The appeal and counsel's submissions

[9] Each of the ratepayers have appealed against the committee's decision in respect of their subjects. The assessor cross-appealed to give notice that he proposed to attack the

findings which the committee indicated it would have made if its primary conclusion was ill-founded.

[10] Mr Haddow submitted that the committee erred in its construction of the 1995 Order. Lands and heritages had to be valued in their actual state and according to their existing use. The actual state of lands and heritages included the physical circumstances of their locality. The circumstances of *Cairngorm Chairlift Co Ltd* v *Highland Region Assessor, supra,* and *Campsie Spring Scotland Limited* v *Assessor for Dunbartonshire, Argyll & Bute Valuation Joint Board*, *supra*, were very different from the present case. They had not involved the addition of new lands and heritages to the locality. Authorities which discussed material changes of circumstances provided an indication of the wide range of matters which might affect the actual state of lands and heritages and their value. Reference was made to *Assessor for Inverness-shire* v *Caledonian Associated Cinemas* 1959 SLT 281; *Assessor for Fife* v *Adamson* 1964 SC 384; *Scammell* v *Assessor for Highland and Islands Valuation Joint Board,* Unreported, 8 July 1997; the Edinburgh tram works cases (*Assessor for Lothian* v *Ministry of Defence, The Army Careers Office* [2010] RA 55, *Assessor for Lothian* v *Hennes & Mauritz UK Ltd* 2010 SC 753, *Assessor for Lothian* v *House of Fraser Ltd* 2010 SC 762, *Assessor for Lothian* v *Royal Bank of Scotland plc* [2010] RA 548, *Assessor for Lothian* v *Alliance & Leicester plc* [2010] RA 561); *Argos Distributors* v *Assessor for Fife Region* 2011 SC 272; *Tesco Stores Limited* v *Fife Assessor* 2011 SC 316; *Assessor for Fife* v *Mercat Kirkcaldy Ltd* 2013 SC 178; *Assessor for Glasgow* v *Schuh Ltd* 2012 SLT 904; *Schuh Ltd* v *Assessor for Glasgow* 2014 SLT 184; and *Assessor for Grampian* v *Anderson, Anderson and Brown LLP* 2018 SC 370. The "physical circumstances of properties" as at 1 January 2017 included the physical circumstances of the locality of the lands and heritages being valued, including the physical circumstances of other properties in the locality. That was why "properties" in the 1995 Order was plural. The addition of

offices to the locality was a physical circumstance. The relevant locality was not just the West End - it extended to the other areas where offices had been built between 1 April 2015 and 1 January 2017 because those new offices had affected the rental market in the West End. The assessor was required to take account of the new offices as part of the physical circumstances of that broader locality. The committee had been entitled to hold that the value rates to be applied to the subjects ought to be reduced from £275 and £250 to £250 and £225.

[11] Mr Gill submitted that the appeals should be refused. The committee had not erred in its construction of the phrase "the physical circumstances of the properties". Any oversupply of office space as at 1 January 2017 was not part of the physical condition and state of the appeal subjects (*Cairngorm Chairlift Co Ltd* v *Highland Region Assessor, supra,* p 42E-F). It was not observable by physical inspection (*Campsie Spring Scotland Limited* v *Assessor for Dunbartonshire, Argyll & Bute Valuation Joint Board*, supra, p 414). It was an abstract rather than a physical matter. In order to fall within "physical circumstances" a matter had to be capable of being a physical material change of circumstances, ie a change to the physical nature of the subjects or their immediate locality. There had been no material change in the physical circumstances of the appeal subjects or their locality between 1 April 2015 and 1 January 2017. In any case, in the context of an extensive city centre, matters such as the opening of new office buildings were not capable of being a material change of circumstances in relation to other offices. Such matters were merely part of the ordinary process of change between revaluations (*Assessor for Glasgow* v *Schuh Limited, supra*; *Tayside Valuation* Joint *Board* v *Land Securities plc* [2013] RA 58; *Schuh Limited* v *Assessor for Glasgow, supra*; *Assessor for Grampian* v *Anderson, Anderson and Brown LLP, supra*).

