IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2016] UKUT 167 (LC)
Case No: RA/45/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – valuation – 2010 Rating List - shop and premises – mode & category of occupation - comparables – end allowance - appeal dismissed

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN :

TREVOR SORBIE **Appellant**

- and -

MIKE DUNLEVEY (VALUATION OFFICER) **Respondent**

Basement and ground floor, 27 Floral Street, London WC2E 9DP

- -

- -

Hearing date: 1 March 2016

Paul Francis FRICS

Royal Courts of Justice, London WC2A 2LL

- -

Michael Conneely for the Appellant Ratepayer
John Harding for the Respondent VO

The following cases are referred to in this Decision:
Lotus & Delta v Culverwell (VO) [1976] RA 141
Williams (VO) v Scottish and Newcastle Retail Ltd and Allied Domecq Retailing Ltd [2001] EWCA Civ 185

DECISION

Introduction

1. This is an appeal by the ratepayer from a decision of the Valuation Tribunal for England (the "VTE") dated 3 July 2015 which reduced the compiled list entry in the 2010 Rating List relating to a hairdressing salon and premises at Bst & Grd Flr, 27 Floral Street, Covent Garden, London WC2E 9DP (the "appeal hereditament") from a rateable value ("RV") of £130,000 to £108,000 with effect from 1 April 2010.

2. The ratepayer, Trevor Sorbie, argues that the VTE's determination was excessive having failed to take the appellant's arguments sufficiently into account, particularly as to the appeal hereditament's locational and trading disadvantages, the analysis of comparables and whether or not an end allowance should be applied. As such it overestimated the value of the hereditament which should, it was submitted, be assessed at £71,000 RV. The respondent VO set out, in his statement of case in response, his valuation in the sum of £130,000 but at paragraph 22 he said:

> "Notwithstanding that the expert's valuation as set out below is higher, the respondent Valuation Officer is not contesting the Valuation Tribunal ruling and will be seeking a determination at rateable value of £108,000 on the ground that the VT decision is not excessive".

However, at the hearing on 1 March 2016 Mr Harding made clear that, on the basis of the VO's evidence and valuation, it was the sum of £130,000 RV that was now being sought. That the respondent VO was intending to argue for the higher figure was notified to the appellant ratepayer by email from Mr Jackson of the VOA on 22 February 2016.

3. The hearing was conducted in accordance with the Upper Tribunal (Lands Chamber) simplified procedure and the appellant ratepayer was represented by Mr Michael Conneely BSc MRICS IRRV who acted both as advocate and expert witness. The respondent VO was represented by Mr John Harding of the Valuation Office Agency's Complex Case and Appeals section. He called Mr Aderemi Bademosi MRICS who is a caseworker in the London Non Domestic Rating Unit of the VOA and who gave expert evidence. I carried out an inspection of the appeal hereditament together with a number of the comparables referred to immediately following the hearing.

Facts

4. Although the parties did not produce a formal statement of agreed facts and issues, it was clear that they were in agreement over the physical characteristics and dimensions of the appeal hereditament, and likewise those of the comparables referred to. From the evidence therefore, and from my inspection, I find the following facts. 27 Floral Street comprises the lower ground (basement) and upper ground floors of a late nineteenth century four storey former industrial

building constructed of stock brick and lying on the south side of Floral Street at the junction with Rose Street on the edge of Covent Garden, one of London's prime tourist destinations. All local amenities are available close by including retail, offices, bars, restaurants and transport links. The main Covent Garden piazza and Covent Garden underground station are within about 200 metres.

