

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

Belhaven Brewery Co Ltd

in respect of

Public House, 39 Main Street, Rutherglen

The dispute between the parties was limited to two narrow issues.

The appeal subjects were entered in the roll with effect from 1st April 2009 as premises under reconstruction with a net annual value and rateable value of £100.

The Appellant's agent Mr Henry contended that the appeal subjects should, firstly, be entered in the roll as premises under construction at a nil value and, secondly, the effective date for the entry should be 9th March 2009.

Dealing with the first issue, the Committee took the view this was one of valuation.

It preferred the Assessor's evidence that the premises were under reconstruction rather than construction. This was on the basis that the original stone walls were being retained and a large extension added rather than the premises being demolished and rebuilt as Mr Henry had suggested.

The Assessor's evidence concerning value was that he considered a nominal value to be appropriate during refurbishment works but felt that the subjects did have some value. The hypothetical landlord and tenant were awaiting completion when they anticipated the premises would reopen as a public house. The landlord would expect payment of some rent whilst the works were being completed and the tenant would similarly expect to have to pay something. The Assessor had therefore placed a nominal value of £100 on the appeal subjects and this was consistent with his normal practice. The Committee preferred the Assessor's evidence to that of Mr Henry who suggested the subjects should have a nil value which he said was the practice elsewhere.

Dealing with the second issue, the Committee took the view this was a matter of law.

Mr Henry submitted that the relevant statutory provision was the Local Government and Rating Act 1997 Schedule 3 paragraph 13 which amended the Local Government (Scotland) Act 1975 ("the Act") by inserting a new subsection 3(4A) :-

“An appeal under subsection (4) above shall be made-

(a) on the ground that there has been a material change of circumstances since the entry was made, not more than six months after the roll ceases to be in force;”

He argued this had the effect that where, as in this case, an appeal was taken before 30th September, the effective date could be backdated to the date of commencement of the works, here, 9th March 2009.

Mr Doherty took a different view. He argued that this provision had no application to the situation before the Committee. It simply provided a six month period of grace in which appeals on grounds of material change of circumstances may still be made notwithstanding that the quinquennial roll has ceased to be in force. The Committee accepted Mr Doherty’s view.

Mr Doherty submitted that the relevant statutory provisions were as follows.

Section 2(1)(d) of the Act provided that the Assessor shall alter the roll to give effect to any alteration in the value of any lands and heritages which is due to a material change of circumstances.

Section 3 of the Act provided for rights of appeal.

Section 2(2)(c) of the Act made provision for when any alteration to the roll made under Section 2(1)(d) would have effect. This was to be from the date of the event by reason of which the alteration is made or as from the beginning of the year in which the alteration is made, whichever is the later. There was however a proviso which applied where the proprietor had intimated in writing to the Assessor the event in question, in which case the alteration in the roll was to have effect from the date of the event or from the beginning of the year in which intimation of the event is made, whichever is the later. What was envisaged here was that the appellant should not be prejudiced by delay on the part of the Assessor in making the alteration to the roll.

Here, intimation to the Assessor had been made on 23rd June 2009, so the effective date was the beginning of the rating year in which intimation was made ie 1st April 2009.

The Committee agreed with Mr Doherty that these were the relevant statutory provisions and they also agreed with his interpretation of those provisions.

Mr Doherty also very properly made reference to Section 2(1A) of the Act which provided that the Assessor shall alter the roll to give effect to any decision following an appeal to a valuation appeal committee and such alteration shall have effect from such date as shall be determined by the committee. He submitted that on the face of it, this meant the Committee does have power to direct that the alteration should have effect from a particular date. He argued however that this did not give the Committee carte blanche to select any date which might occur to it as being

suitable. There had to be a good reason for any departure from the date which would otherwise be identified as the effective date in the other provisions of the Section.

There was no such good reason in this case. Section 2(2)(c) was clear in its terms. The earliest you could go back where, as in this case, intimation had been made was the beginning of the rating year. The logic for this was that the onus was on the proprietor to bring the event to the attention of the Assessor as soon as possible. There was no injustice to the appellant. The statute gave clear guidance and in the absence of good reason to the contrary the Committee should adhere to the effective date of 1st April 2009.

The Committee were persuaded by the detailed argument presented by Mr Doherty which they accepted in full. The Committee accordingly refused the appeal.