

**THE HIGHLAND & WESTERN ISLES**  
**VALUATION APPEAL COMMITTEE**

**Inverness, 21 August 2018**

Alastair Beattie (Chair)  
Bob Shorter  
Jan McEwan  
J P Macpherson

Donald M MacKenzie, Secretary

| Subjects  | Reference Number            |
|---|-----------------------------|
| <b>Shop, Unit 63-65<br/>Eastgate Shopping Centre, 11 Eastgate,<br/>Inverness, IV2 3PR</b> | <b>06/08/267737/6</b>       |
| <b>Shop, Unit 66<br/>Eastgate Shopping Centre, 11 Eastgate,<br/>Inverness, IV2 3PR</b>    | <b>06/08/267750/3</b>       |
| <b>Shop, Unit 67<br/>Eastgate Shopping Centre, 11 Eastgate,<br/>Inverness, IV2 3PR</b>    | <b>06/08/267755/8</b>       |
| <b>Shop, Unit 68<br/>Eastgate Shopping Centre, 11 Eastgate,<br/>Inverness, IV2 3PR</b>    | <b>06/08/267760/6</b>       |
| <b>Shop, Unit 69<br/>Eastgate Shopping Centre, 11 Eastgate,<br/>Inverness, IV2 3PR</b>    | <b>06/08/267765/1</b>       |
| For the Appellant   | For the Respondent          |
| <b>Steven Stuart, QC</b>  | <b>Brian Gill, Advocate</b> |

The Appeal Subjects are five shops situated within Eastgate Shopping Centre, Inverness (“The Centre”). The Centre is a modern, covered shopping centre located in Inverness with fifty four unit shops and large department store anchors. The Centre is on two levels with the Appeal Subjects located on the upper floor of the atrium.

The physical facts of each appeal are agreed and the point in dispute, the same in each case, was the valuation rate per square metre to be applied to the agreed floor areas. In the Roll the Rateable Values are based upon a Valuation Rate of £500 per square metre. However, the Assessor was proposing a reduced rate of £475 per square metre. The Appellants contended for a rate of £375 per square metre.

## **EVIDENCE**

Mr Craig Wilson for the Appellants and Mrs Fiona Rostock for the Assessor both spoke to detailed precognitions which were made available to, and which greatly assisted, the Committee in its consideration of these appeals.

## **FOR THE APPELLANTS**

Mr Wilson is the partner and head of the Rating Department at Eric Young & Co, LLP, based in Edinburgh. He has been a qualified surveyor for 26 years and specialises in non-domestic rates. In relation to rating matters he advises a number of shopping centre landlords across Scotland.

The nearest units to the subjects of appeal are in what is described as the “Link Malls”. Those are Units 70, 71, 72, 73 and 74. Those Link Mall subjects were originally placed in the Roll at £500 per square metre. That rate was subsequently reduced in negotiation with the Assessor and agreed at £325 per square metre.

In what he described as the “prime” section of the Centre, being Units 9 to 21 on the north side of the Mall and Units 23 to 34 on the south side, these are valued at £575 per square metre.

In respect of the small parade of shops leading towards the unit occupied by Next, Units 35, 35a, 40 and 41, the rate was reduced by agreement in negotiation between the Assessor and agents from £450 to £400 per square metre.

Units 36 and 39 have been reduced from £450 to £375 per square metre and Units 37 and 38 have been reduced from £450 to £350 per square metre.

On the Lower Mall the majority of the shops are valued at £325 per square metre.

It was the experience of the landlord, Mr Wilson's clients, and Mr Wilson's letting colleagues who lease space to retailers in the Centre, that the location and value of the Appeal Subjects is more closely aligned with the Units in the "Link Malls" (valued at £325 per square metre). It was their opinion that the location of the Appeal Subjects is slightly better than in the Link Mall section.

The 2017 revaluation rateable values should reflect the hypothetical rental value of a property as at 1 April 2015. The most relevant evidence is that which is closest to the April 2015 Tone Date. Transactions that best replicate the rating assumptions are the open market lettings. Therefore the best evidence for the valuation of shops for rating purposes are new leases of similar properties occurring close to April 2015.

