



RA/36/2005

LANDS TRIBUNAL ACT 1949

RATING – valuation – department store – comparables – adjustments – location – internal arrangement – modernity and quality – repair and maintenance costs – loading facilities – very large store – whether allowance for quantum – held no justification for quantum allowance – rateable value reduced from £19,750,000 to £16,575,000

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
LONDON (SOUTH WEST) VALUATION TRIBUNAL**

BETWEEN

HARRODS LIMITED

Appellant

and

**STEPHEN ANTHONY BAKER
(Valuation Officer)**

Respondent

Re: 87-135 Brompton Road, London, SW1X 7XL

Before: The President and Mr N J Rose FRICS

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 12, 15-19, 22-24 January and 17 April 2007**

*David Holgate QC and Richard Glover, instructed by Herbert Smith, for the Appellant
Timothy Mould QC and Daniel Kolinsky, instructed by HMRC Solicitor, for the Respondent*

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The following cases are referred to in this decision:

Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee [1937] 2 KB 445
Hoare (VO) v National Trust [1998] RA 391
London County Council v Erith [1893] AC 562
Poplar Assessment Committee v Roberts [1922] AC 93
Mersey Docks and Harbour Board v Liverpool Overseers (1873) 9 QB 84

The following cases were also cited:

Fir Mill Ltd v Royton UDC & Jones (1960) 7 RRC 171
IRC v Gray [1994] STC 360
Benjamin v Anston Properties [1998] RA 53
Eastbourne BC & Wealden DC v Allen (VO) [2001] RA 273
John Lewis & Co Ltd v Goodwin (VO) [1980] RA 1
Trevail (VO) v C&A Modes Ltd, Trevail v Marks & Spencer Ltd (1967) 13 RRC 194
Humber Ltd v Jones (VO) (1960) 6 RRC 171
Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141
H J Banks Ltd v Speight and Snowball (VO) [2005] RA 61

DECISION

Introduction

1. This case is about the appropriate rateable value to be entered in the 2000 rating list for Harrods department store. The assessment in the compiled list with effect from 1 April 2000 was £19,750,000. On 15 June 2005 the London (South West) Valuation Tribunal determined that this should be reduced to £18,850,000. Both the ratepayers and the valuation officer appealed against the decision and the two appeals were consolidated. The ratepayer contended for a value of £11,300,000 and subsequently increased this to £11,450,000 (Appendix 1). The first expert report submitted by the VO proposed a value of £19,500,000. The VO subsequently reduced this figure on two occasions, the second of which was at the commencement of the ninth day of the hearing in the course of his examination in chief, when he put forward a valuation of £17,950,000 (Appendix 2). The antecedent valuation date (AVD) for the purposes of the appeal is 1 April 1998. The material day is 1 April 2000. There is agreement that the value should be assessed using the overall method, applying a single rate per square foot to the total floorspace of the store. There is agreement also that the rate per square foot should be derived from department stores in Oxford Street, where there is an agreed rent for House of Fraser and, based on this, agreed assessments for that store, John Lewis, Debenhams, Marks and Spencer and Dickins and Jones.

2. In adjusting the base value derived from Oxford Street there is disagreement between the parties on the following:

- (a) Location. The ratepayers contend that Harrods' location Knightsbridge is less valuable than Oxford Street. The VO's ultimate position is that the locations are of equal value.
- (b) Internal arrangement. Unlike the Oxford Street stores Harrods was only partly purpose-built as a department store. Most of it consists of converted mansion flats. This has resulted in a compartmentalised arrangement and a circulation that is dependent on an irregular location of escalators and lifts. The ratepayers contend for a greater adjustment to reflect these matters than the VO is prepared to concede.
- (c) Modernity. There is disagreement as to the value effect of what was referred to as modernity, and in particular Harrods' lack of atria.
- (d) Quality. The VO makes an upwards adjustment to reflect what he regards as the exceptional quality of Harrods' internal fittings and exterior appearance. The ratepayers make no adjustment for this
- (e) Maintenance costs. It is agreed that an allowance should be made for exceptional maintenance costs, but the size of such allowance is not agreed.

- (f) Goods delivery facilities. Harrods' storage and goods delivery facilities are separate from the store and are connected to it by tunnels under Brompton Road. The valuers disagree as to the amount of the allowance to be made for this disability.
- (g) Quantum. Harrods is very much larger than any other department store. It is 4.5 times the size of House of Fraser and 2.3 times the size of John Lewis, the largest of the Oxford Street stores with agreed assessments. It is 1.5 times the size of Selfridges, whose assessment has not been agreed and is the subject of an appeal. The ratepayers make a 20% adjustment for quantum, the VO none, and this is the most important difference between them.

There was agreement that, if the value of Harrods was to be derived by comparison with those stores that had air-conditioning, a specific deduction should be made to reflect the fact that Harrods does not have air-conditioning. The amount of this was agreed.

Evidence

3. Mr David Holgate QC and Mr Richard Glover, counsel for the appellant, called two witnesses of fact and two expert witnesses. The first factual witness was Mr Malcolm Derek Wiffen, the appellant's house architect from 1984 until his retirement in 2005. Mr Wiffen gave evidence about the structural history of the appeal hereditament and its internal and external maintenance costs, including the impact of the building's listed status. The second factual witness was Mr Nigel Charles Craig Blow, the appellant's buying and merchandise director and a director of the appellant and its parent company. He described the operational difficulties resulting from the size and layout of the property and its remote storage facilities, the turnover achieved in different parts of the building and the importance of the appellant's branded souvenir goods.

4. The expert witnesses called on behalf of the appellant were Ms Sarah Jane Key BSc (Hons), MRICS, a director in the retail department and national skills director for landlord and tenant of DTZ Debenham Tie Leung, and Mr Nicholas Peter How BSc (Est Man), FRICS, a past president of the Rating Surveyors Association and a partner in the rating department of Montagu Evans LLP. Ms Key's valuation was £12,840,000 (Appendix 3). It was prepared on the basis of the statutory definition of rateable value and on the additional assumption that sub-letting in parts was permitted. Mr How's valuation of £11,450,000 was prepared on the statutory rating basis.

5. Mr Timothy Mould QC and Mr Daniel Kolinsky appeared for the respondent valuation officer and called two expert witnesses. The first was Mr Paul Lewis FRICS, FCI Arb, a director responsible for retail landlord and tenant matters at Nelson Bakewell Ltd. The second expert was the respondent, Mr Stephen Anthony Baker BA, Dip Rating, FRICS, IRRV, the valuer in the special rating unit of the Valuation Office Agency in London responsible for the valuations of department stores, large shops and food stores within the London area. He is a former chairman of the rating diploma holders' section of the Royal Institution of Chartered Surveyors. Both Mr Baker's valuation of £17,950,000 and Mr Lewis's of £21,000,000 (Appendix 4) were prepared on the rating basis.

6. We made two accompanied inspections of the appeal hereditament, on 10 January 2007 prior to the hearing and on 30 April 2007 after it. We also made accompanied inspections of John Lewis, Debenhams, Marks and Spencer and House of Fraser, and an unaccompanied visit to Selfridges on 1 May 2007. We had previously visited John Lewis, alone, on 11 January 2007.

The appeal hereditament: description

7. The appeal property is a department store which is situated on an island site, bounded by Brompton Road, Hans Crescent, Basil Street and Hans Road. The main frontage is to the south side of Brompton Road. The hereditament also includes a building in Trevor Square, used for ancillary storage purposes and lying behind the properties on the north side of Brompton Road opposite the main building. The two buildings are linked by a tunnel beneath Brompton Road, through which the goods delivered to Trevor Square are distributed to the main building. The store is located approximately 250 metres to the west of the Harvey Nichols department store, which is on the corner of Knightsbridge and Sloane Street. An entrance to Knightsbridge underground station is adjacent to one of the store's entrances on Hans Crescent.

8. The appellant has had a presence on the site since 1849 and has been the only occupier of the hereditament since its completion. It is the largest department store in Europe. The main building is of steel construction, clad with pink terracotta blocks. It provides accommodation on eleven floors, including two basements. Trading takes place on basement, ground, first, second, third, fourth and fifth floor levels. On the material day the Trevor Square building provided the main loading facility on the ground floor with two basements of storage below, and further storage on the first to six floors above. In September 2001 the upper floors were sold for residential development. The Brompton Road building was listed Grade II as at the material day. In May 2000 the listing was upgraded to Grade II*. The listing applies to the interior and exterior.

9. The site area of the main building is 1.8 hectares (4.5 acres). The site is broadly rectangular in shape and is bounded by:

Brompton Road – display windows and entrances 7, 8 and 9

Hans Road – display windows, minor goods delivery and entrances 10, 1 and 2

Basil Street – display windows and entrance 3

Hans Crescent – display windows and entrances 4, 5 and 6.

10. Harrods commenced trading over 150 years ago as a small grocery store from premises facing the Brompton Road. At the time the shops along this section of Brompton Road were single-storey extensions tacked on to the front of the original houses constructed during the late 18th century. During the late 19th century further premises were acquired and non-food departments were added to the store, a new shop front was constructed, and a two-storey extension built at the back of the premises. Following a fire, the old site was reconstructed in 1884 in a format which perpetuated the single-storey extensions towards Brompton Road and

included on the east side many old cottage sites on Queen's Gardens. The store was completely re-constructed between 1894 and 1912. The rebuilding took place in a piecemeal manner, as sites were acquired only gradually and building regulations at the time required that large undertakings had to be divided into several structurally separate entities. The rebuilding proceeded anti-clockwise from Basil Street and Hans Crescent round into Brompton Road and finally into Hans Road. By 1912, the store occupied the whole of its present site.

11. The four upper floors were originally built as mansion flats arranged around large light wells, which descended to illuminate skylights over the first floor showrooms. In 1912, the first of the flats was removed. Others followed until in 1927 a policy was formally adopted to bring the whole building into commercial use. The majority of the flats existed until the mid 1930s, and by the 1940s some flats still remained on the fourth and fifth floors. During the 1970s the few remaining flats on the fifth floor were removed.

12. The reconstruction and extension of the appellant's storage premises, which were (and are) separate from the store, took place between 1908 and 1912. The appellant currently owns two premises for storage purposes. It owns seven floors of storage space, staff accommodation and a loading bay on Basil Street (formerly occupied by Knightsbridge Crown Court) and the majority of the ground floor and two basements of storage space of the building at Trevor Square. Both these buildings are inter-connected with the store by tunnels. As at the material day only the Trevor Square storage space, together with additional storage space on five floors above the retained ground floor loading bay, was available. The five floors above ground level at Trevor Square were subsequently sold by the appellant in September 2001, following which the former Knightsbridge Crown Court building was acquired in April 2002. Since 1912 continual modifications have been made to the store, including the rebuilding of the elevation to Basil Street in 1929/30 and part-rebuilding of the elevation to Hans Crescent in 1939. Some office areas were added in the centre of the store.

13. The Brompton Road store building is broadly rectangular in shape. Ceilings are plastered, with lighting and sprinklers. Heating and ventilation is via perimeter wall outlets. The ceiling height for each floor is as follows:

Basement	2.7m-3m (average)
Ground Floor	4.5m (average)
First Floor	3.2m (average)
Second Floor	2.75m-2.8m
Third Floor	2.65m-2.8m
Fourth Floor	2.9m-2.95m
Fifth Floor	2.57m-2.9m

14. The largest part of the retail areas on each floor is intersected by structural walls, approximately 18m wide and with depths varying from 28m to 34m. The agreed statement of facts refers at different points to a total of 19 and 27 restaurants. They include a public house and there are six sets of male and seven sets of female customer wcs.

