

LANARKSHIRE VALUATION
APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

PUB ENTERPRISES LTD

in respect of

PUBLIC HOUSE, THE
WAVERLEY, 346 MAIN STREET,
WISHAW ML2 7NG

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 Waverley, 346 Main Street, Wishaw.

Mr Peter Henry, appeared for the Appellants, and Mr Brian Gill, Advocate, appeared for the Assessor.

At the 2010 Revaluation, no turnover figures were returned. The turnover of the appeal subjects was estimated by the Assessor at £219,000, and they were entered in the roll with a NAV/RV of £19,100. The Appellants took occupation of the subjects on 9th December 2014. They had the same right of appeal as they would have had at the time of the 2010 Revaluation: Local Government (Scotland) Act 1975, S3(2A). They contended for a figure of £15,100.

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

- to the commentary contained in Armour on Valuation for Rating (5th Edition), paragraphs 5-25 to 5-26 and to the cases referred to therein: when a proposed valuation is challenged by the ratepayer, the assessor must justify it and explain his approach; but when the parties have presented their cases, the question of onus falls away; it is then for the committee to weigh them up and make their decision.
- to the commentary contained in Armour, paragraphs 17-11 to 17-19, and to the cases and legislation referred to therein including the definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956.
- to the commentary contained in Armour, paragraphs 20-28 and 20-29 and to the cases referred to therein on the valuation of licensed premises: 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 that turnover per square metre is not a reliable guide to annual value (*Lothian Assessor v Belhaven Brewery Co* 2009 S.C. 120).

Mr Henry challenged the Assessor's method of valuation. He submitted that with no turnover figures available, the Assessor had taken the 2005 NAV of £15,900 and added 20% to get to the figure adopted by him of £19,100. What the Assessor should have done in the absence of any indication of the anticipated level of turnover, was to estimate the hypothetical achievable turnover by comparison with other similar properties: SAA Commercial Properties Committee Practice Note 17 Valuation of Licensed Premises 5.3. The Assessor's witness, Mr Knox, candidly admitted that this had been the approach taken by the valuer of the day. However he had taken a fresh look at this, using the approach to valuation set out in the Practice Note. The Committee readily agreed that, since each revaluation is a fresh approach, there was no justification for the method originally adopted by the Assessor, but acknowledged that Mr Gill was correct in his submission that what was important was the evidence before the Committee today.

The Committee weighed up the case presented by each of the parties.

Mr Henry, having identified that the correct approach was to estimate the hypothetical achievable turnover by comparison with other similar properties, then adopted a different approach. In his Production 6, he listed 3 comparisons, the Imperial, 121 Main Street, Wishaw, Coopers/The Yard Bar, 175 Main Street, Wishaw, and Girdwoods, 184 Hill Street, Wishaw. He divided the net annual value of these comparisons by their reduced area in order to arrive at an NAV rate per square metre. In his Production 7 headed "Assessor's Comparisons and PH Proposal" he carried out the same exercise. As Mr Gill pointed out, Mr Henry had taken a similar approach in an earlier appeal which

had come before the Lands Valuation Appeal Court, *Belhaven Brewery Company Limited v Assessor for Ayrshire Valuation Joint Board* [2014] CSIH 89. There, Mr Henry had calculated the NAV and turnover rates per square metre of each of the suggested comparable subjects. Their Lordships had taken the view that it was not appropriate to divide the net annual value of comparisons by their reduced area in order to arrive at a NAV rate per square metre. Lord Doherty explained [para 16] that this approach was based on the fallacy that there is a direct proportional relationship between the floor area and the turnover of licensed premises. Floor area is just one of many factors (location, ambience, fittings, and facilities are others) which may contribute towards a subject's turnover. The comparisons had all been valued on the basis of their turnover, not on the basis of a turnover rate per square metre.

In any event, Mr Henry then went on to select a rate per square metre for the appeal subjects with reference to only one of his comparison, Girdwoods, 184 Hill Street, Wishaw. The rate per square metre for Girdwoods was £104. Mr Hendry proposed a rate of £120 per square metre for the appeal subjects ie higher than Girdwoods to reflect the Main Street location. He made no effort to relate this to his other comparisons which were both situated on Main Street.

The Committee were accordingly unable to accept the approach adopted by Mr Henry, in this case NAV per square metre, or the proposed valuation put forward by him on the basis of this approach.

The Committee then considered the evidence presented at the hearing in support of his valuation by the Assessor. The Assessor, in his Production 5, showed his valuation of the appeal subjects and presented information concerning 8 other public houses in the same locality under 3 headings. The Assessor's primary comparisons were Charlie's Bar, 6 Hill Street, Wishaw, with an actual turnover of £126,000 (reduced area 63.08m²), The Imperial, 121 Main Street, Wishaw, with an estimated turnover of £164,000 (reduced area 82.2m²), and The Yard Bar (Coopers), 175 Main Street, Wishaw, with an estimated turnover of £235,000 (reduced area 117.77m²). These were all located within or close to the shopping area in Main Street, Wishaw, and, like the appeal subjects, were traditional pubs with predominately liquor sales. The Committee agreed that these were suitable comparisons and that the hypothetical achievable turnover of £219,000 estimated by the Assessor for the appeal subjects (reduced area 110.33m²) was not out of place within the resulting basket of turnover figures.

Mr Henry made the point that only the valuation for Charlie's Bar had been arrived at using actual turnover, and that whilst there had been professional representation in relation to the 2010 Revaluation appeals taken for the appeal subjects, no turnover figures had been available, and the appeals had been withdrawn rather than agreed. The Committee noted however that the valuations for Charlie's Bar and The Imperial had each become final by agreement with separate firms of professional agents which it felt lent some weight to these.

The Committee acknowledged that the Assessor had carried out a careful review in his list of comparisons but felt the other comparisons listed were less relevant, in the case of comparisons 4 and 8, due to their size, and in the case of the others, whilst not out of line with the Assessor's valuation, because they were more remote from the appeal subjects.

Mr Henry questioned why the Assessor's list of comparisons did not also include Girdwood's Bar, 184 Hill Street, Wishaw, which he had used as his main comparison. The Committee felt that these were larger premises, situated in a less favourable location some distance from Main Street at the other end of Hill Street, and were not a good comparison.

The Committee accordingly decided on the basis of the evidence presented before it that the Assessor had been able to justify his valuation, that no relevant or persuasive challenge had been made to this, that the Assessor's valuation should accordingly be upheld, and the appeal refused.

13th October 2015