

**IN THE COUNTY COURT AT MANCHESTER**

Manchester Civil Justice Centre (Civil and Family Courts)  
1 Bridge Street West  
Manchester  
M60 9DJ

BEFORE:

**HIS HONOUR JUDGE KHAN**

BETWEEN:

**DONE BROTHERS (CASH BETTING LIMITED)**

**CLAIMANT**

**- and -**

**L & C INVESTMENTS LIMITED**

**DEFENDANT**

**Legal Representation**

Mr Greville Healey (Counsel) on behalf of the Claimant  
Mr David Nuttall (Counsel) on behalf of the Defendant

**Other Parties Present and their status**

None known

**Judgment**

Judgment date: 20 June 2023  
Transcribed from 14:07:41 until 15:10:49

Reporting Restrictions Applied: No

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## **His Honour Judge Khan:**

### *Introduction and location of the Property the subject matter of the claim.*

1. The Claimant, to whom I will refer during the course of this judgment by its trade name Betfred, is a company which occupies property at 6 to 10 Wallgate in Wigan (the Property). The Property comprises a three storey end terrace character building the accommodation extending over a ground floor and basement. The upper floors of the building were converted from offices to residential use in 2020.
2. The Property is located in the centre of Wigan. Retail in the town centre of Wigan is focused along the pedestrianised street of Standishgate with two shopping centres providing additional retail space, namely Grand Arcade anchored by the Galleries Shopping Centre incorporating Makinson Arcade. Standishgate is home to a number of retailers including WHSmith, B&M, Wilko and Specsavers. Grand Arcade is a large, covered shopping centre nominated by national fashion oriented multiples including JD Sports, New Look, River Island and Pandora.
3. At the southern end of Standishgate there are entrances into two main retail schemes, the Grand Arcade to the east and Makinson Arcade, part of the Galleries scheme, to the west. The area is fully pedestrianised. Retailers and/or occupiers present include Weatherspoons, Barclays Bank, Lloyds Bank, RBS Bank, Gregg the bakers, Hays Travel and TUI travel agency.
4. To the south of Market Place lies Wallgate. This street is open to traffic and is home to a mix of occupiers including numerous takeaways, charity shops, pubs and bars. Retailers include Vape Bar, Wallgate News, Pizza King, Salvation Army, Scope, The Raven Pub and Subway.
5. 150 metres approximately to the south of the Property is Wallgate Station. The Property is located at the junction of Market Place and Wallgate. It has a splayed frontage and is visible from Market Place with the main frontage onto Wallgate. Other retailers in the vicinity include Boyle Sports, Betting Office, Subway, Toppers Bar and Paradiso Chicken.
6. The Property is owned by the Defendant, L & C. L & C brought Betfred's tenancy to an end by notice served under section 25 of the Landlord and Tenant Act 1954 on 4 February 2019. The notice expired on 12 August 2019.

### *Matters agreed and in dispute*

7. Having issued proceedings seeking an order for a new tenancy Betfred and L & C have been able to agree the terms of a new lease save for the rent payable under the terms of the lease. L & C contend that the rent should be fixed at £36,000, Betfred that it be fixed at £30,000.
8. As well as agreeing the terms of the lease, other than the amount of the rent, the following matters are not in dispute between Betfred and L & C:-
  - a. The Property description and location as I have identified above with Wallgate is in a weaker position than some of the comparables on Market Place;

- b. The floor area;
  - c. The interim rent should be the same as the rent payable under the new lease;
  - d. Any rent ordered by the Court should apply to a five-year lease or a ten year lease with a five year tenant break;
  - e. The rent applicable to the basement area is £1.50 per square foot.
9. Linked to the dispute between the parties as to the amount of rent payable is a discount which should be applied to the rent having regard to the configuration of the Property and/or its shape on the ground floor, although it is right to say that the discounts are catered for in the figures of £30,000 and £36,000 to which I have referred at [6].

