

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

BRIAN CURLEY

in respect of

PUBLIC HOUSE, BARNHILL TAVERN, 113

BAR DYKES ROAD, BLANTYRE

This is an appeal arising out of the year 2010 Revaluation.

The assessor contended for a net annual value and rateable value of £12,200. The appellant contended for a figure of £12,000.

The assessor had valued the subjects by way of a straightforward application of the Scottish Assessor's Association Revaluation 2010 Practice Note 17 "Valuation of Licensed Premises". The assessor had taken the adjusted turnover of the subjects for the year to 5th April 2008 based on the figures shown in the Return of Information for the 2010 Revaluation completed by the then tenant, namely £148,434, to which had been applied a percentage of 8.25%, which was the figure derived from Appendix 1 of the Practice Note. This produced a figure of £12,246 rounded down to £12,200. The rent for the premises fixed on 19th October 2008 was £12,634, which was marginally higher. The assessor submitted this was a reasonable valuation in the light of the available comparisons for other licensed premises in Blantyre shown in his Production 3.

Mr Curley's main argument was that in the assessor's written statement of the grounds on which the entry in the valuation roll is arrived at, the assessor had stated in general that in arriving at the net annual value regard has been had to the rentals and values prevailing for similar subjects and **in particular to the size, character and situation of the subjects of appeal.**

He drew to the Committee's attention that the Barnhill Tavern, known locally as the Hewlitt's Nest, was an old drovers' tavern. It was the most rural pub in Blantyre with fields to the front. There was no pavement. It was the smallest pub in Blantyre. It had no kitchen and the bar held 20 people. He had purchased the Barnhill Tavern in December 2009. He had spent £40,000 putting in TV and a new central heating system. Turnover had since declined by 30%. He was an experienced publican but basically the customer base was not there and there and he couldn't improve the business. Trade in the whole village had dropped and three licensed premises in Blantyre Main Street had closed in the last three years. The rateable value also set the charges for water and Sky television. The significance of

the £200 reduction in rates which he was seeking was that he would then qualify for relief under the Small Business Bonus Scheme for the year 2012/2013 at the rate of 50% which would benefit himself and his tenant. Without this the pub would definitely close. He argued that if you looked at the 2008 turnover figures and then took into account the size, character and situation of the appeal subjects, this was enough for a deduction of £200 to be made from the rateable value.

In considering its approach to the matter, 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 reproduced 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 passage from the judgement of Lord Justice Clerk Gill in the case of *Assessor v Lothian v Belhaven Brewery Company Ltd.* 2008 S.L.T. 1126 at paragraph 8, reproduced in the same paragraph of *Armour*:-

“For over a century, turnover has been found to be the most reliable basis on which to assess the annual value of licensed premises (cf. *Haggart v Assessor for Leith*, 1912 S.C.784). In modern times, turnover, adjusted in certain respects, has been the basis of successive revaluation schemes produced by the SAA. Since licensed premises differ in their locational advantages, attractiveness and character and in the trading policies of the licensees, it is generally recognised by valuers, and was recognised by the Committee in this case, that turnover per square meter is not a reliable guide to annual value. The essence of the SAA scheme is that it is based on actual turnover in the survey year. Like all such schemes it is merely a means to an end, namely that of ascertaining “the rent at which the lands and heritages might reasonably be expected to be let from year to year” on the statutory terms, which I need not repeat (*Valuation and Rating (Scotland) Act 1956*, s6(8); *UKAE v Assessor for Highland*, 2007 S.C. 252).”

The same paragraph in *Armour* concludes:- “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. Such a system accords well with the rental market where the turnover premises are capable of generating is a prime factor considered in setting rents.”

The subjects accordingly fell to be valued in terms of the Scottish Assessors’ Practice Note 17 for the Valuation of Licensed Premises for the 2010 Revaluation. Paragraph 2.0 of the Practice Note sets out the basis of valuation:-

“The subjects covered by the Practice Note should be valued by the application of the comparative principle, using the percentages of turnover contained in Appendix 1, which should be applied to the adjusted “hypothetical achievable turnover” which excludes VAT.

Licensed premises differ in their locational advantages, attractiveness, and character, and are affected by the trading policies of licensees, along with being subject to the vagaries of current popular trends (circuits).

It should be recognised by valuers that the essence of the valuation scheme is that it is based on the hypothetical achievable turnover. The scheme is designed to enable valuers to ascertain “the rent at which the lands and heritages might reasonably be expected to be let from year to year “on the statutory terms, by identifying a relationship between rents and turnovers which can then be used to arrive at Net Annual Value.

The figure of turnover adopted should represent the annual amount considered to be the hypothetical achievable level in the year to 1st April 2008, having regard to the physical nature of the property and its location as at 1st January 2010, on the assumption that the premises will be operated by a competent operator seeking to maximise profits. The statutory hypothesis assumes that the letting takes place in an open market, which includes prospective tenants who would recognise past and /or current good practices and operating techniques, and seek at least to replicate them.”

Paragraph 5.1 of the Practice Note under the heading of “Recommended Approach to Valuation” states that it should be borne in mind that while actual turnover figures will have been provided and these are, in many cases, likely to be adopted in order to arrive at a valuation, it is nevertheless the hypothetical achievable turnover which should be used if the actual figures are considered not to be representative of the hypothetical situation.

The function of the Committee is to ensure that the valuation is correct having regard to the relevant facts and valuation law and practice. If the valuation is correct in law, then the Committee cannot alter it. They cannot not take account of any sympathy they may feel for the ratepayer.

The Committee noted that the assessor had valued the subjects in the manner set out in the Practice Note. He had done so using the actual turnover figures provided in the Return of Information for the year to 5th April 2008 rather than in the management accounts, which meant that the deduction made for entertainment costs was higher. This was in the appellant’s favour. In this case, the actual turnover figures provided had been adopted as the hypothetical achievable turnover in order to arrive at the valuation. Based on the evidence, the Committee could see no reason why the actual figures would not be representative of the hypothetical situation. The factors to which the appellant had referred would be reflected in the turnover of the appeal subjects. To make a further allowance for these would result in an exercise of double counting.

The appellant’s argument was in essence that in arriving at his valuation the assessor had not had regard or at least sufficient regard to the size, character and situation of the particular subjects of appeal. However, these and other factors relating to the particular premises are reflected in the actual turnover in the survey year, to which varying percentages are applied in accordance with the SAA scheme. As stated in the SAA Practice Note, the purpose of the scheme is to enable valuers to ascertain “the rent at which the lands and heritages might reasonably be expected to be let from year to year” on the statutory terms, by identifying a relationship between rents and turnovers which can then be used to arrive at net annual value. In terms of Appendix 1 to the Practice Note, the percentages are to apply in the absence of local evidence which is sufficient to merit a variation. Note 2 states that the percentages may be reduced by

up to 0.5% to account for unique elements associated with the particular property which are not reflected in the turnover. In the Committee's opinion, there were no such elements in the present case. The Committee were told that there had been a subsequent decline in turnover, but this had taken place after the year to 1st April 2008; and that other pubs nearby had closed which would have affected the physical circumstances, but again this had taken place since the relevant date for this purpose, namely 1st January 2010. The appellant frankly stated that the alternate valuation put forward by him would have enabled him to claim rates relief under the Small Business Bonus Scheme, without which he submitted the pub would definitely close, but the Committee could not alter the valuation to take account of any sympathy it may feel for the ratepayer.

The Committee were satisfied the assessor had correctly valued the appeal subjects and affirmed the assessor's valuation of £12,200.

22 June 2012