LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VR/32/2011

BETWEEN

DEBENHAMS PLC - APPELLANT

AND

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND – RESPONDENT

Re: Unit 39 Fairhill Shopping Centre, Ballymena

PART 2

Mr Michael R Curry FRICS

Introduction

1. This Decision is a final determination of the Tribunal. It follows on from a Decision on a preliminary point (see Debenhams plc v The Commissioner of Valuation for Northern Ireland VR/32/2011 Part 1 [2013]) which was the subject of a case stated on a point of law to the Court of Appeal (see The Commissioner of Valuation for Northern Ireland v Debenhams plc [2014] NICA 49). The case was subsequently remitted to this Tribunal for a decision on the substantive issues. This Decision follows a resumed hearing.

2. The background to this determination is set out in some detail in both the Decision of this Tribunal on the preliminary point and the judgments of the Court of Appeal on that issue.

3. The Appellant ("Debenhams") appealed against a Decision the Respondent ("the Commissioner") had made in regard to an alteration made by a district valuer in the Valuation List ("the List") assessing the net annual value for rating purposes ("NAV") of

the retail hereditament that it occupied at Fairhill Shopping Centre, Ballymena ("Fairhill").

4. Debenhams was one of the larger units. It was at one of the pedestrian entrances to the mall and had been formed by adding a large extension, at both ground and first floor levels, to the side and rear of what had been an ordinary unit. So, it was at an entrance, it was large and it had an unusual configuration.

5. The parties invited the Tribunal to consider, among other things, the helpfulness or otherwise of evidence about the NAVs of a broad range of retail hereditaments elsewhere; Dunnes Stores at a nearby shopping centre - the Tower Centre; retail hereditaments at Fairhill assessed on an overall basis, including Next and New Look; and other hereditaments at Fairhill assessed on a zoned basis.

6. The sequence of this Part 2 Decision (including the paragraph numbers at which the discussion of each aspect begins) is as follows:

The Preliminary Issue

7. The preliminary issue arose in this way. In the course of a Hearing it had emerged that, in accordance with his usual practice, the Commissioner had excluded two hereditaments - Next and New Look - from his consideration. This was because, although they were in the List at the time of his decision, they had not yet been

entered here at the time the district valuer entered Debenhams in the List. Similarly, the expert witness instructed by the Commissioner had excluded them from his consideration in his preparations for the hearing.

8. It was argued on behalf of the Commissioner that the Tribunal also should exclude Next and New Look in arriving at its determination on the ultimate issue. The Appellant argued that they should be considered. The parties agreed to make written legal submissions on this issue only. In the submission on behalf of Debenhams, it was pointed out that, in the event of the Tribunal concluding that the material should have been taken into account, the Commissioner's expert witness would not have had as yet a fair opportunity to deal with it. In these circumstances the Tribunal suggested, and the parties agreed, that it should deal with the exclusion point as a preliminary issue.

9. The issue was agreed to be this:

> "*In reaching its decision under Article 52 of the Rates (Northern Ireland) Order 1977 with regard to the subject hereditament and what appears proper to it, is the Lands Tribunal entitled to exclude the hereditaments occupied by Next and New Look?"*

10. For the reasons set out in its Part 1 Decision the Tribunal concluded that it was not entitled to exclude the evidence. The Commissioner was aggrieved by this decision as being erroneous on a point of law and required the Tribunal to state and sign a case for the decision of the Court of Appeal.

11. Subsequently in The Commissioner of Valuation for Northern Ireland v Debenhams plc [2014] NICA 49 at paragraph 11 the Court of Appeal reformulated the question:

> *"The adoption by the member of the word "entitled" reflected the rather infelicitous use of the word by the parties. The true question can be more accurately reframed to read:*

'Was evidence relating to the valuation of the hereditaments occupied by Next and New Look on which Debenhams seeks to rely as evidence of relevant comparables relevant and admissible evidence in relation to Debenhams' appeal?'"

12. By a majority (Girvan LJ and Coghlin LJ; Higgins LJ dissenting) the Court of Appeal decided that the reformulated question must be answered "Yes" and remitted the case to the Tribunal for it to continue with determination of the substantive issue.

13. The criticism by the Court of Appeal of the question as drafted is a reminder of the need for careful consideration of the questions when drafting a case stated.

Procedural Matters

14. Parties involved in drafting cases stated for the Court of Appeal, from the Lands Tribunal, should note a significant change in practice. In the past the approach of the Tribunal had been to follow the guidance provided by Murphy LJ in Emerson v Hearty [1946] NI 35 and endorsed by Hutton LCJ in Unipork Limited v The Fair Employment Commission for NI (1992). However, in SCA Packaging v Boyle [2009] UKHL 37 Lord Hope criticised that approach:

"[14] The stated case procedure involves the tribunal in stating the findings of fact on which its decision was based, rehearsing the evidence relevant to those findings and giving its reasons. It proceeds upon the assumption that these details are often not given in full, or even at all, at the time when the decision is made. …The procedure is cumbersome but appropriate in such cases. In cases such as the present, however, where a full decision was given by the tribunal in the first instance it makes very little sense for the tribunal to be required to rehearse its decision all over again. If the original decision contains all the tribunal's findings of fact that are relevant to the point at issue and a narrative of the evidence on which the findings were based, it will be sufficient for the decision itself to be used as the basis for consideration of the question of law by

the Court of Appeal. All that needs to be added is an introductory narrative and the questions on which the case is being stated."

15. In Rogan v South Eastern Health & Social Care Trust [2009] NICA 47 Girvan LJ endorsed that guidance:

> *"[10] As long as the appeal procedure from the Industrial Tribunals continues to be by way of case stated, in the light of Lord Hope's comments (with which the rest of the House agreed) in many if not most instances it will be sufficient for the tribunal to incorporate in the case stated by reference its written decision without the necessity of restating or reformatting what is clear from the contents of the decision. It may be that in some cases it will be necessary to state some additional findings of fact or rehearse some additional evidence not apparent on the face of the decision but that should happen rarely since the tribunal's decisions should set out the relevant findings and reasons with sufficient clarity.*
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> *[11] Furthermore the formulation of the question or questions raised in the case stated requires some considerable thought. The tribunal should seek to establish the key issue or issues to be addressed in the formulation of the questions for this court. This court has, of course, a power to reformulate the questions to focus attention on the true matters in dispute. While the tribunal in this case stated posed seven separate questions the real question is whether the tribunal was correct in law in considering the respondent had been unfairly dismissed by the appellant in the circumstances. "*

16. This change in practice was adopted by the Tribunal in its drafting of the case stated and the approach was accepted by the Court of Appeal.

17. For convenience the retail area of the mall may be treated as being in four parts that the Tribunal has termed: the Cross Mall, the North Mall, the Parkway Mall and the

William Street Mall. The Cross Mall ran from a pedestrian entrance at Thomas Street to a unit occupied by Marks & Spencer. From the Cross Mall, the North Mall ran roughly north to units occupied by Next and New Look, the Parkway Mall linked to a pedestrian entrance from car parking accessed from Parkway, and the William Street Mall linked to a pedestrian entrance from William Street. The William Street Mall was short.