*Evidence and representation*

10. Although in accordance with the Court's directions the parties provided factual evidence from a Mr Longden and Mr Wade, the only oral evidence which I heard yesterday was from the parties respective experts, Miss Davies for Betfred and Mr Burrige for L & C.
11. Betfred were represented by Mr Healey and L & C were represented by Mr Nuttall. I am grateful to them both for the assistance they have provided to me in resolving the issues for my determination and for the quality of their written and oral advocacy.

*Framework within which matters in dispute are to be determined*

12. There is no dispute as to the framework within which the Court determines the issues for determination. The starting point is section 34 subsection (1) of the *Landlord and Tenant Act 1954* provides as follows:

*“The rent payable under a tenancy granted by order of the court under this Part of this Act shall be such as may be agreed between the landlord and the tenant or ... in default of such agreement, may be determined by the court 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.”*

There then follow a number of statutory disregards which the parties agree are not relevant to the issues in this case.

13. Cases of this nature are often determined by reference to comparables. There is no dispute in relation to the hierarchy of comparables in a case of this nature. Mr Burrige refers to those in his report at section 11 the hierarchy derived from Bernstein and Reynolds in their handbook of rent review at section 9.6 the hierarchy is as follows:

*“a) open market lettings, b) agreement between valuers at arms length upon lease renewal or rent review, c) determination by an independent expert, d) an arbitrators award including a PACT arbitrator in a lease renewal, e) determination by a court under part 2, f) hearsay.”*

14. As is apparent from the matters to which I will refer later in this judgment the only relevant factors in the hierarchy are open market lettings and agreements between valuers at arms length upon lease renewal or rent review. During the course of this

judgment, where I need to, I will refer to open market lettings as tier one and lease renewal and rent review as tier two.

15. I have also been reminded as to what Colman J said in the case of *Living Waters Christian Centres Limited v Henry George Featherstonhaugh* [1999] WL 477 963 [unable to reference this citation online]. Mr Burridge again sets this out at paragraph 11.3 of his report and I incorporate the quotation in this judgment. If this judgment is ever produced in written form and that observation is not an encouragement that it should be, that section of the judgment of Colman J should be set out verbatim.
16. In reaching the conclusion that I have reached in relation to the question as to whether or not I should fix the rent at £36,000 as opposed to £30,000 per annum I have borne all the factors that I have identified a few moments in mind.

#### *Evidence relation to comparables*

17. In terms of the disputes between the parties I firstly address the question of comparables and then I will deal with the adjustments for configuration and/or shape. I will take the comparables in the order which Miss Davies set out in her report. Where I refer to the comparables, I will do so mainly by reference to the name of the tenant rather than the property which it occupies.

#### *2 Market Place-TUI*

18. This is a property occupied by TUI. The relevant evidence derives from a lease renewal dated 12 December 2019. TUI agreed a five-year lease with the benefit of the tenant only break clauses exercisable on the second and fourth anniversary of the lease commencement subject to the payment of three months' rent as a penalty. The previous rent payment payable under the lease was £42,000 but Miss Davies devalues the lease taking into account in particular a schedule of condition to a sum of £30,000.
19. In her report, Miss Davies referred to the fact that 2 Market Place or TUI's tenancy is a comparable which is very relevant. She stated that location-wise 2 Market Place and the Property close, either side of Churchgate albeit that 2 Market Place benefits from a frontage directly onto Market Place and a Market Place address. She identified the fact that date-wise the transaction was only a few months after the date at which she was required to assess the interim rent.
20. In her oral evidence, and consistent with the contents of her report she confirmed that this was a relevant comparable, but the location was only one of the factors which required consideration as part of the exercise in determining the rent. She described the location as being different in terms of being on a high street as opposed to a side street. She identified the fact that Wallgate had a number of vacant shops and fast-food shops whereas Market Place had national retailers and that the Property had a limited frontage on to Market Place.
21. Mr Burridge observed that this was a pre-Covid pandemic letting being effective in late 2019, but in a similar location to the unit occupied by Barclays Bank at 4 Market Place, if anything, slightly higher in terms of zone A value. In Mr Burridge's opinion even though located next door to Barclays, it is in a slightly superior position having a frontage directly onto Market Place. In his oral evidence Mr Burridge confirmed that

2 Market Place was a useful indicator in comparison to 4 Market Place and he also repeated what he described as the lack of “*Covid effect* “ regarding the rental payable.

