

UPPER TRIBUNAL (LANDS CHAMBER)



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21 June 2022

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – VALUATION – former Marks and Spencer store in Kidderminster – terms of letting – adjustment to statutory hypothesis - limited comparable evidence – whether evidence of general demand – appeal allowed – rateable value determined at £17,750

AN APPEAL AGAINST A DECISION OF
THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

BALLCROFT ESTATES LIMITED

Appellant

-and-

**MR D VIRK
(VALUATION OFFICER)**

Respondent

**Re: Ground Floor and Basement
20-21 High Street,
Kidderminster,
DY10 2DJ**

Mr P D McCrea FRICS FCI Arb

Heard on: 28 April 2022

*Luke Wilcox, instructed by Simon Alexander Consulting, for the appellant
Admas Habteslasie, instructed by HMRC solicitor, for the respondent*

The following cases are referred to in this decision:

Hewitt v Telereal Trillium [2019] UKSC 23

Introduction

1. This is an appeal by the freeholder, Ballcroft Estates Limited, against a decision of the Valuation Tribunal for England (“the VTE”) dated 15 January 2021 in which the VTE ordered that the 2017 List rateable value of the ground floor and basement of 20-21 High Street, Kidderminster, DY10 2DJ (“the appeal property”) be reduced from the compiled list assessment of £92,000 and instead be entered into the rating list at £57,000 RV with effect from 1 April 2017.
2. At the appeal on 28 April 2022 the appellant was represented by Mr Luke Wilcox, who called Mr Simon Wanderer IRRV MRICS to give expert evidence. Mr Admas Habteslasie represented the Valuation Officer, calling Mr Darren Byrne MRICS as an expert witness. I am grateful to all of them. Neither party indicated that I would be assisted by an inspection of the appeal property.

Facts

3. From a helpful Statement of Agreed Facts and the evidence I find the following facts.
4. Kidderminster, the historic home of carpet-making, is the largest town in north Worcestershire on the River Stour, close to Shropshire border. Like many towns, it has in recent years seen the development of an out-of-town retail park (the appropriately named Weavers Wharf) with many of the town’s larger retailers relocating to it from the town centre.
5. The appeal property forms the ground floor and basement of the four-storey former Marks and Spencer store on High Street. The first and second floors are the subject of a separate rating assessment that is not before the Tribunal. The four floors covered by the two assessments are let together by the appellant to the retailer Pavers, who in turn share occupation with other retailers. I shall refer to all four floors together as the appeal building.
6. The appeal property has a ground floor sales area of 1,386 sqm, with basement storage of 231 sqm. There is service vehicular access to the basement. The frontage is to a pedestrianised section of High Street. A secondary entrance at the rear is accessed from the Rowland Hill shopping centre.
7. The upper floors (within the appeal building but not within the appeal property) were linked to the ground floor by an internal staircase. But they are, and were at the Material Day of 1 April 2017, in poor repair – the front section of the first floor, at least in recent times, was sealed off apparently owing to asbestos being present, and the second floor was not accessible. They were assessed at £22,250 RV, in both the 2010 and 2017 rating lists.

The issue

8. The nub of the dispute concerns demand, and how that affects value. The appellant says that the effect of both Weavers Wharf and general market decline has been such that there is little if any demand from mainstream retailers for large town centre retail properties. It maintains that, properly analysed, the lease of the appeal building and that of the small number of comparable transactions, show that rental values are purely nominal. The valuation officer,

on the other hand, says that the lease of the appeal building is sufficiently different from the statutory rating hypothesis to render any analysis meaningless, but there is sufficient evidence of positive rents from the comparable transactions to apply a positive rateable value to the appeal property.

The evidence

9. Helpfully, the experts agreed both a statement of agreed facts, and a commendably concise group of comparable transactions. It was common ground that rental levels had not materially changed over time, so neither expert made any adjustment to transactions for dates in relation to the Antecedent Valuation Date (“AVD”) of 1 April 2015.

