

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996**

**IN THE MATTER OF AN APPLICATION**

**BT/8/2023**

**BETWEEN**

**BOOTS UK LIMITED – APPLICANT**

**AND**

**ROBERT JAMES ALEXANDER – RESPONDENT**

**Re: 38 Main Street, Larne**

**Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)**

**Background**

1. The premises at 38 Main Street, Larne (“the reference property”) comprise a double fronted, three storey retail unit in a prime location in Larne town centre.
2. Boots UK Limited (“the applicant”) first occupied the reference property in 1998 and they remain the current tenants. The landlord is Robert James Alexander (“the respondent”). Upon occupation the applicant undertook a refurbishment of the reference property which included the removal of an escalator to the first floor. The applicant is, however, under a legal obligation to replace the escalator should it vacate. The parties are agreed, therefore, that an escalator should be included in any assessment of rent.
3. The reference property was previously let under a lease for five years from 13<sup>th</sup> November 2017 which has now expired. The parties were in the process of negotiating a new lease and on 19<sup>th</sup> January 2023 the applicant made a tenancy application to the Lands Tribunal, requesting a new tenancy to commence on 20<sup>th</sup> January 2023 for a term of five years.

4. There was much agreement between the parties in negotiating the terms of the new lease and the only matter in dispute is the rent to be paid under the new lease. This is the issue to be decided by the Tribunal. The parties were agreed that the rent should be assessed as at 20<sup>th</sup> January 2023 (“the valuation date”) which is the agreed date of commencement of the new lease. The rent under the old lease was £32,000 pa.

### **Rental History**

5. The respondent helpfully provided a rental history of the reference property:

- (i) 1987      £32,000 pa (original letting to Connors Chemists)
- (ii) 1992      £37,000 pa
- (iii) 1997      £43,500 pa (first review with Boots as tenant)
- (iv) 2002      £43,500 pa
- (v) 2007      £46,250 pa
- (vi) 2012      £34,000 pa (lease renewal for a further 5 years)
- (vii) 2017      £32,000 pa (lease renewal for a further 5 years)
- (viii) 2022      In dispute

6. The Tribunal notes and as pointed out by Mr Gibson BL, the rent has been in decline since 2007.

### **Procedural Matters**

7. The applicant was represented by Mr Keith Gibson BL, instructed by Shoosmiths (NI) LLP Solicitors. Mr David Dunlop BL represented the respondent, instructed by Johnsons Solicitors.

8. Mr Michael McCombe of Cushman & Wakefield provided expert opinion evidence on behalf of the applicant. Mr William McDowell of Osborne King provided expert opinion evidence on behalf of the respondent. Mr McCombe and Mr McDowell are experienced Chartered Surveyors.
  
9. The Tribunal is grateful to counsel and the experts for their helpful submissions.

### **Position of the Parties**

10. Mr McCombe had assessed the rent for the reference property at £18,500 pa. Mr McDowell's assessment of the rent was £48,300 pa. The Tribunal is disappointed that the two experienced experts were so far apart in their assessment of the rent for a standard shop on the Main Street in Larne.

### **The Statute**

11. Article 15 of the Order stipulates how the rent should be assessed:

#### “Rent Under New Tenancy

18.-(1) The rent payable under a new tenancy granted in pursuance of an Order of the Lands Tribunal shall be such as may be agreed between the landlord and the tenant

(2) In the absence of agreement the rent shall be such as may be determined by the Lands Tribunal to be that at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing lessor, there being disregarded –

- (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;
- (b) any goodwill allocated to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business);
- (c) any effect on rent of any improvement –
  - (i) carried out by the tenant as a predecessor in title of his; or

(ii) where the tenant or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out by him or that predecessor in title during a tenancy other than the current tenancy, other than in pursuance of an obligation to the immediate landlord.

(d) ....

(3) ...

(4) ...

(5) ...”

