LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964

IN THE MATTER OF AN APPEAL

VR/27/2000

BETWEEN

KENNEDY ENTERTAINMENTS LIMITED – APPELLANT

AND

THE COMMISSIONER OF VALUATION - RESPONDENT

Re: "Fantasy Island", 2 Kerr Street, Portrush

Lands Tribunal – Mr Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI

Belfast – 12th February 2002

1. This appeal concerns premises that were purpose-built by the Appellant as a children's indoor adventure playground ('Fantasy Island') and are located in Portrush, a seaside resort. They are described in the List as an "adventure playground" and both parties agreed that was its category of use for rating purposes. It is one thing to identify a category of use, it is quite another to apply the effect of that determination to the assessment of NAV (for convenience 'in the rating world'). The Appellant said it made a great deal of difference; the Respondent said it made no difference. There are only a few such adventure playgrounds in Northern Ireland.

2. The Commissioner of Valuation by Certificate of Net Annual Value dated 9th August 2000 amending the Net Annual Value of the subject premises from £31,500 to £27,000. The Appellant sought a reduction to £13,250.

3. Mr Stephen Shaw QC instructed by Macaulay Wray appeared for the Appellant.

4. Mr Nicolas Hanna QC instructed by the Departmental Solicitor's Office appeared for the Respondent.

5. Mr Matthew McAllister and Mr Peter Robert Bell, both experienced Chartered Surveyors gave expert evidence.

6. The effective date is 1st April 1997 i.e. the date of the Fourth Revaluation List (the Antecedent Valuation Date being April 1995).

7. The hereditament is in substance a large shed but the long frontage has architectural features including a gabled façade and slate roof that reflect its prominent setting at the end of a terrace of what would appear to be turn of the century buildings. The ground floor area comprises a café to the front with a play area to the rear and ancillary accommodation. A substantial 2-storey 'play frame' with chutes and slides etc. dominates the play area and the first floor is in the form of a balcony around that. It includes a seating area, soft drinks counter, kiddie's rides, party area and ancillary accommodation.

8. The site was purchased in 1991 for a consideration of £176,000. The buildings were completed in 1994 at a cost of £600,000 with the benefit of a Northern Ireland Tourist Board ('NITB') grant of £255,534. The Tribunal was told that £206,168 was attributed to the building and £49,368 to play and other equipment. Unless the use is maintained for 10 years the grant could be clawed back.

9. The Appellant relied on a Receipts & Expenditure method. The Commissioner relied on a Comparison method. In applying the Receipts & Expenditure method, Mr McAllister calculated a divisible balance by taking the tenant's trading accounts over each of 3 years and deducting expenses (other than rates and financial expenses) from income. He arrived at his assessment of rent by allowing 50% of the balance as the tenant's share and the residue as the amount available for rent and rates. He then broadly averaged the resultant figures for rent to arrive at the NAV. In applying the Comparison method, Mr Bell relied primarily on the NAV's of adventure playgrounds in other towns but also relied on NAV's of local hereditaments in other, different modes or categories of use.

10. Both parties primarily relied on criticism of the relevance and reliability of the other's method in principle rather than making a positive case to correct what they saw as flaws in the other's approach.

11. Both accepted that there is no obligation to rely on one particular method of valuation and the Tribunal is entitled to admit all relevant evidence (see Halsbury Vol 39(1) at para 695 and Garton v Hunter (1969) 1 All ER 451). The fundamental issue for the Tribunal is the comparative helpfulness of the two methods. This in turn raises questions of the helpfulness of the expert opinions and the helpfulness of the information on which they were based.

12. In regard to the Receipts & Expenditure method, there were concerns about:
    - The operation of the business;
    - The application of the method;
        - *a.* Allowances for the replacement of tenant's items;
        - *b.* The tenant's share;
    - The 'personification' of the tenant; and
    - The relevance of the tone of the list.

13. In regard to the Comparison method, there were concerns about:
    - Reliable comparables;
    - A valuation scheme;
    - NAV's of adventure playgrounds in other places; and
    - NAV's of local hereditaments in another category of use.

14. Mr Christopher Daniel Kennedy, a Chartered Accountant and employee of the group of companies of which the Appellant formed a part gave evidence concerning the trading accounts.

An Approach based on Receipts & Expenditure

15. A brief summary of the Receipts & Expenditure method, formerly known as the profits method, is set out in the speech of Viscount Cave LC in Kingston Union Assessment Committee v Metropolitan Water Board [1926] AC 331 HL at 339:

> "From the gross receipts of the undertakers for the preceding year they deducted working expenses, an allowance for tenant's profit [the 'tenant's share'], and the costs of repairs and other statutable deductions, and treated the balance remaining (which would presumably represent the rent which a tenant would be willing to pay for the undertaking) as the rateable value of the entire concern."

16. And later

> "The precise date at which the profits basis was first devised and the name of its inventor do not clearly appear; but it is plain from the reported cases that its adoption was immediate and enduring."

17. The method originally was used for undertakings in the nature of public utilities but it is a valuation method that also has been found to be of considerable assistance for a variety of purposes in the leisure industry generally.

Mr McAllister's Approach

18. Mr McAllister said he took the Appellant's trading accounts and 'looked at what is there at the end of the day'. But, in the view of the Tribunal, the Receipts & Expenditure approach is not a formula; it is a method of valuation which requires expert judgment on the part of the rating surveyor.

19. Having heard the evidence and explanations of Mr Kennedy, the Tribunal accepts the correctness of the trading accounts (years ended February 1996, 1997 & 1998) on which Mr McAllister relied. In particular, the Tribunal accepts Mr Kennedy's assurance that the depreciation amounts shown on the accounts were in accordance with a policy that complied with applicable accounting standards. But in the view of the Tribunal that is not the point.

