

PRACTICE NOTE

LIST DEFENCE – LICENSED PROPERTY

Legislation

All will be familiar with the provisions dealing with an application to the District Valuer and [if necessary] a subsequent appeal to the Commissioner. More specifically at revision the two paragraphs of the 77 Order that apply particularly to the valuation of pubs and hotels and indeed to any other hereditament where comparison is being made on the basis of turnover, are paragraphs 2(1) and 4 of schedule 12.

Case Law

The “bedrock” remains VR/9/85 McKeown Vintners Ltd. and anyone dealing with the valuation of pubs or hotels post April should read the case. The following are salient points taken both from McKeown and from advice received from counsel

- The provisions of the 77 Order lay down two quite separate and distinctive methods of ascertaining NAV. The first applies to a general revaluation: the second to revisions of entries in the list between general revaluations.
- When a general revaluation list is being prepared paragraph 1 of schedule 12 applies and all hereditaments are assessed upon an estimate of rental values at a fixed date in time. Evidence of turnover or accounts is applied directly i.e. a full “receipts and expenditure” valuation is carried out or more usually the “shorthand” R & E method described in the valuation “scheme” is adopted.
- When a revision of an entry in the list is under consideration different principles come into play; in particular paragraph 2 (1) and the concept of comparable hereditaments. The rationale is to ensure that “economic factors” influencing rental levels post the antecedent date of the general revaluation are not taken into account.
- There is no mechanism in NI legislation, other than a judicial review, to challenge directly NAV’s established by the Commissioner at a general revaluation. [The position in Northern Ireland is quite different to the position in England and Wales where it is possible to challenge the new list directly by reference to rental evidence and where “tone” is not established until such challenges are resolved.] This means that the date of valuation at revision is the **date of the District Valuer’s Certificate** [see Marks and Spencer – v – The Commissioner] and in

the normal situation of year on year rental increases to apply paragraph 1 of schedule 12 would mean NAV's above the level established at revaluation. The converse is also possible. To prevent this as noted we have paragraph 2 (1) that directs that regard **shall** be had to the NAV's of comparable hereditaments in the same state and circumstances i.e. our "tone of the list" provisions.

- In the case of hereditaments where comparison is made on the basis of turnover paragraph 4 of schedule 12 has an important role to play. It interacts with paragraph 2 (1) and this results in the situation where turnover figures of both the subject and the comparisons must be taken at **current figures** i.e. for practical purposes figures for the financial year in which the application for revision was submitted [The year in which the valuation will first be in force – see wording or para 4]. The impact of this is that if there has been a general increase or decrease in trade since revaluation this is discounted by using comparisons in the same state and circumstances i.e. which have also been effected by the same economic factors. This does not prevent us taking into account the specific circumstances of individual properties but means that general trends are ignored. An example would be border petrol filling stations post 4th reval where a fall in rental values caused by economic circumstances could not be actioned until the 5th general revaluation.
- Care must be taken to ensure that the comparisons chosen are in the same "state and circumstances" – a comparison for a border petrol filling station is another border petrol filling station and not a filling station at some distance removed which is not influenced by the proximity of cheap fuel. In the case of a pub or hotel due allowance needs to be made for all of the factors affecting value noted in the various schemes
- Para 4 of schedule 12 only comes into play whenever comparison is on the basis of turnover. If other methods of comparison are used the normal provisions apply.

Practical Application

1. A percentage of licensees did not submit forms of return and in these cases values in the 5th list are based on our estimates of fair maintainable trade [FMT]. If application are received on these properties in say the 6 months post 1st April NAV's can be adjusted if necessary using the reval schemes and actual accounts as at the antecedent date, always provided that the actual accounts are considered to be a fair reflection of the trade of the hypothetical tenant.
2. By acting as above we are taking a pragmatic view but care must be taken to ensure that we do not present this action as supporting a

challenge to the 5th list entry. Strictly speaking we are dealing with a revision case and are doing so by reference to comparison with the NAV's of other similar properties in the list. If however there have been no significant economic swings in the last two years the result should be the same.

3. As we move further away from the antecedent date the percentages noted in the "schemes" have little if any relevance except as a "check". The basis of valuation is as described in "McKeown" i.e. a comparison with other similar properties in the list using modern turnover.
4. During the life of the 4th list several agents attempted to argue for a reduction in NAV because of changed economic circumstances. The argument was simplistic – turnover has dropped so applying the 4th revaluation scheme to modern turnover NAV should be reduced. As explained above this is not correct. Paragraphs 2 (1) and 4 interact to ensure that general economic changes are ignored and subsequent revision changes can only be justified on the basis of a comparison with other properties in the same state and circumstances. The opening of a new pub or hotel for example may reduce the turnover of a number of properties but this is an "economic factor" which is a matter for a further revaluation. The one caveat that I would add to the above is that while changes which effect all of the comparisons are ignored this does not prevent us looking at the particular circumstances of any individual property. In the above example the opening of new premises may have caused a general reduction in trade in the area but certain individual properties may have been affected to a greater extent than others. If this is the case an analysis of modern accounts should demonstrate the point and NAV could be adjusted accordingly.
5. The valuation of pubs and hotels is not an exact science. At a general valuation:
 - We are attempting to estimate the probable FMT of the hypothetical tenant;
 - The choice of percentage to be applied to the FMT is a matter of judgement
 - In addition at revision we have to find out or estimate the up to date turnover of comparisons. Note that at revision a District Valuer has the power to call for returns from comparable premises but experience has shown that these powers are all but impossible to enforce.
6. Using what information is available to us from revision casework and appeals or making estimates based on RPI increases we should in most cases be in a position to make a reasonable estimate of NAV

without undue research. Most agents will be in a similar position and given goodwill on both sides agreement should be possible.

7. If no agreement is possible then at revision stage, provided the correct methodology has been used, as noted above and reasonable steps have been taken to obtain comparisons then no "soul searching" is required and cases should issue without undue delay.

Happy to deal with any queries which might arise

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