LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPEAL

VR/9/1993

BETWEEN

NORTHERN IRELAND TRANSPORT HOLDING COMPANY - APPELLANT/RATEPAYER

AND

THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

PREMISES: 1 ST ANDREWS SQUARE NORTH, BELFAST

Lands Tribunal - Mr Michael R Curry FRICS FSVA IRRV ACI.Arb

Belfast - 13th October 1995

This appeal relates to the appropriate Net Annual Value of a multi-storey car park ("MSCPs") at 1 St Andrews Square North, Belfast. The District Valuer's Certificate of Alteration from which the appeal arose is dated 24th October 1990 and fixed the Net Annual Value at £47,500. On appeal to the Commissioner of Valuation the Net Annual Value was reduced to £41,400. That Decision, dated 8th March 1993, is the subject matter of this appeal to the Tribunal.

In the 1976 General Revaluation List for Belfast city centre, the 'going rate' for valuations for rating of multi-storey car parks ("MSCPs"), of this size and general character, was accepted to be based on £78 per car space ("pcs") but the subject, which is known as the Great Northern Car Park ("Great Northern"), has disabilities. It was constructed in 1989, has 531 spaces on 9 levels, is convenient for office users in Great Victoria Street and locations to the south of the City Hall, and for entertainment/leisure users, in particular, visitors to the Opera House and the Europa Hotel. Other car parks are however more convenient to the main shopping areas of Belfast and it is not as attractive to shoppers using these areas and as a result is little used by them.

The Ratepayer said that the disabilities, which flowed from the trade it could attract at the location, were significant and there should be a substantial adjustment. The Commissioner said the disabilities were relatively minor, the effect on NAV would be only marginal and so no adjustment should be made

The parties disagreed as to how to approach the questions of whether an adjustment was warranted and how it should be assessed. The Commissioner was opposed to the Ratepayer's approach, which was based partly on trading accounts. If such an approach were accepted, the experts disagreed as to how that adjustment should be measured, in particular, as to whether either gross revenue or net revenue, after deduction of expenses, provided an appropriate guide to relativity between the subject and the principal comparison. They disagreed as to which years' trading figures should be considered, and whether there should be a further adjustment to reflect differences in the character of the businesses.

Appearances

Mr R G Weir QC instructed by Carson & McDowell appeared on behalf of the Appellant and called, as an expert witness, Mr Philip Pallin, an experienced Chartered Surveyor who also had a first hand knowledge of the operation of car parks, including the subject.

Mr R Weatherup QC instructed by the Crown Solicitor appeared on behalf of the Respondent and called, as an expert witness, Mr Steven Halliday, an experienced Chartered Surveyor and employee of the Valuation & Lands Agency ("VLA").

Terminology

For clarity and convenience only, the Tribunal adopts the following terminology and abbreviations:

"Contract" car parking refers to the provision of parking on an agreement, generally a yearly licence whereby a licensee is entitled to use a car park or a particular space during opening hours. The licence fee includes rates and VAT and is usually paid quarterly in advance.

"Casual" car parking refers to short stay parking charged on the basis of the duration of the stay and typically used by visitors to the city for shopping, entertainment or other business.

"Surface Car Parks" refers to car parks which provide open air parking at ground level only.

"MSCPs" - Multi-storey Car Parks - the term is self explanatory.

"pcs" - per car space.

No Rental Evidence

Both parties relied upon Schedule 12 of the Rates (Northern Ireland) Order 1977:

> ".... in estimating the Net Annual Value of the hereditament for the purposes of any revision of the Valuation List, regard shall be had to the Net Annual Values in the Valuation List of comparable hereditaments which are in the same state and circumstances as the hereditament whose Net Annual Value is being revised."

Surface Car Parks

In addition to MSCPs, Mr Halliday referred to six surface car parks. His analysis of these showed a range of pricings from £50 pcs to £90 pcs. He had included them only to show a general tone and did not regard them as directly comparable with the MSCPs. He considered that the range of pricing was a reflection of the physical quality of each and relative advantage in terms of location. Mr Pallin agreed with that approach and would apply a similar approach to MSCPs.

Some of the surface car parks were temporary only and were only roughly surfaced, some had no casual income, or any evening opening. In Mr Halliday's view the subject must be more valuable than a surface car park of 21 spaces in St Andrews Square North (£70 pcs), almost beside the subject. Mr Pallin did not agree: operating costs for it would be minimal and he considered there should be an allowance for size in any comparison with the much larger subject. A surface car park of 140 spaces at Charles Street South was not far from the subject and it was valued at £50 pcs and a 149 space surface car park at Clarence Street West, valued at £80 pcs, had a double bonus of lower overheads (only one kiosk) and appeared busier (often queues formed) than Great Northern, attracting both shoppers and evening entertainment trade.

The Tribunal agrees with the general reservations of both the experts as to the helpfulness of the surface car parks as a guide to the value of MSCPs. There are clear physical and operational differences and there is insufficient depth of expert opinion before the Tribunal either to analyse the former or relate the one class to the other. For instance, the queues at Clarence Street West may reflect a requirement for another kiosk rather than a booming trade.