*16 to 18 Wallgate - Subway*

22. Subway hold a 10 year lease from 25 March 2015 at a current rent of £17,000 per annum. The rent was subject to a review in March 2020 and it was agreed at a nil increase with the rent remaining at £17,000 per annum.
23. Miss Davies identified the fact that this property was located a few doors to the left of the Property. She identified it as a useful comparable in that it sets a ceiling for this area as at March 2020. In her oral evidence she repeated that it was useful evidence in relation to the question of the passing rent. Mr BurrIDGE did not refer to this comparable in his report and in the joint statement did not disagree agree with Miss Davies’ analysis in relation to that property.

*26 Market Place-Hays Travel*

24. Hays Travel occupy 26 Market Place under the terms of a 10-year lease from 30 September 2021 subject to a tenant only break at 5 years at a rent of £30,000 per annum. Hays Travel received a three-month rent-free up front with the following 12 months at half rent equivalent to a total of nine months’ rent free.
25. Miss Davies identified the fact that Hays Travel agreed terms for a 10-year lease on the same terms as Thomas Cook but on an internal repairing basis rather than a full repairing basis and on a smaller demise. Hays Travel’s landlord is now responsible for the exterior and the basement, second and third floors. Miss Davies also identified the fact that this term is particularly advantageous to the tenant given the very old structure of the business.
26. She devalued the rent payable by Hays Travel to £30,000 per annum. In terms of relevance to the Property, she identified the fact that it is located on the opposite side of Market Place at the junction with Market Street and therefore relatively close to the Property. However, she referred to the fact that the negotiations for the lease were not straight forward and recognised that perhaps it was not the most reliable of transactions but nevertheless observed it shows a consistent drop in the rent payable.
27. In her oral evidence she repeated that an important consideration was that this property fronts onto Market Place which she said was visible from most of Market Place. She acknowledged that it had better visibility than the Property being located next to the Pound Bakery and that if one were to stand at one of the other comparables to which she referred, namely Admiral, this property disappears from view. She repeated in her oral evidence that this comparable was relevant due to its location and the timing of the transaction but that it had limited weight as she considered that it was not what she would describe as an arm length’s transaction. Mr BurrIDGE did not disagree with Miss Davies’ analysis in relation to this comparable.

*19 Market Place-Max Spielmann*

28. Max Spielmann agreed a new five year lease from the expiry of the previous lease on 11 November 2021. Max Spielmann took a five year lease with the benefit of a tenant

break at three years. The rent was reduced on renewal from £18,000 per annum to £13,500 per annum and Max Speilmann received an upfront incentive of six months' rent free.

29. In Miss Davies opinion this lease was relevant to the Property, it was located close to it, although arguably in a superior position being closer to Standishgate. She concluded, for reasons that she explained, that she did not place much weight on this renewal as a comparable. Her oral evidence was consistent with what she said in her written evidence and Mr Burridge did not disagree with the analysis in her report.

#### *4 Market Place-Barclays Bank*

30. This comparable arises out of a rent review agreed from 9 January 2022. The parties agreed rent at £83,000 per annum which was a substantial reduction from the previous rent of £144,250. Having regard the absence of comparable evidence at the time to the rent review, the parties therefore placed a a good deal of weight on the lease renewal on the adjoining building occupied by TUI in December 2019, hence basing their valuations at the rate of £34.29, zone A, the rate agreed on the TUI, and assuming £2.50 per square foot apply to the first floor. Miss Davies identified this transaction as useful on the basis it was negotiated between two surveyors and related to a property near the Property, albeit as a comparable just over 12 months old.
31. In her oral evidence Miss Davies confirmed that Barclays Bank and TUI were in the same location, but Barclays Bank had a wider frontage and was more prominent. She confirmed that both TUI and Barclays Bank front on to Market Place whereas the Property is on the side of Market Place fronting onto Wallgate which she described as a secondary street and therefore identified it as being in an inferior location.
32. Mr Burridge's evidence in relation to this comparable is that it was a recent transaction agreed in a similar pitch to the Property albeit being in a slightly superior fronting to Market Place. He confirmed that being a transaction effective from January 2022, it was evidence as to the amount of rent payable following the relaxation of Covid restrictions. In his oral evidence Mr Burridge described this property as being identical to TUI , in a superior location to the Property but he accepted that adjustments could be made in the circumstances.