The appeal building

10. Following Marks and Spencer’s relocation to Weavers Wharf, in 2008 the appeal building (including the first and second floors) was let to Pavers Limited at an annual rent of £125,000. Two further, and in all material ways identical, leases followed, which helpfully sit either side of the AVD. They are a lease dated 3 February 2012 which was for a term from that date to 3 August 2014, and a lease dated 6 June 2016, for a three-year term from 4 August 2016. Both leases were at an annual rent of £70,000. They were contracted out of sections 24-28 of the Landlord and Tenant Act 1954, removing the tenant’s security of tenure. The landlord could terminate the leases on one month’s notice, and Pavers by giving three months’ notice. Alienation was prohibited, save that Pavers were permitted to share occupation of not more than 50% of the premises with the discount retailer Leading Labels Limited, provided exclusive possession was not granted. Importantly, liability for business rates remained with the landlord.
11. In a form of return to the Valuation Office, Pavers indicated that there were two sub-lettings at a rent totalling £23,990. In an email to Mr Byrne, the Financial Controller of Pavers explained that the rental income from Leading Labels was £10,000 from 1 December 2013 with electricity, water, repairs etc recharged at 50%. That rent was reduced to £0 with effect from February 2020. There was also a tenancy at will to “D’Nada” at a rent of £13,980 per annum. This was arguably in breach of Pavers’ alienation restriction.
12. Mr Wanderer considered the letting of the appeal building to be of assistance and placed most reliance on it. In order to convert the 2012 and 2016 leases of the appeal building to an equivalent rent of the appeal property only, on the statutory hypothesis, Mr Wanderer made various adjustments. As regards the 2012 lease, from the headline rent of £70,000, he deducted the rental value of the upper floors (using the 2010 rateable value of £22,250 as a proxy for rent), the rates liability for the ground floor and basement (£55,876) and for the upper floors (£10,190.50) and the landlord’s insurance premium (£4,000). The resultant figure was -£22,316.50. The corresponding figure for the 2016 lease, adjusted to allow for differing levels of uniform business rate and a slightly higher insurance premium, was 28,442.25.
13. Mr Wanderer said that the two lettings of the appeal building, either side of the AVD, on an open market basis, were good evidence. While some adjustment is needed, it was neither complex nor speculative. In any event, the resulting figure was sufficiently negative that even allowing for a margin of error, or if the upper floors attracted a low rent, a nominal rateable value of the appeal property would result.

14. Mr Byrne, in contrast, placed little weight on the letting because of the number and level of adjustments required to convert the terms to the statutory hypothesis. The upper floors had been vacant since 2008, and there was therefore no market evidence of their rental value. The 2010 assessment could not be relied upon as it had not been tested. They were in poor condition and would attract a low rent under the rating hypothesis. Secondly, the appellant as landlord pays both the business rates and the insurance premium on the appeal building, which again is a departure from the rating hypothesis. Thirdly, the lease permits subletting of up to 50% of the demise, which again requires adjustment, and the rents from licensees should be taken into account. Accordingly in his view, the lettings required too many adjustments to be of use, and the better evidence in assessing the rateable value of the appeal property lay not with the appeal building, but with other lettings of large retail units in Kettering town centre.
15. In cross examination, Mr Byrne accepted the sub-licences informed the level of rent which Pavers were prepared to pay, and that as a matter of valuation principle the rental value agreed for the lease required no further adjustment to reflect the licence rents. He also accepted that Mr Wanderer's calculations as to the rates liability and insurance costs were correct, and that even if a nominal rent was attributed to the upper floors, the resulting calculation would produce a negative, or at best nominal, rateable value.
16. The experts also relied on a small number of comparable transactions.

