

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2019] UKUT 51 (LC)
Case No: RA/90/2017**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – Valuation – retail warehouse – devaluation of rent – adjustment to AVD – other rental evidence and assessment evidence – appeal allowed in part – Rateable Value determined at £355,000.

**IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE VALUATION TRIBUNAL FOR ENGLAND**

BETWEEN:

GO OUTDOORS LIMITED

Appellant

and

LAURA LACEY (VALUATION OFFICER)

Respondent

**Re: Premises at Cattewater Road
Plymouth
PL4 0SE**

Peter D McCrea FRICS

Royal Courts of Justice, Strand, London, WC2A 2LL

Date: 6th and 7th December 2018

*Daniel Kolinsky QC, instructed by Colliers International, for the Appellant
Cain Ormondroyd, instructed by HMRC Solicitor, for the Respondent*

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The following cases are referred to in this decision:

Lamb (VO) v GO Outdoors Ltd [2015] UKUT 366 (LC)

DECISION

Introduction

1. This is an appeal which is founded simply in valuation. It is by the ratepayer, GO Outdoors Limited (“GO”), against a decision of the Valuation Tribunal for England (“the VTE”) dated 27 October 2017 in which the VTE determined the rateable value of GO’s property at Cattewater Road, Plymouth, PL4 0SE (“the appeal property”) at £377,500 with effect from 5 December 2011. The appeal to the VTE arose from an appeal by GO against a notice by the Valuation Officer (“VO”) who entered the appeal property into the 2010 rating list at £397,500.

2. The appellant submits that the correct rateable value should be £300,000. The respondent VO considers the VTE’s determination to be correct.

3. The Antecedent Valuation Date (“AVD”) is 1 April 2008. The effective date and material day are both 5 December 2011.

4. On 26 November 2018 I inspected the appeal property internally and externally, and externally inspected the properties put forward as comparable evidence. The hearing took place on 6 and 7 December 2018. The appellant was represented by Mr Daniel Kolinsky QC, who called Mr Ben Batchelor-Wylam MRICS, a Director of Colliers International, to give expert evidence. Mr Cain Ormondroyd of counsel represented the VO and called Ms Laura Lacey MRICS to give expert evidence.

Facts

5. From a statement of agreed facts, the evidence and my inspection, I find the following facts.

6. The appeal property is located on Cattewater Road, approximately one mile east of Plymouth city centre, with a prominent (north) frontage to the A379 which, via the Laira Bridge over the river Plym a short distance to the east, is one of the main arterial routes of the city. While the property is very prominent from the A379 and the major junction with the A374 which leads north, vehicular access to it is not straightforward, because access to Cattewater Road from the A379 is only available from the westward carriageway. So, to get to the appeal property from Plymouth city centre requires a journey east, past the property, then across the Laira Bridge, around a roundabout on Billacombe Road, and west again over the bridge to the Cattewater Road slip road.

7. The appeal property has a gross internal area of 4,188.5 sqm, comprising 4,033.37 sqm on the ground floor, and 155.13 sqm on the first floor. It is L-shaped, wrapping around a smaller retail warehouse occupied by the retailer Carpetright. Together, the two units form one rectangular detached building, having block/brick walls, and a north-light multi-pitched roof. The front elevation faces west, and Carpetright occupy the north-west corner. They share a 180-space car park.

8. The appeal property has an “open” A1 non-food retail planning permission, unfettered by any restriction to bulky goods or similar. The freehold is owned by CIP Property (APT) Ltd, part of the Aviva group – agreed by the parties as an institutional investor landlord.

9. The parties’ view of the age of the property evolved in the run up to the hearing. In their statement of agreed facts of 22 November 2018, Mr Batchelor-Wylam and Ms Lacey agreed that the property was of “steel portal frame construction originally built in 1984”. However, they subsequently agreed that it was converted in 1984 from an industrial building which dated from the 1950’s or 1960’s, as evident by its traditional north light roof construction. Mr Batchelor-Wylam described it as a first-generation retail warehouse which was much more akin to an industrial building. Ms Lacey did not agree, and pointed to the fact that it was owned by an institutional investor.

The lease and associated documents

10. The circumstances in which the terms of the GO’s current lease were agreed were unknown going into the hearing until on the second morning the appellant produced copies of an agreement for lease and a licence for alterations. Whilst the exact date of the agreement of terms remains obscure, what is known is this. Following the demise of MFI, which occupied the property until 2008, it largely remained vacant. Heads of terms for the letting to GO were drawn up, probably in June 2010. The heads of terms indicated that the tenant would receive an 18-month rent free period.

11. By March 2011, the legal teams of Aviva and GO were negotiating the documents. On 19 March, Aviva’s lawyer emailed her opposite number, indicating that:

“Agreement

I understand that our clients have agreed an effective extension of the rent-free period if handover occurs during the Christmas period...”