#### *35 to 37 Market Place-Admiral*

33. This is a property occupied by Admiral and was a new letting from 12 April 2022. Admiral occupy a building located at the junction of Standish Gate and Market Place close to the entrance to the Grand Arcade Shopping Centre. This was previously occupied by Yorkshire Bank , the branch closing in March 2021.
34. Admiral agreed a 15-year lease with the benefit of a tenant only break at years five and ten and agreed a stepped rent over the first five years, £40,000 year one, £42,000 year two, £45,000 years three, four and five. Admiral received six months' rent-free up front and will receive the benefit of a further six months' rent free at the start of year six if the break clause is not exercised.
35. Miss Davies devalued the rent to a sum of £41,400 per annum. She identified this as a useful comparison on the basis that the letting completed within the last 12 months, both parties to the transaction were professionally represented and the unit was as she

described it “*clean*” and a well configured property. While recognising that it is in a stronger location than the Property, being close to the entrance to Grand Arcade and in Standish Gate with stronger retailers in the immediate vicinity, nevertheless she considered that the letting showed what rent and lease terms were achieved for a much stronger, larger and well configured property.

36. In her oral evidence, Miss Davies confirmed that the sum of £41,400 was the average rent over the first five years excluding three months’ rent free, anything over three months being an incentive and therefore could be ignored. She told me that it would be incorrect to take the headline rent figure because the transaction had been structured with incentives and that the Admiral had not been happy to pay £45,000 from the start of the tenancy. Moreover, she identified the fact that Admiral could walk away after five years, and therefore there was potentially no value in the lease after five years.
37. Miss Davies made no quantum discount for this unit having regard to the fact that she considered that it was a normal size and an efficient unit. She confirmed that it was in a strong location, stronger than the unit occupied by TUI, due to its proximity to the shopping centre and the adjoining properties. She sought to differentiate this transaction from the transaction with TUI on the basis that the transaction with TUI was agreed three years earlier and that she did not know what evidence was used in the negotiation in relation to TUI’s lease renewal.
38. She described the Admiral letting as a clean market letting in which she considered that in the negotiations the parties had considered recent and nearby lettings. She admitted that it was possible that when the Admiral lease was negotiated the lettings for Barclays Bank and TUI were in the minds of the negotiating surveyors although she admitted that this was not a matter that she could guarantee.
39. Mr Burridge did not disagree with Miss Davies’ analysis regarding the Admiral letting. However, in his oral evidence he referred to the fact that Barclays and TUI were more useful as comparables. He admitted that if he had known of Admiral letting at the time he prepared the report he would still have come to the same conclusion although he recognised that the Admiral letting was tier one in the hierarchy of comparables. In answer to my question, he told me that not referring to Admiral as a comparable was an oversight on his behalf.

*1 Wallgate, - Boyle Sports*

40. This unit was let to Boyle Sports in July 2022. Boyle Sports took a ten-year lease subject to a tenant only break on fifth year , paying £19,000 per annum. Terms were agreed by October 2021, but the lease was not completed until July 2022. Miss Davies referred to the fact that she has been unable to establish what, if any, incentives the tenant received for taking this tenancy.
41. In her report, Miss Davies referred to email exchanges with the agent for Boyle Sports. In particular she referred to an email from Les Otter of 26 October 2021 which itself refers to the fact that as at that date the property was not open, and that “*it was a long and frustrating story*” with which Mr Otter did not want to bore Miss Davies, but he provided no further reason for the delay.
42. In her oral evidence Miss Davies acknowledged that the delay in completing the transaction could have affected the terms that had been agreed, but also that it would

have been better for the landlord to have had a tenant occupying the property rather than the landlord having an empty property on its portfolio. She admitted that she did not know the reasons for the delay referred to by Mr Otter . She also acknowledged that she did not know whether or not the landlord had been represented in this transaction nor did she know the layout of the property or if any adjustment had been made for that. However, she said that if there had been any particular peculiarity in layout, she might have expected the surveyor to have informed her if an adjustment had been made as a consequence.

