

**LANARKSHIRE VALUATION
APPEAL PANEL**

**STATEMENT OF REASONS RELATIVE
TO APPEALS**

by

**COATBRIDGE CENTREPOINT (a
firm) and GORDON BAVAIRD**

in respect of public houses

**CENTREPOINT, 146 MAIN STREET,
COATBRIDGE, CENTREPOINT, 246
BRANDON STREET, MOTHERWELL,
CENTREPOINT, 21 MUIR STREET,
MOTHERWELL AND
CENTREPOINT, 101 OLYMPIA
HOUSE, EAST KILBRIDE**

ASSESSOR & ERO

19 NOV 2008

LANARKSHIRE

The four appeals in respect of the above subjects were heard together.

All the appeals proceeded on the basis of an alleged material change of circumstance being the introduction of the ban on smoking in enclosed public spaces in Scotland introduced by the Smoking Health and Social Care (Scotland) Act 2005 which had been passed by the Scottish Parliament on 30th June 2005 and came into force on 26th March 2006.

In considering this approach to the matter, the Committee had regard particularly to the commentary contained in Armour on Valuation for Rating (Fifth Edition) at paragraphs 3-12 to 3-29 inclusive and to the cases and legislation referred to therein including the definition of material change of circumstances contained in Section 20 of the Rating and Valuation (Amendment) (Scotland) Act 1984 and the provisions of Section 3 (4) of the Local Government (Scotland) Act 1975. To be a material change of circumstances, the change must be one which affects the value of the appeal subjects.

The burden of proof was on the appellants to satisfy the Committee that a material change of circumstances had occurred (Armour para 3-19). Although this was accepted by the agent for the appellants he remarked in his closing submission that the Assessor had failed to demonstrate that there was no link between the smoking ban and the fall in turnover which had taken place in relation to all four of the appeal subjects.

This was to misrepresent the legal position, as there was no burden of proof on the Assessor to demonstrate the lack of such a link, it was for the appellants to demonstrate that such a link existed.

Having given careful consideration to all of the evidence and submissions, the Committee concluded that such a link had not been established to the satisfaction of the Committee. The Committee was not satisfied that a material change of circumstances in terms of the legislation had taken place and the Committee refused the appeals.

The net annual values entered in the roll at the year 2005 revaluation for the appeal subjects after resolution of appeals were respectively £175,000, £210,000, £85,500 and £117,000. The values sought by the appellants were £101,000, £132,400, £35,900 and £63,000. The appeal subjects all fell into the classification of public house for valuation purposes, but were, more specifically, nightclub complexes.

The argument for the appellants was that the turnover of each of the appeal subjects had declined in the year April 2006 to March 2007, immediately after introduction of the ban. There was clear evidence of such a reduction. While it was a matter of agreement between the parties that many factors could affect the turnover of licensed premises, the Committee was invited to draw the conclusion from the evidence presented by the appellants that the chief cause of the decline in turnover in that year was the introduction of the smoking ban. In respect of all four premises the decline in turnover had continued in the following year, although the rate of decline varied very significantly from subject to subject, from 1.05% to 20.52%.

The Committee accepted the detailed evidence provided by the Assessor, that the turnover of nightclub complexes like the appeal subjects was already in decline prior to the year 2006/2007 as evidenced both by the analysis of turnover of the four appeal subjects themselves and of the comparison Hamilton Palace complex. There was no evidence of a sudden fall in turnover in 2006 which could clearly be attributed to the introduction of the smoking ban. The Committee gave careful consideration to all of the evidence produced by the appellants. There was simply no persuasive evidence from which the Committee could conclude that the introduction of the smoking ban was the main or chief cause, or even a significant cause, of the decline of turnover of the appeal subjects. On the contrary, the evidence simply pointed to the continuation of an existing trend in falling turnover. In this regard, the Committee did not accept the Appellants' contention that the reduction in turnover had already "bottomed out" before the introduction of the smoking ban. The general trend of reduction in turnover for a number of different unidentified reasons would be a matter appropriate to be dealt with in the next revaluation, not a material change of circumstances.

Letters were produced by the chartered accountant for the appellants and the appellants' bank manager. The authors of these letters were not available to the Committee for the evidence contained in their letters, which particularly in the case of the bank, was expressed as being lacking in specification, to be tested. Particularly it was not possible to put to the author of these letters what evidence they had used to attribute the decline in turnover to the effect of the smoking ban, whether they had considered the background of the trend in falling turnover before the smoking ban was introduced or other matters germane to the opinions expressed in the letters. It was noted that the opinion on the cause of the reduction in turnover expressed by the chartered accountant was that of his clients, rather than his own.

The Committee declined to place any significant weight on the evidence of the miscellany of documents produced by the appellants in their production 2. There was no doubt that when this was initially produced at the hearing the Committee was being asked to find support for the appellants' position within these documents, and particularly within the passages which had been highlighted or outlined. The documents has been, the Committee was told, selected by a friend of one of the appellants as a representative sample of comments about the introduction of the smoking ban. Disappointingly in a case involving the effect of the introduction of the smoking ban in Scotland in 2006, the vast majority of the comments contained in these documents related to the introduction of the smoking ban in England in 2008 and some of them were simply speculating on the anticipated effect of that ban rather than commenting on the effects which it was said to have had. One of the documents related to the introduction of the similar ban in Northern Ireland. Almost all of the documents were produced by the licensed trade. One of the documents was an information handout by Forrest, "the Freedom Organisation for the Right to Enjoy Smoking Tobacco", not an organisation the Committee regarded as being a reliable source of unbiased comment on the topic. At least two of the documents, the extract from the Luminar webpage and the extract from Tiscali News dated 18.01.2008 contained material which was in part mutually contradictory. The members of the Committee were extremely disappointed to find a professional agent producing as formal productions for the Committee's consideration such voluminous material, much of which was totally unrelated to the issue before the Committee, which was the effect of the Scottish smoking ban on appeal subjects in the Lanarkshire Valuation area, and was unhelpful in assisting the Committee in reaching a proper decision.

Various steps had been taken by the appellants by way of creating smoking areas of different types. This was in the view of the Committee an example of the well established principle in relation to licensed premises of a competent licensee, reacting to conditions with a view to maximising profits, as had been done, for example, to comply with disability discrimination provisions. As the Assessor's counsel had

correctly pointed out, the turnover evidence did not establish that the provision or absence of these facilities made any significant difference to turnover.