[12] Even if the committee had erred in its construction of the 1995 Order, there was no basis for reducing the valuations of the appeal subjects because there had been no material change in the physical circumstances of the appeal subjects or their locality between 1 April 2015 and 1 January 2017. Moreover, when it made its alternative findings the committee's approach to the evidence was one which no reasonable committee would have taken. It focused only on rents struck during the three month periods on either side of 1 January 2017. It identified only 5 such rents and it overlooked a further 5 rents in assessor's production AS6(b). The rents in AS6(b) supported the tone rates of £250 and £275. The committee's approach had been one of its own devising as opposed to one advanced by either of the parties, and it had been unfair not to raise it with the parties to give them an opportunity to comment upon it (*Assessor for Scotland v British Waterways Board (Scotland)* 2019 SC 222). It had been erroneous in law, or at the very least it had proceeded on the basis of a serious error of valuation principle. Moreover, on this aspect of its decision the committee's reasons were inadequate and unintelligible. They left the reader in genuine and substantial doubt as to the basis for its conclusions (*Moray Council* v *Scottish Ministers* 2006 SC 691).

Decision and reasons

[13] One of the primary meanings of the word "circumstances" is "that which stands around or surrounds" (The New Shorter Oxford English Dictionary (1993 edition)). A natural reading of "the physical circumstances of properties" is that it includes physical features which are part of the surroundings of the lands and heritages being valued.

[14] It is well established that lands and heritages require to be valued in their actual state and according to their existing use (see *Armour on Valuation for Rating,* chapter 18). The actual state of lands and heritages is not restricted to features contained within their physical

boundaries (see eg *Telereal Trillium* v *Hewitt (VO)* [2019] 1 WLR 3262, Lord Carnwarth at para 60). Aspects of the surroundings of lands and heritages may affect their amenity or their use and enjoyment. The locality of lands and heritages is often likely to have an important bearing on their value, and changes to that locality may have an impact on that value.

[15] In my opinion the actual state rule is a key part of the background against which the 1995 Order requires to be construed. In light of that context, in my view the sensible interpretation of "the physical circumstances of properties" is that it is not restricted to physical features within the boundaries of lands and heritages but also includes physical features of their location which are sufficiently close to the lands and heritages to affect them in a material way. It follows that in my view the committee was wrong to construe the 1995 Order in the narrow way it did. Nevertheless, in my judgement its dismissal of the appeals was the correct outcome.

[16] Notwithstanding its interpretation of the 1995 Order, the committee went on to consider how it would have approached matters if the physical circumstances of the locality of the appeal subjects had been relevant. The evidence was, and the committee found (i) that the West End office market was a distinct market, with different rental levels at the tone date from the city centre; and (ii) that it contained two sub-markets, the larger one being of general office stock (which were for the most part offices of less than $500m^2$ gross floor area) and the smaller one being of refurbished/modern offices (a higher proportion of which were over $500m^2$).

[17] In my opinion, on the facts it is clear that the relevant locality of the appeal subjects did not extend beyond the West End. In my view it is also clear that the physical circumstances of the appeal subjects and of their locality did not change in any material

respect between 1 April 2015 and 1 January 2017. No new offices were added to the West End in that period - the total office stock there was static at 89,000m^2 (assessor's production AS10). In my opinion the committee went radically wrong when it treated the new office developments at the Capitol, Silver Fin and Marischal Square as being a relevant change in the physical circumstances of the appeal subjects' locality. First, those developments were in the city centre, not in the West End. Second, as at 1 January 2017 none of them had been completed. In terms of physical circumstances, they had not yet become office lands and heritages. They had not yet increased the lands and heritages used as offices in the city centre.

[18] In my view there was no basis for reducing the rates of £250 and £275 to reflect a change in the physical circumstances of the appeal subjects' locality between 1 April 2015 and 1 January 2017. The relevant circumstances were the same on both dates. It follows that those rates represented the correct levels of value for West End offices as at 1 April 2015 having regard to the physical circumstances of that locality as at 1 January 2017. That was a proposition which had been widely accepted by the time of the hearing before the committee. 136 West End office appeals had been resolved at the tone rates, with most of the ratepayers concerned having had professional advisers acting for them (assessor's production AS9).

[19] Since there had been no significant change in the physical circumstances of the localities of each of the appeal subjects between 1 April 2015 and 1 January 2017, there was no reason for the committee to embark upon the exercise of analysing rental levels as at 1 January 2017. Even if, as seemed to be the case, there had been a fall in the rents of West End offices since 1 April 2015, there was no basis for attributing any part of the fall to a change in the physical circumstances of the locality of the appeal subjects. In the absence of

any such change the disaggregation exercise which the committee carried out lacked any proper foundation.

[20] In my opinion that is sufficient to dispose of these appeals. The committee fell into error but, for the reasons discussed, dismissal of the appeals was the correct outcome. The ratepayers' appeals should be refused.

