

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
IN THE MATTER OF AN APPEAL
VR/117/1999
BETWEEN
NORTHERN BANK LIMITED - APPELLANT
AND
THE COMMISSIONER OF VALUATION FOR NORTHERN IRELAND - RESPONDENT

Lands Tribunal - Mr Michael R Curry FRICS IRRV MCI.Arb

Belfast - 2nd June 2000

This was an appeal under Art 54 of the Rates (NI) Order 1977 concerning the effect, on a valuation for rating, of the quality of pedestrian access to an imposing city centre banking hall and headquarters office building. It was constructed, in 1976, by the appellant for its own occupation and was on a prime city centre site overlooking the City Hall grounds. The building had 7 floors including basement and mezzanine levels and a banking hall on the ground floor. Three lifts provided access to all floors as did two staircases.

Mr Mark T Horner QC instructed by Johnsons, Solicitors appeared for the Appellant and called Mr Robert Watson, an experienced Chartered Surveyor, to give expert evidence. Mr Ronnie Weatherup QC instructed by the Departmental Solicitor, appeared for the Respondent and called Mr Reginald Barrett, also an experienced Chartered Surveyor, to give expert evidence.

In August 1999 the ground floor banking hall had been closed and refitted as offices with limited public access. Other works had been carried out as well, however this appeal related to the premises as they were before, in 1998.

The building had frontage to three streets - Donegall Square West, Howard Street and Wellington Street - and each frontage had a pedestrian access point into the building:

- (a) An imposing entrance on Donegall Square West and which lead directly into the ground floor banking hall (for convenience, the 'Donegall Square' entrance).
- (b) A staff entrance on Wellington Street via a corridor with a lobby and two 20 person lifts (for convenience, the 'Wellington Street' entrance). There was a staircase behind the lifts and a single door leading into the banking hall area.

- (c) A smart entrance on Howard Street (for convenience, the 'Howard Street' entrance). This lead into the banking hall via a lobby which also contained one 8 person lift and gave access to stairs. This entrance had not been used for at least 15 years.

There was also vehicular access to a basement car park, bullion bay and lift, off Wellington Street.

The Donegall Square entrance was used only for access to the Banking Hall and the Howard Street entrance was closed. Neither was used for access to the upper floor offices. In practice the main pedestrian access to the upper floors was from the Wellington Street entrance. The Appellant claimed that access was so unsatisfactory that a 10% end allowance ought to be applied to the value attributed to those floors. The Commissioner of Valuation did not agree and had refused the Appeal to him, subsequent to a Certificate of Net Annual Value dated 26th August 1998, on grounds that "the valuation was fair and relative to those of similar properties in the List".

The Commissioner accepted that an end allowance for access may be allowed in buildings where "access was a distinct disability which would affect the approach of the hypothetical tenant". Further, he did not seriously dispute the Appellant's opinion evidence that the staff entrance was relatively poor in terms of:

- i. quality of the street, and
- ii. quality of the entrance.

However, taken as a whole, he had concluded that access arrangements to the building were not a distinct disability which would affect the approach of the hypothetical tenant.

There is a statutory presumption (Art 54 (2)) that the List is correct but the Commissioner did not rely on that.

In summary, the appellant's case was that, contrary to the conclusions reached by the Commissioner in refusing to alter the List:

1. Taken overall, the access arrangements to upper floor of the building were a distinct disability, partly because of the internal arrangement and partly in terms of the street location of the Wellington Street entrance,
2. Its expert's evidence ought to be preferred to the policies or schemes adopted by the Commissioner and his expert's evidence, and

3. The poor quality of the Wellington Street access would have an adverse impact and reduce the value of the upper floor offices by 10%.

Floor areas and basic pricings were all agreed and the Tribunal makes no comment on these matters. The appellant accepted that its expert's opinion in favour of a 10% allowance, on the assumption that these contentions were correct, was a robust estimate, not based on any precise analysis. If applied, the allowance would reduce the NAV in the Fourth Revaluation List from £693,500 to £642,750.

