

Statement of Reasons

Relative to an Appeal

By

Ming Lang Limited

In respect of

Licensed Restaurant, 36 Hamilton Road, Bothwell, G71 8NB.

This Appeal was a running roll appeal in terms of section 3(4) of the Local Government (Scotland) Act 1975 which proceeded on the basis of an alleged arithmetical error in the entry in the Valuation Roll in respect of the appeal subjects.

The appellants became the tenants of the property on 31st July, 2011 by virtue of a sub lease. They did not lodge a revaluation appeal as the new occupiers of the subjects. There was no revaluation appeal lodged by the previous occupiers of the appeal subjects.

The parties agreed that the appropriate method of valuation of the appeal subjects was a comparative valuation effected in accordance with SAA Commercial Properties Committee Practice Note 17.

It was not disputed that the previous occupiers of the appeal subjects had failed to return to the Assessor, Licensed Premises Questionnaires in respect of the appeal subjects which would have provided turnover information at or around the tone date of 1st April, 2008. Accordingly, in valuing the subjects for the 2010 revaluation, the Assessor had no information in relation to the actual turnover for the appeal subjects. He therefore required to estimate the level of adopted turnover for the appeal subjects. He did this by considering the adopted turnover levels for all other licensed premises in Bothwell.

He contended that even if the actual turnover figures had been available to him at the time of the revaluation he would have considered them to determine if there were indicative of the level of adjusted hypothetical achievable turnover by comparison with other licensed premises comparable in terms of size, character and location. The Assessor had considered all other licensed premises in Bothwell. All appeals in respect of these comparisons had been resolved. In some cases, the notified values had been reduced. There were a range of values. The Assessor had adopted an estimated turnover of £342,900 for the appeal subjects to which he had applied the percentage of 8.75 shown in appendix 1 of Practice Note 17 producing a rateable value of £30,000.

The Appellants produced accounts for the appeal subjects to 31 August 2008. These showed turnover figures (adjusted for food sales) of £238,074 at 2007 and £205,439 at 2008. The Appellants argued that the appeal subjects should be properly valued by

application of the percentage of 8.75 shown in appendix 1 of Practice Note 17 to the adjusted actual turnover at August 2008 thereby producing a rateable value of £18,000. The Appellants contended that an arithmetical error had occurred as the wrong figure had been used in relation to turnover. The correct information had become available and the entry in the Roll should be corrected accordingly.

The committee after careful consideration of all of the evidence led and submissions made were of the view that there was no error in the entry in the Valuation Roll in relation to the appeal subjects. Having regard to the case of *The Trustees of the National Gallery of Scotland against Lothian Assessor* [2010] CSIH 94, the Committee was of the view that for the Appellants to succeed in establishing that there was indeed an error then the turnover to be used in effecting the valuation would require to be an objectively ascertainable fact. The Committee was of the view that this was not the case in this appeal. The SAA practice note 17 provides that licensed premises are to be valued by the application of a certain percentages to “the hypothetical achievable turnover” having regard to the comparative principle. The actual turnover for such subjects is only one factor, albeit a significant factor, in determining the “hypothetical achievable turnover.” Determining the “hypothetical achievable turnover” required the application of the valuer’s judgement to all of the relevant facts.

The Appellants’ criticisms of the validity of the Assessor’s comparisons highlighted that there were issues concerning valuation judgment. Indeed the Appellants conceded that it was a matter of valuer judgement to determine whether to use the turnover as shown in the accounts to 2007 or 2008.

The case of *The Prestonfield House Hotel Co Ltd v The Assessor for Lothian Region* 1982 SC 52 to which the appellants had referred was distinguishable from the present appeal because in that case the appellants had produced relevant turnover information which the Assessor had used to base his valuation. However, it transpired that the figures provided by the Appellants in that case were wrong and it was appropriate for the entry to be corrected when the correct figures were supplied.

The Committee accordingly dismissed the appeal.