

The Local Valuation Panel for Argyll & Bute, Dunbartonshire and Glasgow.

Secretary to the Panel: David C Clapham SSC
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27th March, 2019.

Messrs J and E Shepherd
13 Albert Square
Dundee DD1 1XA

Dear Sirs,

**Valuation Appeal Committee
21 and 22 March 2019**

**1347 Argyle Street
1355 Argyle Street
1075 Argyle Street
340 Crow Road
350A Scotland Street
Licensed Restaurants**

I am directed by the Valuation Appeal Committee (Mr Brenan, Mrs Smith, Mr McVicar and Mr Paterson) to thank both Mr Haddow, QC and Mr Clarke, QC for their respective submissions and for their careful and cogent presentation of their respective cases. The Committee has also directed me to thank all of the chartered surveyors who gave evidence to the Valuation Appeal Committee, whether on behalf of the appellants or on behalf of the City Assessor, for their extensive preparation and important contributions. The Committee was impressed by the experience, knowledge and expertise of all of the professional witnesses. The Committee found all of the surveyors who gave evidence to the Valuation Appeal Committee to be careful and honest witnesses and, ultimately, it was left to the Committee to make a decision in relation to what was evidently an honest difference of opinion amongst professional people.

As the thread that runs through these different appeals is the question of the correct approach to the valuation of licensed restaurants and as the appellants effectively presented all of these appeals together with the Assessor providing one composite reply, I have been instructed by the Committee to issue one decision letter (this) and this will be issued to each of Messrs Jones Lang Lasalle, Messrs Avison Young, Messrs J&E Shepherd and Messrs Montagu Evans with a copy of the decision letter being intimated to the City Assessor.

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The Valuation Appeal Committee has instructed me to say that it has given careful consideration to all of the information available to it.

The Committee took as its starting point that the net annual value should be the rent at which the lands and heritages might reasonably be expected to let from year to year, assuming of course that the tenant was paying not only the rent but the cost of the insurance of the property and the cost of any repairs necessary to maintain the property in a state which would allow it to command that rent.

The Valuation Appeal Committee found that it was bound to apply the law as the law stands. Armour says "It is well-established that the ordinary way of valuing public houses is by the comparative principle". Although that sentence refers to public houses, it appears under the heading "licensed premises". The Committee noted that in the case of Assessor for Lothian -v- Belhaven Brewery Company in 2009 Lord Gill (then the Lord Justice Clerk but later the Lord President) observed "For over a century, turnover has been found to be the most reliable basis on which to assess the annual value of licensed premises. 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 metre 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". It was the finding of the Committee (on 21/22 March) that just as public houses fall to be valued on the basis of turnover so also do licensed restaurants. The Committee did not accept that a licensed restaurant should be valued as a shop. The Committee noted that the valuation of a shop would appear to involve the adoption of a zoning principle. Where a shop is being valued, the first nine metres are treated as Zone A, the next so many metres as Zone B and so on. This is on the basis that the first nine metres are presumed to be the most important and most valuable part of the shop from the point of view of the shopkeeper. This quite simply cannot be said to apply to licensed restaurants.

The Valuation Appeal Committee did not regard the view of a previous Valuation Appeal Committee as being binding upon it. The Valuation Appeal Committee which met on 21 and 22 March, 2019, recognised that it was hearing much fuller and more detailed argument than had been heard by the previous Valuation Appeal Committee (in the Cafe Gandolfi case) and the decision of a previous committee while it certainly has persuasive value was not treated as being binding. However, the Valuation Appeal Committee which met on 21 and 22 March agreed with the earlier Valuation Appeal Committee that a zoning method ought not to apply to a licensed restaurant. The Committee which met on 21 and 22 March agreed with the previous committee that some customers in a licensed restaurant might wish to be seated near the door. Some customers, however, for a variety of reasons, might prefer more privacy and might wish to sit near the back of a restaurant.

Armour provides an extensive quotation from Belhaven Brewery Company Limited -v- Assessor for Ayrshire Valuation Joint Board which was decided in 2014. Lord Doherty is quoted as saying that it was unsurprising that the relevant Valuation Appeal Committee had not accepted the approach which had been put forward by the appellant's surveyor in that case. What Lord Doherty said was that the approach of the surveyor before the Valuation Appeal Committee in that case had been based on the "fallacy" that there is a

direct proportional relationship between the floor area and the turnover of licensed premises.

