

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

Belhaven Brewery Co Ltd

in respect of

Hotel Capo's, 800 Old Edinburgh Road, Bellshill

This was a 2010 Revaluation appeal which called for hearing at a meeting of a committee of Lanarkshire Valuation Appeal Panel on 21st November 2012. Peter Henry appeared for the Appellants and David Coombe for the Assessor. The rateable value and net rateable value proposed by the Assessor was £32,750. The value contended for by the Appellants was £23,900.

The dispute between the parties turned round a particular issue. The appeal subjects had been valued by the Assessor using the Scottish Assessors' Association Commercial Properties Committee Practice Note 17 entitled "Valuation of Licensed Premises". Mr Henry contended that they should have been valued using Practice Note 16 entitled "Valuation of Hotels."

The Committee began by considering the status of Practice Notes. The commentary on the Scottish Assessors' Association with which the Committee were familiar reads as follows:-

"Although each one of the Assessors is an independent statutory official, they work through the Scottish Assessors' Association (SAA) to ensure, amongst other things, consistency of approach and practice in the administration of the Valuation Acts. One way of ensuring this is by working together to produce valuation guidance reports, known as "Practice Notes".

Prepared by Standing Committees and approved by the SAA for the 2010 rating revaluation, the Practice Notes available here deal with the valuation of Commercial, Industrial, Miscellaneous and Public Buildings subjects as well as giving guidance on Basic Principles of valuation."

Armour at paragraph 19-32 states as follows:-

"In the case of some particular classes of lands and heritages a system and level of valuation are sometimes made the subject of an understanding or agreement between the Scottish Assessor's Association and advisers or representatives of the principal ratepayers concerned with such lands and heritages. Understandings and agreements of this kind have been welcomed by the Lands Valuation Appeal Court as a proper step in the direction of uniformity. They are

however to be treated with caution and may not all deserve equal consideration. Lord Avonside has said (*Assessor for Ayrshire -v- R W Cairns Ltd* [1967] R.A. 222 at p231) that :-

“In every case it is for the Committee to reach its own conclusions and to decide what weight, if any, is to be attached to evidence derived from agreements and, particularly, whether any weight should be given to those which lack explanation of basis where such clarification would seem desirable.”

Thus though Practice Notes are welcomed as a proper step in the direction of uniformity, a Committee is not bound to follow the terms of a particular Practice Note, and must consider whether any weight should be given to those which lack explanation of basis where such clarification would seem desirable. In the present case, the parties each considered that the appeal subjects should be valued using a different Practice Note but with one exception dealt with later there was no argument that any other approach should be adopted. The Committee noted that the explanation of basis for each was clearly set out in the respective Practice Notes under the heading “Basis of Valuation.”

Practice Note 16 is headed “Valuation of Hotels”. It states in the introduction at paragraph 1.1 that “This Practice Note deals with the valuation of all classes of Hotels and Country Inns.” It is however clear from the terms of the Practice Note that not all subjects which are described as hotels fall to be valued using this. It goes on to provide in paragraph 1.2 that “Lodge hotels with no integral bar and restaurant , lodge hotels with adjacent public house, licensed restaurant or roadside restaurant , aparthotels with a low service provision and blocks of serviced apartments should be valued in terms of Practice Note 16A.” It then provides under the heading “7 Inns and Hotels with Low Accomodation Turnover”:-

“7.1 Where it is considered that the premises have more in common with a public house than with a hotel, having regard to their character and to the type of business conducted, they may be valued by reference to Commercial Properties Committee Practice Note 17, Valuation of Licensed Premises.”

Practice Note 17 is headed “Valuation of Licensed Premises”. It states in the introduction at paragraph 1.1 under the heading “Use of Practice Note” that “This Practice Note should be used for the valuation of licensed premises with the character of Public Houses, Licensed Restaurants and Nightclubs.”

It accordingly appeared to the Committee that which Practice Note should be used in the present case turned on whether or not the appeal subjects had more in common with a public house than with a hotel, having regard their character and to the type of business conducted.

