

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

FIONA LIVINGSTONE

in respect of

NIGHTCLUB, 41/43 STIRLING STREET, AIRDIE

This was an appeal arising out of the year 2010 Revaluation.

The assessor contended for a net annual value and rateable value of £13,500. The appellant, Fiona Livingstone, contended for a figure of less than £10,500.

The assessor had valued the subjects by way of a straightforward application of the Scottish Assessor's Association Revaluation 2010 Practice Note 17 "Valuation of Licensed Premises". The assessor had taken the adjusted turnover of the subjects for the year to 31st March 2008 based on the figures shown in the Return of Information for the 2010 Revaluation completed by the appellant, namely £158,958, to which had been applied a percentage of 8.5%, which was the figure derived from Appendix 1 of the Practice Note. This produced a figure of £13,511 rounded down to £13,500. The assessor submitted this was a reasonable valuation in the light of the available comparisons for other licensed premises in Airdrie shown in his Production 3.

The appellant argued that the appeal subjects, known as "Diamonds", was a first floor building with only a door entrance on Stirling Street, with Yesterdays public house underneath. At the 2010 Revaluation the rateable value for Yesterdays went down 10% from £11,600 to £10,500. She stated that Diamonds and Yesterdays were the same size and Yesterdays turnover was much higher than her own. Her own rateable value had risen 80% whereas her turnover had since fallen by 40%. The rateable value for the appeal subjects had risen from £7,500 at the last revaluation to £13,500. No other property in Stirling Street had risen by this amount and her turnover had never been any higher at any time than the previous owner of Diamonds.

In considering its approach to the matter, the Committee considered the passage from the judgement of Lord Salveson in the case of *Haggart v Assessor for Leith* 1912 S.C.784 @ 787. This is the passage reproduced at Armour on Valuation for Rating, Fifth Edition, at para 20-28. The Committee took note of the passage in its entirety but particularly noted the last sentence:- "The Assessor here was of the opinion, and the Valuation Committee have agreed with him, that when he has reliable information as to the drawings of a particular shop, those drawings afford

the very best basis upon which to estimate the rental which one year with another a tenant would pay for the premises.”

The Committee also considered the passage from the judgement of Lord Justice Clerk Gill in the case of *Assessor v for Lothian v Belhaven Brewery Company Ltd.* 2008 S.L.T. 1126 at paragraph 8, reproduced in the same paragraph of *Armour*:-

“For over a century, turnover has been found to be the most reliable basis on which to assess the annual value of licensed premises (cf. *Haggart v Assessor for Leith*, 1912 S.C.784). In modern times, turnover, adjusted in certain respects, has been the basis of successive revaluation schemes produced by the SAA. Since licensed premises differ in their locational advantages, attractiveness and character and in the trading policies of the licensees, it is generally recognised by valuers, and was recognised by the Committee in this case, that turnover per square meter is not a reliable guide to annual value. The essence of the SAA scheme is that it is based on actual turnover in the survey year. Like all such schemes it is merely a means to an end, namely that of ascertaining “the rent at which the lands and heritages might reasonably be expected to be let from year to year” on the statutory terms, which I need not repeat (*Valuation and Rating (Scotland) Act 1956*, s6(8); *UKAE v Assessor for Highland*, 2007 S.C. 252).”

The same paragraph in *Armour* concludes:- “Valuation by the application of percentages to turnover is now the norm and assessors usually devise a scheme for the valuation of all licensed premises in which varying percentages are applied to turnover, the percentages varying with the size of turnover, the type of turnover, eg alcohol or food, and the nature and location of the premises. Such a system accords well with the rental market where the turnover premises are capable of generating is a prime factor considered in setting rents.”

The subjects accordingly fell to be valued in terms of the Scottish Assessors’ Practice Note 17 for the Valuation of Licensed Premises for the 2010 Revaluation. Paragraph 2.0 of the Practice Note sets out the basis of valuation:-

“The subjects covered by the Practice Note should be valued by the application of the comparative principle, using the percentages of turnover contained in Appendix 1, which should be applied to the adjusted “hypothetical achievable turnover” which excludes VAT.

