

**MINUTE OF THE SCOTTISH
RATEPAYERS' FORUM
HELD AT the Office of Lothian
Valuation Joint Board, South
Gyle, EDINBURGH
on 9th November 2011**

Present: Garry Clark (Scottish Chambers of Commerce); Marianne Cook (Scottish Government); Kevin Fraser (IRRV); Douglas Gillespie (Past President SAA); Rosaleen Harley (SLTA); Joan Hewton (Vice President SAA); Tom Ironside (British Retail Consortium); David Lonsdale (CBI); Stuart Mackinnon (Federation of Small Businesses); Alasdair MacTaggart (Secretary SAA); Ken McCormack (RICS & CBI); David Melhuish (Scottish Property Federation); Graham Owenson (Scottish Government); David Thomson **Chairman** (President SAA)

1.0 Welcome & Introductions

The Chairman extended a warm welcome to all and invited members to introduce themselves.

2.0 Apologies

Alexandra Burton; Alexander Jackman; Owen Kelly; Philip Glenwright; Roger Littlewood; Fiona Moriarty; Ian Shearer; Johanna Yates.

3.0 Minutes of the Meeting of 28th July 2011

The minute was approved. Forum minutes are posted on the Assessors' Portal which can be accessed using: <http://www.saa.gov.uk/ratepayersminutes.html>

4.0 Matters arising from the Minute of the Meeting of 28th July 2011

It was agreed to cover matters as they arose in the Minute.

5.0 2005 Revaluation

5.1 Lands Tribunal

It was noted that there had been no further settlement of the appeals currently with the Lands Tribunal. The majority of such appeals relate to mobile telephony mast entries and a preliminary hearing to identify a range of dates for a full hearing will take place on 12th December 2011.

K McCormack advised that he understood that Horse Racecourses would be included in the December Procedural Hearing and that it was the intention of the Lands Tribunal to hear all outstanding appeals in the first half of 2012.

G Owenson asked if would be of help to write to the Lands Tribunal.

D Thomson replied that the preliminary hearings were the result of earlier correspondence.

6.0 2010 Revaluation

6.1 Appeals Volume and Issues

D Thomson advised the meeting that appeals were continuing to be settled but that some delays had surfaced as the result of issues surrounding material changes of circumstances appeals arising from the claims that the economic recession has had a marked effect on the rental values of various classes of property.

The appeals for the Mercat Shopping Centre in Kirkcaldy had been heard on the 6th October 2011 and the decision of the Local Valuation Appeal Committee was awaited. D Thomson stated that he had been made aware of "consternation" amongst ratepayers and their advisors due to the way in which the Mercat appeals had been debated at the hearing and, as a result, requests for continuations or for referral to the Lands Tribunal had been lodged for many other appeals to allow time for the decision to be digested.

K McCormack indicated that his opinion was that the Assessor for Fife had argued that the valuation issue regarding economic downturn related to the revaluation and not a material change of circumstances. He also expected the decision to be appealed to the Lands Valuation Appeal Court, irrespective of the outcome.

D Thomson indicated that the summing up by counsel contained no surprises and highlighted that the law was unclear with divided opinion even among Counsel. The matter will need to be tested at the Lands Valuation Appeal Court.

K McCormack warned that absurdities may arise if 2009-10 adjustments on appeal could not be carried into 2010. This could arise if adjacent properties had appealed/not appealed.

D Thomson reiterated that the position post 1st April 2010 is more clear-cut in that evidence of a general downturn in rents after that date may be a material change of circumstances. He also pointed out that the law, as it stands, is clear in that the Revaluation sets the level of value and that Assessors are only empowered to change the Valuation Rolls to give effect to changes in prescribed circumstances.

D Thomson noted the anxiety of ratepayers but asked for their forbearance to allow a definitive outcome to be reached.

D Melhuish asked if there was any plan to extend the time-limit for disposal of appeals. D Thomson replied that there was not.

S Mackinnon suggested that there were implications for the entire Non-Domestic tax base and asked if contingencies were in place to cope with the outcome, irrespective of which way the decision fell. In response, it was emphasised that the scope of Assessors was tightly limited by law and, in any event, not all subject types would be affected.

K McCormack indicated that he had information that requests for continuations or for referral to Lands Tribunal were being opposed. He was reminded that, ultimately, it would be for the Committee or the Lands Tribunal to allow or decline such requests and that Assessors would continue to oppose if they saw no merit in the requests.

S Mackinnon suggested that the outcome of the ongoing appeals could cause serious difficulties and call the entire rating system into disrepute. D Gillespie replied that the effect will vary both geographically and by type of subject. He added that 40% of Revaluation Appeals had already been settled which, in effect, lay the ground rules.

S Mackinnon enquired if the Mercat decision, when issued would be a relevant decision. D Thomson replied that a decision of the local Appeal Committee would only be of relevance in that Assessor's area and that, for a decision to be binding across Scotland, it would need to be made by their Lordships at the LVAC.

