

**LANARKSHIRE  
APPEAL PANEL**

**VALUATION**

**STATEMENT OF REASONS RELATIVE  
TO APPEAL**

by

**GORDON BAVAIRD**

in respect of

**PUBLIC HOUSE  
MOTHERWELL POINT  
21 MUIR STREET  
MOTHERWELL  
ML1 1BH**

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

At the hearing the Assessor contended for a revised figure of net annual value and rateable value of £103,500. The Appellant contended for a figure of £64,400.

There was agreement between the parties that the subjects fell to be valued on the comparative principle and that this would involve the calculation of the fair maintainable turnover for the appeal subjects to which an allowance for entertainment costs should be applied. The Committee had before it actual turnover figures for the years 2000/2001 to 2006/2007. There was no dispute over the amount of the actual turnover figures. There was a dispute as to the fair maintainable turnover figure appropriate to be applied to the subjects. The Assessor in respect of his revised valuation contended that the appropriate adopted turnover figure was £1,150,000. The Appellant contended for a figure of £715,952, being the gross turnover shown in the trading accounts for the year to 31<sup>st</sup> March 2006 of £790,952 less entertainment costs of £75,000. There was agreement that the correct percentage to be applied to the adjusted turnover figure in calculating the Net Annual Value was 9%, derived from the Scottish Assessors' Practice Note number 17 in respect of the valuation of licensed premises, public houses and licensed restaurants, appendix 1.

The Appellant's arguments fell under three headings:

- (a) the effect of regular extensions of permitted hours brought about by the guideline changes made by North Lanarkshire Licensing Board on October 2001 and which resulted in regular extension to 1am on Fridays and Saturdays being granted in respect of a number of public houses situated in the vicinity of the appeal subjects with effect from January 2002;
- (b) the effect of the Smoking Health and Social Care (Scotland) Act 2005. The Bill had been introduced to Parliament on 17<sup>th</sup> December 2004, the Act was passed on 30<sup>th</sup> June 2005 and came into force on 26<sup>th</sup> March 2006; and
- (c) the opening of the Hype Discotheque at 245a Brandon Street, Motherwell (Centre Point), taking effect on 10<sup>th</sup> December 2004.

The Committee dismissed arguments (a) and (b).

The fair maintainable turnover for the appeal subjects required to represent the annual amount considered to be maintainable as at 1<sup>st</sup> April 2003 having regard to the physical nature of the property and its location as at 1<sup>st</sup> January 2005. The effect of the regular extension of permitted hours which came into effect in January 2002 would be clearly evident in the turnover figures for the year to 31<sup>st</sup> March 2003 and there was no need to depart from the turnover figure for that year on this ground. The smoking ban had not come into effect by 1<sup>st</sup> January 2005 and therefore the physical nature of the subjects had not been changed by any time relevant to the valuation. The Committee did not consider that the fair maintainable turnover of the appeal subjects as at 1<sup>st</sup> April 2003 had been affected in any way by anticipation that the smoking ban would come into force some three years later.

The Committee then considered the Appellant's argument (c). The opening of the Hype Discotheque had taken place prior to 1<sup>st</sup> January 2005 and did effect an alteration in the location of the appeal subjects as at that date. The Appellant had closed the second floor disco and had reduced the opening hours of the first floor disco at the appeal subjects by one day per week contemporaneously with the opening of the Hype Discotheque. The appeal subjects and the Hype Discotheque were de facto, if not in strict law, operated by the same parties. The Committee was satisfied that the decision to close the second floor disco and restrict the opening hours of the first floor disco at the appeal subjects had been taken at least partly with a view to

avoiding competition between the two operations. The Committee agreed with the Assessor that what had to be considered was what a hypothetical tenant of the appeal subjects seeking to manage the appeal subjects so as to maximise profits would have done faced with the prospect of the competition from the Hype Discotheque. The Committee was convinced that the hypothetical operator of the appeal subjects would have continued to operate the upstairs disco and maintain the opening hours of the first floor disco in the hope of competing successfully with the new operation. It was accordingly not appropriate simply to adopt the turnover shown in the 2005/2006 accounts following these changes in the operation of the appeal subjects.

Having said that, consideration still had to be given to the way in which the Assessor had calculated his adopted turnover figure of £1.15 million. Understandably there was a large subjective element in the Assessor's calculation. It was noted, however, that the Assessor's figure of £1.15 million produced a figure which was higher than the adjusted turnover figure for 2004/2005 during which the trading pattern of the appeal subjects would have been affected by the opening of the competing subjects for a period of only 102 days (10<sup>th</sup> December 2004 to 31<sup>st</sup> March 2005). The turnover of the appeal subjects would undoubtedly have been reduced by the competition. It seemed very unlikely that the turnover of the appeal subjects allowing for the competition would have achieved £1.15 million.

The Committee acknowledged that the fixing of the estimated turnover was, in the circumstances, a difficult exercise as it involved a calculation based on the hypothesis that the appeal subjects would have remained in full operation after 10<sup>th</sup> December 2004 and a theoretical assessment of how successful this trading would have been. However, the Committee did feel that the Assessor had over estimated the adopted turnover figure at £1.15 million and that a figure of £950,000 should be substituted, made up of £450,000 for the ground floor bar, £300,000 for the first floor disco and £200,000 for the second floor disco. Applying the agreed 9% of turnover produced a figure for net annual value of £85,500 which the Committee substituted for the revised figure contended for by the Assessor.