20. No issue arose in connection with the relevance of the 3 chosen years trading accounts to the valuation date and averaging was accepted.

The management of the appellant's business

21. There was no criticism of the Appellant's choice of the market it targeted or of the quality of the attractions.

22. The main revenue is generated by a charge 'per session'. Opening Hours were discussed. During July and August the premises are open all day. In June the premises are open every day to accommodate school trips. In the shoulders of the season April, May and September the premises are open Friday, Saturday and Sunday. For the other 6 months of the year the premises are open Saturday and Sunday only but also open at school half term holidays.

23. Mr Kennedy's evidence was that the Appellant had given careful consideration to when Fantasy Island should open and their analysis showed that was the season and those were the hours during which the appellant could generate more revenue than costs on a daily basis. In 1994 they had experimented with a longer season and opening hours but that was unsuccessful. The season and opening hours were consistent with those of the major Amusements in Portrush.

24. Administrative charges were discussed. Mr Kennedy considered that the costs incurred were those necessary to generate the level of visitors they had and if the business could operate at less cost they would do so. Based on a reference to the equivalent costs at another adventure playground in another seaside resort, 'Coco's' at Newcastle, which were much lower on a broadly similar turnover, Mr Bell thought they were too high. All other things being equal, it does seem unusual that the business with a longer season and opening hours should have lower administrative costs but Coco's accounts were not before the Tribunal, there was no detailed investigation of how the differences came about, and the Tribunal is not persuaded that Mr Bell's expert knowledge of the business is sufficient for it to accept his unsupported estimates in place of the actual tenant's figures.

25. The Tribunal is not persuaded that there are grounds for challenging the operation of the business and, in particular, its seasonal opening or administrative charges.

The application of the method

Allowances for the replacement of tenant's items

26. Both parties accepted that it was appropriate to make an allowance for the replacement of the play equipment and other equipment & fixtures (for neutrality - the 'tenant's items') that were not part of the rateable hereditament and that the actual tenant had brought to the hereditament – it was not suggested that the hypothetical tenant would bring less or different items. But they disagreed about how such an allowance should be measured.

27. Although he disagreed with Mr McAllister's approach Mr Bell prepared his own valuation using the Receipts & Expenditure method. In particular he adjusted the figures adopted by Mr McAllister for depreciation. He pointed out that Equipment and Fixtures had been written off on a 25% straight-line basis and as the premises opened for business in 1994 that assumed that all the equipment would be due for replacement in 1998. From inspection that was clearly not the case and Mr McAllister accepted that more than 4 years later much of the equipment had not been replaced. Mr Bell referred the Tribunal to the depreciation figure at other premises in another seaside resort, 'Coco's' at Newcastle, for items other than land and buildings and adopted a spot figure of £12,000 for depreciation.

28. The Appellant suggested that it was inappropriate to accept any depreciation figures other than those in the properly prepared accounts as a deduction before arriving at a divisible balance. In support of that view, the Tribunal was referred to *Ryde on Rating,* the Valuation Office Agency (England & Wales) ('VOA') website and *Rating Law & Valuation* by Plimmer.

29. The Tribunal does not agree.

- *Ryde on Rating* refers to a number of cases and it is clear from them that the proper application of the method does not rely on depreciation as shown in the accounts but instead requires careful and expert consideration of such matters as the value and state of the items at the time of valuation, the policy and amount set aside for repairs and renewals and the likely residual life of the items. Based on such factors a view may be formed on two key matters - the appropriate amount to be set aside annually for future replacement of the items and the amount to be allowed for them in assessing the tenant's capital: see e.g. the discussion in Brighton Marine Palace and Pier Co v Rees (VO) (1961) 9 RRC 77 (the 'Brighton Pier' case).
- Mr McAllister referred the Tribunal to the VOA website where a very brief summary states

  "The working expenses, including an allowance for renewal of the tenant's assets, are then deducted from the gross profit to give the divisible balance."

  This case was heard in February 2002 during the closed season for seaside adventure playgrounds and the Tribunal did not reach any final conclusions until it had had the opportunity of viewing the various premises during the summer. When the Tribunal viewed the VOA website in the summer the contents may or may not not have been the same as when Mr McAllister viewed it around the time of the Hearing but the site goes on to explore the method in some detail. There is discussion on the approach to dealing with renewal and among other things, the author states:

  "Actual amounts shown in accounts for depreciation need to be treated with caution as they are determined largely by individual company policy".
- Plimmer at 6.5.40 states

  "Make necessary additions for sinking funds to replace such depreciating items as buildings, rateable plant and machinery, etc, but not, of course land. Calculate the replacement cost of each item, and spread it over its predictable useful life."

  Even if the suggested approach is not entirely clear, the author does not suggest the adoption of depreciation as shown in the accounts.

30. In so far as Plimmer appears to suggest that any allowance should be applied only to rateable plant and machinery, the Tribunal does not agree. Unusual tenant's items and circumstances may give rise to difficult questions for the tribunal of fact but it is well established that the hypothetical tenant is entitled to allowances for items required to realise the receipts of his business for that use, although they are not part of the rateable hereditament. See e.g. the discussion in regard to the fifth question of the case stated in Hoare (VO) v National Trust; National Trust v Spratling (VO) [1998] RA 391 CA (the 'National Trust' case).

31. It is clear from the authorities that the approach requires expert opinion about the tenant's items at relevant times, their value and condition, their likely useful life (perhaps also giving careful consideration in this case, which concerns children's attractions, to functional obsolescence) and the appropriate funding of their replacement. Unfortunately no such detailed consideration was before this Tribunal. Although the Tribunal can experiment arithmetically to see the effect on the valuation of adopting different values, at different times, for the tenant's items and different approaches to providing funding for their replacement, it should not rely on what would be no more than its own mere speculations on such a core issue.

