



RA/42/2007

RA/45/2007

LANDS TRIBUNAL ACT 1949

RATING – valuation – shops – whether appeal parade less valuable than other side of shopping street – rental evidence – assessments – tone of list – lack of central heating – claimed disability due to layout – appeals dismissed

IN THE MATTER OF NOTICES OF APPEAL

BETWEEN **NIGEL GREEN** **Appellant**

and

JACQUI SUTTON-RILEY **Respondent**
(Valuation Officer)

and

VERNON BUILDING SOCIETY **Appellant**

and

JACQUI SUTTON-RILEY **Respondent**
(Valuation Officer)

Re: 10 and 12B Woodford Road
Bramhall
Stockport
Cheshire SK7 1JJ

Before: A J Trott FRICS

Sitting at Manchester Employment Tribunal, Alexandra House,
14-22 The Parsonage, Manchester, M3 2JA
on 7 November 2008

Mr Kenneth Sawyer MRICS IRRV on behalf of the appellant
The respondent valuation officer in person, with the permission of the Tribunal

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The following cases are referred to in this decision:

Lotus and Delta Limited v Culverwell (VO) and Leicester City Council [1976] RA 141

Dawkins (VO) v Ash Brothers and Heaton Limited [1969] 2 AC 366, HL

Ladies' Hosiery and Underwear Limited v West Middlesex Assessment Committee [1932] 2 KB 679

H J Banks and Company Limited v Anthony Speight and Colin Robert Snowball (Valuation Officers) [2005] RA 61

The following cases were referred to in argument:

Futures London limited v David Lloyd Stratford (VO) (2005) Lands Tribunal RA/47/2005 (unreported)

Sarah Kate Barton (VO) v Charles N Brown (2007) Lands Tribunal RA/83/2006 (unreported)

DECISION

Introduction

1. These are appeals by the ratepayers against a decision of the Manchester South Valuation Tribunal dated 10 April 2007 determining the assessment in the 2005 local non-domestic rating list of shops and premises at 10 and 12B Woodford Road, Bramhall, Stockport, Cheshire SK7 1JJ at rateable values of £13,000 and £13,750 respectively, the figures shown in the compiled list and supported by the respondent. The appellants argue in these appeals that the rateable values should be reduced to £10,750 (No.10) and £12,250 (No.12B). The material day and the effective date for the appeals is 1 April 2005.

2. The appeals were heard together under the simplified procedure. Mr Kenneth Sawyer MRICS IRRV appeared on behalf of the appellants, with the leave of the Tribunal, in the dual capacity of representative and expert witness. He called Mr Ian Coulson FRICS IRRV, the principal of Coulson Property Services Limited, as an expert valuation witness in respect of the appeal at 12B Woodford Road. Ms Jacqui Sutton-Riley MRICS was given leave by the Tribunal to appear in person as valuation officer.

3. I made an accompanied site inspection of the appeal properties and the surrounding area on 6 November 2008.

Facts

4. The parties prepared a statement of agreed facts from which, together with the evidence and my site inspection, I find the following facts.

5. The appeal properties are located in the centre of the village of Bramhall and form part of a parade of 11 shops on the western side of Woodford Road at its junction with Ack Lane East and Bramhall Lane South. They are opposite Nos.7-13 Woodford Road which form part of a longer parade of shops on the eastern side of the road running northwards from No.31 at its junction with Meadway and continuing into Bramhall Lane South. There is a small shopping precinct, the Bramhall Centre, to the north of the appeal properties, bounded by Ack Lane East and Bramhall Lane South.

6. 10 Woodford Road was built circa 1904 and is a terraced lock-up shop unit with two floors of residential accommodation above. It has a rear kitchen and WC and a cellar that is used as a store. It is heated by a single convactor radiator positioned above the front door. There is no parking space. The agreed area in terms of Zone A (ITZA) is 39.40 m².

7. No.10 was let on an FRI lease for 10 years from 2 May 2001 at an initial rent of £15,000 per annum (£380.71 per m²) and subject to three yearly rent reviews. The rent was reviewed in

May 2004 to £16,500 per annum (£418.78 per m²) and again in May 2007 to £17,500 per annum (£444.16 per m²). It is occupied by Nigel Green trading as Heart to Heart, a Hallmark card shop.

