LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS
RELATIVE TO APPEAL

by

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in respect of

HOTEL, 166 MAIN STREET, COATBRIDGEG
ML5 3BP (1)

This was an appeal arising out of the 2010 Revaluation, heard on 8 May and 14 June 2013. Mr Simon Dormer represented the Appellant on the first day of the hearing, Mr John Mullan on the second day. Mr Brian Gill, Advocate, appeared for the Assessor.

There were two related appeals concerning subjects at 166 Main Street, Coatbridge, the first pertaining to the accommodation, and the second pertaining to the accommodation and the licensed restaurant.

The subjects comprise a 4 storey purpose built facility consisting of 45 bedrooms, licensed restaurant with 86 covers and car parking overlooking Main Street, Coatbridge off a roundabout at its junction with South Circular Road. They were constructed and entered the valuation roll in 2000. The lower ground floor consists of a reception with bedroom accommodation and lift and stair access to the other floors, the ground floor consists of a bar/restaurant with kitchen facilities , and the first and second floors consist of bedroom accommodation. The lower ground floor is accessed from the car park off Exchange Place, and the ground floor is accessed from Main Street.

The background to matters is as follows. From 2000 to 2010 the subjects were entered in the Valuation Roll as a single unit. At the 2010 Revaluation, a unum quid valuation was entered in the roll, however the accommodation and bar/restaurant were made separate entries with effect from 1st April 2010 at the Appellant's request and on the basis of information provided by the Appellant. The individual values were estimated as no turnover was provided, and both entries were appealed. The bar/restaurant then became a "premises" entry at a nominal value of £100 from 5 May until 31 July 2012 during the course of renovation/redevelopment.

The present appeal concerns the rateable value of the accommodation as at 1 April 2010. The rateable value applied to the bar/restaurant at that date was agreed on appeal at a NAV/RV of £48,500, based on a turnover of £605,000.

The issue between the parties was whether the subjects should be valued using SAA Practice Note 16A, "Valuation of Lodge Hotels," as the Assessor contended, or SAA Practice Note 16, "Valuation of Hotels," as the Appellants contended. The rateable value now being contended for by the Assessor was £43,000, which was based on actual turnover, and not figure of £88,500 appearing on the roll, which had been arrived by way of estimate based on comparison with other lodge hotels in the vicinity, no response having been received to the questionnaires issued in June and July 2006 and October 2008. The Appellant contended for a figure of £28,000.

In considering its approach to the matter, the Committee had regard particularly to:-

- the commentary contained in Armour, paragraphs 5-25 to 5-26 and to the cases referred to therein: an appellant must initially show that there was a case to try; once that had been done, there was no presumption in favour of the Assessor's proposed valuation; the onus is on the assessor to justify a proposed valuation when that valuation is challenged by a ratepayer, particularly in a revaluation year (Armour, paragraph 5-25).
- the commentary contained in Armour, paragraph 10-01 to 10-15 and to the cases referred to therein: if parts are separately occupied then there must be separate entries for the separate subjects in accordance with the rule that the unit of valuation cannot exceed the unit of occupation.
- the commentary contained in Armour, paragraph 20-28 and to the cases referred to therein: turnover, adjusted in certain respects, has been the basis of successive revaluation schemes produced by the SAA; such schemes are 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 contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956.
- the opinion of the Lord President in the case of *Scottish Borders Council v Stobo Castle Health Spa Ltd* 2013 S.L.T. 229: all turnover based valuations rest on the assumption that the actual turnover of the premises would be the basis on which an open market offer of rent would be calculated.
- the opinion of the Lord President in the case of *Suburban Taverns v Glasgow Assessor* 2008 S.C. 298: the appellant's valuer has taken the turnover in the year after the tone date as being conclusive in the assessment of NAV because, in his view, it proves that the turnover levels before the tone date were not maintainable; in essence, that is a valuation method based on the sure and certain knowledge of hindsight; the statutory hypothesis does not permit the valuer to disregard the evidence of turnover in the year immediately before the valuation date and to base his assessment on the evidence of turnover in a later year.
- the opinions of the Lord President in the case of *Assessor for Fife v Mercat Kirkcaldy Ltd and Others* [2012] CSIH 67 and *Assessor for Tayside Valuation Joint Board v Land Securities PLC* and Others [2012] CSIH 68: the fundamental principle on which a revaluation is carried out is that all of the lands and heritages entered in the new roll are valued to a common base; it is essential to any revaluation that there should be one fixed date

at which all valuations are assessed. It would undermine the whole structure of the legislation if individual lands and heritages were to be valued as at some date later than the tone date simply because the values had fallen since then.

