

Statement of Reasons

Relative to an Appeal

By

Lakha Limited

In respect of

Hotel, 315 New Edinburgh Road, Uddingston, Glasgow.

This Appeal proceeded on the basis of an alleged material change of circumstances; namely, the loss of the regular extension of hours to the licence for the subjects. The subjects had been purchased by the Appellants in December, 2003 at which time there was in place a regular extension of hours to the licence which allowed the premises to operate until 3am on Fridays, Saturdays and Sundays. The Appellants utilised the regular extension in the lounge bar and function suite areas of the subjects and traded from those areas as a disco. However, the location of the subjects is such that it is surrounded to the rear and sides by residential properties and due to complaints from neighbouring residents and the police, the Licensing Board at its quarterly sitting on 11th March, 2005, refused to renew the Appellants' application for a regular extension of hours to 3am and instead restricted the extension to their licence until 12 midnight. The Appellants considered that it was no longer viable to operate a disco without the regular extension and they therefore ceased to operate that aspect of their business.

There was agreement between the parties that these occurrences had taken place and that they amounted to changes of circumstances. However, there was disagreement as to whether they were changes which affected value and therefore whether a material change of circumstances in valuation terms had occurred. In this regard, the Assessor referred the Committee to, and they had regard to, the commentary contained in *Armour on Valuation for Rating, Fifth Edition*, paragraphs 3-17 to 3-21 inclusive, to the cases referred to therein and to the provisions of section 3 (4) of the Local Government (Scotland) Act, 1975.

The Committee had particular regard to the comments in paragraph 3-18 to the effect that the Appellants require to adduce evidence to demonstrate that the change of circumstances complained of would alter the value of the subjects in the hands of the hypothetical tenant. (*Assessor for Fife -v- Ruggi 1960 RICS 51*).

In the view of the Committee, as the law stood in this case, the onus was on the Appellants to satisfy the Committee that a change in circumstance had taken place which affected the value of the subjects. This had to be done by proper evidence. The Assessor disputed that the Appellants had discharged this onus.

The Appellants, in order to demonstrate the reduction in turnover following the loss of the regular extension to the licence, produced to the Committee copies of their VAT returns covering the period from 1st January, 2004 to 31st August, 2005 together with details of their management figures showing weekly turnover for the same period.

Discrepancies existed between the figures shown in the VAT returns for total sales and the turnover in the management figures for the same period. However, the Appellants submitted that, despite these discrepancies, it was clear from the documents produced that there was a significant reduction in turnover.

In order to persuade the Committee that this fall in turnover affected the value of the subjects having regard to the rating hypothesis, the Appellants sought to argue that a licence which exists in respect of licensed premises should be viewed as heritable and not simply personal to the licensee. The Appellants argued that the loss of the licence was not due to the poor management of the subjects by the Appellants (as suggested by the Assessor) but rather to the geographical location of the subjects themselves and that therefore no hypothetical landlord or tenant would be able to obtain and maintain such a licence. The tenants of the Appeal Subjects had not sought and would not seek to apply for a re-instatement of the lost extension to their licence as they had determined that there was nothing that could be done by them to resolve the difficulties which had given rise to the loss of it. Accordingly, a planning application had been made by them to make alterations to the Appeal Subjects to allow the function suite and lounge bar areas to be utilised as a restaurant.

The Assessor submitted that the Appellants had not discharged the onus on them. Firstly, he emphasised the discrepancies in the turnover figures between the VAT returns and the management figures produced by the Appellants and argued that the discrepancies undermined any reliance which could be placed on the documents produced to support the reduction in turnover. Secondly, he argued that the loss of the regular extension to the licence for the Appeal Subjects did not affect its valuation having regard to the rating hypothesis. He submitted that the hypothetical tenant would have managed the subjects to their full potential and would have taken steps to operate his business from the subjects in a manner which would have avoided the loss of the licence. Further, the hypothetical tenant would have applied for a re-instatement of the regular extension to the licence. He did not accept that the geographical location of the Appeal Subjects inhibited the obtaining of regular extension of hours to the existing licence. There had been no change in the physical circumstances of the Appeal Subjects since the regular extension of hours to the licence was initially granted. The Appellants had operated their business from the Appeal Subjects using the extended licensing hours for a period of fourteen months; the previous owners had similarly operated their business using the regular extension of hours to the licence and there were other similarly located licensed subjects which had obtained and maintained a regular extension of hours to their licence. Further, there had been an appeal in similar circumstances at the instance of the Stuart Hotel, East Kilbride. In that case, the Appellants had lost their licence completely. The agent acting on their behalf, after discussion with the Assessor, was persuaded that the loss of the licence was transitory and did not affect the value of the subjects having regard to the hypothetical landlord or tenant. The Appellants in that case did not persist in their appeal. (The Appellants in this case, did not agree that the case involving the Stuart Hotel was in point with their case. The Stuart Hotel's licence was lost because of the personal actings of the licensee and had nothing to do with the geographical location of the subjects.)

The Committee after weighing up all of the evidence presented and submissions made to them, were of the view that the Appellants had not satisfied them that the change of circumstances complained of by them had affected value and therefore, they were not satisfied that a material change of circumstances had taken place justifying an alteration in the value of the Appeal Subjects. There was no persuasive valuation evidence before the Committee. The only evidence which could have amounted to valuation evidence was evidence that the average monthly turnover achieved by the Appellants was less than had been achieved by them prior to the loss of the regular extension of hours to their licence. There were discrepancies in the documents produced by the Appellants which their witness could not explain. A profit and Loss Account of the previous owners of the subjects for the year ending 30th April, 2002 was produced but not spoken to by the Appellants' witness. Similarly, the Director's report and financial statements of the current tenants of the subjects were produced but again not spoken to by the Appellants' witness. Given that other licensed subjects located in close proximity to residential areas had obtained and maintained licences with a regular extension of hours to them and that the Appeal Subjects had also operated in this way for a considerable period of time, the Committee were not persuaded by the argument that the loss of the regular extension of hours was due solely to the geographical location of the Appeal Subjects as contended by the Appellants and would therefore alter their value in the hands of the hypothetical tenant.

The Committee accordingly dismissed the appeal.