32. The Tribunal concludes where the allowance for replacements is in dispute, it is insufficient to simply take the depreciation figure in the trading accounts of the actual tenant, and unsafe to adopt a spot figure that is not transparent and cannot be tested: the Brighton Pier approach or something like it would have been appropriate in this case.

The tenant's share

33. Taking a step back from the calculation but on the basis of the value in the accounts of the tenant's items Mr McAllister estimated that the tenant would need to invest working capital of some £200,000. The minimum return he would expect would be 10% and that would swallow up the entire tenant's share. Mr Hanna pointed out that on Mr McAllister's calculations that would result in a zero rent.

34. The approach to apportionment of the tenant's share has varied. For example in the Brighton Pier case a percentage return on the tenant's capital was approved but it is a question of expert fact in every case. However, it is important to recognise that the return on the capital, which he has invested in items on the premises, ought always to be of at least some consideration when assessing the tenant's share: the Surveyor should revisit the question of the value of the tenant's items – if only as a check.

35. In Brighton Pier both valuers reduced the replacement cost of the tenant's items by one half because they were second hand and considered what return might be appropriate. The Tribunal again concludes that expertise is required to assess the tenant's capital: here again the Brighton Pier approach or something like it would have been the proper approach in this case.

36. Although again the Tribunal can experiment arithmetically to see the effect on the valuation of adopting different values for the Tenant's items and different approaches to providing a return on the tenant's capital, it should not rely on what would be no more than its own mere speculations on such a core issue.

The 'personification' of the tenant

37. After allowance for interest and other charges, the accounts show the Appellant to be trading at a loss in each of the 3 years. On the basis of the accounts, the effect of a reduction of rates to the level suggested by Mr McAllister would not appear to be sufficient to turn the business around and in light of the above conclusions, which showed no reward for the tenant's running of the business, Mr Hanna questioned why the company was carrying on. Mr McAllister gave two reasons. The first was that the rating costs were very high and the second was that there was the 10-year NITB grant claw back provision; it was cheaper for the company to continue to trade at a loss than to pay back the grant.

38. His second reason raises interesting questions about the extent to which the personification of the hypothetical tenant should resemble the actual tenant in this case.

39. In the Southern Railway case, which should be considered in full, Lord Hailsham, L.C. says:

> "A further general observation occurs to me, and that is that one may be led astray in the case of a railway undertaking by attempting too detailed or elaborate a personification of the hypothetical tenant."

40. And later:

> "He 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."
>
> Railway Assessment Authority v Southern Rail Co [1936] 1 All ER 26 HL.

41. In a compensation case, Trocette Property Company v Greater London Council (1974) 28 P&CR 408 CA, at 420 Lawton LJ said:

> "It is important that this statutory world of make-believe should be kept as near as possible to reality. No assumption of any kind should be made unless provided for by statute or by decided cases."

42. This 'principle of reality' was approved in both the National Trust case and Williams (VO) v Scottish and Newcastle.

43. The NITB grant agreement was not produced in evidence but it seems that the claw back provision is a contingency provision relating to the continuing of the use of the hereditament for that use which has been adopted for the purposes of consideration of the rebus sic stantibus rule (see later).

44. As it was accepted by Mr McAllister that the actual tenant was motivated to an extent by NITB grant considerations, there would appear to be at least grounds for an argument that the hypothetical tenant would be similarly motivated. If so, it would appear to follow

that the grant should be reflected in the valuation in some way perhaps through a reduced tenant's share or a tenant's overbid. But the measure of that is something on which the Tribunal again should not rely on its own speculation.

Tone of the List and the Receipts & Expenditures method

45. Mr Bell rejected the adoption of the Receipts & Expenditures method of valuation and contended that whilst this approach might be considered at a general revaluation once the new list was published regard must be had to the tone of the list. In his view valuation by reference to the actual accounts was unreliable and did not have regard to the tone of the list. He insisted that the Receipts & Expenditure method was not appropriate unless it could be used as a tool of comparison.

46. The Tribunal was referred to McKeown Vintners Ltd v Commissioner of Valuation VR/9/1985 in which a shortened Receipts & Expenditure method was considered and the Tribunal stated that it is of singular importance to appreciate that at the revision stage a percentage of current turnover (actual or estimated) is used as a method of comparison and not as a direct tool of valuation.

47. The Tribunal accepts that the valuation date is the 'revaluation date' but agrees with Mr Hanna that this is a revision and the Tribunal is obliged to take comparables into account except where the legislation provides otherwise or where for some compelling reason it is impossible for it to do so:

> "… in estimating the Net Annual Value of a 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".
>
> See Schedule 12 to the Rates (NI) Order 1977 – 'the Order'

48. Unlike England and Wales, this 'tone of the list' rule is given statutory expression. It appears to this Tribunal that one consequence may be that the tone of the list crystallizes earlier here than there, although it may still grow in significance or reliability

as it settles down with the passage of time (see e.g. there Marks v Eastaugh [1993] RA 11 and here McKeown Vintners).

49. Mr McAllister accepted that it was unusual for this type of property to be valued by the Receipts & Expenditure method but suggested it should be adopted because there was no comparable. The Tribunal agrees that would be a compelling reason. However for reasons which are set out later, the Tribunal concludes that Mr McAllister took too narrow a view of comparables and so may not only have fallen short of a properly complete application of the Receipts & Expenditure Method but also disregarded the potential helpfulness of the comparison method.