The first issue to be addressed was the unit of valuation. The Committee agreed with Counsel for the Assessor that the Appellant was attempting to unwind his own position, which he was not entitled to do. Whilst the subjects had not been altered since these were built, and had a single listing from 2000 to 2010, on the basis of the evidence provided to the Assessor the hotel and the restaurant had been separately occupied and run as separate businesses with separate accounts and separate tax returns from November 2009 until May 2012. The Appellant had requested that the entries be separated and could not now adopt a contrary position.

The next issue was that of the correct classification. The Committee agreed with the Assessor that in circumstances where the restaurant fell to be treated as separate entity, being let to a third party, ATA Bar & Grill Ltd., and entered separately in the roll with the agreement of the Appellant, the hotel fell within the classification of a lodge hotel , with rooms only and no integral bar and restaurant. Practice Note 16A, para 1.1 stated that the Practice Note applied to "lodge hotels offering rooms only ...and it applies to all similar establishments that have tariffs, building characteristics, and levels of service similar to those of the major operators." The Committee agreed with the submission made by Counsel for the Assessor that the Appellants' argument that the hotel should be classified as Class 2 Hotel was based on evidence of customer experience which related to services provided by the restaurant not by the hotel, other than breakfast. The attempt to run both together ignored the fact that there was separate occupation and separate accounts. The rational behind Practice Note 16A was that occupancy rates for accommodation lodges tend to be much higher that for hotels, and profitability in relation to turnover tends to be much higher with accommodation lodges than with hotels. The subjects were in the style and character of a lodge hotel in both layout and operation. They provided basic accommodation at affordable prices. This appeared to the Committee to be the appropriate classification in the circumstances which existed at the time. The Committee noted that there were two other instances in Lanarkshire where the individual parts had been split to form separate entries. The Committee accepted the Assessor's evidence that the Practice Note did was not intended to relate solely to branded subjects.

The last issue was that of the correct turnover to be adopted. The Committee agreed with the analysis of the relevant law put forward by Counsel for the Assessor. This was a revaluation appeal. It was for the Assessor to justify his valuation by reference to the statutory hypothesis. The adoption of the appropriate SAA scheme was a means to this end. Every method of valuation for rating is a means to a specific end, namely that of establishing what the annual rent of the subjects would be if they were let on the open market at the valuation date on the terms set out in S6(8) of the 1956 Act. The statutory hypothesis does not permit the valuer to disregard the evidence of turnover in the year immediately before the valuation date and to base his assessment on the turnover in a later year. That would be a valuation method based on the sure and certain knowledge of hindsight. What was relevant was the hypothetical achievable turnover at the tone date.

The Committee were bound to agree with Counsel for the Assessor that the approach taken by Mr Dormer who had conducted the appeal on the first day was fundamentally flawed. He appeared to be unaware of the law on valuation for rating and the relevant case law. He did not know of the decisions in the economic downturn cases to the effect that post tone changes could not be taken into account, and he had adopted the approach taken in the Suburban Taverns case, where an attempt had been made to point to a trend after the tone date, which was not permissible.

Mr Dormer had argued for a fair maintainable turnover of £295,409 which appeared to be based on the average room sales over the years from 05/06 to 10/11 less an assumed breakfast income, giving a rateable value based on Practice Note 16, Class 2 of £28,000. Mr Mullan had adopted a turnover figure of £370,000, which he considered to be the average of the turnover figures for the years 05/06, 06/07 and 07/08, from which he had deducted 10% for economic downturn, which was he was not entitled in law to do, arriving at a figure of £333,000. The Assessor had adopted a turnover figure of £375,597, being the turnover figure from the accounts for the nearest accounting year to tone, which he considered was the best indicator of the hypothetical achievable turnover at that date. Given the information provided by the Appellant that very few customers have breakfast, the Assessor had treated any income arising from this in line with paragraph 2.7.3 of Practice Note 16A as minimal income to be included with the accommodation income at 100%. In the absence of the actual sales figures for the period from 1 April 2006 to 11 June 2006, which were not made available to the Committee, the Committee adopted the turnover figure of £375,597 put forward by the Assessor and preferred the Assessor's approach to valuation of the appeal subjects, which it considered to be soundly based in law.

The Committee considered that the Assessor's approach was justified on the evidence, he had used the correct classification, and had been correct to adopt the hypothetical achievable turnover. Applying Practice Note 16A, the rate per DBU based on an agreed DBU of 45.25 and a turnover of £375,597 was £8,300, and adopting a mid-range % to rateable value of 11.5%, gave a value of £43,194, which was then rounded down to £43,000.

Having carefully considered the evidence led and the submissions made, the Committee reached the view that the Assessor had discharged the onus upon him to explain his approach and justify his valuation. There was no persuasive challenge to the Assessor's approach.

The Committee were accordingly satisfied that the Assessor had adequately explained the valuation which he now proposed which should therefore be upheld.

The Committee accordingly dismissed the appeal.

24 July 2013