



RA/42/2004
RA/43/2004

LANDS TRIBUNAL ACT 1949

RATING – alteration of rating list – valuation – mode or category of occupation – public houses – loss of licences – police objection to licences because of owner – public houses ceasing to operate – whether material change of circumstances – whether loss of licence relevant to valuation – held no change in mode or category of occupation – no power to alter list on basis of proposal – loss of licence not relevant to valuation – Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993, reg 4

**IN THE MATTER OF AN APPEAL FROM A DECISION OF THE
MANCHESTER SOUTH VALUATION TRIBUNAL**

BETWEEN

**JUDITH SCHOFIELD
(Valuation Officer)**

Appellant

and

**RBNB
(an unlimited company)**

Respondent

**Re: Jolly Miller Public House
Fernclough Road
Manchester M9 1TU**

and

**Re: The New Victoria Public House
38 Kingfisher Close
Manchester M12 4PW**

Before: The President

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
On 11 March 2008**

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David Forsdick instructed by HMRC Solicitors for the Applicant
Martin Edwards instructed by Winbourne Martin French, chartered surveyors.

The following cases are referred to in this decision:

R v Crown Court at Warrington, ex p RBNB (an unlimited Company) [2002] 1 WLR 1954
Williams (VO) v Scottish and Newcastle (Retail) Ltd [2001] RA 41

DECISION

1. These appeals are from a decision of the Manchester South Valuation Tribunal given on 4 June 2004. They relate to two public houses, the Jolly Miller at Fernclough Road, Manchester, and The New Victoria, at 38 Kingfisher Road, Manchester. At all relevant times the owner and occupier of these hereditaments, RBNB, an unregistered company, did not have a licence to operate them as public houses. In its decision the VT directed that the Jolly Miller should be entered in the rating list as “Public House (without licence)” at a rateable value of £1,400 with effect from 28 June 1997 and that The New Victoria should be entered in the list as “Public House (without licence)” at a rateable value of £1,400 with effect from 27 September 1997. The appellant valuation officer contends that each hereditament should be valued as a public house capable of operating with the benefit of a licence and that they should be entered in the list accordingly, the Jolly Miller at £9,600 RV, The New Victoria at £10,750. The respondent says that the VT’s decision should be upheld. The parties are agreed in relation to these alternative values. Although witness statements had been filed, neither party called any evidence. There is an agreed statement of facts.

2. The Jolly Miller is a purpose-built public house that was built in the 1970s. It is of traditional brick and tile construction and is located in a predominantly residential area in the Harpuhey district of Manchester. It was built to serve a new local authority housing estate. It was formerly owned by Greenalls Group Plc and was sold to RBNB on 15 November 1994. The New Victoria is also a purpose-built public house dating from the 1970s. It is of traditional brick and tile construction and is located in a predominantly residential area in the Longsight district of Manchester, serving the adjoining local authority housing estate. It was formerly owned by Groves and Whitnall Ltd and was sold to RBNB on 9 January 1995.

3. The key facts that give rise to the issue between the parties are not covered by the agreed statement of facts, and I am left to deduce them from the various documents in the trial bundle. There does not appear to be any difference between the parties in relation to them. It appears that in about 1996 the police objected to a number of applications for licence renewals and transfers for public houses owned by RBNB. The basis of objection was that the identities of the shareholders of RBNB were not known and that, without knowing who the shareholders were, it was impossible to know whether the applicant for a licence in each case was a fit and proper person. Acceding to this objection in relation to one of RBNB’s public houses, the Weavers Hotel, Runcorn, on 5 March 1997 the Hatton licensing justices refused the application for a transfer licence made by a Mr Kehoe, who was an employee of RBNB. The applicant’s appeal to the Crown Court at Warrington was dismissed on 10 October 1997. That decision was quashed on judicial review on 3 April 1998 and the matter was remitted to the Crown Court for rehearing. On 9 October 1998 the Crown Court reached the same decision, adverse to the applicant, that it had reached a year before. Mr Kehoe obtained other employment, but RBNB sought judicial review of the Crown Court’s decision as an interested party. On 15 December 1999 Newman J granted the company’s application and declared that the Crown Court’s decision was contrary to law because the identity of the shareholders of the company that owned the public house was irrelevant to the question whether the applicant was a fit and proper person to hold a licence. The Chief Constable of Cheshire appealed to the Court of Appeal against this decision, but his appeal was dismissed on 31 July 2000, and further appeal

to the House of Lords was dismissed on 20 June 2002: see *R v Crown Court at Warrington, ex p RBNB (an unlimited Company)* [2002] 1 WLR 1954.