50. As a rough guide only, Mr Bell used a shortened form of the Receipts & Expenditure method. He compared the NAV's with the receipts for Coco's and Fantasy Island. The NAV of Coco's represented 9% of the average receipts. At £27,000 the NAV of Fantasy Island represented 11.3% of average receipts for the same period. Taking into account that Fantasy Island is

    1. a more modern building; and
    2. in a superior state of repair.

    Mr Bell concluded that the valuation for Fantasy Island when compared with Coco's on an accounts basis appeared reasonable.

51. The Tribunal is inclined to a view that to have regard to the tone of the List where a detailed as opposed to a shortened form of Receipts and Expenditure valuation is prepared a more profound analysis is required. However, on the basis of Mr Bell's approach, as any other value added by the more modern building would be reflected in the receipts, it would appear to follow that the only adjustment required would be for repairs.

52. In the case of Fantasy Island, repairs and maintenance appear to amount to something like 1% of receipts. But all have been attributed to 'Property Expenses' – there is nothing shown separately for repairs and maintenance of the tenant's items. That would require clarification but on a very robust view, and in the context of a check only, the

Tribunal has reservations about whether the "superior state of repair" would be sufficient to fully justify the NAV of Fantasy Island as a percentage of receipts being 2.3% higher than Coco's (a 26% increase in the hypothetical rent) – the difference between 9% and 11.3% of receipts. Although the Tribunal has before it the actual tenant's trading accounts for Fantasy Island, it does not have those for Coco's and it would be unsafe to put too much reliance on such a conclusion.

Rebus sic stantibus

53. In this jurisdiction, the statutory definition of the basis of valuation requires the hereditament to be considered "in its actual state" – a statutory expression of the long-standing 'rebus sic stantibus' rule (see Schedule 12 of the Order).

54. Both parties accept that the rule has two limbs and so it includes a requirement to take into account the mode or category of use (for convenience – 'the category of use') as well as the physical state and, so far as is relevant to this particular appeal, there is no substantial disagreement between the parties about either. The category of use is accepted to be an adventure playground.

55. So far as relevant to this appeal, the Tribunal accepts that the conclusions on matters of law of the Court of Appeal in Williams (VO) v Scottish and Newcastle [2001] EWCA Civ 185; [2001] RA 41 apply in this jurisdiction (see paras. 67 to 79).

56. However, for the avoidance of future misunderstandings, one point should be clarified.

57. Mr Bell put forward a proposition, based on the decision of the Lands Tribunal for England and Wales, to the effect that in determining the category of use, among other things regard should be had to "the methods of valuation commonly applied by rating surveyors" (see the Scottish and Newcastle decision in the Lands Tribunal [2000] RA 119). He thought that the Court of Appeal had upheld that conclusion. However, although the Court did hold that the Tribunal directed itself correctly on the essential points of law, it respectfully dissented from some of the reasoning, including that particular proposition (see para. 73).

Reliable comparables generally

58. In Mr McAllister's opinion "for comparables to be reliable they must be **a viable alternative** for the hypothetical tenant of the subject premises".

59. At the Hearing the Tribunal expressed surprise at that view. In response Mr Shaw suggested that it is a commonly held view and so the Tribunal has given the point some further thought and on mature consideration, the Tribunal still does not agree with the proposition. It may be based on a misunderstanding of a well-known rent review case - F R Evans (Leeds) Ltd v English Electric Co Ltd (1978) 36 P&CR 185 which, so far as the Tribunal is aware, is the only case which uses the expression in a relevant context.

60. The case concerned the rent review hypothesis for some exceptionally large industrial premises – 60 acres in all with nearly 1 million square feet of buildings. At page 189, Donaldson J sets out the characteristics of the hypothetical landlord. Among other things:

> "He is, in short, a willing lessor. He wants to let the premises at a rent which is appropriate to all the factors which affect the marketability of these premises as industrial premises – for example, geographical location, the extent of the local labour market, the level of local rates and the market rent of competitive premises, that is to say, premises which are directly comparable or which, if not directly comparable, would be considered as **viable alternatives** by a potential tenant."
>
> (Tribunal's emphasis.)

61. Clearly Donaldson J was sketching the essential character of the hypothetical lessor and considering what would be in his mind. But he did so in the context of assessing the marketability of the premises, and viable alternatives obviously would be potentially competitive premises.

62. That is quite a different matter from saying that the only comparable transactions, which may assist a valuer in assessing the value, are those relating to viable alternatives and,

so far as the Tribunal is aware, no subsequent case has concluded that F R Evans (Leeds) Ltd v English Electric Co Ltd established a principle that comparables must be viable alternatives for the hypothetical tenant of the subject premises.

63. The Tribunal concludes that Mr McAllister has taken too narrow a view of what is a comparable and may therefore have disregarded evidence that is relevant.

A valuation scheme

64. Mr McAllister criticized the absence of a special scheme for the valuation of this narrow category of use (a 'scheme'). The Tribunal understands his criticism to be this. He says that adventure playgrounds have been wrongly valued in that they should be valued having regard to each other within their mode or category of use. In the absence of a scheme of valuation practice prepared by the Commissioner for this particular narrow category of use, they have been valued either

- by comparison (without any adjustment) with hereditaments not in the same mode or category of use; or
- on the basis of their actual value in the rental world.

He says both approaches are wrong.

65. In effect, Mr Bell said that the scheme is that there is no scheme. The subject premises were purpose-built but, like most of the other adventure playgrounds (and some Amusement Arcades) to which the Tribunal is referred, they are substantially in the nature of a large shed and it is these categories of use only that primarily distinguishes both of them from ordinary large sheds ('sheds' for convenience) in similar locations. Research in the rental world had shown the Commissioner that this restricted user had no effect on value in comparison with sheds in the same locality but available for unrestricted user. So, in the rating world, he had valued adventure playgrounds directly in comparison with nearby sheds.