R Harley asked if the same set of circumstances would apply in business where there was no change to rent but where the turnover and profitability had shown a decline. D Thomson replied that the existing law and precedent would not allow that to be considered although such circumstances may be tested; there would be nothing to prevent cases being advanced if evidence could be adduced. J Hewton added that the Assessor is directed to value the hypothetical tenancy and that a mere rise or fall in turnover or profitability would not inevitably give rise to a reduction in rental value.

S Mackinnon cautioned that the media would make much of the outcome whichever way the decision fell and that it would be sensible to have contingent planning to mitigate the effects.

S Mackinnon enquired about the valuation of Nurseries and asked why there was no national Practice Note. D Thomson replied that it would be impractical to have a single Practice Note as this type of business could operate out of a variety of subject types. J Hewton further added that individual Assessors may have local Practice Notes if sufficient evidence existed within their areas.

R Harley enquired about Licensed Clubs (Members' Clubs). These subjects, she claimed, can operate along the similar lines as a public house provided such a use does not exceed 56 days in any one year. D Thomson replied that the method of value is based on rental evidence for such clubs and would not change provided the 56 day limit was not breached and added that investigations had not shown any significant number of subjects where a public house valuation would have been more appropriate. D Thomson further suggested that the SLTA should advise the relevant Assessor if they believed that any licensed club was operating as a Public House beyond the 56 day limit.

7.0 Scottish Government Update

M. Cook gave a brief update on Scottish Government policy:

- New Small Business Bonus Scheme (SBBS) statistics had been published, these are available at -
<http://www.scotland.gov.uk/News/Releases/2011/10/27103925>
- The Draft Budget had been published on 21 September and responses were welcomed to the consultation. Measures included -
 - Poundage parity will be maintained with England,
 - A Public Health Supplement will be implemented from 1 April 2012; and
 - Empty Property Relief would be reformed from 1 April 2013 – changing from 50% to 10% after the initial 3 months period at 100%. However, empty property relief for industrial and listed property would be unchanged.

M Cook indicated that approximately 240 properties would be affected by the Public Health Supplement proposals.

K McCormack asked if, to pay for SBBS, the supplement on properties with larger values would be continued. M Cook replied that no announcement had been made but that parity will be maintained with England, where the current

large business supplement is 0.7p. G Owenson added that, if possible, an announcement on the poundage and supplement would be made by December.

Marianne Cook confirmed that £150-160m was the total annual cost of empty property relief and the savings from reform would be around £18m in 2013-14 and 2014-15

K McCormack asked if the legislation re the Health Supplement would be changed if any loopholes were identified. G Owenson replied that there were no plans to do so.

T Ironside asked if the Health Tax supplement would be the subject to positive or negative resolution. M Cook replied that it had been confirmed as secondary legislation.

D Lonsdale noted that there was a gap between the setting of the budget and the implementation of the health supplement and asked if there was a specific reason for this. M Cook replied that this was simply to allow for consultation.

D Lonsdale asked if there was any announcement due of enterprise areas. M Cook replied that no decision had been taken but there may be a discount on rates payable or provision of additional capital allowances. The manifesto also made mention of a possible a "low carbon" enterprise area. M Cook added that funding had been allocated in a stepped fashion of £2/6/12m. There was no indication where or what the enterprise areas would be.

M Cook indicated that there would be a review of NDR in advance of the 2015 Revaluation and that it would be designed to assist businesses, rather than follow the format of the current English consultation of operation of the "pool" as in England & Wales.

G Clark asked that if England & Wales agree to an increase to poundage for 2012/13 at less than RPI, would Scotland follow suit. M Cook replied that the Scottish Government had committed to match the English poundage rate.

G Owenson added that, if nothing else changed, this would result in a loss of income.

D Lonsdale asked about business rates incentivisation and pooling of rates income. G Owenson replied that the incentivisation scheme had been announced as part of the Budget and, following agreement with COSLA, would come into force in April 2012. He added that pooling of rates had effectively ceased in April 2011; councils now retain the rates income they collect rather than transfer to the centre for redistribution

In response to a further question by S Mackinnon regarding targets for incentivisation, G Owenson replied that modelling considers a variety of variables and targets will be set for each council that will be appropriate to that council's circumstances.

8.0 AOCB

D Thomson asked K McCormack if the RICS would be consulting members on the consultation on Appeal Panels. K McCormack replied that he had only seen the draft response and had not had sight of the final response.

S. McKinnon asked about publication of appeal statistics. D Thomson replied that an automated system at the Portal was not possible and offered, instead, to post regular updates within the Portal. D Thomson then circulated the current position. [*Action SAA*]

9.0 Date of Next Meeting

To be agreed for a date in third week of May 2012. [*Action AMT, MC and KMC*]