The Prime Four appeal

Background

[21] At the time when the 2017-18 valuation roll came into force on 1 April 2017 seven large modern offices at the Prime Four Business Park were entered in the roll, with net annual values which ranged from £850,000 to £2,120,000. The rental evidence at the rental tone date (1 April 2015) supported a rate of £250 per m^2, and all of the offices in the business park were valued on that basis.

[22] The office at the ground and lower floors of Unit 11, Kingswells Causeway was entered in the roll as a new entry with effect from 1 September 2017. The assessor valued it at £250 per m^2 producing a net annual value of £1,210,000.

Relevant legislative context

[23] The Valuation for Rating (Scotland) Act 1956 ("the 1956 Act") effected major reform of the system of valuation for rating in Scotland. Section 9 required an assessor to make up a valuation roll for the year 1961-62 and every subsequent year. However, while in the year 1961-62 and each fifth year thereafter ("a year of revaluation") an assessor had to value or revalue all the lands and heritages situated within his area, for any year other than a year of revaluation he was (i) to enter in the valuation roll the lands and heritages which he had previously valued or revalued at the respective values which had been entered for the

immediately preceding year; and (ii) to value any other lands and heritages which had not been entered in the roll made up for the immediately preceding year. Accordingly, while a new roll was made up each year, the general principle was that lands and heritages were only to be revalued every five years. There were some exceptions to the principle. Most notably, s 9 empowered an assessor in an intermediate year to give effect to any alteration of lands and heritages which was due to a material change of circumstances.

[24] The Local Government (Scotland) Act 1975 ("the 1975 Act") effected further reform. Several of the provisions of the 1956 Act, including s 9, were repealed. In terms of s 1 of the 1975 Act the valuation roll which the assessor made up for a year of revaluation was, subject to any alterations made to it under sections 1 and 2, to remain in force until it was superseded by the new valuation roll which was made up for the next year of revaluation. Instead of a new valuation roll being prepared annually there was a single running roll for the *quinquennium.*

[25] Section 15 of the Local Government (Scotland) Act 1966 (as amended by the Local Government (Scotland) Act 1975) ("the 1966 Act") provides:

> "**15 Valuation according to tone of roll.**
>
> (1) For the purposes of any new or altered entry to be made in a valuation roll after the passing of this Act at any time the valuation roll is in force, the value or altered value to be ascribed to lands and heritages shall not exceed the value which would have been ascribed thereto in that roll if the lands and heritages to which the entry relates had for valuation purposes been subsisting throughout the year before the last year of revaluation, on the assumptions that at the time by reference to which that value would have been ascertained—
>
>> (a) the lands and heritages were in the same state as at the time of valuation and any relevant factors (as defined by subsection (2) of this section) were those subsisting at the last-mentioned time; and
>>
>> (b) the locality in which the lands and heritages are situated was in the same state, so far as concerns the other premises situated in that locality and the occupation and use of those premises, the transport services and other

> facilities available in the locality, and other matters affecting the amenities of the locality, as at the time of valuation.
>
> (2) In this section "relevant factors" means any of the following, so far as material to the valuation of lands and heritages, namely—
>
> (a) the mode or category of occupation of the lands and heritages;
>
> (b) the quantity of minerals or other substances in or extracted from the lands and heritages;
>
> (c) the volume of trade or business carried on on the lands and heritages.
>
> (3) References in this section to the time of valuation are references to the time by reference to which the valuation of lands and heritages would have fallen to be ascertained if this section had not been enacted.
>
> …"

The 1975 Act amended s 15(1) by inserting the words "at any time the valuation roll is in force" in place of the words "for a year other than a year of revaluation" which had appeared in the provision as originally enacted. Section 15 also now requires to be considered in conjunction with the 1995 Order.

The hearing before the committee

[26] While it was common ground that the rental evidence as at 1 April 2015 supported the assessor's rate of £250 per m^2 for offices in the Prime Four Business Park, the ratepayers maintained that on a proper application of s 15 of the 1966 Act a lower rate ought to be applied to the appeal subjects because between 1 April 2015 and 1 September 2017 there had been unprecedented building of new offices in the Aberdeen area. That had contributed to an oversupply of office accommodation by 1 September 2017. Rents had fallen, and the ratepayers maintained that part of the fall could be attributed to the contribution to oversupply which the new offices had made; and that had the appeal subjects and other new offices in the Aberdeen area existed on 1 April 2015 the rental rate at that time would have