66. The effect on value of a particular category of use is a question of evidence for determination by the tribunal of fact in each case. Valuation in accordance with a scheme may result in a pattern of values that then becomes the tone of the list and as a

result the valuation approach may become difficult to challenge but compliance with such a scheme is not, of itself, determinative of the correctness of the entry in the List. However the absence of a scheme may be a symptom of an absence of more thorough research to establish whether or not there is a pattern that suggests a scheme for valuation.

67. The ‘principle of reality’ suggests that the experts could usefully begin their review of the rating world by looking at the rental world. It may be that close examination of lettings, lease renewals and rent reviews could provide evidence of any different rental market or a guide to adjustments, if any, to the local rents for shops or large sheds as appropriate.

68. The Tribunal is concerned by the absence of any evidence from either expert that would relate treatment of these narrow categories of use in the rating world to their treatment in the rental world; there was no attempt to derive any assistance from actual or hypothetical lettings, in the rental world, that may have included a ‘user clause’ with a permitted use only in accordance with a relevant category of use.

69. Where the permitted use is a broad category - e.g. a shed used as a warehouse - evidence of open market lettings may provide the best evidence because such lettings are likely to be on the same terms as the hypothetical tenancy.

70. Where, with no more than minor alterations, a shed may be capable of meeting demand for a range of uses it is likely that a landlord - wishing to achieve the best rent - has simply offered the shed on the open market with no restriction as to permitted use. If so, a successful bidder will have had to bid against the rest of the world (and therefore all other potential uses to which the shed may be put). So the rent, which the tenant agrees to pay and the landlord to accept, may or may not be the same as the rent on the rating hypothesis (where the user may be deemed to be restricted to a narrow category of permitted use).

71. Perhaps less reliable but much more relevant evidence may be derived by comparing settled rent reviews and lease renewals with lettings on the open market. Unlike open

market transactions, as a matter of contract or statute the parties may have had to take into account permitted use (see e.g. the discussion in *The Handbook of Rent Review* by Bernstein and Reynolds loose-leaf at 5.1 and 5.2 and *Business Tenancies in N Ireland* by Dawson 1994 at page 168). A more profound examination of the underlying facts and assumptions of such transactions and their effect may provide a basis for local adjustments (if any) from rents of sheds in another use, or a broad scheme that will allow the rental world to be of assistance in the rating world. Here the Tribunal is dealing with the rating world rather than the rental world but the Tribunal is concerned as to whether any such detailed examination was carried out with a view either to preparation of the List or for use as a tool for comparison within the List.

72. At any particular location, the rental value of premises, for a narrow category of use may be the same as, or greater or less than that of physically similar premises at the same location but for other uses. One the one hand, if a landlord limits the number of potential tenants by confining the market to a narrow category of restricted user, it seems likely that the resultant rent will be less. On the other hand a category of use is effectively a permission as well as a restriction and that permission may add to the rental value (as it often, but not always does in the case of premises with Intoxicating Liquor Licences).

73. There was unchallenged evidence from the Planning Service that the 'adventure playground' use is not regarded as being within any of the Use Classes in the schedule to the Planning (Use Classes) Order (NI) 1989 and so any change to or from that use would not fall within any of the Use Classes and would require planning consent. However, it was not suggested that a quasi-monopoly was created as a result.

74. There was some evidence from the rental world about adventure playgrounds: the rent of Jungle Jim's (NAV £27,500) at Newtownabbey (a former warehouse in an estate of retail warehousing) was agreed on review with effect from 1st April 1995 at £27,500; and "Aladdin's Kingdom" (NAV £9,700) at Omagh (part of an old former dairy) had been let at a rent of £10,500 with effect from November 1995.

75. Unfortunately, neither expert attempted any transparent analysis, which the Tribunal could test, of these or any other transactions of the effect in the rental market of a permitted user only as an adventure playground: there was no evidence before the Tribunal about the contractual assumptions for purposes of the rent review and whether, in particular, the rents were agreed on the basis of a permitted user only as an adventure playground or how the rents compared with other premises nearby. The permitted user may or may not be an advantage or disadvantage and may make no difference or add to or detract from value in the rental world.

76. Mr McAllister for example, commented that the NAV of Jungle Jim's "represents a commercial rent … as against a Scheme for the valuation for adventure playgrounds" and "… since no scheme existed for adventure playgrounds they have obviously been valued with regard to factors prevailing in their own area where rents for this type of property did not exist". In regard to "Aladdin's Kingdom" he said "this represents a commercial rent on which the NAV was fixed as against a Scheme for the valuation for adventure playgrounds".

77. Rental evidence for adventure playgrounds does appear to be sparse but judging from their locations and the evidence of the rental world, it does seem likely that their values in the rating world could best be assessed by adjustment from local shed pricing (e.g. warehouse or, where relevant, retail warehouse user). Unfortunately neither expert set out local shed pricing or any supporting reasons for any particular adjustment or none.

78. Mr Bell said that all the adventure playgrounds had been valued by the comparative method having regard to commercial values in the surrounding locality. He thought that the hypothetical tenant would have regard to general rental levels in the vicinity and he looked at local good warehouse rents and saw those as the "bottom line" for adventure playgrounds. In the view of the Tribunal they equally could be the upper limit; he may have disregarded the effect of the narrow category of use.

