

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

GORDON BAVAIRD

in respect of

PUBLIC HOUSE - CENTREPOINT
Brandon Street, Motherwell ML1 1RS

This appeal proceeded on the basis of an alleged material change of circumstance being the opening of the disco portion of Zico's, 57/59 Kirk Road, Wishaw. There was agreement between the parties that the date on which this occurred could be taken for the purpose of the hearing and any alteration in the Valuation Roll as a consequence of the appeal, as 15 April 2008.

In considering its approach to the matter, the Committee had regard particularly to the commentary contained in *Armour on Valuation for Rating (Fifth Edition)* at paragraphs 3-12 to 3-29 inclusive and to the cases and legislation referred to therein including the definition of material change in circumstances contained in Section 20 of the Rating and Valuation (Amendment) (Scotland) Act 1984 and the provisions of Section 3 (4) of the Local Government (Scotland) Act 1975. To be a material change of circumstances, the change must be one which affects the value of the appeal subjects.

The burden of proof was on the Appellants to satisfy the Committee that a material change of circumstances had occurred (*Armour*, para 3-19).

Having given careful consideration to all of the evidence and submissions, the Committee concluded that a material change of circumstances had been established to the satisfaction of the Committee.

The rateable value and net annual value entered in the Valuation Roll for the appeal subjects as at the year 2005 revaluation were £210,000. The Appellants sought a reduction of 21.32% which would have produced a value of £165,800. The figure of 21.32% represented the reduction in turnover for the rating year 2008-2009 compared with the corresponding figure for the year 2007-2008. The amount of reduction in turnover was agreed between the parties. There was no agreement that any of the reduction in turnover was due to the opening of Zico's. The Committee did not accept that the whole reduction in turnover was due to the opening of Zico's. Having carefully considered all of

the evidence the Committee considered that a reduction of 5% in turnover could be attributed to the opening of Zico's and accordingly reduced the value by this amount to £199,500.

There was no dispute that a significant reduction in turnover of the appeal subjects had taken place from April 2008 onwards. The reduction was considerably greater than the reduction in turnover which had taken place between 2006-2007 and 2007-2008 (1.06%) and also greater than the corresponding reduction between 2005-2006 and 2006-2007 (18.92%). The Committee accepted that Zico's was competing for the same 18-30 target market as the appeal subjects. Although situated in Wishaw, it was sufficiently close to the appeal subjects to compete with it effectively geographically and particularly to capture some of the potential customers from the Wishaw area who would otherwise have visited the appeal subjects in the absence of any appropriate competition more locally. While Zico's was smaller than the appeal subjects, it was large enough to be a significant competitor for the available market. It was modern and attractive. It represented a 50% increase in the number of subjects competing for the target market. It seemed reasonable to the Committee on the face of the matter that the competition provided by Zico's would affect the trading of the appeal subjects.

The Assessor argued that there had been a general downturn in trading of subjects similar to the appeal subjects due to the current economic climate and that there were specific factors to which at least part of the downturn in the appeal subjects' turnover could be attributed. While bearing in mind that the burden of proof lay on the Appellants, it would be appropriate at this stage, to say that the Committee was not impressed by the specific arguments put forward by the Assessor. The first of these was that the significant drop in the turnover of the appeal subjects for June 2008 (£33,727) could be attributed to the European Football Championships. The Committee was not persuaded that the televising of these championships would be likely to have a significant impact on the disco type operation of the appeal subjects and in any event the comparison with turnover for previous years was clouded by the fact that a very significant part of the appeal subjects' trading was done at weekends and that monthly periods could contain either four or five weekends thereby making accurate comparison from month to month difficult.

Similarly in relation to the significant drop in turnover for August 2008 (£31,304) the Committee did not accept that this was largely due to the televising of the Olympics nor to the adverse publicity caused by two fracas which had taken place outside the appeal subjects at around that time. In relation to the latter, the Committee accepted the evidence of the Appellants that such events had not had a significant effect on turnover historically.

The Committee did accept that the current economic climate would be likely to have a depressing effect on turnover of the appeal subjects and similar subjects. The question was whether or not the Appellants had persuaded the Committee that there was another factor in play here namely the commencement of operation of Zico's and that this had affected turnover. In this regard the Committee found the comparison between the turnover of the appeal subjects and of the subjects known as Centrepoint the Olympia, East Kilbride persuasive. The turnover figures for 2008-2009 for the latter subjects also showed a downturn, but of only 11.3%. The downturn was not consistent, some months

showing an increase in turnover. The reduction in turnover for the appeal subjects, however, was much greater and was consistent, only one month, July 2008, showing an increase, and this of a very small amount. It appeared clear to the Committee that there was likely to be another factor operating in reducing the turnover of the appeal subjects and from the evidence this was on the balance of probabilities the competition from the opening of Zico's.

It was a difficult task for the Committee to judge to what extent the impact of Zico's had affected turnover. The Committee was satisfied that the economic downturn was the more significant factor. After careful consideration of all of the evidence the Committee felt that it would be reasonable to attribute 5% of the reduction in turnover to the impact of the opening of Zico's and therefore to reduce the value of the appeal subjects by this amount to £199,500 with effect from 15 April 2008.

21 May 2009