

# DOUG STEVENS SEMINAR

▶ MONDAY 22<sup>nd</sup> MAY 2017

▶ 08.00HRS TO 09.00HRS

▶ VENUE : CBRE

▶ 'C-BAR'

▶ Henrietta House  
Henrietta Place

▶ W1G 0NB

▶ SUBJECT

1. *PHYSICAL FACTORS & LEASE CLAUSES IMPACTING ON RENTAL VALUATION*
2. *OPEN QUESTIONS*

SEMINAR BY DOUG STEVENS TO 1<sup>st</sup> & 2<sup>nd</sup> YEAR GRADUATES  
DELIVERED AS A POWERPOINT PRESENTATION

## WHAT PHYSICAL FACTORS IMPACT ON RENTAL VALUATION OF A SHOP ?

- ▶ SIZE - is it very large (QUANTUM) is it very small (A KIOSK)
- ▶ SHAPE - is it a regular rectangular shape - or irregular ie, short and wide or long and thin or oddly shaped or with a dog-leg (MASKED) area
- ▶ STRUCTURE - does it have a standard glass shopfront - or a large element of stone or brickwork
- ▶ CONFIGURATION - is it multi-level - is the ancillary floorspace proportionate to the ground floor - or is it top heavy (at F/F) or bottom heavy (at BMT)
- ▶ PHYSICAL DISABILITIES - a plethora of columns - are there steps outside or inside the shop
- ▶ YOU ARE COMPARING YOUR SHOP WHICH HAS ONE OR MORE OF THE ABOVE PHYSICAL FACTORS WITH ANOTHER SHOP WHICH HAS NO PHYSICAL DISABILITIES.
- ▶ Q. HOW DO YOU PROVE A DISCOUNT AS TENANT (T) - or - DISPROVE AS LANDLORD (L/L)
- ▶ WE VALUE BY THE COMPARISON METHOD - SEEKING COMPARABLES OF OTHER SHOPS SIMILAR TO OURS
- ▶ A. TO PROVE A DISCOUNT YOU NEED TO FIND AN APPROPRIATE COMPARABLE WITH SIMILAR DISABILITIES
- ▶ A. TO DISPROVE YOU NEED A COMPARABLE WHERE NO DISCOUNT WAS AGREED

# *ALLOWANCES FOR PHYSICAL FEATURES & ALLOWANCES FOR ONEROUS LEASE CLAUSES IN RENT REVIEWS*

▶ *WE REFER TO ALL ADJUSTMENTS (POSITIVE/ADDITIONS & NEGATIVE/DISCOUNTS) AS ALLOWANCES*

## ▶ *PHYSICAL FEATURES*

- ▶ *LISTED STATUS ( GRADE 1 OR GRADE II )*
- ▶ *RETURN FRONTAGE*
- ▶ *HARD FRONTAGE*
- ▶ *MASKING*
- ▶ *SHAPE*
- ▶ *DISPROPORTIONATE FRONTAGE TO DEPTH*
- ▶ *QUANTUM*

## ▶ *ONEROUS LEASE CLAUSES*

- ▶ *RESTRICTIVE USER*
- ▶ *KEEP OPEN*
- ▶ *RESTRICTIVE ALIENATION*
- ▶ *ALTERATIONS*
- ▶ *LONG LEASE TERM*

Q. WHAT ARE THE PHYSICAL DIFFERENCES BETWEEN THESE 2 SHOPS ?

Google Maps 34 New Bond St



Image capture: Aug 2016 © 2017 Google

London, England  
Street View - Aug 2016



## A. ONE HAS UNUSUAL PHYSICAL FEATURES : STEPS - RAILINGS - OLD SHOPFRONT - THE OTHER DOESN'T

- ▶ THE RALPH LAUREN (POLO) SHOP IS GRADE II LISTED - THE FENDI SHOP IS NOT
- ▶ YOU ARE TENANT - Q. WHY DO YOU WANT AN ALLOWANCE (DISCOUNT) FOR THE LISTING/PHYSICAL FEATURES ?
- ▶ A. BECAUSE THE HYPOTHETICAL TENANT IS RESTRICTED IN TERMS OF SHOPFITTING - THE CUSTOMERS HAVE TO CLIMB STEPS - THEY CAN'T STAND DIRECTLY IN FRONT OF THE SHOP - DISABLED CUSTOMERS HAVE TO BE HELPED IN TO THE SHOP - THE SHOP MAY ONLY APPEAL TO A SMALL SECTION OF THE POTENTIAL POOL OF TENANTS - DIFFICULT TO ASSIGN/UNDERLET
- ▶ Q. HOW DO YOU PROVE A DISCOUNT ?
- ▶ A. YOU FIND COMPARABLES WHERE AN ALLOWANCE HAS BEEN MADE FOR A PROPERTY WITH SIMILAR PHYSICAL FEATURES
- ▶ Q. IS THE ALLOWANCE (if proven) APPLIED TO THE WHOLE DEMISE A. YES 2.5% to 5% common
- ▶ YOU ARE L/L. Q. HOW DO YOU ARGUE AGAINST AN ALLOWANCE ?
- ▶ A. THE CHARACTER FEATURES ARE AN ATTRACTION - MARKET DEMAND IS SO STRONG THAT A T WILL TAKE IT WITH NO ALLOWANCE





