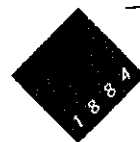


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Our ref: MJN/saw  
9<sup>th</sup> June 2013

The Rt Hon Dr Vince Cable  
Secretary of State for Business, Innovation and Skills  
Dept for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Received in  
Central Drafting Unit

18 JUN 2013

Dear Dr Cable

**Re: Government Investigation into Tied Tenancy System for Public Houses**

I write with regard to the above matter and thought I would make a letter submission to give my personal views for your consideration.

I am a Partner in Brownill Vickers, which is a firm of Chartered Surveyors specialising in the valuation and sale of commercial property, which includes licensed property and particularly including pubs, restaurants, hotels and the like. As well as being a Chartered Surveyor I am also a Fellow of the Association of Valuers of Licensed Property ([www.avlp.com](http://www.avlp.com)) and also a voluntary Assessor for the Best Bar None organisation. Brownill Vickers are corporate members of the Federation of Licensed Victuallers who awarded me a certificate at their annual dinner this year for recognition of efforts made towards its members. I am a member too of the Bii ( British Institute of Innkeeping ).

I have over 25 years experience in the sale and valuation of all types of commercial property, but my particular level of expertise is with businesses and of course public houses represent a fairly large slice of my work. It might interest you to note that my practice has been established since 1884 and throughout all that time we have offered professional services to breweries and in the last 20 years or so pub companies too.

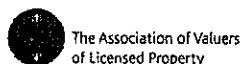
I am concerned that the Government seem intent again looking into the tied model and do so without the full or correct information. I note your Colleague Mr Greg Mulholland MP has made much 'noise' about the tied system over the last three years or so and in fact I saw Mr Mulholland speak at the tied pub company summit in 2010. It strikes me as being the case that Mr Mulholland is particularly against the larger pub companies rather than the breweries themselves and in particular an 'issue' with Enterprise Inns Plc. His comments are personal and abrasive and he clearly has issues with Mr Tuppen, the CEO of Enterprise Inns.

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17 JUN 2013





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I do hope and pray that Mr Mulholland's actions is not influencing the government – I fear that it is however. I do not believe for one moment Mr Mulholland would know much about the trade in the round. However, I do appreciate his earnest and honest efforts - I personally believe he is however unbalanced in his views.

I often tell the story passed down to me from my late father who was bought up in a public house on the outskirts of Sheffield. His mother occupied as a licensee the Sportsman at Lodge Moor during World War II. My father said she often moaned about two things; (1) the pub rent and (2) the price of beer from courage! I tell this story for those who occupy pubs under a tied system as it is the main point of argument now some seventy years later. I come from the basic premise that in over 25 years of experience, I have never known any pub company or for that matter brewery force anybody to sign an agreement. I have only seen people take time and effort to spell out the obligations of the tenancy or lease to potential applicants and therefore I have to admit on that score alone I have little time for people who take tied agreements and then moan. That does not mean that the deals should not be fair, as they should be.

In my opinion the Government are probably looking into this particular issue five years or more too late, as the recession has come along and forced most pub landlords, albeit pub company or brewers to change quite fundamentally. In all the rent reviews I have been involved with acting for landlords or tenants rents in the past 24 months have come down. In all property rent reviews it is quite normal for the interest of the tenant and the landlord to be diametrically opposed when it comes to the setting of rent. The rents being set today are a lot fairer. If they are not judged to be fair by a tenant, then under the tied system over the last 24 months, that tenant has had the resolve to refer the matter to Arbitration or Independent Expert or the more cost effective PIRRS for rent matters, or for other matters to refer the issue more recently to PICA-S. I feel that the Government are looking into the tied system too late, as surely by anybody's measure and certainly to all indications I receive both PIRRS and PICA -S is working or starting to work. You will appreciate that PIRRS have only been running for about two years or so and PICA-S only really heard there first cases in 2012.

There also seems to be a perception, which I have seen 'pedalled' by Mr Mulholland that the main issues in the trade revolve around the tied estate and yet this is not the case, please be assured that the whole of the licensed trade is having a tough time – certainly outside London. Competition is high and this is driving down trade, but some of the biggest aspects to consider here have been Government initiatives or regulations that are particularly affecting the licensed trade. However, to make an assumption that the licensed trade with all its aspects and particularly with rent reviews is worse off than any other aspect of property would to my mind be almost delusional. There are high rents in every aspect of property ownership and of course the 'upwards' only rent reviews have prevailed really since the 1960's and are nothing new. The rents that prevail in



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the pub estate at this point in time are dare I say correcting to the present market conditions faster than almost any other non-licensed property I know.