Licensed premises differ in their locational advantages, attractiveness, and character, and are affected by the trading policies of licensees, along with being subject to the vagaries of current popular trends (circuits).

It should be recognised by valuers that the essence of the valuation scheme is that it is based on the hypothetical achievable turnover. The scheme is designed to enable valuers to ascertain “the rent at which the lands and heritages might reasonably be expected to be let from year to year “on the statutory terms, by identifying a relationship between rents and turnovers which can then be used to arrive at Net Annual Value.

The figure of turnover adopted should represent the annual amount considered to be the hypothetical achievable level in the year to 1st April 2008, having regard to the physical nature of the property and its location as at 1st January 2010, on the assumption that the premises will be operated by a competent operator seeking to maximise profits. The

statutory hypothesis assumes that the letting takes place in an open market, which includes prospective tenants who would recognise past and /or current good practices and operating techniques, and seek at least to replicate them.”

Paragraph 5.1 of the Practice Note under the heading of “Recommended Approach to Valuation” states that it should be borne in mind that while actual turnover figures will have been provided and these are, in many cases, likely to be adopted in order to arrive at a valuation, it is nevertheless the hypothetical achievable turnover which should be used if the actual figures are considered not to be representative of the hypothetical situation.

The function of the Committee is to ensure that the valuation is correct having regard to the relevant facts and valuation law and practice. If the valuation is correct in law, then the Committee cannot alter it. They cannot not take account of any sympathy they may feel for the ratepayer.

The Committee noted that the assessor had valued the subjects in the manner set out in the Practice Note. In this case, the actual turnover figures provided had been adopted as the hypothetical achievable turnover in order to arrive at the valuation. Based on the evidence, the Committee could see no reason why the actual figures would not be representative of the hypothetical situation in the year to 1st April 2008. As stated in the SAA Practice Note, the purpose of the scheme is to enable valuers to ascertain “the rent at which the lands and heritages might reasonably be expected to be let from year to year” on the statutory terms, by identifying a relationship between rents and turnovers which can then be used to arrive at net annual value. In terms of Appendix 1 to the Practice Note, the percentages are to apply in the absence of local evidence which is sufficient to merit a variation. Note 2 states that the percentages may be reduced by up to 0.5% to account for unique elements associated with the particular property which are not reflected in the turnover. In the Committee’s opinion, there were no such elements in the present case.

The Committee also acknowledged that the submissions made by counsel for the assessor in relation to the grounds of appeal which had been put forward were correct:-

The process of revaluation involves a completely fresh start. It is well settled in valuation law that comparison with the previous rateable value for the appeal subjects is not a relevant ground of appeal. (Armour, para 2-06). The previous valuation for the appeal subjects would have been carried out in terms of a different Practice Note and on the basis of different turnover figures.

The public house below would have been valued on the basis of its own actual turnover and was also slightly smaller than the public house below, having a reduced area of 87.7 sq m compared with 105 sq m.

Whilst it was clear from the other accounts produced that there had been a subsequent decline in turnover, this had taken place after 1st April 2009; subsequent falls in turnover were not relevant to rateable value in the year of revaluation.

The Committee considered that the assessor’s comparisons were of limited relevance. Only five had been assessed on the basis of returns. The Committee also agreed with the appellant that the comparisons with the 2 other nightclubs in Airdrie were of no value whatsoever. In each case, the turnover had been estimated, and it was unclear whether one of

them was open or not. However, the Committee accepted that the valuation of the appeal subjects had not been affected in any way by the valuations placed on the comparison properties.

The Committee were satisfied the assessor had correctly valued the appeal subjects and affirmed the assessor's valuation of £13,500. The appeal was accordingly dismissed.

22 June 2012