3-6 Coventry Street/Swan Centre – 99p Stores

17. This is a nearby retail unit, fronting Coventry Street, but forming part of the Swan Shopping Centre, to which it had rear access. It was formerly occupied by Boots the Chemist – another town centre casualty of the Weavers Wharf development. The agreed floor area was 1,841.2 sqm, all of which can be valued as main space.
18. The unit was let to 99p Stores Limited by a lease dated 27 November 2013, for a term of ten years from 26 August 2013, at a headline rent of £80,000 per annum, which included any service charge contribution for the Centre. There was an initial three-month rent-free period. The lease provided for a rent review at the end of the fifth year, capped at £95,000 per annum. The tenant could break the lease at the end of the third year, on a penalty of £20,000.
19. The lease included an 'exclusivity rent reduction' which took effect if the landlord entered into a letting, by lease, licence, etc, to a list of named discount retailers (presumably commercial rivals of 99p Stores). The list comprised Poundworld, Poundstretcher, B&M Retail, Home Bargains, Poundland, Dealz or any other single-price retailer or non-fashion discounter. If there was such a letting within the first five years of the term, the rent would be reduced by 25%. As I outline below, B&M were already present in the centre when the lease was completed. Whether the rent was in fact reduced was not in evidence.
20. From the headline rent of £80,000, Mr Wanderer deducted 25% for the exclusivity clause, then a further £6,000 (10% of the resulting net £60,000) to reflect the benefit of the rent review cap.
21. In his first report, Mr Wanderer made a further reduction of £99,085 representing the service charge contribution which the tenant was not required to pay (based on £5 per sq ft). The resultant negative net rent was -£45,085. His estimate of service charge was based partly

on research of other centres, and partly from the agents for Specsavers, who told Mr Wanderer that the optician's service charge in the centre was £7.26 per sq ft in 2014, and £8.25 per sq ft in 2016. In his second report, he adjusted this to £3.50 per sq foot, on the basis that a quantum discount might apply to the larger units in the centre. Mindful of the service charge cap on B&M (see below) at £1.75 per sq ft, he thought it reasonable that that would represent 50% of the full service charge figure, which at £3.50 per sq ft would equate to a service charge of £69,367, resulting in a negative net rent of -£15,367.

22. Mr Byrne made no adjustment for the exclusivity clause because no other discount retailer took a lease in the centre during the exclusivity period. As for the rent review cap, Mr Byrne's considered Mr Wanderer's 10% unjustified, amounting to a premium of 50% of the rent over the five-year term, hedging against rental growth of 16.25% over that period. He made no adjustment for the rent review cap.
23. In his first report Mr Byrne made an adjustment to reflect the lack of service charge liability of £2,000 per annum. He subsequently revised this figure and, based on £1.75 per sq ft, being a similar level to the B&M cap, deducted £34,683 from the headline rent. His analysis therefore stood at £45,317, or £24.61 per sqm.

1-6 St George's Mall, Swan Centre – B&M

24. This unit is within the Swan Centre, having an agreed floor area of 1,709 sqm, all of which can be valued as main space.
25. Despite the exclusivity clause in the 99p Stores lease, B&M were present in the Swan Centre when that lease was granted and subsequently renewed the lease during the exclusivity period.
26. The lease dated 23 December 2015 was for a term from 18 August 2016 to 31 December 2019. There is reference to a previous lease dated 18 August 2006 (which was not in evidence) between the former freeholder and B&M. The headline rent was £100,000 per annum, with a 15-month rent and service charge holiday. The tenant's repair liability was limited; there was no obligation to replace floor coverings, nor to maintain repair or replace any fixtures or fittings identified in a schedule of condition (dated July 2006, so presumably attached to the previous lease); and there was no obligation to replace and mechanical or electrical equipment or plant at the end of the term.
27. The experts agreed that the 15-month rent free period should be spread on a straight-line basis over the three-year [sic] term, therefore deducting £41,666. They applied a similar approach to the service charge holiday, deducting £13,455, based on a service charge figure which was capped at £32,392. These deductions brought the net rent down to £44,878.
28. But they did not agree how the dilapidations waiver should be treated. Mr Wanderer had written confirmation from Mr Philip Murphy, Asset Manager for the landlord of the Swan Centre, that 'as part of the deal, the landlord agreed to waive its claim for dilapidations in respect of floor coverings and mechanical and electrical systems. The capital value of this concession is estimated at £255,000.' Taking this on a straight-line basis over the term, he deducted £84,915 per annum, resulting in a net negative rent of -£40,037. Mr Wanderer accepted that he only had information from the landlord's representative as to the figures; there was no confirmation from B&M as to the capital value, or indeed any aspect of the

agreement, and he fairly observed that he was not qualified to say whether £255,000 was correct or otherwise. But, he said, since his calculations resulted in a figure which was well into negative territory, there was some scope for adjustment without a positive rent being generated.