18. In the discussion that follows, for convenience only, the Tribunal has identified hereditaments by the name of the occupier. A list of the occupiers and Unit numbers of those in Fairhill are set out below.

Occupier	***Unit***	***Mall***
Debenhams	39	Parkway
Marks & Spencer	35	Cross
Next	57A	North
New Look	57B	North
H&M	1-5	Cross
Café Nero	35	Cross
HMV	40	Parkway
Boots	28/29	Cross
Sports Direct	13	Cross/Parkway

19. Before the decision on the preliminary point, but in connection with the ultimate issue, the Tribunal had received written and oral evidence from Mr Nicholas Rose and Mr William Joss, both experienced Chartered Surveyors.

20. Following the decision of the Court of Appeal the parties produced position papers. Having reviewed the material then before it, the Tribunal suggested that although the experts disagreed strongly about the relative helpfulness, if any, of the comparables, it might be convenient to consider the valuation evidence in three strands:

Strand 1: the Dunnes assessment at Tower Centre;

Strand 2: the New Look and Next assessments at Fairhill; and

Strand 3: the zoned assessments at Fairhill.

21. The Tribunal suggested and the parties agreed that the experts should suspend any disbelief as to the helpfulness of any of the three strands. Then, for each and every individual strand, they should set out what their valuation of the subject would be, based primarily on that evidence. Each should include his reasons for adopting particular pricings and adjustments, and finally his views on the relative helpfulness of each strand so as to draw the strands together to reach his conclusions.

22. Almost inevitably as a consequence of the number of exchanges of expert evidence, it was difficult for the experts, in responding to each other, not to appear a little advocative at times. Nevertheless further focussed and helpful expert evidence was received from both experts. When reading the criticisms of the expert evidence that follows, it should be borne in mind that, to assist the Tribunal in receiving more comprehensive material, they had been asked to suspend their disbelief in the helpfulness of some approaches and look at evidence that they might not otherwise have considered.

23. In some of their reports both experts referred to the content of reports that in effect included the opinions of other valuers. As those other experts did not give expert evidence before the Tribunal in accordance with its rules and practice, it attaches no weight to those opinions.

24. Counsel also submitted helpful skeleton arguments.

25. At the resumed Hearing counsel suggested, and the Tribunal agreed, that in all the circumstances, which had included examination and cross examination of the experts at the earlier hearing, an approach based on Concurrent Evidence from both experts,

or "hot-tubbing" as it is also termed, would be appropriate. The two experts were sworn in together (rather than separately). The three strands formed the agenda for a discussion chaired by the Tribunal in which the experts, counsel and the Tribunal all engaged. There was no further cross-examination.

26. Later the Tribunal requested zoned plans of three hereditaments that it thought might be of interest, together with further expert opinion on their analysis. The experts complied, with Mr Joss adding a fourth to assist in interpreting one of them.

27. The Tribunal has viewed the subject and principal comparisons, but with some caution in view of the passage of time.

Positions of the Parties

28. On behalf of the Appellant, it was contended that an overall pricing approach should be adopted and the valuation should be reduced to £145,850. On behalf of the Commissioner it was contended that a zoning approach was appropriate and the evidence was insufficient to rebut the presumption that the valuation in the List of £225,000 was correct.

The Tone of the List Rule

29. The determination of the Case Stated included, for the first time, consideration by the Court of Appeal of the "Tone of the List rule" as it applies in Northern Ireland. Their Lordships followed two decisions of the Court of Appeal in England and Wales:

> Dawkins (Valuation Officer) v Ash Bros and Heaton Ltd [1969] 2 AC 366; and Pointer v Norwich Assessment Committee [1922] 2 KB 471.

30. In regard to decisions of this Tribunal, their Lordships cited with approval:

> McKeown Vintners Ltd v The Commissioner of Valuation for Northern Ireland [1991] VR/9/1985

and Girvan LJ also cited with approval:

> Trustees of Glenkeen Orange Hall v The Commissioner of Valuation for Northern Ireland [1994] VR/31/1993.

31. In the judgment of Girvan LJ, approved by Coghlin LJ, there is clear guidance on the importance of reliance on comparables in the List. In view of its significance the Tribunal has set out below the relevant discussion:

> *"[24] In McKeown Vinters Ltd v The Commissioner of Valuation for Northern Ireland [VR-9-1995] and in The Trustees of Glenkeen Orange Hall v The Commissioner of Valuation for Northern Ireland [VR-31-1993] Judge Gibson QC as President of the Tribunal and Mr Curry as Member of the Tribunal respectively provided illuminating expositions of relevant legal principles relating to the valuation of hereditaments for rating purposes. Lord Pearce in Dawkins (Valuation Officer) v Ash Bros and Heaton Ltd [1969] 2 AC 366 at 381-382 set out the matter thus:*
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> > *"Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective valuers of the rest. Out of various possible standards of comparison that has chosen the annual letting value. This is appropriate since the tax is charged annually. One therefore has to estimate "the rent at which the hereditament might reasonably be expected to let from year to year" the tenant paying rates repairs etc. This standard must be universal even though in many cases it demands various hypothesis."*
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> *As Lord Pearce's comments show, there is an inevitable issue of relativity within a class in the valuation list.*

[25] The fact that there has to be a determination of a hereditament's valuation made by way of comparison with the respective valuations of the rest of the hereditaments in the list demands that the focus is not on the current true value but on achieving a proportional and uniformly balanced valuation of properties inter se. At the time of a general revaluation there can be no entries of NAVs until all hereditaments have been assessed and thus at that stage there are no net annual values of comparable hereditaments in the list. As Judge Gibson QC pointed out in McKeown Vinters, at the stage of general revaluation the concept of comparables (which underpins paragraph 2(1) of Schedule 12 of the 1977 Order) cannot play any part in the assessment process. When, however, a revision of an entry in a valuation list arises for consideration at a later stage different principles come into play, in particular the principle of comparability under paragraph 2(1). The completion of the list at the general revaluation by itself creates comparables. At that stage paragraph 2(1) begins to have a role to play. As time progresses, if actual rental values and turnover figures were used in the revision of a particular entry in the valuation list, it would inevitably result in that entry being increased to a level significantly different from other entries in the list. As Judge Gibson QC pointed out, there must be a limiting factor and that is provided by paragraph 2(1) which produces what is often termed a tone of the list or, as Mr Curry described it in Glenkeen, a "tone of the comparables" so as to ensure fairness and uniformity to meet the issue of relativity to which Lord Pearce refers. Judge Gibson QC further pointed out that Article 54(2) imposes an onus on the rate-payer to prove that an entry in the list is incorrect. This has been construed as meaning that all entries in the valuation list are deemed correct until the contrary is shown. The combination of Article 54(2) and paragraph 2(1) underpins the tone of the list.

