

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

TRACEY TAVERNS LTD

in respect of

THE OLD ORIGINAL, 283 GLASGOW ROAD,
BLANTYRE G72 0YS

This was a new occupier appeal made under S3(2A) of the Local Government (Scotland) Act 1975 concerning an entry in the valuation roll for the public house known as The Old Original, 283 Glasgow Road, Blantyre.

Mr Michael O'Shea, appeared for the Appellants, and Mr Steven Stuart, QC, appeared for the Assessor.

The Assessor was defending a valuation of NAV/RV £28,200. The Appellants initially contended for a figure of £11,500, but having heard the Assessor's evidence contended for a figure of 6.5% of the turnover figure of £132,755 put forward by them, which by the Committee's reckoning would have given an alternative value of around £8,600.

The background to matters was not in dispute.

The subjects of appeal comprised a public house located on the ground floor of a tenement building. The landlords were Punch Taverns. The Appellants took occupation of the subjects on 25th November 2013. The premises had been closed since June 2013. They had been shut on or off for periods over the last three years due to various problems, including drugs and noise levels. The Appellants were taking appropriate steps to rebuild the business and the quarterly VAT returns showed that turnover was steadily increasing. According to figures set out in an uncertified spreadsheet prepared by the Appellants, the turnover for the initial 12 months trading from December 2013 to November 2014 was £132,755.81.

The Assessor had valued the subjects using the Scottish Assessor's Association Practice Note 17 dealing with the valuation of licensed premises. The subjects had been valued on the comparative principal, using the percentages of turnover contained in Appendix 1 to the Practice Note, applied to the hypothetical achievable turnover. In essence, the Assessor had valued the subjects by reference to information relating to the turnover as at the tone date, using a figure of £322,250.

The Appellants argued that, in the circumstances, this was unfair. . The rates payable on the assessment under appeal represented circa 10% of gross turnover in the first year which was unsustainable. Their position was that the subjects should be valued by reference to the turnover in the first year's trading.

The appeal taken was a new occupier's appeal. The Assessor's counsel, citing *Armour on Valuation for Rating*, Fifth Edition, para 20-28 and *Suburban Taverns (Glasgow) Ltd v Assessor for Glasgow* [2008] CSIH 5, submitted that the Assessor's approach was correct. The Committee agreed with this. Section 6(8) of the Valuation and Rating (Scotland) Act 1956 requires the valuer to assess the rent at which the subjects might reasonably be expected to be let from year to year on the terms there set out. In making this assessment, the valuer must take into account all of the circumstances that would have been known to the hypothetical landlord and tenant at the tone date to the extent that they would have influenced the amount of the rent agreed upon. Turnover, adjusted in certain respects, has been the basis of successive revaluation schemes produced by the SAA. 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 evidence of turnover in a later year. It is recognised however that evidence emerging after the tone date may be relevant in certain limited circumstances. A valuer may find evidence which originates after the tone date to be useful either as check on the valuation which is made using information available up to the tone date or as a surrogate means of valuation where such information is not available. However the Committee acknowledged that neither of these circumstances were relevant in the present case where information relating to the turnover as at the tone date was available and there was no evidence that this information was unreliable.

Having given careful consideration to all of the evidence and submissions, the Committee concluded that the Assessor had been correct in basing his valuation on evidence of turnover as at the tone date, and it dismissed the appeal.

The Appellants had been unaware prior to the hearing that an alternative approach may be to lodge an appeal on grounds of a material change of circumstances, and as there was no such appeal before the Committee, it was not necessary for it to form a view on this. The Secretary did however draw to the Appellants' attention that it would be in their interests to take professional advice if they intended to lodge an appeal on this ground, because this is a legal concept with a meaning, so far as valuation for rating is concerned, which is defined by statute and has been subject to considerable judicial interpretation.

18 December 2014