29. Mr Byrne thought that since the landlord was willing to forgo dilapidations to secure a letting, any dilapidations must be minor; if not, at the end of the lease the landlord would have a dilapidated property and no return on the rent. He made no allowance for dilapidations and analysed the net rent at £44,878 or £26.25 per sqm.

1 High Street – British Heart Foundation

30. Both experts thought that 1 High Street was less useful as a comparable than 3-6 Coventry Street and 1-6 St George's Mall.
31. This unit is a short distance away from the appeal building, within direct view, but at the edge of the pedestrianised area, with rear vehicular access which the public could use. It was let to British Heart Foundation as a furniture outlet, on a ten-year lease from July 2014 at a headline rent of £60,000, with a 12-month rent free period, a tenant's option to break after the end of five years, and a rent review capped at 20% increase.
32. The unit was smaller than the appeal property, with ground floor space of 382.3 sqm, and first floor and second floor storage both of 575 sqm. It was the only comparable where a zoning approach was adopted to analyse its rent – despite which both valuers analysed on an overall basis.
33. It was agreed that the tenant would benefit from 80% charitable relief on its business rates liability.
34. Mr Wanderer deducted the rent-free period over the first five years, equating to £12,000, arriving at £48,000. He estimated the 2014/15 rate liability to be £50,610 and deducted 80% of this - £40,488 – as the tenant's overbid, to arrive at a net rent of £7,515, or £4.89 per sqm overall. He did not consider the transaction to be useful. The unit was particularly suited to the BHF's furniture use owing to the rear access allowing customer drop-offs and collections, and to the high ratio of ancillary storage space. Mr Byrne's analysis was to a net rent of £46,454, which equated to £30.30 per sqm overall.

1 Worcester Street and 2-6 Worcester Street

35. These were two freehold sales which were, by common ground, of limited utility in the valuation exercise. 1 Worcester Street, with a total floor area of 6,154 sqm, was sold in April 2016 for £415,000, having remained vacant since the demise of the much-missed Woolworths in 2008. Mr Wanderer's firm acted for the landlord, and he said that there had been minimal occupier interest, with only a single 'serious' offer being made – in 2017 at £90,000 for the first three years, rising to £100,000 in years four and five. The rateable value was £233,000, and while the rent would have gone some way to alleviating the landlord's rates liability, the letting did not proceed. Mr Byrne analysed the proposed rent, allowing for insurance at 2.5%, to be equivalent to £91,650, or £58.52 per sqm. However, he accepted in cross examination that this rate is out of kilter with the other evidence, that in any event it was not a transaction, and was of little assistance.

36. The adjacent property, 2-6 Worcester Street, was sold on 19 December 2014 for £500,000. Mr Wanderer thought the price might have been influenced by the possibility of redevelopment. Neither expert felt the transaction was of assistance.
37. Standing back, Mr Byrne's view was that the rent on the appeal building was of little assistance, and that the two main comparables were 3-6 Coventry Street, which he thought was in a better location than the appeal property, and 1-6 St George's Mall, which he considered inferior to it.
38. On this basis, in Mr Byrne's first report, his view was that the rateable value of the appeal property should lie somewhere below his analysis of 3-6 Coventry Street (£42 per sqm) but above that of 1-6 St George's Mall (£26.25 per sqm) and he adopted £35 per sqm. However, having reconsidered the service charge provision his devaluation of 3-6 Coventry Street, his devaluation altered to £24.61 per sqm. This put his evidence in some difficulty, because the position had been inverted, and led to his reassessment of the appeal property at £25 per sqm, or £37,500 RV.

Tone of the list?

39. In his expert report Mr Byrne referred to the Check, Challenge, Appeal regime under the 2017 rating list. He said that while 3-6 Coventry Street has an outstanding Challenge in place, both 1-6 St George's Mall and 1 Worcester Street had been subject to a Check but no subsequent Challenge had been made, and neither 1 High Street nor 2-6 Worcester Street had been subject to Checks. Since there was a lack of Challenges four years into the rating list, Mr Byrne's view was that a general tone of the list was in place. However, in cross examination he accepted that no tone had been established.