Mr Wilson's approach to the exercise of valuation had been informed, to an extent, by principles taken from the text book, "The Handbook of Rent Review" (Kirk Reynolds, QC and Guy Featherstonhaugh, QC). He referred to this as the principal reference for

surveyors acting as expert witnesses, arbitrators and independent experts in lease advisory matters. He made particular reference to paragraph 9.4.3 of that publication, a paragraph headed “Weight to be Attached to Different Methods of Rent Assessment” –

“The quality of the evidence derived from the various ways in which rent can be fixed in terms of the weight which can be attached to it when forming opinions of value will depend upon the circumstances of each case. All other things being equal, the descending order of weight is:

- (a) Open Market Lettings;
- (b) Agreements between valuers at arm’s length upon lease renewal or rent review;
- (c) Determination by an independent expert (including a PACT independent expert in respect of a lease renewal);
- (d) An arbitrators award (including a PACT arbitrator in respect of a lease renewal);
- (e) Determination by the court under the 1954 Act;
- (f) Hearsay. Although hearsay evidence is now generally admissible in civil proceedings this does not alter the weight to be attached to it. The quality of such evidence can, however, be enhanced through technical procedures such as civil evidence and notices.”

In the valuation of shop premises the comparative basis of valuation was that generally used. As he understood it, the Assessor had derived his amended rate of £475 per square metre based on an average of just two transactions. He submitted that the Assessor should have looked at a wider selection of the evidence available

within the Centre, including evidence from nearby shops and he should have considered factors such as the marketing difficulties within the immediate proximity of the Appeal Subjects. That would have put the rents the Assessor had relied on into a better context.

Most modern leases are structured as either:-

- (a) Rent with no additional payment;
- (b) Base rent with turnover agreements which involve the tenant paying an agreed minimum base rent and, if a pre-determined turnover threshold is breached, the tenant may also have to pay an agreed percentage of the turnover in excess of the threshold;
- (c) Turnover only agreements where the rent is linked directly to the turnover of the shop, the rent being calculated on the basis of a pre-determined percentage of turnover and will not be subject to any minimum or maximum amount;
- (d) In recent years, when the letting of subjects has become more problematic, there has been a significant increase in short term lease/licence arrangements which often continue on an annual basis until terminated by either party. In many such instances nil or nominal rents are paid.

A landlord would prefer a straight rent agreement as this gives certainty of income and that, in turn, satisfies the needs of their investors. Where turnover provisions are included, that generally indicates that the retailer has had the upper hand in negotiations with the landlord.

Prior to 2008, where a base and turnover agreement existed, it could often be assumed that the base rent was a discount on the true rental value. Commonly the base rent would be 80% of the true market value. However, the landlord would also typically have expected the turnover provisions to be triggered and a top up to be paid. Since 2008 the retail market has struggled with changes in shopping patterns, including a shift to online retailing. This has resulted in store closures, retail administrations and landlords now offer significantly reduced rent deals. Thus, any base and turnover agreements are not considered to be a discount on the true rental value. A landlord will not typically be budgeting or expecting anything beyond the base rent even where there is a top up provision. As the landlord and tenant are not anticipating any payments beyond the base rent, he submitted it is only the base rent figure which should be analysed.

He had carried out an analysis of all “base and turnover” agreements in the Centre. In his analysis he ignored turnover information from the large department stores and also the food court. His analysis was restricted to the unit shops.

In 2014 there were thirteen base and turnover deals. Six of these generated an additional rent. The total top up rent amounted to £115,717 against base rents totalling £1,142,886. Top up rents therefore represented 10.1% of base rents. Within the top up rent figure, the sum paid by the occupant of one unit, Unit 23, accounted for £52,963. Mr Wilson described that as an “anomaly” and if the Unit 23 figure were excluded the turnover top up across the Centre represented a 5.5% increase on the base rents.

In 2015 the turnover top up accounted for 9.4% of addition to base rent. If the Unit 23 “anomaly” was again excluded, that figure reduced to 4.6%.

The total unit shop rent roll for the Centre is approximately £5,000,000. The turnover top up in 2014 and 2015 amounted to approximately 2.3% of that sum. With the removal of the Unit 23 “anomaly” that percentage drops to approximately 1%.