The Committee which met on 21 and 22 March, 2019 did not accept that a licensed restaurant should be valued as a shop. If a licensed restaurant were to be valued as a shop then the zoning method would have to be used and that would simply mean no account being taken of the turnover of a licensed restaurant.

Mr Rankin in his evidence said that it was his contention that a change of use of a property should not result in a substantial change in value and indeed it was an important part of Mr Rankin's case that the possession of a licence should not radically affect the valuation of premises. The Committee did not accept this argument.

The Committee proceeded on the premise that premises have to be valued according to their actual use but a shop is valued as a shop and not as a grocer's shop or as a butcher's shop etc. Consequently, it was the finding of the Committee that if there were four shops which constituted a row of shops and if all four shops were identical in size, it would be reasonable to value all of the shops equally even though one might be a grocer's shop, one might be a butcher's shop, one might be a chemist's shop and one might be a bicycle shop. The fact that these shops have different uses should not affect the way in which the shops would be valued. However, it was the finding of the Committee that if in that row there were in fact not four sets of premises but five sets of premises with the fifth being a licensed restaurant, then, in the finding of the Committee, even though the licensed restaurant might be of entirely the same floor area as the shops, it would have to be valued on a different basis.

The Committee understood the arguments that were deployed by the professional witnesses who gave evidence on behalf of the appellants. In the example taken by the Committee where there are five sets of premises, four of which are being used as shops and one of which is being used as a licensed restaurant, the four sets of premises being used as shops will fall to be valued as shops. The fifth set of premises being a licensed restaurant will fall to be valued on a turnover basis and the Committee accepted that this could lead to a greater or lesser disparity between on the one hand the net annual value of the licensed premises and on the other hand the net annual value of the neighbouring bicycle shop or grocer's shop. The Committee was of the view, however, that a disparity was not necessarily illogical and might be an inevitable consequence in some circumstances of the valuation of a licensed restaurant on a turnover basis.

To take as an example the licensed restaurant at 340 Crow Road, it was the evidence of Mr Boal that the net annual value/rateable value of his clients' restaurant of £35,500 was an entirely unrealistic and unreasonable reflection of the annual value of the property. He said that the figure of £35,500 set at the 2017 revaluation was excessive. Mr Boal said that at the 2017 revaluation, the valuation of shops was covered by the Scottish Assessor's Association Practice Note 1 ("Valuation of Shops"). Mr Boal provided a copy of Practice Note 1 and said that it should be noted that according to the Practice Note it was intended to apply to the valuation of standard shops and subjects occupying shop type premises in retail locations. Mr Boal went on to say that in terms of the Practice Note, shops were to be valued by application of the comparative principle using rates per square metre derived from local rental evidence.

Mr Boal went on to point out that the rent passing was only £21,000 per annum and he said that the net annual value/rateable value of £35,500 could not be supported either by the arm's length rent which had been agreed or by rental evidence in the locality at or leading up to the tone date. He said that the Zone A rate applied to immediately

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neighbouring retail properties in Crow Road was £200 per square metre and that that would be an appropriate Zone A rate to apply to the subjects under appeal when (in his view) correctly assessed as a shop.

Mr Boal provided in his precognition details of his proposed value and his conclusion. He said that a fair and reasonable Zone A rate would be the Zone A rate applied by the Assessor to immediately neighbouring shop premises at the 2017 revaluation, i.e. £200 per square metre.

Mr Boal applied the Zone A rate of £200 per square metre to the reduced floor area and then deducted an 8% end allowance for quantum in line with the Assessors' Practice Note for shops and thus he arrived at a proposed net annual value of £16,100.

It was the finding of the Committee that the difficulty with Mr Boal's approach was that what Mr Boal was doing was valuing licensed premises as if they were a shop. It was the finding of the Committee both in fact and in law that the premises in respect of which Mr Boal's client had to pay non-domestic rates were to be valued not as a shop but as a licensed restaurant and that a licensed restaurant had to be valued on a turnover basis.

