LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

RATES (NORTHERN IRELAND) ORDER 1977

IN THE MATTER OF AN APPEAL

VR/5/2011

BETWEEN

MENARYS RETAIL LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION – RESPONDENT

Part 2

Re: 110 Main Street, Bangor

Lands Tribunal - Mr M R Curry FRICS Hon.Dip.Rating

Background

1. In a Decision dated 17th April 2012 ("the Part 1 Decision") the Tribunal dealt with an appeal concerning the valuation for rating purposes of a retail hereditament, occupied by Menarys Retail Limited ("Menarys"), at No. 110 Main Street, Bangor.

2. Based primarily on comparison with another retail hereditament nearby, the Tribunal's conclusions included the following (see paras 22 and 25 to 28 of the Part 1 Decision):

   "22. At the Hearing Mr MacLynn accepted Ms McGrath's adjustment of 10% to extract the value of the car parking at Asda.

   25. In considering end allowances, if any, to reflect the size of the ground floor in comparison with that of the first floor and/or the comparables the Tribunal is conscious that the parties have reached an agreement on the proportionate pricing for the upper floors. Any end allowance applied to the ground floor would therefore appear to affect the entirety of the valuation. The Tribunal is not privy to the terms of that agreement and would not wish to intervene accidently in matters already agreed. However the possibility of an end allowance appears to have been left open as neither party opposed an end allowance as such.

   26. Ms McGrath said that 10% should be added to the ground floor pricing to reflect the smaller size of the ground floor of Menarys in comparison with Asda; Mr MacLynn said

that any end allowance for size (or quantum) should reflect the relative overall total areas of the hereditaments and these total areas were much the same. The Tribunal agrees with Mr MacLynn and concludes there should not be any such adjustment.

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

28. Taking this into account along with an adjustment of 10% for the lack of car parking would produce a total adjustment to the Asda pricing of 15% resulting in a pricing for Menarys of £82.87 say £83.00 per square metre overall on the ground floor."

3. Before the Part 1 Hearing, the Tribunal had received a joint minute, in accordance with its directions, agreed by the expert witnesses. The minute set out issues on which the experts were agreed and included:

"2.5 The proportion of value to apply on the upper floors in relation to the value on the ground floor of the premises".

4. At that hearing the Tribunal was informed that there was agreement on a number of matters including, in particular, that the ground floor of the hereditament should be valued on an overall basis rather than a zoned basis and also that there was an agreement on the proportion of value to apply to the upper floors in relation to the value of the ground floor. It was not told what that proportion was. In its approach the Tribunal determined the remaining issues between the parties to be:

- the price per square metre to be applied to the ground floor;
- whether, in arriving at that price, the hereditament should be treated as being in a mode or category of use of that of a small or medium department store; and
- end allowances, if any, to reflect the size of the ground floor in comparison with that of the first floor and/or the comparables.

(See para 9 of the Part 1 Decision)

5. After the Part 1 Decision was given, the Commissioner wrote to Menarys suggesting that the 5% allowance (see para 27 of the Part 1 Decision above) was not appropriate in light of the understanding reached between the expert valuers.

6. He suggested that the expert valuers had reached a common understanding that even though the premises were unusual in their configuration (in that they were "upside down") in all the circumstances it was not appropriate to add any extra elements to the valuation beyond the halving back for the first and upper floors. Accordingly, the proper scope for the Tribunal was to fix an unadjusted ground floor rate, since between them they had agreed a mechanism (the halving back) to allow for configuration to be taken into account. The further reduction for the unusual configuration is something which offends the understanding and arrangement reached between the surveyors as recorded in their joint minute.

7. In response Menarys said that they did not consider that the 5% reduction made by the Tribunal in reaching an overall figure for the ground floor should be considered to be a further reduction nor should it have any impact on the agreement reached between the surveyors in relation to the upper floors. The Tribunal had merely reflecting the configuration in determining the ground floor figure in the same manner as the experts, albeit that the Tribunal had stated the actual percentage applied.

Procedure

8. The Tribunal received copies of the correspondence, skeleton arguments and oral submissions from Mr Stephen Shaw QC and Mr Mark Orr QC.

Positions of the parties

9. Mr Shaw QC suggested that the Tribunal had accidently intervened in the agreement and he invited it to revisit the issue. Mr Orr QC suggested that it had not intervened.

Discussion

10. At the time of the joint minute there was a very wide range of different comparables in the expert evidence intended to be received by the Tribunal and the experts attached the weight they thought appropriate and mentally adjusted the figures produced by their analysis to arrive at a pricing for the subject. As that was at the heart of the dispute they could not have known which comparables, and the corresponding relative attributes, the Tribunal would prefer. The use of such comparables commonly requires adjustment to their pricing to reflect differences between them and the subject. In some cases an adjustment may be made to the pricing of a particular element only, in others an overall or end allowance may be applied. Such adjustments are not absolute matters that attach to the valuation of the subject no matter which comparables are being considered; they depend on the relative attributes of the

subject and comparables. The joint minute does not contain any agreement on what adjustments should apply to each to arrive at the value of the subject.

11. In the view of the Tribunal there was nothing in the wording of the joint minute that would preclude such ordinary adjustments, in principle. And, evidence was received from the expert valuers about adjustments both to a particular element and also an overall or end allowance (see paras 22, 26 and 27 of the Part 1 Decision).

12. There were important differences between the subject and the principal comparison. The Tribunal elected, for the reasons it gave in the Part 1 Decision, to reflect the difference in overall configurations (and car parking) by an allowance to the ground floor pricing. Clearly, on the basis of what it been told, it would have followed that the same percentage allowance would be applied to the upper floors as a result of the proportionate pricing agreed. In this way the effect was to make an overall or end allowance rather than an adjustment to a particular element for the difference in configurations (and car parking) of the subject and the comparison.

13. There does not appear to be any objection from the Commissioner to the end or overall allowance for car parking differences being affected in this way.

14. Although, at that time of the Part 1 Decision, the Tribunal was not privy to the full detail of the agreement already reached between the expert valuers, it is not now surprised to find that in fact, the experts had agreed that the proportion of value to be applied to the upper floors was to be determined by 'halving back'. That was the ordinary practice; not a special approach. The ultimate outcome turns out to have been consistent with the expectations of the Tribunal. In the event that some extraordinary approach, that specifically addressed the difference in configuration between the subject and the principal comparison, had been agreed and that had not come out in the course of evidence or argument at the Hearing, the Tribunal would have been minded to allow the issue to be revisited now. See the note of caution of paragraph 25 of the Part 1 Decision.

15. The Tribunal concludes that it has not intervened in the agreement and is not minded to revisit the issue.

16. In this case the parties narrowed the issues after expert evidence had been exchanged and before the Part 1 Hearing. That must be encouraged but, to give each party a fair opportunity to address the other's case, if the focus of the main contentions has changed, it is perhaps important that the parties promptly revisit their expert evidence to ensure that the facts, the conclusions drawn from them and the reasons for those conclusions, that they say are

relevant to the outstanding issues, are clear and distinct and not obscured by those that are irrelevant because of matters no longer in dispute.

ORDERS ACCORDINGLY

22nd January 2013 **Michael R Curry FRICS Hon.Dip.Rating**
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances

Appellant: **Mr Mark Orr QC instructed by C & H Jefferson Solicitors.**

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