15. The ancillary areas are:

Brompton Road building

Sub-basement	Plant, storage and kitchen area
Basement	Plant and storage area
Sixth floor	Offices and staff restaurant
Seventh floor	Offices
Eighth floor	Offices

Trevor Square building:

Sub-basement	Plant and storage area
Basement	Storage
Ground floor	Goods delivery area
First-fifth floors	Storage
Sixth floor (roof)	Plant

16. On the material day there were two separate loading facilities at the appeal hereditament. One was located in the Hans Road delivery yard on the southern side of the Brompton Road building, between doors 1 and 2. This was a small loading bay within the envelope of the main building. Its use involved delivery lorries parking in Hans Road, which was subject to parking restrictions. The main loading facility was located in the Trevor Square building. This is a nine storey building, including two storeys below ground, built between 1910 and 1920. At the material day the first to sixth floors comprised storage and plant areas, served by four goods lifts. The ground floor was (and remains) a large covered loading area, with a raised loading dock. The basement and sub-basement were also served by four goods lifts, which remain in use. The loading facility comprised five bays with a raised loading dock. It had a concrete floor and the area was sprinklered but not heated.

17. At the sub-basement level there is a tunnel passing beneath Brompton Road, approximately 4 metres wide, 2.7 metres high and 50 metres long. It links the storage area in the Trevor Square building to the Brompton Road building at lower ground floor level. Goods delivered to the Trevor Square loading facility were (and continue to be) moved from the storage area in the Trevor Square building to the retail areas in the Brompton Road building, via the goods lifts and tunnel. There is an additional tunnel beneath Brompton Road to the north east of the goods tunnel, carrying services between the two buildings

18. At the material day the small receiving bank, part of the loading bay in Hans Road, received deliveries of fresh food between 7.00am and 3.00pm and furniture deliveries between 11.00am and 3.00pm. There were only two bays at this receiving bank, which had restricted access: large lorries could not enter because of a lack of headroom. Contractor deliveries were also made to Hans Road, because delivery through the store doors was not possible. On average there were approximately 20 such deliveries per day. Rubbish collection from the store also had to be conveyed via Hans Road. Non-cardboard waste was first compacted on the lift landings of the main freight lifts in the store. The compacted waste was then transported on pallets via the freight lifts to Hans Road. There are loading restrictions affecting the appeal

hereditament. No deliveries are allowed between 5.00pm and 7.00am (deliveries only between 9.00am and 3.00pm for food products). Loading has to be undertaken during the day. These restrictions are made voluntarily by the appellant, but would otherwise be enforced to meet the reasonable requirements of occupiers of adjacent residential properties.

The appeal hereditament: nature of the trading operation

19. The key products sold from each of the floors of the appeal hereditament are as follows:

Floor	Main use
Lower ground	Stationery, designer menswear, Harrods branded souvenir goods, services
Ground	Food halls, accessories, menswear, restaurants, Harrods branded souvenir goods, beauty
First	Womenswear
Second	Homeware and major household appliances
Third	Furniture, books, sound and vision
Fourth	Childrenswear, young fashion, Harrods branded souvenir goods, toys
Fifth	Sports, urban retreat salon

The store employs approximately 2,600 staff (excluding concession staff) to work in its retail and storage facilities. In addition, approximately 400 temporary staff are employed in the run up to and during the summer and winter sales.

20. A key issue for the appellant as a retail business – as it is for retailers generally – is the need to encourage a steady draw of customers throughout all areas of the store, including the higher floors. The store’s gross area is 1,510,631 sq ft. By way of comparison, the Bluewater shopping centre has a gross area of 1,610,000 sq ft and the Lakeside shopping centre has a gross area of 1,377,000 sq ft.

21. The store comprises a series of cellular spaces between 550m² and 650m² in size, separated by cross walls, with arched openings to create through circulation. On the Brompton Road frontage this comprises seven separate terraced shop units across all the retail floors to which one façade has been applied. During busy periods there are congestion problems at the bottom of the escalators on the ground floor and access to each of the “rooms” on the ground floor is also difficult. At these times it is necessary to restrict access to the congested areas. The compartmentalised rooms make it impossible for the customer to see all the products on offer across the entire floor.

22. With the exception of the escalators between the ground and basement floors in the Egyptian Hall and in the confectionery hall, other escalators and lifts in the store are located in positions not immediately visible to customers. For example the Egyptian escalators (the main

escalators within the store) are located behind internal doorways in the centre of the store and are not visible to customers within any of the retail compartments on the ground floor, save for those immediately adjacent to the escalators.

23. The compartmentalised layout creates some degree of difficulty for the appellant in communicating to customers where products are located within the store. For example, any customer visiting the women's designerwear ranges on the first floor would not be able immediately to ascertain where each designer's range is located. In order to address this problem, the appellant provides a map for customers, identifying where product categories are located on each floor. In addition it employs an information team, comprising 11 full-time staff who are primarily responsible for standing beside the three busiest escalators on each floor of the store and directing customers to their preferred department. This team is supplemented by 18 further members of staff during sales and Christmas periods, who are co-opted from the appellant's offices.

24. Customer footfall in the store differs from floor to floor, with the majority of footfall being on the ground floor. A survey of 4,500 customers carried out by the appellant over a four month period during 2004 showed that 81% of customers visited departments on the ground floor, only 29% visited the lower ground floor and 38% the first floor, whilst less than 20% visited the second floor or above.

25. From a retailer's perspective, it is common to locate fast-selling or high stockturn products such as perfumes/cosmetics and accessories ranges on the ground floor of the store, because impulse purchases are more likely to take place on this floor than on other floors and a customer is less likely to make the effort to travel beyond the ground floor to the higher floors. The appellant is constantly seeking to draw customers to its higher floors in order to experience the width of its product range. This approach to product location reflects the value of the ground floor of the store to a retailer, and the correspondingly decreasing value of higher floors.

26. The three types of product which provided the greatest sales per square foot to the appellant for the year ended January 2005 were Harrods branded souvenir goods (which retailed on the lower ground, ground and fourth floors), beauty products such as perfumes, cosmetics and toiletries (located on the ground floor) and luxury items such as womenswear, menswear and fine jewellery and watches (which retailed on the lower ground, ground and first floors). In 2004 the margin from Harrods branded souvenir goods comprised 10.4% of the store's total margin. In 2004/5 the appellant's margin per square foot for its branded souvenir goods on the lower ground floor was just under double the corresponding figure for non-branded goods. On the ground floor the appellant's margin per square foot for branded goods was approaching double that for non-branded goods. The appellant does not possess comparative data for 1998 or 2000. In total the appellant's branded souvenir goods yielded sales that were nearly double the overall store average for the year ending January 2005. In addition to sales attributable to the Harrods branded souvenir goods, a large proportion of the appellant's income comes from sales in its restaurants. Five restaurants can be considered as branded, namely Café Harrods, Harrods Chocolate Bar, Harrods Famous Deli, The Green Man

Pub and Planet Harrods. For the year to January 2004 (the earliest period for which records are available) 33% of credit card sales in the 10 restaurants located in the store's food halls were cards registered overseas.

27. Brand protection is very important for the appellant, which has registered trade marks in numerous jurisdictions. Its global branded souvenir goods business had annual sales of approximately £50m for the year to January 2000. Of this £15m was attributable to the appellant's unique airport based souvenir stores. A further £10m was attributable to the appellant's overseas wholesale business (predominantly in Asia) whereby the appellant licenses overseas operators to on-sell its branded souvenir goods. In the United Kingdom alone the appellant has over 90 registered trademarks in place. It incurred legal fees of approximately £6.7m in the period 1990 to September 2005 in pursuing litigation to protect its brand.

The comparables

Marks and Spencer, 456-472 Oxford Street, London, W1C 1AP

28. This store is located on a corner site on the north side of Oxford Street close to Selfridges. It is the last department store on the west side of Oxford Circus.

29. The main entrance and display is to Oxford Street and there is a further entrance and display in Orchard Street. Immediately to the west, unit shops are assessed at £3,900 per m² Zone A. Shops to the east of Selfridges are at £4,200 per m².

30. It is a seven storey building on basement to fifth floors. Trading is on basement to second floors. The front part of the store was built in 1930 and the rear part in the 1960s. The building was refurbished in 1994.

31. The retail areas are rectangular in shape, the depth being larger than the width. There are concrete floors and plastered ceilings, with lighting, sprinklers and air conditioning ducting below, to the ground floor and basement. The first and second floors have suspended ceilings with lower headroom. There is one customer restaurant and no customer wcs.

32. A public road from Portman Mews South leads to the rear loading area in Granville Place. This comprises four bays with roller shutter doors, a small buffer store and a customer collection point. Granville Place is little used except by Marks and Spencer. There are eight goods lifts to the main storage area on the fifth floor. This has a full headroom of 4.75m, clear headroom of 3m, blow air heating, sprinklers, a concrete floor and three goods lifts to all retail areas.

33. There are four separate escalators. They are basement to second floor, located to the front of the store; basement to first floor, located by the lift core; basement to first floor, located near the Orchard Street entrance and basement to first floor, located near the Portman Mews South entrance. All are single escalators and located in the retail area with a limited view of the retail areas for part of the journey. There are two customer lifts and two staff lifts. The store is air conditioned, has a sprinkler system and includes company flats.

34. The floor areas are as follows:

Gross internal area		29,877.1 m ²
Net internal area - sales	14,356.0 m ²	
ancillary	<u>7,541.0 m²</u>	
		21,906.0 m ²
Ground floor gross internal area		4,356.6 m ²

The 2000 list RV was analysed as follows:

Gross internal area	29,877.1m ² @ £135	£4,033,408
Company flats, say		<u>£ 150,000</u>
		<u>£4,183,408</u>
	Say RV	£4,150,000

This assessment was agreed with Marks and Spencer via their agent, Gerald Eve.

Debenhams, 334-348 Oxford Street, London, W1C 1JG

35. The hereditament comprises the retail building with a frontage to Oxford Street, and a separate area of two office buildings and the goods delivery facility. The goods delivery area is linked to the retail building by an underground tunnel leading to the rear of the retail building. The store is located on an island site on the north side of Oxford Street, close to House of Fraser and John Lewis. The site is bounded by Marylebone Lane (entrance and display); Henrietta Place (entrance and display); Vere Street (entrance) and Oxford Street (main entrance and display). The Zone A at this location is £4,500 per m². The store is an 8 storey building, including two floors of basements. Trading is on basement to third floors.

36. The retail building was erected in the late 1960s and refurbished in the 1980s.

37. Retail areas are irregularly shaped, with the depth larger than the width. There are concrete floors, suspended ceilings with air conditioning, ducting and sprinklers. The refurbishment in the 1980s included the creation of a central atrium with escalators. There are two customer restaurants and one set of customer wcs.

38. There is a remote loading bay in Welbeck Street, linked to the main store via a tunnel at basement level. Access is via an entrance under offices. There is a yard area, roller shutter doors to the bay and buffer store and two goods lifts to the main store room at sub-basement level. The full headroom is 4.75m and the clear headroom is 3.5m. The space is sprinklered. It has a concrete floor and four goods lifts to all retail areas. The tunnel is approximately 3.5m wide and 40m long. It varies between 2.25m and 2.5m in height.

