

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

**IN THE MATTER OF AN APPLICATION**

**BT/67/2012**

**BETWEEN**

**CO-OPERATIVE GROUP LIMITED – APPLICANT/TENANT**

**AND**

**CEDAREAST INVESTMENTS LIMITED – RESPONDENT/LANDLORD**

**Re: Units 10 and 12 Beverley Road, Carnmoney**

**Belfast – 10<sup>th</sup> & 11<sup>th</sup> October 2013**

**Lands Tribunal - Henry M Spence MRICS Dip.Rating IRRV (Hons)**

**Background**

1. The respondent is the freehold owner of a small neighbourhood retail development at Beverley Road, Carnmoney. The development comprises eight separate units with a variety of retail and service users. Five of the units face on to Beverley Road and three units to the rear front Fairview Road. There is ample surface car parking and service areas.
2. The subject premises comprise two ground floor retail units, Nos 10 and 12 Beverley Road which have been amalgamated by the removal of a dividing wall to form a single convenience store.
3. The applicant occupies the premises under a lease dated 1<sup>st</sup> February 2000 between the respondent and J & J Haslett Limited. By a Deed of Assignment dated 17<sup>th</sup> May 2004 the lease was assigned to Wineflair (Belfast) Limited. By a Deed of Assignment dated 18<sup>th</sup> October 2006 the lease was subsequently assigned to the applicant.
4. The relevant terms of the lease for the purposes of the current reference are:
  - i. The lease demised the premises for a term of 15 years from 1<sup>st</sup> November 1997. The contractual term of the lease therefore expired on 1<sup>st</sup> November 2012.

ii. The rent was subject to five yearly upwards only reviews. The rent review clause provides:

“the rent to be determined on any rent review is to be determined on the basis of the current areas (in imperial zones) of the 2 shop units numbered 10 and 12 in their current physical condition i.e. that the units are not to be reviewed all as one unit.”

iii. The premises were to be used for a supermarket or any other use falling within Class 1 of the Planning (Use Classes) Order (NI) 1989 to which the respondent might consent, such consent not to be unreasonably withheld or delayed.

iv. The tenant was obliged to keep the premises in a state of repair evidenced by a condition report attached to the lease.

5. The rental history of premises:

- Initial rent                    £35,000
- 1<sup>st</sup> June 1999                £40,500
- 1<sup>st</sup> June 2004                £43,350
- 1<sup>st</sup> June 2009                £52,000

6. On 20<sup>th</sup> June 2012 the respondent served a Landlords Notice to Determine. On 13<sup>th</sup> December 2012 the applicant made a tenancy application to the Lands Tribunal.

7. Prior to hearing the parties agreed a 15 year lease with a break clause at year 10 all other lease terms remaining the same apart from the rent. It is the rent which the Tribunal has been asked to determine.

### **Procedural Matters**

8. Mr Douglas Stevenson BL appeared for the applicant instructed by Johns Elliot, Solicitors. Mr Keith Gibson BL appeared for the respondent instructed by O'Hare, Solicitors. The Tribunal also received written and oral expert evidence from Mr Christopher Callan and Mr Brian Wilkinson both experienced Chartered Surveyors. The respondent called Mr O'Kane, Director of Cedareast, to give evidence as to current demand for the subject property and the landlord's intentions if the property became vacant. The Tribunal is grateful for the detailed submissions from the experts and the legal representatives.

## Position of the Parties

9. The parties are in agreement that the rent should be based on one lease of the entire premises to one tenant. They have, however, failed to agree the rent payable under the terms of the new lease. Mr Wilkinson has assessed the rent at £52,000 pa on a zoned basis for two separate units. Mr Callan considers the rent should be assessed on an overall basis for one single unit, giving a figure of £38,200 pa.