Wellington Street was a narrow backstreet that mixed pedestrian traffic with car and service vehicle traffic to and from a number of private car parks and office buildings. There was vehicular access from one end only (Upper Queen Street), it could be congested and there were no footpaths and less than adequate street lighting. There were some retail outlets but the street was dull and very much a backwater.

The Wellington Street entrance was a plain double doorway reflecting security considerations rather than corporate prestige. There were two steps up and then a passageway 2 metres wide and about 8 metres long. It was more 'passageway' than 'foyer'; there was inadequate space to provide for a receptionist.

At the end of the passageway, it turned and opened out into a lift lobby about 3.5 metres wide and about 7 metres long. A single door led to the Banking Hall and another lead to a short passage to a staircase.

The Appellant claimed the Wellington Street entrance was substandard in comparison with other office buildings, with the exception of the Royal Avenue comparison and some offices in multiple occupation.

As the actual occupier had chosen to use the three accesses in a particular way which resulted in upper floor pedestrian access being restricted to a poor entrance, the question arose as to whether the hypothetical tenant would do the same. The experts disagreed: Mr Barrett concluded they would not, Mr Watson concluded they would. For the following reasons the Tribunal finds itself more in agreement with Mr Watson than Mr Barrett but not wholly in agreement with either.

As stated earlier the building, which must be considered as a whole, comprised a ground floor banking hall with offices above. It occupied a corner site with frontage to two main thoroughfares Donegall Square West and Howard Street. In the middle of both these frontages there were prominent, attractive entrances, but the main access to the upper

floors was via the two 20 person lifts (for convenience 'the main lift bank'), in the middle of the Wellington Street frontage and persons wishing to get to those lifts could only do so by passing through the banking hall (if they did not use the Wellington Street entrance).

There was lift access to the upper floors from the Howard Street entrance lobby. But there was only one 8 person lift there (for convenience 'the Howard Street lift'), a fifth of the capacity of the main lift bank and, in practice, it was used for access to and from the basement car park: that entrance had not been used for many years.

At morning and evening peak times it appeared that about 5% of the staff arrived by car and parked in the basement. They used the Howard Street lift to reach their offices on the other floors of the building, 95% came in through the Wellington Street entrance.

In theory at least, the hypothetical tenant would have a number of options:

- use the accesses in the same way as the actual occupier.
- use the Donegall Square and/or Howard Street entrances to provide access to the upper floor offices by way of the main lift bank.
- use the Wellington Street entrance to provide access to the upper floor offices by way of the main lift bank but supplement that by using the Howard Street entrance to provide some direct access to the upper floor offices by way of the Howard Street lift.

The description of the hereditament in the list was "Bank and offices". Mr Horner submitted and the Tribunal accepts that, the actual use was as a banking hall on the ground floor and it was a fundamental principle of rating that the bank and offices should be valued as they stood.

Mr Barrett considered that as there were three access points, the building must be looked at in its entirety and the hypothetical tenant would use all the accesses. He pointed out that the access provided from Wellington Street allowed for greater control of security and suited the operations of the occupier. That was its actual chosen arrangement. He accepted that access to the upper floors from the other entrances through the banking hall, as it stood, would involve persons passing behind the counters and through secure areas but thought the counters could be rearranged and that would not involve structural alterations. In regard to the Howard Street entrance he insisted that it should be taken into account.

Mr Watson considered that the 8 person lift at the Howard Street entrance was inadequate to cater for the volume of persons entering and leaving the building at peak time. In his opinion the location of the main lift bank at the Wellington Street entrance dictated that this

was the main entrance to access the upper floors of the building. The Donegall Square and Howard Street entrances were a long way from the lifts. It would have been neither convenient nor practical for staff travelling to the upper floors of the building to pass through the banking hall. Although the actual occupier had chosen to lay out the building in this way and might be included as one of the hypothetical tenants, Mr Watson pointed out that the bank had been designed in the early 70s; if the building were being redesigned now the ground floor arrangements might be different. He drew attention to a new development by the Ulster Bank nearby where the main frontage included the entrance to a ground floor banking hall and prestige entrances to the upper floors. For security and cost reasons it was unlikely that an occupier would want to keep open more than two access points to an office building of this size.