## RESTRICTIVE USER CLAUSE IN THE LEASE ?

- ▶ YOU ARE DEALING WITH A PROPERTY WHICH IS A SHOP (A1) or A BANK (A2) OR A RESTAURANT (A3)
- ▶ Q. WHERE DO YOU CHECK IN THE LEASE TO SEE WHAT THE PROPERTY CAN BE USED FOR ?
- ▶ A. THE USER CLAUSE or (in the definitions) the PERMITTED USE
- ▶ Q. WHERE DO YOU CHECK IN THE LEASE WHAT USE (S) THE PROPERTY CAN BE VALUED FOR ?
- ▶ A. THE RENT REVIEW CLAUSE - specifically the ASSUMPTIONS
- ▶ NB THE USER CLAUSE / PERMITTED USE GOVERNS WHAT THE PROPERTY CAN BE USED FOR BY T
- ▶ IF IT SAYS TO USE AS A BANK (A2) YOU CANNOT USE IT FOR A1 OR A3 OR ASSIGN IT TO A NON A2 USER
- ▶ BUT - THE RENT REVIEW CLAUSE DETERMINES WHAT USE(S) YOU CAN VALUE ie permitted user may be Bank (A2) but review clause says A2, but also A1 and/or A3 uses
- ▶ NB - RENT REVIEW CLAUSE OVER-RIDES USER CLAUSE WHEN IT COMES TO VALUATION
- ▶ Eg - USER CLAUSE MAY SAY USE ONLY FOR SALE OF FOOTWEAR
- ▶ IF THE RENT REVIEW ASSUMPTION IS TO ASSUME A LETTING ON A NEW LEASE ON THE SAME TERMS AS THE EXISTING LEASE THEN THE USE ( AND VALUATION ) IS FOR FOOTWEAR ONLY - ie, RESTRICTIVE
- ▶ IF RESTRICTIVE AS T YOU ARGUE FOR AN ALLOWANCE (DISCOUNT) AND NEED COMPARABLES
- ▶ BUT - IF RENT REVIEW CLAUSE SAYS YOU CAN ASSUME ANY A1 USE THEN L/L HAS BEST OF BOTH WORLDS - control over user BUT a valuation at rent review assumed to be non-restrictive.

## RESTRICTIVE USER ( Cont`d)

- ▶ USER CLAUSES MAY BE **ABSOLUTELY RESTRICTIVE**, **QUALIFIED**, ie L/L`s CONSENT IS REQUIRED OR **OPEN** WITHIN A SPECIFIED USE CLASS OR CLASSES.
- ▶ **ABSOLUTE** - USER CLAUSE SPECIFIES A SPECIFIC USE, ie, SALE OF FOOTWEAR ONLY
- ▶ Q. WHY IS THIS RESTRICTIVE ?
- ▶ A. T CANNOT WIDEN HIS RANGE OF GOODS OR CHANGE TO ANOTHER USE - LIMITED FLEXIBILITY
- ▶ A. IF T WANTS TO ASSIGN OR UNDERLET MUST DO SO TO A FOOTWEAR RETAILER - LIMITS DISPOSAL
- ▶ RESTRICTIVE USERS ARE NOW LESS COMMONPLACE SAVE FOR SPECIALIST RETAIL LOCATIONS WHERE L/L WANTS FULL CONTROL, ie CARNABY STREET (Shaftesbury Estates) SLOANE STREET/KINGS ROAD (Cadogan Estates)
- ▶ DISCOUNTS OF 10% WERE COMMON - ie, **UDS Tailoring v BL Holdings (1982)** menswear only
- ▶ **Law Land v Consumers Association Ltd (1980)** - use restricted to Consumer Assoc only - T argued for low rent as only possible T- BUT the open market proviso in the rent review over-rode the absolute user restriction
- ▶ **Charles Clements v Rank City Wall (1978)** A lease renewal with restrictive user - only as a cutlers (knives & forks, etc) - 14% discount decided. L/L willing to open user BUT could not unilaterally do so as T was happy
- ▶ A USE RESTRICTED TO A2 USE (BANK) ONLY MIGHT ATTRACT A 5% ALLOWANCE IF YOU HAVE 5% COMPARABLES
- ▶ **QUALIFIED** - Several layers of qualification, ie, subject to good estate management, or tenant mix
- ▶ **OPEN** Consent for change of use will be given with L/L`s consent not to be unreasonably withheld or delayed LLCNTBUW (OD)
- ▶ SEEK TO COMPARE `LIKE WITH LIKE` ie, COMPARE THE USER CLAUSES AND THE COMPARABLE EVIDENCE
- ▶ USER CLAUSE MAY BE ABSOLUTELY RESTRICTIVE - BUT CHECK THE RENT REVIEW CLAUSE DOESN`T OVER-RIDE IT, ie, ASSUMPTION THAT THE SHOP IS AVAILABLE FOR USE FOR ANY CLASS A1 PURPOSE