39. The main escalator provision is a single up and down escalator from basement to fifth floors, located in an atrium in the centre of the store. There is a separate escalator between ground floor and basement. There are four customer lifts and one staff lift. The store is fully air conditioned and has a sprinkler system. The floor areas are as follows:

Gross internal area	Debenhams Oxford Street building	30,413.78 m ²
	Welbeck Street ancillary	<u>3,524.00 m²</u>
Total gross internal area		33,937.78 m ²
Total net internal area		26,674.34 m ²
Debenhams Head Office		
Net internal area	Welbeck Street	3,625.36 m ²
	Wimpole Street	<u>4,254.00 m²</u>

The agreed 2000 list RV was analysed as follows:

Retail areas – Gross internal area	33,937.78m ² @ £135	£4,581,600
Offices Welbeck Street - Net internal area	3,625.36m ² @ £180	£ 652,565
Offices Wimpole Street - Net internal area	4,254.00m ² @ £150	<u>£ 638,100</u>
Total		<u>£5,872,265</u>
	Say RV	£5,860,000

This assessment was agreed with Debenhams via their agent, Gerald Eve.

John Lewis Partnership, 278-306, Oxford Street, London, W1C 1DX

40. This store is located on an island site on the north side of Oxford Street with Bhs immediately to the east and House of Fraser immediately to the west. The site is bordered by Holles Street (entrances and display); Cavendish Square (entrances and display); Old Cavendish Street (loading access, entrance and small display) and Oxford Street (main entrance and display).

41. The Zone A immediately to the east is £4,600 per m² and £4,500 immediately west of House of Fraser.

42. It is a 10 storey building, including two floors below ground level. Trading is on basement to fifth floors. The store was built between 1958 and 1960.

43. The retail areas are broadly square, partly sub-divided by compartmental walls, which restrict visibility. All have concrete floors with raised timber floors over, suspended ceilings with lighting, sprinklers and air conditioning ducting. Approximate headroom is 4m to ground and first floors, 3.5m to basement, second and third floors and 3m to fourth and fifth floors. There are two customer restaurants and four customer WCs.

44. Loading is from three bays at Old Cavendish Street with two raised loading areas, two disused turntables and five roller shutter doors. The loading facility is served by four goods lifts. The main storeroom is at sub-basement level. Full headroom is approximately 3.25m and clear headroom 2.25m. It is heated and sprinklered, and partly sub-divided by solid walls. There is a concrete floor and five goods lifts to all retail floors.

45. Two sets of up and down escalators serve basement to fifth floors. One set is located in the centre of the store, the other close to the Cavendish Square entrance. Both sets are located in the retail areas with a limited view of those areas for part of the journey. There are three staff lifts and eight customer lifts. Retail areas are fully air conditioned and there is a sprinkler system. The floor areas are as follows:

Gross internal area (retail only)		60,589.5 m ²
Net internal area - sales	34,831.0 m ²	
ancillary	<u>8,879.0 m²</u>	
		43,710.0 m ²
Ground floor gross internal area		7,108.4 m ²

(All calculations exclude offices and areas used for car parking.)

John Lewis is the third largest department store in the country, after Harrods and Selfridges.

The 2000 list RV was analysed as follows:

Retail areas:	Gross internal area	60,589.5 m ²	@ £135	£8,189,582
Offices	Net internal area	780.6 m ²	@ £150	£ 117,090
Car parking:	56 covered spaces		@ £2,500	<u>£ 140,000</u>
				£8,436,672
			Say RV	£8,400,000

This assessment was agreed with John Lewis Partnership via their agent Montagu Evans.

House of Fraser, 308-322 Oxford Street, London, W1C 1HF

46. This store is located on an island site on the north side of Oxford Street, close to Debenhams and John Lewis. It is bordered by Old Cavendish Street (entrance and display), Henrietta Place (entrance), Chapel Place, and Oxford Street (main entrance and display). Unit shops are assessed at £4,500 per m² Zone A to the immediate west and £4,600 to the east of John Lewis.

47. It a 10 storey building, including two floors below ground level. Trading is on basement to fifth floors.

48. The retail areas are rectangular, with the depth significantly larger than the width. There is a concrete floor and an old suspended ceiling with ventilation ducting and sprinklers. There are two customer restaurants and one set of customer WCs.

49. There is a loading bay in Chapel Place, a cul-de-sac with a single entrance to a bay area. There are two good lifts to the main storage area in the basement with full headroom of 4.75m and clear headroom of 4.5m. The space is heated and sprinklered, with a concrete floor and two goods lifts to all retail areas.

50. The main escalator is a single escalator up and down between ground and fifth floors. It is located in a compartment atrium, situated on the west side of the building at approximately mid point between front and rear. The area is divided from the retail area by the solid walls of the lift core. Visibility of the retail areas is limited. There is a second escalator between ground floor and basement, six customer lifts and one staff lift.

51. The store is not air conditioned. There is a heating and separate ventilation plant plus a sprinkler system. Much of the plant is original.

52. House of Fraser carried out works in the store in 2000 which were finished in November 2000. They involved: replacement of the existing escalators, refurbishment of all sales floor services including the heating and ventilation systems, installation of new boilers and comfort cooling equipment, renewal of incoming electrical systems with new electrical distribution to each floor, new sales floor lighting and overhaul of three of the existing lifts. The other three were decommissioned but for rent review purposes were assumed to be in good and substantial repair and in working order.

53. The floor areas are as follows:

Gross internal area		31,294.4 m ²
Net internal area - sales	17,750.0 m ²	
ancillary	<u>5,900.0 m²</u>	
		23,650.0 m ²
Ground floor gross internal area		3,576.7 m ²

54. The store is occupied under a lease for 99 years from 21 January 1981. 5 yearly rent reviews to open market rental value as demised, excluding improvements to heating and ventilation system on the ground floor and escalator between ground floor and basement. Review clause assumes a 35 year lease. FRI terms.

55. The rent review at 21 January 1991 was determined by an independent expert at £2,526,375 pa. This rent was adjusted to £2,530,000 in terms of rateable value, because the rent under the lease excluded improvements made by the tenant. The rent review as at 21 January 1996 was agreed at £3,250,000 pa between landlord and tenant. This rent review was adjusted to £3,300,000 in terms of rateable value, because the rent under the lease excluded improvements made by the tenant. The rent review as at 21 January 2001 was determined by an independent expert at £4,925,000 pa.

56. The agreed 2000 list RV was arrived at as follows:

Adjusted rent on review 21 January 1996	£3,300,000
Plus rental growth to 1 April 1998 @ 10% = £3,630,000 say	£3,600,000
Gross internal area 31,294.4 m ² @ £115	£3,598,858
Say RV	£3,600,000

The occupiers' proposal was withdrawn by House of Fraser via their agent Montagu Evans.

57. A reduction in the assessment was subsequently agreed to reflect loss of space and disturbance during the works undertaken in 2000. Following conclusion of these works, the entry in the list was altered by the Valuation Officer by increasing the assessment to RV £3,750,000 with effect from 1 November 2000. This was subsequently agreed at £3,680,000, representing an increase of 2.25% to reflect the additional value of the improvements. The revised assessment was equivalent to £117.60 per m².

Dickins and Jones, 222-224 Regent Street, London, W1B 3AD

58. This store is located on an island site on the east side of Regent Street, approximately 75m from the junction with Oxford Circus. It is separated from Liberty by Great Marlborough Street. The site is bordered by Great Marlborough Street (entrances and display); Regent Street (main entrance and display); Argyll Street (entrance and display) and Little Argyll Street (display). The Zone A at this location is £3,000 per m².

59. It is a seven storey building, including two below ground level. Trading is on basement to fourth floors. The store was built in the 1920s. It closed for trading in January 2006. The retail areas are rectangular with display windows on all sides. There are concrete floors, open plastered ceilings with lighting and sprinklers below and heating and ventilation wall perimeter outlets. Generally, retail areas have higher ceilings than the other stores. There are four customer restaurants and four customer wcs.

60. Loading access is via Argyll Street, a street with double yellow lines. There is no loading bay, only a single doorway to a small buffer area fronting a single goods lift. This runs between the ground floor and the main stockroom at sub-basement level. There is an additional goods lift to all retail areas. The stockroom has a concrete floor, some space heating and is sprinklered. Its full headroom is 3.75m and its clear headroom is 3m. There are single up and down open escalators between basement and fourth floors, located in an atrium in the centre of the store. There are two customer lifts and two staff lifts. The heating and ventilation system is old, with very limited cooling plant. There is a sprinkler system. Some of the plant appears to have been renewed but most is old.

61. The store is constructed of load bearing walls, which compartmentalise the retail areas. The walls are up to 2m thick and divide the retail areas into three compartments per floor, varying in area from 1,050m² to 1,230m². The store is listed Grade II.

62. The floor areas are as follows:

Gross internal area		25,164.0 m ²
Net internal area - sales	13,333.5 m ²	
ancillary	<u>6,783.7 m²</u>	
		20,117.2 m ²
Ground floor gross internal area		3,748.7 m ²

The 2000 list RV was analysed as follows:

Gross internal area	25,164 m ² @ £129	£3,246,156
	Say RV	£3,250,000

Agreed with Dickins and Jones via their agent, Montagu Evans.

Principles of valuation

63. Except in one respect, to which we shall refer, there is no difference between the parties as to the relevant principles of valuation that fall to be applied in valuing the hereditament. The following are derived from the locus classicus, the judgment of Scott LJ in *Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* [1937] 2 KB 445 at 468-70, 474 and 477-8:

- (a) The hereditament to be valued is the actual property for the occupation of which the occupier is to be rated, and that hereditament is to be valued as it in fact is – *rebus sic stantibus*.
- (b) In weighing up the evidence bearing upon value, it is the duty of the valuer to take into consideration every intrinsic quality and every intrinsic circumstance which tends to push the rental value either up or down.

- (c) The rent to be ascertained is the figure which the hypothetical landlord and tenant would, in the opinion of the valuer or the tribunal, come to as a result of bargaining for the hereditament, in the light of competition or its absence in both demand and supply, consequent upon the ‘higgling of the market’.
- (d) Though the profits which may reasonably be expected to arise from a business may form an element in estimating the enhanced value of the occupation of the premises, the actual profits made do not form any element, except in so far as they afford evidence of what might be reasonably expected to be made from the occupation of premises affording facility for carrying on such a business.

64. Two further principles need also to be borne in mind:

- (e) The statutory hypothesis is only a mechanism for arriving at a value for a particular hereditament for rating purposes, and it does not entitle the valuer to depart from the real world further than the hypothesis compels (per Schiemann LJ in *Hoare v National Trust* [1998] RA 391 at 408).
- (f) The actual occupier is to be taken as a prospective bidder for the hypothetical tenancy: *London County Council v Erith* [1893] AC 562.

The disagreement between counsel (which, as we shall say, seems to us more apparent than real) arises on the basis of reliance that Mr Holgate placed on a sentence in the speech of Lord Parmoor in *Poplar Assessment Committee v Roberts* [1922] AC 93 at 121:

“The special skill and industry of a particular occupier is not one of the natural conditions that attach to the property and on this ground it is excluded from consideration in the assessment of rateable value.”

Relying on this passage Mr Holgate said that, on the evidence, the special skill and industry of the appellant includes its name, reputation and trademarks, and it was these things that enabled it to trade effectively from the premises. No other operator could achieve the turnover, margin or profit of Harrods, and the ability of Harrods to make the profits that it did because of these things must be left out of account in the valuation.