Both parties were also in agreement about the valuation principles which applied, though again there was a dispute between the parties as to the results of applying these. These were as set out by the Lord Justice Clerk in the case of *Glasgow City Assessor -v- Monti Marino (Glasgow) Limited* [2012] CSIH 55:-

“It has been established for half a century that lands and heritages must be valued according to their actual physical state and according to the use to which they are presently devoted, without regard to the potential for physical

adaptation, provided that such use is beneficial and is not subject to arbitrary restrictions (*Ass for Moray and Nairn v Elgin High Church* 1962 SC 524). For example, shop premises in use as office and storage space must be valued according to the rent that premises used for offices and storage would attract (*Ass for County of Stirling v Myles and Binnie* 1962 SC 530). The question whether the subjects should have been entered in the Roll as a shop or as a restaurant or cafe is, in my view, pre-eminently a question of fact for the Committee. In recent years, this court has affirmed this approach in several cases; for example, on the question whether lands and heritages were a hotel or a guest house (*Woodrow v Lothian Region Ass* 2002 SC530) or were a public house or a restaurant (*Fishers Bistro v Lothian Ass* 2007 SC 671). The Lands Tribunal took a similar approach in *Spudlike Group Ltd -v- Ass for Tayside JB [2002] RA 91*".

Both parties cited these principles, which the Committee agreed undoubtedly applied, in favour of their own position.

The Committee carefully considered the evidence and submissions presented by the parties. It found as follows.

The appeal subjects comprise a lounge bar and restaurant on the ground floor with six letting bedrooms (2 en suite) on the upper floor. The bar accommodated 40 persons, and the restaurant had 60 covers. There was also a beer garden which could accommodate 40 people. There was car parking for 40 cars. The occupation capacity of the letting bedrooms was 50% throughout the year. There were 27 members of staff employed in the business of which the equivalent of 1 full time member was employed dealing with the bedrooms although guests who used the accommodation also used the restaurant and lounge bar. There was no hotel reception, guests were given a key for the door to the upper floor where the accommodation was situated, and there was no staff member present at the premises during the night. The turnover was primarily from liquor sales and food. The income from accommodation was very small in comparison. On Friday and Saturday the appeal subjects operated almost like a night club: there was a DJ in the lounge bar, this spilled out into the restaurant after 9:00pm when food ceased to be served, the premises were very busy after the pubs closed and were open until 3am.

In the view of the Committee, the picture presented was such that there was no doubt that the appeal subjects had more in common with a public house than with a hotel, and that Practice Note 17 which was to be used for the valuation of public houses, licensed restaurants and nightclubs was entirely appropriate.

The Assessor put forward as comparisons Chaplin's Hotel, 43 Hamilton Road, Bellshill, Angel's Hotel, 114 Main Street, Uddingston and the Buck's Head Hotel, 16 Townhead Street, Strathaven. The Committee felt that these were not dissimilar in configuration and appearance. They were similar in that the accommodation turnover as a percentage of total turnover for the appeal subjects was 4.26%, and the figures for the comparison subjects were 3.33%, 0.98% and 3.86% respectively. The Committee agreed these were appropriate comparisons and considered it to be significant that these had been valued on the basis of Practice Note 17 and those valuations had been agreed by other professional agents.

The Committee noted the Appellants' submission that the actual use of the appeal subjects was as a hotel. They did not agree. The appeal subjects were called a hotel and had formerly operated under a hotel licence but the Committee considered they had more in common with a public house rather than a hotel. They also noted the Appellants' submission that the best evidence of the rateable value of the appeal subjects was the rental passing at the datum point, namely £19,681, but did not accept this was a correct statement of the law. The rent may be an adminicle of relevant evidence, but cannot be the sole basis and starting point (Armour, paragraph 19-07). They also noted the Appellants' submission that that the valuation was excessive because the 2005 rateable value had been £20,250 and that the rateable value of £32,750 proposed for 2010 represented a 62% increase, but did not consider comparison with what has gone before to be a relevant ground of appeal.

The Committee accordingly agreed that the appeal subjects had been correctly valued by the Assessor on the basis of Practice Note 17. The Assessor had also satisfactorily explained how he had arrived at his valuation on this basis, as set out in his Production 4.

The Committee accordingly refused the appeal.

29 November 2012