I have heard the Government mention, somewhat belatedly that there is concern about the level of pubs that are closing, but pubs have been closing ever since I started work at Brownill Vickers. I firmly believe that they will continue to close. As there remain too many situated in the wrong area's. You only have to do some elementary research to see how many pubs have closed in certain areas and interpret the information to assume that this trend will continue. If you were to look at the village of Eckington on the outskirts of Sheffield there used to be I believe 13 public houses here and now there are probably three. The closure process has been going on for over 20 years and not over recent years. When I started work at Brownill Vickers there was about 700 Public Houses in Sheffield and I would imagine that there is just less than half that amount today. I would expect that number to fall further.

Therefore, you will appreciate that I am always alarmed, when people who I suspect should know better peddle the untruth that the pub companies and breweries who operate tied systems have been the ones that have closed pubs. For those who know the industry, it actually follows that since the great brewery disposals of the late 1980's (which was sadly due to poor legislation by Lord Young) the pubs that were actually sold to the pub companies at that time were the ones that traded with lower levels of trade! The large disposals of this era from the likes of Courage and Bass, clearly sold off pubs periodically in a formatted fashion but it was the lower trading pubs that were sold. Therefore, it would of course always follow that typically these would be the pubs that closed first. In the late 1980's and early 1990's the larger companies kept the best units for themselves and in many cases these are still owned and managed operations rather than tenanted.

I am also mindful that Mr Mulholland is very closely associated, or so it would seem with CAMRA, Fair Pint and other organisations who believe that in some way the tied model has affected the choice of the consumer or the choice of the potential publican and this of course is utter nonsense as there is more choice today for somebody entering the licensed trade than there has been for 20 years or more. They can purchase a freehold or a free of tie lease or a tied lease. The fact is that many still consider the tied system due to the entry route being quicker and in many cases at a much lower cost.

For instance, Mr Mulholland recently visited a pub in the constituency where I had been directly involved. I was acting for Enterprise Inns Plc on a lease renewal as the tenant and landlord had not agreed new terms. The rent had been approximately £                      The tenant who was a very capable party had appointed herself a specialist valuer who in the past had been connected with the Fair Pint organisation. I believe his original assessment was approximately

£' which by any standard was not a credible assessment. This pub is situated in a particularly 'well to do' village.

The negotiations between the landlord and tenant went on for some time and eventually I was bought in to act as an Expert for the Landlord. My rental assessment was at £ for the renewal of a fully tied agreement, with no discount and pending going to court for determination the tenant and her advisors agreed £. which for a business doing over £ net per annum is a fair rent, even if it is fully tied. If you are ever mindful I would be happy to discuss this particular rent review with you and indeed with Mr Mulholland. The Government when looking into areas they are not used to looking into invariably do not look under every stone and Mr Mulholland on the face of what I know seemed to be heavily supporting the tenant here against Enterprise Inns Plc and yet can not have realised that the point that lead to settlement prior to going to court was that the tenants own management accounts had a huge black hole in them due to the level of casual employment. I suspect Court was avoided by the tenant fearing a more in depth analysis of her accounts. I am afraid this scenario is by my experiences quite the norm.

I do not make this point here for an HMRC investigation into a particular pub, but I hope it does make the point that the Government should be very careful about who they are supporting and for what reason they believe they are supporting them. In this case the nearest other property, which was let in early 2012, has been let free of tie for £90,000, therefore I do believe that within the same environ there is a good comparison here between a fully tied unit with a lower rent and one that is free of tie. I presume Mr Mulholland supports business paying the correct level of tax ?