This analysis supported Mr Wilson’s view that the hypothetical landlord would not be anticipating a rent in excess of the agreed base figures. Only six of the base and turnover agreements generated additional revenue and those represented between 4% and 5% in addition to the base rent.

Mr Wilson then referred to the following subjects in the Atrium by way of comparison.

Unit 68 – this was a new 10 year lease entered into with effect from 19 September 2014. It was an open market letting. The analysed rate was between £354 and £376 per square metre.

Unit 67 – this was a new lease entered into in April 2015 albeit with an existing occupier. The rent was calculated on the basis of turnover only, there being no base rent. For this reason this lease has been ignored by the Assessor in his calculations. In Mr Wilson’s view it was inconsistent of the Assessor to take account of turnover information in other leases but to ignore this, a turnover only arrangement. If

turnover top ups are to be taken into account, this lease should be included in the analysis. The analysed rate for this unit was £270 to £288 per square metre.

Unit 66 – this was an agreement entered into in March 2014 with an existing tenant. It amounted to an extension and a variation of the previous lease. The variation included the tenant receiving a 12 month rent free period. The analysed rate per square metre was £602. In the context of the other evidence Mr Wilson considered this to be outside the general range of values and so less weight should be applied to it.

Units 63 to 65 – this was a new lease from April 2011 for 10 years with a rent review in 5 years. It is a base rent and turnover top up. The analysed rate per square metre is £137 to £160.

Unit 62 – this unit has been vacant since 2015. The ongoing availability of units such as this were, according to Mr Wilson, a useful indicator that figures at the lower end of the scale of values may be more relevant.

Mr Wilson also analysed values in relation to subjects in the Link Malls. Appeals in relation to these subjects had been settled with the Assessor, the rate being reduced from £500 to £325 per square metre.

Unit 70 – this was a 5 year lease entered into in October 2016 with a 1 year rent free period. It was a base rent and turnover top up. The rate per square metre was £274.



Unit 71 – this was a lease from November 2012. It was a turnover only basis. The rent paid on that basis in 2015 equated to a rate per square metre of £64.

Unit 72 – this was a new 5 year lease in August 2016 with a rate per square metre equating to £337.

Of the subjects in the Link Mall, Unit 70 sits in close proximity to the Atrium where the Appeal Subjects are situated. While accepting that the Atrium is considered by letting agents to be a superior location to the Link Mall he regarded the £274 per square metre figure in relation to Unit 70 to be a useful “bench mark” for the Appeal Subjects.

He sought to distinguish Unit 66 because, while it was an arms-length agreement, it was to a sitting tenant who was already obliged to pay the same rent until 2018. He preferred instead Unit 68 (£354 to £366 per square metre). This should then be benchmarked against Unit 67 (£270 to £288 per square metre) and Units 63-65 (£137 to £160 per square metre) and also Unit 70 (£274 per square metre). He also invited the Committee to take the view that some weight should be given to Unit 66 which has been void for 3 years and in respect of which the last rental evidence equated to £374 per square metre following a 1 year lease renewal in 2014. He therefore invited the Committee to accept the appellants’ proposed rate of £375 per square metre.

#### **FOR THE RESPONDENT**

Mrs Rostock is a member of the Royal Institution of Chartered Surveyors and has been qualified for over 17 years. She has worked for the Highland & Western Isles

Valuation Joint Board for 16 years. She has been involved with the valuation of non-domestic subjects, mainly within Inverness and the rural areas surrounding the city. She dealt with the 2010 revaluation appeals for the Eastgate Centre and the bulk of the 2017 revaluation appeals for offices and shops in Inverness town centre and the peripheral area. The Appeal Subjects to which this case relate are the only “Unit” shops in respect of which matters have not been settled by negotiation with agents.

She summarised the nature of the dispute in this case as being over the weight to be attached to what are considered to be the two pertinent lease transactions – Units 66 and 68. There was also a difference of opinion as to whether turnover top up elements should form part of the analysis to arrive at the Zone A rent rate.

