

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

KAREN CULLEN

in respect of

PUBLIC HOUSE, JACK DANIELS, GLENCAIRN
STREET, MOTHERWELL ML1 1TT

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 Jack Daniels, Glencairn Street, Motherwell. As such, the Appellant had the same rights to appeal as would have existed under the 2010 Revaluation except that if the appeal was successful, it could be effective only from the date when the Appellant became tenant.

Mr Henry, appeared for the Appellant, and Mr Cleland, advocate, appeared for the Assessor.

The Assessor was defending a valuation of NAV/RV £42,250. The Appellant contended for a figure of £35,000.

The grounds of appeal lodged were such as to suggest that the appeal might be based upon or at least contain elements of a material change of circumstances argument. However at the hearing, the appeal was presented solely as a new occupier appeal. This meant that the burden of proof was as set out in paras 5-25 and 5-26 of Armour on Valuation for Rating (5th Edition). Where a reasonable challenge to an Assessor's valuation has been made, the Assessor requires to explain his approach to valuation. In so far as the case had relied on any material change of circumstances, the burden of proof would have been on the ratepayer to establish that a change of circumstances affecting value had taken place, but the Committee recognised that this was not the case in the present appeal.

The subjects of appeal comprised a ground floor property with two bar/lounge areas and kitchen to the rear. The Appellant had taken occupation of the subjects as a new tenant on 19th June 2014.

The appeal background preceding the present appeal was as follows.

At the 2010 Revaluation, no turnover figures were returned. The value was therefore doubled to NAV/RV £63,500 in line with the Assessor's policy at that time. The value was then amended under redress to £45,250 when turnover figures were provided. The valuation notice issued was then appealed. Further turnover figures were then provided showing the breakdown of the gross turnover which resulted in the value being amended to the present figure of £42,250. 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. The Assessor had arrived at an adopted turnover using the figures in the accounts to 31st May 2008. The appeal was lodged and agreed on behalf of the previous tenant by Mr Henry. An appeal citing the economic downturn had also been lodged then withdrawn by Mr Henry.

The case presented on behalf of the Appellant was in essence that the hypothetical achievable turnover adopted and the resulting NAV/RV did not take into account that the physical nature of the location of the appeal subjects had changed in two respects since the tone date, namely, the closure of Motherwell College in 2009, and the decanting of tenants from Glencairn Tower. Mr Henry also referred in his evidence to the closure of Motherwell College Annexe which had been in close proximity to the appeal subjects, but the Committee heard from the Assessor's witness that this had in fact closed some 10 years ago, which Mr Henry did not dispute. . He also made the point that the value on the roll was higher than the rent payable for the appeal subjects, though he conceded that this had always been the case.

In terms of the Valuation Timetable (Scotland) Order 1995, valuations for the 2010 Revaluation fell to be made on the basis of the level of rents prevailing as at 1st April 2008, and on the basis of the physical circumstances of properties as at 1st January 2010. The parties were in agreement that Motherwell College in Dalziel Drive closed in June 2009, relocating to Ravenscraig, Enterprise Way in August 2009 for the start of the new term. As regards Glencairn Tower, the Assessor's evidence was that at the start of the financial year 2009/2010, the percentage of properties occupied was 50%, being 80 flats out of 160, and that this decreased throughout 2009 into 2010, until the last occupant left on 1st December 2010. New housing had subsequently been built on the site of Motherwell College since 1st January 2010. The physical circumstances as at 1st January 2010 were accordingly that Motherwell College had by then relocated from Dalziel Drive to Ravenscraig, and that at best there were 80 out of 160 flats still occupied at Glencairn Tower.

Mr Henry pointed to a huge drop in turnover during the period from the datum year of 2008 to 2013. He was advised that it was the lunchtime and early evening trade that was mainly affected. There were no food sales in the pub now, whereas previously, they had steady trade from the Motherwell College students and staff, and other locals.

The Committee carefully considered the evidence and submissions put forward by the parties.

Mr Henry had given evidence of two specific changes in the physical circumstances of the locality as at 1st January 2010 which had taken place after the tone date. He had produced accounts showing a significant fall in turnover since the tone date. He had submitted that the fall in turnover was a consequence of the two events referred to, in particular because the relocation of Motherwell College had decimated the lunch time trade. He explained that he had not been aware of these changes when he had previously dealt with the appeals in relation to these subjects. He acknowledged that the recession which began in 2008 had hit public houses, stating that tenants could not afford the rents and that there had been huge changes to public houses throughout the country. In his submissions, he stated that the facts are that the licensed trade has been decimated. However, he attributed the drop in turnover for the appeal subjects solely to the two changes which he had put forward. Other factors had played no part in the fall in turnover of the appeal subjects.

The Assessor did not dispute that these changes had taken place, but provided further detail concerning the timing of the changes referred to and highlighted that these changes were already known when the previous appeal had been settled. He questioned the effect of the changes on the appeal subjects and did not accept, particularly given the dramatic and difficult economic circumstances during the period, and the normal ebb and flow of trade, that the decline in turnover could be attributed to these two events. He pointed out that there was no evidence of any correlation between the closure of Motherwell College and the decline in turnover of the appeal subjects. The previous tenant did not give evidence. An examination of the turnover during this period of other nearby public houses showed no obvious pattern. During the year when the decant from Glencairn Tower was completed, there was a slight rise in turnover.

The Committee acknowledged that in order for it to find in favour of the Appellant, it would need to find as proven fact that the physical circumstances of the appeal subjects were different from those which had existed at the tone date, and that these changes had given rise to and could be measured by means of the subsequent drop in turnover. It took the view that there was no persuasive evidence of this. Whilst there had undoubtedly been a significant decline in turnover over the period since these changes had taken place, there

was no evidence to show that the fall in turnover had been as a result of the changes referred to rather than as result of other factors, or if other factors had also played a part, the extent to which these changes had resulted in a drop in turnover. It also felt that if the changes referred to had had the significant effect on turnover now being suggested, it was likely that this would have been apparent to Mr Henry or his then client at the time of the earlier appeals.

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 in the year immediately before the valuation date and on the basis of the evidence presented there was no reason why this should now be changed, and it dismissed the appeal.

7 April 2015