I am also surprised that once again Campaign for Real Ale (CAMRA) is being trumpeted so much by lobbying forces. The Campaign for Real Ale is exactly that – it is not a campaign for pubs generally it is a campaign for Real Ale – Real Ale being traditional beer that is still fomenting in the barrel. In my opinion and from my experience in having dealt with CAMRA members for over 25 years CAMRA do not have a significant level of interest in what we may call a 'branded' pubs and have no great interest in pubs where they are modern city centre pubs unless there is a broad range of cask ales. CAMRA, certainly based on the local membership are anti-food pubs and yet it is exactly this type of unit that is continuing to trade well and of course it is very rare to find a pub tied in for food purchases. I think it also needs bearing in mind that since Lord Young's decision in 1988 and with many pubs throughout the being tied pubs, there has been growth in Real Ale. There is more choice for Real Ale drinkers, such as I am, then there has ever been. In fact I would say that supply of different f Real Ale from different micro breweries is now close to surpassing demand, which again for the Government creates a problem because it would seem to me that some Real Ale suppliers are now dealing in cash and certainly in part off radar sales



are occurring right now. Are the Government really wanting to encourage micro – breweries ? I bet the occupant of Number 11 isn't .

My main reason that I am surprised that the Government are investigating now is that it would seem to me for many years the Government have done nothing to support the pub trade, free of tie or tied and in fact I would say quite the opposite they have actually been against it. I say this for the following reasons:

- (1) The rating revaluation has just been delayed by two years. I wrote to my MP Nick Clegg who took the matter up with Mr Eric Pickles MP and I did receive a response from Mr Pickles, but the response I can tell you was completely wrong. What possible reason, other than the complete scrapping of rates on commercial property can there be for delaying the revaluation, which should have taken place hypothetically on April 1<sup>st</sup> this year, with a view to the new rateable values being in place April 1<sup>st</sup> 2015. In the absence of any information to the contrary I can only believe that this delay was because the valuation office and possibly even the Exchequer have realised that the national cache of rateable values if valued this year would plummet, which they certainly would. The rateable value as payable by most public houses are presently assessed as of their last revaluation which was the 1<sup>st</sup> April 2008, with the rateable value becoming the then new rateable values on the 1<sup>st</sup> April 2010. Therefore, most pubs, restaurants and hotels are 'locked in' to high rateable values and there won't be a correction for a period of what will be seven years. How can the Government be looking to help small businesses and in particular the pub industry at the same time as making this decision, it strikes me as being quite ludicrous.

The rateable value should you not know is the notional rental assessed by the District Valuer at a particular period in time, i.e. as stated the 2010 rateable value is based on the hypothetical rents as of 1<sup>st</sup> April 2008. However, if you consider what has happened within the licensed trade since 2008 to be assessed for general rates on such a computation is crazy. The smoking ban, whilst acted was not taken into consideration fully and the downturn grew pace significantly as we 2008 progressed. The Government can't have it each and every way making publicity about trying to help small businesses at the same time as caning them directly.

- (2) The last time there was as many freeholds on the market as there is now was probably the early 1990's. People who are considering entering the licensed trade at the moment have a broad choice of the type of agreements, tied, free of tie, lease or tenancy, freehold or franchise and most people would find it most desirable to operate a free of tie or freehold unit, but its bank finance that is holding this sector back. I am struggling every day of every week at the moment to find funds to assist purchasers. I can qualify that in the years I have been working as a valuer/surveyor has never been harder. It is virtually impossible to fund a Public House purchase at the moment unless you are

well established or have other assets. To be fair the pub companies, particularly Punch, Enterprise, Admiral and Marstons are disposing of pubs at great pace. The market is if anything flooded with freeholds, particularly in the Midlands and North and particularly so in former urban areas. There is no shortage of choice just a lack of funding.

- (3) The Government are promoting health and wellbeing in the individual, but in many ways this has a direct effect on people going to a pub as it is not portrayed as being a healthy pursuit.
- (4) The main culprit for the closure of pubs I can almost categorically confirm is the that supermarkets are selling liquor at prices which are significantly below what they can be purchased for in a pub. It is invariably still the case that the safest place to drink, other than your own home, is in a public house, but the pub has to pay rates, rent or mortgage, heat, light, power and staff etc. I have often thought that off sales duty should be twice what on sales duty is to help arrest this problem.
- (5) In some areas pubs are closing. On Tuesday this very week I travelled from Skipton to Bradford and then onto Leeds for valuations and there are whole roads of pubs that are closed in Bradford and Leeds due to demographical changes in those areas. It should also be noted that I have seen many public houses close and be turned into Restaurant use with many Chinese and Indian restaurants occupying former pub premises as the planning use is the same or similar .
- (6) Increasing the VAT from 17.5% to 20% added to the already unfair disadvantage with the supermarkets.
- (7) In all the years I have been working in the licensed trade the one thing I will congratulate the Government on is that the Chancellor thought it fit to knock 1% off beer duty .This is the first time I can ever remember that there has been such a move, which isn't significant, but perhaps does show positive intent. I would be much happier if VAT on public house sales was reduced as has happened in France and the consequence was many more people are involved and employed. The licensed trade with all its spectrum probably employees more under 25 year olds than any other business.