79. Taking the category of adventure playgrounds as a whole, each was valued by reference to local levels of value; generally speaking they were treated like any other

shed and where there was evidence of a rent, that was taken at face value. But there was no evidence before the Tribunal of careful consideration of evidence in the rental world that could provide a guide to or a scheme for the effect of the narrow, restricted category of use, perhaps by comparing rent review and lease renewal settlements (i.e. on contractual or statutory restrictions as to user) with open market lettings. There was some evidence from the rental world but there was a worrying absence of anything before the Tribunal that would allow it to test whether the experts had given proper consideration to whether each or any rent was fixed on the basis of a narrow category of use.

80. As a consequence of reliance on direct comparison with other much more broad categories of use or their actual open market rents at the relevant time in the rental world, the Tribunal does have grave reservations about the correctness of the treatment and general level of values of the narrow category of adventure playgrounds as a whole. But in the absence of relevant and transparent analysis by experts, it is not in a position to come to a firm conclusion that this category has been shown to be wrongly valued.

The helpfulness of the NAV's of adventure playgrounds

81. The Tribunal now considers whether the entries in the list for other adventure playgrounds elsewhere provide an indication that, in the rating world, Fantasy Island is correctly valued or not.

82. Although adventure playgrounds had been valued for preparation of the list by comparison with the values of sheds in the surrounding localities, and Mr Bell supported that approach, for purposes of this appeal he relied on comparison with other adventure playgrounds in the List and treated comparison with other hereditaments in Portrush as being of secondary assistance. Mr Bell suggested that other adventure playgrounds elsewhere are sufficiently similar to be regarded as comparable and produced an (agreed) analysis of the NAV's of other adventure playgrounds – there is only a handful - in the province. He had excluded, as too unhelpful, other playgrounds which had been valued as part of larger hereditaments. The 5 adventure playgrounds (Ground floor agreed areas and agreed pricing analysis are shown in brackets) were:

- Dreamworld at Belfast (1858sq m @ £25.00)
- Coco's at Newcastle, Co Down (580sq m @ £27.00)
- Bananas at Londonderry (566sq m @ £29.50)
- Aladdin's Kingdom at Omagh (312sq m @ £31.00)
- Jungle Jims at Newtownabbey (732sq m @ £37.50)

83. Mr Bell did not demonstrate in detail how or why he considered the pricing of the 5 comparables supported the pricing of the subject. He set out only general reasons and no individual adjustments.

84. Mr McAllister accepted that in terms of physical attributes and category of use, and if the other adventure playgrounds all had been in Portrush they would be acceptable as helpful. He simply rejected any approach based on comparables in this case on two grounds:
    - Where local comparables were not available, in order to achieve comparability it was essential that they should have been valued in accordance with the same scheme (if they were all valued differently there would be no common thread); and
    - Analysing the list to try to find a consistent pattern would be 'very hypothetical'.

85. The question of a scheme has already been discussed.

86. Analysing the list to try to find a consistent pattern is bound to be 'hypothetical' as the entries in the list are the evidence of the rating world and the hypothetical market which it represents. The Tribunal therefore rejects that criticism in principle but the approach to identification and analysis of patterns in the List must be based on sound principles of valuation and take account of the principle of reality.

87. Mr McAllister concluded none of them was a comparable. As discussed earlier he also did not accept that any of the adventure playgrounds had been correctly valued and he took a narrow view of what should be considered to be a comparable. But his particular reservations turned, he said, on the effect of locality coupled with demand and he relied

on length of season and opening hours as a key indicator. He specifically distinguished Fantasy Island from the others on grounds of lack of demand - it was the only one that did not stay open all year round. That, he said, reflected the lack of proximity to attractive shopping facilities.

88. Mr Shaw suggested that, where there are a number of suitable comparisons, all other things being equal the greater the proximity to the subject generally the better – 'location, location, location'. He referred to Howarth v Price (VO) (1964-1965) 11 RRC 196 at 199 and William Hill (Hove) Ltd v Burton (1958) 3 RRC 355 in illustration of the principle. The Tribunal accepts that it is important to recognize that evidence from remote locations generally is less relevant and possibly, in the extreme, irrelevant unless it is being used to demonstrate a principle or, as suggested above, support a scheme or practice. That should be reflected in the relative weight attached to it. But it is a question of fact and degree and part of the role of the expert witness to explain, in a transparent manner capable of being tested by the Tribunal, whether or not and with what reliability relativity can be established.

89. It appears to the Tribunal that in the experts' consideration of the List, the following 4 factors emerged as being of potential significance:

- Size of the accommodation;
- Quality of the accommodation;
- Size and character of the town; and
- Location within the town.

90. It would appear likely that these 4 factors would be generally relevant to sheds and if each of the hereditaments was valued in accordance with nearby sheds in other uses, it would be surprising if there were not an underlying pattern that reflects their influence. But neither expert produced any transparent analysis of whether or not, or to what extent there was such a pattern and, although superficially the relative levels do not look obviously wrong, it is not for the Tribunal to carry out its own analysis and take expert evidence from itself.

91. The sizes of the accommodation were all agreed, and the relative qualities were not in dispute. Fantasy Island has a higher standard of construction, finish and general appearance than any of the comparables including Coco's. Both experts agreed that of all the other adventure playgrounds, Coco's at Newcastle would be the closest for comparison purposes in that it is in a seaside resort and also occupies a seafront location and the resident populations are of the same order. There was an inconclusive debate about the number of tourists drawn to Portrush as compared to Newcastle. Neither expert attempted to draw any conclusions about relative demand from the respective volumes of trade, in terms of turnover, nor, although later the Tribunal will discuss evidence about levels of value in Portrush, did either produced any evidence of the 'level of values' in Newcastle.

92. But in regard to location there was a fundamental difference about whether proximity to shopping facilities had a special value to adventure playgrounds over and above what might be the ordinary value of a shed for some other use at a particular location.