She explained that the Centre is not valued on one unified Zone A rate per square metre as some sections are better than others, having higher footfall and therefore they command a higher rent. Conversely, some sections are not the first choice of retailers, are in areas of lower footfall and they may lack visibility and therefore the hypothetical tenant will pay less per square metre for a unit in those locations.

The appeals in relation to what was referred to as the “prime section” of the upper level of the Centre were withdrawn without adjustment at a Zone A rate of £575. It was a matter of agreement between parties that this section is the prime section of the Centre as a whole.

The parade of shops leading up to the unit occupied by Next and which lead away from the prime section (“the Next Parade”) had rates agreed with agents varying from £400 to £350, descending as they get further from the prime section.

Units in the two linking corridors (“the link malls”) between the prime section and the Atrium had rates agreed at £325.

It was Mrs Rostock’s position that shopping centre landlords often agree a base rent with tenants with a top up of a percentage of turnover agreed if the retailers reach a certain level of turnover. The base rent is considered to be 70% to 80% of open market value in many cases, often quoted in a back letter or separate agreement. The parties will then agree a turnover top up element. Percentages agreed and threshold turnovers on which the top up sum is based are negotiated specifically with individual tenants. The 100% equivalent rent is normally quoted in the main lease. The key to determining what the actual rent is, is to look at the terms of the Lease.

She explained that on her analysis of the rental evidence adjustment had been made to meet the definition of net annual value and then further adjustment made to reflect the value of any incentives. Incentives may include a rent free period, a sum of money paid from the landlord to the tenant called a capital contribution or reverse premium which may or may not have been given to assist the tenant with fitting out costs, rent free periods, etc.

Unit 62 - This Unit is not under appeal and is currently vacant. The rent of this Unit analysed £394 in 2009 and the rent on review remained unchanged in 2014. As the

rent did not change on review, it was of no use in determining the open market Zone A rental as at the tone date, 1 April 2014 and so she disregarded it. However, this Unit is available for rent at £65,000 against a current RV of £67,000 (£500 per square metre) which suggests even with incentives, the landlord is looking for a rent closer to £475 than the £375 contended for by the agents. In the advertising material the landlord states the Unit sits “on the upper mall of the Centre which is regarded as the prime”.

Units 63-65 - This was a ten year lease commencing in April 2011. The tenant benefited from a rent free period and a capital contribution from the landlord. The rent review pattern was every 5 years. The rent did not change in 2016. She had agreed with the appellants’ agent in this case that the reduced rental rate of £92 per square metre was for the base rent only. This did not include a sum for the fitting out of the unit of over £900,000. However, since the rent was several years before the tone date of 1 April 2015 and the rent was not reviewed in 2015 and there was doubt over how much of the fitting out costs were rateable, she disregarded this rent.

Unit 67 - This Unit was occupied by a tenant who went into administration in 2015. Thereafter a new agreement was reached with the landlord which requires the tenant to pay a rent equivalent to 17.5% of gross turnover. No base rent is paid. The turnover rent includes services charges and rates liability whereas for rating purposes the rent to be analysed is exclusive of any VAT, service charges, rates liability, etc. The information available in this case suggests that by the time service charges and rates liability are accounted for, the rent element is negligible. She considered this to be a distressed or abated rent. The landlord and tenant are able to serve notice to end

the agreement at very short notice, she believed one month's notice. For these reasons this rent has been disregarded.

Unit 69 - The rent payable equates to £966 per square metre . This was agreed from December 2007. The rent was not changed at review in 2012 and she understood it remained unchanged after the 2017 rent review. Because of the age of the rent it is not indicative of tone levels of value and therefore it has been excluded from the basket of rents to which she had regard.

Unit 66 - This Unit has been occupied by the same tenant for over 15 years. The lease was due to end in 2018 but in 2014 they negotiated an extension to the lease with effect from 3 March 2014 for a further 5 years i.e. until 2023. The rent did not increase from the passing rent of £106,920 per annum but a year rent free was negotiated which reduced the rent from the equivalent of £810 per square metre to £602 per square metre. Because this was fairly close to tone she considered this to be good evidence. This lease also stipulates that there is a top up payment to be paid in addition to the base rent if their turnover exceeds a certain level. Their turnover levels have for the last 4 years resulted in a top up element being paid in addition to the basic rent. Including the top up adjusts the rate from £602 per square metre to £720 per square metre.