The Tribunal accepts that the manner in which the actual occupier uses a building will usually be a strong indicator as to how it might best be used by the hypothetical tenant but different occupiers will have different priorities and, for instance, different occupiers may attach different importance to a prestigious entrance for staff. Further, more modern banking and office requirements and design may be very different from those of an earlier generation and that was apparent from the Tribunal's viewing of other premises.

The Tribunal accepts that, if staff and visitors to the Upper floors were to be permitted to pass through the 'behind the counter' area of the Banking Hall, that would both be a security risk and highly disruptive, morning, lunchtime, evening and in between. The Tribunal also accepts that the layout or fitting out of the Banking Hall could be changed without offending the rule that the hereditament must be valued as it stood; in particular a different counter layout could be considered. However, the location of some elements, such as the entrances, the lifts, the book safe, the strong room and other security access arrangements, must be considered to be fixed and it was apparent from the plans that the substantial structures of the Banking Hall had been designed on the assumption that the counter layout would be much the same as it was; it was not a flexible layout. On balance, the Tribunal is not persuaded that an alternative layout, which provided suitable access from either the Donegall Place or Howard Street entrances to the main bank of lifts, was practical or could be achieved without a very significant reduction in the Banking Hall space.

The Tribunal accepts that concentrating staff access at the Wellington Street entrance had advantages from a security point of view but does not accept Mr Watson's unsupported opinion that, for security and cost reasons, the hypothetical tenant would completely ignore another access, the Howard Street entrance, to the upper floors of a building of this size and character. That opinion is hardly consistent with his views on the importance of an entrance. On the particular question of the cost of providing security at that entrance, that

opinion must be considered in the context of his estimate that the 'limited' access reduced the rental value of the building by some £50,000 a year.

Although the Tribunal agrees with Mr Watson that the 8 person lift at the Howard Street entrance was inadequate to cater for all the persons entering and leaving the building at peak time, the Tribunal is not persuaded that he was correct in his assumption that the hypothetical tenant would make no use of it at all, and attribute no value to it. It was the actual occupier's choice not to use it but the Tribunal agrees with Mr Barrett that some valuable use could be made of it, for some direct access to the upper floor offices, without disruption to or structural alteration to the Banking Hall.

In summary then, the Tribunal has concluded that

- As was not really in dispute, the Wellington Street entrance was relatively poor in terms of
 - street location, and
 - physical character and layout.
- The hypothetical tenant
 - contrary to the view of the Commissioner, would be most unlikely to use the Donegall Square and/or Howard Street entrances (to the Banking Hall) to provide access to the upper floor offices by way of the main lift bank
 - contrary to the view of the Appellant, would not necessarily restrict its use of the accesses in the same way as the actual occupier.
- The hypothetical tenant would
 - be likely to use the Wellington Street entrance to provide access to the upper floor offices by way of the main lift bank but, contrary to views put forward by the Appellant,
 - value the opportunity to supplement that by using the Howard Street entrance to provide direct access to the upper floor offices by way of the Howard Street lift.
- To some degree, the Appellant has succeeded in establishing that
 - the "access was a distinct disability which would affect the approach of the hypothetical tenant", and
 - the Commissioner did not properly take into account the quality of the access arrangements from the point of view of the hypothetical tenant.

The Tribunal now turns to the question of how the comparable evidence may best be analysed to demonstrate the effect of the relevant disabilities and how the outcome of that analysis may best be applied to the subject of this appeal. As the actual disability allowances, but not the reasons for them, had been agreed for the relevant comparables,

that was of course essentially a matter of expert opinion and the helpfulness - the relevance and reliability - of the expert valuation evidence.