65. Too much must not, in our view, be read into the single sentence from Lord Parmoor’s speech on which Mr Holgate relies (although it should be noted that the same proposition appears in the speech of Lord Buckmaster at 103). *Poplar v Roberts* concerned the question whether the rateable value of hereditaments occupied on rents that were limited under the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 should be limited to the restricted rental levels or should take account of the rents that could be expected to be achieved in the absence of such restrictions. The question of the relevance of the personal attributes of the tenant was not in issue, and we agree with Mr Mould, who submitted that, read in context, Lord Parmoor was doing no more than seeking to encapsulate the contrast between letting value and profitability. The principle is that it is the premises that are to be rated and not the income of the occupier. That principle is to be found stated in a number of places, including *Mersey Docks and Harbour Board v Liverpool Overseers* (1873) 9 QB 84 per Blackburn J at 97. In a passage quoted by Scott LJ in *Robinson* at 477 Blackburn J gave the example of the

shop on Cheapside, then no doubt a prime shopping street. The rateable value, he said, would be the same whether the tenant was a flourishing trader or was carrying on business at a loss. This, however, was doing no more than emphasising the economic realities, which, as Scott LJ was at pains to point out, were the foundation of rateable value.

66. It does not seem to us that, if the actual occupier is to be regarded as a potential tenant, there is any requirement of law that some of its attributes must be left out of account while some other attributes must be taken into account. Indeed we do not see how this could be done. We can quite see that normally it will not matter whether a particular occupier is more or less successful in his business, for instance as a shop, than other occupiers in the same category of business. The reason for this is that the rent will be determined by supply and demand in the market, and the successful shopkeeper will not have to pay more for his premises than an unsuccessful shopkeeper, any more than he will have to pay his suppliers a greater amount for the goods that he buys from them.

67. In the present case, however, the premises are unique, and it is clear that the appellant's presence in the market as a potential bidder for them is, on any view, likely to be a significant factor. In the hypothetical circumstances it will be looking for premises in which to carry on its business, and it will be viewing the subject hereditament in terms of its suitability for that purpose. What it will seek are premises in which its unique trading operation can be carried on, including the deployment of the Harrods brand. Although at one time it appeared that the appellant was contending that all considerations relating to the Harrods brand had to be left out of account, ultimately it was accepted that, in deciding what bid it should make, Harrods would take account of the value to it of its brand and the opportunity for its deployment in the subject hereditament. There is no question, on the other hand, of our attaching any significance to levels of turnover or profitability, since we have no means of comparing these with those of the comparable hereditaments even if it were enlightening to do this.

68. Not only are the premises here unique, but there is, as the appellant says about itself, "only one Harrods". Because of the nature of its business there is only one set of premises that meets its requirements. While, as we indicate below when we consider the appropriate allowance for size, we do not think that the evidence establishes that there would be any competing bidder for the premises, it is also the case that there is no alternative hereditament in which Harrods might relocate its operation. In these circumstances there is no reason, in our judgment, for not assuming that in the hypothetical negotiation there would be a parity of bargaining power between landlord and tenant. This consideration in our view supports the adoption as comparables of the Oxford Street stores, in respect of each of which no disparity of bargaining power is suggested. It is also a matter that is relevant to the arguments advanced in relation to quantum, which we deal with below.

The valuations

69. Mr How valued the gross internal area of the hereditament at £115 per m² (Appendix 1). To this he added 1.5% to reflect the physical quality of the delivery yard. He deducted 7.5% to reflect the physical quality of the buildings (which he termed "modernity"), 5% for the

locational differential between Knightsbridge and Oxford Street and 2.5% for compartmentalisation. He made the following deductions to reflect specific exceptional costs: £586,225 for delivering goods from the storage area in Trevor Square to the points of sale; £1,000,000 for maintaining the listed exterior of the store; £218,600 for maintaining its mechanical and engineering services and £250,000 for maintaining and refurbishing its listed interior. Finally, he deducted 20% to reflect the excessive size of the property.

70. Ms Key applied a basic value of £12 per sq ft (£129 per m²) to the gross internal area (Appendix 3). To this she added 7.5% to reflect the physical quality of the property and deducted 5% for its location and 2.5% for compartmentalisation. Her deductions for specific exceptional costs and quantum were identical to those made by Mr How.

71. Mr Baker's starting value was £135 per m² (Appendix 2). He made the following adjustments, by reference to the basis of £115 agreed for House of Fraser: add 5% for quality, deduct 1% for lack of air conditioning, 2.5% for compartmentalisation and 1.5% for remote loading facilities. From the valuation figure thus arrived at, Mr Baker deducted 5% for exceptional maintenance costs.

72. Mr Lewis adopted the same basic rate as Mr Baker (Appendix 4). He added 7.5% for quality and 5% for location. He then deducted £1,286,000 for the extra costs of maintaining the property and delivering goods. He made an end addition of 5% to reflect the effects of competing demand for the property, vacant and to let.

The basic rate per m²

73. The experts all agreed that they should start the valuation exercise with a basic value, derived from comparable evidence. Adjustments should then be applied to that figure to reflect the particular characteristics of the appeal hereditament.

74. Mr How's basic value was £115 per m², being the agreed basis for the rating assessment of House of Fraser. That assessment was in turn based on an adjustment of the rent agreed between the landlord and tenant for the purposes of the rent review as at 21 January 1996. Since the agreed assessments of the other department stores had all been based on the House of Fraser reviewed rent, Mr How considered that the same approach should be adopted for the appeal hereditament.

75. Mr Baker said that the assessments of five of the six large department stores in Oxford Street and Regent Street had been settled and the assessment of the other store, Selfridges, was subject to an outstanding appeal. Three of the six had been agreed at £135 per m² and the Dickins and Jones settlement at £129 per m² could be regarded as representing £135 less adjustments for particular factors. This tone had been derived from the House of Fraser rent. House of Fraser, assessed at £115 per m², was the only store valued at that level. There were differences between the other four stores but, apart from Dickins and Jones, they had not had

any effect on rateable value. Mr Baker considered that the tone of value for department stores had settled, the tone value was £135 and the basic value should be the tone value. In Mr Baker's opinion, John Lewis was the best comparable. The assessments of House of Fraser at £115 and Selfridges at £150 (subject to appeal) reflected the exceptional characteristics of those properties. The starting point should be the norm, not the exception.

76. Like Mr Baker, Mr Lewis adopted a basic value of £135. This, however, was not derived from the agreed rating assessments of John Lewis, Marks and Spencer and Debenhams. Instead, it was based on the House of Fraser rent review in 1996, adjusted to reflect Mr Lewis's opinion of rental growth between the review date and the AVD. In arriving at that opinion, Mr Lewis had regard to the growth rate indices prepared by IPD in respect of retail units in Oxford Street North and department stores nationally.

77. Ms Key also arrived at her starting value by adjusting the House of Fraser reviewed rent. For the purposes of this exercise she too used the IPD data on department stores nationally, but she weighted them by reference to IPD's figures for single retail units in Warren Street/Oxford Street North and in Soho/Oxford Street South. She concluded that the rental value of House of Fraser at the AVD was £12 per sq ft (£129 per m²).

78. Mr Baker's view was that, since the assessments of five of the six department stores in Oxford Street and Regent Street had been agreed, the tone of such properties was settled. Mr How thought that it was not possible to identify a tone of value when the information available related to a few settlements on a few department stores with varying characteristics, particularly when the assessments of the two largest stores had yet to be agreed. We regard the issue as academic in the context of the issues that we have to decide, since each valuer accepts that the five agreed assessments, together with the rent of House of Fraser, constitute the comparable evidence that falls to be applied in valuing the subject hereditament.—

79. Although the experts referred to rent reviews agreed for House of Fraser and Harvey Nichols, it is now common ground that there is only one comparable rented property with a rent review at arm's length, namely House of Fraser. All the valuers adjusted this rent to arrive at its equivalent in terms of rateable value as at the AVD, but they reached different conclusions. Mr How and Mr Baker considered that the appropriate figure was £115 per m², the value which had been adopted by all the valuers concerned with negotiating the settled assessments of West End department stores. Ms Key and Mr Lewis arrived at (different) higher values, with the use of IPD indices. On this issue we prefer the approach of Mr How and Mr Baker. The reliability of a valuation based on indices depends to a great extent on how far the data underlying those indices relates to truly comparable properties. Since it is common ground that the only reliable rental evidence is the rent agreed for House of Fraser, it is unlikely that the rents used in compiling the IPD indices accurately reflect movements in rental values of Oxford Street department stores in the relevant period. In those circumstances, the most persuasive evidence is provided by the endorsement, by various rating surveyors advising Oxford Street and Regent Street department store operators, of the value of £115 per m² for House of Fraser. We accept that figure and therefore reject the starting points adopted by Ms Key and Mr Lewis.

80. In their closing submissions counsel for both parties argued, in our view with justification, that the difference between the starting points of Mr How – £115, based on the agreed House of Fraser assessment, and of Mr Baker – £135, based on the agreed assessments of John Lewis, Debenhams and Marks and Spencer – did not reflect a substantial difference of approach. Although Mr Holgate submitted that there were practical advantages in adopting Mr How’s approach over Mr Baker’s, we accept Mr Baker’s view that the £135 agreed for John Lewis, Debenhams and Marks and Spencer is a more sensible starting point than the £115 agreed for House of Fraser. As Mr Baker observed, the department stores in the West End have differing characteristics, some of which are value significant and others not and, in considering whether a particular factor would affect the overall value, it is more helpful to have regard to a number of comparables than to one.

81. Mr How produced his own analyses of the agreed assessments of House of Fraser, John Lewis, Debenhams and Marks and Spencer in an attempt to establish how individual features of those properties had been reflected. Mr Baker disputed the reliability of those analyses. He pointed out that Mr How had not been involved in discussions on the compiled list values of any of the comparable stores. By contrast, he (Mr Baker) had personally discussed and settled all those values and percentage adjustments had been neither discussed nor agreed. He added that Mr How’s adjustments could not be supported by any evidence, particularly at the margins. For example, one could not be sure whether an adjustment for one factor had been 10%, and not 9% or 11%. A small change to one factor would have a knock-on effect on others.

82. We accept Mr Baker’s evidence in this regard. We find that the most helpful evidence is provided by the three stores assessed at £135 considered together, bearing in mind that their assessments have all been agreed at that figure overall, even though there is no evidence to show precisely how the individual values were arrived at. Those values represent figures which have been agreed by experienced valuers, and they should be accorded significant weight. We do not agree with Mr Baker that the value agreed for John Lewis is of any more assistance than the values of the other two. All three assessments should be given equal weight. In considering that evidence, it is to be borne in mind that the respective valuers agreed that the value of each store was £20 per m², or 17.5 per cent more than the House of Fraser. That is as far as one can go with precision. It is not possible on the evidence to isolate any one characteristic and be sure that, in arriving at the rateable value of a particular property, a specific percentage was added to or subtracted from the agreed RV of House of Fraser.

Our valuation approach

83. Having determined that the basic rate derived from the comparables should be the £135 of Marks and Spencer, Debenhams and John Lewis, we need to apply this to the appeal hereditament by making such adjustments as we find to be appropriate. We do this by considering the issues in five stages:

- (a) Location
- (b) Quality factors
- (c) Delivery arrangements
- (d) Exceptional maintenance costs
- (e) Quantum

84. There was agreement that if the basic rate were to be derived from the £135 comparables, there should be a deduction to reflect the fact that Harrods does not have air-conditioning. This was agreed at 1% of a value based (rather confusingly) on £115 per m², £161,154, and we make this adjustment in our valuation.