5. The appeal hereditament extends to approximately 391 sq m, and is described in the 2010 Rating List as a "hairdressing salon and premises", the use to which it is currently put. It is partly air conditioned and in addition to the "sales" areas, kitchen/toilet facilities, some offices and stores, there are a number of below pavement storage vaults off the basement area. Although valued on the basis of A1 retail use, for which it has planning permission, there are no 'shop windows', there being standard windows to the upper ground at about 2 metres above ground level, and smaller windows at pavement level giving limited natural light into the lower ground floor area. Access from the street is through glazed double doors on the front, Floral Street, elevation leading to nine stairs rising to the upper ground floor reception area. Access between the upper ground and basement accommodation is via a separate double staircase. The floors above the appeal premises, which are in separate occupation and are unrelated to this matter, comprise offices.

6. The appellant ratepayer has occupied the appeal hereditament since 1999 under the terms of a lease dated 20 November 1998 for a term of 25 years from 24 June 1998. The landlord of the premises, which had formerly been used as B1 offices until they were vacated in 1997, applied for and obtained A3 planning consent for restaurant/wine bar use, but that was never implemented and has subsequently lapsed. The appellant then applied for and obtained consent for A1 retail use. The rent was reviewed by agreement between Mr Conneely for the tenant and Mr Geoff Wright of CBRE as at 24 June 2008 on the basis of restaurant/wine bar values on a stepped basis at £185,000 for the first year, £195,000 pa for the period 24 June 2009 to 23 June 2010, £200,000 for the following year and £207,500 until 23 June 2012.

7. The appeal hereditament was entered into the 1995 Rating List on 12 April 1999 when the premises were first occupied by the appellant as a hairdressing salon following refurbishment at £33,500 but this was revised by agreement with the VO to £27,500. It was then entered into the 2000 Rating list at £62,000 RV with effect from 1 April 2000 but was reduced by agreement to £44,500 with effect from 13 September 2004 due to a material change in circumstances. The entry into the 2005 Rating List was at £74,000 RV with effect from 1 April 2005 but this was again revised by agreement to £69,500 from the same effective date. The hereditament was then entered into the 2010 Rating List at £130,000 RV and this was revised on appeal by the VTE to the £108,000 RV which is the subject of this appeal.

8. Whilst there was an issue as to what mode and category of occupation was appropriate to be considered for valuation purposes, the experts agreed that if it were to be retail, the layout of the hereditament was such that zoning would be inappropriate.

The VTE decision

9. After outlining the background to the appeal and summarising the evidence, the VTE said:

> "22. The 2005 rateable value for the subject property was based, by agreement, on office rents in the vicinity. Mr Conneely, for the appellant, concedes that he may have been wrong in agreeing this basis and we think he was. It is a matter of law that a hereditament should be valued rebus sic stantibus. A restaurant must be valued as a restaurant, an office as an office and a retail unit as a retail unit, even if it is in a location which looks as if it would more commonly be used as offices. This is in line with the decision in … *Williams (VO) v Scottish and Newcastle Retail Ltd and Allied Domecq Retailing Ltd* [2001] EWCA Civ 185…
>
> 23. Since 1998, the subject hereditament has been used as an upmarket hairdresser and we are satisfied that this use clearly falls within retail use, irrespective of any planning permissions for other use classes that may have been obtained from time to time."

After setting out its reasoning further, the VTE concluded:

> "31. Taking everything into account, we are satisfied that the subject property should be valued at more than the Mercer Street shop [£275 psm]. There is little empirical evidence on which to draw, but we have concluded that an overall value is £325 psm, which takes account of the exclusive access and potential disabilities of that location, including the steps from the street and the positioning of the windows in the property, so no additional end allowance would be justified. We have applied the basic value we have determined to the valuation submitted by Mr Conneely, adopting his approach to the air-conditioned areas for the property and to the relativities to be applied (see our revised valuation in the appendix below)".

That calculation came to £108,235 which was rounded to £108,000 RV.

Issues

10. In determining the rateable value of the appeal hereditament, the following matters are in issue:

a) The interpretation and weight to be given to the relevant evidence

b) The relevance of and weight to be applied to the passing rent (per *Lotus & Delta v Culverwell (VO)* [1976] RA 141)

c) Mode and category of occupation (per *Scottish & Newcastle*)

d) Whether or not an end allowance should be applied

The statutory provision

11. The rateable value of a non-domestic hereditament is defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 ("the 1988 Act"):

> "2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions:
>
> (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
>
> (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
>
> (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above."