8. 12B Woodford Road forms part of a two-storey purpose-built retail development of three shops that was completed in 1983/84. It a ground floor lock-up shop unit with a rear kitchen and WC. It is centrally heated. There is no parking space. The agreed area is 41.21 m² ITZA.

9. No.12B was let together with No.12C on an FRI lease for 25 years from 25 September 1984 subject to five yearly rent reviews. The rent was reviewed in 2004 to £28,000 per annum. No.12C was sublet on a 25 year FRI lease from 25 September 1984. The reviewed rent in 2004 was £14,000 per annum. There is no agreed devaluation of the 2004 reviewed rent for 12B because the parties did not agree the area of No.12C ITZA. Mr Sawyer said it was 38.79 m², Ms Sutton-Riley 34.44 m² and Mr Coulson 40.51 m².

10. The 2005 list compiled assessments were based on a Zone A rent of £335 per m² for the subject parade of 11 shops, including the appeal properties. On the eastern side of Woodford Road the Zone A figures were £300 per m² for Nos.21-31, £310 per m² for Nos.7 to 19, £320 per m² for Nos.3-5 and £350 per m² for properties in Bramhall Lane South, including the two prime retail units (Forbuoys and Boots) at the apex of the junction between Ack Lane East and Bramhall Lane South.

11. Three proposals in respect of the assessments of properties in the subject parade have been settled, at 3 Ack Lane East and Nos.2 and 12 C Woodford Road. The first two were withdrawn and the third was settled by agreement. There is an outstanding proposal in respect of 5 Ack Lane East. Disability allowances have been made in respect of the assessments of Nos. 2,5,11 and 31 Woodford Road.

Issues

12. The main issue in respect of both appeal properties is the Zone A rate which the appellants argue should be £300 per m² and which the respondent says is fairly represented by the assessment figure of £335 per m². There are two further issues in respect of 10 Woodford Road. Firstly, the appellant argues that an adjustment should be made to reflect the lack of central heating and, secondly, that the shop is inconvenienced by its layout and should be given a disability allowance.

The case for the appellants

13. Mr Sawyer accepted, following the guidance given by the Tribunal, Mr J H Emlyn Jones FRICS, in *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council* [1976] RA 141, that the starting point for his analysis should be the lease rents on the appeal properties. He said that the rent for No.10 that was fixed on the grant of the lease in 2001 was high

(£380.71 per m²), having been influenced by the rent on a new letting of 6 Woodford Road at 18,080 per annum (£383.61 per m² ITZA) in August 2000. He described the lessee of No.6 as a “boom trade” tenant (Bramhall Health and Beauty) that ceased trading in 2007. He said that this was evidence that the rent on No.10 was above the reasonable rental expectation level contemplated by the statutory definition.

14. The lease at No.12B formed part of a larger letting with No.12C and the appeal hereditament did not correspond to the extent of the demised premises. The analysis of the reviewed rent of £28,000 per annum depended upon how No.12C was measured ITZA. There was no agreement on this point and Mr Sawyer said that any apportionment of the rent under the lease would be subjective and lacking in precision. His own analysis showed a rent of £349.96 per m² ITZA for Nos.12B and 12C combined, comprising No.12B at £339.72 per m² and No.12C at £360.82 per m². However, he argued that the result of this analysis provided evidence of less weight than that contemplated in *Lotus and Delta*.

15. The second stage of the required analysis was to review the rents payable for similar properties, both in the subject parade and on the opposite (eastern) side of Woodford Road (Nos.3 to 31). Within the subject parade Mr Sawyer referred to a letting at No.2 for 10 years, with a five yearly rent review, from 7 January 2002, on internal repairing and insuring terms, which he devalued at £271.27 per m² ITZA. There had been a lease renewal at No.4 in September 2005. A new 16-year lease, with four yearly rent reviews, on internal repairing terms, was granted at a stepped rent which the parties agreed devalued at £442.35 per m² ITZA. Mr Sawyer stressed that both of these comparables were lock-up shops where rent devaluations were not encumbered by having to make subjective adjustments in respect of the upper parts.

16. The remaining rental evidence from the subject parade was in respect of No.8, a 15 year FRI lease from April 2003 with five yearly rent reviews at an agreed rent of £371.05 per m² ITZA; No.3 Ack Lane East, a 15 year FRI lease from November 2002 with five yearly rent reviews at an agreed rent of £400.40 per m² ITZA; and No.5 Ack Lane East, a rent review on FRI terms in April 2004 at an agreed rent of £493.55 per m² ITZA.