12. On 10 May 2011 an agreement for lease was completed, under which the landlord would carry out works to the property. Those works were detailed in an attached schedule of works “for Cat A – Go Outdoors” dated November 2010, and included the removal of MFI’s fixture, fittings and signage etc, repairing and redecorating the exterior of the property, replacing the roof covering to a modern, insulated standard, and repairing and replacing external doors and shutters. Once the landlord’s works were complete, or earlier if agreed, the agreement provided for a

handover date, after which the tenant could enter the property as a non-exclusive licensee to carry out its fitting out works (the CAT B works) under a licence for alterations. The lease would have a term of 15 years from the completion date, or the handover date if earlier.

13. The agreement allowed for the extended rent-free period referred to in the email of 19 March. However, the extension was not limited to a handover during Christmas. It provided that the rent under the lease would become payable 21 months after the handover date or, if the handover date lay between 14 November 2011 and 2 January 2012, the rent would start 21 months after 2 January 2012. In the event, the handover date and term commencement date were 17 October 2011. The licence for alterations, under which GO's proposed fit out was approved, and the lease itself, were completed on 15 December 2011. After a fit-out which took around two months, GO started trading on 17 December. The rent of £400,000 a year was effective from 17 July 2013, 21 months after the term commenced.

Statutory Provisions

14. There is no dispute between the parties as to the interpretation of the relevant statute. Section 56 of the Local Government Finance Act 1988 ("the Act") gives effect to Schedule 6 to the Act which sets out the statutory basis on which the rateable value of a non-domestic hereditament is determined. The statutory assumptions for determining rateable value are set out in paragraph 2 of Schedule 6, as follows:

"2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –

- (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
- (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from the assumption any repairs which a reasonable landlord would consider uneconomic;
- (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.

....

(6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in subparagraph (7) below shall be taken to be as they are assumed to be on the material day.

....

(7) The matters are—

- (a) matters affecting the physical state or physical enjoyment of the hereditament,
- (b) the mode or category of occupation of the hereditament,

....

- (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
- (e) the use or occupation of other premises situated in the locality of the hereditament.”

Factors affecting the valuation

15. The elements which influenced the valuation of the appeal property under the statutory provisions were as follows:

- i) the passing rent for the appeal property and how that rent should be adjusted to reflect the rent which would have been agreed on the statutory assumptions at the AVD;
- ii) evidence of rents on other retail warehouses in Plymouth;
- iii) evidence of agreements of other rating assessments.

16. Shortly before the hearing, the very minor plant and machinery element of the valuation was agreed at £558 RV.

17. I should add that I do not consider the so-called first-generation nature of the appeal property to be a factor affecting the valuation. In my judgment it provided good quality space, and I note that two Chartered Surveyors were, up until a short time before the hearing, of the view that it was considerably newer than eventually proved to be the case.

18. Both surveyors referred in their reports to *Lamb v GO Outdoors Ltd* [2015] UKUT 036 (LC). As I observed at the outset of the hearing, the determination of a rateable value by reference purely to valuation evidence is fact specific, and very limited assistance could be derived from the determination of the rateable value of another property located 400 miles away. The fact that the ratepayer, both counsel, and indeed Tribunal Member were common to both appeals did not make that decision any more relevant to the issues in this appeal.

The rent on the appeal property and how it might be adjusted

19. It was common ground that the devaluation of the rent on the appeal property could be carried out using a discounted cash-flow method, adopting a discount rate of 8%, quarterly-in-advance¹, over the first ten years of the term. The amount of rent-free period to be reflected in that calculation was disputed. Mathematically, the range of values lay between £73.09 and £79.19 per sqm.

¹ In fact, under the provisions of a side letter the rent was paid monthly, but neither side took this point.

20. In his written evidence Mr Batchelor-Wylam allowed for the full 21-month rent free period in his analysis of the letting, arriving at an annual equivalent rent of £299,402, which on the agreed floor area equated to £71.48 per sqm. Ms Lacey pointed out that those calculations had inadvertently omitted the final quarter's rent which had a present value equivalent of £47,219. The correct figure, if the whole 21-month rent-free period was allowed for (which she disputed), would equate to £73.09 per sqm. For the appellant, Mr Kolinsky QC accepted the mathematical accuracy of this in his skeleton argument but as we shall see Mr Batchelor-Wylam's view of the importance of the rent changed in his oral evidence.

21. As Ms Lacey indicated in her expert report, she only received a copy of the lease from the appellant some four working days before her report was due to be filed. This meant that she made certain assumptions and provided a range of figures. In the week before the hearing, further email correspondence was disclosed by the appellant, although a complete picture did not form until the agreement for lease was produced at the hearing.