## Statutory Framework

10. The relevant provisions are contained in Article 18 of the Business Tenancies (Northern Ireland) Order 1996 ("the Order"):

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

- (a) any effect on rent of the fact that the tenant has or his predecessors in title have been in occupation of the holding;
- (b) any goodwill attached to the holding by reason of the carrying on thereat of the business of the tenant (whether by him or by a predecessor of his in that business);
- (c) any effect on rent of any improvement—
  - (i) carried out by the tenant or a predecessor in title of his; or
  - (ii) where the tenant or a predecessor in title of his has remained in occupation of the holding during two or more tenancies, carried out by him or that predecessor in title during a tenancy other than the current tenancy;other than in pursuance of an obligation to the immediate landlord;

.....

- (4) Where the Lands Tribunal fixes the amount of rent under this Article, it may by order direct—
- (a) that the rent shall be payable in that amount from such date (including a date then past), and

(b) that interest shall be payable on rent in arrear (including rent in arrear by virtue of a direction under sub-paragraph (a)) at such rate,  
as the Lands Tribunal considers proper in all the circumstances.”

## Authorities

11. The Tribunal was referred to the following authorities with regard to the rent payable:

- Harewood v Harris [1958] 1 All ER 104 CA
- Cameron v Gordon (BT/11/1966)
- Fawke v Chelsea (Viscount) [1980] QB 441

and to the following text books:

- Reynolds and Clark – Review of Business Tenancies – paragraphs 8-27 and 8-28 at pages 437 to 439 and paragraphs 8-126 at page 491
- Dawson – Business Tenancies in Northern Ireland – page 169
- Ross – Commercial Leases, Division G Rent Review, Chapter 5 Disregards, C Occupation, paragraph [344]
- Sweet – Commercial Leases: Tenants’ Amendments – 6<sup>th</sup> Edition – paragraph 11.07 at page 220

## Discussion

12. Both parties were agreed that Article 18(2) of the Order requires the Tribunal to assess the rent on the basis of one lease to one tenant of the entire premises (“the holding”). They disagree, however, as to what comprises the holding.

13. The holding is defined in the Order:

“the holding’, in relation to a tenancy to which this Order applies, means (subject to Article 16(2)) the property comprised in the tenancy ...”

14. Mr Stevenson submitted that it was clear that the Tribunal should approach the valuation of the premises on the basis of one large unit, as it stands. He considered that this is how the market/hypothetical tenant would approach the valuation of the premises in formulating its rental bid.

15. Mr Gibson submitted that the request for a new tenancy pursuant to Article 7(3) of the Order must set out the property to be comprised in the new tenancy. [Article 7(3):- “A tenant’s request for a new tenancy shall not have effect unless it is made by notice in the prescribed form served on the landlord and sets out in general terms the tenant’s proposals as to — (a) the property to be comprised in the new tenancy ...”] He further submitted that the applicant

itself indicated in its tenancy application that the premises for which it sought a new tenancy were 2 units/shops:

“Lock up shops known as Units 10 and 12 Beverley Road, Carnmoney, Glengormley, Newtownabbey, County Antrim”

and if that were not the case what the applicant could have sought was:

“Units 10 and 12 Beverley Road, Carnmoney, Glengormley, Newtownabbey, County Antrim, now comprising one unit or holding”

16. Article 18(2) of the Order directs that the Tribunal should have “regard to the terms of the tenancy” in assessing the rent. Paragraphs 1 of the lease describes the demise as “ALL THOSE lock up shops known as Units 10 and 12 Beverley Road, Carnmoney, Glengormley, Newtownabbey in the County of Antrim, more particularly delineated and described on the map or ground plan attached hereto and thereon outlined in red ...”. The plan attached to the lease clearly shows two separate units.
17. The Tribunal is therefore satisfied that for the purposes of assessing the rent in accordance with Article 18, the holding comprises two separate shop units. Should removal of the dividing wall, however, be disregarded under Article 18(2)(c) “improvements”?