The matters identified as potentially affecting the scale of an allowance were:

Character of the Building (whether headquarters building)

Fragmented accommodation and small floor plate

Quality of the Street

Quality of the Entrance, and

Any set off for other access within the Building

Character of the Building

Was the impact of such a disability likely to be greater in the case of an headquarters buildings, such as this?

Although it may have been prompted by a comment from the Tribunal and although it was not a matter discussed in his report, it accepts Mr Watson's unchallenged opinion that, in the real world, the market for headquarters buildings was likely to be slightly different from the market for buildings in multiple occupation: the corporate occupiers "were more choosy" and considered that the building made an important statement about their company. He referred the Tribunal to a number of other buildings which had spacious and prestigious entrance foyers and the Tribunal accepts that, in the real world there must be a presumption that a quality address and a quality entrance would enhance the value of a building.

How that effect might be analysed and reflected is another matter. It may be that expert analysis would show that it could best be reflected in an end allowance or it may be best reflected in an enhanced pricing of the entrance itself.

Apart from Mr Watson's oral opinion that it mattered, and it was clear that the presence or absence of an 'office' entrance could affect the value of the upper floors, there was no analysis before the Tribunal that there was, in the List, a distinct category of headquarters buildings whose upper floor pricing reflected that status. In particular, there was no evidence that, even if there were such a distinction, the subject (which combined a banking hall with upper floor offices) was actually included in such a special category.

The Tribunal is not persuaded that it should treat the impact, of such a disability, on these upper floor offices as greater in this case than in the ordinary run of office buildings.

General Observations on the Other Valuation Issues

So far as the other matters are concerned, although the experts gave opinion evidence to the Tribunal, it was not supported by any substantial research (there were only three relevant comparables and not even plans of the entrances were prepared) or analysis and the results of any analysis based on such a small sample must be treated with caution.

For the avoidance of doubt, the Tribunal emphasises that a rating appeal is not in the nature of a judicial review of the decision of the Commissioner but is, instead, a full assessment of what the correct valuation should be. To provide evidence of a correct valuation figure, expert analysis (and usually expert analysis of the List, to reflect the statutory imperative to have regard to comparables in the List) is an essential ingredient.

Here, neither expert produced any analysis based on transactions in the letting market or settlements in rent reviews or valuations for other purposes which would support their valuation conclusions; they both relied on a surprisingly small number of valuations of offices with disabilities, in the List.

The expert witnesses appeared to rely more on other peoples' opinions than their own. Mr Barrett relied on policy and the opinions of the reporting valuers. Mr Watson relied on the opinions of the experts who had been acting for other ratepayers in settled appeals. Where they did express their own opinions, these were largely unsupported by any reasonably transparent and objective analysis identifying the factors at work and their effect.

As a result, the written reports argued the valuation issues, not on positive expert opinion but instead primarily on the basis of criticism of the Commissioner's decisions and its rebuttal.

Although more of the experts' own opinions seemed to emerge through oral examination at the Hearing, that detracts from their reliability and is not the way the Tribunal can best be helped. Having earlier identified and exchanged all relevant factual details about the subject and the comparables and their detailed annotated valuations of the subject, experts are required to put their cards on the table by setting out their views and, with transparent reasoning capable of being tested by the Tribunal, how they come to those views.

As might be expected, it seems there were schemes adopted by the Valuation and Lands Agency (e.g. 'the shop scheme' and 'the office scheme') to provide the building blocks of valuation for the Fourth Revaluation. These, or some other policy of the Commissioner, may, as a result of its widespread application, become the only or a relevant tool of analysis to use subsequently in comparing one hereditament with another.

For example here, it was contended that, in the valuation schemes for the Fourth Revaluation, quality of location:

- in regard to the office scheme within the prime office district, was not a factor that had been reflected.
- would only be a factor where the shop scheme applied.