In conclusion my main issue with the Government looking into this aspect now is that I doubt there is any one lobby group or one party who knows the licensed trade well.

I have stated I have never seen where any of the pub companies or brewers have forced anybody to sign one of their agreements and I do have difficulty in



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comprehending why somebody signs an agreement one year and then starts moaning about it the year after. I refer again to this lessee that was recently visited in the constituency area by Mr Mulholland. She, along with those who would help and assist her, moaned and moaned about the tied system and yet at that very time, due to it being the end of the lease, she had a wonderful opportunity to leave and go elsewhere and yet she wouldn't - even when there was a free of tie lease in close proximity and Enterprise Inns had a further public house in close proximity where they were willing to give high levels of discount as it was not such a good pub. The lady renewed her agreement because she had a 'landmark' pub in the centre of a very affluent village and in my opinion there was something quite wrong with her trying to get support to have the tie on this pub removed, when it was and has always been a tied pub throughout all the time I have worked here. If she didn't want a tied lease she didn't need to seek a renewal on a tied lease and could have pursued other options elsewhere. I worry at this point in time and using the analogy of this particular public house that the Government are favouring the tenant believing that all pub companies are just big and nasty animals. No one is presenting balance it would seem.

I am very supportive of the Government looking to do something positive, but from what I have read over the last 3-4 months it would seem that there has almost been a verdict reached before evidence has been submitted.

I repeat that in this present market place in most villages, towns and cities there is a whole range of opportunities available to those wanting to enter the licensed trade and for those who enter under the tied system they are invariably entering because either they like the pub, its location, the rent or the level of ingoing costs. If they don't then there are free of tie leases and tenancies available and also freeholds available.

It would be wholly unfair for the Government to victimise the brewers or pub companies and then not follow suit with other types of property. For instance I understand that you yourself used to work for an oil company. There is a strong connection between the public house sector and the oil sector at the dispensing end and in valuation terms and of course should I take a franchise agreement from an oil company then I am obliged to purchase and sell their own petroleum. If I purchase a Starbucks franchise I am expected to purchase my coffee from Starbucks. Equally, if I purchase a McDonalds franchise I cannot purchase my hamburgers from Burger King, if I purchase a Dominos Pizza franchise I would be thrown out if I purchased my pizza dough from Pizza Hut - you will obviously follow my drift! The Government could open a complete bag of worms here. It is worth pointing out that it may be very difficult to get landlords to reduce the rent on any commercial property even if the marketplace has changed.



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There is no two ways about it Public House Landlords have experienced significant increases in rent between 2003 and 2008 and yet in the tied estate it strikes me that rents are actually falling, whilst in the untied estate rents are not increasing but neither falling.

I believe the Government need to be very careful for some of the reasons outlined here with regards to which stones they are lifting to look under – I doubt anybody in Government fully appreciates the trade in its spectrum . In the past three days CAMRA have issued a statement which has now been slightly retracted, at least in part saying that the average publican under a tied agreement only makes £10,000, what I didn't witness is whether this was £10,000 per operator or per person bearing in mind that most traditional public houses are run by a couple and therefore £10,000 could be £20,000 per couple. Again, referring back to the property in that Mr Mulholland visited the ladies son was employed there and although she was making a loss if you added back in the casual labour and her sons wages then the profitability would have been rather good.

I don't have an opinion on everything, but I do not believe that the Government with a short term attitude can correct this position and whilst I welcome any genuine advance and Government assistance in the licensed trade generally I think this would be better focused on other aspects such as reducing rates, helping reduce utilities bills, to reduce red tape abundant in and around the trade. I also can't see that the Government can particularly do anything in this sector without it having connotations in other associated sectors regarding property and property ownership, i.e. some of the examples I have outlined above. There is also contractual obligations, if somebody enters into an agreement where they are contracted to perform certain duties such as purchasing products from one supplier then surely the contract should be supported not undermined as seems to be the case.

If I can be of any further help or assistance please do not hesitate to contact me.  
I look forward to hearing from you.

Kind regards  
Yours sincerely

**Martin J Nicholson, MRICS**  
**Managing Partner**