### **Disregards**

18. Article 18(2)(c) requires the Tribunal to disregard any effect on rent of any improvement carried out by the tenant or a predecessor in title. Is the removal of the dividing wall an “improvement”?
19. Mr Stevenson contended that if the effect of the removing the wall between Units 10 and 12 was to decrease the rental value of the premises, those works do not constitute an “improvement”. He submitted in that scenario they are not to be disregarded and the premises are therefore to be valued as one large unit.
20. He further submitted, if on the other hand, the Tribunal considers that the removal of the wall increased the rental value of the premises, because the removal means that a supermarket operator would not now have to remove the wall, then the removal of the wall would constitute an improvement and should be disregarded.
21. Mr Gibson considered that to value Units 10 and 12 on an open plan basis would essentially take in to account an alteration or “improvement” to the premises. He submitted that it has

been a consistent feature of Business Tenancy Legislation and relief that no account is taken of any improvements.

22. What constitutes an “improvement” is not outlined or defined in the Order. Reynolds and Clarke at page 491 paragraph 8-126 advises: “Improvements is a term which is not defined. In the context of S19(2) of the Landlord and Tenant Act 1927, the word ‘improvement’ has been held to be any work of physical alteration which, **from the tenants point of view** (Tribunal emphasis), improves the holding.”
23. In the subject case the tenant clearly considered the removal of the wall to be an “improvement”. It would have been significantly more difficult for him to operate his business as a convenience store without removing it. The Tribunal is satisfied therefore that the removal of the dividing wall between Units 10 and 12 is an improvement from the tenant’s point of view and it should be disregarded for the purpose of assessing the rent.

#### **Rental Value on a Two Unit Basis**

24. Post hearing the areas of the subject premises were agreed by the experts at:-

##### 10 Beverley Road

Sales Area	Nett Internal Area	2,606 sq ft
	ITZA	1,094 sq ft
	Store	434 sq ft

##### 12 Beverley Road

Sales Area	Nett Internal Area	1,146 sq ft
	ITZA	736 sq ft

The Tribunal is disappointed that the experts did not agree the areas prior to hearing, even though they were both aware of discrepancies.

25. The experts were agreed that in 2009, the date of the previous rent review, the ITZA pricing in the centre was £27.50 psf. For the present case they provided various comparables within the centre but most were agreed several years prior to the hearing or were not arms length transactions. The Tribunal found the most helpful and contemporary evidence to be that relating to Units 3 and to some extent Unit 12a:

### Unit 3

This was confirmed to be a new letting to subtenants for a term of 12 years from 1<sup>st</sup> May 2011 at a rent of £17,000 pa with an option to break after 6 years and rent reviews every 3 years. Both experts were broadly agreed on the analysis:

ITZA	589.5 sq ft @ £28.83 psf	£17,000 pa
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Mr Callan considered that as the transaction was some 18 months prior to the renewal date it was too historic to be of any assistance. The Tribunal does not agree. The comparisons provided by Mr Callan in his evidence included lettings commencing June 2011 and November 2011 yet he considered these to be relevant.

### Unit 12a

This was an open market letting for 3 years at a rent of £9,000 pa commencing 1<sup>st</sup> May 2012.

Mr Wilkinson analysed:

ITZA	386 sq ft @ £27.50 psf	£10,615
	Less 15% irregular shape and frontage frontage to depth allowance	<u>£1,592</u> say £9,000 pa

Mr Wilkinson granted the 15% allowance to reflect the large frontage to depth ratio and irregular shape of this particular unit which was unsuitable for many retailers.

Mr Callan analysed:

ITZA	384 sq ft @ £23.10 psf	£8,870
Store	25 sq ft @ £50 psf	<u>£125</u> say £9,000 pa

He considered this unit to be a kiosk and not a relevant comparison. The Tribunal agrees to some extent but is satisfied that it gives a broad indication of rental levels in the centre.

26. In Mr Wilkinson opinion the comparables, in particular Unit 3, demonstrated that the headline ITZA of £27.50 psf had been maintained. Mr Callan did not consider that the subject units 10 and 12 should be zoned but if they were to be in his opinion the current ITZA was in the region of £23 psf.

27. The Tribunal agrees with Mr Wilkinson's position that the most recent evidence in the centre points to the headline ITZA being maintained at £27.50 psf.

