

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

THOMAS SANDERSON

in respect of

PUBLIC HOUSE, THE GLASSFORD INN,

3 JACKSON STEET, GLASSFORD

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

The assessor contended for a net annual value and rateable value of £26,000. The appellant contended for a figure of £13,000.

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 5<sup>th</sup> April 2008 based on the figures shown in the Return of Information for the 2010 Revaluation completed by the appellant, namely £297,355 to which had been applied a percentage of 8.75%, which was the figure derived from Appendix 1 of the Practice Note. This produced a figure of £26,019 rounded down to £26,000. In order to arrive at the adjusted turnover, the assessor had applied the percentages set out in the Practice Note to the various types of turnover. Income from liquor on sales had been taken at 100%. Income from cross-counter tobacco sales had been taken at 20%. In relation to income from food sales, the first £40,000 was excluded, the next £40,000 taken at 75%, and the income over £100,000 taken at 100%. Net machine income had been taken at 100% because it was less than 3% of total turnover. No deduction had been made for entertainment costs because these were less than 3% of total turnover. The assessor submitted this was a reasonable valuation in the light of the available comparisons for other licensed premises shown in his Production 2.

The appellant, Thomas Sanderson, appeared with his son Stephen Sanderson and his accountant, Alan Ritchie. He argued that the appeal subjects should be compared with other single operator pubs in country villages. The nearest were The Chapelton Inn, Chapelton, the Southfield Hotel, Blackwood, which was closed now, and the Bully Inn, Quarter, all of which he said had been assessed at a level where they paid no rates under the Small Business Bonus Scheme. He was paying into a black hole created by the rates relief scheme. The assessment of £26,000 was a piece of nonsense. There was a formula for calculating this based on turnover but his turnover went up when more tax was put

on the product. His rates had gone up in successive steps. His business was in jeopardy. His was the most expensive drink in the area. He could not compete with other local pubs whilst his rates were at that level.

If he could get a better location, he would swop. Strathaven had 8,000 inhabitants, Blackwood 3,930, Quarter 830, Chapelton 760 and Glassford had 670. All Glassford had was a pillar box, a shop and a school. The appeal subjects were being compared with places where the footfall was greater. They were at a disadvantage when compared with other main road establishments such as in Strathaven. He was being penalized for being successful. He had cut down to save on outgoings, but couldn't do anything with the rates.

Mr Ritchie submitted that assessment was based on comparative treatment. He had gone through the Assessor's response and understood the calculation. He was concerned that three of the five comparisons were based on estimates which were fairly historic and these had been made in circumstances where the assessor was not aware of food sales and there was no information to show breakdown of turnover.

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 1<sup>st</sup> April 2008, having regard to the physical nature of the property and its location as at 1<sup>st</sup> 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. 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 his business. The extent to which the location of the appeal subjects in a small village away from the main road had an effect upon its trade would be reflected in its turnover. To make a further allowance for this would result in an exercise of double counting.

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 appellant argued that he was being penalized for his success, but by law and practice the method of valuation for licensed premises was by the application of percentages to turnover and the statutory hypothesis assumed that the premises will be operated by a competent operator seeking to maximise profits.

The Committee understood the point which the appellant was making with regard to the Small Business Bonus Scheme, but the Committee could not alter the valuation to take account of any sympathy it may feel for the ratepayer.

The Committee did agree with the appellant that the assessor’s comparisons were of limited value in circumstances where only two of the five were based on actual turnover and of those two only one was a similar operation in having more food sales than alcohol sales. However these had been put forward only as a check and had no bearing on the way in which the appeal subjects had been assessed.

The Committee were satisfied the assessor had correctly valued the appeal subjects and affirmed the assessor’s valuation of £26,000. The appeal was accordingly dismissed

3 July 2012