Unit 68 - This Unit has been let to the current tenants since September 2014. It is a 10 year lease with 5 year rent review pattern at a base rent of £18,000 per annum. They received a capital contribution of £80,000 from the landlord and a rent free period of 9 months. The lease contains an option for the tenant to break from the

lease in 6 years but subject to the payment of a penalty if that option is exercised. The penalty is the equivalent of 3 months' rent - £20,000. If the tenants do not exercise their right to break at year 6 the incentives are analysed over the term of the lease – i.e. 10 years. This leads to two different rent rates depending on which decision the tenants make and Mrs Rostock stated that she had to take a professional judgement as to which scenario is the more likely. The present tenants have a clause in their lease to pay a turnover rent if their turnover exceeds a stated threshold and this has happened. During 2016 and 2017 they have paid a turnover top up in addition to their base rent. The effect of adding in the turnover top up results in the rate of £449 per square metre if they break from the lease at the 6 year point and £478 per square metre if they remain in occupation for the term of the lease.

Normally she would be looking at a basket of rental transactions. Some of them would be on the high side, some on the low side with several in the middle which would assist in arriving at a hypothetical rent rate for the Appeal Subjects. However, the basket in this case is very small with two quite different rates. Unit 66 in which the existing tenants negotiated a lease extension from March 2014 which analysed to a rent rate of between £602 per square metre and £720 per square metre depending on whether or not a turnover top up element was taken into account.

Unit 68 was a new lease effective from 19 September 2014 analysing at an adjusted rent rate of between £360 per square metre and £478 per square metre depending on whether the turnover top up was taken into account and/or the year 6 break option was exercised.

The Atrium unit shops were originally assessed at £500 per square metre. However, during negotiation on behalf of the tenant of Unit 67, that appeal was settled at £475 per square metre without prejudice to the appeals in relation to the present Appeal Subjects.

Mrs Rostock stated that the level of £475 per square metre was well supported. She was of the opinion that both pieces of rental evidence – in relation to Unit 66 and Unit 68 – should be considered as having equal weight. She had had regard to the SAA Practice Note One, Adjustment of Rents (“the Practice Note”). The Practice Note deals with rents and rents on review. Unit 66 was not a new lease but it was not a review either. The Practice note suggests equal weight should be attached to rents on review and rents in new leases. Unit 66 rent was a product of negotiation, an extension to the lease when new terms were agreed and the adjusted rent was reduced. The tenants could have walked away from the Unit at the original expiry date, 2018, but they chose not to do so.

The aim of the revaluation exercise was to determine the rent the hypothetical tenant would be prepared to pay for the particular subjects. The actual rent for a property may be of significance and useful, however it is not conclusive. For this reason she had been mindful of rents and rate of value agreed elsewhere in the Centre.

Looking elsewhere in the Centre she considered that the Atrium was a better location than those in the Next Parade but not as good as the prime section. However, she considered it to be “not far behind” the prime section. The link malls have been agreed as being poorer than the Atrium and the prime section. She considered that in

all of the circumstances a rate of £475 per square metre was reasonable for the Appeal Subjects.

### **SUBMISSIONS FOR THE APPELLANTS**

On behalf of the Appellants Mr Stuart recognised there was a “smallish” number of rents but there was nonetheless some rental evidence from this area of the Centre.

Some of the rents are generated from turnover top-up agreements. On this subject he commended to the Committee the evidence of Mr Wilson. This was to the effect that whereas some years ago it may have been appropriate to regard the base rental level in such an arrangement as being a discount on the true market rent, that was not now appropriate. Landlords did not enter into such arrangements expecting a top-up (though, no doubt, one would be welcomed). The analysis of rents undertaken by Mr Wilson in Appendix 7 to his precognition bore out this contention. Only six base and turnover agreements over the whole Centre generated any additional rent. Taking into account what Mr Wilson had described as the “anomaly” of Unit 23, this did not support a suggestion that the base rent is somehow a discount on the true market rental value.