But valuation is an art and not a science and negotiations between experienced surveyors, including the assessment of the relevance and reliability of other evidence, may temper the scheme and generate a pattern of outcomes that varies from the strict, scheme answers. That would not be unexpected where properties did not fit too neatly into a particular category or scheme.

Rating creates a hypothetical market and the relationship between an appellant and the Commissioner may be compared, in some ways, with a tenant and a landlord in a rent review or a letting in the real market. When a deal is done, the experts may analyse the outcome in different ways from the ways in which, acting as advocates and in an effort to persuade, they argued their case. It is the final figure that the parties have agreed that matters and not always the basis on which they arrive there. Further, there will be inconsistencies in the pattern and a different expert looking from a different perspective, at a raft of agreed figures may legitimately conclude they support rather different conclusions.

Where there is evidence that the expert for the Ratepayer and the expert reporting for the Commissioner agreed on the reasons for an allowance, their opinions, although they were not properly giving expert evidence to the Tribunal, may be of assistance to the Tribunal as an indication of 'hypothetical' market sentiment on the issue. However, where there is no evidence that there was agreement it is difficult to see how the opinions of those not giving expert evidence may be regarded as a reliable guide for the Tribunal.

The Tribunal now turns to consideration of the evidence relating to:

- fragmented accommodation and small floor plate
- quality of the Street
- quality of the Entrance, and
- any set off for other access within the Building

63 Royal Avenue

These were premises occupied by a building society. Although described as offices, the ground floor had been zoned as a shop (not treated as a banking hall). There was about

540 sq.m. of offices on 4 floors above, and it seemed the entire building would have been treated as if it were a shop but for an additional access, a relatively long and narrow passageway from a side street (Lower Garfield Street). The effect of that was to significantly add to the upper floor pricing. There was a connecting door to the ground floor offices. Both experts agreed that the offices were valued at £65 per sq.m. (would have been £45 under shop scheme) with a disability allowance of 10%.

61 Fountain Street

These were premises occupied by an insurance company. The entrance was again a relatively long but broader passageway than at 63 Royal Avenue, it had steps between levels but there was room for a 'porter's desk'. There was minor ancillary accommodation on the ground floor and about 2230 sq.m. of offices on 4 floors above. Both experts agreed that the offices were valued at £96 per sq.m. with a disability allowance of 10%.

1 Wellington Street

These were offices with their entrance almost directly opposite that of the subject. There was an entrance foyer with room for a reception desk. There was 1,666 sq.m. of office accommodation on 6 levels over shops. Both experts agreed that the offices were valued at £100 per sq.m. with a disability allowance of 5%.

Other modern office blocks to which the Tribunal was referred had good quality entrances from main thoroughfares.

The Commissioner adopted a commendably open approach and, at the Hearing, produced two reports, prepared by valuers (for convenience, 'Reporting valuers') reporting to him in other Appeals under the appeals procedure (in accordance with Art 52 (3)) and one memo relating to an appeal to this Tribunal recommending 'end allowances' in each of these cases.

In his written evidence, Mr Barrett referred to 63 Royal Avenue and explained why he thought the Commissioner had given a reduction there:

“ ... but this has been abated because this access is via a passageway from Lower Garfield Street as opposed to being from Royal Avenue”
(perhaps both quality of the street and quality of the entrance).

Elsewhere in the Report his opinion was more specific; he attributed the end allowance to the quality of the street:

“to reflect the access being from Lower Garfield Street and not from Royal Avenue”.

However, at the Hearing, he appeared to consider that both the quality of the street and the quality of the entrance were relevant factors.

According to Mr Watson's written evidence and the reporting valuer's report, that ratepayer had **not** sought a reduction on grounds of the quality of the street. However, the reporting valuer had considered allowances for both were justified. He attached some (but perhaps much lesser) significance to the quality of street. He had said:

"Given that the access to the upper floors is via the less prestigious Lower Garfield Street and (more importantly) via 6.5 metre long and 1.4 metre wide passageway, ... I proposed to adopt a 10% end allowance."