The competing valuations

40. Mr Wanderer's view throughout the process has been that the rental evidence demonstrated negative rental values, and that the rateable value of the appeal property was therefore £1.
41. The valuation officer's position evolved over time. During the Check and Challenge process, and before the VTE, the compiled list figure of £92,000 was defended. Subsequently in its statement of case, the VO swung behind the VTE's determination, contending for a rateable value of £57,000. In Mr Byrne's first expert report, he valued the appeal property at £52,500, based on £38 per sqm. Having had regard to Mr Wanderer's report, and in particular the level of service charge in the Swan Centre, he adjusted his valuation to £45,000 RV, or £30 per sqm.
42. As I indicated above, Mr Byrne made a further adjustment during cross examination, finally settling on £37,500 RV, some 40% of the original figure. It is to Mr Byrne's credit that, cognisant of his professional obligations and duty to the Tribunal, he was willing to alter his view when further evidence came to light.

Discussion

43. If there is a rent passing on the subject hereditament at the AVD, that would ordinarily be a good starting point from which to assess rateable value. But here we have a rent not only of the hereditament, but of the whole of the appeal building. While Mr Wanderer's adjustments

can be reviewed and if necessary adjusted, in reality the analysis is of limited assistance. Although it can probably be taken that the hypothetical landlord of the appeal property is that of the appeal building (otherwise there would be a flying freehold of the upper floors) the same cannot be said for the hypothetical tenant, who cannot be assumed to be the same tenant as one taking a lease of the whole building after adjustments are made to his or her assumed liabilities as Mr Wanderer has done.

44. Secondly, the leases significantly depart from the terms of the notional letting under the rating hypothesis. The tenant has no security of tenure as the leases were contracted out of the relevant provisions of the Landlord and Tenant Act 1954, and the landlord can recover possession on one month's notice. The tenant's ability to assign the lease is prohibited, and subletting is extremely restricted. It is therefore debatable whether the tenant can assume a letting from year to year with a reasonable prospect of continuance as required under the rating hypothesis.
45. Mr Byrne was rightly sceptical of the usefulness of the letting, but he agreed that if it were to be analysed, Mr Wanderer's approach was logical, removing from the headline rent of the whole building elements for insurance, rent and rates liabilities. But there is an unresolved circularity in Mr Wanderer's approach, arguing as he does for a nominal rateable value, but in doing so using the 2010 list rateable value to generate a rates payable figure of £58,255.
46. In my view, if the exercise were to be conducted, only a nominal figure should be attributed to the upper floors. By the end of the hearing, it was common ground that they attracted very little value. They are in disrepair, having been vacant since Marks and Spencer relocated and are partly inaccessible. The photographs show dated accommodation.
47. If I deduct from the headline rent of £70,000 an average of the insurance figures (£4,250), a nominal rent and rates liability for the upper floors (say £1,000) and for the moment using Mr Wanderer's rates for the ground floor/basement (£58,255), a net rent of around £6,500 per annum or thereabouts is arrived at.
48. We know that Leading Labels were paying £10,000 for 50% of the space – which can be taken to be 50% of the ground floor and basement, since the upper floors were unoccupied. Leading Labels' rent was inclusive of all outgoings, so perhaps a net rent of £6,500 is about right. But it would not take much of an adjustment to tip the net rent into negative territory. However, as I say I am sceptical as to the usefulness of the method at all.
49. If the net rent is negative, resulting in a rateable value of £1, the question is whether the appeal property was simply unlucky – the property without a tenant willing to pay a significantly positive rent when the music stopped and the limited pool of tenants in this game of market musical chairs had sat elsewhere – or whether the wider evidence demonstrates, as Mr Wilcox submitted, an utterly turgid market in which there was no longer any general demand for large stores in the town centre.
50. Of course, under the rating hypothesis we must assume that a letting takes place. There was no question that, unlike the appeal building maybe, the appeal property had reached the end of its economic life. This appeal turns on whether there is sufficient evidence of general demand to indicate that the hypothetical tenant would pay a positive rent, and if so at what level. Mr Byrne accepted that, in principle, if there were no general demand, a nominal rateable value may theoretically be appropriate.