43. Miss Davies admitted that she did not know what the terms of the lease were nor did she have any footfall figures so as to compare the footfall in this part of Wigan the footfall regarding the Property. When she was taken to a photograph comparing the Property to Boyle Sports, she agreed that Boyle Sports was in a less attractive location due to its position, and that the Property was more easily accessible from Market Place than Boyle Sports. She acknowledged that when it was put to her that Boyle Sports was an outlier as a lower zone A, a bit like Max Spielmann, she suggested that Boyle Sports was not an anomaly because it was an open market letting and therefore was relevant as a comparable. She rejected the suggestion that Boyle Sport was irrelevant due to the Covid effect given that it had completed by July 2022.
44. Mr Burridge only addressed the tenancy with Boyle Sports in the joint statement. He referred to the fact that Boyle Sports occupies what he describes as a clearly inferior position to the Property, on the opposite side of Wallgate and further away from the pedestrianised area of the town centre thus affecting footfall. In his oral evidence he repeated that it was in an inferior position and rejected the suggestion that it was only marginally different. He identified the Property as being in a pedestrianised area which was a safe area for pedestrians to mill around but that beyond the Property and to access Boyle Sports, pedestrians would have to cross over a main road. He said that in the circumstances he would describe Boyle Sports as being in a different pitch to the Property.
45. When taken to a photograph of the location of the Property and Boyle Sports he rejected the suggestion that he had exaggerated the difference between Boyle Sports and the Property. He repeated that Boyle Sports was clearly inferior , and that if he had known about the letting to Boyle Sports at the time he had made his report, he would have referred to it but would have dismissed it for the reasons that he had given orally.
46. As regards adjustments, Mr Burridge informed me that he did not need to make any adjustments preferable to the rent payable by Boyle Sports, given that there were better comparables, namely TUI and Barclays Bank.
47. In arriving at her figure of £30,000 Miss Davies had averaged the rent payable by Admiral and Boyle Sports. She was questioned on the approach that she had taken in relation to the averaging of the rent. She admitted that for averaging there needed to be properties with similar characteristics save for rent but that in carrying out the exercise she had not just taken account of the rent payable by Admiral and Boyle Sports, she had had regard to other evidence to show what was happening on Market Place. She had also seen as important the fact that Admiral and Boyle Sports were open market lettings at the top of tier one and that Barclays Bank and TUI were reviews and they were less relevant than open market values.



48. She recognised that Boyle Sports was in an inferior position to the Property and that Admiral was in a better position, and on that basis she had concluded that the Property fell between the two. She referred to the fact that the Property was closer to Boyle Sports and that on that basis she could have made an adjustment of 80% rather than 50% but did not do that because she thought that taking a 50% was a fairer way of assessing the evidence.
49. Mr Burridge's approach was as follows. He acknowledged that the Property occupied an inferior position to Barclays Bank, was still within the pedestrianised area of Market Place, but it did not enjoy the same visibility and prominence as the two comparable transactions. Accordingly, in his opinion this needed to be reflected in the valuation and he would expect an adjustment of 5% to 10% to be warranted, and therefore had applied the mid-point of 7.5% to rent payable by Barclays Bank from January 2022, and thus had arrived at the figure for zone A at £31.72.
50. For completeness although Miss Davies in her report refers to 9 Market Place, a unit occupied by Kings Amusement, she acknowledged in her oral evidence that this was not or is no longer a relevant comparable.

