LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS RELATIVE TO APPEAL

by

BELHAVEN BREWERY COMPANY LIMITED

in respect of

PUBLIC HOUSE, THE MILLCROFT, 98 MILL STREET, RUTHERGLEN

This is an appeal arising out of the year 2005 Revaluation.

At the time the Assessor was valuing the appeal subjects for the purposes of the revaluation, no turnover figures were available and the Assessor had valued the subjects on the comparative method having regard to the values of what he considered comparable public houses. By the date of the hearing, profit and loss accounts for the period ended 31 March 2002, with comparison figures for 2001, and the year ended 31 March 2003 (in reality to 6 February 2003) were available. On the face of it, this might have resulted in a relatively simple valuation on the basis of turnover as at the tone date of 1 April 2003, but the parties' positions were more complex than that.

The agent for the Appellants had valued the subjects on a turnover basis averaging the turnover for the years 2002 and 2003. This produced a proposed value of £34,600. The Assessor was defending a proposed figure of net annual value £46,750.

The Appellants' agent had adopted his position because of the trading pattern of the appeal subjects which showed a decline in turnover, with, particularly, turnover reducing significantly between 2000 and 2001 and then more gradually in 2002 and 2003. The then operators had sold to the Appellants on 7 February 2003. It was argued that the averaging of the turnover for 2002 and 2003 produced a figure more reflective of fair maintainable turnover as at the tone date. In relation to turnover for 2003, the Appellants' agent had annualised this to allow for the fact that the former owners had ceased to trade on 6 February 2003.

The Assessor argued that the figures for turnover in the latter years of operation of the former owners did not reflect fair maintainable turnover (or hypothetical achievable turnover). The Assessor founded strongly on the significant increase in turnover which had taken place in the 53 day period from 7 February 2003, when the Appellants started to operate the appeal subjects, to 31 March 2003. The Assessor had valued the appeal subjects on the basis of an estimated turnover as at the tone date of £520,000.

After careful consideration and by a majority of four to one, the Committee agreed with the Assessor. There was no dispute between the parties that the appeal subjects fell to be valued in terms of the Scottish Assessors' Association Practice Note for valuation of licensed premises, public houses and licensed restaurants for the 2005 Revaluation ("the practice note"). This required the assessment of a hypothetical achievable turnover or fair maintainable turnover. This is defined in the practice note as being subject to the assumption that the premises will be operated by a competent publican seeking to maximise profits by responding to normal trading practices and the effects of local competition.

The Committee was concerned that too much emphasis was perhaps being placed by the Assessor on trading for a short period of 53 days. However, the Committee had been invited to look at the trading pattern of the appeal subjects from 1997 onwards. It was clear from this that the appeal subjects had formerly traded at a level commensurate with that achieved by the Appellants during the 53 day period immediately after they took over. There was an established pattern of such trading. The decline had come in the years 2001 to 2003 immediately before the subjects were sold to the Appellants. There was not specific evidence as to what had caused the decline, but the history of higher level trading, followed by a decline, followed immediately by a significant upturn as soon as a new operator took over persuaded the Committee that the previous operators in the period for which sales evidence had been used by the Appellants had not been operating the appeal subjects as a competent publican seeking to maximise profits in terms of the practice note and that the turnover achieved was not fair maintainable turnover.

The Appellants' agent argued that the turnover for the 53 day period in February and March 2003 would be enhanced by a novelty factor caused by a new operator. The Committee accepted this, but the majority felt that the enhancement would be slight and that the Assessor had allowed for it adequately by reducing his turnover figure from £527,678, being the annualised figure for this period, to £520,000. The turnover figure adopted by the Assessor was therefore maintainable in terms of para 2.1 of the practice note.

In reaching its decision, the Committee kept in mind the provision of para 6.1 of the practice note in relation to the use of actual turnover figures. It also considered the passage from the judgement of Lord Salvesen in the case of Haggart –v- Assessor for Leith – 1912 S.C.784 at 787. This is the passage reproduced in Armour on Valuation for Rating, Fifth Edition, at para 20-28. Here, neither party proposed using the actual turnover figures as at the tone date, the appellants using actual turnover figures, but seeking to average the actual turnover figures over an approximately two year period and the Assessor using an estimate based on actual turnover for a 53 day period. The Committee considered that a departure from the actual turnover figures as at the tone date was appropriate as the actual figures did not represent the fair maintainable turnover. The majority felt that the Assessor was correct in his choice of estimated turnover figure.

The majority of the Committee preferred the Assessor's approach to that of the Appellants, accepted it in its entirety and accordingly approved the Assessor's figure of £46,750 and dismissed the appeal.

The dissenting member felt that neither the Appellants' nor the Assessor's position was correct. The Assessor's method was to be preferred, but his adopted turnover figure of £520,000 was excessive. The dissenting member would have substituted for this a figure of £500,000, to which a percentage of 8.75, rather than 9.00 would have been appropriate in terms of the practice note.

There was a disagreement between the parties about the reduction factor to be applied to the upper floor, but since at the end of the day both proposed valuations proceeded on the basis of turnover, this was not a matter to be decided by the Committee.