22. In her first report, Ms Lacey noted that the lease provided for a rent-free period of 21 months. Deducting three months for tenant fit-out, and treating the remaining 18 months as an incentive, Ms Lacey analysed the rent at £76.11 per sqm. Subsequently, the heads of terms were produced and attached to the statement of agreed facts. Following this, Ms Lacey noted that there was in effect a penalty if the landlord's works were sufficiently late to cause GO to miss the Christmas trading period. In her second report, she said that it could be argued that since a *further* three months was effectively a Christmas penalty, the correct analysis might be based on an incentive of 15 months, which would equate to £79.19 per sqm. Following disclosure of the agreement for lease at the hearing, it became clear that the rent-free period was 21 months, and accordingly the parameters lay at £73.09 and £76.11 per sqm.

23. It is necessary at this point to outline the very late change in Mr Batchelor-Wylam's view of the weight to be attached to the rent on the appeal property. In his expert report, he outlined the importance he placed on the devaluation of the rent on the appeal property. For example:

"I regard the actual rent as very important evidence of value. It is evidence of an actual open market new letting transaction for the subject property between unconnected parties. In a market where very little transacted between 2007 and 2012 I find this evidence compelling and relatively weighty in comparison to tonal evidence." (para 5.1.13)

"A tone does not exist and the rent is the most useful evidence. My conclusions on value derive from the rent and fit with the picture established from analysing the best available rental evidence from other sites" (para 6.1. iii)

24. Whilst even at that stage he was clear that the rent was not the sole basis of his valuation, his calculation for the purposes of the appeal was based simply on the adoption of his analysed rent at £71.50 per sqm or thereabouts, with a very small addition for plant and machinery, to arrive at his opinion of rateable value of £300,000.

25. Surprisingly, while accepting that Ms Lacey's alteration to £73.09 per sqm was mathematically correct, Mr Batchelor-Wylam did not agree to that rate being applied to the agreed floor area to arrive at a revised rateable value (which I calculated would, with the plant and machinery agreed at £558, be £306,695 before rounding). He justified this reluctance by stating, for the first time in his oral evidence, that he no longer considered the rent on the appeal property to be the driving factor in the assessment of rateable value. In cross examination, he said that even if the correct analysis of the rent-free period equated to say £332,000, he would still not depart from his valuation of £300,000. Instead, he preferred the settlement of the rateable value of The Range as the key piece of evidence. Quite when he reached this point on the evidential road to Damascus was not entirely clear – but since he had not filed a supplementary expert report his change of position took the VO by surprise.

Adjustment to AVD

26. While in their written reports the experts had proceeded on the basis that the period of adjustment was from the AVD to October 2011, once the agreement for lease had been produced at the hearing, it became common ground that the more appropriate date at which a comparison of market conditions with those at the AVD could be made was the date of agreement for lease – 10 May 2011, some three years and one month after the AVD.

27. Mr Batchelor-Wylam stated in his expert report that there was no compelling evidence to suggest that a better or worse deal would have been struck at the AVD in 2008 than in 2011. In oral evidence, his opinion was more nuanced. He accepted that there was clearly a change in market conditions from April 2008 to 2011 but he didn't feel that he could confidently say how that affected a change in values. His view was that the market fell after the AVD and then recovered by the time of the letting of the appeal property, and that the market at the two points in time was "similar". He couldn't say that it was immediately comparable but accepted that his opinion of £71.50 was lower than the analysed letting.

28. The fact that the rent of the appeal property had not increased at the 2016 rent review was said to endorse this opinion that the rental level in 2011 was similar to that at AVD. However, he accepted in cross-examination that little weight could be attached to this nil-increase review, since it concerned the apparent lack of change in rental levels between 2011 and 2016, and not in the earlier window between the AVD and 2011, and because it was a nil increase review in an upward-only review mechanism.

29. Ms Lacey's view was that market conditions in 2011 were recessionary and differed greatly from the more buoyant market at AVD. She adopted the VTE's determined adjustment of 16%.

30. In considering the adjustment required to the letting of the property to reflect conditions at the AVD, both surveyors sought assistance from a variety of contemporaneous market reports and other publications. Mr Batchelor-Wylam relied upon the RICS Commercial Market Survey of April 2008; a GfK NOP report which analysed consumer confidence; the 2008 Trevor

Wood/Savills “Definitive Guide to Retail and Leisure Parks”; and to his own firm’s “Property Snapshot” of April 2008 and Midsummer Retail Reports from 2007-2014. Ms Lacey preferred the quarterly CBRE UK Prime Rent and Yield Monitor Reports for Q1 2008, and Q4 2011.