51. As Lord Carnwath explained in *Hewitt v Telereal Trillium* [2019] UKSC 23 (at 58):
- “...even in a “saturated” market the rating hypothesis assumes a willing tenant, and by implication one who is sufficiently interested to enter into negotiations to agree a rent on the statutory basis. As to the level of that rent, there is no reason why, in the absence of other material evidence, it should not be assessed by reference to “general demand” derived from “occupation of other ... properties with similar characteristics”.
52. In this appeal, we do have a small number of nearby properties which have reasonably similar characteristics to the appeal property.
53. First, 3-6 Coventry Street, let in August 2013. While nearly two years before the AVD, neither expert made any adjustment for movement in rental values over time. That is to my mind significant. Mr Wanderer makes an adjustment of 10% to reflect the rent review cap. I agree with him that there is some value in certainty, but I think he has over-valued the level of that certainty in circumstances where it would have been highly unlikely that the cap would have been breached. Comparing a lease with a rent review cap with one where there is no cap, I accept that a tenant would be prepared to pay, and a landlord would expect to receive, some recognition of the cap in the initial rent. But having regard to the market circumstances at the time, and given that neither valuer thinks that rental levels were on the rise, I would not put that at more than 2.5%.
54. The exclusivity clause presents a conundrum. Again, comparing a lease with such a clause with a lease without, similar comments apply. I agree with Mr Wanderer that it is what is in the mind of the parties when the lease was entered into that is relevant. But the wrinkle is that one of the ‘triggering’ competitors, B&M, were already in place because their previous lease of 1-6 St George’s Mall dates to 2006. It is not clear to me whether a lease renewal ‘triggered’ the rent reduction for 99p Stores at 3-6 Coventry Street. If it did, that would only have been from 2016, rather than from the start of the lease.
55. It is possible that 99p Stores were seeking to prevent B&M moving within the centre – that would clearly have counted as a triggering event – and the other listed retailers from coming in. So again, I agree in principle with Mr Wanderer that some reflection should be made, but I think he has overcooked it. On closer examination, the landlord has some leeway under the exclusivity clause; it does not apply to any assignment or subletting by existing tenants within the centre, which would clearly have put the landlord in a difficult position. It only applies to new lettings undertaken by the landlord. And it only applies to any such new lettings before 25 August 2018, being the end of the fifth year of the term. The landlord’s hands are untied in the second five-year period. However, the clause is clearly of value to the tenant to prevent competition directly within the centre. In my judgment the clause would attract a 10% addition to the rent.
56. As for the amount by which the rent should be adjusted to reflect the inclusive service charge, the evidence is inconclusive. 3-6 Coventry Street forms part of the Swan Centre, but its main entrance is on Coventry Street. There is a rear access into the Centre and, I assume, some form of loading facility, but the main footfall into the unit will not require access into the centre. The service charge heads were not available in evidence, but it is probable, in my view, that the liability for service charge for the unit would have been less, pro-rata, than the units within the Centre itself, e.g. B&M’s unit at 1-6 St George’s Mall, which we know

was subject to a service charge cap, of £32,292, equating to £1.75 per sq ft. The cap would suggest that the headline service charge would be something more than £1.75 per sq ft. but reflecting the location of the unit, with only rear access into the centre, I would estimate the amount which the landlord would be prepared to absorb from the rent for the headline service charge would be £2.50 per sq ft, or say £49,500.