85. In (b) we include all those factors which may require an adjustment to be made to the basic value, other than location, heating and ventilation (lack of air conditioning), delivery arrangements giving rise to exceptional costs, the exceptional costs of maintenance and size per se. Included, therefore, are the quality of the exterior architecture, the internal arrangement (including the number of floors, their configuration and compartmentalisation), vertical circulation, the lack of atria and the quality of the finishes. We do not think that it is helpful to make individual adjustments for any of these factors. There are two reasons for this. The first is that some of these factors interact, and we do not see that it is appropriate, for instance, to seek to isolate compartmentalisation from other aspects of internal arrangement; and we would note that the fact that the store is very large may impact on some of the factors (for instance vertical circulation and compartmentalisation) and would accordingly fall to be taken into account to this extent. The second reason is that, as we have said above in relation to the basic rate per m², it is not possible to attribute to the £135 per m² comparables any particular adjustments that have been made to the House of Fraser £115 per m² to reflect individual attributes of these stores. It seems to us unrealistic in these circumstances to do other than to form an overall judgement that has regard to all these factors when considering the appeal hereditament and how it compares with the comparables. We consider that two factors should be treated separately – delivery arrangements and maintenance – because they are acknowledged to give rise individually to exceptional costs and these costs are capable of quantification.

Location

86. The West End of London comprises a range of different retail locations with different attributes and different levels of value. Considered as a whole, it is the prime retail location in the UK. It has the highest zone A values, the largest pedestrian flow and the highest turnover of all shopping locations in the country. It also has the largest department stores in Europe. Its principal element consists of the Oxford and Regent Street areas. The appeal hereditament is located in Knightsbridge, to the west of these areas. It is separated from them and has different characteristics. Knightsbridge is a much smaller retail area. Pedestrian flow is much lower and there is a larger proportion of shoppers from overseas. Historically, Knightsbridge has

been identified as a location for the very expensive fashion and jewellery retailers from Europe. In recent years, the retail pattern has been changing with the growth of the mass fashion retailers. There are only two department stores, Harrods and Harvey Nichols.

87. Oxford Street is the best known shopping location in the UK. It does not have expensive, luxury retailers – these are located in Bond Street and elsewhere – but it is the premium location for the mass fashion market. It has the highest pedestrian flow in the country and the highest retail turnover. There is considerable bus and taxi traffic along the street. Shoplifting is a serious problem for retailers, although it is not a materially greater problem than for retailers in Knightsbridge. Oxford Street contains the large space users Marks and Spencer, Bhs, Debenhams, House of Fraser, Selfridges and the largest branch of John Lewis in the UK. It is a very long shopping street, divided into sections to the east and west of Oxford Circus. The eastern part is generally perceived to be of lower value. The western part, between Oxford Circus and Marble Arch, has the highest zone A values and, with the exception of the smaller Marks and Spencer store, all the department stores in the road.

88. Regent Street has a higher pedestrian flow at the Oxford Circus end than at the Piccadilly Circus end. It is associated with higher quality retailers than are generally found in Oxford Street. The Dickins & Jones department store was until recently located at the northern end of Regent Street, close to the junction with Oxford Circus.

89. Mr How expressed the opinion, by reference to an analysis of zone A rates, that the prime location in Brompton Road was less valuable than the prime Oxford Street location. The information on the other department stores showed that they were less sensitive to location than standard shops. However, the information on C&A Modes/Allders showed that there was a strong sensitivity to location when there was a large decline in the zone A rates. Zone A rates were 56% lower on the west side of Harrods than on the east side. He thought that the locational value of the appeal property would at least follow the trend of zone A rates in Brompton Road, and he concluded that a 5% allowance for location should be made. Mr Baker originally took the view that Harrods' location was superior to that of the Oxford Street comparables, and his valuation contained an addition to reflect this. Having considered it further, however, his view was that no adjustment for location was appropriate.

90. It is clear that Knightsbridge is a quite different shopping centre from the Oxford Street/Regent Street area. It is very much smaller, it has a much lower pedestrian flow, and it is dominated by and dependent on one store, Harrods. In the public mind Harrods and Knightsbridge have such a close association as to be almost synonymous in retailing terms. We do not think that any assistance in valuing Harrods is to be derived from Zone A rates, which reflect the attractiveness of the location to the non-department store retailer. The conclusion we have reached is that Harrods has an outstanding location for the particular retailing operation that is carried on. Indeed the nature of the retailing operation appears at least to some extent to be a product of its location. It is set in a high-class residential area. It is accessible to tourists. It has an immediately adjacent entrance to the tube, at a station that is called Knightsbridge. It is a positive advantage to a store that seeks to emphasise its uniqueness that it is not just one of a number of department stores in an extensive shopping centre.

91. Because of the different nature of Oxford Street and Knightsbridge any direct comparability between them is clearly lacking. The judgment we have formed, however, is that Knightsbridge is as good a location for Harrods' operation as Oxford Street is for the operations of the department stores that are agreed to provide the comparables in this case. This appeared to us to be the judgment that Mr Baker ultimately settled on, and he confirmed that it was. We accordingly see no justification for the adjustment for location that Mr How makes.

Quality factors

92. As we have said, we include under this head the quality of the exterior architecture, the internal arrangement (including the number of floors, their configuration and compartmentalisation), vertical circulation, the lack of atria and the quality of the finishes. Mr How listed a number of factors which, he said, contributed to the quality of a department store. He grouped six of these features together under the heading "modernity". They were: building age; fit-out including finishes, floor and wall coverings and lighting; ceiling height and the presence of suspended ceilings; the presence of atria; the number of trading and ancillary floors; and configuration. By the conclusion of the hearing it was common ground that the difference between the experts in relation to these features was primarily related to the absence of atria at Harrods. Mr How described an atrium as "a central court which rises vertically through the floors of a building, creating a feeling of spaciousness and light". In Mr Baker's judgment, on the other hand, the overall effect of atria was neutral. They added light, but interrupted horizontal circulation.

93. Mr Baker made an upward adjustment of 5% for the exceptional quality of the appeal hereditament, 1.75% for the quality of the exterior and 3.25% for internal quality. He pointed out that the appeal hereditament had a more highly specified and distinctive exterior than the comparable department stores. This, he said, raised the image of the building to a unique level, recognised internationally as one of the premier buildings in the world. The costs of maintaining this part of the hereditament were very high. Whilst he did not suggest that the benefits to a retail occupier were equivalent to the additional costs, the iconic nature of the terracotta exterior, unique to this hereditament, was part of its intrinsic character and conveyed the style and quality that was associated with the retail nature of this location.

94. As for the interior, Mr Baker said that the quality of the fitting out of the ground and first floors and the Georgian restaurant area on the fourth floor of the appeal hereditament was significantly higher than that at the Oxford Street department stores. The ground floor had a ceiling height of about 6 metres. It contained several rooms fitted to a very high standard, namely the Egyptian Hall, the Food Hall, Rooms of Luxury 1 and 2, Fine Jewellery, Harrods Arcade, Perfumery, White Perfumery and the Egyptian escalator hall. The first floor had a ceiling height of approximately five metres. Its enhanced quality lay in its ceilings. They featured ornate patterning in embossed plasterwork, dating from the early 20th century or the 1930s. The Georgian Restaurant featured timber panelling to walls, an attractive plastered ornate ceiling, ornate pillars and piers, chandelier light fittings and a roof terrace area to the Hans Road elevation. Mr Baker said that the fitting out costs of these areas appeared to be

over four times the norm. In his opinion, the cost and quality of this fit-out was of a higher order than at any of the comparable stores and its purpose was to enhance the intrinsic character of the appeal hereditament. This had had the effect of providing an environment in which expensive goods could be retailed more successfully than if the environment were of Oxford Street quality. As the additional costs of these works would bear on the landlord, he or she would seek additional rent. The reasonable tenant would perceive the higher quality fitting out as being beneficial to retail occupation and a higher rent would be agreed.

95. Mr How, on the other hand, did not consider that any adjustment was required to reflect the standard of internal fitting out of these areas or the quality of the exterior. In his view the correct approach was to make an overall adjustment by reference to the quality of the comparable stores. He pointed out that Mr Baker had made no allowance for the modest quality of the other floors in the main building and at Trevor Square. In any event, he said, Mr Baker's view appeared to have been strongly influenced by the expenditure which the appellant had incurred. Value did not necessarily reflect cost. The comparison to be made was between the quality levels of the various stores and not between the sums spent by the store operators.

96. As for vertical circulation, Mr Baker considered that, in rental terms, the facilities for this at the appeal hereditament were more valuable than those at House of Fraser and on the same level as at John Lewis. He pointed out that the escalators at House of Fraser cannot be seen from the shop floor generally and that customers cannot see where they are going as they move from floor to floor. He also considered that the distribution of lifts and escalators was slightly better at the appeal hereditament than in the House of Fraser. Mr How, on the other hand thought that there was no value difference in this regard between the appeal hereditament and the House of Fraser. He also expressed the view that the agreed assessment of John Lewis incorporated a 5% addition compared with House of Fraser to reflect superior vertical circulation.

97. It is clear from the evidence and the very extensive inspections that we have carried out that Harrods' particular physical attributes contain features that are both of benefit and disbenefit when compared to the Oxford Street comparables. It has an important and imposing façade on Brompton Road, which symbolises and is used to symbolise the style of its operation. This and the high quality of the finish and fitting-out of the ground and first floors and the Georgian Restaurant are superior to anything to be found in the Oxford Street comparables. They enhance the attraction of the building as a store for the sale of luxury goods, and they are of obvious and substantial benefit to Harrods. On the other hand atria, and the intervisibility that these give to areas of a store, are in our judgement of advantage, particularly in a very large store, and Harrods lacks these. We bear in mind that John Lewis and Debenhams had atria, but Marks and Spencer did not. The fact that Harrods is only in part purpose-built and much of its floorspace consists of converted mansion flats, resulting in an irregular and compartmentalised arrangement of retail space, is disadvantageous in that it severely restricts intervisibility and makes it difficult for customers to find their way around – a feature that is made more significant by the size of the store. But this disadvantage is limited to some degree by the fact that the compartmentalisation results in, and is used to advantage to provide, a succession of rooms that lead the customer on.

98. In terms of vertical circulation our conclusion is that Harrods is less well provided for than John Lewis, Debenhams and Marks and Spencer. The difference lies not in the relative number of lifts and escalators but in their distribution across this very large, compartmentalised store. At approximately 4.5 acres per floor, Harrods is between 2.3 and 4.7 times as large as those comparables. Of the four pairs of escalators, one is in the centre of the building. The other three escalators are located on the perimeter of the building, and although, as Mr Baker pointed out, all of them are close to an entrance, there are seven other entrances with no escalators adjacent to them. There are no escalators or lifts in the north-eastern or the south-western quadrants; and no escalators or lifts serving all floors of the store that are within easy reach of the prime retail frontage to Brompton Road.

99. Overall the judgment we have formed is that these various benefits and disbenefits give to Harrods a value that is effectively the same as the Oxford Street £135 per m² comparables. This, therefore, is the basis of valuation that we adopt before moving on to consider whether deductions should be made in respect of the three remaining factors, delivery facilities, exceptional maintenance costs and quantum, and, if so, what these deductions should be.

Exceptional maintenance costs: evidence

100. There are a number of issues between the valuers in respect of exceptional maintenance costs. They relate to external repairs, additional internal maintenance and excessive shop fitting costs resulting from the listed status of the appeal hereditament. We summarise the evidence on each in turn and then state our overall conclusions.

101. As far as the exterior is concerned, Mr Wiffen explained that the unusual construction of the hereditament meant that the appellant incurred external maintenance costs which were unique to it. He estimated that the appellant incurred costs of approximately £10m per 10 year cycle of maintenance works to the exterior, which would not be necessary at the more modern department stores. These costs, which were applicable as at the AVD, largely related to the repair and maintenance of the approximately 50,000 terracotta tiles which covered the exterior. These had to be replaced on an ongoing basis. Since 1997 a specialist structural engineer had carried out annual inspections to assess the condition of the tiles. The £10m estimate also included repair works to the store's octagonal dome.