Senior Counsel referred the Committee to the Lands Tribunal for Scotland case of Morrison E F (GP) Ltd –v- Central Scotland Assessor [2004] RA76 (“Morrison”). He noted that case pre-dated 2008 when the assumption, in the context of base rent and top-up agreements, that base rents were a discount on market rental value had changed. He submitted that even then, prior to the change he said had taken place in 2008, Morrison did not support the proposition that in the case of a base rent and top-



up agreement, 100% of any top-up actually achieved should be applied to the base rent figure to arrive at a rental value for rating purposes.

He summarised the Appellants' case in relation to the available rental evidence as follows.

Unit 62 - this was a "void" – a Unit the landlords had not been able to let on a standard leasing arrangement. Instead, it had, since 2014, been occupied on a series of short-term licence agreements.

Units 63 to 65 - this was an old lease but according to Mr Wilson's analysis of the rental and allowing for the incentives, it resulted in an adjusted rent in the range of £137 to £160, well below what was being contended for by the Appellants in their cases.

Unit 66 - this was a lease variation agreed in 2014. The Lease was then extended by five years with a one year rent free period. The terms of the new Lease were negotiated as an "arms-length" transaction but it was not an "open market" transaction as it was dealt with between the landlord and a sitting tenant. Account had to be taken of the consequences for both parties if it had not been possible to agree a variation – for a landlord in respect of potentially losing an established tenant of some standing; for the tenant in losing a shop location with which it had been associated for some time and to which an element of goodwill doubtless would attach and the consideration of the cost to which the tenant would be put in terms of fitting out a new shop unit elsewhere if they had to move out. As a result, this Unit produced a base

rental figure of £601 which increased to £734 with the top-up provided for in 2014. This was considerably in excess of the figure proposed by the Assessor of £475. It was not an open market transaction. It was so out of line with the other values in the Centre that, in the hierarchy of evidence available, little weight should be attached to it.

Unit 67 - this was a turnover only rent. It analysed to a figure well below the Assessor's rate of £475. It was not clear why the Assessor chose to disregard this turnover only rent but sought to take into account, in relation to certain units, turnover figures which were generated in addition to base rents.

Unit 68 - this was a new Lease struck seven months prior to the tone date. Depending on how incentives associated with the Lease were treated, it analysed to a rate of approximately £374. Taking into account the turnover top up triggered in 2016, that increased to £454.

According to Mr Stuart, the Assessor was placing a heavy reliance on just two units – Unit 66 and Unit 68. They were in close proximity to each other and of similar size. How then, should account to be taken of the very significantly different values?

As a means of dealing with this, he commended to the Committee the approach of Mr Wilson which was to look at the wider market evidence in the Atrium. He referred to the summary laid out in paragraph 4.37 of Mr Wilson's precognition. This pointed to the rate of the Appeal Subjects being towards the "Unit 68 end of the scale". He suggested this was a more useful rental than in Unit 66. Unit 66 had not been an open

market transaction, its figure “skewed” the analysis and so less weight should be attached to it.

The evidence available from the units in the link mall provided a useful check. This was summarised by Mr Wilson at paragraph 4.42 of his precognition.

For all of these reasons, Mr Stuart invited the Committee to uphold the Appeals.

### **SUBMISSIONS FOR THE ASSESSOR**

Mr Gill emphasised the importance of the statutory hypothesis. For ease of reference this was set out by the Lands Tribunal in Morrison at page 99. In particular, Mr Gill referred to the following passage – “Valuation is on the basis of analysis of a body of rental evidence relating to similar subjects at the location, although there are complications in relation to lease terms which have a bearing on the rental level. Parties agree that in that situation the task of the valuer is to analyse that rental evidence and then, applying valuation expertise, arrive at a basic rate per square metre representative of market value.”

That required the exercise of professional judgement regarding a particular piece of evidence in terms of assessing its applicability to the Appeal Subjects and the weight to be attached to it in that assessment process.

He submitted that there was no such thing as a hierarchy of evidence as had been suggested by Mr Wilson and with reference to the quotation of paragraph 9.4.3 from the Handbook of Rent Review.