### **Authorities**

12. The Tribunal was referred to the following authorities:

- (i) Co-operative Group Limited v Cedareast Investments Limited BT/67/2012
- (ii) John Minnis Estate Agents Limited v Stephen James and Patricia James BT/15/2018
- (iii) JD Sports Fashion Plc v Central Craigavon Limited BT/16/2019
- (iv) Samuel Smith (Southern) Limited v Howard de Walden Estates Ltd [2007] 1EGLR 107

13. And to the following texts:

- (i) Ross on Commercial Leases at Division P, Chapter 8 and paragraph 531
- (ii) Hill & Redman’s Law of Landlord and Tenant at Division A, Chapter 7 and paragraph 2365.
- (iii) Hill & Redman’s Law of Landlord and Tenant at paragraph A[1923] et seq.

## The Rental Valuation

### Mr McCombe

14. The experts were agreed that the overall net internal area of the reference property is 9,439 sq ft.

15. Mr McCombe had assessed the rent on a zoning basis:

Zone A	323 sq ft
Zone B	474 sq ft
Zone C	588 sq ft
Remainder	1,782 sq ft

He calculated the ITZA at 930 sq ft for comparison purposes.

16. He also supplied overall net internal measurements:

Ground floor	3,167 sq ft
First floor sales/ancillary	3,163 sq ft
Second floor office	885 sq ft
Second floor stores	<u>2,224 sq ft</u>
Total	9,439 sq ft

17. Mr McCombe provided a summary of his comparables which were all located on Main Street, Larne:

	Address	Name	Event	Date	Rent pa	Area	Comments
1.	42	Wild Blossom	OML (3yrs)	11 Jan 23	Yr 1 £8,000 Yr 2 £9,000	GF ITZA 479 Rear ST 406 1F ST 557	3yr lease terms break at yr 1 1 month rent free
2.	34-36	Superdrug	LR (5yrs)	1 June 21	£22,350	GF ITZA 1,433 Rear ST 1,879 FF ST 1,095	5yr lease agreed Break at yr3 Previous rent £35,000 pa

3.	17	The Save Point	OML (1yr)	1 April 21	£7,200	GF ITZA 503 GF ST 112 1F ST 586 2F 331	New 1 yr lease agreed £600 pm
4.	48A	Semi Chem	LR (14 mths)	1 Dec 20	£6,500	GF ITZA 710	Renewal for term of 14 mths Pandemic Clause

18. Mr McDowell considered that comparables 3 and 4 did not provide any significant assistance in valuing the reference property, as they were much smaller units and the valuation dates were 2020/21. The Tribunal agrees and will now consider comparables 1 and 2.

19. Comparable 1 42 Main Street “Wild Blossom”: This was an open market letting on 11<sup>th</sup> January 2023, close to the valuation date. In comparison with the reference property Mr McCombe adjusted the rent of this comparable:

Initial rent	£8,000 pa
Net rent	£8,000 pa
Less 7.5% for quantum	(£600 pa)
Less 5% for lease term	<u>(£400 pa)</u>
<b>Adjusted net rent</b>	<b>£7,000 pa</b>

20. When questioned by Mr Dunlop BL, Mr McCombe agreed that he did not have any market evidence to substantiate the reductions for quantum and lease term, rather it was his expert opinion. Mr McDowell also pointed out that Mr McCombe had analysed the reference property on the basis of four zones, which had an “in built” reduction for quantum. The Tribunal agrees and also concurs that there is no evidence to substantiate Mr McCombe’s proposed reductions.

21. The Tribunal's analysis of No. 42 based on an average rent of £8,666 pa over the 3 year term.

ITZA	479 sq ft @ £15.23	£7,298 pa
Store	406 sq ft @ £2.00	£812 pa
IF Store	557 sq ft @ £1.00	<u>£557 pa</u>
		<b>£8,666 pa</b>

22. Comparable 2 34-36 Main Street "Superdrug": The date of this lease renewal was 1<sup>st</sup> June 2021 and the term was for five years with a tenant's break option at year three.