102. Mr How allowed for these costs by deducting the annual average of £1m from his valuation. Mr Baker accepted Mr Wiffen's estimate of £10m expenditure over 10 years and agreed that an appropriate allowance should be made. In his opinion, however, the correct approach was to calculate the annual equivalent of the total cost. This, he felt, would be consistent with the approach of an occupier, who would be likely to place funds in an interest bearing account. He initially allowed £815,000 per annum, being the sum which, if invested annually at 4½ per cent interest, would accumulate to £10m at the end of 10 years. He subsequently accepted that an allowance should be made for tax on the interest, and increased his deduction to £870,000.

103. On internal costs Mr Wiffen referred to two reports which he had obtained from WSP Knowledge Solutions, mechanical and engineering experts, comparing the maintenance costs incurred in respect of the appeal hereditament with those expected to be incurred at more modern department stores in central London such as John Lewis in Oxford Street. In their initial report, WSP estimated these additional costs at £393,500 (equivalent to £336,000 as at 1998/99). In his expert report, Mr Lewis criticised this exercise because, he said, it ignored the characteristics and specification of the comparable properties. In response, WSP prepared a supplementary report, reducing their estimate of additional maintenance costs incurred annually by the appellant by comparison with House of Fraser to £256,000 (£218,600 as at 1998/99). By comparison with John Lewis and Marks and Spencer, their estimate remained unchanged at £393,500.

104. In preparing his valuation Mr How deducted the estimated internal repair costs of £218,600, calculated by comparison with House of Fraser, in full. Mr Baker accepted that, of this sum, £49,831 did represent additional costs. However, he said that this figure was so small in the context of the overall valuation that he thought it would be ignored. The costs which Mr Baker excluded completely were related to the fact that the ventilation system at the appeal hereditament was entirely fresh air and not a recirculation system. In Mr Baker's opinion the fresh air system was superior. It provided value for money and there was therefore no reason to deduct the additional costs from the valuation. On the other hand Mr Wiffen said that, because of the configuration of the appeal hereditament, the beam depths, ceiling heights and the listing of certain ceilings, it had not been possible to install the type of ventilation preferred in modern department stores, which was in fact a recirculating system.

105. The appellants also contended that allowance should be made to reflect exceptional shopfitting costs. Mr Wiffen said that the Grade II listing of the appeal hereditament covered both the exterior and the interior, and included the decorative solid plaster ceilings and wall finishes. The unusual construction of the store meant that the combined controls by English Heritage and the District Surveyor were more onerous than for most other department stores, particularly in the context of refurbishment works. The Food Court areas and the Barber's Shop tended to cause the most difficulties when refurbishment or maintenance was required, because of the listing of a large proportion of finishes in those areas. Mr Wiffen produced a report by Mr Andrew Hudson FRICS, a Member of V B Johnson LLP, chartered surveyors. Mr Hudson concluded that what he termed the Harrods factor added some 18 to 25% to the cost of shopfitting at the appeal hereditament compared to other department stores in London's West End.

106. Mr How said that the major rooms in the appeal hereditament were refitted over a 10 year cycle. They had an area of some 23,700m² on ground and first floors. He considered that a reasonable average shopfitting cost for a standard department store would be £1,000 per m². Applying that figure to the total area of the major rooms produced an estimated total shop fitting cost of £23,700,000 over 10 years. Mr Hudson's Harrods factor increased these costs by between £4,266,000 and £5,925,000 over 10 years, or between £426,000 and £592,500 annually. Mr How considered that the hypothetical tenant would take these excess costs into account when assessing his rental bid, but that the hypothetical landlord would not agree to

allow them in full. He therefore deducted 50% of the cost to reflect the likely outcome of the letting negotiations. The average cost was £509,250, and he allowed £250,000.

107. In general, Mr Baker accepted Mr Hudson's conclusions on the extra costs attributable to the listed status, but he considered that a few of the elements which Mr Hudson had included in his analysis should be discounted. In Mr Baker's opinion, some cost items were the result of the separation of the loading bay and the main store, and should therefore be considered separately. Others related to solid ceilings. Although the majority of department stores had suspended ceilings, the period feel of solid ceilings and the special effect of the high ceilings on certain floors contributed to the elegance of the interior. The Dickins and Jones store in Regent Street had solid plaster ceilings on all floors except the basement, but the effect of solid ceilings on value had not been discussed during rating negotiations with Mr How's predecessor. Mr Baker also pointed out that the cost of works to the White Cosmetics Hall was only 11.37% above those incurred in the comparable stores. He reduced Mr Hudson's range of 18-25% for the Harrods factor to 12-20%. This resulted in annual sums from £284,400 to £474,000, and an average of £379,200.

108. Mr Baker said that the appeal hereditament was a high quality building used for and suitable for retailing high quality products. The tenant would expect shopfitting costs to be substantially higher than would be incurred in the generality of department stores. He would also expect restrictions on adaptations to an important historical building. Mr Baker's judgment was that it was unlikely that the additional costs would affect rental value. The point was arguable, however. The VT had decided that a total allowance of 5% should be made to reflect the abnormally high maintenance costs, including shopfitting. In his initial report, Mr Baker had calculated the additional external maintenance costs at £815,000, which was equivalent to 4.3% of his basic valuation. In view of his doubt about the impact on value of the additional fitting out cost, he did not consider that the VT's decision of 5% should be disturbed.

Exceptional maintenance costs: conclusions

109. Mr Baker's evidence on exceptional maintenance costs was not entirely consistent. In his first written report dated 28 June 2006 he said that the VT's decision, that the total allowance for these items was 5% of the basic valuation of £135 per m², should not be disturbed. He considered that £815,000 should be allowed for external maintenance and the balance of the 5%, equivalent to £130,904, was for shopfitting, making a total deduction of £945,904. He did not think that any allowance should be made for internal repairs. That explanation was inconsistent with the valuation calculation that accompanied his expert report. There he deducted 5% of £146.50 per m². This produced an adjusted basis of £139.175 per m², which he rounded down to £139. The effect of this approach was that the total deducted was £1,051,004 (£7.50 per m²).

110. In his speaking note, produced at the end of day 7 prior to the commencement of his examination in chief, Mr Baker made certain changes to the explanation in his initial report. The allowance for external costs was increased to £870,000, to reflect the need to adjust for tax

on sinking fund interest. In addition, £49,831 was included for internal maintenance, which he had previously said should be disregarded. Finally, shop fitting costs were taken at £132,650. Although this sum was only slightly different from the figure of £130,904 mentioned in his first report, the method of arriving at it was quite different. In his speaking note, Mr Baker allowed 35% of his average cost figure of £379,200, but he did not provide a cogent explanation as to why he had chosen 35%.

111. We did not find this aspect of Mr Baker's evidence to be convincing. We consider that Mr How's approach to exceptional maintenance costs was reasonable and we accept it. Mr How's valuation included a deduction of £218,600 in respect of additional internal repair costs identified by WSP. That figure was based on a comparison with House of Fraser. It was therefore right for Mr How to adopt it, since the House of Fraser value formed the starting point for his valuation. We have concluded, however, that the starting value should be that of John Lewis, Marks and Spencer and Debenhams. Since WSP's estimate of additional costs by comparison with the first two of these stores was £336,000, and since Mr Baker did not express disagreement with the estimates contained in WSP's supplementary report, we consider it appropriate to deduct £336,000 in respect of internal maintenance costs. The total deduction for exceptional maintenance costs is therefore £1,586,000 (£1,000,000 plus £336,000 plus £250,000).

Delivery arrangements: evidence

112. It was agreed that the physical separation of the retail section of the appeal hereditament from its storage and goods delivery facilities is a disability which should be reflected in the valuation. Mr How said that the goods receiving area at Debenhams allowed vehicles to load under cover and the yard permitted vehicles to manoeuvre freely. By comparison with House of Fraser this advantage had been reflected in the assessments of John Lewis, Debenhams and Marks and Spencer by making an addition of 1.5%. In order to maintain a consistent approach, Mr How considered that a similar addition should be made when valuing the appeal hereditament. He felt that this was an appropriate adjustment to reflect the fact that the delivery yard at Trevor Square was enclosed and provided adequate waiting and turning space for vehicles. This addition, however, did not take into account the additional costs which arose as a result of the remote location of the delivery yard in Trevor Square. These costs should be taken into account because, with the exception of Debenhams, none of the other relevant department stores had remote loading and storage. Accordingly, he deducted £586,225, based on Mr Blow's evidence about the cost of having to transport goods so much further from loading bay to shop floor than at the House of Fraser. This figure was made up of £382,533 for the costs of transporting goods from Trevor Square to the end of the tunnel in the store, plus £203,691 due to the additional distances travelled within the store to the points of sale by comparison with House of Fraser.

113. Mr Baker dealt with these considerations in a different way. Initially, he did not make an allowance for fragmentation, on the basis that a comparable situation existed at the Debenhams store and no adjustment had been made in the agreed assessment of that property. He revised this approach in his second supplementary report. He then said that, by reference to House of

Fraser, the settled Debenhams rateable value included a 1.5% addition for the physical quality of the goods delivery facility, which provided secure off-street parking. The appeal hereditament had the same physical quality of goods delivery as Debenhams, but the adjoining accommodation was used for storage purposes. In Debenhams, by contrast, there was a large office element to the building containing the delivery and storage facilities, which comprised a separate structure at the rear of the main store, linked to it by a tunnel under Henrietta Place. Mr Baker felt that there was a higher degree of interaction between the two buildings in the appeal hereditament than was likely to be the case at Debenhams. He concluded that there were marginally greater disadvantages for the appeal hereditament in this respect. He therefore thought that the 1.5% addition for Debenhams should be reduced to nil when valuing the appeal hereditament and so the basis of £135 per m² should be reduced by 1.5% of £115 per m², or £241,731.

114. Mr Baker disagreed in principle with Mr How's suggestion that a further deduction should be made to reflect the greater cost of moving goods internally at the appeal hereditament than at House of Fraser. He argued that the costs of moving goods internally were incurred by the occupiers of all the comparables. Mr How's logic applied equally to John Lewis, but no allowance had been made to the rateable value of that store. Mr Baker also disagreed with the point used by Mr Blow to calculate the distance from the remote storage to the Brompton Road store. He considered that the appropriate measurement was from the remote storage at Trevor Square to the periphery of the store, at a point where the tunnel met it below basement level. Thereafter one was dealing with costs within the building, in respect of which there was no case for an allowance. On this basis, the additional cost was £320,000. This was equivalent to 1.98% of Mr How's basic value. It was necessary to offset against this Mr How's addition of 1.5%, so that the total effect of adopting the costs was an adjustment of only 0.5%. This was immaterial in the context of the overall valuation.

115. The final issue was whether Mr How was right to calculate absolute costs and deduct them or whether, as Mr Baker suggested, the valuer should form a judgment as to the appropriate percentage adjustment to be made, bearing the absolute costs figure in mind.