On that basis his rental assessment was:

10 Beverley Road

Sales ITZA 1,094 sq ft @ £27.50 psf £30,085

Store 434 sq ft @ £4 psf £1,736

12 Beverley Road

Sales ITZA 736 sq ft @ £27.50 psf £20,240

£52,061

say £52,000 pa

28. The Tribunal, however, has to consider the effect of the lease terms on the rent i.e. one lease of the two units ("the holding") to one tenant. Unit 8 within the centre has been vacant since January 2011 and the landlord has been unable to secure a tenant. There is therefore a considerable risk that if one tenant took a lease of the two units he may have difficulty securing a tenant for one of the units. In Mr Wilkinson's opinion the centre was in a "strong" trading location and any reduction in the rent to reflect that risk was not warranted. On the basis that one of the units has been vacant since January 2011 the Tribunal does not agree and considers that the rent should be reduced by 10% to reflect the risk.

29. Mr Callan considered that there should also be a reduction in the rent to reflect the previous tenant's improvements. The repair covenant in the lease was to maintain the premises in the condition they were in at the commencement of the lease, as evidenced by the schedule of condition. The general conclusions therein state:-

"Internally Unit 10 is in a satisfactory condition requiring only minor upgrading works. However Unit 12 is in a poor condition and requires extensive internal refurbishment to bring it in to a satisfactory condition. Externally upgrading works are required to the flat roof to bring them in to a satisfactory and maintainable condition."

30. In Mr Callan's rental assessment he considered a 5% reduction was warranted to reflect the "onerous rent review clause, internal configuration and condition of the premises" but he did not break this down for each element. In Mr Wilkinson's opinion the centre was in a very strong trading location and no reduction was warranted for the improvements carried out by the previous tenant.



31. The Tribunal does not consider that a reduction in rent is warranted for the onerous rent review clause and Mr Callan did not provide any evidence to justify such a reduction. The Tribunal considers, however, that a reduction is warranted to reflect the original condition of the premises as evidenced by the schedule of condition and is of the opinion that a 2½% reduction is adequate.
32. The Tribunal assesses the rent on a 2 unit basis at:

10 Beverley Road

Sales ITZA	1,094 sq ft @ £27.50 psf	£30,085
Store	434 sq ft @ £4.00 psf	£1,736

12 Beverley Road

Sales ITZA	736 sq ft @ £27.50 psf	<u>£20,240</u>
		£52,061
Less 10% for risk of taking two units on one lease		
Less 2½% for disrepair		<u>x 87.5%</u>
		£45,553
	say	£45,000 pa

**Prospective Tenants**

33. Mr O’Kane, the centre manager, gave evidence that one of the current occupiers in the centre would be interested in leasing the subject unit, even though it was some four times larger than their current unit. The experts were agreed, however, the most likely prospective tenant was a convenience store operator. Mr Stevenson suggested that the landlord would want a convenience store operator as an anchor for the centre. The Tribunal agrees.
34. As previously discussed, the holding comprises two separate units and it is highly unlikely that a convenience store would lease the two units unless they were given permission to remove the dividing wall. This is the situation with the current occupier. On that basis the Tribunal considers that an assessment of the rental value on an “overall” basis is valid.

**Rental Value on an Overall Basis**

35. Mr Callan provided details of recent lettings of three broadly similar size convenience stores located at High Street, Bangor; Great Victoria Street, Belfast and Doagh Road, Newtownabbey. Given the proximity of Doagh Road to the subject premises and also reflecting the fact that Bangor High Street and Great Victoria Street would be regarded as stronger retailing pitches, he considered the Doagh Road letting to be the best evidence. The Tribunal agrees.

36. Mr Callan provided evidence of the letting of the Tesco Express unit at 142 Doagh Road, Newtownabbey. The unit is located fronting the Doagh Road at the junction of the O'Neill Road, directly opposite Whiteabbey Hospital. The premises are part of a terrace of five units which were constructed in 2011. Mr Callan gave evidence of an open market letting to Tesco Express for 20 years with an option to break at the end of year 10 and at a rent of £44,000 pa with effect from 7<sup>th</sup> November 2011. The tenant received 5 months rent free.

