

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEALS

by

BELHAVEN BREWERY CO LTD

in respect of


**(1) PUBLIC HOUSE, HORSESHOE BAR,
121 DEEDES STREET, AIRDRIE**

and

**(2) PUBLIC HOUSE, JACK DANIELS,
1 GLENCAIRN STREET, MOTHERWELL**

Both appeal subjects had been the subject of appeals against the values proposed by the Assessor at the year 2005 Revaluation. Both appeals were heard by a Valuation Appeal Committee on 23 April 2008. The agent for the Appellants in both appeals was Peter Henry, Chartered Surveyor, Edinburgh, the same agent as appeared for the Appellants in the present appeals.

The tone date for the year 2005 Revaluation was 1 April 2003. In both revaluation appeals the Valuation Appeal Committee had accepted the Assessor's calculation of adjusted turnover for the appeal subjects at that date. In relation to the revaluation appeal for 121 Deedes Street, Airdrie, Mr Henry had sought to produce at the hearing accounts in respect of the appeal subjects for the year ending 31 March 2003. The Committee had refused, for the reasons set out in the Committee's Statement of Reasons to allow the accounts to be produced. These accounts had also not been certified or audited. The Committee did not consider this issue, as the Committee had determined to exclude the accounts on the basis of the lateness of their production by Mr Henry. The Committee had accepted the Assessor's adjusted turnover figure, which had included a calculation of hypothetical turnover. In respect of the revaluation appeal for 1 Glencairn Street, Motherwell, Mr Henry had produced a turnover figure for the appeal subjects based on accounts which had not been certified or audited. The accounts had contained no breakdown of the turnover. The Committee was of the view that the Appellants' calculation of the adjusted turnover of the appeal subjects at the tone date had to be treated with caution and preferred the Assessor's approach (paragraph 3 of the Committee's Statement of Reasons). The Committee accepted the Assessor's figure for adjusted turnover which again included a calculation of hypothetical turnover.



Mr Henry sought to pursue the current appeals on the basis of Section 3(4) of the Local Government (Scotland) Act 1975 on the grounds that there was such an error in the entry in the Valuation Roll as is referred to in Section 2(1)(f) of the Act, ie to correct an error of measurement, survey or classification or any clerical or arithmetical error in any entry therein. Had there been such an error the Assessor would have been required in terms of Section 2(1)(f) to alter the Roll to correct the error. The error which Mr Henry claimed to have identified related to the adjusted turnover approved by the Committee in the revaluation appeals. The correct figure for adjusted turnover was, he argued, that contained in the accounts to 31 March 2003. The difference between the adjusted turnover approved by the Committee in the revaluation appeals and the figure which Mr Henry maintained was the correct adjusted turnover was £55,415 and £23,436 respectively.

The Committee accepted the Assessor's argument that it was incompetent to bring these appeals based on the error provisions contained in the 1975 Act. The turnover figure which he claimed was in error was a figure adjudicated on and approved by an earlier Valuation Appeal Committee of this Panel. Mr Henry had taken no appeal to the Lands Valuation Appeal Court in respect of the decisions of the Valuation Appeal Committee in the revaluation appeals. In reality he was seeking to appeal against these decisions using the error provisions of the 1975 Act. This was not competent. The Committee accepted the Assessor's argument that if such an approach was competent, there might be no end to the number of occasions on which Appellants could seek to challenge entries in the Roll which had been settled by way of appeal to the Valuation Appeal Panel.

In support of his argument, Mr Henry referred the Committee to the decision of the Lands Valuation Appeal Court in *Prestonfield House Hotel Co Ltd -v- Assessor for Lothian Region 1982 SC52*. In the view of the Committee this did not assist Mr Henry. The circumstances were completely different and particularly the entry in the Valuation Roll which was being challenged in terms of Section 2(1)(f) had not been the subject of a decision of a Valuation Appeal Committee and had, in fact, never been appealed.

21 December 2009