Delivery arrangements: conclusions

116. In the light of the evidence and our inspection, we have come to the conclusion that Mr How's total deduction of £586,225, based on Mr Blow's evidence does not overestimate the difficulties of operation caused by the remote location of the loading facilities and the situation of the main set of service lifts, located off-centre within the appeal hereditament with its exceptionally large floor plate. We have not overlooked the fact that Debenhams has remote storage facilities but is assessed at the same rate as John Lewis and Marks and Spencer, which do not. As we have said, however, those three stores each exhibit a variety of characteristics. It is in our view entirely possible to analyse the Debenhams assessment on the basis that it incorporates a discount for fragmentation, which is offset by an addition for the fact that it is the only store with an atrium enclosing an escalator. Moreover, the distance from the start of the tunnel to the mid point of the goods lifts at the appeal hereditament is 224.6m – more than five times the equivalent distance at Debenhams. Our valuation accordingly

incorporates the allowance of £586,225. There is no need for an adjustment for the quality of the goods delivery area at Harrods by comparison with the department stores assessed at £135 per m².

Quantum: evidence

117. Ms Key said that, once a retailer had accommodated the optimum number of product lines for its business, additional sales space produced diminishing marginal returns. The retailer would therefore not regard space beyond its optimum size requirement as adding significantly to the value of the operation and its rental bid for such space would be reduced accordingly. Only a limited number of department store operators traded enough lines to utilise more than 100,000 sq ft. Even fewer could utilise the space in stores of 250,000 sq ft. The rental bid for such stores would thus incorporate a quantum discount, to reflect the diminishing returns from sales areas remote from the prime trading space. In London and most regional cities there was a reasonable demand for stores of around 100,000 sq ft. Above that level there was little demand until the range from 220,000 sq ft to 600,000 sq ft was reached. This range accounted for the majority of department stores in Central London, whose rental values incorporated a quantum allowance, reflecting the reduced number of potential bidders. There was then a further gap before Selfridges (approximately 1,000,000 sq ft) and then a large step up to the appeal hereditament.

118. Ms Key said that none of the retailers entering the Central London market or moving to larger units during the period 1998/2003 had taken stores larger than 110,000 sq ft. She was not aware of any requirements which were unfulfilled during that period for accommodation of the traditional department store size between 100,000 sq ft and 250,000 sq ft. Nor was she aware of any department store requirements in Central London above 250,000 sq ft. Factors which would influence the approach of a potential bidder for the appeal property included the fact that it was the size of a major regional shopping centre. Extensive product lines would be needed to fill the sales space in all categories. This could only be achieved by targeting the luxury market which was attracted by the Harrods brand. All the London stores were mature and well established, providing powerful competition to new entrants. Costs of entry were high and new entrants to the West End had historically started with a small store to test the market and build brand image. None of the survivors had gone on to expand beyond about 68,000 sq ft GIA.

119. Several department stores in London had closed over a 20 year period and none had been taken over by another operator. Knightsbridge offered a smaller, more limited range retail market than Oxford Street, with an elite image which was largely attributable to the history and world famous presence of Harrods. The influence of overseas tourism spending at Harrods was estimated at 40% of sales. Any other operator would have considered the vulnerability of this turnover to tourism movement and the strength of sterling. It would have needed to assess the potential turnover of the store without the Harrods brand and then estimate the time necessary to establish its own brand and build up reputation. It would have anticipated higher than normal ongoing costs of maintaining and refurbishing a listed store the size of a regional shopping centre, whilst requiring a higher level of tourist trade than any of the other London

competitors in order to generate the level of turnover previously achieved at the property. In the light of currency fluctuations and potential terrorist attacks, a new operator considering the property would have regarded it as a high risk venture.

120. In September 2005 DTZ Research had been commissioned to prepare an analysis of department stores worldwide, in order to establish whether there would have been demand for the appeal hereditament from other department store operators between 1998 and 2003. They concluded that there probably would have been no such demand. If there had been any demand at all, it would have been so limited that it would have led to serious consideration of a discount for quantum being incorporated in the agreed rent. Ms Key gave thought to whether there was justification for a size discount for the appeal hereditament, compared with House of Fraser store which was very much smaller. She provided details of the Oxford Street comparables which had been considered for the purposes of the 2001 rent review on House of Fraser. Ms Key concluded that this evidence showed strong demand for units between 48,000 and 68,000 sq ft GIA. There was less demand at approximately twice that size and the rent per sq ft was reduced, reflecting the size of the building and the smaller number of potential occupiers likely to have a requirement to fill the space.

121. The House of Fraser store, at 336,850 sq ft, was approximately three times the size of Allders. The January 2001 House of Fraser rent review, at £14.62 per sq ft GIA, indicated a discount of 28.5% below the rent agreed for Allders in the same year. In Ms Keys's opinion, the quality of the two buildings was similar, save that the House of Fraser had the disadvantage of trading on four more floors. That disadvantage, however, combined with the very limited growth in rental values between January 2001 and mid - to late 2001 (when the Allders transaction was agreed) was unlikely to have offset the significantly weaker location of the Allders building. Thus, the adjustment attributable to quantum was in excess of 28.5%.

122. Whilst this exercise suggested that a quantum discount of 25 to 30% would be appropriate for the appeal hereditament compared to House of Fraser, Ms Key noted that in absolute terms this would represent a significant reduction in the rental bid. She adopted what she termed a conservative approach, and estimated that the quantum discount appropriate to the appeal hereditament was at least 20%. Ms Key said that her opinion of the appropriate quantum allowance reflected her view that there would be no demand for the property apart from that of the existing occupier. She had not separately quantified the effect on value of disregarding the Harrods brand value, but it was likely to be significant. If it were possible to quantify the value effect of the Harrods brand, she considered that it would reinforce her opinion that a 20% deduction for quantum was conservative.

123. Ms Key's base valuation before adjusting for other factors ("BOFA"), namely quality, location, compartmentalisation, fragmentation, exceptional repair costs, listing costs and quantum ("BOFA"), was £18,101,256. That figure was based on an overall value of £12 per sq ft (£129 per m²). By way of a check, Ms Key carried out what she termed a decay analysis. This was a method of analysing the rental value of retail space in a large store, following a similar process to the zoning method adopted for standard retail premises. Traditional market practice was to analyse large stores by an overall rate per square foot rather than a zoned approach. The overall rate

reflected such factors as the number of floor plates, shape, configuration and the amount of space allocated on each floor. It was therefore possible to re-analyse the rent for large stores by reference to the decay of space in different parts of the store, similarly to a zoning approach, but applying an overall rate to the ground floor space. The value of the remaining floors was then adjusted relative to the ground floor and the rent analysed to an overall rate in terms of main space (ITMS). The rate chosen for ancillary floors would vary dependent upon the use of the space.

124. With the exception of Marks and Spencer where insufficient information was available, Ms Key analysed all the settled rating assessments of department stores in the 2000 list for Westminster to reflect the decay of space in different parts of the stores. This exercise expressed the assessed value for each store as a rate ITMS. It started by calculating the value per square foot ITMS for each store. This rate was then applied to the floor area of the appeal hereditament ITMS, which had been adjusted to reflect the decay of space in that building. This generated a value for the appeal hereditament BOFA.

125. Two sets of decay rates were adopted. The first (“Harrods/DTZ”) reflected the sales per square foot on each floor of the appeal hereditament for the year to January 2005. The second (“ME/DTZ”) reflected informal discussions between Mr How’s firm and the valuation officer for the 1990 rating assessments, together with the view of Ms Key’s firm of the decay rates appropriate to large stores. This had regard to the zoning method applicable to standard units up to 70,000 sq ft stores in central London. The value of ancillary floors was increased relative to the ground floor compared with standard units. This reflected the increased ability of a department store to draw customers beyond the ground floor compared with a standard retail unit.

126. This exercise indicated a range of values for the appeal hereditament BOFA of £14m to £18.85m. The unweighted average figures were £16,550,000 adopting the Harrods/DTZ decay rates and £16,150,000 adopting the ME/DTZ rates. As a scoping exercise by reference to ITMS rates, Ms Key said that she would have expected the value of the appeal hereditament before adjustments to fall within this range.

127. Mr How’s approach to the question of a quantum allowance was as follows. Relying upon the analysis of DTZ Research, he assumed that there was unlikely to be more than one potential tenant for the appeal hereditament. In the absence of the opportunity to offer Harrods branded souvenir goods, the hypothetical tenant would find it difficult fully to utilise all the floor space. In these circumstances, his experience told him that he would expect a quantum allowance to apply. The amount of such allowance would depend upon the extent of the competition. In the absence of competition he expected that a reasonable deduction would be not less than 20%. The evidence of the comparison between Allders (9,559 m² GIA) and C&A Modes (16,807 m²) showed a quantum allowance between these two small stores of 11.5%. With these factors in mind, he agreed with Ms Key that there should be a 20% allowance for quantum by comparison with House of Fraser.

128. Mr Lewis did not apply a quantum adjustment to his valuation. He said that such an allowance was justified where a shop was so much larger than the comparable property that the analysis of the latter was unreliable; or where the return to be gained from the extra area diminished, or where the size and rental commitment would reduce the number of potential bidders in the market by comparison to the comparable. The Harrods building, on the other hand, comprised a full range department store, which was fully utilised by the current occupier. The range of goods sold was similar to that in other department stores in central London. The appellant had spent considerable sums extending the property, acquiring extra space and converting non-selling and ancillary areas into sales accommodation. The store was not of excessive size for the current occupier. The floor space was fully utilised, stocking the range of goods normally associated with department stores. There were no areas of wasted space. The property was large enough to enable the occupier to dominate the local retailing environment and benefit from efficiencies in management and maintenance systems and operation.

129. Mr Lewis did not agree with DTZ Research that there would have been no interest in the appeal hereditament from overseas department store operators. In his opinion, it was almost inconceivable that the opportunity to acquire Europe's premier department store would be dismissed by occupiers of premises of a similar nature in other cities elsewhere. The fact that such operators had previously concentrated their expansion ambitions upon their domestic markets was largely the result of lack of opportunity elsewhere. The availability of the appeal hereditament would present a chance to acquire a store of sufficient size to be commercially viable in an unrivalled location in central London. It would result in bids being made by one or more overseas operators as well as the appellant itself and, possibly, Selfridges.

130. Mr Lewis considered that there would have been a premium overbid as a result of international competition. He added 5% to his valuation to reflect this factor. In the course of cross-examination, he accepted that it was doubtful whether Selfridges would have been in the market at the relevant date. He also agreed that it was seriously questionable whether there would have been a bid from any of the overseas department store operators. Nevertheless, he felt that the mere fact that there might be only one potential tenant did not of itself result in the rent achievable being adjusted for quantum.

131. Mr Baker said that quantum was adopted in retail valuations in two different ways. The first was a specific allowance, usually an end allowance, applied to a valuation on the zoning basis. The second was the effect on overall value of size, as one of possibly many other factors, specific to an individual large retail hereditament. Within Greater London, the area with which he was professionally concerned, there were approximately 250 large shops. They included variety stores and department stores, selling mainly non-food products. The localities ranged from poor quality secondary areas to the most prestigious retail location in the United Kingdom. He had acknowledged the existence of the second element of quantum in his own valuations of large shops in almost all the areas with which he was involved. In his view, the quantum element in the overall value was a product of relative demand and was location specific. It would be incorrect to apply a certain quantum factor, appropriate to a shop of a given size in one location, to a shop of the same size in a different location, unless the two locations would attract the same level of demand.

132. Certain areas of London had been strong retail locations in the past. The strength of the location would have supported a Marks and Spencer, a Bhs or a Woolworths of certain sizes. As a result of changes which had occurred in those areas – for example, the development of a nearby covered shopping centre – the stores were now too large for current retailing requirements. The quantum effect on the overall value in such locations could be substantial. In a stronger retail location, the rents for the same size properties might not indicate any allowance for quantum. Size was not of itself the fundamental determinant of whether the overall value would be affected by quantum. It was also necessary to consider demand. In order to illustrate this point, Mr Baker explained how he had valued large retail units in three locations – Croydon, Romford and Clapham Junction. Croydon was a successful regional centre and attracted strong retail demand. The others were weaker retail locations, where demand for large retail properties was reduced, resulting in larger adjustments for quantum.