12. Pursuant to the Rating Lists (Valuation Date) (England) Order 2008 [SI No 2008 No 216] 1 April 2008 is specified as the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of local and central non-domestic rating lists which are to be compiled for England on 1 April 2010. This is the antecedent valuation date ("AVD").

The case for the appellant ratepayer

13. Mr Conneely is a chartered surveyor with some 36 years rating experience, including nine years working at the VOA. He has been practising in Covent Garden since 1991 and has acted for the appellant ratepayer in both rating matters and those regarding the lease of the premises throughout the appellant's occupation of the appeal hereditament. Regarding the location of the property, Mr Conneely said that it is towards the western end of Floral Street close to where it joins Garrick Street in a mixed area where retail is not the principal use – that being towards the centre of the street and around the crossroads with James Street which leads into the main piazza and to Covent Garden underground station. The only public entrance to the appeal unit faces onto offices and the rear of a shop on Longacre which runs parallel to Floral Street to the north. Not only do the premises not have any form of shop frontage, but their visibility is limited both from the James Street and Garrick Street directions due to the curvature of the street in the vicinity. It is not, therefore, either a good location or a suitable building for retailing purposes.

14. Mr Conneely explained why, despite the 995, 2000 and 2005 assessments having been agreed with the VO on the basis of office rental values, it was being argued that the assessment should nevertheless be based upon overall (not zoned) retail values and why the passing rent should not be given any weight for comparison purposes. When the premises were marketed in 1998, they had A3 planning consent for restaurant/wine bar use (which commanded significantly higher values than either offices or retail) and the initial rent that was agreed in the sum of £103,500 pa reflected the fact that the successful bidder was in competition with such occupiers.

15. Clause 2(7)(a) in the lease permits the use of the property "*for any purpose within Classes A1* [retail] *or A3* [restaurant] *or B1* [office] *of the Town and Country Planning Use Classes Order 1987"* subject to some exclusions such as use as an escort agency or turf accountant, and a restriction on use under A3 to "good class restaurant" excluding hot food takeaways. The rent review clause in the Fourth Schedule of the lease specifically states at clause (E)(b) that the open market rent is to be assessed *"otherwise upon the terms and conditions contained in this Lease ... and in particular on the assumption that the property can be used for the purposes permitted by clause 2(7)(a)"*. Thus, Mr Conneely said, at every review the rent has to be assessed upon the assumption that restaurant/wine bar was a permitted use; the value of the premises as a restaurant would very much higher than the value of the use to which the appellant put the premises – retail. This had been confirmed, following the taking of legal advice, by the arbitrator who had been appointed to determine the 2003 rent review. Because of the arbitrator's findings, all subsequent rent reviews had been on this basis. The fact that the arbitrator's award had determined the 2005 rent at £165,000 whereas the assessment (on an office basis) for the 2005 Rating List was agreed at £69,500 RV proves, Mr Conneely said, how little weight should be given to the passing rent.

16. The reason that previous assessments for rating purposes had been on an office basis was because, at the time they were negotiated, Mr Conneely believed that planning permission would have been granted for reinstatement of such use and that use for that purpose would not offend the doctrine of rebus sic stantibus (the lease and rent review provisions being irrelevant for this purpose). He pointed out that in the 2007 Westminster Unitary Development Plan the City Council had formulated a policy for Covent Garden to protect retail uses and frontages. This was further emphasised in Westminster City Council's City Plan of 2010 and so permission for reversion to office use by the material day would now be unlikely, hence his current valuation for the 2010 Rating List was on a retail basis.