17. Mr Sawyer also referred to a 2002 rent review determination by an independent expert in respect of Barclays Bank at 14 Woodford Road, immediately south of the appeal parade. This determination was made on the zoning basis at a figure of £269.14 per m² ITZA. The permitted user included shop use.

18. Mr Sawyer said that since 2005 there had been six instances of tenants vacating shops in the appeal parade due to closure of the business or to lease assignments with no premiums being paid. He considered that this undermined the credibility of the appeal parade rents that had been relied upon by the respondent. They were unrealistically high. In support of this argument he said that the annual rental growth at No.10 between 2001 to 2004 was 3.53%, which was considerably lower than the rental growth in properties on the eastern side of Woodford Road. For instance between 2003 to 2006 the rent at No.23 had increased by 7.29% per annum.

19. Mr Sawyer argued that the appeal parade on the western side of Woodford Road was a less attractive retail pitch than the parade on the eastern side. The main pedestrian flow was along the eastern side which also benefitted from direct access to the main Bramhall public car parks located to the south in Meadway. Pedestrians could walk to the odd numbered shops from there without having to cross the busy Woodford Road. In support of his argument Mr Sawyer produced a pedestrian survey that had undertaken six counts between August 2005 and January 2007. This showed that on each occasion the pedestrian flows were significantly higher along the eastern side of Woodford Road (outside Nos.3 and 5) compared with the western (appeal) side (outside Nos.2 and 4). Furthermore, the pavement was much wider along most of the eastern parade (Nos.15-31) and there was a bus stop outside No.29. Several national retailers traded from this side of the road.

20. Despite this, and the evidence of similar rents on both sides of the road, details of which Mr Sawyer presented in evidence, the rating assessments on the eastern side of Woodford Road were based on a lower figure per m² than those on the appeal parade. He noted that the appeal in respect of 12C Woodford Road had been settled at a rateable value of £11,500, a reduction of 17.86% from the compiled list assessment of £14,000, notwithstanding the rent review in 2004 at £14,000 per annum.

21. Mr Coulson had negotiated the 2004 rent reviews on 12B and 12C Woodford Road and the review of the sublease at No.12C. He had also negotiated rent reviews at No.23 in 2003 and 2006. He was a local resident. He agreed with Mr Sawyer that there was a surge in rents in the appeal parade from 2003 with high level rents being paid by the “boom trades”. This had affected other rent negotiations in the parade. He said that the Vernon Building Society at No.12B was assessed at £335 per m² ITZA whereas the Alliance & Leicester Building Society at No.3 was assessed at £320 per m² despite being adjacent to the peak value area of the village. The Cheshire Building Society at No.31 was assessed at £300 per m² despite being the nearest shop to the main public car parks, on a corner location and benefiting from a high pedestrian flow.

22. He explained that he had agreed the rent review at 12C Woodford Road on the basis of £355 per m². He took the area of the first floor as 12.35 m² ITZA (based upon a relativity of Zone A/6) and made an end deduction of 7.5% for “planning”, although he could not recall precisely why he had done so. He agreed that the rent of £355 per m² supported the adopted rate of £335 per m² ITZA “at the date of review”.

23. Mr Sawyer said that full central heating had been installed in five of the 11 shops in the appeal parade. The respondent had not made any adjustment between heated and unheated shops although he said that such adjustments had been made in respect of industrial and office premises. 10 Woodford Road did not have full central heating and no rateable value adjustment had been made to reflect its absence. He submitted that it was inconceivable that the rental market would not make an allowance for shops without central heating. He noted that such a differential existed in respect of air conditioning in shops in the 2005 list despite the fact that, like central heating, there might be a limited demand for it from retailers. He submitted that the lack of full central heating should be reflected in a 2.5% end allowance.

24. Mr Sawyer argued that 10 Woodford Road was inconvenienced by a poor layout. The full shop frontage of 4.55 metres reduced to a width of 2.92 metres at a depth of 8.95 metres where there was also a change of floor level with a 0.2 metre step. The width reduced further at the rear of the shop to 2.76 metres. The rear shop area was partitioned off for storage and had limited utility because of the narrow width of the rear wall (1.58 metres) and due to the kitchen door opening directly into the partitioned space. He noted that disability allowances had been made in respect of four other nearby shops, at Nos.2, 5, 11 and 31 Woodford Road. These allowances ranged from 2.32% to 10% and, by comparison, Mr Sawyer said that a 5% disability allowance was appropriate for No.10.