# Fully Glazed Return Frontage





# Partial Return Frontage



## RETURN FRONTAGE (R/F)

- ▶ A L/L OF SHOP WITH RETURN FRONTAGE WILL WANT A HIGHER RENT FOR IT
- ▶ Q. WHAT POSITIVE ARGUMENTS COULD BE ADVANCED FOR AN ALLOWANCE
- ▶ A. R/F INCREASES PROMINENCE OF THE SHOP - CUSTOMERS CAN SEE INSIDE THE SHOP THUS ENHANCING THE TENANT'S OPPORTUNITY TO ATTRACT MORE CUSTOMERS - THE TENANT HAS A GREATER OPPORTUNITY TO DISPLAY THEIR WARES.
- ▶ Q. AS T WHAT ARE THE NEGATIVE ARGUMENTS AGAINST AN ALLOWANCE ?
- ▶ A. MOST RETAILERS NOW SEEK THE MAXIMUM AMOUNT OF LINEAR WALL SPACE AND SO DO NOT WANT A GLAZED RETURN FRONTAGE BECAUSE THEY COULD NOT RACK AGAINST THAT FRONTAGE AND SO LOSE LINEAR WALL SPACE - THE DRESSING OF SHOP WINDOWS IS TIME CONSUMING AND COSTLY - THE INSURANCE PREMISES ARE HIGHER FOR A UNIT WITH A GLAZED RETURN FRONTAGE - THE POOL OF POTENTIAL TENANTS WANTING RETURN FRONTAGES IS SMALLER
- ▶ L/L NEEDS COMPARABLES SHOWING AN ALLOWANCE FOR SIMILAR QUALITY R/F - RANGE OF ALLOWANCES 2.5% to 5% to 7.5% to 10%
- ▶ T MIGHT ARGUE THAT THERE IS A LIMITED NUMBER OF TRADES AND IDENTIFIABLE T's WHO WILL TAKE A R/F AND ALL MIGHT ALREADY BE REPRESENTED OR NOT ACTIVE IN THE MARKET.

## RETURN FRONTAGE ( Cont`d )

- ▶ IDEALLY EVIDENCE OF ALLOWANCE FOR R/F SHOULD BE FROM SAME TOWN/CENTRE –or – A SIMILAR TOWN/CENTRE WITH SIMILAR CHARACTERISTICS
- ▶ WHERE IS THE RETURN FRONTAGE TO ? IS IT TO A BUSY RETAIL STREET FACING OTHER RETAIL UNITS -or- TO A SECONDARY SIDE STREET
- ▶ DOES IT SUBSTANTIALLY ADD TO THE PROMINENCE OF THE SHOP ?
- ▶ IS THERE A SECONDARY ENTRANCE FROM THE RETURN FRONTAGE ELEVATION
- ▶ FULL R/F - IF THE RETURN GLAZED FRONTAGE RUNS FOR THE ENTIRE LENGTH OF THE SHOP THEN IT MAY BE APPROPRIATE TO APPLY A PERCENTAGE ADDITIONAL TO THE VALUE OF THE WHOLE SHOP.
- ▶ **NB THE %AGE ALLOWANCE IS ADDED TO THE GROUND FLOOR RENT ONLY - NOT THE WHOLE DEMISE**
- ▶ PARTIAL R/F - WHERE THE GLAZED RETURN FRONTAGE IS PARTIAL (IE. ONLY PART OF THE SHOPS RETURN FRONTAGE BENEFITS FROM GLAZING (see 2<sup>nd</sup> photo) AND THE REST IS A SOLID STRUCTURE AN ADDITION TO THE RENTAL VALUE SHOULD BE MADE FOR THE AREA OF THE SHOP WHICH BENEFITS FROM THE GLAZED FRONTAGE). Eg IF ONLY THE FIRST 10 FEET OF ZONE A HAD A GLAZED RETURN FRONTAGE THEN AN ADDITION OF 10% / 7.5% / 5% / 2.5% WOULD BE ADDED TO THE FIRST 10 FEET ONLY - NOT TO THE WHOLE SHOP
- ▶ IF THE SHOP IS A DOUBLE UNIT WITH A DOUBLE FRONTAGE AND A RETURN FRONTAGE YOU MIGHT ADD A %AGE TO THE ADJACENT HALF OF THE SHOP UNIT ONLY -ie, NOT APPLY IT TO THE WHOLE