The Tribunal does however accept that in general terms the pattern of values supports the view that the range of pricing was primarily a reflection of the physical quality of each and its relative advantage in terms of location for business.

MSCPs

In Mr Pallin's view there were four MSCPs of similar size which could be considered to be suitable as comparables - Dublin Road, Montgomery Street, Victoria Centre and Hi-Park. All were very similar in structure, all had about 500 spaces on six or seven levels, all were modern, all had been built within the last 10 years and all were located broadly within the City Centre. Dublin Road was currently under appeal and whilst Montgomery Street and Victoria Centre would be suitable, he considered he did not have sufficient information about their trading to be able to rely on them for comparison purposes. Hi-Park, on the other hand was owned and managed by the Ratepayers and therefore he had access to all its trading figures. He relied on it as his single comparison.

Mr Halliday relied on two of these MSCPs as comparables - Montgomery Street (£78 pcs), Victoria Centre (£78 pcs) and one other - Castle Court (£50 pcs). These had been, in turn, assessed by reference to three other MSCPs - Hi-Park (£78 pcs), Gloucester Street (£89 pcs), and Rosemary Street (£82 pcs).

Mr Halliday said Gloucester Street (£89 pcs), which had 116 spaces, and Rosemary Street (£82 pcs) with 128 spaces, were old fashioned MSCPs. The Rosemary Street car park was used for contract parking only. Different pricings applied on different levels and he had taken an average. Mr Pallin considered the difference in pricing between Gloucester Street (£89 pcs) and nearby Montgomery Street (£78 pcs) with 472 spaces could only be to do with size. Again, Rosemary Street (£82 pcs) was similar in location but smaller in size than Montgomery Street (£78 pcs). In Mr Pallin's view, the higher pricing at Gloucester Street and Rosemary Street reflected their smaller size.

The experts agreed that Victoria Centre and Montgomery Street were priced at £78 pcs because they were very similar to Hi-Park. Mr Pallin could not account for the reduction from £78 pcs at these, to £50 pcs at Castle Court. In his opinion it could not be an adjustment for size only: although Castle Court was much bigger, with 1628 spaces, if it was running at full capacity it would be much more profitable than the others because much of the operating costs of a MSCP were fixed and so there would be economies of scale.

Mr Halliday agreed that part of the approach of a valuer was to adjust comparables to reflect differences in state and circumstances and accepted that one difference was the question of size. For example, he would not expect the same pro rata rent for very large properties. In the specific case of car parks if they were very large it would be much more difficult to get them fully utilised. It was put to him that one could very well have a large car park that was full, and the only way to see whether that was so or not was to see what trade it was doing. Mr Halliday agreed: that was why Valuation & Lands Agency were looking at figures. In arriving at £50 pcs for Castle Court Mr Halliday said he did have regard to factors including turnover figures, which indicated a lower turnover per space, its location, rather more outlying - further from the City Centre - and that it would not attract the same sort of contract income because of its location and accessibility.

The Tribunal accepts that the experts' analyses of this group of MSCPs do illustrate the existence of a variation in per unit pricing attributable to the relative advantages and disabilities of each hereditament. But their analyses did not develop any hypothesis or criteria from the range of values which, in turn, could be applied directly to the subject.

An Approach Based Partly on Trading Accounts

MSCPs tended to be physically similar but the Tribunal accepts that differences in location result in different types of trade which may be of different value to the hypothetical tenant. The Tribunal accepts Mr Pallin's opinion that their physical similarity was not a good reason to ignore trading accounts. Nor would he accept an approach based on turnover only. He was not contending for a profits method: his contention was that analyses of profits could be used to make adjustments and it would be very difficult to make appropriate adjustments without trading figures.

After the evidence on behalf of the ratepayer had been heard, Mr Halliday was invited to reconsider his opposition to Mr Pallin's approach. When pressed to deal with a hypothetical situation in which two car parks were available for letting and one was generating twice the income of the other, Mr Halliday conceded that other information a hypothetical tenant would look for would be the relative running costs because "you would need to know what you are going to end up with". Mr Halliday accepted that, on the facts of this appeal, contrary to the view of the Commissioner, the appellant's expert's approach was more likely to be adopted by a hypothetical tenant. By conceding that was so, although aware of the consequences for his party's case, he illustrated essential responsibilities of an expert witness:

1. The primary duty of the expert witness is to the Tribunal,

2. The duty is to be truthful as to fact, honest as to opinion and complete as to coverage of relevant matters,

3. The expert's evidence must be independent, objective and unbiased. In particular it must not be biased towards the party who is responsible for paying him. The evidence should be the same whoever is paying for it.

In the view of the Tribunal, having regard to the evidence which had been adduced, the concession was properly made. The Tribunal concludes it is appropriate, in this appeal, to consider trading information, as part of a hybrid approach; subject, of course, to the reservation that it be confined to information properly admissible and that the difference in trading performance in not simply a reflection of the use made of the hereditament by the particular occupier.