[26] The central issue raised in this appeal is whether, as Mr Shaw asserts, the Commissioner was bound to close his eyes to the 2009 valuations and in the result the NAVs ascribed to Next and New Look, or whether, as Mr Beattie asserts, they form part of the relevant corpus of valuation evidence to which regard should be had in determining whether the valuation of Debenhams was excessive. A key

point in the rate-payer's case is that, whereas in the case of Debenhams, the District Valuer adopted a zoning method of valuation in a case of the 2009 NAVs he adopted an overall valuation approach which resulted in what appears to be a lower valuation in particular in relation to New Look (£190,000 in relation to a unit of 1,622 m2) compared to Debenhams £225,000 (a hereditament with an area of 1,507 m2 with what Debenhams contends are comparable characteristics).

[27] In Pointer v Norwich Assessment Committee [1922] 2 KB 471 Atkin LJ said:

> *"I confess that I do not quite appreciate the view taken by Salter J that while you may give evidence of the actual rent paid for the other premises you may not give evidence of their rateable value. In my opinion, evidence of the rate of a value must be admissible, and for two reasons. In the first place, in cases in which both premises are in the same Union, it is evidence against the Assessment Committee in the nature of an admission. And, secondly, it may be the only way in which you can get at the rent at which the appellant's premises are worth to let by the year."*

[28] When the District Valuer carried out his valuation in relation to Debenhams hereditament he had evidence from the valuation of other hereditaments in the valuation list at that time. In assessing the appropriate NAV he had to have regard to the tone of the list emerging from the existing entries. When the matter went on appeal to the Commissioner there existed at that stage entries in relation to the Next and New Look hereditaments. Under Article 52 the Commissioner has a duty to investigate the subject matter of the appeal. Under Article 52(4)(b) he may:

> *"make such alteration in any evaluation list in relation to any comparable hereditament which is in the same state and circumstances as the first-mentioned hereditament as appears to him to be necessary in order to render the valuations of that hereditament and the first-mentioned hereditament proportionate and uniform."*

This reference to the objective of ensuring proportionality and uniformity in the valuation of hereditaments inter se is in line with the principle of tone of the list. A

valuation of the hereditament which is too high or too low having regard to the tone of the list would result in a lack of proportionality and uniformity with the current valuation list. This is equally true of valuations both before and after 19 September 2008. If the Commissioner's argument were correct, the Commissioner would have to close his eyes to valuations after 19 September 2008 and ignore later valuations notwithstanding that that might result in a lack of uniformity and disproportionality in the overall list.

[29] A duty to investigate requires the decision maker to carry out a systematic enquiry into the subject matter of the investigation set in its overall context. Article 52 does not in terms limit the field of enquiry. The Tribunal on appeal has the same powers as the Commissioner under Article 54(2). Mr Shaw, however, seeks to limit the wide investigatory role of the Commissioner by contending that since the Commissioner is reviewing the District Valuer's decision and since the Commissioner can only take account of evidence up to 18 September 2008 the Commissioner is precluded from looking at material not available to the District Valuer. There is nothing in the wording of Article 52 to compel such a restrictive view of the ambit of the Commissioner's investigation. Such an approach proceeds on the premise that in determining whether the valuation in respect of Debenhams hereditament nothing appearing in the valuation list after 18 September 2008 can be looked at or considered. It ties the valuation to 18 September 2008. However, while the date of valuation was 18 September 2008, what was being assessed was the appropriate NAV having regard not to what the actual current value of the premises was at the date of the assessment on 18 September 2008 but rather it was a valuation moderated by the tone of the list which will produce a valuation not current at the date of assessment. In words of Lord Pearce in Dawkins its value is in comparison to the respective values of the rest of the hereditaments on the list. Once that point is properly understood, the valuation date of 18 September 2008 ceases to be the limiting factor for which Mr Shaw contends. Valuations after 18 September 2008 must have been assessed in the light of the tone of the list (or the tone of comparables, to use Mr Curry's

words,) and they, too, must have been intended to meet the objective of a uniform and proportionate set of valuations to which tone of the list speaks.

[30] It cannot be said that evidence which the rate-payer wishes to adduce in relation to the NAVs of Next and New Look has no potential relevance. The rate-payer must be entitled to pursue its evidence and present its case in the way it wants to make good its challenge to the NAV attributed by the District Valuer to Debenhams's hereditament. A district valuer's valuation, whether earlier or later, may give rise to an argument that the district valuer has effectively admitted that his valuation of Debenhams was too high (see Atkin LJ in Pointer). Debenhams must be entitled to lead the evidential basis upon which it seeks to rely for cross-examining the District Valuer on his valuation evidence. Whether the evidence relating to the later NAVs will make any difference remains to be assessed. The weight, if any, to be attached to this material will be a matter for the Tribunal. As already noted, questions of admissibility and weight must not be confused. In the present case the Commissioner cannot establish that the evidence relating to the later NAVs is so clearly irrelevant that it should be excluded."

32. In the view of the Tribunal, this clear guidance must be central to the approach to a number of the issues in this case.

The Ordinary Shop and the Retail Stores Sectors

33. A pivotal issue was how the ground floor of Debenhams should be valued. Should it be an overall approach where the entire ground floor was valued at the same price per square metre or should it be a zoned approach? Or should the valuation be flavoured by both approaches? The choice of approach appeared to depend on where Debenhams stood in relation to the threshold between what the Tribunal has termed the ordinary shops sector and the retail stores sector. So the Tribunal has considered how that may be decided.

34. The configuration of Debenhams was not that of a standard shop and the experts put forward various proposals for how that should be treated, particularly when applying

a zoning approach. But these were not supported by much in the way in analysis of comparables. The Tribunal therefore sought further evidence from the experts and has considered those issues in the context of the assessments of other hereditaments that also had unusual features and some similarities to Debenhams.

35. Although the choice between zoning (almost universally used for assessing the hypothetical rental value of ordinary shop units in the List) and an overall approach (often used for assessing the hypothetical rental value of larger retail units in the List) has been the subject of debate in the Lands Tribunal for England and Wales from time to time, the outcomes have been inconclusive and neither counsel referred the Tribunal to any binding legal authority on the point. The Tribunal concludes that the choice is a matter of expert judgement. The Tribunal now turns to the factors that should be taken into account in this case.

36. The advantages of zoning are widely recognised and need not be recited here but it was accepted that it was not always relevant to larger retail units.

37. Both valuers primarily relied on overall size as the basis for choice but neither produced a convincing rationale for where the threshold lay and it did not appear to be consistent across those assessments in the List that were introduced in evidence in this case.

38. The consequences of the choice were significant. As Girvan LJ noted (at paragraph [26] of his judgment):

> *"A key point in the rate-payer's case is that, whereas in the case of Debenhams, the District Valuer adopted a zoning method of valuation in a case of the 2009 NAVs he adopted an overall valuation approach which resulted in what appears to*
>
> *be a lower valuation in particular in relation to New Look (£190,000 in relation to*

a unit of 1,622m^2) compared to Debenhams £225,000 (a hereditament with an area of 1,507m^2 with what Debenhams contends are comparable characteristics)."