## KEEP OPEN CLAUSE (KOC)

Q. Q. WHAT IS A KEEP OPEN CLAUSE AND WHERE MIGHT IT APPLY?

R. A . WHERE A TENANT IS AN ANCHOR TENANT IN A SHOPPING CENTRE THE LEASE MIGHT INCLUDE A KEEP OPEN CLAUSE ABSOLUTE AS L/L IS CONCERNED AS TO THE IMPACT ON THE CENTRE IF THE ANCHOR TENANT SHOULD CEASE TRADING – IT COULD DEPRESS VALUE OF THE CENTRE

KEEP OPEN CLAUSE MAY BE ABSOLUTE - OR - QUALIFIED

THE TENANT COVENANTS *“TO KEEP THE DEMISED PREMISES OPEN FOR TRADING AT ALL USUAL TIMES THAT RETAILERS ARE OPEN FOR TRADING IN THE LOCALITY SAVE FOR WHEN CARRYING OUT WORKS TO THE DEMISED PREMISES AND FOR REASONABLE PERIODS IMMEDIATELY PRIOR AND SUBSEQUENT TO A PERMITTED DISPOSITION AFFECTING THIS PROPERTY”.*

*THIS IS A QUALIFIED KEEP OPEN CLAUSE – BUT STILL ONEROUS*

*LET'S LOOK AT THE EXAMPLE OF A DEPARTMENT STORE OR FOODSTORE ON A 25 YEAR LEASE*

Q. WHY SHOULD THE TENANT GET AN ALLOWANCE (DISCOUNT) FROM A FULL MARKET RENT?

A. IT COSTS HIM HEAVILY IF HE CAN'T DISPOSE OF THE STORE (WHICH MIGHT BE A LOSS MAKING STORE). HE MAY BE TRADING AT AN UNSUSTAINABLE LOSS

Q. DOES THIS CLAUSE COMPEL THE TENANT TO REMAIN OPEN & TRADING?



# KEEP OPEN CLAUSE (KOC) (Cont`d)

- ▶ **NO** in **England** *Co-operative Insurance Society LTd v Argyll Stores (Holdings) Ltd [1997] 3 All ER 297.*
- ▶ House of Lords overturned an order requiring Safeway, the anchor tenant in a shopping centre, to carry on trading in terms of its lease. They held that a keep open clause was not, other than in exceptional circumstances, specifically enforceable, since it was the settled practice of the Court not to make an order requiring a person to carry on a business
- ▶ **YES** in **Scotland** *Highland & Universal Properties Limited v Safeway Properties Limited 2000 SLT 414* on the Scottish legal principle of specific implement
- ▶ WHAT FACTORS INFLUENCE THE LEVEL OF DISCOUNT FOR KEEP OPEN?
- ▶ **LENGTH OF LEASE** - IS IT A LONG LEASE? (MORE ONEROUS IF SO)
- ▶ **ABILITY TO ALIENATE** – CAN TENANT ASSIGN OR UNDERLET WHOLE OR PART(S)
- ▶ **TENANT DEMAND FOR THE STORE** – IS THERE ONE OR MORE TAKERS FOR THE STORE?
- ▶ T NEEDS COMPARABLES TO ACHIEVE ALLOWANCE FOR KOC
- ▶ L/L MAY PRODUCE COMPARABLES WHICH SHOW NO ALLOWANCE FOR KOC
- ▶ TYPICAL ALLOWANCES 2.5%, 3.75% AND 5% DEPENDENT ON ABOVE 3 FACTORS
- ▶ **NB WHERE THE KOC IS ON A UNIT WHICH IS NOT THE ANCHOR T IN A CENTRE A CLOSURE WOULD BE UNLIKELY TO CAUSE A SIGNIFICANT IMPACT – SO NO ALLOWANCE MADE**

# HARD FRONTAGE



## HARD FRONTAGE

- ▶ Q. WHAT ARE THE PHYSICAL FEATURES OF THIS BANK PROPERTY ?
- ▶ A. LIMITED FENESTRATION (WINDOWS). SMALL SINGLE DOOR ENTRANCE
- ▶ TYPICALLY BANKS HAVE HARD FRONTAGES - FOR SECURITY /PRESTIGE?
- ▶ Q. WHY SHOULD THEY ATTRACT AN ALLOWANCE (DISCOUNT)?
- ▶ A. ONLY A SMALL GLAZED WINDOW DISPLAY - CAN'T ATTRACT CUSTOMERS
- ▶ A. OFTEN ONLY ONE ACCESS POINT/ENTRANCE DOOR - LACKS FLEXIBILITY OF LAYOUT
- ▶ A. BUILDING MIGHT BE LISTED OR IN CONSERVATION AREA SO FRONTAGE PROTECTED ie, may not be possible to change/open up the frontage
- ▶ A. GREATLY LIMITS POTENTIAL ASSIGNEES WHO MAY NOT WANT HARD FRONTAGE
- ▶ TYPICALLY 2.5% UP TO 5% ALLOWANCE (DISCOUNT)
- ▶ T NEEDS COMPARABLES OF BANK WITH SIMILAR HARD FRONTAGE WHERE ALLOWANCE AGREED/AWARDED
- ▶ L/L NEEDS COMPARABLES WHERE NO ALLOWANCE SPECIFICALLY AGREED -or- AT A LESSER RATE
- ▶ ALLOWANCES DEPEND ON DEGREE OF HARD FRONTAGE /AMOUNT OF GLAZING - See 2<sup>nd</sup> photo