In Port of London Authority v Orsett Union [1920] All ER HL 545 at page 554 Lord Dunedin said:

> "What is the inquiry which .... quarter sessions are engaged on? It is to find the net annual value of the hereditament in question .... What would the hypothetical tenant give for the subject? If the subject is an ordinary one similar in character to other subjects which have stood the test of the markets, or better still, if it has stood the test of the market itself without disturbing circumstances, the enquiry is simple. But when the nature and circumstances of the hereditament in question do not admit of such a test, some other way must be found. There are several ways of attacking the problem. One way is to consider what the hypothetical tenant could make out of the hereditament, not in order to rate that profit, but in order to find out what he was likely to give in order to have the opportunity of making that profit ..... No question of law is necessarily involved in either of these methods."

There were opposing views as to the helpfulness of previous decisions both of this Tribunal and the Lands Tribunal for England & Wales. The Commissioner relied on them to show an absence of approval for the valuation approach adopted by Mr Pallin. The Ratepayer said the only rule they demonstrate is that there is no rule. The Tribunal considers that, provided care is applied, previous decisions on the choice of valuation approach often are helpful but it has reservations for the following reasons. Although a Lands Tribunal is an expert tribunal, it is not

any part of the role of an expert tribunal to carry out its own research and analysis and, whilst the observations and inferences of the experts will be examined critically, its decision will be constrained to a great extent by the expert evidence. The content of that evidence will depend on, among other things, the factual evidence available, the skills and experience of the experts, the importance the experts ascribe to particular facts, and the inferences and conclusions they draw as expert valuers. Generally, a Tribunal will confine itself to carefully considering the differences between the competing views of the experts, using its expertise to consider and balance their reasoning and analyses. If a previous decision on choice of method turned on questions of which expert opinion was to be preferred in the particular circumstances of the case, care must be taken before interpreting it to be a precedent illustrating that particular valuation principles are of general application.

The question of how the chosen method or methods is to be applied is another matter. The underlying principles of methods which have stood the test of time should not be set aside lightly, whether they are used wholly or as part of a hybrid approach.

It is well settled that, in the Rating cases, the actual trade at the hereditament may be considered. In that regard the effect of the rating hypothesis differs from the interpretation put on the usual rent review provisions in commercial leases. As Lord Davey said in Cartwright v Sculcoates Union [1900] AC 150 at page 159.

> "If you are to take into account the fact that the premises command a trade, you must surely ask what trade. Is it a large trade or is it a small trade? And I do not know myself any better test of what trade they may be expected to command than the trade which they actually do command. It is not that you rate the profits, it is not that you rate the man's skill and judgement or discretion in the mode of carrying on the business, but you have to ascertain what sort of a trade the hypothetical tenant, as he is called, may reasonably expect to be able to carry on on those premises as an element in determining the rent he will be willing to offer."

Lord Brampton said in the same case, at page 162:

> "I think he [the Arbitrator] has very properly found that, although the profits in this house cannot themselves be assessed according to their value as profits, yet the power to earn them in that house increases the value of that house."

Also Lord Morris at page 155:

"There is no force put on a publican to produce his books; he is not in this inquisition threatened with the screw, and if he chooses not to bring forward his books he need not do so, and the arbitrator is then obliged to forage about for the purpose of ascertaining, in the best way he can under the circumstances, what the profits would be."

Mr Halliday gave evidence that generally he had been unable to obtain trading accounts for must of his comparisons but he did have turnover figures for some. It was difficult to obtain accounts because operators were often unwilling to give the information. They regarded it as confidential and did not want their competitors to have the full facts. He gave evidence that if such information were provided in confidence it would not be used in the Tribunal.

The Valuation Date and Relevant Year

Schedule 12 Part 1 para 4 of the Rates (NI) Order 1977 provides:

"Where the Net Annual Value of a hereditament is fixed, wholly or partly, having regard to the volume of trade carried on at the hereditament .... the volume .... to be taken into account for the purposes of a valuation shall be the probable volume .... for the first year with respect to which that valuation will be in force".

There is an apparent tension between the requirement of estimating a rent "from year to year" which in many cases (except perhaps mines and quarries and the like) may remain in the list for 20 years or more and, assessing that rent, "having regard to the probable volume .... for the first year with respect to which that valuation will be in force". That tension was addressed in McKeown Vintners Limited v The Commissioner of Valuation VR/9/1985:

"If there are true comparables, then paragraph 4 provides a tool of comparison which enables the expert valuer to analyse the comparables either wholly or partly by reference to turnover of the appeal hereditament and to the turnover figures of the comparables. By the very wording of paragraph 4 this means using it at values current to the case under consideration, which in the instant appeal is 1984/1985. In this situation the principles set out in paragraph 2(1) and paragraph 4 interact either on their own or with other evidence of comparison."

A question of the relevant date (the first year with respect to which that valuation will be in force) was considered in Northern Ireland Transport Holding Company Limited v The Commissioner of Valuation VR/12/1982:

> "The gross receipts must be estimated as at .... the date of the District Valuer's Certificate [not the effective date for the alteration in the List]."