17. However, Mr Conneely pointed out the appeal hereditament is an unusual retail unit taking into account the layout of the accommodation and the fact it does not have any form of shop front, and it should therefore be valued on an overall rather than zoned basis. The main comparable upon which he relied was a shop in a converted industrial building which also had a hard frontage at 4 Mercer Street, off Long Acre. It is a shop occupied by Snow & Rock with four sales floors connected by a central lift and had been valued on an overall basis at £275 psm for the 2010 Rating List entry. The accommodation was far better configured for retail purposes and the location of the shop was in an area where zone A values are £4,250 psm (including a unit immediately adjoining 4 Mercer Street), whereas the closest retail unit on Floral Street to the appeal hereditament, on the corner of a lane leading down to Long Acre, has a zone A rate of £1,100 psm, and there were others in the immediate vicinity at zone A rates

ranging between £1,100 and £1,200 psm. Levels in Garrick Street, a predominately shopping street, are also much lower than Long Acre at around £1,150 psm. This was, in terms of retail values, irrefutable proof that the appeal hereditament is not located in a valuable position for retail purposes and Mr Conneely's view was that based upon the Mercer Street evidence, the overall base value for the appeal hereditament should be £250 psm from which 15% should be deducted as an end allowance to reflect the poor entrance and configuration of the windows.

18. Mr Conneely also relied upon the ground floor and basement hereditament at 71 Monmouth Street which is described in the Rating List as "hairdressing salon and premises". It is in a predominately retail area not far from the appeal hereditament where zone A rates are at £1,600 psm. The ground floor is valued on an overall basis at £300 psm and the basement is at £225 psm. This, he said, adds further support to the base figure of £250 psm on the appeal premises.

19. In cross-examination, Mr Conneely accepted that the location of the appeal hereditament was good for the up-market clientele that Trevor Sorbie attracted to his internationally renowned salon, and acknowledged that when the business moved there in 1999 the main search parameter was that the premises had to be in Covent Garden. However, in valuing the hereditament as a retail unit, it was the prevailing zone A rates in the vicinity that were the key indicators of values in specific streets or localities. Bearing in mind zone A levels on the better retail parts of Floral Street and prevailing rates in Garrick Street he said that that the appeal hereditament, if it were to be zoned, would attract a value of between £900 and £950 psm zone A.

20. Mr Conneely also explained why the valuation for rating purposes should be on the basis of retail rather than restaurant use. The rent payable by Trevor Sorbie was based upon restaurant simply because the lease terms permitted that use; but those terms were not relevant to a rating valuation. That the rental value determined in the rent reviews was out of kilter with retail values was, Mr Conneely reminded us, agreed with the VO. Having said that, he accepted that he had not produced any documentary evidence to prove that rental values for A3 restaurant use were higher than standard retail.

21. Asked why he took an overall value per sq m (the principal of which was not in issue) but then made a further adjustment for the poor access and windows, Mr Conneely said he had considered the situation relating to the basement and ground floor of 43 King Street (in Covent Garden Piazza) where two allowances of -10% each had been made for non-standard frontage and access. There, the disabilities were less than at the appeal premises, so in his view a 15% discount was not out of line.

22. It was put to Mr Conneely that a base value of £250 psm on an overall basis for the appeal hereditament was effectively less than a zone C rate. It was not, he said, comparing like with like particularly as the overall rate takes into account all the lesser value non-retail areas such as storage, wcs etc. Nevertheless, he did say that, based upon the evidence he had, he considered that retail values on an overall basis were only 35% of values for A3 restaurant use.