#### *Configuration discount*

51. As regards the question of the configuration of the Property and/or its shape the headline position of each of the experts is as follows. Miss Davies suggested a discount of 15%, Mr Burridge a discount of 7.5%.
52. Miss Davies identified the configuration in the following way in her report. There were a few issues with the configuration of the subject property that affect valuation. Firstly the fact the Property is very wide at the its front, narrowing towards the rear meant that it is a very high zone A, smaller zone B and even a smaller zone C, resulting in a disproportionately a high area ITZA compared with the sales area when compared to a regularly configured shop with a consistent internal width. Secondly, as a separate point she identified that the shape also affected the ease of fitting out.
53. Having regard to those factors, she recognised that an adjustment was needed and concluded that there should be an overall adjustment of 15%. She recognised that this was higher than for the property occupied by Admiral .
54. In her oral evidence, and consistent with what she had set out in her report, Miss Davies identified the fact that the overall shape would be an impediment to letting because a retailer liked square or rectangular units for racking, that if the racking was in the middle of the property there would be wasted space. She also referred to the fact that the back of the Property was best used for non-sales, and therefore is unusable space and how the space at the back was fragmented, hidden from view and therefore could lead to shoplifting problems. She suggested that 15% was not at the extreme end and would be sufficient to attract a tenant. She repeated that the shape was awkward and that because of the high frontage depth there was too much zone A.
55. Mr Burridge addressed the configuration in the following way in his report. He referred to the fact that the ground floor layout was an irregular shape which, in his opinion, warranted a discount or adjustment from the *section 34* rental calculation. He promised, in his report, to expand on that point later. He does so at paragraph 13.2.1 and 13.2.2 in his report when he makes the following comments:

*“As I’ve already observed the subject property is of an awkward shape which would impact on the fitout of the subject property and the subsequent rental bid. It is, of course, difficult to obtain any specific comparable transactions to confirm that and/or illustrate the level of discount applicable. But in my expert opinion this would be in the order of 5% to 10%. This section 34 rental valuation therefore adopts a mid-point of say 7.5%.”*

56. In his oral evidence he explained that he concluded that there should be an adjustment of 7.5% because it was halfway between the figures of 5% and 10% to which he had referred in his report, which was to reflect the awkward shape and the impact on fitout and a rental bid. He suggested that the adjustment for fitout had nothing to do with zoning and how Miss Davies had only made one adjustment rather than them up split up but he described them as one and the same thing.

#### *The Parties’ submissions*

57. Mr Nuttall submitted that Miss Davies’ reliance on Boyle Sports was fatally flawed having a regard to its location and timing. He drew a comparison with the letting to Max Spielmann which he said Miss Davies had accepted was an outlier. Mr Nuttall submitted that Max Spielmann was an anomaly due to Covid and/or the fact that the parties had not been professionally represented when negotiating the terms. Mr Nuttall reminded me that Miss Davies had accepted that there were problems with Max Spielmann as a comparable and therefore little weight should be attached to it. Mr Nuttall suggested that the reasons for discounting Max Spielmann were reasons that were equally apt to Boyle Sports.
58. Mr Nuttall referred to the fact that the terms for Boyle Sports had, as is apparent from the email to which I referred earlier, been agreed in October 2021 and that the Covid effect may have been more prominent at the time terms were agreed. He identified the fact that a factor which might have been an important consideration to the landlord agreeing terms and having the property occupied rather it standing vacant.
59. As regards the question of location Mr Nuttall submitted that Mr Burridge’s evidence was compelling, in particular, how Mr Burridge had drawn a distinction between the location of the Property when compared to Boyle Sports’ premises having a regard to the fact that the Property is situated in a pedestrian zone whereas Boyle Sports’ are not. He referred to the psychological barrier to shoppers crossing over from the pedestrian zone into the non-pedestrian zone and how there was probably therefore a distinction between footfall on the opposite sides of the road. Moreover. In terms of visibility, Mr Nuttall submitted that having regard to what could be seen in the photographs, the Property was visible from Market Place, its logo was prominent, whereas Boyle Sports was less easy to see. He described the locations as being entirely different.
60. Mr Nuttall also identified some unknown factors which he recognised were always relevant in applications of this nature. He referred to the long and frustrating history referred to in the email of 26 October 2021, the lack of evidence in relation to layout, configuration, whether or not there were any onerous terms, and whether or not the parties were represented. Some or all of those factors, according to Mr Nuttall, would have driven down the rent payable by Boyle Sports.