There may be circumstances in which the date of application for revision, by a ratepayer, is the appropriate date (see for instance Aileen P Gorman v The Commissioner of Valuation VR/26/1993) but that question did not arise in this appeal.

The date of the District Valuer's Certificate was 24th October 1990. That is the Valuation date. It appears that between then and the Commissioner's Decision on Appeal of 8th March 1993, most of the comparables upon which the District Valuer had placed much reliance, had themselves been appealed and a major review of the valuation of this class of hereditament took place. Gross turnover information was considered as a means of secondary analysis. The question of whether, and to what extent, hindsight was used was not raised.

Two issues arose in connection with what trading accounts should be considered by the Tribunal. The first was whether actual figures for the trading years later than the valuation date should be taken into account and the second was whether trading figures which were available to this rate payer in respect of a comparable car park should be admitted.

Evidence After the Valuation Date

Schedule 12, by its plain words, requires a forecast to be made. The Ratepayer argued that the Tribunal should not blind itself to evidence which, available with hindsight, demonstrated what actually did happen. After careful consideration the Tribunal considers that hindsight will not always automatically provide a correct answer and it should not be employed if it is not reasonably necessary. For purposes of a revision of the List, the question for the Tribunal is this. What was the rental value, in the hypothetical market, on the relevant date? It is not a question of what it became thereafter in consequence of unforeseeable change.

At the valuation date the hypothetical tenant will be aware of then current trading circumstances but, bearing in mind that a valuation will usually relate to a new or altered hereditament, he may or may not be in a position to identify and quantify future expectations of events in order to arrive at a rent "from year to year". But, if there is sufficient evidence, at that

time, there is no need to inquire further. If that evidence turns out to have created a false impression, the hypothetical market would also have been mislead. However, if an unfair situation develops, it may be that it can be remedied to a large extent by a fresh revision which would of course reflect circumstances at that later time. If wisdom after the event is used, it may, accidentally or otherwise, take into account a factor which would not have affected the market and so it does not follow that hindsight will automatically produce a more correct result. The later actuality may not be a safe guide to the reality of the sentiment of the market at the earlier date.

There will, however, be circumstances in which hindsight will be presumed to be helpful. The admissibility of rental evidence after the valuation date has been the subject of some controversy especially in rent review disputes. Although no rental evidence, as such, was adduced in this appeal, the Tribunal addresses the point briefly in order to make clear the distinction, between rents and events. Generally where the issue has arisen in connection with rent reviews, subsequent rental comparables have been admitted, provided that, between the review date and the date of the comparable, either no event has occurred that has altered the conditions that were prevailing at the review date or, if such an event has occurred, an adjustment can be quantified to reflect and strip away the effect on rent of that event. The rationale is that, although such rents could not have affected the working of the market in its reliance on comparables to arrive at a rent, such rents can provide an indication, albeit with hindsight, of the market at the valuation date. There is no requirement to demonstrate a prior trend or anticipation before they may be admitted. The Tribunal accepts that principle to be the appropriate principle to apply to rents in rating cases.

The question of admissibility of evidence relating to 'events' after the valuation date is a different issue. That category of evidence may be divided into that which relates to events which would have been an expectation of the market and those which would not. A further distinction must be made between evidence to show that an expectation existed at the valuation date and evidence that quantifies or measures that expectation.

There is a difference between using evidence relating to matters after the material date in order to quantify imponderables which would have been in the minds of the parties at the relevant date and using evidence from after that date to introduce into the minds of the hypothetical parties expectations which would not have been in their contemplation at the time. Wisdom after the event cannot be used to create expectations in the hypothetical market at the valuation date, nor can it be used to quantify their effect if, at the valuation date, sufficient evidence already existed for the hypothetical market to do that. But if it can be shown that

there were expectations in the hypothetical market at the valuation date, that there was insufficient evidence then available for this market to quantify their effects on rental value, and that it is reasonably necessary to quantify them, the Tribunal considers that the practical approach is to use wisdom after the event. But that may not produce a clear resolution of the question and there is a balance to be struck so as to avoid an endless enquiry. The question of what is reasonably necessary will depend on the circumstances of the appeal.

So there is a distinction in approach between rents and events and between expectation and quantification.

Exceptionally, later evidence which shows the working of a factor which would not have been in the mind of any reasonable hypothetical tenant at the relevant date may be considered, in order to strip away that factor from other admissible evidence (eg if later accounts or rents are admitted for other reasons). But such an enquiry must proceed with caution because, in an attempt to achieve certainty where none existed, it may lead the Tribunal too far away from its fundamental task of estimating a rental value which would have been reached by the hypothetical market.

Having set out its views on the proper approach, the Tribunal turns to a consideration of the statutes (but bearing in mind that there are differences between those in this jurisdiction and those in England and Wales) and cases which might forbid it from applying it.