31. While these reports were the subject of lengthy cross-examination, it is not necessary to outline them in any detail. In the end, both sides accepted that they only provided a very general view of national conditions for largely generic retail warehouses, albeit with some differentiation for quality, location and restriction of planning permissions. I derive no assistance from the RICS Market Survey or the GfK reports, and I only place limited weight on the market reports. While they help to set the scene against which more local evidence can be assessed, they are national reports for generic property types, in some cases encompassing the whole retail sector, with little differentiation between quality and age of property. In summary, I note that of the Colliers reports:

- (a) the “Property Snapshot” indicated that at the AVD warehouses with open A1 planning consent were “moving”, whereas those with bulky goods restrictions were “flat”, but the report did not identify changes in rental levels.
- (b) The 2007 Midsummer report indicated that yields are likely to hold firm, but that the out of town market “is getting used to the new world order where rents rise at a much more modest rate as it comes to terms with 9.75 million square feet of available space. The open A1 sub-sector will, however, remain strong whilst the bulky goods market continues to struggle”. It was a far cry, however, from the “rampant” investment market of 12 months before.
- (c) The 2008 report, a couple of months after the AVD, predicted that there would be a small upward movement in rental values for the out of town sector generally.
- (d) The 2009 report outlined a list of retailers failing and, for the first time, discussed rents falling. However, the investment market remained strong for prime opportunities, with increasing demand for “best in class” parks.
- (e) The 2010 report said that administrations flooded the market, with a significant effect causing “major rental value devaluation, the first significant reverse in the fortunes of the out-of-town market since its emergence some 30 years ago”.
- (f) The 2011 report noted that vacancy rates were improving, but said little if anything about rental levels.
- (g) The 2012 report indicated that some retailers were still acquiring space, including the appellant.

32. As regards the CBRE market reports:

- (a) The quarter 1 (Q1) 2008 report indicated that rental values for the general retail warehouses sector was continuing to grow in the first quarter of 2008, and that “whilst the all retail warehouses rental index has shown respectable growth of

2.3% over the last year, this is not indicative of all properties; very select prime locations have seen large increases whilst the vast majority have been flat. The momentum is largely from fashion parks”.

- (b) The Q4 2011 report showed annual growth in the retail warehouse sector was continuously negative between 2008 and 2011, although the rate of decline was continuing to reduce from around Q3 2009.

33. The date of the 2008 Trevor Wood/Savills Report was unclear, but it appeared to rely upon data up to the end of 2007 and it indicated that:

“for many years we have been highlighting the problem that some retail parks have to face of ‘Second-hand supply’. Numerous administrations, receiverships and declining confidence among some retailers has led to an explosion in available space”.

34. In a passage that would be the subject of some debate during the hearing, but in reality from which limited assistance can be derived, the report went on:

“Thankfully the picture is not all gloomy as the take up of good quality Open A1 consented units by Comparison Goods retailers such as Argos, Dreams, Dunelm, Land of Leather, Next and ScS has continued again this year. Overall, it is interesting to note the speed with which good quality units possessing Open A1 consents in prime locations are snapped up. This speed contrasts sharply with the, fortunately, limited number of poor quality, restricted consent units in secondary locations that have often been on the market for a number of years with little interest from prospective tenants.”

35. Mr Batchelor-Wylam accepted in cross-examination that his analysis of the market reports mistakenly proceeded, in part at least, on the basis that the appeal property had a “bulky goods” planning consent. He acknowledged that whilst the user clause in the subject lease had restrictions, the planning consent of the appeal property, which would be reflected in the rating hypothesis, was an open (non-food) retail warehouse consent. In his expert report, he had indicated that from the evidence produced it is quite clear also that the open A1 consent market adds a premium and this is evidenced throughout the research over the last eight midsummer retail market reports.

36. His view in oral evidence was that the reports provided a national perspective on the sector which suffered from a smoothing effect. They featured data that was likely to come largely from deals on prime, with some secondary, retail warehouses, but was highly unlikely to come from first generation properties such as the appeal property. He felt that there may be a lag effect in data shown in the CBRE reports, because it was at odds with his experience of market sentiment at the relevant times. By the end of cross-examination on this topic, Mr Batchelor-Wylam’s opinion was that the market reports only provided indications and maintained his view that there was no growth in the market in 2007 to 2008. There was no evidence to enable him to form a view of the change in market conditions between 2008 and 2011. He felt, in his oral

evidence at least, that the best guide to value of the appeal property was the settlement of the rating assessment on The Range – see below.

37. Ms Lacey’s evidence was that the market for retail warehouses in Plymouth was effectively “full” before the AVD, and it was not until September 2008 when there was, in common with the national scene, an “explosion” of second-hand space on the market. Coming from such a low base, any increase in space was going to appear significant. Leading up to the AVD, the market was very changeable, but rents were still increasing. Market sentiment was reflected in the RICS Market Report, and while there was an increase in second-hand stock, these vacancies provided an opportunity for the unexpected new arrivals into the market which took advantage of the new voids. The previously covenant-oriented market, which up to then had been willing only to take prime tenants, had to embrace these new occupiers. This continued, to an extent, after the AVD. Ms Lacey agreed that it was unprecedented to have such an amount of available space, because to that date the market had been full.