The Practice Note did not set out a hierarchy of evidence either. Each piece of evidence had to be assessed on its own merits as to applicability and weight to be attached to it.

Turnover top ups were a red herring because they had not been relied upon by Fiona Rostock in arriving at her valuation of the Appeal Subjects.

The revaluation had been in full flow for over 1 year and there were already clearly established levels of value in the Centre.

Mrs Rostock had considered everything that she knew of the Atrium. He referred in particular to paragraphs 10.3 to 10.6 of her precognition. This included an assessment of vacancies and the pattern of vacancies which she concluded were reflected in market rental values generally.

In relation to the following particular units he submitted:-

Unit 62 - As regards this vacant unit, there was evidence of a rental level in 2009 which analysed to £394 per square metre and which remained unchanged in the 2014 review. Since the rent did not change in 2014, and we are here dealing with a 1 April 2015 tone date, she had disregarded this evidence.

Unit 63-65 - This was a rent struck in 2011 in the context of a 10 year lease with a rent free period, a capital contribution from the landlord and a 5 yearly rent review period. The rental was too old to be of relevance, the amount of the capital fit out

costs and the extent to which these were rateable were unknown. For these reasons Mrs Rostock had been correct to disregard this evidence.

Unit 67 - This was a rent so low she had, correctly, decided to disregard it.

Unit 69 - Both parties had not taken this unit into account in their calculations.

There were only two reliable and relevant pieces of evidence – Unit 66 and Unit 68.

The appellants had chosen to exclude Unit 66 and were wholly reliant on the evidence of Unit 68. The Assessor had looked at both of those transactions and taken account of them.

As regards the Next Parade, the rates in relation to these units had been reduced, as a result of negotiation, to £400, £375 and £350 per square metre. This was an area which, in the context of the Centre, could be regarded as “sub-prime”. They could therefore not be fairly compared to the Appeal Subjects.

Mr Gill invited the Committee to prefer the evidence of Mrs Rostock to that of Mr Wilson, to prefer her approach to valuation and to refuse the appeals.

## **DISCUSSION & DECISION**

The quotation from the case of Morrison set out above was considered by the Committee to be a useful starting point. It is repeated here for ease of reference –  
“Valuation is on the basis of analysis of a body of rental evidence relating to similar

subjects at the location, although there are complications in relation to lease terms which have a bearing on the rental level. .... the task of the valuer is to analyse that rental evidence and then, applying valuation expertise, arrive at a basic rate per square metre representative of market value.”

The issues for the Committee in relation to these appeals boiled down to these –

- (a) what rental evidence should properly be considered;
- (b) what weight should be attached to that evidence.

The comparisons upon which there had been greatest focus by the parties were Unit 66 and Unit 68. The rental values of these were markedly different. Looked at together, these two subjects at least seems to define the width of the spectrum of values from which the value of the Appeal Subjects was to be found.

The paucity of useful comparisons from within the Atrium made it necessary and appropriate to cast the net a little wider, without straying, however, from the first floor of the Centre.

The areas of the Centre which had been referred to in evidence, in descending order according to their proximity to the Appeal Subjects, were the link malls, the prime section and the Next Parade.

The agreed rate for the link mall subjects was £325 per square metre; the agreed rate for the prime section was £575 per square metre; the agreed rate for the units on the Next Parade was between £350 and £400 per square metre.

It appeared to the Committee to be a matter of agreement between the parties, and to accord with the evidence, that, in terms of value, the Appeal Subjects in the Atrium should be below units in the prime section, greater than those in the Next Parade and than those in the link malls. The fact that values in those distinct areas were settled, further assisted the Committee in determining where, in the spectrum of those values, the values of the Appeal Subjects should properly lie.

Given the concession by Mr Gill that the Assessor had not had to take account of turnover top ups in arriving at his figure of £475, it was not necessary for the Committee to give weight to those figures.

Taking account of all of the relevant evidence laid before it, the Committee determined that the rate of £450 per square metre should be applied to the Appeal Subjects. To that extent the appeals are upheld.



.....  
Alastair G Beattie, Chairman

3 Oct. 2018

.....  
Date