133. Mr Baker considered that quantum existed in the West End market, but only up to a threshold of 100,000 sq ft (9,290m²). Below that level there was demand from retailers such as Gap and Waterstones, who normally traded from much smaller premises, for a “flagship” store in the West End. That demand did not extend to larger premises. The evidence of agreed rating assessments for department stores ranging from 16,308m² (Liberty in Regent Street) to 60,589m² (John Lewis) indicated no allowance for size. Although the assessment of Selfridges (96,004m²) was subject to an outstanding appeal, it did not incorporate a quantum adjustment either.

134. Mr Baker described the hypothetical marketing of the appeal hereditament as a once in a lifetime opportunity to acquire the largest and most prestigious shop in the UK. He said that two alternative situations could be envisaged. The first was that demand would be very limited and the rent would be at a discount to the rents of comparable properties. The second was that demand would be considerable and the rent would be at a premium to the rents of comparable properties. The first alternative was the position adopted by Ms Key and Mr How. Mr Lewis, on the other hand, had concluded that the marketing of the appeal hereditament would generate sufficient demand for the successful rental bid to be at a premium to the rents of comparables.

135. There was no factual evidence and opinions were, inevitably, speculative. It would not be appropriate to base a rating valuation on a purely speculative opinion. A reasonable position had to be adopted. In Mr Baker’s judgment, the reasonable position was that the outcome of the marketing exercise would be broadly neutral between these two alternatives, and that there would be neither a discount nor a premium in the agreed rent. It followed that the rent would not reflect quantum.

136. Mr Baker suggested that demand for John Lewis would be at a similar level to that for the appeal hereditament. Since no allowance for quantum had been incorporated in the assessment of the former, which had been agreed with Mr How’s firm, no such allowance was appropriate for the appeal hereditament. Mr Baker pointed out that the gross internal area of the appeal hereditament had increased in 2003 from 140,337m² to 145,959m². In 2006, the appellant had taken occupation of 102 Brompton Road for occupation as a food store and this was incorporated in the overall hereditament. He concluded that the actual occupier had an

occupational requirement for a department store slightly larger than that existing on the material day and was prepared to pay substantial sums to achieve the required enlargement. For all these reasons, he took the view that the valuation of the appeal hereditament should include no adjustment for size.

Quantum: conclusions

137. As we have said above, quantum constituted the largest difference between the parties. The appellant's case was that 20% should be allowed for this, while the respondent made no such allowance. The starting-point, in our view, must be with the comparables. They range in size from 29,877 m² (Marks and Spencer) to 60,589 m² (John Lewis) and they show no allowance for quantum. There is thus no inference to be drawn that simply because of its very considerable size Harrods should be valued at a lower rate per m² than the comparables. If there is to be an allowance for quantum, it must be sought elsewhere. The arguments were essentially on two fronts – the demand for such large premises, and the usability of the space. We will consider these in turn. Before we do so, however, we should deal with the topic of decay in view of Mr Holgate's submission that Ms Key's decay analysis added support to the case for a quantum adjustment.

138. Mr Baker's basic value before adjustments was £18,918,077 (£135 per m²) and thus outside the range suggested by Ms Key's decay approach. He considered, however, that that analysis was of no assistance. We agree, for the following reasons. Firstly, an exercise which produces – as Ms Key's does – a range of values, varying by 35 per cent, for one element of the valuation is an extremely imprecise valuation tool. Secondly, Ms Key has never used her decay analysis for the purposes of rental valuations of West End department stores prepared on an overall basis. Nor has such an analysis been used for the valuation of such stores for rating purposes in any rating list including the 1990 list. Ms Key has, in effect, sought to use her decay analysis as a proxy for a zoned approach to valuation, even though zoning is no longer used either for rental or rating valuations of department stores. Furthermore, the decay analysis only purports to assist with the top line of the valuation, that is, before the question of any deduction for size is considered.

139. The evidence does not establish in our view that there would have been a competing bidder for the hereditament at the valuation date. Mr Lewis originally took the view that Selfridges would have been a potential competing bidder and, among foreign companies, Bloomingdales, Macy's, Galleries Lafayette and Mitsukoshi would, he thought, also have been in the market. It was in consequence of this that he made a 5% addition to the base rate. On further consideration, Mr Lewis recognised that the only UK bidder would be Harrods, and he accepted that it was questionable whether any international company would bid at all. We think it improbable that any international operator would open a new store of this huge size in London, and inconceivable that it would contemplate doing so other than at a rent that would be well below what Harrods would be prepared to pay. Effectively, therefore, Harrods would have been the only bidder.

140. The fact that Harrods would have been the only bidder does not, however, suggest to us that it would only have been prepared to pay, or could have negotiated, a rent that was lower per m² than the basic rate. We are not persuaded that the extent of demand is necessarily of significance to the question whether an allowance for quantum should be made. Even assuming that there were competing bidders, if on the evidence each would have regarded the available space as excessive for the operation that it wished to carry on, this would be likely to reduce the rent in terms of the rate per m². On the other hand the absence of any competing bidder would not by itself cause a reduction in the rate per m² unless the potential tenant saw the amount of floorspace as excessive.

141. The determining consideration, in our judgment, is whether the amount of floorspace was indeed excessively large for Harrods' purposes. The evidence does not suggest that it is. On the contrary, the history of its occupation of the store has been one of expanding the retail floorspace. There was a significant increase in the selling area in the years 1994-8. Mr Blow said that all retailers, specifically department stores trading off multiple floors, faced a similar challenge in terms of draw and circulation, but he thought that Harrods' challenge was greater than anyone else's because of the size and configuration of the store. He agreed, however, that it was not his evidence that there was ever a period of time when Harrods was significantly over-provided with floorspace. Indeed Harrods' retail model, he agreed, enabled it to make effective use of the entirety of the retail floorspace that was available to it.

142. It is, of course, in the nature of a department store operation that some departments will be significantly more sales-intensive than other departments and that there will be a falling off in such intensity above the ground floor. But additional floorspace on the upper levels has enabled Harrods to provide the full range of merchandise that is one of the hallmarks of its operation. This pattern of continued expansion is, in our view, good evidence that the amount of floorspace is not excessive in terms of Harrods' operation and not comparatively excessive when related to the operations of the retailers in the comparable stores. We do not think that the case for an allowance for quantum has been made out.

Conclusion

143. We attach our valuation, incorporating the various conclusions which we have mentioned (Appendix 5). Harrods' appeal is allowed and the valuation officer's appeal is dismissed. We order that the assessment of the appeal hereditament in the 2000 rating list shall be altered to £16,575,000.

144. A letter on costs accompanies this decision, which will take effect when the question of costs is decided.

Dated 21 June 2007

George Bartlett QC, President

N J Rose FRICS

Appendix 1

87-135 BROMPTON ROAD, LONDON, SW1X 7XL

VALUATION BY

Nicholas Peter How BSc (Est Man), FRICS

Valuation at 1 April 1998 but taking the matters mentioned in Schedule 6
paragraph 2(7) as they were on the Material Day 1 April 2000 in accordance with Section
56 and Schedule 6 paragraph 2(1) of the Local Government Finance Act 1988

Basic valuation	140,133.9 m ²	@	£115	£16,115,399
Adjustments (1)	modernity	plus 7.5%		
	goods delivery facilities	<u>plus 1.5%</u>		
		plus 9.0% of	£16,115,399	<u>£ 1,450,386</u>
	running total			£17,565,785
(2)	location	minus 5.0% of	£16,115,399	<u>£ 805,770</u>
	running total			£16,760,015
(3)	compartmentalisation	minus 2.5% of	£16,115,399	<u>£ 402,885</u>
	running total			£16,357,130
(4)	fragmentation			
	deduct costs identified by Nigel Blow		£ 586,225	
(5)	exceptional repair costs			
	deduct costs identified by Malcom Wiffen		£ 1,000,000	
	deduct costs identified by WSP		£ 218,600	
(6)	listing costs			
	deduct costs identified by Andrew Hudson		<u>£ 250,000</u>	
	total deductions		£ 2,054,825	<u>£ 2,054,825</u>
	running total			£14,302,305
(7)	quantum	minus 20%		<u>£ 2,860,461</u>
				£11,441,844
			Say RV	£11,450,000

87-135 BROMPTON ROAD, LONDON, SW1X 7XL

VALUATION BY

Stephen Anthony Baker BA, Dip Rating, FRICS, IRRV
(Valuation Officer)

Basis for comparable properties in Oxford Street: £135 per m²

Basic value 140,133.9 m² @ £135 £18,918,077

Adjustments:-

(All but one adjustments are made by reference to the agreed basis for the key rented property, House of Fraser, 308-322 Oxford Street, London, W1C 1HF (£115 per m²). The exception is the adjustment for the additional costs of maintenance, which is based on the adjusted basis.)

Quality	Add	5%
Heating and ventilation	Deduct	1%
Compartmentalisation	Deduct	2.5%
Loading facilities and fragmentation	Deduct	1.5%
Total additions		5%
Total deductions		5%
Net addition		Nil

Valuation prior to adjustment for exceptional costs 140,133.9 m² @ £135 £18,918,077

Less for additional costs of maintenance and additional costs arising from listed status	5%	<u>945,904</u>
		17,972,173

Say RV £17,950,000

87-135 BROMPTON ROAD, LONDON, SW1X 7XL

VALUATION BY

Sarah Jane Key BSc(Hons), MRICS

Base Valuation	1,508,438 sq ft	@ £12 per sq ft	£18,101,256
Percentage Adjustments	Quality	Plus 7.5% of £18,101,256	+ <u>£ 1,357,594</u>
			£19,458,850
	Location	Minus 5% of £18,101,256	- <u>£ 905,063</u>
			£18,553,787
	Compartmentalisation	Minus 2.5% of £18,101,256	- <u>£ 452,531</u>
			<u>£18,101,256</u>
Absolute Adjustments	Fragmentation	Minus costs identified by N Blow	- <u>£ 586,225</u>
			<u>£17,515,031</u>
	Exceptional Repair Costs	Minus costs identified by	
		N Wiffen - £1,000,000	- £ 1,218,600
		WSP - £ 218,600	- <u>£16,296,431</u>
	Listing Costs	Minus costs identified by A Hudson	- <u>£ 250,000</u>
			<u>£16,046,431</u>
End Allowance	Quantum	Minus 20% of £16,046,431	- <u>£ 3,209,286</u>
			<u>£12,837,145</u>

Say RV **£12,840,000**

87-135 BROMPTON ROAD, LONDON SW1X 7XL

VALUATION BY

Paul Lewis FRICS, FCI Arb

Basic rent	£135 per m ²
Quality	plus 7.5%
Location	plus 5%
Adjusted rate	£151.88 per m ²

140,137 m ² @ £151.88	=	£21,284,007
<u>Less</u> for extra costs resulting from listing and fragmentation		<u>1,286,000</u>
Net rent		19,998,007
<u>Add</u> premium bid @ 5%		<u>999,900</u>
		20,997,907

Say RV £21,000,000

87-135 BROMPTON ROAD, LONDON, SW1X 7XL

Valuation by Lands Tribunal

Basic value 140,133.9m² @ £135 £18,918,077

Less

Lack of air-conditioning	161,154	
Exceptional maintenance costs	1,586,000	
Exceptional delivery costs	<u>586,225</u>	
		<u>2,333,379</u>
		16,584,698

Say RV £16,575,000