39. In the earlier stages of this appeal a main contention on behalf of Debenhams was to the effect that the choice depended on character. It was said that there were some retail hereditaments which by virtue of their nature were, or should be recognised as being, in a distinct mode or category - perhaps mini-department or mini-anchor stores or mall anchors - within the List. When the matter came on for the resumed Hearing after final disposal of the preliminary point, the Appellant abandoned that contention and suggested only that the subject was a retail store that fell to be valued on an overall basis. Mr Joss thought the determining issue of whether a hereditament was to be valued on a zoned or overall basis was size but the threshold would be different for different centres, perhaps depending on the local mix of ordinary shops and retail stores and their relative typical sizes. He also considered the rating histories of appeals to be part of the context.

40. At Fairhill, in support of the determining issue being overall size, Mr Joss referred to two units below the total overall size of Debenhams (about 1500m^2), H&M (about 1300m^2) and Sports Direct (about 1400m^2); and two units above its size New Look (about 1600m^2) and Next (about 2100m^2). The units below were zoned, those above were treated on an overall basis. Debenhams was about the mid-point. Based instead on the ground floors only, Debenhams was marginally closer in size to those assessed on an overall basis: the two units below the size of Debenhams (about 750m^2) were H&M (about 500m^2) and Sports Direct (about 350m^2); and the two units above its size were New Look (about 900m^2) and Next (about 1150m^2).

41. Faced with a choice between two valuation approaches, the Tribunal has considered the fundamental differences between them to see if that would suggest any factor, other than size, that might reasonably be expected to be relevant to a choice at the margin. The essential difference between a zoning approach and an overall approach is this. Zoning is based on the concept that frontage, whether to a street or mall, is of

key importance. In this case the approach was to divide the ground floor of each shop into up to 4 zones back from the frontage with each zone priced at half the rate of the zone in front. The importance attached to frontage by zoning was illustrated by the fact that a square metre at the front of a deep retail shop was treated as being eight times as valuable as a square metre at the rear. Whereas on an overall approach, no additional value is attributed to frontage - a square metre at the front is treated as being of the same value as one at the rear.

42. It was agreed that in the List in addition to the hypothetical market for the ordinary shop sector, there was a separate and distinct retail stores sector. (The Tribunal has preferred to refer to "retail stores" rather than "large stores" because, at the threshold, overall size may not be the only determining factor.) Debenhams was close to the size threshold between the ordinary shop and the retail stores sectors. A zoning approach was accepted to be appropriate for the former and an overall approach for the latter. The proposition the Tribunal has derived is this. The side of the threshold on which a unit lies is a matter primarily of size. But, at the margin, another helpful indicator may be whether the relative prominence of its display frontage is limited to something significantly less than that of the ordinary or standard retail unit.

43. The assessments of the NAVs at Fairhill probably supported and certainly were not inconsistent with the proposition. Those stores that were assessed on an overall basis, had limited display frontages for units of their size. Marks & Spencer had a total area of about 6,250m^2 with an frontage to the end of a mall of about 7 metres; Next had an area of about 2,100m^2 with an frontage to the end of a mall of about 7 metres; and New Look had an area of about 1,600m^2 with an frontage to the end of a mall of about 6.5 metres. All had frontages that were much less prominent than the larger ordinary shop units in Fairhill to which the Tribunal was referred. For example, two shops came close to New Look in overall size: H&M had an area of about 1,300m^2 but it had a frontage to the mall of about 14 metres, frontage to the entrance beyond the mall of about 11 metres and extensive return frontage to Thomas Street; and Sports

Direct had an area of about 1400m^2 but it had a frontage to one mall of about 18 metres and frontage to another mall of about 9 metres. New Look was assessed on an overall basis, H&M and Sports Direct were zoned, but only New Look had a limited display frontage.

44. Mr Joss had prepared a schedule of larger units elsewhere, the detail was limited but it could be considered in the context of shopping centre plans included in Mr Rose's evidence. The Tribunal has focussed on hereditaments around the size of Debenhams (about 1,500m^2) that probably would be close to the margin in overall size between retail stores and ordinary shops. Boots (Unit 207) (about 1,400m^2) at Foyleside Shopping Centre (in Londonderry) and Arcadia (Unit 45) (about 1,400m^2) at Buttercrane Shopping Centre (in Newry) both had been zoned. However, Dunnes (Unit 40) (about 1,450m^2) at the Tower Centre and Marks & Spencer (Unit 7) (about 1,600m^2) at Bow Street Mall (in Lisburn) both had been assessed on an overall basis. The shopping centre plans suggested that that, on a broad view, the two units assessed on an overall basis had proportionately limited display frontages for their size in comparison with the two assessed on a zoned basis.

45. Analysis of the evidence also suggested that zoning should not ordinarily be treated as an alternative approach; it would appear to be a matter of choosing one approach or the other. At Fairhill and the Tower Centre, the assessments of retail stores were broadly compatible with each other on an overall basis but not on a zoning basis. As Mr Rose observed, if the entry in the List for Dunnes Stores, valued on an overall basis, were analysed on a zoned approach, an end allowance of some 60% would be required to adjust to the entry in the List. Similar analyses for Next and New Look showed that Next, the larger store, would require an adjustment of about 15% and New Look, the smaller store, about 25%. There was no consistency or apparent rationale for such allowances.

46. The Tribunal also notes that because of the design of a typical shopping mall, and the size, and limited display frontage of retail stores, they often may be located at the end of malls rather than more centrally. Also, the zoned assessment of New Look at Bow

Street Mall in contrast to the overall assessment of its retail store at Fairhill confirms, if that were necessary, that it is not the character of the occupier that matters. Although Mr Rose abandoned his earlier conclusion that Debenhams was within a category that was identified by character (e.g. mall anchors - a function they may often perform) a number of his observations considered the relative scale of display frontage. Mr Joss recognised that the spatial relationship with the frontage could be significant by making an end allowance, in some of his analyses, where an area of the hereditament was "offset" from the frontage. But he did not go so far as to consider whether there was a point at which such an end allowance simply would no longer be sufficient.

47. The Tribunal concludes that close to the threshold between an ordinary shop, which would be valued by zoning, and a retail store, which would be valued overall, the question of which side of the threshold a unit lies is a matter for expert judgement. It is primarily a question of size. But where the display frontage of a large retail unit is limited to something significantly less than that of the ordinary or standard unit, that would support treatment as a retail store. These probably are not the only factors that may be relevant in all cases.

48. In passing the Tribunal notes that there also may be categories of hereditaments that, perhaps by virtue of custom and practice, fall to be assessed on an overall basis e.g. Mr Joss appeared to accept that anchor stores may be in such a category, but that was not the issue here. At the time of a General Revaluation, further research into the rental market might be helpful. That might include, for example, the question of whether frontage, in relation to ground floor size, or overall size, or both were helpful indicators.