38. As for the Trevor Wood/Savills report, Ms Lacey accepted that on a national basis secondary space was “sticking” on the market. She disputed that the appeal property was in the secondary, poor category, but accepted that if it were, the outlook for the property would be bleak, which would depreciate rental growth.

Rental evidence in Plymouth

39. Mr Batchelor-Wylam interpreted the Tribunal’s decision in *Lamb* as authority for the notion that rental evidence within a two-mile radius was of most use, but owing to a lack of transactions widened his search to three miles. While he provided a table of comparable evidence in his expert report, this was not subjected to any form of analysis or real explanation. He discounted the Friary Retail Park as the units there were more modern, closer to the city centre, and typically much smaller; the exception was Dunelm “which can be differentiated due to its open planning permission” but principally because it is a diversified scheme of multiple retail warehouses arranged around a central car park. He went on: “the more compelling evidence comes from rental transactions on the subject property as well as tonal evidence from The Range....”.

40. Ms Lacey cast the net wider, but her starting point was the Carpetright unit, within the same building as the appeal property. Her evidence was that Carpetright originally occupied under a 20-year lease from September 1989 and held over at lease expiry in 2009 before vacating for the unit to be refurbished at the same time as the appeal property. Carpetright then took a new 10-year lease from 10 October 2011, at a rent of £155,000, but receiving a reverse premium equivalent to one year’s rent. The Form of Return (“FoR”) which evidenced this new lease was not received by the VOA until June 2014, which has implications for the weight to be attached to the unit’s rating assessment – see below. The parties analysed this rent in different ways. Ms Lacey had it as £109.21 per sqm, assuming that of the 12-month incentive, three months was for tenant’s fit out and the remaining nine months was an incentive. Alternatively, if the full twelve months was allowed for, Mr Batchelor-Wylam’s analysis showed £104 per sqm if the incentive

was treated as a full reverse premium in cash terms, and Ms Lacey's analysis was £107 per sqm if it were a rent-free period.

41. Mr Batchelor-Wylam accepted that Carpetright was within the same building, with the same fabric, but was considerably smaller than the appeal property and would attract a different type of tenant. He did not consider that the Carpetright unit provided "much of a steer" in valuing the appeal property.

42. Neither party relied on the rental evidence provided by the letting of The Range.

43. Further afield, Ms Lacey referred to two lettings within the Friary Park development, one mile west of the appeal property; the first to Pets at Home, analysed at £209.43 per sqm in October 2008 for a unit of 1,079 sqm; and the second to Dunelm at £137.35 per sqm in December 2008 for a unit of 2,774 sqm. She considered that these transactions should be adjusted for quantum when applied to the appeal property.

44. Ms Lacey's main comparable in her adjustment of the letting of the subject property to AVD was the surrender and regrant of the B&Q unit at Coypool Road. The rent review of the previous lease, which was for 25 years from March 1988 and thus due to expire in March 2013, set the rent at £456,250 in March 2006. However, in December 2010 the lease was surrendered, and a new lease agreed for a term of ten years at a rent of £387,600 but with a one-year rent-free period. The VTE had accepted Ms Lacey's predecessor's analysis of the reduction in rent of just under 16%, but Ms Lacey's analysis, which treated the whole of the 12-month rent free period as an incentive to a sitting tenant, suggested a reduction of 26.2%. However, she adopted a conservative position and retained the 16% adjustment determined by the VTE.

45. Ms Lacey accepted in cross-examination that a surrender and re-grant to a sitting tenant would ordinarily be placed lower in the hierarchy of useful evidence than had it been a new letting, and that a rent reduction between 2006 and 2010 could only be a guide, rather than a proxy, for changes in rental evidence between 2008 and 2011. The exercise would only be useful if the relevant part of the market was not in decline between March 2006 and the AVD, otherwise that decline would not be captured in the analysis. She said that had the market been in decline between those dates, the surrender and regrant of the B&Q lease would have no use as a comparable transaction.

46. Mr Batchelor-Wylam did not suggest that Ms Lacey's analysis was mathematically incorrect, nor did he dispute the principle of the whole of the rent free period being allowed for on the basis that it was granted to a sitting tenant. He agreed that the transaction provided some guidance, but he placed very little weight on it, because the first rent was a rent review in 2006, at which time the market for retail warehouses was buoyant, with a low vacancy rate even for first generation warehouses, whereas in 2008, the market had shifted and first generation retail warehouses were not in demand. He also had reservations about the rent on the new lease, which appeared from the FoR supplied by the VO to have been set by some reference to indexation, and also noted that B&Q had actually since vacated and unit redeveloped into three smaller units.