25. Mr Sawyer, referring to the judgment of Lord Pearce in *Dawkins (VO) v Ash Brothers and Heaton Limited* [1969] 2 AC 366, HL said that rating was a standard by which every hereditament was measured by reference to every other hereditament. It was a comparative exercise. The respondent had relied upon the Court of Appeal decision in *Ladies' Hosiery and Underwear Limited v West Middlesex Assessment Committee* [1932] 2 KB 679 to support her view that if a number of properties were under-assessed it did not mean that the rateable value of other properties should be reduced so as to be under-assessed as well.

26. Mr Sawyer submitted that *Ladies Hosiery* could be distinguished on its facts from the present appeals in two ways. Firstly in *Ladies Hosiery* the appellant ratepayer produced no evidence to prove that the assessment was incorrect. Secondly, a reduction in the assessment of the appeal hereditament to bring it in line with the tone for the seven comparable shops in that appeal would have resulted in a "uniform error". In the subject appeals the appellant had produced evidence that showed the assessment of the appeal hereditaments was too high. A comparison of the appeal properties with the shops on the eastern side of Woodford Road would not precipitate a uniform error because given the tone of the list for shops in Bramhall the assessments of the odd-numbered shops was not erroneous and no evidence had been produced to show that they were under-assessed.

27. Mr Sawyer concluded that the respondent's approach was flawed because she had not correctly followed the guidance contained in *Lotus and Delta*. She had not looked at all the rental and assessment evidence in the immediate locality. Instead she had confined herself to examining the evidence from the appeal parade. The rents relied upon by the VO were not representative of the rent that might reasonably be expected on the statutory hypothesis.

The case for the respondent

28. Ms Sutton-Riley adopted the guidance given by the Tribunal in *Lotus and Delta* as the framework by which she analysed the evidence. She took as her starting point the rent actually passing on the appeal hereditaments. The rent on 10 Woodford Road was fixed by a new letting less than two years before the AVD and was reviewed on 2 May 2004. The devaluations were agreed between the parties at £380.71 and £418.78 per m² respectively. Ms Sutton-Riley considered that both these rents provided strong support for the reasonableness of the Zone A rate of £335 per m².

29. Ms Sutton-Riley accepted that the rental evidence for 12B Woodford Road was derived from the letting of a double unit with No.12C. Nevertheless she considered the rent to be relevant. The parties differed in their analysis of the first floor offices that formed part of 12C. Ms Sutton Riley analysed this space at Zone A/16 and took the store and kitchen at A/20. This gave an area ITZA of 34.44 m². The 2004 rent review devalued at £370.13 per m² for 12B and 12C combined. She devalued the rent on the review of the sublease of 12C at £406.50 per m². Ms Sutton-Riley criticised Mr Sawyer's approach to the devaluation of No.12C which she said was unsubstantiated. He had calculated its area in terms of Zone A by assuming a rate of A/8 for the first floor offices and store and a rate of A/20 for the kitchen. The effect of this was to increase the area ITZA to 38.80 m² and to decrease the devalued rent of No.12C on review to £360.82 per m². Ms Sutton-Riley said that her analysis had adopted the respondent's standard shop scales that were used across the network. This analysis had been agreed with CVS Surveyors in respect of the settlement of the assessment at No.12C. She concluded that, based on the rents payable on the appeal properties, the figure of £335 per m² in terms of Zone A was supported.

30. Turning to the rental evidence from comparable properties Ms Sutton-Riley explained that she had relied solely upon rents payable in respect of the appeal parade and had not taken account of the evidence from the eastern side of Woodford Road. She did so because the road had formed a natural break, being a busy suburban road that was not easy to cross. Ms Sutton-Riley relied upon the rental evidence from 4, 6 and 8 Woodford Road and from 3 and 5 Ack Lane East that was agreed with Mr Sawyer (see paragraphs 13 to 16 above). She also relied upon the rent review at 6 Woodford Road in September 2003 which devalued at an agreed figure of £442.82 per m² ITZA. The parties disputed the devaluation of 2 Woodford Road which Ms Sutton-Riley devalued at £313.60 per m². She dismissed the evidence of the 2002 rent review at Barclays Bank at 14 Woodford Road. This was a detached modern unit set back from the main road and which was not in the nature of a shop unit. It did not have a display window and had a large element of customer car parking at the rear. She did not think that it was a helpful comparable.