49. The experts disagreed about how the frontage and ground floor configuration of Debenhams should be treated. A number of solutions were proposed but many lacked supporting evidence based on the List. The Tribunal therefore requested and

received additional zoned analyses and expert commentary about hereditaments that might be of interest.

50. There were many pedestrian accesses to the malls of Fairhill shopping centre: there was lift access from the roof deck car park; there was direct access at the upper floor level from the multi-storey car park through Marks & Spencer; the closer access at the lower floor level from the multi-storey car park was through Marks & Spencer; there was access from the ground level car park, and indirectly from the multi-storey car park to the entrance at which Debenhams was located (the 'Parkway' entrance); there was access from Thomas Street; and from William Street. At the Parkway entrance there was an enclosed lobby area, with glazed doors to the mall and glazed external doors to the car park; at Thomas Street there was an open porch with glazed doors to the mall only; and at William Street there was neither lobby nor open porch.

51. Debenhams had a total frontage of about 9 metres to the mall, two full height glazed windows of about 5.5 metres wide beyond the mall doors to the lobby area, and beyond that again, a window, not full height, of about 2.5 metres onto a walkway to the car parks. Although HMV was opposite Debenhams, and of similar frontage, in his zoned assessment of Debenhams, Mr Joss did not rely on HMV's assessment. Instead he had turned to H&M at the Thomas Street entrance. From that assessment he concluded that a 10% end allowance should be made to Debenhams to reflect the masking element of the double doors and lobby. Having done so he then concluded that HMV's assessment, that had recently been decided by the Commissioner, without further appeal, was inconsistent with that of Debenhams, was incorrect and ought to be reduced (by 7.5%) to bring it into line.

52. When Fairhill centre opened, about 1991, the Parkway entrance had been its main pedestrian access from the car park. However, shortly after the publication of the General Revaluation List (2003) a hereditament formerly occupied by the Co-op, together with other land, was redeveloped to create a new mall - the North Mall. Significantly, Marks & Spencer and the multi-storey car park also were greatly

enlarged, linked together and, through Marks & Spencer, to the Centre. That comprehensive redevelopment of the parking and access arrangements would have had an effect on the entire centre. However it would have had a different effect on two specific hereditaments, or part of them. These were the two on either side of the Parkway entrance. That entrance no longer continued to enjoy the primacy for pedestrian traffic of the original entrance from the car parking. The effect would have been to reduce the value added by the frontage that was outside the mall doors but that was not taken into account. Those units now are part of Debenhams, and HMV. In light of that the Tribunal is content to agree with Mr Joss that, for comparison purposes, the assessment of HMV was unsafe and it should prefer the treatment of the units at the Thomas Street entrance.

53. The way Mr Joss applied the zoning approach to H&M will be discussed in more detail later. If his approach were applied to Debenhams, broadly speaking, the part of the frontage that lay beyond the mall doors would be treated as being of much more limited display value than the part within the mall. Mr Rose would not attribute significant value of any of the frontage beyond the mall doors. The Tribunal will return to the issue as part of the discussion on zoning but for the moment it is sufficient to say that it concludes that the value is somewhere between these two opinions. However, in particular, it is not persuaded that the outer doors that create the lobby area now measurably increase the value of the display frontage within the lobby.

54. As discussed earlier, at Fairhill, within the retail stores sector Marks & Spencer had a frontage of about 7 metres; Next had about 7 metres; and New Look had about 6.5 metres. Within the ordinary shops sector, H&M had frontage to the mall of about 14 metres, frontage to the entrance beyond the mall of about 11 metres and extensive return frontage to Thomas Street; and Sports Direct had a total frontage of about 27 metres. Debenhams had frontage to the mall of about 9 metres and display frontage of more limited importance beyond the mall doors.

55. It is a matter of expert judgement but the Tribunal has no hesitation in concluding that on the basis of size and limited display frontage Debenhams was within the retail stores sector.

56. If size were the only factor, Debenhams probably would fall to be treated as being within the retail stores sector, but it would be a more marginal decision.

Applying an Overall Approach

57. In applying an overall approach, Mr Rose's first preference was to rely on Dunnes at the Tower Centre and, only as an alternative to rely on Next and New Look at Fairhill. Mr Joss preferred to rely on Next. In the course of making their assessments both experts challenged the correctness of some of the entries in the List. Both challenged Sports Direct and New Look, and Mr Rose also challenged Next.

58. Mr Joss questioned the correctness of the Commissioner's recent decision on Sports Direct (currently under appeal to this Tribunal). In his opinion the assessment should have been higher (£210,000) than the entry in the List (£200,000). He noted that the size of the upper floor of Sports Direct was about three times the size of the ground floor. His analysis of the entry in the List showed an allowance that he attributed that to its "upside down" configuration. He referred to Menarys Retail Limited v The Commissioner of Valuation [VR/5/2011], where the upper floor was about one and a half times the size of the ground floor and the Tribunal decided on an end allowance of 5% for its configuration. Mr Joss accepted that the higher ratio of Sports Direct may suggest a greater adjustment but adopted the Menarys figure of 5%.

59. In Menarys the Tribunal concluded:

> *"25. In considering end allowances, if any, to reflect the size of the ground floor in comparison with that of the first floor and/or the comparables the Tribunal is conscious that the parties have reached an agreement on the proportionate pricing for the upper floors. Any end allowance applied to the ground floor would*

therefore appear to affect the entirety of the valuation. The Tribunal is not privy to the terms of that agreement and would not wish to intervene accidently in matters already agreed. However the possibility of an end allowance appears to have been left open as neither party opposed an end allowance as such.

26. Ms McGrath said that 10% should be added to the ground floor pricing to reflect the smaller size of the ground floor of Menarys in comparison with Asda; Mr MacLynn said that any end allowance for size (or quantum) should reflect the relative overall total areas of the hereditaments and these total areas were much the same. The Tribunal agrees with Mr MacLynn and concludes there should not be any such adjustment.

27. Mr MacLynn said that there should be a deduction to reflect Menarys as having an 'upside down' configuration with a much larger first floor (2,334 m2) than ground floor (1,596 m2). Ms McGrath considered that there was no need for any special adjustment to reflect this disparity. There was no primary factual evidence in support of either position but because of the very significant disparity in sizes, and the wider breadth of experience of Mr MacLynn in valuing large stores, the Tribunal concludes that there should be some such adjustment and adopts Mr MacLynn's suggested 5%."

60. The Tribunal was established partly with a view to creating a body of consistent valuation decisions. But how the actual figures are determined and applied in one case may not be a sound basis for another case as they are likely to depend on the circumstances (perhaps against the background of an existing agreement on the proportionate pricing for the upper floors as in Menarys) and the evidence received in the decided case (perhaps very limited as in Menarys). Each case must depend on its own circumstances and evidence.

61. The Tribunal is not persuaded that Mr Joss's reliance on the actual adjustment in Menarys is a sufficient basis to displace the presumption that the entry in the List for Sports Direct is correct.