47. By the second day of the hearing the FoR had been produced, but added little by way of clarity. In answer to question 8.1 “On what basis was the rent determined”, the drop-down box had been entered as “3- INDEXED TO RPI OR OTHER INDEX”. RPI seems to me to be unlikely, since at first glance the RPI all items index was in more or less continual growth from 1988 onwards, and certainly between March 2006 (195), and December 2010 (228.4), or when the rent became payable in December 2011(239.4).

48. The only other letting was that of the very small (512 sqm) unit D Coypool Road, two miles to the north of the appeal property, to Jolley’s Pet Store in November 2006, but Ms Lacey said that she would not attempt to transcribe the rent achieved of £146.50 per sqm, to the appeal property, but she considered the letting helped to build a picture of the Plymouth market.

49. Ms Lacey’s remaining evidence consisted of rent reviews. She placed a low weighting on the review of Staples at Charles Cross - £156.02 per sqm in March 2006, for a unit of 1,922 sqm – as she could not confirm how the rent was determined.

50. At Coypool Road there were rent reviews of the Currys and Comet units at £181.69 and £185.57 per sqm at June 2008 for units of around 1,400 sqm. Ms Lacey accepted that Coypool Road could be considered a better location than that of the appeal property, but thought that the units did not have the same prominent frontage. She placed a relatively low weight on these reviews as she wasn’t aware of the rent review provisions.

51. Near to Coypool Road, there were four rent reviews at Marsh Mills Retail Park, which Ms Lacey considered to be the prime retail park in Plymouth. The reviews were in respect of: Land of Leather (931 sqm), £253.84 per sqm in February 2005; Halfords (921 sqm), £303.79 per sqm in March 2006; Wolseley (a very small 182 sqm), £391.27 per sqm in May 2006; and Furniture Village (927 sqm), £309.40 per sqm in June 2007. Ms Lacey considered that the rents achieved were higher than those that could be achieved for the appeal property.

52. Mr Kolinsky took Ms Lacey through her schedule of rental evidence for the period of March 2006 to the AVD. She accepted that there was little useful rental evidence, but her view was that this was indicative of the strength of the market in Plymouth during that period – there was no tenant churn causing vacancies, and therefore no new lettings.

Agreements of rating assessments of other units

53. While Mr Batchelor-Wylam included a table of assessment evidence in his written report, this was not commented upon or interrogated in any way. By the end of the hearing, it appeared to be common ground that the three key comparables were the Carpetright unit, adjoining the appeal property, The Range, and Fairway Furniture, but neither Fairway Furniture nor Carpetright featured in Mr Batchelor-Wylam’s report.

54. The Carpetright unit was assessed at £105 per sqm in the 2010 rating list. Ms Lacey's view was that the unit was underassessed. Her evidence was that the assessment was agreed before the rent restructuring was known by the VO, and the rate was set having regard to the rent set at the 2006 rent review, at which point the unit had not been refurbished. Mr Batchelor-Wylam accepted that in many ways the Carpetright unit was very similar, but as with the rental evidence, the significant size difference between it and the appeal property called into question its comparability.

55. Having made several cameo appearances earlier in this decision, one of the main comparables now comes to centre stage – The Range, Billacombe Road, which is about half a mile to the east of the appeal property, across the Laira Bridge.

56. This branch of The Range is situated in a former Sugar Mill industrial complex. It is in two buildings which are separated by an access road to the rear (and slightly distant) car park. The larger building comprises three former 1960's workshops which have been combined. The smaller building is slightly newer, dating from the 1970's.

57. The Range was the subject of extension. It appears that the original hereditament was agreed in the 2010 list at £270,000. Having been reduced for a temporary period on an MCC-based appeal owing to road reconfiguration, the £270,000 was then increased with effect from 29 April 2016 to £322,500 when the size of the hereditament increased. The original floor area of 4766.70 sqm (including some outdoor sales space and a glasshouse) was increased by ground floor sales of 522.35 sqm and 584 sqm of mezzanine space to give a total area of 5,289.05 sqm. But this did not affect the rate per sqm - in both valuations, the unadjusted rate was £82.00, and the adjusted rate for the main space was £61.44 per sqm. How this adjustment of around 25% was arrived at remained unclear – Ms Lacey did not deal with the valuation and could not produce a record showing any calculations. Mr Batchelor-Wylam thought it might be 10% for layout, 10% for fragmentation, and 5% for some other factor.

58. Mr Batchelor-Wylam considered The Range to be the best comparable. It was of similar size to the appeal property and in close proximity to Laira Bridge, with similar prominence and presence. It is made up of older industrial buildings, but was actually of steel portal frame construction which was better than the older nature of the appeal property. He accepted that there were layout issues, and the site was fragmented. Access to The Range was straightforward, and better than that of the appeal property. He accepted that the appeal property should be valued at a rate higher than the £61.44, but not as high as it might have been had it not suffered from the various disadvantages that he had outlined.