# Hard frontage ?





## ALIENATION - ABILITY TO ASSIGN OR UNDERLET WHOLE OR PART OF PROPERTY

- ▶ Q. WHY DOES A RESTRICTION ON RIGHTS TO ASSIGN OR UNDERLET A PROPERTY OR PART OF IT IMPACT ON RENTAL VALUE
- ▶ A. AS A T YOU MAY WISH TO SELL ( ASSIGN) THE LEASE OR UNDERLET THE WHOLE PROPERTY OR PART OF IT TO ANOTHER T
- ▶ A RESTRICTION ON ABILITY TO ALIENATE IS ONEROUS - IT LIMITS FLEXIBILITY IN DEALING WITH THE PROPERTY WHICH MAY NOW BE SURPLUS OR TOO LARGE
- ▶ THE LEASE WILL CONTAIN PROVISIONS COVERING ASSIGNMENT OF WHOLE AND UNDERLETTING OF WHOLE AND PART. THESE WILL GOVERN WHAT YOU CAN DO WITH THE PROPERTY
- ▶ HOWEVER THE RENT REVIEW PROVISIONS MAY SPECIFY DIFFERENT ASSUMPTIONS AS TO ALIENATION RIGHTS AND IT IS THESE WHICH IMPACT ON VALUATION AT REVIEW
- ▶ IF THE PROPERTY IS LARGE AND/OR MULTI-LEVEL IT MAY LEND ITSELF PHYSICALLY TO SUB-DIVISION. DOES THE LEASE PERMIT THIS? - IF NOT IT IS ONEROUS IF COMPARED WITH COMPARABLES WHICH HAVE MORE FAVOURABLE ALIENATION PROVISIONS
- ▶ NB A RESTRICTION AGAINST UNDERLETTING IN PART IS NOT ONEROUS IF PHYSICAL SUB-DIVISION TO CREATE A SUBLET IS IMPRACTICAL
- ▶ AS A T IF THE ALIENATION PROVISIONS ASSUMED IN THE REVIEW CLAUSE ARE ONEROUS YOU NEED TO FIND COMPARABLES WITH SIMILAR ONEROUS PROVISIONS
- ▶ AS A L/L TO AVOID AN ALLOWANCE YOU NEED COMPARABLES WHERE NO ALLOWANCE WAS MADE FOR SIMILAR ALIENATION ASSUMPTIONS

# ALIENATION

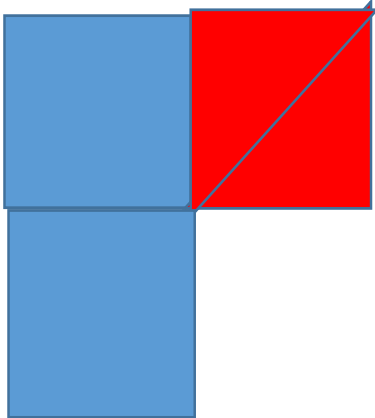
## Assignment -- Pre-emption -- Underletting

- ▶ **ASSIGNMENT** - Assignment of part only is almost always prohibited - not onerous
- ▶ A lease prohibiting assignment of the whole is restrictive - onerous as L/L has full control. T cannot dispose of lease. There are few examples of this - a 5% allowance might apply
- ▶ **PRE-EMPTION** - L/L reserves a pre-emption right so that when T wishes to sell lease (assign) and applies to L/L for consent L/L exercises right to take a surrender matching terms which the T can achieve in the open market ie, if best premium offer for lease was £50,000 - L/L pays £50,000 for a surrender
- ▶ **Q** Is a pre-emption an onerous provision ?
- ▶ **A.** T says YES arguing that no one will submit a full offer as they know L/L can over-ride
- ▶ **A.** L/L says NO. Counter argument is that by surrendering lease T is off the hook (ie, no AGA)
- ▶ Pre-emption clauses are NOT regarded as onerous. No allowance is usually made
- ▶ **UNDERLETTING** - Underletting of the whole is invariably permitted
- ▶ A lease prohibiting underletting of whole is onerous 2.5% up to 5% allowance may apply
- ▶ Underletting of part or parts is common for larger shops + multi-level shops, ie offices above
- ▶ Restriction on underletting part/parts of large shop/multi-level is onerous 2.5% -5% allowance common

