

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

MARLIN LEISURE LTD

in respect of

PUBLIC HOUSE, MAVRIX, 69 CHURCH STREET,
LARKHALL ML9 1EZ

This was a new occupier appeal made under S3(2A) of the Local Government (Scotland) Act 1975 concerning an entry in the valuation roll for the public house known as Mavrix, 69 Church Street, Larkhall. As such, the Appellants had the same rights to appeal as would have existed under the 2010 Revaluation except that if the appeal was successful, it could be effective only from the date when the Appellants became the occupier.

Mr Martin Black attended for the Appellants, and Mr Steven Lander presented the case for the Assessor.

As this was a new occupier appeal, this meant that the burden of proof was as set out in paras 5-25 and 5-26 of *Armour on Valuation for Rating* (5th Edition). Where a reasonable challenge to an Assessor's valuation has been made, the Assessor requires to explain his approach to valuation.

The appeal had been lodged on 24th February 2016. The Appellants were in the process of purchasing the property, but there had been a problem over the car parking which was not included in the title. They had taken entry under a licence to occupy, and were currently in the process of refurbishing the property. The Assessor was defending a valuation of NAV/RV £14,100. At the hearing, the Appellants contended the rates were too high for the type of business they intended to operate but did not put forward an alternative valuation.

The subjects of appeal comprised a ground floor property with a reduced area, as calculated by the Assessor, of 104.01 sq. m. This was not challenged by the Appellants, and accordingly, was accepted as correct by the Committee.

The case put forward for the Appellants was that whilst this had historically been a public house, it had been mostly unsuccessful. It had opened and closed over the last 5 years, and had been unoccupied for the last 2 years. The Appellants wanted to try something different and quirky. They were looking to create a world class indoor sports facility catering for pool and darts. They had applied for a new licence, but the wet sales would be ancillary to the business. Children would be permitted on the premises. There would be 3 darts oches with a new type of lighting, and drop down screens so that children could play on the playstation. This would lower the capacity of the premises but they expected to operate profitably. It was a wholly different proposition from what had been there before, but the rates were a big cost. According to the Appellants, the last rental achieved for the property was £1,000 per month but the landlord would have taken £750.

The Appellants also argued, in relation to the Assessor's comparisons, that he was not comparing like with like due to the fact that the premises had never traded successfully for any length of time. None of the Assessor's comparisons had ever shut, and for this reason they could not be compared with the appeal subjects.

The Committee were alert to the fact that an appeal of this nature might contain elements of a material change of circumstances argument. In so far as the Appellants' case relied on any material change of circumstances, the burden of proof would be entirely on the ratepayer to establish that a change of circumstances affecting value had taken place. The Appellants gave evidence concerning their intentions and stated that they were in the process of refurbishing the subjects but did not attempt to establish that a change of circumstances affecting value had taken place as at the date the appeal had been lodged. The appeal was against the entry currently in force. The issue before the committee was accordingly whether the Assessor had correctly valued the appeal subjects when he made that entry.

The Assessor had valued the subjects using the Scottish Assessor's Association Practice Note 17 dealing with the valuation of licensed premises. The subjects had been valued on the comparative principle, using the percentages of turnover contained in Appendix 1 to the Practice Note, applied to the hypothetical achievable turnover. Turnover figures had never been supplied, and to arrive at his valuation, the Assessor had looked at public houses of a similar size and style in similar locations. He had looked at this on a reduced area basis, citing the 5 closest comparisons, and on a geographical basis, citing the 3 closest comparisons. With reference to the comparison premises, he had arrived at an adopted turnover for the appeal premises of £165,500, which applying the percentage of 8.5% set out in Appendix 1 to the Practice Note gave a NAV of £14,100.

The Committee agreed that the Assessor had adopted the correct approach to valuation, provided always that the comparisons used were suitable.

It did not agree with the Appellants' argument that they were unsuitable because the premises used as comparisons had traded successfully and none had shut. It accepted the Assessor's submission that what was to be valued was the premises and not the business. In terms of the Practice Note, the figure of turnover adopted should be arrived at 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. No evidence was led before the Committee as to the reasons why the previous businesses had failed, or which was intended to show that the reasons for those failures related to the premises themselves rather than the operation of the business.

The Committee acknowledged that the five comparisons put forward were suitable, in circumstances where they of similar size, character and location, where, out of the five put forward, there were actual turnover figures for three, and where four of the valuations had not been appealed, and the other was agreed on appeal with professional agents.

The Committee carefully considered the evidence and submissions put forward by the parties. It concluded that the Assessor had properly explained his valuation.

The premises fell to be valued in accordance with their previous use as a public house. Since the appeal had been lodged, the Appellants had begun refurbishing the premises to accord with the particular use which they intended to make of these, but this had no bearing on the appeal presently before the Committee.

The Committee accordingly dismissed the appeal.

30th September 2016