been lower than £250 per m². The ratepayers also submitted that the net annual value of the appeal subjects could be less than the figure which would be arrived at by applying s 15 because that figure was a ceiling. They suggested that the appeal subjects could be valued directly by comparison with, but were less valuable than, new city centre offices which the assessor had valued at £225 per m². The assessor's position was that the locality of the appeal subjects for the purposes of s 15 was their immediate locality - the Prime Four Business Park. Rents there between 1 April 2015 and 1 September 2017 did not fall below the tone. Any decline in rents elsewhere in Aberdeen between 1 April 2015 and 1 September 2017 was no more than the normal process of economic change between one revaluation and another. On a proper construction of s 15 it provided how all new and altered entries had to be valued. Its effect was not merely to impose a ceiling figure. The appeal subjects required to be valued in accordance with s 15. In any case, if they were to be valued by direct comparison with other subjects the most comparable subjects were the other offices in the Prime Four Business Park, not newly built offices several miles away in the city centre.

[27] The committee allowed the ratepayers' appeal. It held that s 15 imposed a ceiling and that it did not prevent a new or altered entry being valued lower than that ceiling. However, it rejected the ratepayers' contention that the appeal subjects should be valued by comparison with newly built offices in the city centre. In relation to the s 15 valuation, it decided that the locality of the appeal subjects was "greater Aberdeen", which it described as "Aberdeen City and the parts of Aberdeenshire close to it such as Portlethen, the Checkbar (Aberdeen South Business Park) and Westhill at or around the Total and Sub Sea 7 sites". It reasoned that between 1 April 2015 and 1 September 2017 the addition of new offices in greater Aberdeen was a change in the physical circumstances of that locality. It sought to identify (i) the extent to which rents of large offices had fallen between those

dates; and (ii) the extent to which it would be right to attribute part of that fall to the change in physical circumstances of the locality as opposed to other factors. In order to ascertain the fall in rents of large offices it chose eight comparisons which had rents which had been struck during the period between three months before and three months after 1 September 2017. Three were in Westhill, two at Bridge of Don, two at Hill of Rubislaw, and one at Portlethen. The largest (1,277.9m^2) was a fitness centre, not an office. Two of the other seven were offices of 512.1m^2 and 423.3m^2, and the remainder ranged in size from 113m^2 to 261.5m^2. The committee averaged the eight rental rates to arrive at a figure of £166.56 which it found to be 44.63% lower than the average of the rates which the assessor had applied to the eight subjects (£225). It reasoned that part of the decline was due to an unprecedented oversupply of office accommodation, and that a portion of that part of the decline was caused by the appearance on the market of new build offices, and in particular the Capitol, Silver Fin and Marischal Square developments in the city centre. While most of that office accommodation was not completed as at 1 September 2017, the committee took the view that it was being marketed and that therefore it contributed to the oversupply which existed on that date. Applying its judgement, it concluded that the part of the rental fall which was attributable to an oversupply of new offices "outweighed" all the other causes of oversupply. It "disaggregated" the oversupply element caused by the addition of the new offices. That led it to conclude the rate applied to the appeal subjects should be reduced from £250 to £200, with the result that the net annual value was reduced from £1,210,000 to £980,500. In exercising its judgement the committee relied upon and was guided by a decision of the Valuation Tribunal for England - *Aon Risk Services Limited v Gott (VA)* [2011] RA 381. It concluded that the wording of paragraphs 2(7)(d) and 2(7)(e) of Schedule 6 to the

Local Government Finance Act 1988 was very close to the wording of s 15 of the 1966 Act "…so that the case was a useful guide to the interpretation of the Scottish provisions."

The appeal and counsel's submissions

[28] The assessor appealed. The ratepayers did not cross-appeal.

[29] Mr Gill submitted that the court should allow the assessor's appeal. The committee had misdirected itself in law and it had made serious errors of valuation principle.

