

LANARKSHIRE VALUATION
APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO REQUEST

by

Belhaven Brewery Co. Ltd

for

APPEAL CITATION IN RESPECT
OF

Public House, 6 Waterside Street,
Strathaven

This was a request under Regulation 8(7) of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 for an appeal to be heard.

The terms of Regulation 8(7) are:-

“If an appellant considers that his appeal has not been or is not to be heard within a reasonable period of lodging it, he may request the Committee to hear the appeal within such period as he may specify, being a period not less than 70 days from the date of his request and if the Committee declines to hear the appeal within such a period –

- (a) it shall state its reasons for so declining; and
- (b) the Secretary shall notify both parties accordingly.”

The request was made by email dated 21st November, 2011 which was placed before the Committee on 25th November 2011. The Appellants were represented by Mr Peter Henry, Chartered Surveyor and Mr Stephen Stuart, Q.C. appeared for the Assessor.

Mr Henry stated that the Net Annual Value for the appeal subjects entered in the valuation roll 2010 is £47,500. His alternative valuation is £22,100. On 10th March, 2011, he wrote to the Assessor, on behalf of the Appellants, stating this alternative valuation and providing details of the basis of it together with accounts information. He invited the Assessor to discuss the merits of the appeal with him. However, the Assessor had stated that he was unable to do so at the present time due to the

pressure of other business. However, the Appellants' tenants are in severe financial difficulty (the previous tenant had already gone out of business) and an early resolution of this appeal (which Mr Henry felt was achievable by negotiation) would alleviate some of these difficulties. Mr Henry did not accept the Assessor's argument that it was appropriate to cite all similar types of subject in the same area at the same time. He was aware of a situation involving public houses in Hamilton where the Assessor at the time of revaluation did not have any turnover figures for these subjects. He issued a valuation in respect of them without the benefit of this information. Subsequently, the ratepayers provided this information and the valuations were revised. It was not correct to say that citing the appeal in respect of these appeal subjects would mean a lack of comparisons. Even if all appeals in respect of similar subjects were cited at the same time, this would not provide comparisons as these appeals would also be outstanding and not settled.

Mr Henry produced to the Committee a fax copy letter from Mr John Swinney, the Cabinet Secretary for Finance, Employment and Sustainable Growth. This letter was in response to a letter from Aileen Campbell, MSP whose constituent was the tenant of a public house, 11-13 Bloomgate, Lanark where an application under Regulation 8(7) had also been made and was heard in tandem with this application. Mr Swinney stated, *inter alia*, that where an application is made under Regulation 8(7), the Committee must grant it and in the event that they do not, they must offer an explanation for rejecting the application.

Mr Stuart emphasised that the terms of Regulation 8(7) provided that an application could be made in terms of that Regulation where the hearing of an appeal had not been or is not to be heard within, "a reasonable period of lodging it." The issue for consideration therefore was what was reasonable. In determining this, regard should be had to three factors; the date of the lodging of the appeal, the number of appeals which required to be dealt with and the statutory timetable for disposing of them.

He explained that the Appellants had lodged an appeal on 29th September, 2010. There had been around 7,500 revaluation appeals lodged. By the date of the hearing, around 4,000 already cited for hearing; 2,690 had been disposed off leaving approximately, 3,300 outstanding. In terms of the Valuation Timetable (Scotland) Order 1995 the last date for dealing with revaluation appeals was 31st December 2013. The timetable set by the Scottish Parliament for disposal of revaluation appeals by 31st December 2013 had to be accepted as reasonable. In addition to the number of revaluation appeals, there were around 4,300 running roll appeals which also required to be disposed of by 31st December, 2013. The Assessor planned to deal with 4000 appeals each year.

It was the Assessor's practice to group appeals with common features in the same location together for hearing. All revaluation appeals for public houses in Strathaven town centre would be cited together. This was considered good practice and allowed ratepayers to pool information and resources. The tone rate would be set in this way and running roll appeals would then be dealt with. It

was not possible to settle individual appeals in isolation as to do so would mean that other comparable subject would still be under appeal.

It was not uncommon for there to be instances of hardship but there was a statutory mechanism for this under Section 25A of the Local Government (Scotland) Act 1966.

The Assessor was bound to give consideration to the volume of appeals and the number of appeals which had been lodged before this appeal. To deal with this appeal first would be to the prejudice of other appeals lodged before this and would be against the statutory timetable. It was reasonable for this appeal to be dealt with in the manner proposed by the Assessor.

The purpose of Regulation 8(7) was to deal with exceptional circumstances such as where an assessor through oversight had omitted to cite a particular appeal, or had failed to cite without good reason for doing so. This was not the case here. The system adopted by the Assessor for citation of appeals was reasonable and met the interests of both the Assessor and the ratepayers.

Mr Stuart stated that the Panel had already dealt with four previous applications under Regulation 8 (7) on similar grounds all of which had been refused.

The Committee after careful consideration of the request decided that this should be refused. They sympathised with the reasons for the making of the request. The purpose of Regulation 8(7) was however to deal with exceptional circumstances such as where there had been an omission to cite or a failure to cite without good reason. The Assessor had explained that the system adopted for progressing and dealing with the many number of appeals which had been lodged. There were a large number of appeals and the Assessor had to have an effective system for dealing with these. The Assessor's practice was to group together appeals with common features. Public houses would be dealt with as a group. The committee agreed that this was a proper and reasonable approach for the Assessor to take. The period within which appeals had to be dealt with had been laid down in the Valuation Timetable (Scotland) Order 1995. The last date for dealing with revaluation appeals was 31st December 2013. The present appeal also required to be dealt with within the same timescale. The issue was that the appeal should be heard within a reasonable time of it being lodged. These timescales had been set by the legislature. The Assessor had explained the method he proposed to follow to work within these timescales. The present appeal was to be dealt with in accordance with that method. The Committee accepted that for the reasons explained by the Assessor the present appeal could not be dealt with in isolation. For the reasons given the Committee declined to grant the Appellants' request that the appeal should be cited for hearing at the present time.

