

STATEMENT OF REASONS

Relative to an appeal

By

BELHAVEN BREWERY CO. LTD

In respect of

Entertainment Centre,
1-3 Princes Mall, East Kilbride

This appeal concerned a 2010 revaluation appeal in relation to an entertainment centre in respect of which the Appellants had become the tenants on 19th October, 2009.

The appeal subjects were a unum quid entry in the valuation roll comprising six units; a laser tag unit and two nightclubs located on the first floor of the subjects and two public houses and a coffee shop which were located on the ground floor of the subjects.

The valuations of the nightclubs had been in issue but the valuations placed upon them by the Assessor were conceded by the appellants during the course of the hearing. The parties agreed that a nominal value of £100 in respect of the coffee shop was appropriate as this was in an unfinished condition.

There were three issues in dispute between the parties. Firstly, the appellants challenged the unum quid entry and asserted that the laser tag unit and the two nightclubs should form one entry in the valuation roll; the public house known as the Exchange should form a separate entry and the other public house known as the ibar should form a unum quid entry along with the coffee shop. Whilst the Assessor conceded that it was appropriate that the laser tag unit

and nightclubs should form one entry in the roll, he contended that the two public houses and the coffee shop should be entered in the valuation roll as a unum quid.

The appellants had been guarantors on behalf of the previous tenants in the lease in respect of the appeal subjects. The appellants had made a significant capital investment in the appeal subjects. The appellants had become the tenants of the appeal subjects when the previous tenants had ceased to trade. They were attempting to protect their investment and had determined to operate the Exchange public house. The bar was not operating and the coffee shop had not been completed. The appellants sought to separate the Exchange public house from the entry in respect of the bar and coffee shop because of the difficult trading circumstances in which they found themselves. Mr Henry conceded that all three units were connected and that there was internal communication between each of them.

The Assessor contended that a unum quid entry in respect of the two public houses and the coffee shop was appropriate as they had a number of common factors. The appellants were the tenants in respect of all of the units. They shared a communal kitchen, staff toilets, an administration office, the same supply of utilities. In addition, the public houses shared a communal spirit store, cellar and beer pipes leading from the cellar to the bar serving area in each of them. There was internal access between each of the units.

In determining this issue, the Committee was of the view that it was necessary to identify the unit of occupation and that paramount consideration required to be given to the geographical situation of the units. The effect on the value of the appeal subjects of a unum quid entry and the particular trading difficulties of the appellants were not relevant considerations. The units were adjoining and had many communal features. There was internal communication between all of them. The appellants were the tenants in respect of all of them. The committee were of the view that, in the particular circumstances, the subjects were not capable of being separately let and accordingly, it was appropriate for them to be form a unum quid entry in the valuation roll.

Secondly, there was dispute with regard to the valuation of the laser tag unit. The total reduced area of this unit was agreed at 705 square metres. The dispute centred on the rate per square

metre to be applied to the unit. The Appellants contended for a rate per square metre of £60; in contrast the Assessor argued for a rate of £80. Both parties used an entertainment centre at 60 Hamilton Road, Motherwell as a comparison. Those subjects had a net annual value in the 2005 valuation roll of £30,000. Mr Henry had calculated a rate per square metre of £31.71; he did not provide details of his reduced area for these subjects. The Assessor stated that the reduced area of these subjects was 772 square metres with a net annual value of £30,000 producing a rate per square metre of £38.86. The Assessor explained that this comparison had been valued on the contractors' principle and he considered that that explained the particularly low rate per square metre which the analysis of the valuation of those subjects had produced. The appellants also sought to compare the laser tag unit with one at 46A Portobello Road, Edinburgh. These subjects had a net annual value in the 2005 valuation roll of £33,400 and a reduced area of 584.92 producing a rate per square metre of £60. The Assessor asserted and the appellants conceded that these subjects had in fact been valued as a shop and were described as such in the valuation roll. Further, during the course of negotiations with Mr Henry, the Assessor had made reference to a laser tag unit located next to a bowling alley at 17 Miller Road, Ayr. This had a rate per square metre of £80. The Assessor had not sought to rely on this as a comparison at the hearing but passing reference was made to it. The Assessor asserted that whilst it was permissible to look to comparisons outwith the valuation area, regard should be had in the first instance to valid comparison evidence within the valuation area. The Assessor had valued the laser tag unit having identified a tone of the roll rate with regard to the comparison at 60 Hamilton Road, Motherwell but adjusted to take account of the superiority of the laser tag unit which formed part of the appeal subjects. It was larger, newly constructed and in a superior location being located as it was in East Kilbride town centre within an entertainment centre. Accordingly, it merited the rate of £80 applied to it by him.