[30] On a proper construction of s 15 (read together with the 1995 Order) it provides that new or altered entries to the roll are to be valued on the basis of the levels of rents which prevailed at the revaluation tone rental date. Section 15 precludes a new or altered entry being valued at a rate which is higher or lower than the figure arrived at by the application of s 15. The assessor's interpretation achieved fairness between ratepayers, whereas the ratepayers' suggested construction would be productive of unfairness. The "evident" purpose of s 15 was "to secure a level of uniformity of valuation in the running roll for the whole period between revaluations" (*Armour on Valuation for Rating,* para 3-45). The maintenance of the common base throughout the period of the roll was what was universally understood as being "the tone of the roll". The headnote of s 15, "Valuation according to tone of roll" was a strong pointer towards the correctness of the assessor's construction. It was part of the contextual scene of the provision (*Imperial Tobacco, Petitioner* [2012] UKSC 61, 2013 SC (UKSC) 153, para 17). The starting point was that "language in all legal texts conveys meaning according to the circumstances in which it was used" (*R* v *Montila* [2004] UKHL 50, [2014] 1 WLR 3141, §36). There was no authoritative decision which precluded the assessor's construction. In *Sports Shop (Fife) Ltd* v *Assessor for Grampian Region,* Unreported, June 20 1990 (discussed in *Armour*, para 3-45) the assessor had not opposed the ratepayers' appeal and the court did not issue a reasoned decision. In so far as

there were observations by the court in other cases tending to support the ratepayers' construction (*Assessor for Grampian* v *Barclays Menswear Enterprises Ltd* 1990 SLT 569, Lord Milligan at p 369K-L; *Assessor for Tayside Valuation Joint Board* v *Land Securities, supra* Lord President Gill at paras [3], [20]), those observations were tentative and were *obiter dicta.* The foundation of the system of valuation for rating was the primacy of the revaluation. That was the time at which general levels of rents and value were determined. The fundamental principle was that "all of the lands and heritages entered in the new roll are valued to a common base" (*Assessor for Tayside* v *Land Securities*, *supra,* para [22]). Each revaluation "resets values to a common base which remains constant until the next revaluation" (*Assessor for Grampian* v *Anderson, Anderson and Brown LLP*, *supra*, para [16]). The values fixed at revaluation were in principle subject to revision from that common base only in "severely limited" cases (*Assessor for Glasgow* v *Schuh Ltd*, *supra*, para [34]), where there was a material change of circumstances falling into one of two contrasting categories: (i) general falls in the level of rental values (and, even then, only where what caused the fall was "something beyond the normal ebb and flow of business" (*Anderson, Anderson & Brown*, para [34])); and (ii) changes to "the physical nature of the premises, or of the locality" (*Assessor for Grampian* v *Anderson, Anderson & Brown*, *supra*, Lord Justice Clerk Dorrian, para [16]; Lord Malcolm, para [56] ("changes of circumstances in the subjects or their immediate locality")). Matters such as changing patterns of retail and the emergence of new shops and centres were all part of the ebb and flow of a dynamic industry: they were part of the "normal processes of change" (*Assessor for Glasgow* v *Schuh Ltd*, *supra*, para [34]) or the "ordinary processes of change" (*Schuh Ltd* v *Assessor for Glasgow*, *supra,* para [30]). Those were matters for the assessor's pre-revaluation survey and were to be reflected in the values at which subjects would be assessed at the next revaluation. The normal manifestations of

the market were not capable of amounting to a material change of circumstances. They gave rise to no change to the common base - the values set at the revaluation. It was clear from *Assessor for Glasgow* v *Schuh Ltd, supra,* para [41] that, in the context of an extensive city centre, matters such as the opening of new office buildings could not be a material change of circumstances in relation to other offices in that city centre. Those matters were part of the ordinary processes of change.

[31] The valuation of new or altered subjects required to be in accordance with s 15. The only adjustments to the tone rental rate which might be required were adjustments to take account of the physical state of the new or altered subjects and the physical state of their locality if either had changed in a material way. The relevant locality was coextensive with the locality which was relevant for the purposes of ascertaining the "physical circumstances" of lands and heritages for the purposes of the 1995 Order.

[32] The Committee had erred in law in its construction and application of s 15 of the 1966 Act. It erred in holding that the word "locality" in s 15(1)(b) "required it to have regard to a much wider set of circumstances" than when considering the "physical circumstances" of a property for the purposes of the 1995 Order. It also erred in holding that for the purposes of s.15(1)(b) "matters which could affect a locality could be intangible", and therefore that an oversupply of office accommodation in the greater Aberdeen area was capable of being relevant to the "state" of the locality of the subjects of appeal. It further erred in so far as it obtained assistance as to the construction and application of s 15 from the English case of *Aon Risk Services Limited* v *Gott (VA), supra.* The committee proceeded, incorrectly, on the basis that the locality of the appeal subjects was "greater Aberdeen". It was not. The relevant locality was the Prime Four Business Park. That locality had been in "the same state" in all material respects on 1 April 2015, 1 January 2017, and 1 September

2017. The building of new offices in other localities had not affected any change to the locality of the appeal subjects. An oversupply of office accommodation elsewhere in Aberdeen was not a change to the locality of the subjects of appeal.