4. The relevant elements of the licensing regime at the relevant time were as follows. Under the Licensing Act 1964 a licence was required for the sale of alcohol. Such licence was granted by the licensing justices for the petty sessional division in which the premises were located to a particular person. It permitted him to sell alcohol for consumption on or off the premises. If the person named in the licence left the premises, alcohol could only continue to be sold there if a protection order, giving temporary authority to sell alcohol, was granted or if a transfer of the licence to a new named person was granted. A protection order thus enabled the continuation of sales pending the grant of a transfer. In the event of an application for a transfer being refused by the licensing justices, appeal could be made to the Crown Court. A licence could be revoked by the licensing justices, but there was a right of appeal against revocation, and the revocation did not take effect until any appeal had been disposed of.

5. According to the respondent the Jolly Miller closed on 28 June 1997. It appears, however, that the licence was not revoked until 23 September 1998, and notice of appeal was then lodged against the revocation order. The appeal was not determined, and it was eventually withdrawn on 7 April 2002. At some point following the decision of the Court of Appeal in the *Warrington* case on 31 July 2000, the police decided not to oppose the grant of protection orders in relation to RBNB's public houses pending the outcome of the appeal to the House of Lords. An application for a protection order in respect of the Jolly Miller was accordingly made, and this was granted on 7 November 2000. The public house reopened on 17 December 2000.

6. According to the respondent The New Victoria closed on 27 September 1997. As with the Jolly Miller the licence was revoked on 23 September 1998, notice of appeal was lodged, and the appeal was withdrawn on 7 April 2002. A protection order was granted on 7 November 2000 and the public house reopened on 31 March 2001.

7. The relevant rating history in relation to the two appeal hereditaments is as follows. The Jolly Miller was entered in the 1995 rating list at £10,750 RV. A proposal was made to reduce this assessment, and in due course this was settled, at an agreed rateable value of £9,600 with effect from 1 April 1995. On 2 November 2000 a further proposal was made, seeking a reduction in the rateable value and a change in the description of the hereditament to "Stores and Premises". In the case of The New Victoria, which had been entered in the 1995 list at £13,000 RV, a similar proposal was also made on 2 November 2000. It was these proposals that led to the appeals which gave rise to the VT's decision in the present case.

8. The VT expressed its conclusions in the following terms:

"The lack of a licence for these premises was in highly unusual circumstances, as normally a licensing problem would be with the person running the public house, if the Police objected to them holding the licence then a replacement licensee could be found. In this instance the objection was against the owning company who cannot be

replaced. Therefore RBNB were prohibited from using both premises as public houses by law, also the premises could not be let to anyone else.

The lack of an on-licence would seriously affect a rental bid, as the potential for any income from the premises is virtually nil. So what are the premises? After much discussion the members decided that they should both be valued as Public House (without licence) following the principle of 'rebus sic stantibus' in other words 'as it stands'.

There is a strong argument for the alternative view held by the Valuation Officer regarding the assumption which are to be made when valuing a property for rating. But the members were of the opinion that as the premises could not be used for their intended purpose, the matters included in Schedule 6(7)(b) of the Local Government Finance Act 1988 which states 'the mode or category of occupation of the hereditament', are relevant. In other words both properties cannot be used for their intended purpose."

9. For the appellant valuation officer, Mr David Forsdick submitted that the material day for the proposals was 2 November 2000 (under regulation 3 of the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992), and that the matters affecting the physical enjoyment of the hereditament (under paragraph 2(7)(a) of Schedule 6 to the Local Government Finance Act 1988) and the mode or category of occupation (paragraph 2(7)(b)) and other factors were to be taken to be as they were on that day. It was common ground that at the material day the premises themselves were in the physical form of a public house and could have been so used if protection orders had been sought by suitable licensees, because following the Court of Appeal decision in July 2000 the police would not have objected

10. Mr Forsdick submitted that there was no material change in circumstances within paragraph 2(7). In particular there had been no change in the mode or category of occupation. Under the rating hypothesis the hereditament fell to be valued on the basis of a hypothetical landlord and a hypothetical tenant. The police's concerns in the real world had no application to the hypothetical circumstances that had to be considered for rating purposes. They only objected to licensees employed by or under the control of RBNB, and there was no reason to think that they would have objected to the hypothetical landlord and tenant. In any event at the material day, following the police's change of stance in the light of the Court of Appeal decision, the hypothetical landlord and tenant would have known that the necessary protection orders would have been granted, as they were in fact granted five days after the proposals.

