

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS  
RELATIVE TO APPEAL

by

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in respect of

HOTEL AND LICENSED RESTAURANT, 166  
MAIN STREET, COATBRIDGE ML5 3BP (2)

This was an appeal arising out of the 2010 Revaluation, heard on 14 June 2013. Mr John Mullan represented the Appellant. Mr Brian Gill, Advocate, appeared for the Assessor.

There were two related appeals concerning subjects at 166 Main Street, Coatbridge, the first pertaining to the accommodation, and the second pertaining to the accommodation and the licensed restaurant.

The subjects comprise a 4 storey purpose built facility consisting of 45 bedrooms, licensed restaurant with 86 covers and car parking overlooking Main Street, Coatbridge off a roundabout at its junction with South Circular Road. They were constructed and entered the valuation roll in 2000. The lower ground floor consists of a reception with bedroom accommodation and lift and stair access to the other floors, the ground floor consists of a bar/restaurant with kitchen facilities, and the first and second floors consist of bedroom accommodation. The lower ground floor is accessed from the car park off Exchange Place, and the ground floor is accessed from Main Street.

The background to matters is as follows. From 2000 to 2010 the subjects were entered in the Valuation Roll as a single unit. At the 2010 Revaluation, a *unum quid* valuation was entered in the roll, however the accommodation and bar/restaurant were made separate entries with effect from 1 April 2010 at the Appellant's request and on the basis of evidence provided by the Appellant. The individual values were estimated as no turnover was provided, and both entries were appealed. The bar/restaurant then became a "premises" entry at a nominal value of £100 from 5 May until 31 July 2012 during the course of renovation/redevelopment.

An appeal concerning the rateable value of the accommodation as at 1 April 2010 had been heard first. The parties had agreed that the evidence heard in that appeal should be treated as evidence in the present appeal. The rateable value applied to the bar/restaurant at that date was agreed on appeal, based on a turnover of £605,000. The present appeal was a material change appeal but the parties were agreed that a material change had taken place and the issue concerned the *unum quid* value combining the hotel and licensed restaurant as one with effect from 1<sup>st</sup> August 2012. The catering and liquor turnover of £605,000 agreed on appeal was adopted by both parties.

The parties both considered that the subjects should be valued using SAA Practice Note 16, "Valuation of Hotels." The issue was whether they should be valued as a Lower Service Provision Budget Hotel as the Assessor contended, or as a Class 2 hotel as the Appellants contended. The rateable value now being contended for by the Assessor was £97,000, not figure of £91,500 referred to by Counsel for the Assessor in his opening remarks in the first appeal. The Appellant contended for a figure of £70,000.

In considering its approach to the matter, the Committee had regard particularly to:-

- the commentary contained in Armour, paragraph 20-28 and to the cases referred to therein: turnover, adjusted in certain respects, has been the basis of successive revaluation schemes produced by the SAA; such schemes are 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 contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956.
- the opinion of the Lord President in the case of Scottish Borders Council v Stobo Castle Health Spa Ltd 2013 S.L.T. 229: all turnover based valuations rest on the assumption that the actual turnover of the premises would be the basis on which an open market offer of rent would be calculated.
- the opinion of the Lord President in the case of Suburban Taverns v Glasgow Assessor 2008 S.C. 298: the appellant's valuer has taken the turnover in the year after the tone date as being conclusive in the assessment of NAV because, in his view, it proves that the turnover levels before the tone date were not maintainable; in essence, that is a valuation method based on the sure and certain knowledge of hindsight; the statutory hypothesis does not permit the valuer to disregard the evidence of turnover in the year immediately before the valuation date and to base his assessment on the evidence of turnover in a later year.
- the opinion of the Lord President in the case of Assessor for Fife v Mercat Kirkcaldy Ltd and Others [2012] CSIH 67: it is essential to any revaluation that there should be one fixed date at which all valuations are assessed. It would undermine the whole structure of the legislation if individual lands and heritages were to be valued as at some date later than the tone date simply because the values had fallen since then.