[33] The committee erred in seeking to ascertain (i) if there had been a fall in rents between 1 April 2015 and 1 September 2017; and (ii) if a cause of the fall was a change in physical circumstances. The proper approach ought to have been (a) to consider the state of the appeal subjects and their locality as at 1 September 2017; and (b) to determine their value on 1 April 2015 on the basis that the state of the locality of the appeal subjects on 1 September 2017 had not been materially different from the state of that locality on 1 April 2015.

[34] In any case, the evidence did not disclose any material change in the level of rents at the Prime Four Business Park between 1 April 2015 and 1 September 2017. The only evidence of a decline in rents there came from sublets 5 months and 12 months after 1 September 2017. Since during the period after 1 September 2017 rents were declining it would clearly be wrong to use those rents as a basis for saying there had been a fall below the tone level as at 1 September 2017. The analysis of eight rents which the committee carried out was methodologically flawed. The eight rented subjects were not comparable with the appeal subjects. They were very much smaller and in very different locations. They were not the only rents which fell within the time frame which the committee had selected. The committee's exercise mixed evidence from different sub-markets which would have experienced different movements in rents. There was no analysis by floor area. One of the subjects was not an agreed comparable, and it was not an office. It was a fitness centre.

[35] Finally, the committee failed to provide adequate and intelligible reasons for its decision.

[36] Mr Haddow submitted that the assessor's appeal should be refused. On a proper construction of s 15 it provided a ceiling above which the net annual value of a new or altered entry made after the roll came into force could not go. It did not prevent such a new or altered entry from having a value lower than that ceiling. That was the ordinary and natural reading of s 15. The heading did not cast doubt on that reading. While a heading was part of the context of a provision which could be used as an aid to its construction, its function was merely to serve as a brief guide to the material to which it referred and often it may not be entirely accurate. The ratepayers' construction accorded with the mischief which s 15 had been intended to remedy - that new or altered entries might be valued on a higher basis of value than existing entries in the roll where rents had increased since the tone date. That interpretation was supported by the decision of the court in *Sports Shop (Fife) Ltd* v *Assessor for Grampian Region, supra*, and by the observations of by Lord Milligan in *Assessor for Grampian* v *Barclays Menswear Enterprises Ltd, supra,* and of Lord President Gill in *Assessor for Tayside Valuation Joint Board* v *Land Securities, supra.*

[37] Section 15(1)(a) and 15(1)(b) were not confined to physical factors or factors which affect the physical enjoyment of lands and heritages, but may embrace factors of a wider nature including intangible matters (*cf*. the (now repealed) General Rate Act 1967, s 20 and *Clement (VO)* v *Addis Ltd* [1988] 1 WLR 301, Lord Keith of Kinkel at p 301F-G; *Assessor for Fife* v *Adamson, supra*), such as the effects of the oversupply of offices in a locality.

[38] The assessor's criticisms of the committee's approach were unfounded. On the evidence the committee was entitled to find that the locality of the appeal subjects was greater Aberdeen. There had been unprecedented building of new offices in the period between 1 April 2015 and 1 September 2017. For the purposes of applying s 15 the committee had to assume that the office accommodation in the Aberdeen area had been the

same on 1 April 2015 as it had been on 1 September 2017. It had adjusted the assessor's rate of £250 to take account of the new offices which had been added by 1 September 2017. It had arrived at the appropriate adjustment to the assessor's £250 rate by identifying the average drop in office rentals, and by disaggregating (i) that part of the drop which was due to oversupply because of additions to the pool of offices, from (ii) that part of the drop which was due to oversupply because of falling demand. The committee's approach was analogous to the approach which the ratepayers' expert witness had taken. It was an approach which the committee had been entitled to take.

Decision and reasons

[39] The court was favoured with submissions which advanced different constructions of s 15. Mr Gill maintained that s 15 provided the valuation method which required to be used to arrive at the value of a new or altered entry. Mr Haddow submitted that it merely provided a means of obtaining a ceiling valuation which could not be exceeded, with it being permissible to value the entry at a lower figure. The issue is an interesting one on which there appears to be no authoritative decision. However, in my opinion it is not a live issue in the present case.