The proprietor of licensed premises, including a licensed restaurant, has to provide the City Assessor with a return providing details of his turnover. That will allow the assessor to make an assessment based upon the appropriate percentage of the turnover. If a publican or the owner of a licensed restaurant does not provide a return of his turnover then of course the Assessor will have to make an estimate of the hypothetical achievable turnover and apply a percentage to that. It was the view of the Committee that it was not to be assumed that in the case of each and every licensed restaurant the landlord of the premises would know what the turnover was and if the landlord chose to accept a rental level based on what he thought he might be able to fetch for the premises on the basis of the premises being let out as a shop then that was the landlord's decision. Likewise, a landlord who had attempted to run a licensed restaurant in a set of premises himself and who had seen that venture fail, might, for his own reasons, be glad simply to have the shop let out at whatever rent the tenant was within reason prepared to pay. Landlords no doubt have their own reasons for making commercial decisions. Even though a lease might contain a rent review provision, a landlord in the fortunate position of having a tenant paying his rent regularly might decide that he did not wish to upset his tenant by seeking an increase in the rental level.

The professional agents who gave evidence on behalf of the various appellants naturally pointed to instances where the City Assessor (for reasons not entirely clear) had valued particular licensed restaurants not as licensed restaurants but as shops. The Assessor for his part pointed to the large number of cases where appeals in relation to licensed restaurants had been settled by professional agents on the basis of the application of the turnover method of valuation and of course the Assessor was quick to point out that some of the appeals that had been settled had been settled by some of the professional firms acting on behalf of the appellants in this case.

It was the view of the Committee that Mr Haddow was correct to say that what the Assessor's approach presupposes is, in comparison with a café or a restaurant without a licence, the existence of a licence must add to rateable value in every case. What Mr Haddow said was that in relation to the question of whether a licence did add value, the answer was "it depends". It was the finding of the Committee that the possession of a licence to sell alcohol does in the case of a restaurant add value.

Mr Haddow said "plainly any scheme will have inconsistencies in its universal application of a percentage of turnover to provide the value". The Committee considered that there was a possibility or even a probability that the universal application of a percentage of turnover to provide the value could throw up apparent inconsistencies but the valuation of premises, whether licensed restaurants or otherwise, cannot be considered always to be a perfect science. Mr Haddow said in his submissions that it was significant that the "Wee Lochan" being the property in Crow Road was the subject of a lease in circumstances where the landlord, himself a restaurateur, had failed in a restaurant venture. Mr Haddow said that it was plainly wrong to suggest that the landlord of any of these subjects of appeal would be able to let their premises to be operated as licensed restaurants at a level above the dominant force in those areas namely shop values and he said that the landlord of the Wee Lochan had accepted a level of rent which was a shop level of rent. However, the Committee did not hear evidence from the landlord of the "Wee Lochan" and cannot speculate about the mindset or the views of the landlord. However, in circumstances where a landlord had himself attempted to operate a licensed restaurant from a property and had failed, he might be glad, rather than being faced with an empty shop, to let the property out at a shop level of rent. At the point when the landlord lets out the property and the rent is fixed, the landlord might obviously be in a position not to know what the turnover of the proposed licensed restaurant is likely to be.

The Committee derived assistance from Item E4, Production No.2, showing that various licensed restaurants in streets such as Byres Road, Clarence Drive, Dumbarton Road, Gibson Street and Great Western Road had had appeals settled or withdrawn.

The Committee attached weight to Mr Clarke's point that no one has given evidence that landlords knew turnover levels when rents were struck. The Committee also accepted that properties being run as successful licensed restaurants may well have been previously under-valued. The Committee also accepted a submission made by Mr Clarke to the effect that a restaurant, like the "Wee Lochan" is highly unlikely to do as well as it does if it has no licence because as Mr Clarke put it, a licence "is part of the package for the dining experience".

The Committee found it of interest that there was no evidence before it that any of the restaurateurs who were appealing against rateable value would be prepared to give up their alcohol licences in order to bring about a reduction in rateable value.

The Committee agreed with Mr Clarke that to value the appeal subjects other than on the turnover basis would be to fly in the face of the very significant number of appeals that have been settled, using the turnover basis. The Committee found that a hypothetical landlord seeking to let out licensed premises would have in mind the turnover that licensed premises were capable of generating. In the view of the Committee an analysis of shop rents was not the correct approach to the valuation of licensed restaurants and even where shop rents are analysed to work out a rent rate there can still be inconsistencies between the average rent per square metre and individual cases.

I am directed by the Committee to say that it was for the foregoing reasons that the Committee decided that the appeals in front of it should not be allowed and that the respective values being defended by the City Assessor should be confirmed.

Yours faithfully

David C Clapham SSC

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