But a later report of the same reporting valuer, at Fountain Street, appeared to contradict both his own report and Mr Barrett's explanation. He said:

"... However I now propose to follow suit for the allowance agreed at 63 Royal Avenue and grant a 10% end allowance for [61 Fountain Street's] poor quality access - **not the location of access.**" [emphasis in his report].

Mr Watson, who was an expert before the Tribunal, did not express any view as to the reason for the allowance in his written evidence. But, in the book of particulars which accompanied his Statement of Case, he did highlight the fact that access was from Lower Garfield Street and did not refer to the quality of the entrance. In his oral evidence, although he provided no rationale, he attributed the allowance partly to the quality of the street and partly to the long, narrow entrance.

So, on the reasons for the allowance at 63 Royal Avenue:

- there was not agreement between the expert for the ratepayer and the reporting valuer - no evidence of what the hypothetical market thought.
- neither expert suggested that the disabilities of the entrance were offset by the connection to the ground floor offices.
- there was a difference of emphasis, if not more, between the written and oral opinions of Mr Barrett. In the written opinion, the emphasis was on the quality of the street, orally he appeared to accept that it was a combination of both the quality of the entrance the quality of the street.
- there was no clear written opinion from Mr Watson but perhaps an implication that it was the quality of the street and an unsupported opinion from Mr Watson that it was a combination of both the quality of the entrance the quality of the street.

- the Tribunal did gain the impression that neither the Ratepayer nor the Reporting valuer were comfortable with the extent of the impact of changing the hereditament from the 'shop scheme' to the 'office scheme' and the allowance (quite properly) may also have reflected a degree of instinctive uncertainty about the correctness of the outcome.

Not without concerns about reliability, the Tribunal views this evidence as suggesting both factors were at play. However, from its inspection, the Tribunal is inclined to the view that the passageway was of such quality that it would not have made much difference whether it had led from Royal Avenue rather than Garfield Street. The preliminary conclusion is that the 10% disability allowance more likely than not primarily reflected the quality of the entrance but also its location.

At 61 Fountain Street, according to Mr Watson, the Ratepayer had sought a reduction:

“ ... for the location, layout and smaller size of the entrance ... “ (Tribunal’s emphasis)

As outlined above, the reporting valuer had attached some significance to the question of quality of street location but firmly rejected the argument and recommended a 10% end allowance for poor quality access only.

In his written evidence, Mr Watson did not express his own opinion but explained why he thought the Commissioner had given a reduction:

“the Commissioner granted an allowance of 10% to reflect ... that the entrance ... is narrow, on two levels and leads to a compact lift lobby”.

In his oral evidence, although he provided no rationale, he appeared to agree that the quality of the street was not poor and the allowance did relate to the quality of the entrance.

In his written opinion, Mr Barrett provided no rationale but said that

“The end allowance reflects the poor quality access/entrance to the premises”.

In his oral evidence, Mr Barrett confirmed that view.

So, on the reasons for the allowance at 61 Fountain Street:

- there was not agreement between the expert for the ratepayer and the reporting valuer - no evidence of what the hypothetical market thought.

- the written and oral opinions of Mr Barrett attributed the allowance to the quality of the entrance only.
- there was an oral opinion from Mr Watson that it was the quality of the entrance.

The preliminary conclusion of the Tribunal is that the 10% allowance at 61 Fountain Street was attributable only to the quality of the entrance.

At 1 Wellington Street, it would appear from a Statement of Case the ratepayer had prepared for the Tribunal (that appeal was not pursued), it had sought allowances primarily on the basis of rental evidence but distinguishing the building on two main grounds:

1. the quality of street location, and
2. the “six floors with a small floor-plate on each floor”.

The Commissioner produced a memo to him recommending a settlement. It referred to earlier correspondence, was silent on the rental evidence and the first distinguishing point but recommended a reduction on grounds of the second:

“As far as I can determine, this hereditament’s spread of accommodation, with circa 280 sq.m. on each floor level, is, in Belfast terms, unique. This, it is considered, materially disadvantages subject when compared with other modern offices in this locality and, as a consequence, a 5% end allowance is fully justified.”