62. Mr Rose also thought that the Commissioner's Decision on Sports Direct was incorrect but he thought the assessment was too high. Sports Direct was formerly occupied by Next. On another agent's application in October 2003 the assessment was increased to reflect an increased floor area. On appeal to the Commissioner in August 2004 the assessment was reduced. Immediately afterwards in September 2004 the assessment was increased to reflect extensions to the ground and first floors. More than 4 years later in January 2009 Mr Rose made a further application to the District Valuer for revision. He was refused a reduction, promptly appealed to the Commissioner of Valuation, who dismissed his appeal and Mr Rose has appealed to this Tribunal. Mr Rose explained the background. Some years ago he had taken over a portfolio of rating work from the agent who had acted for Next. He noted that although the agent had made the District Valuer aware of the rent agreed with effect from August 2003, he had not passed on details of a significant capital contribution the landlord had made to the tenant to induce it to take extra space at first floor level. That was his sole reason for the appeal. Without coming to a firm conclusion, the Tribunal doubts whether this single piece of evidence is sufficient now to displace the entry for Sports Direct in the List. Also, it seems to the Tribunal that even if there were grounds for a reduction because of the size of the upper floor, any allowance probably should be applied to the upper floor only.

63. Mr Rose challenged the correctness of the Commissioner's decisions on large hereditaments at Fairhill (Next and New Look - both currently under appeal to this Tribunal)). At General Revaluations in recent years it appears that it has become common practice for valuers representing the Commissioner and valuers representing ratepayers to attempt to 'prior agree' assessments for some hereditaments and groups of hereditaments. Mr Rose had been involved in such negotiations and in particular had acted for Marks & Spencer who occupied a retail store at Fairhill. He explained that in the absence of rental evidence at Fairhill, he had relied on his long experience to negotiate, with the valuer leading the Commissioner's team for retail stores, an assessment for Marks & Spencer based on an actual rent for Primark

(ground floor 1427m^2 with a small basement and first floor) at the Tower Centre. They had agreed that Fairhill was superior location and settled on a figure that was 10% above the rent for Primark. Presumably that reflected all material differences including size. Marks & Spencer was duly entered in the new List at the agreed figure. However, for reasons that were not explained to the Tribunal, and apparently without reverting to Mr Rose at the time, it appears that Primark was entered in the new List at a significantly lower figure than the actual rent. In consequence there was a differential in the List between them of not 10% but more than 20%. Mr Rose had extensive experience of dealing with retail stores for a range of purposes. It was his firmly held opinion that the assessments of large units valued on an overall basis at Fairhill should be more closely aligned with those at the Tower Centre. The Tribunal accepts that his intuitive opinion was that at the time of the General Revaluation a 10% differential was appropriate and that also might well have been so in the rental market of the real world. But in light of the judgment of the Court of Appeal, in this case it is now clear beyond doubt that, such a long time after the relevant General Revaluation (published in 2003), it was not sufficient to displace the presumption of correctness of the entries in the List for Next and New Look.

64. Mr Joss also challenged the correctness of the Commissioner's decision on New Look. He thought the assessment was too low. Sports Direct and H&M had been valued by zoning. He created two notional hereditaments. The first was a notional version of Sports Direct, with that higher NAV discussed above and the same total area (1383m^2) but apportioned differently - a larger ground floor (782m^2 instead of the actual 343m^2) and a smaller first floor (601m^2 instead of the actual 1040m^2) - so as to bring the ratio into line with New Look. The second was H&M, where he noted that in comparison with New Look the ratio of size of the upper floor to the ground floor was much greater (1.6:1). To reflect this he adjusted the NAV by 2.5% (from £214,500 to £220,000). His notional version of H&M with that higher NAV again had the same total area (1288m^2) but apportioned differently again - a larger ground floor (727m^2 instead of 495m^2) and a smaller first floor (561m^2 instead of 793m^2) - again so as to bring the ratio into line with New Look. He analysed these notional figures on an overall basis and compared them with the actual NAVs for Next, New Look and Marks

& Spencer. From this he concluded that a pattern emerged showing that the ground floor pricing varied inversely with size and so New Look should have been priced at £180 rather than £150 per square metre. He concluded that the assessment of New Look at £190,000 was incorrect and should be higher at £227,000. In the view of the Tribunal, this approach lacks sufficient factual foundation and regard to the entries in the List to displace the statutory presumption of correctness.

65. For these reasons, the Tribunal is not persuaded that the presumption, that the entries in the List for New Look or Next are correct has been displaced.

66. Neither party questioned the reliability of the valuation of Dunnes Stores at the Tower Centre but the Tribunal is not persuaded that either expert has provided it with sufficient helpful evidence to relate a retail store in Fairhill to a retail store in the Tower Centre. As discussed above, Mr Rose was of the opinion that the assessments of retail stores at Fairhill should be more closely aligned with those at the Tower Centre but he relied on his experience of values at the time of the General Revaluation. In the view of the Tribunal too much time had passed for that to be preferred to the tone of the comparables.

67. The Tribunal finds that the assessments of Next and New Look were the most helpful evidence of the hypothetical market represented by the List. There is a degree of hindsight involved but they are admissible and for the reasons discussed above and in the Part 1 Decision, it has rejected the opinion of Mr Joss that simply because Next and New Look were not actually in the List (or physically completed) at the time of the District Valuer's certificate for Debenhams, little weight should now be attached to these assessments.

68. In regard to retail stores assessed on an overall basis, it was accepted that the price per square metre could reduce with size. But was there such a difference in size between Next, New Look and Debenhams that a difference in pricing should be applied? By looking at the overall pricings for the ground floor of Next (1168m^2 at

£150 per square metre) and New Look (915m^2 at £180 per square metre - as assessed by him) Mr Joss concluded that there was a pattern of pricing increasing with reducing size and that the entry in the List for Debenhams (752m^2 at £192 per square metre) could be supported. But that depended on his conclusion, rejected by the Tribunal (see above) that the entry in the List for New Look was incorrect and too low.

69. Mr Rose simply relied on the entries in the List. He observed that New Look was 22% smaller than Next and the entries in the List showed them to be priced at the same rate per square metre. He concluded that there was no evidence in the List justifying valuing Debenhams, which was 7% smaller than New Look, at a different rate. The Tribunal prefers his approach. It is not persuaded that the evidence of the tone of the comparables indicates that there should be any difference between the basic overall pricings applied to these three hereditaments on grounds of size. Mr Rose and Mr Joss eventually both adopted 50% of the overall ground floor rate for the first floor pricing of Debenhams and the Tribunal is content to adopt that.

70. That being so the ground floor of Debenhams should be valued at £150 per square metre and the first floor at £75 per square metre. That would result in an NAV of £169,350 say £170,000.

Applying a Zoning Approach

71. The Tribunal has concluded that the zoning approach is not appropriate for retail stores. It is included here for completeness only and as an alternative in case the Tribunal is wrong in this view, and not as a check valuation.

72. Both experts adopted the settled Zone A price for the mall of £750 per square metre. And both valuers zoned in parallel with the mall frontage. Apart from that their applications of the zoning approach were many and varied.