Ryde on Rating and the Council Tax Issue 6 at para E [340] sets out the Editors view of the general position, in England and Wales, with regard to evidence after the valuation date:

> "The Lands Tribunal adopted the rule in Rating cases that events, including rents fixed, after the date of the proposal are only admissible as evidence of the value in order to prove or disprove a trend or anticipation established at the date of the proposal. In several cases trading results after the date of the proposal have been taken into account pursuant to this rule and in others such evidence has been excluded. However, in the light of the Court of Appeal Decision in Garton v Hunter (Valuation Officer) [1969] 1 All ER 451, CA it is submitted that all evidence is admissible although the weight to be attributed to it will depend upon its usefulness and comparability."

If that is a correct description of the position, this Tribunal cannot wholly agree with the rationale because there is a distinction between 'rents' and 'events' and the principle in issue was to do with the old best evidence rule not evidence after the valuation date. In Garton v

Hunter Lord Denning referring to Robinson Brothers (Brewers) Ltd v Houghton & Chester-Le-Street Assessment Committee [1937] 2 All ER 298 said

> "It is plain that Scott LJ had in mind the old rule that a party must produce the best evidence that the nature of the case will allow and that any less good evidence is to be excluded. That old rule has gone by the board long ago. The only remaining instance of it, that I know, is that if a original document is available in one's hands, one must produce it. One cannot give secondary evidence by producing a copy. Nowadays we do not confine ourselves to the best evidence, we admit all relevant evidence. The goodness or badness of it goes only to weight, and not to admissibility."

In Halsbury's 4th Edition Vol 39 at para 117 it is suggested that a statutory compensation case, Bwllfa and Merthyr Dare Steam Colliers (1891) Ltd v The Pontypridd Waterworks Company [1903] AC, is authority for a principle that "if relevant, accounts available at the date of hearing of an appeal may be admissible in evidence". With respect the Tribunal considers a more restricted view on admissibility to be appropriate. That approach opens the door too wide, too easily. In that case the House of Lords considered an issue as to future prices and the Earl of Halsbury LC held, at page 429:

> "[The arbitrator] ought to have considered the possible rise or fall of prices; but, as I have said, he probably would have made a mistake. We now know what would have been the true sum, and the proposition baldly stated appears to be that, because you could not arrive at the true sum when the notice was given, you should shut your eyes to the true sum now you do know it, because you could not have guessed it then.
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> It is, of course, only an accident that the true sum can now be ascertained with precision; but what does that matter? It seems to me that the whole fallacy of the contention that you may not look to the facts that have occurred rests upon the false analogy of a sale."

Lord Macnaghten, at page 431 stated:

> "If the question goes to arbitration, the arbitrator's duty is to determine the amount of compensation payable. In order to enable him to come to a just and true conclusion it is his duty, I think, to avail himself of all the information at hand at the time of making his award which may be laid before him. Why should he listen to conjecture on a matter which has become an accomplished fact? Why should he guess when he can calculate? With the light before him, why should he shut his eyes and grope in the dark?"

Convenient though it might be to avoid conjecture, the reason why that principle is not usually appropriate in Rating is that the Tribunal is concerned with rental value, in the hypothetical market, at a point in time, not with assessing, at the relevant date a fact that lies in the future. In the Rating cases, the analogy which was held to be false in that case is not false but instead is appropriate. The hypothesis of a letting rather than a sale makes no difference. However the Tribunal does find support here for its approach to using hindsight in the assessment of future events, in appeals in which the expectation has been established but the effect cannot be quantified on evidence prior to the valuation date.

The issue will often arise where a profits basis is applied. Ryde on Rating and the Council Tax, dealing with the position under the General Rate Act 1967 and considering "The Profits Basis in Detail" at para E [672] states:

> "A proposal to alter the valuation list may give rise to protracted proceedings on appeal, and may be made years after the material date for a valuation on tone of the list, and the question arises whether accounts becoming available after the material date but before the hearing can be taken into account. The practice for many years was to base the valuation on the last accounts available, but to admit in evidence both before assessment committees and quarter sessions the latest available accounts. Where these accounts merely illustrated the working of factors in existence at the material date, the practice could be supported; but it could not extend to the admission of accounts showing the working of a factor which would not have been in the mind of any reasonable hypothetical tenant at the date of the proposal, or, it is submitted, the date for valuations on tone of the list. It would appear, however, proper to reflect at some point in the valuation factors which either came into existence after the closing the last account and before the material date or were only partially effective in that account."

The Tribunal agrees with that approach to a profits method, subject to some qualification. Whilst the nature of the method is such that the latest available accounts often will be admissible, in the view of this Tribunal, they should not be admitted as a matter of course. Generally, except to the limited extent permitted by the practical considerations outlined below, grounds must first be established on the basis of evidence available at the valuation date.

In practice, the end of the ratepayer's financial year will seldom coincide conveniently with the valuation date. Generally the latest available trading figures, prepared for other reasons, will be for a period which ended some time earlier. As the appeal is progressed the ratepayer may

complete a further year of trading and wish to produce trading information for that period, partly before and partly after the valuation date. Provided the figures at the later date do not reflect a new expectation of the hypothetical tenant, ie one which could not have been contemplated at the valuation date, the Tribunal considers no injustice will arise from a minor compromise which admits, as a matter of course, these later figures if produced. Further, to require preparation of accounts specially for the appeal may impose an unfair burden on a ratepayer, and create other problems. After all, Trading accounts are a 'snapshot' on a particular date representing the trading experience of the occupier over the period, and if they relate in part to a period prior to the valuation date, they represent, to that extent, what his experience was during that time.

