

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS

RELATIVE TO APPEAL

by

PATCH ENTERTAINMENTS LTD

in respect of

DISCOTHEQUE, SKOOSH, FIRST FLOOR, 21
MUIR STREET, MOTHERWELL ML1 1BH

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 discotheque known as Skoosh situated on the first floor of the tenement building at 21 Muir Street, Motherwell. 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 John Mullan presented the case for the Appellants. He attended with Jackie Lewis of Patch Entertainments Ltd, but Jackie Lewis did not give evidence. Mr Iain Newton presented the case for the Assessor.

In a new occupier appeal, the burden of proof is 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.

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

- to the commentary contained in Armour, paragraphs 17-11 to 17-19A, and to the cases and legislation referred to therein including the definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956: net annual value is arrived at based on the rent which the hypothetical tenant would pay to the hypothetical landlord for a lease on the statutory terms of the subjects;

- to the dictum of Lord Justice Clerk Gill in *Suburban Taverns (Glasgow) Ltd v Assessor for Glasgow*, [2008] CSIH 5: in the valuation of public houses for rating it has been recognised for many years that turnover is the most reliable determinant of NAV;
- to the commentary contained in *Armour*, paragraphs 3-44 to 3-45 and to the cases and legislation referred to therein including the provision for valuation according to the tone of the roll contained in Section 15 of the Local Government (Scotland) Act 1966.
- to the dictum of Lord Doherty in *Belhaven Brewery Company Ltd v Assessor for Ayrshire Valuation Joint Board* [2014] CSIH 89 at para[14] citing as authority *Suburban Taverns (Glasgow) Ltd v Assessor for Glasgow*, supra, per Lord Justice Clerk Gill at para [16], per Lord Hodge at para 22, and the authorities referred to in *Armour* para 19-19, footnote 2 (viz *Heart of Midlothian Football Club Ltd v Assessor for Lothian Region* 1988 SLT (Lands Tr.) 61; *Occidental Petroleum (Caledonia) Ltd v Assessor for Grampian Region*, March 25 1988; *Magell Ltd v Assessor for Dumfries and Galloway* 2005 SLT 453; *Wincanton plc v Assessor for Lanarkshire Valuation Joint Board* 2012 SLT 1161: post-tone date evidence of rents or turnover may be relevant to determining the annual value of lands and heritages.

The appeal had been lodged on 26th February 2016. The value appearing on the roll was NAV/RV£34,250. The Assessor in his evidence asked the Committee to note this was not appealed at revaluation, and that an appeal by new occupiers in 2013 was dismissed in absence, however at the hearing he elected to defend a valuation of NAV/RV £21,000. The Appellants contended for an alternative valuation of NAV/RV£14,700.

The subjects of appeal are situated on the first floor of a traditional three storey tenement building. The front entrance is on the ground floor with stairwell access to the first floor. This entry formed part of what was formerly known as Motherwell Point, comprising a public house on the ground floor and nightclubs on the first and second floors, which had operated as a single entity. The valuation placed on the complex at tone had been NAV/RV £71,000. No turnover figures had been produced and this had been an estimated value. The second floor was split off as a separate entity with effect from 1st September 2008, and the first floor was split off with effect from 18th November 2008. The second floor and ground floor were now premises entries with NAV/RV £100. Jackie Lewis had been the manager of the first floor premises from 1994 to 2008, and in November 2008 she and James Hughes, who had been the doorman, were parties to a lease of the premises which were operated from that date as a separate business. Since 1st January 2016, the business had been operated by the Appellants, Patch Entertainments Ltd.

It was not in dispute that the value fell to be determined by reference to SAA Practice Note 17 dealing with the Valuation of Licensed Premises, by reference to the turnover figure at the tone date, 1st April 2008. The difficulty faced by both the Appellants and the Assessor was that there were no turnover figures available at tone. The Committee heard that these would have been for the accounting period from 6th April 2007 to 5th April 2008 but there were no accounts available, and even if there had been, they would have been for the cumulo entity. Post tone turnover figures for the premises were however available as follows:-

Year ending 30/11/2009 - £188,982

Year ending 30/11 2010 - £250,024

Year ending 30/11/2011 - £243,250

Year ending 30/11/2012 - £211,283

Both parties took a different approach to valuation. The Appellants took the turnover figure for the year nearest the tone date, arriving in this way at a value of NAV/RV £14,700. The Assessor carried out a valuation by comparison, looking at the turnover as a secondary guide to value, arriving in this way at the value of NAV/RV £21,000, being the figure which the Assessor had elected to defend.