In his written opinion, Mr Barrett considered that the 5% end allowance

“reflects internal configuration on 6 levels over shops and a relatively small floor plate”.

At the Hearing, Mr Barrett agreed that view of the Reporting valuer seemed reasonable and assumed that he had researched the uniqueness question but Mr Barrett appeared not to have done any research of his own.

According to Mr Watson, in his written opinion, the Ratepayer had sought a reduction:

“ ... to reflect the fact that Wellington Street is a narrow, congested street lacking in prominence and the fact that the accommodation is spread over six floors each of a relatively small floor plate”

In his Expert Report, Mr Watson expressed his own view:

“ ... I believe the allowance of 5% partially reflects ... that Wellington Street is a narrow, congested street lacking in prominence.”

At the Hearing, Mr Watson isolated this as the only reason. He said the accommodation was good: the floor plate although relatively small was not unique, the offices were long and narrow but enjoyed good natural lighting.

So, there were two possible categories of allowance at 1 Wellington Street:

- fragmented accommodation and small floor plate, and
- quality of the Street

And, on the reasons for the allowance:

- there was no agreement between the expert for the ratepayer and the reporting valuer - no evidence of what the hypothetical market thought.
- the written and oral opinions of Mr Barrett were that the end allowance related to the internal configuration and small floor plate.
- there was a written opinion from Mr Watson that he thought it was the quality of the street that was important and not the floor plate.
- there was oral opinion from Mr Watson that it was **not** the floor plate.

Not without reservations as to reliability, the preliminary view of the Tribunal is that the 5% allowance more likely than not reflected the quality of the street, for the following reasons:

- inspection by the Tribunal confirmed the poor quality of the street and that would indicate that it might be a factor,
- although it was not expressly conceded by the reporting valuer, it was specifically claimed by the ratepayer, the point was to be pursued to this Tribunal and it was not refuted in his memo, and
- the accommodation spread was not unique, it was not so very different from that of the Commissioner's own offices where no allowance was made (but other considerations may have discouraged an appeal to himself)

So, the preliminary view of the Tribunal, having considered the evidence comparable by comparable, are

- there must be reservations as to reliability
- the 5% allowance at 1 Wellington Street more likely than not reflected the quality of the street.

- it seems more likely than not that the 10% allowance at 61 Fountain Street reflected only the quality of the entrance.
- the 10% disability allowance more likely than not primarily reflected the quality of the entrance at 63 Royal Avenue but also its location.

In attempting to draw these strands together, and decide their relevance to the subject, the Tribunal was given little assistance by the expert witnesses. The best conclusion consistent with the evidence that the Tribunal can reach, is that the quality of the entrance and the quality of the street are two aspects of the same disability. Each may be a factor on its own or they may combine to create the effect so the quality of the street may not matter if there is a really poor entrance and a really good entrance may offset a location in a side street. So the combined effect may be cumulative or if one factor is tending to an extreme high and the other is tending to a modest low, the effect of that may be that the dominant factor is the only one apparently affecting the outcome.

Mr Barrett having taken the view he had, did not pursue the question of what factors might helpfully be taken into account, and to what extent, by the Tribunal in making the allowances at the key comparables relevant to the subject.

Mr Watson robustly estimated an end allowance of 10%. As discussed earlier, this reflected assumptions with which the Tribunal did not agree. He assumed the hypothetical tenant:

- would restrict its use of the accesses in the same way as the actual occupier, and
- would not value the opportunity to use the Howard Street entrance to provide 'prestige' direct access to the upper floor offices by way of the Howard Street lift.

There were some other issues raised.

The Tribunal cannot conclude that the evidence indicates that the relevance of an allowance for quality of location depended on the district in which the building was sited. In any event it appeared to affect an office in Wellington Street, opposite the subject.