73. For reasons of transparency, consistency and facilitating comparison between hereditaments, the Tribunal considers that it is better to treat the defining of the

zones as a distinct step from choosing and applying an appropriate pricing. It also considers that the default approach to pricing zones for analysis and assessment should be halving back; any departure from that should be regarded as an exception, requiring an explanation. Finally, it considers that, where practical, it is better to apply appropriate adjustments to disadvantaged areas themselves, rather than include them as some or all of an overall percentage end allowance.

74. Where the Tribunal has preferred a zoning structure that differs from those put forward by the experts, in the absence of more detailed information it has arrived at some areas by deduction, and so some are estimated and approximate only. That means that there is a margin of possible difference in the outcome but not significant in the circumstances.

75. The Tribunal was surprised by how some of the assessments in the List appeared to be very precise and yet their analyses did not readily conform with those figures. For example, the entry in the List for Boots was £96,800 but Mr Joss's analysis suggested an assessment of £97,878, and the entry for Café Nero was £30,900 but Mr Joss's analysis suggested an assessment of £28,500. The Tribunal of course accepts that it is the entry in the List that is presumed to be correct and not the analysis by an expert.

76. Mr Rose was reluctant to even consider zoning Debenhams. He zoned the section with frontage to the mall and applied a remainder pricing to the other section. He applied an end allowance of 20%. He arrived at a valuation of £140,750, of which about £95,500 was attributable to the ground floor and £45,250 to the first floor. Mr Joss struggled to assist the Tribunal with a satisfactory rationale for the actual valuation of Debenhams in the List and provided the Tribunal with a large number of permutations of zoning approaches in consequence of which he concluded that the entry in the List was not shown to be wrong. A typical example was his Option 4C. He had treated Debenhams as being in two sections - the mall & entrance section, and the offset section (not behind this frontage). He arrived at a valuation of £148,500 for the former. In the latter, he treated what would have been Zone B as Zone C and

what would have been Zone C as remainder. For that section he arrived at a valuation of £43,500. Finally he made an end allowance of 20% for masking and layout to arrive at a total for the ground floor of £153,500.

77. There were a number of assessments that might have been comparables of interest in assessing the unusual features of Debenhams. As mentioned under *Procedural Matters*, the Tribunal had invited the parties to provide analyses of three comparables that it thought might be helpful. These included HMV which was opposite Debenhams but, for the reasons discussed earlier, the Tribunal has not found the assessment of HMV to be helpful.

78. Both experts relied on Boots as the only helpful comparable where, like Debenhams, there was an area that was not directly behind the unit's frontage or to use Mr Joss's terminology - offset or masked. About half of the frontage that might otherwise have been Boots was occupied as a Banking kiosk - the Boots hereditament wrapped around the bank. Mr Joss's analysis of Boots was based on treating the offset area immediately behind the bank, which would otherwise have been partly Zone A but mainly Zone B, as Zone C. He made no adjustment to the Zone C pricing behind that. His analysis would result in an assessment of £97,878 not £96,800. Mr Rose's analysis was based on treating the masked area as if it were not masked but making an end allowance of 12.5% for masking. That outcome was more consistent with the entry in the List. However for purposes of applying the consequences to Debenhams, he adopted Mr Joss's analysis.

79. The Tribunal's preferred analysis of Boots is based on Mr Joss's approach but with some significant changes. Firstly it has adopted the usual zone depths back from the frontage and estimated, by deduction, separate areas for the masked and not masked areas. On analysis it transpired that a close approach to the assessment in the List was achieved by then treating each zone in the masked or offset area at half of the pricing of the adjoining unaffected zone. The Tribunal's analysis therefore is:

Zone	*Area m^2*	*Price £/m^2*	*£*	*NAV*
A	44.00	750.00	33,000	
A (masked by Bank)	6.50	375.00	2,438	
B	70.10	375.00	26,288	
B (masked by Bank)	55.10	187.50	10,331	
C	69.50	187.50	13,031	
C (masked by Bank)	30.00	93.75	2,813	
Total Ground Floor	275.20		87,900	
Total Ground Floor				£87,900
First Floor Office & Stores	159.70	52.50	8,384	
Total First Floor				£8,384
Total NAV				£96,284
NAV in the List				£96,800

80. This analysis provides the best evidence, in this case, of how the masked area at Debenhams should be treated. The Tribunal cannot agree with how Mr Rose applied Mr Joss's analysis to his valuation of Debenhams. He noted that Mr Joss had treated the shadowed area at Boots as the same value as Zone C. There was no remainder area there so, linguistically that was the same value as the rear of the hereditament. From that he concluded that the whole of the masked area of Debenhams should be valued at the Remainder rate - "the same rate as the rear of the store" no matter what zone it might otherwise have been in. The Tribunal prefers to treat each zone in the masked or offset area at half of the pricing of the adjoining unaffected zone.

81. For the reasons discussed earlier the Tribunal has turned to H&M at the Thomas Street entrance as a comparable of interest because of its frontage within and outside the mall doors. This was one of the hereditaments for which the Tribunal later requested a zoned survey and further commentary. Mr Joss said that Café Nero should first be considered as part of the context for H&M.

82. Café Nero was a relatively small unit at the Thomas Street entrance with part of its frontage within the open porch area (opposite H&M) outside the Fairhill mall doors. It also had frontage to Thomas Street. At that location, Thomas Street had an established Zone A level of £150 per square metre. Mr Joss's analysis was based on adopting a Zone A level of £400 per square metre to reflect its transitional location between Thomas Street and the much more valuable Fairhill mall (£750 per square metre). The entrance door was on the corner of the frontages so, all things being equal, either frontage might have been treated as the primary frontage. But the much more valuable adjacent frontage was that of the Fairhill entrance and that was the marginally longer frontage. Despite that he zoned from Thomas Street and added an allowance of £200 per linear metre for 8 metres of return frontage to the entrance. In the List the NAV for Café Nero was £30,900 but for some unexplained reason Mr Joss appeared to have adopted a different, much lower figure - £28,500 - for his analysis:

Zone	***Area m^2***	***Price £/m^2***	***£NAV***	***NAV***
A	40.40	400.00	16,160	
B	42.60	200.00	8,520	
Return frontage	8 metres	200.00	1,600	
Total Ground Floor				£26,280
First Floor	79.40	40.00	3,176	
Allow for poor access -30%			-953	
Total First Floor				£2,223
Total NAV				£28,503
			Say	£28,500

83. The analysis is puzzling but it is immediately apparent that this hereditament outside the mall doors has been treated as nothing like as valuable as those within. The Tribunal prefers to analyse the assessment by zoning from the frontage that adjoined

the more valuable neighbouring frontage (the Thomas Street Mall). That was also the longer frontage. The Tribunal's analysis of the assessment in the List is:

Zone	*Area m^2*	*Price £/m^2*	*£NAV*	*NAV*
A	49	430.00	21,070	
B	34	215.00	7,310	
Return frontage				
Total Ground Floor				£28,380
First Floor	79.4	40.00	3,176	
Allow for poor access -30%			-953	
Total First Floor				£2,223
Total NAV				£30,603
			Say	£30,900

84. This analysis supports a Zone A price for Café Nero of £430 per square metre.

85. H&M was larger and its frontage, of about 25 metres, extended beyond the doors into the Cross Mall, with about 14 metres within the mall. Outside the centre, there also was a return frontage the full depth of the shop. One entrance door was on the corner of the frontages, the other was within the mall. H&M had been formed by the amalgamation of several units and was entered into the List in May 2007 at £257,000. In May 2008 agents for H&M applied to the District Valuer for a reduction. The assessment was reduced to £185,000 but the agents promptly appealed to the Commissioner. In March 2012, the Commissioner altered the valuation by increasing it to £214,500 and his decision has been appealed to this Tribunal.