In this appeal, although objection was raised to trading figures from later years, no objection was taken to the production of figures for the trading year which ended some months after the valuation date. That is the practical approach and the Tribunal agrees with it.

The question of the weight to be attached to the figures is a different matter.

Trading at the Comparable

The Commissioner was opposed to consideration of the Trading figures of the ratepayer at another MSCP occupied by him.

Although not all the potential tenants in the real or the hypothetical market would have access to the information, this ratepayer did and it is firmly established that the actual occupier is among the possible yearly tenants. See for instance LCC v Erith Parish (Churchwardens); West Ham Parish (Churchwardens) v LCC [1893] AC 562. The Tribunal accepts that, although other appellants in other appeals may not be able to produce such evidence and there may be difficulties which flow from that, this ratepayer is able to do so and can rely on them.

A Shorthand Accounts Method

Although it was contended for by the expert witness for the Commissioner in his written evidence, as a result of the concession properly made by him at the Hearing, it follows that the 'Shorthand Accounts Method', ie an approach based on a percentage of turnover, is not appropriate in this appeal. That, however, is not to be taken to be a general criticism of a method which may be wholly appropriate in other circumstances.

A Full Accounts Method

Applying the accounts method in full in the 1990's is most unlikely to produce a fair result consistent with the tone of the List. That simply is because of inflation since the 1976 General Revaluation. For example, if it were to be applied in this appeal, it would produce a different NAV for the principal comparison, Hi-Park MSCP, from that in the List and not disputed. The Tribunal is not persuaded that a full application is appropriate in this appeal. But it was applied to a partial extent and that does mean that the fundamental principles of the method must be taken into account when considering how it should be applied.

The Comparable

Hi-Park had been completed in December 1985 and had 564 spaces on six levels. The subject was completed in December 1989 with 531 spaces on nine levels. Primarily used by shoppers, Hi-Park MSCP was located close to the main shopping area and was easy to access from High Street which in turn was easily accessible from North, South and East Belfast.

Which Trading Accounts

The Ratepayer produced specially prepared accounts for the year ended 31st December 1990. However for the reasons outlined above, the Tribunal considers that there are no grounds for objection, by reason of inadmissibility, to the Trading Accounts for the year ended 31st March 1991, which have the additional advantage of not being based upon figures prepared with this appeal in mind, and prefers them.

The net valuation issue for the Tribunal is the valuation of the subject relative to Hi-Park. It is of course essential that, so far as possible, like is compared with like. The trading figures for Hi-Park in 1991 were exceptional and artificially enhanced by a temporary closure for much of that period of its main rival, Victoria Centre MSCP, as a result of bomb damage. Although he was opposed to the method of valuation, and stressed the importance of the Valuation date, Mr Halliday assessed trade, and in effect quantified earlier expectations of future events at the subject and Hi-Park MSCP, by reference to the year ended 31st March 1992 as well as the previous year. He accepted that the future opening, in fact in December 1993, of Dublin Road MSCP with 440 spaces competing both in contract car parking and casual car parking was predictable at the Valuation date and therefore potentially a relevant factor. However he considered it should be disregarded as not being of special importance: there might be short

term instability but all businesses face changes in competition, the subject would be well established and well placed to compete. Mr Pallin agreed with Mr Halliday that at the relevant valuation date the opening of the new Dublin Road MSCP would have been predictable. With hindsight it was now possible to say that they had lost 30-35 contract clients to them.

Mr Pallin included Trading figures for later years including, and in particular relied upon, averaged trading figures for the two years ended March 1993 and 1994. In addition to the Dublin Road MSCP opening, he referred to the closure of the Opera House and the Europa Hotel as a result of bomb damage and subsequent security measures and road closures in May 1993. He adjusted these later figures for the subject by the addition of 20% to the casual income (to allow for the effect of the closure of the Europa hotel and the Opera House) and by the deduction of 10% from the contract income (to allow for losses to Dublin Road MSCP).

The Tribunal considers that the figures for later years are admissible on two grounds. The first is because the hypothetical market at the time would have accepted that the temporary closure of Victoria Centre MSCP distorted and increased the revenue figures for Hi-Park MSCP for the year ended 31st March 1991 and it is appropriate to take later years into account to try to quantify what the expectations of a normal year would have been and so to avoid a distorted view. The second is that the later years figures may be admitted with a view to quantifying an expectation (the Dublin Road MSCP opening) that was established.

However, with regard to the effect of the latter, when the figures for the years ended 31st March 1993 and 1994 are considered, the Tribunal finds that they do not do that because they reflect other matters (the temporary closure of the Europa Hotel and the Opera House as a result of bomb damage) which would not have been an expectation of the hypothetical market at the Valuation date. If it were appropriate to make adjustments on the basis of spot figures, as was done, to reflect expectations in these figures, adjustments can be made in a similar way, if appropriate, to the earlier figures. These later figures in their unadjusted state reflect different circumstances and, when adjusted on the basis of spot figures, become far too speculative to be of assistance in actually quantifying the expectation. The Tribunal concludes that little assistance can be gained from the figures for the years ended 31st March 1993 and 1994.