The first issue was that of the correct classification. The Assessor explained that his initial approach to arrive at a *unum quid* value was to aggregate the restaurant value with the hotel value, which was the reverse of the process followed in relation to the Red Deer at Auchenkilns where the owners of the property had let out the lodge hotel to a separate operator. However the evidence presented pointed towards a more integrated operation with a different level of service and standards than that covered by Practice Note 16A. He had accordingly adopted the classification within Practice Note 16 "Valuation of Hotels" of Lower Service Provision Budget Hotel. The Committee agreed with this

and considered that this was more appropriate than the classification of Class 2 put forward by the Appellant. The appeal subjects were now operated by a single entity as a stand alone lodge hotel, with refurbished integral bar/restaurant facilities. They still provided a standard room at a reasonable price on a room only basis paid for on arrival with breakfast at an extra cost. The facilities were basic and differed from those a normal hotel would provide. They were aimed primarily at the short stay room only market. There was no portering, no room service facility, no communal residents lounge or separate bar or dining area other than in the adjoining licensed restaurant. The classification was stated to include lodges with integral bar and/or restaurant facilities and the property fitted this description. This appeared to the Committee to be the appropriate classification in the circumstances of the present case. The Committee accepted the Assessor's evidence that this classification was intended to cover lodges with integral facilities no matter who the occupier was. The Committee considered the Appellant's argument that if the property were valued on this basis, it would be the only non-branded hotel of this type in the country, but it agreed with the Assessor that it was the property which was to be valued, not the operator.

The next issue was that of the correct turnover to be adopted. The Committee agreed with the analysis of the law put forward by Counsel for the Assessor. It was for the Assessor to justify his valuation by reference to the statutory hypothesis. The adoption of the appropriate SAA scheme was a means to this end. Every method of valuation for rating is a means to a specific end, namely that of establishing what the annual rent of the subjects would be if they were let on the open market at the valuation date on the terms set out in S6(8) of the 1956 Act. The statutory hypothesis does not permit the valuer to disregard the evidence of turnover in the year immediately before the valuation date and to base his assessment on the turnover in a later year. That would be a valuation method based on the sure and certain knowledge of hindsight. What was relevant was the hypothetical achievable turnover at the tone date.

The Committee were bound to agree with Counsel for the Assessor that the approach taken by Mr Dormer who had conducted the appeal on the first day was fundamentally flawed. He appeared to be unaware of the law on valuation for rating and the relevant case law. He did not know of the decisions in the economic downturn cases to the effect that post tone changes could not be taken into account, and he had adopted the approach taken in the Suburban Taverns case, where an attempt had been made to point to a trend after the tone date, which was not permissible.

Mr Dormer had argued for a fair maintainable turnover of £295,409 which appeared to be based on the average room sales over the years from 05/06 to 10/11 less an assumed breakfast income, giving a rateable value using Practice Note 16 of £28,000. Mr Mullan had adopted a turnover figure of £370,000, which he considered to be the average of the turnover figures for the years 05/06, 06/07 and 07/08, from which he had deducted 10% for economic downturn, which was he was not entitled in law to do, arriving at a figure of £333,000. The Assessor had adopted a turnover figure of £375,597, being the turnover figure from the accounts for the nearest accounting year to tone, which he considered was the best indicator of the hypothetical achievable turnover at that date. Given the information provided by the Appellant that very few customers have breakfast, the Assessor had treated any income arising from this in line

with paragraph 2.7.3 of Practice Note 16A as minimal income to be included with the accommodation income at 100%. In the absence of the actual sales figures for the period from 1<sup>st</sup> April 2006 to 11<sup>th</sup> June 2006, which was not made available to the Committee, the Committee adopted the turnover figure of £375,597 put forward by the Assessor and preferred the Assessor's approach which it considered to be soundly based in law.

The Committee considered that the Assessor's approach was justified on the evidence, he had used the correct classification, and had been correct to adopt the hypothetical achievable turnover. The percentage to be applied to Lower Service Provision Budget Hotels was 11.00 – 15.00%. The Assessor had selected the mid-range figure of 13% which the Committee considered to be appropriate in terms of the Practice Note. The resulting calculation was as set out in Assessor's Production 4:-

Accommodation	£375,597 @ 13% = £48,828
Licensed Restaurant	£605,086 @ 8% = <u>£48,407</u>
Total	£97,235
Say	NAV/RV £97,000 wef 1 <sup>st</sup> August 2012.

Having carefully considered the evidence led and the submissions made, the Committee reached the view that the Assessor had properly explained his approach and justified the valuation which he now proposed. There was no persuasive challenge to the Assessor's approach.

The Committee accordingly dismissed the appeal.

24 July 2013