The Commissioner contended that the quality of the entrance had no effect on value unless

- it was the sole entrance, and
- it was an indirect access (ie a lobby separated from the street by a narrow corridor)

The Tribunal accepts that the impact of the disabilities may be expected to be more severe where there was only one entrance but the Tribunal has concluded that the evidence

showed there was an impact at 63 Royal Avenue, where there was more than one entrance.

So far as the second point is concerned, whether or not the degree of separation was the key factor, it appears to the Tribunal that the subject qualified as being in that category.

At the Hearing attempts were made to compare the relative qualities of the main and side streets at Royal Avenue and the subject. However the Tribunal is not persuaded that would identify any common denominator that would assist the question of relativity.

Doing the best it can with the evidence, if Wellington Street had been the only access to the upper floors, having regard to the key comparables and the limited helpfulness of the expert evidence, the Tribunal would have allowed a robust 8% or 9% for the combined effect of the poor quality of both the entrance and street location.

Although Wellington Street was not the only access, the Tribunal has concluded that the hypothetical tenant would not value the use of the Donegall Square and/or Howard Street entrances (to the Banking Hall) to provide 'prestige' access to the upper floor offices by way of the banking hall and the main lift bank. But, the Tribunal has concluded that the hypothetical tenant would recognise the opportunity to use the Howard Street entrance to provide an alternative and 'prestige' direct access to the upper floor offices by way of the Howard Street lift, although it accepts that would incur additional security/operational costs.

Although the Tribunal accepts that requirements change, it goes without saying that it must be of some significance that the actual occupier, who complains of the disability and argues that it results in a very substantial reduction in value:

- designed the building, and
- did not alter the access arrangements when recently altering and changing the use of the ground floor.

Doing the best it can with the limited helpfulness of the evidence, the Tribunal concludes that the allowance should be 6%.

In summary, the Tribunal largely accepts the appellant's case and finds that:

1. As was not really in dispute, the Wellington Street entrance was relatively poor in terms of
 - i. street location, and
 - ii. physical character and layout.

2. The hypothetical tenant
 - i. contrary to the view of the Commissioner, would be most unlikely to use the Donegall Square and/or Howard Street entrances (to the Banking Hall) to provide access to the upper floor offices by way of the main lift bank.
 - ii. contrary to the view of the Appellant, would not necessarily restrict its use of the accesses in the same way as the actual occupier.

3. The hypothetical tenant would
 - i. be likely to use the Wellington Street entrance to provide access to the upper floor offices by way of the main lift bank but,
 - ii. contrary to views put forward by the Appellant, value the opportunity to supplement that by using the Howard Street entrance to provide direct access to the upper floor offices by way of the Howard Street lift.

4. To some degree, the Appellant has succeeded in establishing that
 - i. the “access was a distinct disability which would affect the approach of the hypothetical tenant”, and
 - ii. the Commissioner did not properly take into account the quality of the access arrangements from the point of view of the hypothetical tenant.

5. The policies or schemes adopted by the Commissioner were not always the best guide to value, and expert’s evidence, although not entirely satisfactory in their scope and content in this appeal, could support or displace such schemes.

6. The poor quality of the entrance and street location of the Wellington Street access, although offset to some extent by the availability of the Howard Street entrance, would have an adverse impact and reduce the value of the upper floor offices by 6%.

Accordingly the valuation of the Tribunal is:

		£
Ground Floor (as agreed)		123,919
Basement (as agreed)		50,672
Upper Floor Offices (as agreed)	520,208	
Less 6% end allowance	<u>31,212</u>	<u>488,996</u>
		663,587
	say	663,500

ORDERS ACCORDINGLY

8th November 2000

**Mr M R Curry FRICS IRRV MCI.Arb
LANDS TRIBUNAL FOR NORTHERN IRELAND**

Appearances:-

Mark T Horner QC instructed by Johnsons, Solicitors, for the Appellant.

Ronnie Weatherup QC instructed by Departmental Solicitor for the Respondent.