31. Ms Sutton-Riley placed the most weight on the rental evidence at 10 Woodford Road and the new lettings close to the AVD on 8 Woodford Road and 3 Ack Lane East. She also placed weight upon the rent review of 6 Woodford Road in September 2003. She said that although the other rents in the block were supportive of her argument she attached less weight to them. She concluded that the existing rate of £335 per m² was clearly supported by the relevant rental evidence.

32. In the next stage of her analysis Ms Sutton Riley considered the evidence of settled assessments of comparable properties. She identified three such settlements, at 3 Ack Lane East (where the rating appeal was withdrawn by the ratepayers, who were advised by surveyors, the Coupers Partnership), 2 Woodford Road (where the rating appeal was withdrawn by the ratepayer who was advised by Montagu Evans) and 12C Woodford Road (where the assessment was agreed with CVS Surveyors at £11,500, a reduction from £14,000 based upon changes in the survey and to the treatment of the first floor offices. CVS Surveyors accepted that the rate of £335 per m² ITZA was correct). It was now three and a half years since the 2005 list was compiled and Ms Sutton-Riley submitted that there was a general

acceptance of the tone of value applied to the appeal parade. This was supported by the settlement evidence that she has cited. She said that the tone of the list had been established at £335 per m² ITZA.

33. Ms Sutton-Riley accepted that the properties on the eastern side of Woodford Road were generally valued at a lower rate per m² but whereas she acknowledged that rental evidence from those properties was admissible she submitted that it was of lesser worth than her evidence. There was no need to spread the net any wider than the appeal parade. The fact that there was a difference between the two sides of the road did not necessarily mean that the appeal parade was over-assessed. It could equally mean that the eastern parade was under-assessed. But Mr Sawyer had not shown this to be the case. Ms Sutton-Riley had not heard of the “boom trades” to which Mr Sawyer and Mr Coulson had referred and she felt this was being used as an excuse to ignore prime rental evidence because it was inconveniently high. The closure of businesses that Mr Sawyer had referred to was not relevant and could not be reflected in the valuation. The parties were simply required to value the properties having regard to the economic circumstances and rental values as at the AVD in the context of the physical circumstances as they existed at the material day.

34. Mr Sawyer’s reference to *Dawkins* was incorrect. Lord Pearce did not say that rating was a standard but that rating sought a standard. Ms Sutton-Riley submitted that the true rule of law was stated in *Ladies Hosiery*, as followed by the Tribunal in *H J Banks and Company Limited v Anthony Speight and Colin Robert Snowball (Valuation Officers)* [2005] RA 61. The objective of rating was to achieve consistent valuations but if a number of properties were under-assessed this did not mean that others should be reduced so that they were under-assessed as well. Ms Sutton-Riley did not necessarily accept that the eastern parade was under valued. She had not considered the matter and expressed no opinion about it because it was not relevant to the subject appeals.

35. Shops in the 2005 rating list had been valued on an unheated basis since central heating was considered to be value insignificant. Only a few shops had central heating and a wet system of hot water radiators was fairly unusual. For many potential occupiers (such as florist, greengrocers or bakers) central heating was of no benefit. The presence or absence of central heating in these appeals was not value significant and the evidence of the appeal parade supported this conclusion. Ms Sutton-Riley said that none of her three key comparables, at 8 and 10 Woodford Road and 3 Ack Lane East, had central heating and their rents were substantially above the adopted rate of £335 per m² showing that such a rate for unheated property was fully supported.

36. The rent at 10 Woodford Road did not reflect any disability. The property was not “vastly different” from other units within the appeal parade and did not warrant a disability allowance. The properties in the vicinity where an allowance had been made could be distinguished from No.10. The stairs at the front of 5 Woodford Road masked the shop. Ms Sutton-Riley, following an inspection of this property earlier this year, had sought to remove the allowance but at present it still remained in the assessment. No.11 had a shared access and a 5% allowance was justified. An allowance of 7.5% was incorporated into the

assessment of No.2 because of pillars and protrusions within the unit. At 31 Woodford Road a 10% allowance was given due to its irregular shape. Ms Sutton-Riley conceded that there were inconsistencies in the application of these disability allowances but said that the level of disability at No.10, consisting of a simple narrowing of the shop and a step up, was too small to be relevant during rental negotiations. No allowance was justified.