61. Moreover, to the extent that Miss Davies took an average, Mr Nuttall submitted that taking an average was only appropriate in circumstances where there were equally comparative figures and in Mr Nuttall's submission there were not. On that basis Mr Nuttall submitted that if Boyle Sports was excluded the only relevant comparable relied upon by Miss Davies was that of Admiral and this was not useful because it was in a different location. However, Mr Nuttall referred to the 2 we and Barclays bank comparables as being far more useful, even taking into account the fact that they were tier 2.
62. Furthermore, Mr Nuttall suggested that Miss Davies was wrong in her evidence that from the rental of the Property plummeted, when compared to TUI and Barclays because that ignored that albeit that the Property had a Wallgate address, it was on Market Place which Mr Nuttall reminded me incorporated the pedestrianised area. On that basis Mr Nuttall submitted that the approach taken in arriving at the rentals of Barclays and TUI should be taken in arriving at the rental for the Property.
63. As regards the question of configuration, Mr Nuttall asked whether in reality Mr Burridge had merged the issues of layout and depth. Mr Nuttall submitted that he had not, and that Mr Burridge had shown a proper understanding of these issues. Mr Burridge's evidence was that they would not impact on an incoming tenant as the property could be fitted out. He submitted that there was nothing unusual about the Property, there were no void spaces, no security issues and that those factors which are matters which should be reflected by only a modest reduction.
64. Mr Healy commenced his submissions by referring me to an extract of the judgment of Colman J in *Living Waters* to which I have referred to above. He also identified the fact that Mr Burridge had prepared his report without knowing about the most recent letting to Boyle Sports, and expressed his surprise that in the circumstances that Mr Burridge had not prepared a supplemental report or sought to expand upon the reasons which he provided in the joint statement.
65. Mr Healy referred to Mr Burridge's ability to make adjustments between the Property and Barclays Bank and queried why no similar adjustment could be made between the Property and Boyle Sports. As regards Mr Nuttall's reference in his closing submissions to the Max Speilmann letting Mr Healy submitted that this was a distraction. Mr Healy reminded me that this was a low zone A rental, how Miss Davies could have ignored it, but that having regard to her duty to the Court as an expert she brought the matter to the Court's attention and how she had recognised that it was an outlier but that had to be seen in the context of the other Market Place evidence which was available. Moreover, Mr Healy identified the fact that Miss Davies could have used this to, as he described, talk the rent down further but that she had not done so.
66. As regards the question of the location and the extent to which Boyle Sports was in an inferior position to that of the Property, Mr Healy rejected the analysis of Mr Burridge as adopted by Mr Healy. He referred to the fact that Boyle Sports could be easily accessed, albeit not within the pedestrianised zone, by the two zebra crossings in the vicinity of the pedestrianised area. As regards the question of the unknown factors which Mr Nuttall had referred to might have driven down the rent, Mr Healy described that as speculation on behalf of L & C.

67. In terms of a comparison with TUI and Barclays Bank , Mr Healy submitted that a true analysis of this position was that not they were a cross check. He identified that by reference to what Miss Davies had said in her report at 7.7.3 namely that there was an absence of comparable evidence at the time of the review and therefore the parties placed a lot of weight on the lease renewal on the adjoining building occupied by TUI.
68. Mr Healy identified the fact that Barclays Bank was a rent review not an open market rent, that the TUI rent had been agreed pre-Covid and, having regard to this fact and the fact that both Barclays and TUI were tier two, they were unreliable or inapt comparables in relation to the exercise for me to undertake. He recognised, however, that Barclays Bank evidence could be important, but that open market letting evidence was preferable and how evidence preferable to a rent review was an imperfect comparison post-Covid.
69. Mr Healy identified Miss Davies' approach as entirely sound. She had identified comparables, weighed the evidence and did her best in terms of taking an average of 50% between Admiral and Boyle Sports. Mr Healy identified this as an appropriate judgment call of an expert doing her best in the circumstances.
70. As regards the issue of adjustments Mr Healy referred to the fact that these were two different concepts, one being shape/fitout and the other being zoning. The former was reflective of what he described as "*real-world market behaviour*" namely the tenant looked at a shop under consideration and thought about how it could sell its merchandise or goods in a property rather than considered the esoteric issues of zoning with which experts were concerned. In terms of the latter, namely zoning, this is the exercise of experts working out what the market would do and making adjustments because of size and the like. Mr Healy referred to the fact that an adjustment was needed in this case having regard to the fact there was too much zone A at the front of the Property, but this was not necessarily the same thing as making an adjustment regarding the shape having a regard to difficulties with fitting out and the like.