The Committee considered that a reasonable challenge to the Assessor's valuation had been made. The Assessor seemed to acknowledge this in circumstances where he elected not to defend the valuation appearing on the Roll. The Committee accordingly considered the Assessor's approach to valuation.

The Assessor took the view that as the available turnover figures were post tone, they should be considered only as a secondary guide to valuation. The Committee acknowledged that the evidence of turnover in the three later years was of no relevance, being remote from the tone date. It also considered the Appellants' evidence as to why it might be that there had been an increase in turnover in those years to be irrelevant. It was mindful however that the turnover for the year to 30/11/2009, which was between 8 and 20 months post tone, was the most proximate evidence of turnover available, and as such, in the absence of tone date evidence, may be used as a surrogate means of valuation if it is the best evidence of value available. However, before considering whether this was the best evidence of value available, and if so, what weight should be given to that evidence, the Committee carefully considered the valuation by comparison carried out by the Assessor.

The Assessor referred the Committee to para 5.3 of the Practice Note which stated that in the absence of any indication of the anticipated level of turnover, the hypothetical achievable turnover should be estimated by comparison with other similar properties. The Assessor's Production 3 showed the Assessor's valuation of

the appeal subjects and comparisons. The table listed various subjects in Motherwell, Bellshill, Airdrie, Coatbridge, Cumbernauld and Hamilton. According to the Assessor, the properties in Motherwell, being Hype Nightclub/Mega Bar, provided the most appropriate and relevant comparisons. The Committee could understand that, being the closest in location, this was likely to be the case, but as it was given no information as to factors such as the locational advantages, attractiveness, character, fittings and facilities, or the trading policies of the licensees in relation to the other premises listed, it was not in a position to make its own judgement. It did however share the concern expressed by the Appellants' agent that the Assessor was treating as his best comparisons subjects which were modern purpose built premises whereas the appeal subjects comprised a converted tenement property. It was not clear from the comparative evidence produced by the Assessor how he had arrived at an estimated hypothetical achievable turnover for the appeal subjects, which appeared to the Committee on the basis of the limited information available to it to be excessive in relation to the other modern purpose built facilities in Motherwell and out of line when compared with the turnover in the older properties listed. The Committee found the Assessor's valuation to be unconvincing.

As regards the secondary check carried out by the Assessor, the estimated turnover appeared to the Committee to be out of line with the turnover for the year ended 30th November 2009. The Assessor suggested that as the property opened in 2008, there would be a period of time before the nightclub became established. The Committee did not consider that the Assessor's explanation was plausible. What had taken place in 2008 had been a change of occupier. The nightclub continued to operate in the same unit. The Assessor's witness accepted in cross examination that the subjects of appeal had operated as an over 25's nightclub since 1994. The Committee considered the turnover in the three later years, which was closer to the figure arrived at by the Assessor, was too remote from tone to be used as a check.

The Committee for these reasons took the view that little weight could be placed upon the value arrived at by the Assessor as a result of his comparative approach. It considered that in the circumstances of the present appeal, the best evidence of annual value available to it was the post tone turnover figure for the year ending 30th November 2009. The reliability of that evidence was not challenged by the Assessor. Neither party had seen fit to address the Committee as to whether there were any significant changes in general levels of turnover in the interim but the absence of any such evidence did not make the evidence of turnover in the year in question irrelevant or inadmissible. The Committee considered that this was the best available evidence of annual value. It had no basis on which to make any adjustment to that figure.

The Committee carefully considered the evidence and submissions put forward by the parties. It concluded that the Assessor had not properly explained his valuation and that the valuation put forward by the

Appellants, which was based on the best available evidence of annual value, albeit post tone, was to be preferred.

The Committee accordingly granted the appeal.

3rd March, 2017

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