11. For the respondent Mr Martin Edwards said that the issue was simple: whether under the heading of mode or category of occupation the loss of a licence enabling the ratepayer to sell liquor at the premises was to be taken into account. These were public houses, he said, that could not lawfully be used for the purposes for which they were held. It was wrong for the VO to suggest that the problem could be circumvented by the ratepayer selling the property against his will, or agreeing to an arms length tenancy, or by acceding to the demands of the police that the identities of RBNB's shareholders should be disclosed. The facts of the case, Mr Edwards said, were unique: up to the grant of the prohibition orders in 2000 the respondent was

prohibited from occupying the hereditaments, and there was only a tenuous right to do so thereafter. The VT's decision was correct and should be upheld.

12. There is no dispute that these buildings were purpose-built public houses which, on the material day, were not in use for the reason that there was no one with a licence to sell liquor in either of them. Two questions arise for decision, in my judgment. The first is whether in each case the closure of the public house and/or the loss of its licence amounted to a material change of circumstances. This question arises because under the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 the respondent was only able to make a proposal at the time that it did on certain limited grounds. The basis of the respondent's proposal in each case was that the rateable value shown in the list was inaccurate by reason of a material change of circumstances (the ground contained in regulation 4A(1)(b)). A material change of circumstances is a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the Act: see regulation 3. Among the matters in subparagraph (7) is "(b) the mode or category of occupation of the hereditament". The words that appear in the provision constitute a statutory recognition of one limb of the *rebus sic stantibus* rule – that in valuing a hereditament for rating purposes it is to be assumed that it could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day: see *Williams (VO) v Scottish and Newcastle (Retail) Ltd* [2001] RA 41. The second question, which only arises if the first question is answered in the ratepayer's favour, is whether the lack of a licence falls to be reflected in the rateable value.

13. It is clear in my judgment that in neither case was there any change in the mode or category of occupation. Each proposal had sought a change in the description of the hereditament to "Stores and Premises". Although the respondent contended before the VT that each could have been occupied as a store, the evidence was that it had not been occupied for this purpose and that no steps had been taken to achieve its use for this purpose. It was evidently because of this that the VT rejected the respondent's description of the hereditament in each case as "Stores and Premises", preferring its own description of "Public House (without licence)". There had thus been no change in the mode or category of occupation. What there had been was a change from occupation as a public house to non-occupation, but that was not a change within paragraph 2(7)(b). Nor did the loss of the licence have the effect of changing the mode or category of occupation. There was, therefore, no basis on which the VT could have directed the list to be altered. Quite apart from the Regulations, however, a hereditament that is unoccupied, in my judgment, is properly to be entered in the valuation list under a description and with a value that takes into account the mode or category of purpose for which it was designed or last occupied and for which it can be expected to be occupied in future. Each of these hereditaments was in physical terms a public house and had only ever been occupied as a public house and, once occupied again, could be expected to be to be occupied as a public house.

14. This answer to the first question that arises means that the appeals must succeed. I will nevertheless consider the second question also. The second question relates to the lack of a licence on the material day. The fact that there was no licence and that (if this were the case, which the VO contests) no licence could have been obtained because RBNB was the owner is not a matter that can affect the valuation. The reason for this, as the VO correctly argues, is

that the hereditament must be assumed to be vacant and available to be let by a hypothetical landlord to a hypothetical tenant. Such inhibition as attached to RBNB would not have attached to another hypothetical landlord or hypothetical tenant. A licence could have been obtained by some other operator, so that the inhibition that existed while RBNB remained the owner would not have affected the rent on which agreement would have been reached on the rating hypothesis. (It may also be that by the material day, as the VO suggests, the police objection to the grant of a licence had been lifted, but this was not accepted on behalf of the respondent, and the VO has not advanced evidence to prove that this was the case.) The VT was thus in error in valuing each hereditament as a public house without a licence.

15. My conclusion, therefore, is that these appeals must be allowed. The entries in the list that appeared before the VT's decision must be restored. As far as costs are concerned, Mr Forsdick and Mr Edwards agreed that these should follow the event subject to the orders already made on costs at pre-trial reviews held on 16 February 2006 and 16 October 2006. Accordingly, subject to those earlier orders, the respondent must pay the appellant's costs of the appeal, such costs if not agreed to be the subject of detailed assessment by the Registrar on the standard basis.

Dated 18 March 2007

George Bartlett QC, President