

Statement of Reasons**Relative to an Appeal****By****Belhaven Brewery Co. Limited****In respect of****Public House, 121 Deedes Street, Airdrie, ML6.**

This was an appeal arising out of the year 2005 Revaluation.

At the outset of the hearing a preliminary matter arose; Mr Peter Henry appeared on behalf of the Appellants and sought to lodge in evidence a set of accounts in respect of the Appeal Subjects for the year ending 31 March, 2003. Mr Stewart on behalf of the Assessor objected to these productions. Mr Stewart submitted that this appeal had first called for hearing before a Committee of the Valuation Appeal Panel on 28th November, 2007. On that occasion, it had been continued to 23rd April, 2008 on the strength of an undertaking given by Mr Henry to produce whatever accounts he could in relation to the Appeal Subjects by 12th February, 2008. Mr Stewart submitted that whilst Mr Henry had produced some information to the Assessor by the 12th February, 2008, he had not produced any relevant account information. The Assessor made further requests for this on 25th March and 1st April, 2008, to no avail. On 10th April, 2008, the Assessor again wrote to Mr Henry advising him that in light of lack of relevant information produced by him and the decision of the Lands Valuation Appeal Court in the case of Belhaven Brewery Company Limited v The Assessor for Highland and Western Isles dated 15th January, 2008 which considered and commented on Mr Henry's conduct in relation to valuation appeals, the Assessor was seeking sight of certified and audited accounts. The accounts which Mr Henry sought to produce were shown to the Assessor on 21st April, 2008 and he was advised at that time that the Assessor was not willing to have regard to them as they were not certified or audited.

Mr Henry accepted that when the appeal had first called on 28th November, 2007, he had given an undertaking to produce as much information as he could. He had produced a profit and loss account for 2001. He stated that the difficulty for him in obtaining the relevant information, being the accounts cover the time date of 1st April, 2003, was that the Appellants were the Landlords of the subjects and they had tenants running it. Mr Henry stated that five weeks prior to the hearing on 23rd April, 2008, he contacted the tenant Mr Marshall, who is no longer operating the Appeal Subjects and requested a copy of the accounts from him. Mr Marshall agreed to provide these. Mr Henry did not receive them and contacted Mr Marshall again who advised that he had sent the accounts and did not have any further copies of them. Mr Henry then contacted Mrs Marshall and eventually secured her agreement to Mr Henry contacting the Accountants in an attempt to obtain the necessary information directly from them. Approximately, two weeks prior to the hearing, he contacted the Accountants, the accountant dealing with it was on holiday, when she returned she required to retrieve

her file from storage and confirm her clients' consent to the release of the information to Mr Henry. The copy accounts were faxed to Mr Henry on 21st April, 2008 and he in turn sent a copy to the Assessor. Mr Henry stated that he had also attempted to obtain relevant information from his own clients; he had contacted them by telephone on a weekly basis to no avail and eventually attended personally at their offices during the week preceding the hearing. He stated that pressure of other business had prevented him obtaining the information sooner. Mr Henry stated that it was not normally practice for accounts in the licensed trade to be certified and audited. It accepted that it could be done but at a cost.

The committee retired to consider both parties' submissions. After carefully consideration of all submissions, the Committee determined that they were not prepared to allow Mr Henry's productions to be admitted into evidence. The appeal had first called on 28th November, 2008 and had been continued to 23rd April, 2008 on the undertaking given by Mr Henry to produce as much information as possible by 12th February, 2008. The Committee were of the view that it must have been in the mind of the Committee which dealt with the requested continuation of the appeal that it was appropriate that the Assessor should be afforded time to consider any information produced and hence the gap in time between the date for production of the information and the date of the continued hearing. By Mr Henry's own admission, it had taken him a period of five weeks to obtain the information and the Committee were of the view that it would have been possible for him to have obtained it prior to 21st April, 2008. They were of the view that it was not reasonable to expect the Assessor to respond to a case based on information which he had not had an opportunity to properly consider. The Committee did not consider the issue of the lack of certification or auditing of the accounts as they determined to exclude them on the basis of the lateness of their production by Mr Henry. It had however been conceded by Mr Stewart on behalf of the Assessor that the lack of certification or auditing of the accounts would not per se render the accounts inadmissible but would be a factor in determining their reliability.

This decision of the Committee was intimated to the parties. Mr Henry determined to press ahead with the appeal.

The scheme of valuation was not in dispute and the parties agreed that the value of the Appeal Subjects was the adopted turnover at 8 $\frac{3}{4}$ % derived from the Scottish Assessor's Practice Note number 17 in respect of the valuation of licensed premises, public houses and licensed restaurants, appendix 1.

There was no evidence in relation to the turnover of the Appeal Subjects at the time date of 1st April, 2003. Accordingly, both parties in valuing the Appeal Subjects had required to calculate a hypothetical turnover in respect of them. The Committee were of the view that the Assessor's approach in this regard was to be preferred. Mr Henry had prepared a valuation which was clearly based on the information in the accounts to 31st March, 2003 and was not therefore admissible. He attempted to give evidence of the adjusted turnover in that valuation arguing that it was his adopted hypothetical turnover which he had calculated by reference to the accounts information in relation to the Appeal Subjects for 2001 and his experience of the trading at the Appeal Subjects. The Committee were of the view that little weight could be attached to this evidence as it was clearly based on the information in the accounts to 31st March, 2003 which the Committee had already determined was not admissible. Further and in

any event, there was no attempt by Mr Henry to show any comparison between what he contended was a hypothetical turnover, with the turnover of comparable subjects at the same date in order to test the turnover being adopted by him. The Committee were of the view that in the absence of information in relation to the turnover at the same date, it was necessary to value the Appeal Subjects by drawing comparisons with other comparable subjects.

The Assessor, on the other hand, had calculated his hypothetical turnover by analysing the final value rate per square metre of eight other public houses which he considered were the closest comparable subjects to the Appeal Subjects based on their reduced areas and their proximity to the Appeal Subjects. The values of all of these comparisons had either been agreed or had not been the subject of any appeal. The Assessor had exercised his judgement to arrive at an appropriate value rate per square metre which he considered fitted with the pattern of evidence available and applied this rate to the reduced area of the Appeal Subjects in order to arrive at an adopted turnover in respect of them.

Accordingly, the Committee upheld the proposed valuation of the Assessor, spoken to at the Hearing, which had been properly explained to the Committee and they dismissed the Appeal.