[40] Before the committee the ratepayers did not maintain that the value of the appeal subjects was lower than the value produced by applying s 15. They did not contend that the subjects ought to be valued on the basis of the levels of rents which prevailed as at 1 September 2017. They posited two methods of arriving at their proposed valuation. The principal method was by applying s 15. However, they argued that when effect was given to the assumption that the other properties in the locality of the appeal subjects were to be taken as they were on 1 September 2017, the result was that the s 15 tone of the roll value for the appeal subjects was lower than the £250 per m^2 which had been applied to offices in the

Prime Four Business Park at the revaluation. The ratepayers' secondary method was that the appeal subjects were to be valued by comparison with new offices in the city centre.

[41] The committee rejected the contention that the appeal subjects ought to be valued by comparison with new offices in the city centre (and the ratepayers have not appealed against that finding). It accepted that they ought to be valued in accordance with s 15, but it did not accept the ratepayers' proposed valuation. It looked at the appeal subjects and the physical circumstances of greater Aberdeen as at 1 September 2017, and it valued the subjects as if those physical circumstances had existed on 1 April 2015. It determined that on that scenario their value was £225 per m^2.

[42] Since the outcome of the appeal does not turn on whether new or altered entries may be made in the valuation roll at values lower than the value which would be arrived at were s 15 of the 1966 Act to be applied, it is not necessary to decide which of the rival constructions of s 15 is correct. Tempting as it may be to add to the *obiter dicta* which already exist on the topic, I prefer to reserve my opinion on it until a case arises where its determination is required.

[43] I turn then to what in my opinion are the live issues in this appeal. In my view the committee materially misdirected itself. It erred in treating the locality of the appeal subjects for the purposes of s 15(1)(b) as greater Aberdeen. It gave the phrase "the locality in which the lands and heritages are situated" in s 15(1)(b) an unduly wide ambit. While I recognise that the precise extent of the relevant locality in a particular case may depend upon the category of subjects under consideration, and that it may involve questions of fact and degree, generally it ought not to extend to an area where the relevant category of lands and heritages command levels of value which are materially different from the level of value for such subjects in the vicinity of the appeal subjects. Here, the committee's conclusion that the

locality in which the appeal subjects were situated was "greater Aberdeen" was premised on its acceptance that a prospective tenant looking for a large office such as the appeal subjects would have considered his options in each location across greater Aberdeen before selecting his preferred office. That may be so, but the fact that a prospective tenant may look at a range of localities does not transform those separate localities - with their distinct characteristics and levels of value - into a single amorphous locality. By proceeding on the basis that it did, in my opinion the committee went radically wrong. The fact of the matter was that, so far as offices were concerned, greater Aberdeen had many distinct and different localities. Offices in the Prime Four Business Park commanded rents of the order of £250 per m^2. The nearest other office location, Westhill, commanded significantly lower levels of rents (the tone rate for the best offices in Westhill was £220). Each of the office locations had their own characteristics and their own distinct value levels (eg the best rate for the city centre was £225; for Hill of Rubislaw, £300; for Portlethen, £225; for Bridge of Don, £200; for Dyce, £200). In my view, on a proper application of s 15(1)(b) to the facts, the relevant locality of the appeal subjects did not extend beyond the Prime Four Business Park.

[44] Since I have concluded that in the present case the relevant locality was to all intents and purposes the same for the purposes of the 1995 Order and for s 15(1)(b), it is unnecessary to rule upon Mr Gill's submission that for any particular subject the localities for the purposes of the 1995 Order and for s 15(1)(b) will always be co-extensive. However, I incline to the view that the two need not always coincide. No doubt in very many cases they will, but I would not exclude the possibility of cases where the s 15(1)(b) locality may be more extensive. A possible example might be where the particular category of lands and heritages contains only a very limited number of subjects which are situated at locations which are distant from each other.

[45] Had the committee correctly identified the locality, the next task ought to have been to determine its state as at 1 September 2017 "so far as concerns the other premises situated in that locality and the occupation and use of those premises". There was no suggestion that any of the other matters referred to in s 15(1)(b) had changed since 1 January 2017 (the physical circumstances date for the revaluation).

[46] There was no significant change to the physical circumstances of the other premises in the Prime Four Business Park or to the physical circumstances of their locality between 1 January 2017 and 1 September 2017 (or, indeed, between 1 April 2015 and 1 September 2017).

[47] Nor is there is any suggestion that there was any significant change in "the occupation and use of those [other office] premises" in the Prime Four Business Park between 1 January 2017 and 1 September 2017 (or indeed between 1 April 2015 and 1 September 2017). In any case, arguably the "occupation and use" assumption concerns the mode or category of occupation of the other premises, not whether they are vacant. Otherwise, if regard were had to greater/lesser levels of vacancy at the date of the new or altered entry being made the effect may be to assume a different level of demand from that which prevailed at the tone rental date (1 April 2015). That would seem to be wrong in principle, and to run counter to the level of rents being the level prevailing at 1 April 2015 (a level which will have been conditioned on the basis of demand at that time). That tends to point against construing "occupation and use" as encompassing whether or not premises in the locality are vacant. However, it is unnecessary to reach a concluded view on the point in the present case.