23. Mr Conneely's valuation was set out thus:

Floor	*Description*	*Area M2*	*£/M2*	*Value*
Ground	Sales	182.05	£250.00	£ 45,512.50
	Kitchen	5.91	£125.00	£ 738.75
	Customer toilets	8.47	£125.00	£ 1,058.75
Basement	Sales	83.98	£250.00	£ 20,995.00
	Int. storage	25.34	£125.00	£ 3,167.50
	Office	21.19	£175.00	£ 3,708.25
	Customer toilets	10.29	£125.00	£ 1,286.25
	Mess/staff room	35.56	£125.00	£ 4,445.00
	Vaults	18.36	£ 53.75	£ 987.00
	Air conditioning	287.22	£ 7.00	£ 2,010.54
			Sub-total	£ 83,909.54
	Less 15% for raised floor and steps			(£12,586.43)
			Total	£ 71,323.11
			Say	£ 71,000.00

The respondent VO's case

24. Mr Bademosi confirmed that he was acting as the expert witness appointed by and on behalf of the respondent VO, Mr Mike Dunlevey. In his report, he undertook a valuation exercise based upon the value of offices on the same basis as had been undertaken in respect of past revaluations. This produced the figure of £130,000 (the RV in the original list) which he included at appendix K. This analysed to £473 psm for the main upper ground floor and £236.50 psm for the basement areas, but he accepted that this had not been carried out on the agreed overall basis. He therefore introduced at the hearing a revised valuation which, to achieve the same RV (£130,000) adopting and factoring in the agreed variables for secondary space as applied by Mr Conneely and accepted by the VTE, produced an overall rate of £394 psm. The valuation, to which no further end allowance was applied, was set out thus:

Floor	*Use*	*Relativity*	*Area sq m*	*Factor*	*Price sq m £*	*Value*
Ground	Retail	1.0	182.05	1.0	394.00	£ 71,727.70
	Kitchen	0.7	5.91	0.504	394.00	£ 1,173.58
	Toilets	0.5	8.47	0.50	394.00	£ 1,668.59
Bsmt	Retail	1.0	83.98	1.0	394.00	£ 33,088.12

Int store	0.5	25.34	0.5	394.00	£	4,991.98
Office	0.7	21.19	0.7	394.00	£	5,844.20
Toilet	0.5	10.29	0.5	394.00	£	2,027.13
Staff	0.5	35.56	0.5	394.00	£	7,005.32
Vaults	0.5	18.36	0.5	394.00	£	1,196.48
Air conditioning		287.22	1.0	7.00	£	2,010.54
				Sub-total	£	130,733.60
				Say	£	130,000.00

25. In cross-examination by Mr Conneely, Mr Bademosi admitted that this was purely a mathematical exercise to convert the valuation arrived at on the office basis to an overall figure per sq m on a like for like basis to the methodology employed by the appellant.

26. Mr Bademosi said that in arriving at his opinion that the figure of £130,000 RV entered into the 2010 Rating List was correct, he had taken into account the rent agreed on the appeal hereditament for the five year period from 24 June 2008 (effectively two months after the AVD). This was on a stepped basis that averaged £199,000 pa. He did not agree that the passing rent had to be ignored. Mr Conneely had produced not a shred of evidence to support his argument that A3 rental values were higher than those for A1 retail. The figure at the 2008 review was, he said, in line with the sort of increase in values that could be expected from the initial rent agreed in 1998 (also stepped) which would have reflected the tenant's open market bid for its specific intended use as a hairdressing salon. He said that he had also considered office rental values in the area, retail values on both zoned and overall bases and A3 restaurant rental values that he had been able to find.

27. In considering evidence where retail rents were zoned, he said he had carried out a conversion exercise to show what those figures were on an overall basis. However, it was put to him that that was meaningless because conversion ratios from zone A to B etc. and for secondary/ancillary accommodation would be affected by size. This meant that the situation could occur where a unit with a higher zone A rate could have a lower overall conversion rate than one with a lower zone A figure. Mr Bademosi accepted that that was the case, and that no assistance could be gained from such a conversion exercise. However, he did agree that the zone A rates for the different localities (the levels of which he agreed with Mr Conneely) would demonstrate which the best and worst trading locations were. Nevertheless, whilst he agreed to general zone A levels, he said he could not agree with Mr Conneely's assessment that the appeal hereditament would, if it was zoned, be in the £900 to £950 range and he thought the £1,150 to £1,200 psm that had been achieved in some of the nearby comparables was more appropriate.