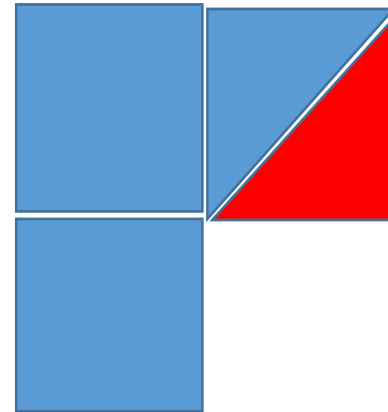
# MASKING

MASKING - WHERE PART OF THE GROUND FLOOR OF A SHOP UNIT IS NOT VISBLE FROM THE SHOP FRONTAGE

IS WHOLE RED AREA MASKED ?



OR IS ONLY THIS RED AREA MASKED FROM FRONT OF THE SHOP ?



## MASKING

- ▶ IN PREVIOUS 2 PLANS THE SHOP HAS A DOG-LEG SHAPE - SUCH THAT PART OF IT IS OFF-SET AND SO NOT VISIBLE FROM THE SHOPFRONT
- ▶ Q. DOES THIS MAKE IT LESS VALUABLE SPACE AND IF SO WHY ?
- ▶ A. THE SPACE IS ARGUABLY LESS VALUABLE BECAUSE ITEMS/GOODS IN THIS PART OF THE SHOP ARE `MASKED` FROM THE VIEW OF CUSTOMERS (ie, NOT VISIBLE) TOWARDS THE FRONT OF THE SHOP
- ▶ Q. SHOPS ARE ZONED. HOW DO WE DOWNGRADE THE ZONED RATE FOR THE MASKED AREA
- ▶ A. NO UNIVERSAL ANSWER. A 50% RATE MIGHT BE APPROPRIATE
- ▶ Ie IF MASKED AREA FALLS IN ZONE C THEN APPLY A/6 RATHER THAN USUAL A/4
- ▶ Q. DO WE APPLY THIS LOWER RATE TO THE FULL RED SQUARE AREA - or - JUST THAT TRIANGULAR PART WHICH CAN`T BE SEEN FROM THE MID-POINT AT THE FRONT OF THE SHOP?
- ▶ A. NO UNIVERSAL ANSWER - BUT THE TRIANGULAR AREA IS MORE LOGICAL IF VISIBILITY IS THE ISSUE - ADOPTING THIS APPROACH THE ADJUSTMENT TO THE ZONE C AREA IS FOR THE TRIANGULAR AREA ONLY
- ▶ ONCE AGAIN FOR T TO SUPPORT AN ALLOWANCE FOR MASKING THEY MIGHT NEED COMPARABLES