Conclusions

37. The appeal hereditaments are both let and, as the parties agreed, the starting point for the consideration of their rateable value should be the actual rents payable under their respective leases, as per *Lotus and Delta*. The lease at 10 Woodford Road was granted for 10 years on FRI terms from 2 May 2001 with three yearly rent reviews. The shop is a self contained lock-up unit and the analysis of the rent payable is not complicated by the need to analyse the upper parts. The parties agree that the reviewed rent in May 2004 devalues, on the statutory hypothesis, to £418.78 per m² in terms of Zone A. The original letting was at an agreed figure of £380.71 per m² ITZA.

38. The analysis of the letting of 12B is more difficult because it was let on FRI terms together with 12C which was immediately sublet. The lease and sublease date from 25 September 1984 and there was a rent review on both in September 2004. The parties did not agree the devalued rent. However, the reviewed rent on the head lease in 2004 was £28,000 and the subletting of 12C was reviewed at the same time in the sum of £14,000. The rent attributable to 12B was taken by Mr Sawyer as the difference between these two sums, ie £14,000, which, using the agreed area for 12B, devalues at £339.72 per m². The rent review of the head lease (12B and 12C together) devalues at £349.96 per m² according to Mr Sawyer and £370.13 per m² according to Ms Sutton-Riley.

39. The rental evidence postdates the AVD and in the case of 12B Woodford Road is complicated by the subletting of 12C. Nevertheless in my judgment there is no evidence to suggest that the adopted rate of £335 per m² is too high, whichever method of analysis is chosen. I also note that Mr Coulson said that the evidence of the review on the subletting of 12C supported the adopted rate (as at the review date). That review was settled by him on the basis of a rent of £355 per m². I agree with Ms Sutton-Riley that the rental evidence of No.10, and to a lesser extent that from 12B and 12C, provide support for her contention that the adopted rate is reasonable. Both Mr Sawyer and Mr Coulson said that the rents in the appeal parade had been distorted by lettings to “boom trade” tenants. I agree with Ms Sutton-Riley that this is an arbitrary classification that is not relevant to the consideration of the rental evidence. Nor do I consider that the evidence, subsequent to the AVD, of tenants vacating shops in the appeal parade is either relevant to the statutory valuation required or proven to be attributable to rents that were too high.

40. Whilst the evidence of the lettings on the appeal hereditaments is good evidence it is not in itself decisive and all other relevant considerations are admissible. The next proposition in *Lotus and Delta* is that where rents of similar properties are available they too should be considered. The parties failed to agree on what evidence of rents on similar properties should

be taken into account. Ms Sutton-Riley said that the best evidence came from the rents on the appeal parade and therefore she took no account of any of the rents paid for properties on the eastern side of Woodford Road. Mr Sawyer said that the rents paid on both sides of the road were relevant. I agree with him. Whilst I accept Ms Sutton-Riley's conclusion that the best rental evidence is to be obtained from lettings in the appeal parade I think that the lettings on the eastern side are admissible and should be considered.

41. Ms Sutton-Riley said that Mr Sawyer misrepresented the legal position in respect of the consistency of assessment as against its accuracy. I do not think that there is any practical difference between the experts on this point. Ms Sutton-Riley refers to the decision of this Tribunal in *H J Banks* which cites from the judgment of Scrutton LJ in *Ladies Hosiery* at 688, a quotation relied upon by Mr Sawyer:

“... The assessing authority should not sacrifice correctness to ensure uniformity, but, if possible, obtain uniformity by correcting inaccuracies rather than by making an inaccurate assessment in order to secure uniform error.”

The Member in *H J Banks*, Mr P H Clarke FRICS, said at paragraph 153 of that decision:

“ Under the rule in *Ladies Hosiery*, however, the correct question is: are the assessments of the appeal hereditaments correct? It is not: are the assessments too high by comparison with British Coal assessments?”