28. Mr Bademosi said that in is view, the best comparable on a retail user basis and that had been assessed on an overall rather than a zoned basis was Units 4 & 6, 8-10 Neal's Yard, WC2H 9DP. This was a ground and first floor unit occupied as a hairdressing salon located in a popular pedestrianised "Bohemian" quarter between Monmouth Street and Shorts Gardens to the north-east of Seven Dials. This is a predominately retail area in a secondary location to Covent Garden but close by. It is assessed on an overall basis at £500 psm overall, with 10% end allowance on first floor and to a storage area to reflect difficult access via a spiral staircase. The premises have similar characteristics, and in his view, considerable weight should be given to this comparable. It was accepted that this unit was very much smaller than the appeal hereditament at 135 sq m, and that it had a "proper" shop window frontage. It was thought that zone A values ion Neal's Yard were c. £1,400 psm.

29. Turning to office settlements, Mr Bademosi said that whilst he accepted office rents were not helpful in valuing hairdresser's units, his analysis showed unadjusted values based upon £430 psm which in his view indicates an assessment of £130,000 RV on the appeal property is "not excessive."

30. A table of settlements on premises occupied as restaurants was also produced, showing values in the range £850 to £1,000 psm but he accepted that this was also of no assistance as restaurant analyses were carried out on a points system for the various parts and could not therefore be easily compared.

31. As to Mr Conneely's comparables, Mr Bademosi said that he did not agree with his views as to the location of Mercer Street. The only issue about Snow and Rock at 4 Mercer Street was whether the building was comparable in terms of size and physical characteristics. It was a 6 storey former industrial building with basement and four floors of retail covering 983.75 sq m, so was almost three times the size of the appeal premises. The figure of £275 psm reflected the size and character of the unit and its location. As it was so different, it should be attributed little weight as evidence.

32. Regarding the basement and ground floor hairdressing salon at 71 Monmouth Street, Mr Bademosi said that it was (when occupied – it is now empty and the building within which the unit is located is under substantial reconstruction and refurbishment) somewhat unusual in the it had a small ground floor area, approached along a corridor to a reception at the rear, and the majority of the useable space was at basement level. Whilst it is in a retail area, the layout does not lend itself to zoning, and he agreed that an overall basis was appropriate.

33. As to Mr Conneely's 15% end allowance, it was suggested that this amounts to double-discounting because inherent in the overall valuation basis are the physical characteristics of the hereditament.

34. In conclusion, Mr Bademosi said that he had placed the greatest weight on the evidence from the rent review on the appeal premises and the passing rents that have applied. He also considered Neal's Yard to be a first rate comparable and all the evidence suggested that the

£325 psm overall adopted by the VTE was too low and there was absolutely no coherent evidence produced by the appellant to demonstrate that a figure even lower, at £250 psm less end allowance could be supported.

Discussion and conclusion

35. Looking firstly at the relevance of, and the weight to be applied to the passing rents, it was common ground that the basis of valuation that had been adopted, by agreement between Mr Conneely and the VO in respect of earlier rating lists (comparable office rents), was wrong. That being the case, the question of whether or not the rent being paid by the appellant under the terms of the lease should be taken as the starting point, per the first of the six propositions in *Lotus & Delta v Culverwell* (VO) [1976] RA 141 needed to be answered. Mr Conneely gave his reasons why it should not, saying that the rent that the tenant agreed to pay at the commencement of the lease and in subsequent rent reviews was substantially higher than the value of the unit assessed on a retail basis. Mr Sorbie had had to commit to a level of rent that an up-market restaurant would be prepared to pay – that level potentially being as much as 65% more than retail values. Mr Badimosi disagreed. He pointed out that the initial rent of £103,500 pa agreed in 1998 (stepped annually for each of the five years to the first rent review) would have reflected a willing tenant's open market bid, and the review rent agreed in 2008 (also stepped) was in line with general increases in market rents over a 10 year period. He said that Mr Conneely had produced no evidence of restaurant rents, so his views as to alleged differences between A1 and A3 user values were unsupported.