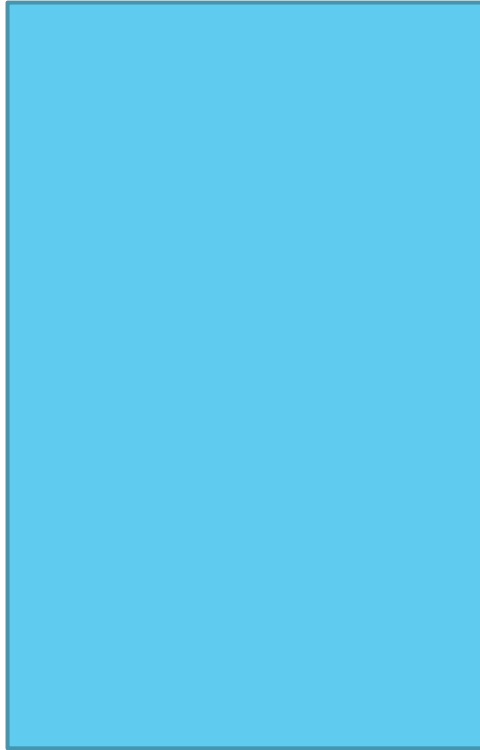


# RESTRICTION ON STRUCTURAL ALTERATIONS

- ▶ MANY LEASES PERMIT TENANTS TO CARRY OUT INTERNAL (NON-STRUCTURAL) ALTERATIONS WITH L/L'S CONSENT
- ▶ MOST LEASES (ESPECIALLY IN SHOPPING CENTRES) OR WHERE THERE ARE OFFICES OR RESIDENTIAL ABOVE PROHIBIT TENANT FROM CARRYING OUT STRUCTURAL ALTERATIONS - THIS IS TO PRESERVE THE STRUCTURAL INTEGRITY OF THE LANDLORD'S BUILDING
- ▶ HOWEVER SOME LEASES PROHIBIT STRUCTURAL ALTERATIONS WHERE THERE ARE NO STRUCTURAL ISSUES See example below -;
- ▶ *Not to erect or suffer to be erected any new buildings on the demised premises or any part thereof nor make any alterations or addition whatsoever in or to the buildings for the time being comprised in the demised premises nor to cut, maim or injury or suffer to be cut maimed or injured any of the roofs, walls, timbers, wires, pipes, drains, appertences, fixtures or fittings thereof or of which the demised premises form part nor to do or suffer in or upon the demised premises or the remainder of the Building or other premises as aforesaid any wilful or voluntary waste or spoil.*
- ▶ WHY IS THIS A PROBLEM FOR SOME TENANTS - ie, WHAT STRUCTURAL WORKS ARE THEY LIKELY TO DO?
- ▶ TAKE THE EXAMPLE OF A LARGE STORE LIKE HAMLEYS - LONG LEASE - NO STRUCTURAL ALTERATIONS
- ▶ THEY MAY WISH TO MOVE ESCALATORS OR LIFTS OR OPEN UP FLOOR SLABS
- ▶ ALL OF THOSE WORKS ARE STRUCTURAL - SO L/L CAN SAY NO - OR - YES FOR SOMETHING IN RETURN
- ▶ EXAMPLES ON BOND STREET. TENANT PAYS HUGE £10M PREMIUM TO TAKE AN ASSIGNMENT OF A LEASE. THEN SUBMITS HIS PLANS FOR TO ALTER THE PROPERTY TO THE L/L
- ▶ L/L SAYS NO - "THERE ARE NO STRUCTURAL ALTERATIONS PERMITTED" - "BUT I WILL CONSENT IF YOU PAY MORE RENT OR CHANGE OTHER LEASE TERMS IN MY FAVOUR"
- ▶ Example - Arcadia will not sign any lease for a TopShop store that prohibits structural alterations
- ▶ THERE ARE A FEW EXAMPLES ON LARGER STORES WHERE A 10% ALLOWANCE (DEDUCTION ) WAS MADE - FOR MANY STANDARD SIZED UNITS ON STANDARD LENGTH LEASES IT IS DIFFICULT TO SUPPORT A CASE FOR AN ALLOWANCE
- ▶ DEPENDENT ON CIRCUMSTANCES AN ALLOWANCE OF 5% UP TO 10% MAY BE MADE - BUT COMPARABLE EVIDENCE NEEDED TO SUPPORT CASE

# DISPROPORTIONATE FRONTAGE TO DEPTH (FTD)

**SHOP A** 30 FT WIDE X 60 FT DEEP



ZONE A  $30 \times 20 = 600 @ 100\% = 600$

ZONE B  $30 \times 20 = 600 @ 50\% = 300$

ZONE C  $30 \times 20 = 600 @ 25\% = 150$   
 $1800 = 1,050$

1,800 SQ FT 1,050 UNITS ITZA

**SHOP B** 60 FT WIDE X 30 FT DEEP



ZONE A  $60 \times 20 = 1,200 @ 100\% = 1,200$

ZONE B  $60 \times 10 = 600 @ 50\% = 300$

$1,800 = 1,500$   
1,800 SQ FT = 1,500 UNITS ITZA

# (Disproportionate) Frontage to Depth (FTD)

- ▶ BOTH SHOPS ARE THE SAME SIZE 1,800 SQ FT - BUT A DIFFERENT SHAPE
- ▶ WHEN ZONED SHOP A = 1,050 UNITS ITZA BUT SHOP B IS 1,500 UNITS ITZA
- ▶ IF ZONE A RATE IS £100 THEN VALUE OF SHOP A = £105,000 per annum
- ▶ SHOP B = £150,000 per annum
- ▶ Q. IS SHOP B THAT MUCH MORE VALUABLE THAN SHOP A?
- ▶ A. POSSIBLY. IT AS GREATER FRONTAGE- PROMINENCE - OPPORTUNITY TO ATTRACT MORE CUSTOMERS
- ▶ BUT FROM THE SAME FLOORSFACE CAN THE T GENERATE THAT MUCH GREATER SALES DENSITIES TO SUPPORT A MUCH HIGHER RENT ?
- ▶ A. THE ZONING METHOD POTENTIALLY OVER=VALUES SHOP B - IT HAS A DISPROPORTIONATE FRONTAGE TO DEPTH (FTD)
- ▶ SO WE MAKE AN ADJUSTMENT FOR THIS - AN ALLOWANCE FOR FTD
- ▶ THIS WAS A PRINCIPLE ESTABLISHED IN RATING CASE LAW
- ▶ WH Smith & Sons v Clee VO LT1978 RA 93
- ▶ (14% Allowance for shop which was 7 units wide - 137 ft frontage x 46 ft depth)
- ▶ REASON – Zoning method over-values this unit
- ▶ IT WAS THEN FOLLOWED FOR SHOP RENT REVIEWS
- ▶ Triumph Securities Ltd v. Reid Furniture Co. Ltd (1986) 283 EG 107
- ▶ Furniture shop on Kings Road - Arbitrators Award 14% for FTD
- ▶ THERE ARE MANY NEGOTIATED SETTLEMENTS FOR FTD, + ARBITRATION AWARDS + INDEPENDENT EXPERT DETERMINATIONS - RANGE FROM 5% UP TO 25% DEPENDENT ON DEGREE