### *Discussion*

71. A resolution of the issues for my determination depends upon whose expert evidence I prefer. In my judgment, the expert evidence of Miss Davies is preferable for the following reasons which are illustrative rather than exhaustive and not sit out in any particular order. I identify eight reasons as follows; -
  - a. Miss Davies properly discharged her duty to the Court as an expert in a far more thorough manner than Mr Burrige did. Miss Davies found and considered relevant comparables including those which she agreed were unhelpful, for example Max Speilmann, and another example which Mr Healy had described as less good evidence namely the pre-Covid transaction from December 2019 the rent review with TUI.
  - b. Miss Davies has taken a balanced approach and one consistent with her duty to the Court. That is reflected by the explanation she gave in cross examination as to why she took an average approach between the rent of Admiral and Boyle Sports, when she told me that having regard to the geographical proximity between Betfred and Boyle Sports she could have made an 80% allowance rather than an 50% allowance.

- c. The report of Mr Burridge contained only two comparables surprising for the exercise he was undertaking. In his evidence he had explained that that tenants are more open with enquiries from a tenant's surveyor than a landlord surveyor. I considered that explanation weak.
- d. Equally weak, or perhaps unconvincing, was Mr Burridge's answer to a question I put to him at the conclusion of his cross examination namely that his failure to Admiral as a was an oversight.
- e. Given the limited number of comparables in Mr Burridge's report compared to those of Miss Davies', I might have expected a supplemental report from Mr Burridge. It is surprising that one was not forthcoming containing Mr Burridge's written evidence in relation to Miss Davies' comparables. This is all the more surprising, having regard to the fact that Mr Burridge acknowledged that his comparables were only tier two comparables.
- f. It is difficult to understand how in the circumstances in which Mr Burridge was able to discount the rent payable by Barclays Bank having regard to the fact Property occupies an inferior position to Barclays Bank, why no attempt was made by him to analyse and adjust the Boyle Sports' rent having regard to Mr Burridge's stated position that Boyle Sports occupied an inferior position to the Property. It seems to me it is the same analytical or intellectual exercise looked at it in a different context or from a different position.
- g. I remind myself what Colman J said in *Living Waters Christian Centres Limited v Henry George Featherstonhaugh* namely:

*"The term 'comparable' has to be treated [is] wide enough to be cover any other property which has any evidential contribution to make to the assessment of the value of the property in question, whether that contribution is substantial or only relatively small because of differences in material characteristics."*

Undeniably Admiral and Boyle Sports have evidential contributions to make to the assessment of the value of the amount of rent, having regard to the fact they reflect open market lettings, tier one, as opposed to rent reviews or renewals, tier two, being the comparables relied upon by Mr Burridge. It is difficult to see how they could be dismissed as evidentially irrelevant or materially different in those circumstances on location alone. They were properly considered by Miss Davies and weighed with the other evidence by her. Mr Burridge's approach wedded to his comparables is either overly simplistic or alternatively unnecessarily dismissive.

- h. In my assessment of the evidence of Mr Burridge, I cannot ignore Mr Healy's criticism of the approach which Mr Burridge took to the adjustments by attempting to conflate or compare the issue of shape and fitout to zoning. I agree with Mr Healy's assessment that they are different matters for the reasons given by Mr Healy.

72. Accordingly, and in accordance with *section 34 of the Landlord and Tenant Act 1954* I determine the rent payable under the new tenancy and the interim rent at £30,000 because I am satisfied and find that for the reasons given by Miss Davies in her

evidence that this is the amount of rent which might reasonably be expected if the Property were let on the open market by a willing seller.

73. Those are the reasons that I have reached the conclusions that I have reached in relation to the issues for my determination.

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This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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