Although the figures for Hi-Park MSCP for the year ended 31st March 1991 were known at the time to be artificially high, the figures for the year ended 31st March 1992 were artificially low because of bomb scares at Hi-Park MSCP. That, at least, provides a bracket within which the answer lies. No serious objection was taken to the production of these two years figures and

the Tribunal considers that it is appropriate to focus on them rather than the later years on which Mr Pallin relied.

A Further Adjustment

The Commissioner contended that it was not appropriate to simply apply a ratio of adjusted net profits and considerations other than the Trading accounts, in particular risks relating to the security of income, would affect relative rental value. The adjustment he sought in this appeal reflects one aspect of the evaluation of the tenant's share, in the conventional application of the profits method. Ryde on Rating at para E [678] asks:

> "..what allowance for tenant's profits would be sufficient to induce the hypothetical tenant to take the hereditament at the supposed rent?"

There are two approaches, either a percentage on tenant's capital or, often where that is small, a percentage of gross receipts. Where the former is applied, three factors go to determine the percentage - interest on capital, profit and risks. The hypothetical tenant is:

> "..a person embarking upon a commercial undertaking in which he is to sink his capital, in which he takes all the risks of success or failure, and in which he has not merely to be compensated by receiving a reasonable interest upon the capital invested, but also to receive such a profit upon his venture as reasonably to compensate him for the risk which it involves, and to induce him to embark upon its prosecution."

Lord Hailsham LC in The Southern Railway Company Appeals, re [1936] 1 All ER at page 39

The Tribunal accepts it is wholly appropriate to consider what adjustment, if any, it is appropriate to make to the relative net incomes to reflect these matters and it accepts, in particular, that risk is a matter to be taken into account.

Great Northern MSCP had a customer base focused on offices and entertainment whereas Hi-Park MSCP was focused on shoppers. So the income at Great Northern MSCP was mainly contract. The casual income there was focused on the entertainment users - visitors to the Opera House, Europa Hotel etc in the evening. Mr Halliday considered that Hi-Park MSCP was ideally suited to casual use and Great Northern MSCP was equally suited to contract use. He considered casual use income was less secure and more difficult to collect than contract. So the hypothetical tenant would prefer an income protected by yearly licence and in Great

Northern MSCP the tenant might be prepared to accept a lesser share because of the security of income.

Mr Pallin, with greater experience of the car parking business in Belfast, did not agree. The disadvantage of the market in Belfast for contract car parking was that it was very competitive. His experience was that casual car parking income was more stable. In his view a shoppers car park in a prime location was, if anything, more attractive than a contract car park.

So, the experts had totally opposing views on the relative merits of the different character of the trade attracted to these two MSCPs, ie contract v casual car parking, and whether any or what adjustment was required for that. Although the Tribunal accepts that security of parking income ought to be considered, it is not persuaded, having carefully considered the limited evidence before it, that there ought to be an adjustment in favour of Great Northern MSCP in this appeal.

The Opinions on Valuation

Mr Pallin's approach to valuation was as follows. He accepted the valuation of Hi-Park MSCP which was based on 564 spaces at £78 per space giving £44,000. But in his view the Commissioner's approach of applying £78 per space to Great Northern MSCP did not properly take account of the importance of its location and, in particular, the effect that had on trade.

In his view a car park operator considering taking a lease of a MSCP would estimate the income and then deduct the estimated running cost (including rates), an element for head office cost and profit, and base his rental bid on the residual. Mr Pallin at the hearing gave evidence about the importance of the level of occupancy, he said that the story with MSCPs was that there were unavoidable fixed costs, the costs of the lifts, staff, painting and decorating, security, maintenance etc and it was necessary to collect a minimum amount to break even.

So far as his analysis of accounts was concerned he insisted that he had relied wherever possible on factual costs. When it was put to him that different tenants might have different systems and produce different expenses he found that difficult to accept because the Ratepayer had separate actual bills for most of the items of expense. The main area where potential hypothetical tenants might differ would be in head office costs. He confirmed that the accounts on which he relied, formed part of the audited accounts of the company which were

accepted by Inland Revenue, except where he indicated they were adjusted. In analysing the accounts, to arrive at a net income before deduction of rates, he had

(a) adopted the repairs figure for Hi-Park MSCP for both car parks because Great Northern MSCP was more modern and he considered the figure for Hi-Park MSCP gave a better longer term view. He applied the same amount pcs to Great Northern MSCP to reflect a longer term view,

(b) apportioned the manager's salary and motor expenses equally between the two MSCPs,

(c) made an additional allowance for the additional lift at Great Northern MSCP, and

(d) applied a spot figure of £15,000 for depreciation at each MSCP.