86. In earlier evidence Mr Joss said that the reason for the increase of H&M on appeal was a reduction in an allowance on the ground floor for disabilities from 20% to 7.5% and, on the first floor, a reduction in an allowance for its disabilities and also size relative to the ground floor from 20% to 10%. He did not give any reasons for that change.

87. Unlike Café Nero, Mr Joss analysed the assessment in the List by zoning from the mall entrance frontage and not Thomas Street. He adopted the mall Zone A pricing of £750 per square metre for the Zone A area inside the mall doors and what was the mall Zone B pricing (£375 per square metre) for the Zone A area outside the mall doors.

88. Behind Zone A he treated the full width (based on mall and entrance frontage) at mall Zone B and behind that mall Zone C pricings. He did not half back the pricings of the Zone A area outside the mall (£375 per square metre) for the Zones B, C and D behind that frontage. Instead he carried the pricing across from the corresponding contiguous part behind the frontage to the mall. Noting that the established Zone A pricing for Thomas Street on that side of the mall entrance was £125 per square metre and that even the Zone C pricing (£187.50 per square metre) that he had adopted, exceeded that, (although there was a small remainder area priced below that) he made no upwards adjustment for return frontage. He made two end allowances. One was 7.5% for masking on the ground floor and the other was 10% for size and offset on the first floor.

89. Mr Rose relied on an earlier entry in the List, before the valuation was increased on appeal to the Commissioner of Valuation but the Tribunal does not find that helpful. Mr Rose drew attention to the absence of any allowance for two steps up to the mall entrance, did not agree with the way the zoning approach had been applied and considered that the end allowances were insufficient. He did not produce any analysis of H&M or any comparable that would support his opinions.

90. H&M is the subject of an appeal to this Tribunal and it does not wish to prejudge that appeal, which may be based on other, additional evidence. However, the Tribunal is not persuaded by the evidence before it that the assessment of H&M was incorrect.

91. As indicated earlier, in approaching the analysis of disadvantaged areas such as those of H&M outside the mall, it considers that the default approach to pricing zones should be to half back and then to consider whether there is a need to apply

adjustments to the disadvantaged areas only, avoiding if possible any overall percentage end allowance.

92. The Tribunal's analysis of the assessment of H&M in the List is:

Zone	*Area m^2*	*Price £/m^2*	*£NAV*	*NAV*
A within mall	70.00	750.00	52,500	
A outside mall	50.00	430.00	21,500	
B within mall	100.02	375.00	37,508	
B outside mall	88.00	215.00	18,920	
C within mall	72.57	187.50	13,607	
C outside mall	88.00	107.50	9,460	
D outside mall	26.37	53.75	1,417	
Gross Total Ground Floor	494.96		154,912	
Net Total Ground Floor				£154,912
First Floor	793.00	75.00	59,475	
Net Total First Floor				£59,475
Total NAV				£214,387
			Say	£214,500

93. This analysis supports a Zone A price for H&M of £430 per square metre.

94. So, this analysis deals with the configuration of H&M by halving back the respective pricing from both the higher value frontage within the mall and the lower value frontage outside. The outcome is consistent with the entry in the List and the Tribunal's analysis of Café Nero. Any addition for return frontage would have to be supported by evidence from the List and there was nothing persuasive before the Tribunal. There is no further end allowance nor is there a need for one. The analysis of these two comparables provides the best evidence, in this case, of how units at the entrances should be treated.

95. Turning now to Debenhams, the Tribunal concludes that, in line with the evidence from the Thomas street entrance, the part that had frontage to the mall, i.e. within the mall doors, should be assessed at the mall Zone A pricing and the Zone A area with frontage outside the mall doors should be assessed at a lower figure. Also in line with those analyses, the areas behind those frontages should be priced by halving back from the relevant Zone A price. In line with the analysis of Boots, each zone in the masked or offset area should be priced at half of the pricing of the contiguous unaffected zone. In the absence of any better evidence, for the area outside the mall, the Tribunal has adopted the Zone A price derived from Café Nero and H&M at the Thomas Street entrance.

96. Subject to different end allowances both valuers assessed the first floor at £75 per square metre. Both experts considered there should be some end allowance for the first floor of Debenhams but they had different views of what might be appropriate. Mr Rose made an allowance of 20% for size/shape and Mr Joss allowed 10% for the offset layout. The Tribunal is not convinced by the evidence in this case that an allowance is appropriate for the fact that an upper floor is offset, as opposed to for its size and/or layout, is appropriate. The Tribunal has adopted 10% for the irregular layout.

97. The Tribunal's assessment of Debenhams on a zoning approach would therefore have been:

Zone	***Area m^2***	***Price £/m^2***	***£NAV***	***NAV***
A within mall	43.06	750.00	32,295	
A (entrance outside mall	51.71	430.00	22,235	
B within mall	66.37	375.00	24,889	
B outside mall	79.76	215.00	17,148	
B masked	99.88	107.5	10,737	

C within mall		21.12	187.50	3,960	
C outside mall		71.51	107.50	7,687	
C masked		116.14	53.75	6,243	
D outside mall		54.79	53.75	2,945	
D masked		148.11	26.86	3,978	
Total Ground Floor		752.45		132,117	
Ground Floor Total					£132,117
First Floor		754.19	75.00	56,564	
Allowance for layout	10%			-5,656	
Total First Floor					£50,908
Total NAV					£183,025
				Say	£185,000

Conclusions

98. On analysis of the evidence of the List and, in particular, on the basis of its size and display frontage, the hereditament occupied by Debenhams should be treated as a retail store. An overall approach is appropriate for retail stores. That would result in an NAV of £170,000.

99. The zoning approach is not appropriate for retail stores. A valuation has been included for completeness only and not as a check valuation. That would result in an alternative NAV of £185,000.

100. The Tribunal allows the appeal and directs that the NAV of Debenhams in the List be altered to £170,000.

ORDERS ACCORDINGLY

Michael R Curry FRICS

3rd December 2015 **LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances

Appellant: **Mr Stewart Beattie QC instructed by Mr Nicholas Rose FRICS and later by Carson and McDowell**

Respondent: **Mr Stephen Shaw QC instructed by the Departmental Solicitor's Office.**