The Committee was of the view that where there was evidence from within the valuation area, it was appropriate to have regard to it as opposed to valuation evidence of similar subjects from other valuation areas. They accepted the superiority of this unit compared with the comparison at 60 Hamilton Road, Motherwell. It appeared that both parties were of the view that this unit was superior to that comparison as both had contended for a rate higher than

applied to the comparison property. The Committee felt that having regard to the size of the unit; that the fact that it was newly constructed and had a better location than the comparison property, a rate of £80 per square metre was appropriate. The valuation of this unit at £56,400 had been properly assessed by the Assessor.

Thirdly, the parties disputed the method of the valuation of the public houses whether entered in the roll as a unum quid or separately. In relation to the Exchange public house, the Appellants had taken the actual turnover of the subjects as at June, 2011 and had backdated using the RPI all items to 1st April, 2003 to calculate the adjusted turnover as at that date before then effecting a valuation in term of the scheme of valuation as set out in the Scottish Assessors' practice note 17 in respect of Public Houses. This had produced a valuation of £41,638 rounded to £41,600. In relation to the ibar, the appellants contended that in the event that it was entered in the valuation roll as a unum quid with the coffee shop only, it should have net annual value of £20,000. They adduced no evidence in support of this figure. In the event that it was to be valued as part of a unum quid entry with the Exchange public house and coffee shop, it should attract a nominal valuation of £100 as the appellants were not trading from it. They asserted that if an operator was found for this unit then this nominal valuation could be revised by the Assessor.

The Assessor, in contrast, had taken a rate per square metre identified from the tone of the roll and applied this to the combined areas of the public houses of 528.12 square metres comprising 338 square metres in respect of the Exchange and 190.12 square metres in respect of the ibar. The parties did not agree on the area of the Exchange public house. The appellants had measured it as 332 square metres; the Assessor at 338 square metres. In order to support his rate, the Assessor relied on three comparisons; Hudsons Bar, 16 Cornwall Way, the Tower Bar, 5 Southgate and Shenanigans Bar, 42 The Olympia. These comparisons had respective final value rates of £3560, £3,857 and £1837. The rate in respect of the subjects at 42 The Olympia (Shenanigans) appeared low but the Assessor considered that this was explained by the fact that it was located on the first floor unlike the others which were on the ground floor. The valuation in respect of the comparisons had been agreed with professional agents. The Assessor had applied a rate of £2,850 to the reduced area of 528.12 square metres producing

an adopted turnover of £1,505,142 to which was applied the rate of 9% in terms of the scheme of valuation, producing a valuation of £135,463 rounded down to £135,000.

The Committee preferred the method of valuation adopted by the Assessor. The backdated turnover figures used by the appellants in their calculation were eight years post the tone date of 1st April, 2003 and consequently were considered by the Committee to be too remote to be reliable. This method would have been permissible had there been no other available evidence. However, this was not the situation in the present case. There were settled valuations in respect of valid comparisons which had established the tone of the roll. It was appropriate to value in this manner. The rate applied by the Assessor having regard to the final value rates of the comparisons was reasonable. The Committee rejected the appellants suggestion that the value of the ibar should be restricted to a nominal value as the appellants were not trading from it. The ibar required to be valued having regard to the statutory hypothesis; this unit had operated and was capable of operation as a public house.

The Committee supported the entries and respective valuations contended for by the Assessor and they dismissed the appeal.