Mr Pallin's approach was criticised on behalf of the Commissioner on a number of grounds but the criticism was made with a broad brush and did not seriously dispute individual items in the accounts. If, the approach was accepted, the Commissioner contended that it should be based on the year ended December 1990, except that revenue of £537,000, ie the figure for the year 1992, should be adopted for Hi-Park MSCP. Earlier figures were distorted and inflated by the lack of competition. Even that £537,000 should be reduced for inflation. While retaining a general reservation about the expenses and adjustments made to them, assuming all were correct, then the net income at Great Northern MSCP was £319,000 but Hi-Park MSCP at £537,000 less £156,000 produced a net income of £381,000. The approach adopted should be based on comparison of these figures but only if the net income approach was accepted.

The Tribunal's Conclusions on Valuation

For the reasons given above, the Tribunal has begun with the income and expenditure figures for the two MSCPs for the two years ended 31st March 1991 and 1992, and first added back Rates. The Tribunal then has adjusted the income figures generally in accordance with Mr Pallin's adjustments. From the evidence, the revenue at Hi-Park MSCP was artificially high in the first year and low in the second. The Tribunal has adjusted the revenue (by £20,000) so both years are roughly the same. The hypothetical tenant would have been aware of the future event of the opening of the Dublin Road MSCP which would compete with Great Northern contract trade. With hindsight that resulted in the loss of 30 to 35 contract spaces. The Tribunal has adjusted the revenue at Great Northern MSCP by a reduction of £15,000 as

an estimate for that. The manager's salary is shown in the Hi-Park MSCP accounts for year ended 31st March 1991: that has been apportioned between the two MSCPs and, in the absence of a separate figure for the second year, adopted for both years. Similarly, motor expenses have been apportioned between the two MSCPs. Again, the repairs figures for Hi-Park have been accepted as a clearer indication of what is likely to be the probable average annual cost, one year with another, and applied on the basis of an amount pcs, with a loading of Mr Pallin's spot figure £894 say, £900 for the additional lift at Great Northern MSCP. Depreciation has been adjusted to Mr Pallin's spot figure of £15,000 for both MSCPs for both years.

The effect of these adjustments is set out in *Appendix I* and shows ratios of 0.75 and 0.78 for the two years.

A more complete approach would calculate a tenant's share. However, although Mr Pallin did not take this step, the approach put forward by the Commissioner to calculate that share was based on a percentage of the net income and the Tribunal is not persuaded, by the evidence before it, that the percentages should be different in these two MSCPs. If, but only if, that percentage approach is adopted, and the percentage is the same for both, no difficulty arises. Further, the rate in the pound for both these hereditaments (in the same District) will have been the same. The Tribunal therefore accepts it is appropriate to apply the ratios in the particular circumstances of this case. Applying these to the Hi-Park NAV of £44,000 gives £33,000 and £34,320, with an average of £33,660.

Having carefully considered all the evidence and submissions, the Tribunal determines the NAV of Great Northern MSCP to be £33,500.

The Tribunal concludes with a caution. As stated earlier, this decision of the Tribunal turns on the evidence before it. The valuation method chosen in this appeal was a hybrid of the comparative method and the profits method and when such an unusual approach is put forward, it should be set against a background of careful consideration of the relevance of each and all of the features of the traditional methods.

Having heard the parties on the question of costs the Tribunal orders that the Respondent do pay to the Appellant its costs of the Appeal and in default of agreement to be taxed by the Registrar of the Tribunal on the High Court Scale.

ORDERS ACCORDINGLY

11th June 1996

Mr Michael R Curry FRICS FSVA IRRV ACI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

Mr R Weir QC instructed by Messrs Carson & McDowell, Solicitors for the Appellant.

Mr R Weatherup instructed by the Crown Solicitor for the Respondent.

APPENDIX I

ACTUAL ACCOUNTS

		Great Northern		Hi Park	
		Year Ended March		Year Ended March	
		1991	**1992**	**1991**	**1992**
Income	actual	480,947	480,451	573,914	537,070
Expenses	unspecific	112,988	105,472	96,550	104,874
	Rates	114,696	124,511	97,066	107,289
	Salary	0	0	15,879	15,879
	Motor exp	0	0	109	1,056
	Repairs	7,237	15,108	18,090	14,150
	Depreciatn	25,183	21,250	14,713	10,320
Expenses Total		260,104	266,341	242,407	253,568
Contribut'n		220,843	214,110	331,507	283,502

ADJUSTED ACCOUNTS

		Great Northern		Hi Park	
		Year Ended March		Year Ended March	
		1991	**1992**	**1991**	**1992**
Income	actual	480,947	480,451	573,914	537,070
	adjustment	-15,000	-15,000	-20,000	20,000
Adjusted Income		465,947	465,451	553,914	557,070
Expenses	unspecific	112,988	105,472	96,550	104,874
	Rates	0	0	0	0
	Salary	7,940	7,940	7,940	7,940
	Motor exp	54	528	54	528
	Repairs	17,932	14,222	18,090	14,150
	Depreciatn	15,000	15,000	15,000	15,000
Expenses Total		153,914	143,162	137,634	142,492
Contribut'n		312,033	322,289	416,280	414,578
RATIO		0.75	0.78		