93. The agreed analysis of the NAV of the subject Fantasy Island at Portrush was 658sq.m @ £28.00 – £1.00 per sq m more than Coco's at Newcastle. Taking into account the location and physical characteristics Mr Bell was of the opinion that the ground floor pricing differential was justified. The first floor of Fantasy Island (£15 per sq m) is superior to Coco's (£13 per sq m) and again he said the differential is justified. On the assumption that comparison is appropriate, the most important question is whether the evidence casts doubt on these differentials.

94. Without accepting the validity of the method Mr McAllister said the pricing of Coco's suggested an appropriate rate for Fantasy Island would be:

    Ground floor 658 sq m @ £15 = £9,870
    First floor 561 sq m @ £8 = £4,488 NAV £14,358 say £14,250

95. The factors he said he took into account were:

- Coco's was open all year round as opposed to the more seasonal opening of Fantasy Island. He estimated this "to be equivalent to just under 50% of the use by Coco's";
- The cost of closure with regard to ongoing expenditure; and
- The level of values in both areas.

96. The Tribunal accepts the importance of the third point but is unable to see the connection between the seasonal opening and the pricing chosen for his valuation.

97. Coco's was open all year around; daily opening hours were longer than those at Fantasy Island and that may or may not be an accurate indicator of demand: the Tribunal had evidence about careful consideration being given to optimizing the length of season and opening hours at Fantasy Island but there was no corresponding evidence from Coco's (or other adventure playgrounds) to indicate whether a review of similar thoroughness had been made there.

98. There was no evidence about seasonal opening or otherwise of other leisure facilities in Newcastle but Mr McAllister attached considerable importance of the extent of nearby shopping facilities. He considered Newcastle to be much superior as a shopping town to Portrush. Mr Bell would not accept that the shopping facilities of the two towns were substantially different and pointed out that the valuation date was before the recent opening of a major supermarket in Newcastle. Neither expert produced any evidence of retail values in the rental or rating world from either town. The Tribunal is not persuaded that the evidence shows Newcastle to be a superior shopping town to Portrush but has some reservations in the light of the proximity of the former to the major shopping facilities at Coleraine.

99. Mr McAllister suggested that the importance of having an adventure playground near a shopping centre was that parents left their children there while they went shopping but the Tribunal is not persuaded that possibility materially affected value.

100. Neither expert produced any transparent analysis isolating whether or not, or to what extent there was evidence of the proximity to shopping facilities as a factor affecting the value of adventure playgrounds generally in the rental world or the rating world. But it was suggested and seems quite possible that for adventure playgrounds there may be some advantage in that. The Tribunal is not persuaded that they provide some form of child minding service but a combination of shopping and entertainment in a single trip may add a special value. Some adventure playgrounds were located near major shopping facilities, some (like Fantasy Island and Coco's) were not. As Mr McAllister pointed out, Jungle Jim's, which had the highest value, was situated conveniently close to the Abbey Shopping Centre. But, in the absence of expert analysis, the Tribunal cannot say whether for example Jungle Jim's value in both the rental and the rating world simply reflected local values in the retail warehouse park in which it is situated, or a special or overvalue as a consequence of a synergy from the close proximity of the major shopping centre. But the demand for the adventure playground in Portrush may be less than Mr Bell thought; the seasonal trade and opening hours might reflect a lack of demand attributable to the absence of shopping facilities in the vicinity.

101. The lack of enquiry into the issue of possible relevance of proximity to major shopping facilities detracts from the reliability of the evidence of the pattern of NAV's of the comparables. But superficially the relative levels of NAV of adventure playgrounds within their category do not look too flawed and although it has reservations, the Tribunal is not persuaded that relative values within this category have been shown to be substantially wrong.

NAV's of local comparables in another category of use

102. Mr Bell pointed out that Portrush is a resort with a wide range of leisure based properties and was of the opinion that in the rating world the hypothetical tenant as well as looking at the valuations of other adventure playgrounds in other locations would have regard with the general level of values in the locality. He referred to five hereditaments in Portrush. He accepted that they were not in the same category of use as the subject. He said that all of them had been valued by the comparative method

having regard to the valuations of other commercial property in Portrush but did not produce any evidence in support.

103. Although Mr Bell preferred to rely on comparison with other hereditaments in the same category of use elsewhere, three of his local comparisons were Amusement Arcades containing machines that pay out money (The Gold Rush, Sportsland and Phil's).

104. In the rental world Mr Bell suggested that Amusement Arcades in Portrush might have some additional value. They have Gaming Licences (a licence is required under the Betting, Gaming, Lotteries and Amusements (NI) Order 1985) and there was undisputed evidence of a local policy against both Planning permission and Gaming Licences being granted for further Amusement Arcades. In this case, Amusement Arcades were either based in shop units or sheds but the unchallenged evidence from Coleraine Borough Council indicated that there was a quasi monopoly and also a degree of portability about licences:

> "In the past five years only one new arcade has been approved and licensed. This was a relocation of a business from the Arcadia site to Dunluce Avenue (Phil's). No other applications have been successful."

105. The experts had polarized views about Gaming Licences; one said it made no real difference, the other said it made such a difference that comparison with an adventure playground was impossible. But neither expert produced any transparent analysis which the Tribunal could test. When analysing a new letting, rent review or lease renewal for a permitted use which involves a quasi-monopoly arising from a licence which partly attaches to the occupier and partly to the premises, it is essential to know who was assumed to have the effective benefit of the licence. Was it the landlord or was it the tenant?

