

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

relative to appeal

by

Belhaven Brewery Company Ltd

in respect of

The Picture House, 39 Main Street, Rutherglen

This is a running roll appeal against a new entry in the valuation roll for a public house. Prior to this date there existed a premises entry with a nominal net annual value of £100 which related to the former public house known as The Linn O'Dee. The subjects have been extended and refurbished. The rateable value proposed by the Assessor is £66,000 with effect from 24th November 2009. The rateable value contended for by the Appellants is £49,700.

There was agreement that the preferred method of valuing these subjects, had the requisite evidence been available, would have been a valuation by the application of percentages of properly evidenced turnover of the appeal subjects as at the tone date of 1st April 2008.

The Committee considered the passage from the judgement of Lord Salveson in the case of *Haggart v Assessor for Leith* 1912 S.C.784 @ 787. This is the passage produced at Armour on Valuation for Rating, Fifth Edition, at para 20-28. The Committee took note of the passage in its entirety but particularly noted the last sentence:- "The Assessor here was of the opinion, and the Valuation Committee have agreed with him, that when he has reliable information as to the drawings of a particular shop, those drawings afford the very best basis upon which to estimate the rental which one year with another a tenant would pay for the premises." The Committee also considered the following passage from the same paragraph of Armour:- "Valuation by the application of percentages to turnover is now the norm and assessors usually devise a scheme for the valuation of all licensed premises in which varying percentages are applied to turnover, the percentages varying with the size of turnover, the type of turnover, eg alcohol or food, and the nature and location of the premises."

The subjects fell to be valued in terms of the Scottish Assessors' Practice Note for the Valuation of Licensed Premises, Public Houses and Licensed Restaurants for the 2005 Revaluation. This required the assessment of the "hypothetical achievable turnover" or "fair maintainable turnover". This is defined as being subject to the assumption that the premises will be operated by a competent publican seeking to maximise profits by responding to normal trading practices and the effects of local competition. The Practice Note also states that where the property is new, or has reopened, the initial turnover may be enhanced for the duration of a "honeymoon" period, and may warrant a downward adjustment, in order to reach the hypothetical achievable level of turnover. The duration of any recognised

honeymoon period should be individually assessed according to the particular circumstances. In the absence of any indication of the anticipated level of turnover, the hypothetical achievable turnover should be estimated by comparison with other similar properties.

Here the only information as to turnover available was the first year's figures for 356 days to 14/11/2010 which had been projected for 365 days. These totalled £1,221,622. The appellants' agent also produced what he described as "moving annual total" figures to the end of June 2011 which he explained included some of the figures in the first year's figures; he did not provide the actual turnover figures. The second set of figures totalled £1,068,618. The "moving annual total" figures were significantly lower than the first year's figures.

The appellants' agent produced a valuation which he had prepared based on the second set of figures. The valuation was arrived at by backdating the second set of figures to the end of March 2003 using the RPI all items index. In doing so, he had used the index figure for June 2011. In his valuation he then deducted an end allowance of 10%, arriving at a net annual value of £62,000. He took the view that his figures could not be relied upon: the early trading figures were volatile and backdating 8 years to the end of March 2003 further increased the problem with the use of these figures. He concluded that the solution was to look to tone of the roll comparisons for the larger pubs in the wider area, select a suitable turnover rate per square meter from his comparisons, and apply the turnover rate to the reduced floor area of the appeal subjects to get to a tone of the roll adjusted turnover figure, to which 9% should be applied in terms of the 2005 Revaluation Scheme. In doing so he had looked at comparisons in various parts of Rutherglen and also in Cambuslang and Blantyre. He produced a list of comparisons and from this he took the turnover rate of the 100 Acre, which was a public house at 360 Curtis Avenue, Rutherglen, having a similar reduced floor area of 317.78 square metres, namely £1,827, and applying this to the reduced floor area of 303 square metres which he had arrived at for the appeal subjects, he reached a figure for net annual value of £49,822 which he rounded down to £49,700.

The Assessor agreed that in the circumstances the subjects should be valued according to the tone of the roll. The main area of dispute was the use of suitable comparisons to determine value. He argued that the appellants' agent's comparisons were in the main determined by size without taking cognizance of the particular location they are situated or layout, design and ambience. The Assessor had chosen as comparisons public houses located within the main thoroughfare of Rutherglen. He produced a map (Assessor's Production 4) which showed where the Assessor's comparisons were situated. He explained that the concept of the appeal subjects had changed from fully wet sales to a mixture of both wet and dry sales with a high percentage, namely 80%, of food to drink. There was no other public house in Rutherglen with such a high percentage. He considered the best available comparison to be Doctor Gorman's, a public house situated at 33 Queen Street, Rutherglen. This was situated nearby and had the largest food to turnover ratio (19.01%) of all the comparison subjects. He acknowledged that the appeal subjects were larger, with a reduced area, by his measurement, of 307.62 sq m compared with 208.26sq m, and that larger premises might be expected to have a smaller final value rate. He argued however that the appeal subjects were in a high profile location whereas Dr Gorman's was less prominently situated off the main thoroughfare. He did not think the 100 Acre public house was a suitable comparison as this was totally different in character from the appeal subjects. It was situated in a local

authority housing estate and comprised a public bar and lounge bar with a function hall upstairs which was closed during the week. The appeal subjects had a much better ambience, being described on its website as a high profile location offering the ideal location for families of all ages to meet, eat and drink. He had offered to meet the appellants' agent to resolve the dispute over the reduced area. The Assessor had carried out a check valuation using the turnover figures for 356 days to 14/11/2010. These had again been projected to 365 days and backdated to 1st April 2003 though the Assessor had adopted the RPI all items figure as at October 2010 being the end date of the relevant accounting period. This brought out a net rateable value of £83,500.

The Committee was well aware from figures it had seen in relation to other public house appeals that turnover figures can fluctuate significantly from year to year. The Committee did not feel that the use of the turnover figures provided by the appellants, projected back using the retail price index amounted to the use of reliable information as to the drawings of the appeal subjects sufficient to form the basis of a valuation by turnover. The parties were correct in these circumstances to seek to value the subjects using the comparative method by reference to the tone of the roll. The Committee took the view that as between the alternative comparisons put forward by the parties the Assessor's comparison was the more suitable. It accepted the Assessor's submission that the 100 Acre public house selected by the appellants as a comparison as being of a similar size was a completely different animal in terms of its location, layout and ambience. The appeal subjects were distinctive in that these were a public house with a significant food element. Whilst this was a new concept in Rutherglen, of all the comparisons put forward, the Assessor's comparison, Dr Gorman's, was the public house most like this. The Committee considered the argument that larger subjects such as the appeal subjects might be expected to have a lower rate per square metre than smaller subjects such as Dr Gorman's but they accepted the Assessor's submission that there was a trade off to be made for the prominent location of the appeal subjects on the main thoroughfare. The Assessor's comparison and choice of final value rate was accordingly to be preferred.

The Committee considered both the check valuation performed by the Assessor and the valuation carried out by the appellants' agent to be of limited value because of the requirement for extensive backdating but agreed with the Assessor that the appellants' agent had in effect discounted his valuation twice by using lower figures which had not been properly explained and then allowing an additional end allowance.

The Committee accordingly supported the value contended for by the Assessor and dismissed the appeal.

29 September 2011