42. In my opinion Mr Sawyer has tried to apply this rule in the present appeals. His case is that the prospect of a uniform error, such as that considered in *Ladies Hosiery*, does not arise in these appeals and that the principle that correctness should not be sacrificed to uniformity is not relevant. Mr Sawyer has sought to show by an examination of all the relevant evidence that the appeal hereditaments have been over-assessed. He does not rely upon a uniform under-assessment of the eastern parade properties. However, I do not consider that the evidence of rent payable on the eastern side of Woodford Road supports Mr Sawyer's contention that the eastern side is the more valuable. In the agreed statement of facts the parties give details of 21 comparables where the rent devaluation is agreed, 10 of which are on the eastern side of Woodford Road and 11 of which are in the appeal parade. The evidence dates from 2000 to 2006 and both sides of the road are evenly represented across this date range. The average rent for the eastern side of the road is £371 per m² and for the appeal parade is £386 per m². Three of the five highest rents are in the appeal parade. The average ratio of the adopted rate per m² to the agreed devaluation of the rent is 86.5% for the eastern side and 89.6% for the appeal parade, a difference that I do not consider to be material.

43. I do not accept Mr Sawyer's argument that the rent review of Barclays Bank at 14 Woodford Road is good rental evidence and I give it no weight. I agree with Ms Sutton-Riley that this building is different in several respects and is not comparable with the appeal parade shops. In the agreed statement of facts it is not included in the description of that parade. Mr Coulson, correctly in my view, described it as a one-off.

44. Mr Sawyer said that the low rental growth of 10 Woodford Road (3.53%) compared with that of No.23 shows that the original rent of No.10 was too high. I reject that argument for two reasons. Firstly, because the comparison is not made over the same period. The rents at No.10 were fixed in 2001 and 2004 whilst those at No.23 were fixed in 2003 and 2006. Secondly, I do not consider that a conclusion of over-renting can be reached by a single comparison between two properties.

45. Mr Sawyer also relies upon the results of six pedestrian counts that were undertaken at various times between August 2005 and January 2007. These were for periods of 15-20 minutes, the majority (four counts) being undertaken between 12.00 pm and 12.50 pm. On average these showed the pedestrian flow along the appeal parade to be 53% of that along the eastern side of Woodford Road. I am not persuaded that these counts are necessarily representative of the pattern of pedestrian flow throughout the whole day (for instance none of them was undertaken in the morning) but they do suggest that the greater pedestrian flow is, as Mr Sawyer claims, along the eastern side of the road. However, I see no evidence that this is reflected in higher rents along the eastern side of the road, which is the relevant consideration in these appeals.

46. Ms Sutton-Riley concludes that a tone of the list has been established for the appeal parade at £335 per m². As the Member said in *H J Banks* at paragraph 237:

“The position at any time regarding the tone of the list is a question of fact. When an assessment is challenged before a tribunal the correct time for deciding whether the tone of the list has been established is immediately before the hearing.” (References omitted)

As at the date of this hearing three ratepayers who were professionally represented had challenged the level of assessment in the appeal parade under the 2005 list. Those three appeals were all settled (either by withdrawal or agreement) at the adopted rate of £335 per m². There is one outstanding proposal at 5 Ack Lane. It is over three and a half years since the 2005 list came into effect and the adopted rate has not been successfully challenged. In my opinion the tone has now settled at the adopted rate.

47. I conclude that the adopted rate of £335 per m² for the appeal properties is supported by the rents payable on those properties, by comparison with the rents payable on other shops in the locality and by the tone of the list established from assessments in the appeal parade that have either been accepted or agreed.

48. Mr Sawyer makes two further points. Firstly, he argues that there should be an allowance at No.10 for the lack of central heating. None of the comparable assessments take central heating into account and it is not reflected in the tone of the list. Nor is there anything in the rental evidence to suggest that the market makes any such allowance and I award none. Secondly, he argues that No.10 should be given a disability allowance due to its narrow configuration at the rear, the step up to the back trading area of the shop and the restrictions on the storage space behind. Ms Sutton-Riley accepts, fairly in my opinion, that there are inconsistencies in the way in which disability allowances have been made in the locality. However, the disabilities of the four shops where such an allowance has been made

can be distinguished from those claimed in respect of No.10. The use of the shop appears to satisfy the needs and requirements of the occupier and the three pieces of rental evidence for No.10 do not reflect any such disability. I do not consider that the factors that Mr Sawyer has described as disabilities merit any allowance.

49. I therefore dismiss the appeals and confirm the assessments of 10 Woodford Road and 12B Woodford Road in the 2005 list at £13,000 and £13,750 respectively.

50. These appeals were heard under the simplified procedure where an award of costs is made only in exceptional circumstances. In my opinion there are no such circumstances in these appeals and neither party suggested that there were. I therefore make no award as to costs.

Dated 5 December 2008

A J Trott FRICS