23. Mr McCombe adjusted the rent of this comparable:

Initial rent	£22,350 pa
Net rent	£22,350 pa
Less 5% for lease term	<u>(£1,117.50 pa)</u>
<b>Adjusted net rent</b>	<b>£21,232.50 pa</b>

24. And his analysis:

Ground floor ITZA	1,433 sq ft @ £11.43	£16,379 pa
Ground floor Store	1,879 sq ft @ £2.00	£3,758 pa
First floor Store	1,095 sq ft @ £1.00	<u>£1,095 pa</u>
	<b>Say</b>	<b>£21,232 pa</b>

25. Again there is no market evidence to support the 5% reduction for the lease term and the Tribunal prefers:

Ground floor ITZA	1,433 sq ft @ £12.21	£17,496 pa
Ground floor Store	1,879 sq ft @ £2.00	£3,758 pa
First floor Store	1,095 sq ft @ £1.00	<u>£1,095 pa</u>
		<b>£22,350 pa</b>

26. The Tribunal notes that this lease renewal of 34-36 Main Street was carried out in June 2021 in the second period of Covid lockdown and which ended in July 2021.

27. Based on his analysis of his comparables Mr McCombe assessed the rent of the reference property:

Ground floor ITZA	930 sq ft @ £11.50	£10,695.00 pa
First floor sales/ancillary	3,163 sq ft @ £2.00	£6,326.00 pa
Second floor office	571 sq ft @ £0.50	£285.50 pa
Second floor store	2,224 sq ft @ £0.50	<u>£1,112.00 pa</u>
	<b>Say</b>	<b>£18,500.00 pa</b>

28. Mr McDowell considered 34-36 Main Street to be a good comparable for the reference property as it was adjacent and of a more comparable size. He noted, however, that the lease renewal was negotiated during the second period of lockdown. He considered that the drop in rental from £35,000 pa to £22,500 demonstrated the difficulties landlords were experiencing in the extraordinary market circumstances pertaining in 2020 and 2021.

29. He considered the reality of rental markets post pandemic was that analysis on the basis of zoned rents was all over the place and very few locations had an established Zone A pattern. His preference was to look at overall rental levels.

30. His preferred comparable was No. 46 Main Street which was occupied by Tesco Stores Ltd. The relevant date of the Tesco “deal” was 7<sup>th</sup> February 2023, very close to the valuation date for the reference property.

31. In the Tesco stores “deal” the tenant had a break option at 7<sup>th</sup> February 2023 which they chose not to action despite an automatic RPI review provision being included with the lease. They were content to let the landlord increase the rent by RPI. Mr McDowell’s opinion was that Tesco Stores Ltd did not believe the RPI rent was higher than the market rent of the property, otherwise they would have attempted to re-gear their rent.

32. Mr McDowell analysed the “Tesco” rent of £51,729.57:

GF rent	2,228 sq ft @ £20.28
GF ancillary	370 sq ft @ £4.00
FF off/store	1,105 sq ft @ £3.50
FF ancillary (not used)	1,198 sq ft @ £1.00



33. Using a “standing back” analysis Mr McDowell adopted £10 sq ft for the reference property as opposed to the Tesco rent of £20.28 sq ft. This, he informed the Tribunal, was based on his 35 years involvement with the reference property.

34. He applied this £10 sq ft to give a rental for the reference property:

GF retail	3,167 sq ft @ £10.00	£31,670
FF retail	3,163 sq ft @ £4.00	£12,652
2F offices	885 sq ft @ £2.00	£1,770
2F stores	2,224 sq ft @ £1.00	<u>£2,224</u>
		£48,316
	<b>Say</b>	<b>£48,300</b>

35. The Tribunal disagrees with Mr McDowell:

- (i) The reference property lends itself ideally to the zoning method of valuation. It is of an elongated shape and the further back you go the property becomes less valuable. This is exactly why a zoning method is appropriate, as opposed to an overall basis as adopted by Mr McDowell.
- (ii) The analysis of the Tesco “deal” gives an overall rent of £20.28 sq ft. Mr McDowell, however, “standing back and looking” comes up with half that figure, £10 sq ft, for the reference property. On that basis the Tesco rent is not a proper comparable for the reference property if the rent per sq ft on the ground floor is half that of Tesco. Indeed if the Tesco rent of £20.28 is applied to the reference property, the rent is in excess of £75,000 pa.
- (iii) The Tribunal considers that the Tesco “deal”, which adjusts the rent by RPI, is not a valid comparable as it was not negotiated by the landlord and tenant. As demonstrated by Mr McDowell’s 50% downward adjustment to £10 sq ft, the “deal” was clearly not a valid rent review for comparative purposes. If it is a valid rent review of a nearby comparable why did he not apply the Tesco rent of £20.28 sq ft to the reference property rather than £10 sq ft? As assessed by Mr McDowell one property is half the rental value of the other. The Tribunal assumes that Tesco, as a