37. Mr Callan arrived at a net effective rent of £42,500 pa for the unit by devaluing 2 of the 5 months rent free and allowing 3 months tenants fitting out period. He analysed this rental:

Zoned Basis		
Ground Floor ITZA	2,563 sq ft @ £16.60 psf	say £42,500 pa

Overall Basis		
Ground Floor	4,269 sq ft @ £9.95 psf	say £42,500 pa

38. Mr Wilkinson analysed:

Sales Area	4,269 sq ft @ £10.31 psf	say £44,000 pa
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He did not make any allowance for the rent free period.

39. Both experts devalued the rent to give a psf in or around £10, although on a technical basis the Tribunal prefers Mr Callan's analysis which reflects market practice in allowing only 3 months rent free for fitting out.

40. Mr Gibson suggested that the rent of £44,000 pa was a concessionary rent offered by the landlord to secure an anchor tenant for the centre, thus enhancing the ability to attract tenants for the other units. Mr Callan did not agree. His experience was that the landlord would want to keep the headline rent as high as possible to maximise the rental income from the other units. In his opinion the landlord would give incentives in other forms, such as the 5 month rent free period.

41. Mr Callan applied the Doagh Road evidence to assess the market rent for the subject premises on an overall basis at:

Sales	3,825 sq ft @ £9.95 psf	£38,059
Store	432 sq ft @ £5.00 psf	<u>£2,160</u>
		£40,219

Discount for onerous rent review clause, internal configuration and condition of premises of 5%	- <u>2,011</u>
	£38,207
	say £38,200 pa

Post hearing the areas were agreed and Mr Callan's assessment was revised to:

Sales	3,752 sq ft @ £9.95 psf	£37,332
Store	434 sq ft @ £5 psf	<u>£2,170</u>
		£39,502
Less discount 5%		<u>-1,975</u>
		<u>£37,527</u>

42. With regard to the Doagh Road comparable Mr Callan noted in his evidence that there were a number of competing neighbourhood schemes within the vicinity, even though he adopted the same pricing. His further analysis of the Doagh Road comparable gave an ITZA pricing of £16.60 psf which is significantly below the ITZA pricings being achieved at Beverley Road, even on his own analysis of £23 psf.
43. This would suggest that either the Doagh Road rent is a concessionary rent or Beverley Road is a superior location. Based on the ITZA levels of the respective centres the Tribunal considers there is an element of both.
44. The Doagh Road premises are located at a busy road junction and there are several competing neighbourhood schemes in the vicinity. The Beverley Road premises on the other hand are located in a large residential area and have minimal competition in the locality. The Tribunal considers this to be an ideal location for a convenience store.
45. Based on the analysis of the Doagh Road premises at £10 psf on overall basis, the Tribunal considers that an uplift of 20% is warranted to reflect an element of concessionary rent and better trading position giving an overall pricing of £12 psf for the subject premises:

Unit 10

Sales NIA	2,606 sq ft @ £12 psf	£31,272
Store	434 sq ft @ £4 psf	£1,736

Unit 12

Sales NIA	1,146 sq ft @ £12 psf	<u>£13,752</u>
		£46,760
Less 2½% for disrepair		<u>-2½%</u>

£45,591  
say £45,000 pa

**Conclusion**

46. The Tribunal determines the rent in accordance with the Order at £45,000 pa and applying Article 18(4) of the Order the Tribunal directs this rent be backdated to the determination date of the contractual expiry of the lease, 1<sup>st</sup> November 2012.

**ORDERS ACCORDINGLY**

**21<sup>st</sup> November 2013**

**Henry M Spence MRICS Dip.Rating IRRV (Hons)  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

**Appearances:**

**Applicant/Tenant – Mr Douglas Stevenson BL instructed by Johns Elliot, Solicitors.**

**Respondent/Landlord – Mr Keith Gibson BL instructed by O’Hare, Solicitors.**