36. The rent that was agreed at £185,000 pa at the June 2008 review, just two months after the AVD, was also on a stepped basis, rising incrementally to £207,500 in June 2012. This, as Mr Bademosi demonstrated in his appendix E, averaged out at about £199,000 pa over the 5 year review period. Using Mr Conneely's valuation (see para 23 above) as a template, and the agreed variables for the secondary accommodation, I estimate this to be an overall rate of approaching £600 psm. This is 20% more than the £500 psm overall that has been applied to the only other hairdressing salon for which figures calculated on an overall basis are available at Neal's Yard.

37. Mr Bademosi said that Neal's Yard was an important comparable and should be attributed considerable weight. I agree. It is in a highly visible and prominent position within the Neal's Yard pedestrianised shopping area which is a most attractive and interesting backwater with many "Bohemian" type outlets. Although not having the footfall and overall significance of Covent Garden, it will in my view be a good trading location. However, in my judgement, the location of the appeal hereditament in Floral Street is considerably better for the type of business being undertaken by Mr Sorbie, and despite its acknowledged disadvantages in retail terms of not having a shop frontage, and an inconvenient access (which, as will be seen below, I consider warrants an end allowance) it would I believe command a rental value higher than Neal's Yard. As I see it, the value of the Neal's Yard comparable is that it suggests that the passing rent of the appeal hereditament is equivalent to a retail value, and has not been inflated by competition from restaurateurs for the space. Indeed, Mr Conneely admitted that he had no evidence to support his claims as to restaurant values exceeding retail values, let alone anything to justify an

alleged value some 65% more than retail. Therefore, on balance, and weighing up all the pros and cons it seems to me that Neal's Yard on its own suggests the passing rent on the appeal hereditament is a very good guide to its true open market value and a figure of £500 psm overall would not be untoward. It should not therefore be disregarded as a starting point for the assessment as there is no evidence that the permitted use under the lease has resulted in a rent that is higher than that which can be assumed under the rating hypothesis.

38. As to the weight to be given to the comparable evidence, I have already dealt with Mr Bademosi's principal comparable above. Mr Conneely's main comparable is Snow and Rock in Mercer Street, off Long Acre. I agree that it bears a number of similarities to 27 Floral Street and that it is in a better trading position (as a shop), located as it is close to the junction with Long Acre which is, I also agree, the "prime" shopping street in Covent Garden (other than the piazza itself). However, whilst the evidence is clear that zone A values are approaching four times as much in parts of Long Acre than they are in the vicinity of the appeal premises and nearby Garrick Street indicating much higher overall values per sq m where zoning is not being used, I accept Mr Bademosi's point about Mercer Street being very different to Long Acre. According to his evidence, zone A values in Mercer Street where that method of assessment has been used are much closer to those that apply near the appeal premises - in the region of £1,100 to £1,300 psm ITZA. It is quite narrow, and with tall buildings right onto the narrow pavements appears somewhat oppressive. It is also not a major shopping street, and Snow and Rock is one of only a few major retailers located there. Further, 4 Mercer Street is approximately three times the size of the appeal hereditament and some further adjustment is therefore warranted to reflect this. With the trading areas being split over six quite small floors, whilst the assessment has all retail areas at the same £275 psm, it certainly does not seem to me to be a unit configured in such a way as to be particularly attractive to retailers generally. I agree with Mr Bademosi's view that the differences are such that one is not comparing like for like, and little weight therefore can be applied to this comparable.

39. As to 71 Monmouth Street, assessed at £300 psm on the ground floor, and £225 psm to the basement sales area, Mr Conneely thought this was a better trading location (with zone A values at about £1,600 psm ITZA), and in his view the figures supported a base value for the appeal hereditament of £250 psm overall. I prefer Mr Bademosi's view. The plans of the premises indicate a somewhat unconventional layout, with the majority of the salon area at basement level. It would not have had the pavement level windows to increase natural light, and appeared to me to be in rather less exclusive location than the appeal premises.

