

Report

Report to:	Lanarkshire Valuation Joint Board
Date of Meeting:	7 March 2011
Report by:	Assessor and Electoral Registration Officer

Subject:	Non-Domestic Appeals
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ Advise members of the Joint Board of the upsurge in activity in relation to appeals against entries in the Valuation Roll for non-domestic subjects throughout Lanarkshire.

2. Recommendation(s)

2.1. The Board is asked to note the content of the report.

3. Background

3.1. A combination of the 2010 revaluation of non domestic properties and the general economic downturn has seen an upsurge in both the number of non-domestic appeals lodged with the Assessor for Lanarkshire and the level of activity normally associated with such appeals.

3.2. The increased level of activity in relation to non-domestic appeals includes heightened representation from elected members, appellants' agents, and appellants themselves, resulting in the reallocation of resources to undertake the work associated with both managing and dealing with the disposal of such appeals.

4. Revaluation Appeals

4.1. The number of appeals received in Lanarkshire in connection with the 2010 revaluation is 7348 against a NAV of £813,257,080 and RV of £810,858,180. This compares to the total number of appeals received in connection with the 2005 revaluation of 7066 against a NAV of £535,045,074 and RV of £533,157,924. The details of the revaluation appeals received are contained in the report entitled 'Revaluation 2010: Appeals' noted by the Board at the meeting of 29 November 2010.

4.2. A citation programme for revaluation appeals has been agreed with the Secretary and Chairman of the Lanarkshire Valuation Appeal Panel which will commence with the citing of retail subject appeals in May 2011. This is later than previous revaluation appeal citation programmes due to the number of hearings that have required to be scheduled for the beginning of 2011, principally in relation to the upsurge in economic downturn appeals received against 2005 valuation roll entries.

5. Running Roll Appeals

5.1 An appeal may be lodged against a valuation roll entry between revaluations in a number of limited circumstances, such as (in general terms):

- where there is a new proprietor, tenant or occupier (appeal to be lodged within 6 months of becoming (P), (T) or (O));
- where the value of the subjects has been altered, or a new entry made by the Assessor (appeal by (P), (T) or (O) within 6 months of notice of change);
- on the ground that a material change of circumstances has occurred;
- on the ground of error at any time while the roll is in force.

5.2 There has been an upsurge in running roll appeals received in Lanarkshire, covering a varying range of property types, over the recent period. In particular, bulk appeals have been lodged against entries in the 2005 valuation roll by professional agents citing the economic downturn as the main ground of appeal. Excluding any running roll appeals referred to the Lands Tribunal for Scotland, as at 1 April 2009 there were 519 outstanding appeals; currently there are 1248 running roll appeals outstanding. Those relating to the 2005 valuation roll are currently being heard by the Valuation Appeal Committee and are scheduled to be heard up until the beginning of the citing of revaluation 2010 appeals in May 2011. There is a suggestion that agents will lodge bulk appeals on the grounds of economic downturn for entries in the 2010 valuation roll also.

5.3 Where the Assessor is satisfied that there has indeed been a material change of circumstances affecting value following the production of relevant evidence, then values have been reduced without recourse to the Valuation Appeal Committee. Where no evidence has been received, then values continue to be robustly defended.

6. Appeals referred to the Lands Tribunal for Scotland

6.1 The Lands Tribunal for Scotland is an independent civil court. It has statutory power to deal with various types of dispute involving land or property, including matters of dispute in valuations for rating on non-domestic properties. The circumstances and manner in which reference of an appeal (or complaint) against an entry in the valuation roll may be made to the Lands Tribunal is a matter for regulations made by the Secretary of State. An application for referral to the Lands Tribunal must be made to the Valuation Appeal Committee and include representations in relation to the following matters which provide the grounds on which a referral request may be made, namely 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) The law applicable to the case is uncertain or difficult to apply;
- (d) The law applicable to the case raises a fundamental or general issue likely to be used as a precedent in other cases;
- (e) The subjects relate to more than one valuation area and the valuation is appealed in more than one such area.

6.2 In Lanarkshire, as at 1 April 2010, 129 appeals with an NAV of £175,579,800 had been referred to the Lands Tribunal. Case teams were formed and appeal discussions entered into for a substantial number of these appeals with professional agents to seek resolution without recourse to the Lands Tribunal where possible. Whilst discussions, principally towards the end of 2010, resulted in some 70 appeals being resolved without recourse to it, two appeals did proceed to the Lands Tribunal in December 2010. The cases involved two industrial properties in Shotts where the appellant's ground of appeal was that the subjects should be treated as a single entry in the valuation roll at a combined value of £215,000. The Lands Tribunal decided that the subjects should not be treated as a single entry, and,

therefore, the values as separate entries should remain in the valuation roll. The appellants have lodged an appeal against the decision of the Lands Tribunal.

6.3 Additionally, 3 appeals referred to the Lands Tribunal were sisted awaiting the outcome of a decision of the Scottish Lands Valuation Appeal Court. These appeals relate to the rateability of sites of auto teller machines located at post offices, whereby the appellant contested that such sites should not be entered separately in the valuation roll. The recent decision of the SLVAC upheld the approach of entering the sites of ATMs at such locations separately from the post office in the valuation roll.

6.4 Currently 57 appeals remain outstanding at the Lands Tribunal with an NAV of £65,567,430, the bulk of which relate to telecommunications and electricity generation subjects. It is expected that the Lands Tribunal will list these appeals to be heard over the current calendar year.

7.0 Appeals to the Scottish Lands Valuation Appeal Court

7.1 An appeal of a decision by the Valuation Appeal Committee or the Lands Tribunal takes the form of a stated case. The case is to be stated to the judges of the Lands Valuation Appeal Court, which is a civil court in Scotland composed of 3 Court of Session judges. The procedure involves LVJB staff preparing transcripts, making observations and representations on draft stated cases, and liaising with Counsel on grounds/answers to grounds of appeal in preparation for the case being heard at the Court of Session in Edinburgh.

7.2 Over the recent period, 7 decisions of the Lanarkshire Valuation Appeal Committee and 1 Lands Tribunal decision have been appealed by appellants, resulting in the preparation of stated cases. All appealed VAC decisions have now either been withdrawn or abandoned, with the Lands Tribunal decision appeal having just been received. The appendix to this report provides a brief summary of each case.

8. Employee Implications

8.1 None.

9. Financial Implications

9.1 The upsurge in activity associated with the disposal of non-domestic appeals has a direct effect on the budget of LVJB. There are the costs associated with, where appropriate, engaging Counsel (in the region of £2,250 per day) and also costs incurred from the work undertaken by the Lanarkshire Valuation Appeal Panel. There is also the relatively significant cost associated with staff time required to deal with such matters.

10. Other Implications

10.1 Dealing with non-domestic appeals, in particular the preparation of appeal cases and appearance at hearings, is both time consuming and resource intensive. As the number of, and activity normally associated with, non domestic appeals has increased significantly over the recent period, so too has the effect on other workload. LVJB's management team will continue to consider current working practises and procedures within the context of managing all key service delivery areas during this time of increased activity with non-domestic appeals.

11. Equality Impact Assessment and Consultation Arrangements

11.1 This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and therefore no impact assessment is required.

12. Privacy Impact Assessment

12.1 This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and therefore no impact assessment is required.

Gary Bennett

Depute Assessor and Electoral Registration Officer

17 February 2011

Previous References

Report to Board entitled 'Revaluation 2010: Appeals' for 29 November 2010 Board meeting

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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