[48] In my view, for the reasons discussed, application of the assumptions in s 15(1)(b) does not provide a sound basis for differentiating the tone valuation rate to be applied to the

appeal subjects from the tone valuation rate of £250 per m^2 which was used for valuing the other offices in the Prime Four Business Park. The benchmark tone of the roll value rate of £250 per m^2 which was used to value the offices in the roll reflects rental levels prevailing at 1 April 2015 on the basis of the physical circumstances of those offices and their immediate locality as at 1 January 2017. In a running roll appeal the values in the roll for those offices ought to be taken to have been made on that basis unless the evidence demonstrates otherwise. Here it does not. Moreover, by the date of the hearing before the committee there had been four appeal agreements with professional agents for offices in the business park, all at the rate of £250 per m^2 (assessor's production AS6). That suggests an acceptance by those agents that £250 per m^2 was the correct rate on the basis of rental levels prevailing at 1 April 2015 taking account of the physical circumstances of offices and of their immediate locality as at 1 January 2017.

[49] On a proper application of s 15 there was no material difference between the circumstances of the appeal subjects and their locality and the circumstances of the other offices in the business park and their locality. There was no sound basis for modifying the £250 tone of the roll value rate. That is the value which the committee ought to have applied.

[50] That is sufficient to dispose of the appeal. The committee erred in identifying the locality of the appeal subjects for the purposes of s 15(1)(b). Its subsequent analysis was based on the false premise that the relevant locality was greater Aberdeen. In fact, the relevant locality was the Prime Four Business Park. On a proper application of s 15(1)(b) to the facts, the tone of the roll for the appeal subjects is, as the assessor maintained, £250 per m^2.

[51] Even if the committee had been right to conclude that the locality was greater Aberdeen, I would have had very significant doubts about its subsequent approach and reasoning. It identified a decline in rents in greater Aberdeen from about 2015 onwards. It was common ground that rents were falling, but the exercise which the committee carried out to identify the fall in rents for large offices seems to me to be of questionable worth. Not one of the eight rents used was for a large office. One of the comparisons was not even an office - it was a fitness centre. The largest of the other seven subjects was 512m^2, the smallest was 113m^2, and four of the others had values between 203.8m^2 and 261.50m^2. In my opinion that was an unpromising basis for drawing reliable conclusions about rental movements for large offices. The committee went on to conclude from that evidence that there had been a fall of 45% in the rents of large offices. It attributed the fall to deteriorating economic circumstances and to an oversupply of office accommodation. In its view, part of the oversupply arose because of new office developments, and part because a decline in demand for offices meant that more space was available than formerly. However, of the three principal new developments which featured most prominently in the evidence, only one of them, the Capitol, had added to the office supply by 1 September 2017. Silver Fin and Marischal Square had not been completed, and in my opinion the committee was wrong to treat them as if they had been. On 1 September 2017 they were not existing office lands and heritages. The committee disaggregated the 45% decline and attributed about half of it to that part of the oversupply which it ascribed to new office developments. It attributed the remainder of the decline to oversupply caused by a decline in demand because of a deterioration in the economy. It does not seem to have considered whether part of the rental decline was caused by economic factors unrelated to oversupply. The basis upon which it reached its apportionment is obscure. It seems to have been guided to a considerable extent

by the decision and reasoning in *Aon Risk Services Limited* v *Gott (VA), supra.* However, in my opinion *Aon Risk Services Limited* v *Gott (VA)* was neither an appropriate precedent nor a reliable guide. Contrary to the committee's view, in my opinion the terms of the legislation upon which that case turned (the Local Government Finance Act 1988, Schedule 6, paras 2(6) and 2(7)) are materially different from the terms of s 15 of the 1966 Act.

Disposal

[52] I propose to your Ladyship and your Lordship (i) that the ratepayers' appeals (the West End appeals) be refused; and (ii) that the assessor's appeal (the Prime Four appeal) be allowed. The upshot is that the net annual value of 28 Albyn Place remains £357,000 and the net annual value of 74 Carden Place remains £97,500; and that the net annual value of Unit 11, Kingswells Causeway should be restored to £1,210,000.