59. The final main comparable was a unit occupied by Fairway Furniture, further out of Plymouth town centre at 184 Billacombe Road. It has an area of 3,314 sqm, constructed in 1986 with no refurbishment. It was agreed at a main space rate of £94.50 per sqm. Ms Lacey considered that it was in an inferior location to the subject property. Mr Batchelor-Wylam said that it was around 1,000 sqm smaller than the appeal property, which again would attract different

occupiers. It had reasonable visibility but had better access than the appeal property and was more modern.

60. In summary, Mr Batchelor-Wylam thought that the appeal property should be valued at £71.50 per sqm. He thought it should attract a higher rate than the £61.44 agreed for The Range after adjustment, but not as good as The Range's £82 per sqm before adjustment. He preferred to adjust upward from the £61.44 per sqm, as this was the actual agreed rate for The Range, than to adjust downward from the £82, and in his view the level of such adjustment was in the order of 12.5 -15%, to arrive at £71.50 per sqm.

61. Ms Lacey's view was that the rate of £95 per sqm, before a 5% shape allowance, remained appropriate, and was in line with the comparable evidence when taken as a whole.

Discussion

62. It is, on reflection, unsurprising that the parties have been unable to agree this matter, given the tangled nature of the evidence, with neither side having a conclusive case.

63. I would start by commenting on the experts themselves. Both did their best with what they had, but I found Ms Lacey to be a more persuasive and straightforward witness. Her case was consistent throughout, despite being hampered by late disclosure of material. Whilst she is employed by the VOA, her previous experience in the retail warehouse investment market became obvious, and largely rendered her immune from cross-examination on that area.

64. Mr Batchelor-Wylam's approach, and his very late change of stance, was sufficiently puzzling for Mr Ormondroyd to put to him that he was, in effect, advocating his client's case. I wouldn't put it as strongly as that. In my judgment his resistance to amending his valuation, and complete about-face as to the relevance of the rent, was probably down to a degree of inexperience rather than disingenuousness. The Tribunal does not discourage experts from giving their up to date and honest opinion, and they should not feel that they are pegged to a written report drafted some months before if their view has genuinely changed, or other evidence has come to light. But it might have been better, and fairer to the VO, for Mr Batchelor-Wylam to have submitted a short amending written report prior to the hearing.

65. Turning now to the evidence, I start with the rent itself. In my opinion the correct devaluation is to treat three months as a fitting out period and 18 months as an incentive to be deducted. This is for several reasons. It is unrealistic to devalue the transaction with the benefit of hindsight, and I make no allowance for the fact that the fit out only took two months. Equally, whilst the final document allowed for an extension for the Christmas period, that might or might not have been necessary, but, as a certainty, 21 months was allowed for as a rent-free period. This 21-month period commenced at the handover date but GO did not have exclusive possession until they had completed their fit out.

66. Accordingly, in my view the correct devaluation of the letting would equate to a rent of £318,750 or thereabouts², i.e. £76.11 per sqm.

67. There was some discussion concerning the extent to which the rent included rateable elements, but in my view that has little relevance. The devaluation is one of a market transaction, and the tone of the rating list comes, in the main, from rental transactions without any analysis or deductions to exclude non-rateable elements. I accept Mr Ormondroyd's submissions on this point, that the hypothetical scenario assumes that the tenant has beneficial occupation from the beginning of the tenancy, and not just a non-exclusive licence for fitting out.

68. The next stage is to assess how, if at all, this rent should be adjusted to reflect conditions at the AVD. In my view, this cannot be done by reference to the market reports, which are too generic to be reliable, and only provide a context. I prefer Ms Lacey's evidence to that of Mr Batchelor-Wylam, and accept her opinion that the rents fell between the AVD and the letting of the appeal property. But the extent of that fall is not clear, and it is necessary to consider the other evidence.

69. If geography were the sole influencing factor, Carpetright would of course be the best comparable. It also has the advantage of being a transaction at broadly the same date as the subject lease, and it is fair to assume that the level of refurbishment was also broadly common with that at the appeal property. So, despite also being some years from the AVD, what the transaction does facilitate is a comparison between two lettings to ascertain what the quantum discount was. But some caution is required, since Carpetright were existing tenants, and the surrender of their tenancy might have had an effect on the new lease terms. I have outlined above the various ways in which the new Carpetright letting could be analysed. In her schedule of evidence Ms Lacey accepts that the 12-month inducement was by way of a reverse premium and accordingly devaluing the transaction adopting a discounted cash flow technique. I agree with Mr Batchelor-Wylam that this must be treated as an inflow of cash at day 1, and analyse the rent at something in the order of £104 per sqm.

70. The precise terms of the deal were not available, and accordingly the most one can take from this is that, in 2011 at any rate, the quantum discount for a property of 1,270 sqm compared with 4,188 sqm is £104 per sqm against £76.11 per sqm, so around 26%. But as well as a degree of opacity, the transaction suffers in common with the subject letting, in that it is necessary to assess what that would have been at the AVD.