40. The question of mode and category of occupation is not something which, I think, needs determination in this case, as the experts agreed that the occupation of the hereditament as a hairdressing salon was indisputably retail and that was how it was valued. Whilst Mr Bademosi initially valued it on an office basis (and there was more than sufficient evidence to demonstrate a value of £430 psm if that was the use to which the premises could be put), he revised his valuation to the same methodology as that applied by Mr Conneely, but did so simply to get to the VO's £130,000 RV that had originally been entered into the compiled list. On that basis he got to £394 psm on the assumption that it took into account the agreed disabilities and no additional end allowance was therefore required.

41. In my view, the disabilities are such that an end allowance should be applied, but on the basis of my conclusion, it makes no difference to my determination. The VTE was absolutely right when it said that there was "little empirical evidence on which to draw" and I have to confess to having difficulty finding sufficient evidence from that provided by the parties to lead me to a clear conclusion, other than the comparable at Neal's Yard. Nevertheless, I am satisfied that Mr Conneely's base figure of £250 psm, from which he took another 15% discount for disabilities is far too low. The Mercer Street comparable was sufficiently different to be of little use, and the disabilities at 71 Monmouth Street would have been more severe than at the appeal hereditament – which, as I have said, is in a far better location for the appellant's line of business. Having concluded that the Neal's Yard comparable is the most helpful, and taking into account the rent paid on the appeal hereditament, I am of the view that a base value in the region of £500 psm would be far more appropriate than the figure applied by the VTE when determining the RV on the basis of £325 psm, and indeed more than the figure used by the VO when making the initial assessment of £130,000 RV. With an end allowance of 15% as sought by Mr Conneely the value based on £500 psm would become £140,000 (see appendix 1 below).

42. However, as it is not possible to increase the figure above that from which the appeal was made, I determine that the Rateable Value shall be re-instated at the compiled figure of £130,000 as sought by the respondent VO. The appeal is therefore dismissed.

43. Following the provision to the parties of a draft of this decision, I received submissions from the appellant suggesting that, as a matter of law, I could not increase the assessment from that determined by the VTE, therefore effectively returning to the position as it was before the VTE appeal, where the respondent had not formally cross appealed. Reference was made to the procedure under Rule 22 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. However, Rule 22 relates to situations where a party requires the Tribunal's permission to appeal (as set out in Rule 21). That does not apply in appeals from the VTE. The suggestion that the respondent was circumventing the procedure for cross-appeals was therefore unfounded.

44. In any event, this was a rehearing and, as Mr Conneely indeed acknowledged, under regulation 42(5) of the Valuation Tribunal for England Regulations 2009, this Tribunal is able to "confirm, vary, set aside, revoke or remit the [VTE] decision or order, and **"may make any order the VTE could have made"** [my emphasis].

45. This appeal was heard on accordance with the simplified procedure and, unless there are specific circumstances that warrant an alternative finding, such as the conduct of the parties, the question of costs will not arise. As there are no such circumstances in this case, I make no order as to costs.

Dated: 7 April 2016 Paul Francis FRICS

Appendix 1

Upper Tribunal (Lands Chamber) Valuation

Sales areas 266.03 sq m @ £500 psm	£133,015.50	
Secondary areas at 0.5 relativity = 85.57 sq m @ £250 psm		£ 21,392.50
Office at 0.7 relativity = 21.19 sq m @ £350 psm		£ 7,416.50
Vaults 18.36 sq m @ £53.75		£ 987.00
Air conditioning 287.22 sq m @ £7.00	£ 2,010.54	
Sub-total		£164,822.04
Less 15% end-allowance		£ 24,723.30
Total		£140,098.74
Say		£140,000.00