food store, had not been impacted by Covid restrictions and they were clearly happy to allow the rent to be increased by the RPI to remain in situ.

36. Mr McDowell also provided rents for the Laharna Retail Park in Larne, which was a retail park approximately 150 yards from the reference property. These rents, he submitted, demonstrated the effect of Covid on rental values in Larne and showed a “bounce back” effect on rents post Covid:
- (i) Pre-pandemic; 9<sup>th</sup> August 2019 B & M Bargains leased 10,169 sq ft for £80,000 pa, equating to £7.86 sq ft.
  - (ii) Pandemic; 6<sup>th</sup> September 2020 Poundland leased 11,625 sq ft at £32,500 pa rising to £65,000 pa on 6<sup>th</sup> March 2023, £4.19 sq ft averaged over the five year term.
  - (iii) Pandemic easing; 1<sup>st</sup> October 2021 Peacock Stores Limited leased 8,598 sq ft for £68,333 pa equating to £7.94 per sq ft.
37. In his view, Mr McDowell considered that these rents gave a fairly clear view of how three major retailers approached rental negotiations that straddled the pandemic market period.
38. The Tribunal finds these rents not to be controversial as they show a dip in rental values during the pandemic which would certainly have been expected.
39. For direct comparison with the reference property Mr McDowell considered “Peacocks” provided the best post Covid comparable, albeit it was a retail warehouse unit.
40. He considered Tesco’s at £20.28 sq ft and Peacocks at £7.94 sq ft led him to an assessment of £10 sq ft for the reference property.

41. The Tribunal considers that a retail warehouse unit in Laharna Retail Park is of very limited assistance in assessing the rental for a shop unit on Main Street, Larne. The Tribunal has already commented on Tesco's.
42. The rental details for the Poundland Store in Laharna Retail Park were disputed at hearing and the Tribunal asked the experts to agree the details post hearing which they were unable to do. In any case the Tribunal finds the Laharna comparables to be of no assistance.

### The Tribunal

43. Of the comparables submitted by the experts the Tribunal finds the following two comparables to be of most assistance:
- (i) Superdrug at 34-36 Main Street which devalues at £12.21 sq ft ITZA 1<sup>st</sup> June 2021. This lease renewal was therefore agreed towards the end of the second pandemic lockdown period which ended in July 2021. Both experts were agreed that this was a valid comparable.
  - (ii) Wild Blossom at 42 Main Street. This unit is smaller than the reference property but it is the only post Covid rent available to the Tribunal. It is an open market letting which was agreed in February 2023, only one month post the valuation date. As previously calculated by the Tribunal this rental devalues at £15.23 sq ft ITZA.
44. Based on this limited evidence, which is not ideal but there is nothing else available, the Tribunal considers that ITZA rents on Main Street, Larne, at the valuation date, would be in the region of £16 sq ft.
45. Applying £16 sq ft ITZA to the reference property:

Ground floor ITZA	930 sq ft @ £16.00	£14,880
First floor sales etc	3,163 sq ft @ £2.00	£6,326
Second floor office	571 sq ft @ £0.50	£285
Second floor stores	2,224 sq ft @ £0.50	<u>£1,112</u>
		£22,603
	<b>Say</b>	<b>£22,600pa</b>

46. The Tribunal, exercising the statutory authority conferred under Article 18 of the Order, assesses the rental of the reference property, at the valuation date, at £22,600 pa.

**9<sup>th</sup> July 2024**

**Henry Spence MRICS Dip.Rating IRRV (Hons)**

**Lands Tribunal for Northern Ireland**