71. As far as the rating assessment is concerned, all other things being equal and assuming that the quantum discount was unchanged over the period, the rating assessment of Carpetright at £105 per sqm would suggest that the assessment of the appeal property would be around £77 per sqm. But I agree with Ms Lacey that the £105 cannot necessarily be considered correct. I accept her evidence that the rating assessment of Carpetright was agreed based upon the previous rent of

² Sum of net present values at £2,244,812/7.042358 (yp 10 years at 8%, qtlly in adv) = £318,758.54

£130,200³. I do not consider that she is impugning the rating list in stating that the assessment is, in the light of better evidence, too low.

72. As for whether the quantum discount can safely be assumed to be the same at the AVD, there is some force in Ms Lacey's view that the differential would have been wider in a poorer market, but there is no real evidence in support of that. But even without her getting home on that point, an analysis of the Carpetright rent and rateable value would seem to suggest that the appeal property's value should be somewhere higher than £77 per sqm.

73. The next closest property is The Range, which was, latterly in any case, the central plank in Mr Batchelor-Wylam's case. Having inspected both properties, in my view the appeal property is in a more prominent location than The Range. Both front the main A379, but the appeal property is located at a busier junction, and is visible from quite a distance when driving either west along the A379, or south from Embankment Lane. But The Range does not suffer from the same access issues as the appeal property. As for the buildings, the fragmented nature of The Range would not suit many retailers. Given that Ms Lacey was unable to produce the VO's valuation breakdown, I have a degree of sympathy for Mr Batchelor-Wylam's preference to use the rent after deductions for the purpose of analysis, but on balance I think it better to use the headline rate, since neither party could confirm the reason for the deductions. It may be that there is some unknown reason for all or part of the deductions which would make the property unreliable as a proper comparable. Mr Batchelor-Wylam accepted that The Range was an unusual property. I agree, and think it unrealistic therefore to treat it as the main valuation comparable. All that can be taken from it is that the assessment was agreed at £82.00 per sqm before deductions to reflect a property which on any view is unusual.

74. The next comparable is Fairway Furniture. It is further out of Plymouth town centre, but again fronts the A379 and is on a busy roundabout. My impression from inspecting it was that the location was a quasi-residential one - access is from Stentaway Road, with houses on the opposite side. Built in 1986 but apparently not refurbished since, the building itself nevertheless seemed to me to be of superior construction, with more of a showroom feel than a retail warehouse. It is smaller, but in my view there is no need to adjust for quantum. In the same way that no quantum adjustment was made when The Range grew from 4,766 sqm to 5,289 sqm, I make no adjustment to Fairway's 3341 sqm compared with the appeal property's 4,188 sqm

75. Mr Batchelor-Wylam said that he thought that a unit of 3,341 sqm would attract a different tenant from that of the appeal property's size, but I note from his firm's 2012 report that "...Go Outdoors are also looking for larger size stores of up to 30,000 sq ft". It would seem that the appellant would be comfortable trading from around 2,700 sqm to the appeal property's 4,188 sqm.

³ Previous rent confirmed to me by the parties after the hearing

76. In summary therefore, from the appeal property's rent, when adjusted for time, and the three closest comparable properties, I have this:

- The appeal property's rent, once adjusted, would point to something higher than £76.11 per sqm
- Carpetright, when adjusted for quantum, would point to something higher than £77.00 per sqm
- The Range is not especially helpful but the agreed rate before deductions was £82.00 per sqm for an unusual property, in a location which is slightly less prominent than the appeal property, but without the access difficulties.
- Fairway Furniture was agreed at £94.50 per sqm, for a better building but in an inferior location.

77. I am not persuaded that anything can be learnt from properties further afield, all of which were agreed to be in largely superior locations.

78. In cases where the evidence is inconclusive, it is necessary to assess the credibility of the experts. I found Ms Lacey to be more persuasive than Mr Batchelor-Wylam by a notable degree. Her evidence was consistent throughout, and as I indicated above she benefitted from experience in the private sector retail market in addition to that at the valuation office.

79. Doing the best I can with fairly sparse evidence, and having regard to the expert evidence, in my opinion the rateable value of the property is based on £85 per sqm. On the agreed floor area of 4,188.5 sqm this would be as follows:

| | |
|-------------------------------|-------------|
| 4,188.5 sqm @ £85 per sqm: | £356,022.50 |
| Plant and machinery (agreed): | £558 |
| | <hr/> |
| | £356,580.50 |
| (say) | £355,000 RV |

80. The appeal therefore succeeds in part, and I direct that the rateable value of the appeal property shall be entered into the 2010 rating list at £355,000 with effect from 5 December 2011.

81. This decision is final on all matters other than costs. The parties may now make submissions in writing on costs and a letter containing further directions accompanies this decision.

Dated: 18 February 2019

P D McCrea FRICS