57. Both experts deducted percentages from the headline rents. In my view they should be applied to the base rent, as they are extra items of rent to reflect the advantages to the tenant. In other words, using my combined 12.5% for rent review cap and exclusivity clause, the correct calculation is base rent + 12.5%, rather than the numerically different final figure less 12.5%. Therefore, the calculation is £80,000/1.125, arriving at £71,111. Allowing for the service charge inclusion of £49,500, in my judgment the true net rent on 3-6 Coventry Street is in the order of £21,500 per annum, or say £11.75 per sqm.
58. Turning now to 1-6 St George's Centre, the experts agreed that the net rent after the deductions for rent-free period and service charge holiday was £44,878. That isn't right. The term of the lease is from 18 August 2016 to 31 December 2019, so say 3.3 years. The 15-month rent and service charge holidays were agreed at £165,365. If spread equally over a term of 3.3 years, the deduction would be £50,110, and the net resulting rent would be £49,889 rather than the £44,878 which the experts agreed.
59. The main dispute was in respect of the dilapidations waiver. In my view Mr Wanderer's analysis is questionable for three reasons. First, there was a schedule of condition in place which would probably reduce the tenant's dilapidations liability. Secondly, we only have the landlord's view as to the capital value of the works, but we have nothing from the tenant's representative to counter it. Thirdly, even if the capital value is right, it is likely (as Mr Wanderer subsequently accepted) that the tenant could resist a claim for dilapidations, relying on section 18 of the Landlord and Tenant Act 1927, especially, on the appellant's case, rents were static and the market sluggish, because it is questionable as to the effect on the landlord's reversion.
60. But again, is a lease with a part dilapidations waiver more valuable to the tenant than one without? We only have an untested figure from the landlord. I am conscious that this was a short lease, with a fifteen-month rent and service charge holiday. The landlord was evidently keen to keep B&M in place, and might have been willing to write off a substantial dilapidations sum.
61. I am not satisfied that there is an entirely reliable way of devaluing this comparable, but am more persuaded by Mr Byrne's view than Mr Wanderer's. Doing the best I can with the evidence, if I take 40% of the landlord's quoted £255,000, and devalue it equally over the term of 3.3 years, say £31,000 would be deducted from the rent, resulting in a net rent of £18,889, or just over £11 per sqm. Arguably, that analysis favours the appellant, and it is possible the deduction for dilapidations should be lower.
62. 1 High Street is, by common consent, a less useful comparable than those above. I agree with Mr Wanderer's analysis of spreading the rent-free period over the first five years, bringing the rent down from £60,000 to £48,000. But I do not accept that the tenant's 80% rates relief should entirely be treated as an overbid. A more proportionate analysis would be to take say half - £25,000 - to arrive at a net rent of say £23,000, or £15 per sqm. But that assumes the unit is capable of analysis on an overall basis - the experts agreed that a

zoned approach would be adopted. While neither valuer asked me to place significant weight on the transaction, given the general dearth of evidence, to my mind it helps fill in a fairly empty canvas.

63. I should add that I found nothing of use in the two freehold transactions, save for background information, including that 1 Worcester Street remained available and to let for some years.
64. On any view, the evidence in this appeal is patchy. An analysis of the rent on the appeal property is questionable. 3-6 Coventry Street analyses at £11.75 per sqm, based on fairly heavy assumptions as to service charge. 1-6 St George's Mall analyses at just over £11 per sqm, but again without total confidence. And 1 High Street shows £15 per sqm, but on a unit which should really be zoned rather than valued overall.
65. It is entirely unsurprising that the parties cannot agree what the answer should be.
66. Standing back, I accept Mr Wilcox's submission that there is no evidence of a letting that is on sufficiently conventional terms to not require adjustment of varying degrees of effort, to convert them to the statutory hypothesis. Putting aside that of the appeal building for the moment, all three lettings involve significant inducements – be they rent review caps, exclusivity clauses, service charges included, dilapidations waived or rent-free periods. But I am satisfied that there is evidence of positive rents being paid, even after these inducements and that, despite Mr Wilcox's attractive submissions, there was general demand for large stores.
67. I agree with Mr Byrne that the deconstruction of the headline rent of the appeal building to ascertain the net rental of the appeal property is not persuasive. In the light of an analysis of the limited evidence, in my judgment a fair approach is to value the appeal property by applying £11 per sqm, thus £17,776 but say £17,750 RV.
68. The appeal is therefore allowed, and I determine a rateable value of £17,750 with effect from 1 April 2017.

P D McCrea FRICS FCI Arb

21 June 2022

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the

application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.