# LEASE LENGTH

- ▶ HISTORICALLY LEASES WERE FOR 99 YEARS - THEN 25 YEARS

- ▶ **CURRENT AVERAGE LEASE LENGTH IS 6.75 YEARS**

- ▶ SO TENANTS SEEK AN ALLOWANCE (DISCOUNT) IF THEY HAVE A LONG LEASE - DEFINED AS ONE WHICH IS LONGER THAN A LEASE WHICH MIGHT NOW BE GRANTED IN THE OPEN MARKET ie THE MARKET NORM

- ▶ NB TO ASSESS IF THE LEASE IS LONG COMPARE IT WITH OTHER PROPERTIES OF A SIMILAR NATURE THEN IF DEALING WITH A RENT REVIEW ESTABLISH WHAT THE ASSUMED LEASE TERM IS - IT MIGHT DIFFER FROM THE UNEXPIRED TERM ie ONLY 5 YRS LEFT ON LEASE - BUT - REVIEW CLAUSE ASSUMES A 10 YR TERM

- ▶ IF YOUR LEASE TERM (UNEXPIRED OR ASSUMED) IS IN LINE WITH THE MARKET NORM FOR THAT SECTOR THERE IS NO ALLOWANCE TO BE ARGUED FOR

- ▶ BUT IF THE MARKET NORM IS FOR A SHORTER LEASE YOU MAY HAVE A CASE FOR AN ALLOWANCE (DISCOUNT)

- ▶ YOU NEED COMPARABLE EVIDENCE - IDEALLY IN THE SAME TOWN/CENTRE FOR A SIMILAR PROPERTY

- ▶ THE MARKET NORM VARIES SECTOR BY SECTOR

- ▶ FOR A SHOP 5YRS OR 10YRS IS NOW STANDARD - FOR DEPARTMENT STORES, VARIETY STORES & FOOD STORES LEASE TERM MIGHT BE 25 YRS (but some existing leases may be for terms of 99 yrs with 50+ still unexpired)

- ▶ THERE WILL BE NEGOTIATED SETTLEMENTS & ARBITRATION AWARDS & EXPERT DETERMINATIONS TO PROVIDE EVIDENCE FOR ALLOWANCES FOR STANDARD SHOPS & LARGE STORES

- ▶ **Q. WHAT FACTORS ARE RELEVANT TO ASSESS LEVEL OF ALLOWANCE ?**

- ▶ **A. LENGTH OF LEASE COMPARED TO THE RELEVANT COMPARABLES - Larger if it is longer**

- ▶ **A. QUALITY OF LOCATION - PRIME OR SECONDARY - Larger allowance for poorer location**

- ▶ **A. LEVEL OF POTENTIAL DEMAND - Larger allowance if limited demand**

- ▶ **A. ALIENATION RIGHTS (CAN IT BE UNDER-LET AS WHOLE OR IN PART(S)) - Larger allowance if restrictive**

- ▶ TYPICAL ALLOWANCES (DISCOUNTS) 2.5% UP TO 20% DEPENDENT ON ABOVE FACTORS



# CONCLUSIONS

- ▶ MANY **PHYSICAL FACTORS IMPACT** NEGATIVELY ON **VALUATION** OF SHOP PROPERTY
- ▶ IDENTIFY THEM & REFLECT THEM IN YOUR VALUATION / RENT REVIEW NEGOTIATION
- ▶ BUT YOU NEED RELEVANT COMPARABLE EVIDENCE TO SUPPORT YOUR CASE OR TO DEFEAT A CASE FOR AN ALLOWANCE (DISCOUNT)
  
- ▶ MANY **LEASE CLAUSES & ASSUMPTIONS** AT RENT REVIEW **IMPACT ON VALUATION** OF SHOP PROPERTY
- ▶ THE MOST IMPORTANT ASSUMPTIONS ARE FOUND IN THE RENT REVIEW PROVISIONS WHICH MAY REQUIRE AN HYPOTHETICAL POSITION DIFFERING FROM THE RESPECTIVE CLAUSES IN THE LEASE
- ▶ AGAIN YOU WILL NEED COMPARABLE EVIDENCE OF WHERE ALLOWANCES HAVE BEEN MADE ON SIMILAR PROPERTIES WITH SIMILAR LEASE ASSUMPTIONS
  
- ▶ KEEP A RECORD OF LEGAL CASES AND COMPARABLES DEALING WITH EACH OF THE ISSUES ABOVE
  
- ▶ NEXT SEMINAR ON **DEVELOPMENT APPRAISAL** - JUNE 26<sup>TH</sup> 08:00