106. Does a licence lead to an overbid for a shed in a secondary position but not for a shop in a prime position?

107. Mr Bell relied on the Commissioner's scheme for Amusement Arcades, which stated among other things "the essential benchmark is the relativity of new NAV's to adjoining commercial premises". Further, he said that research in the rental world indicates there was no evidence of any differential and, in his opinion, any differential would not be substantial. He did not produce any of the research on which the Commissioner's scheme was based and did not include any analysis of rents of Amusement Arcades in Portrush or elsewhere in his evidence.

108. Mr McAllister did produce two transactions. A "major part" of Phil's Amusements in Main Street had been let on lease from 1st April 1995 at a commencing rent of £18,500 per annum. The rent had been reviewed on 1st April 1999 to £21,000 per annum and the NAV is £22,500. Mr McAllister also drew attention to Kiddieland, which is not far from the subject in Kerr Street. It had a small amusement arcade and a large open area for use for entertainment. The NAV had been fixed at revaluation at £14,600 but according to Mr McAllister it later had been let on lease at £60,000 per annum from 3rd April 1999. Although there was this rental evidence about two local Amusement Arcades – one was a rent review, the other appears to have been a new letting – neither expert attempted to analyse the effect of the basis on which the rents had been fixed. Mr McAllister said that the NAV of Phil's "is now in line with the rent" but the Tribunal was not given any evidence about whether or not the letting or review reflected the permitted user, or any explanation for the clear and disturbing disparity between the NAV and rental value of Kiddieland.

109. In this case there is limited directly relevant valuation evidence relating to this narrow category of adventure playground use. In looking outside the category, on the one hand the Tribunal has reservations about the correctness or otherwise of the Commissioner's and Mr Bell's approach to Licensed Amusement Arcades; there is evidence of a quasi-monopoly, and there is no transparent analysis of evidence from either the rental world or the rating world (for example, the NAV and rent of Kiddieland). On the other hand the Tribunal is not persuaded, by the expert evidence in this case, that comparison with Licensed Amusement Arcades is in principle a safe guide to the correctness or otherwise of the valuations of adventure playgrounds in the rating world.

110. There is statutory presumption, which may be displaced, that the entries in the list are correct. Mr McAllister did not accept that the valuations of any of the hereditaments in the list to which the Tribunal was referred were correct, although he had acted for and settled rating appeals on two of the local Amusement Arcades.

111. Neither side relied directly on Barry's Amusements, the largest and best-known amusement park in Northern Ireland. The property has a gaming licence and was valued by the receipts and expenditure approach.

112. For the following reasons, the Tribunal agrees with Mr McAllister that the local comparables are of little assistance:

1. The Tribunal accepts that they all share a reliance on a mainly seasonal trade but Mr Bell did not produce any transparent reasoning to show how their values should be adjusted to arrive at that of a building at the location and of the quality and character and category of use of Fantasy Island.
2. Mr Bell chose them on grounds that they rely "upon a mainly seasonal trade" but his evidence was that they had been valued for rating on the same basis as adjacent commercial premises whether or not the latter were similarly reliant "upon a mainly seasonal trade".
3. There are extreme contrasts in location:
    a. some are Main street (Phil's and Sportsland); and
    b. some are very secondary (Goldrush and Countryside Centre).
4. The buildings vary significantly in quality and character:
    a. Waterworld includes a swimming pool;
    b. Countryside Centre is a former 1860's bath house;
    c. Goldrush was formerly a bus garage;
    d. The main roof of Phil's was due for replacement; and
    e. Sportsland is good modern premises with extensive glazed frontage.
5. There were differences in categories of use:
    a. Waterworld includes a swimming pool;

b. Countryside Centre is an interpretive centre with no admission charges; and

c. Goldrush, Phil's and Sportsland have licensed amusement permits (see the discussion above).

6. Mr Bell accepted that Waterworld was not of much help.

113. In regard to the NAV's of other local hereditaments the Tribunal largely agrees with Mr Shaw that the NAV's of the other local hereditaments not in the same mode or category of use are an unreliable guide in this case; there are differences in location, quality and character and category of use, and the Tribunal has reservations about whether sufficient enquiries had been made into the rental world and about the absence of any supporting analysis for the expert's conclusion on the effect of the factors outlined above.

114. The primary focus of the enquiry in this case is the correctness of the treatment of one adventure playground, Fantasy Island, and the Tribunal should be circumspect in how far it goes in reviewing the correctness or otherwise of the treatment of other categories of use. But, if anything, the presence of the quasi-monopoly enjoyed by local licensed Amusement Arcades and the absence of any differential between their NAV's and that of the narrow category of use of Fantasy Island as an adventure playground would suggests that Mr Bell's opinion of the relevance is unreliable, that there should be a differential and the NAV of Fantasy Island may be too high.

115. In passing the Tribunal comments that it does not agree with Mr McAllister's suggestion that a covenant in the title of the subject, which prevented it from obtaining a gaming licence, was a material consideration in the selection of comparables; the presence of such a private restriction is usually irrelevant to the hypothetical tenancy.

116. Mr McAllister put forward what he said were "estimated figures that he could not stand over" for the NAV's of 2 local licensed Amusement Arcades on the assumption they had no gaming licences. The Tribunal finds them of no assistance as he gave no explanation as to how he arrived at them.

Summary

117. The Appellant relied on a Receipts & Expenditure method. The Commissioner relied on a Comparison method. Both parties primarily relied on criticism of the relevance and reliability of the other's method in principle rather than the detail of the outcome. The fundamental issue for the Tribunal is the comparative helpfulness of the two methods. This in turn raises questions of the helpfulness of the expert opinions and the helpfulness of the information on which they were based.

118. In regard to the Receipts & Expenditure method, the main concerns were:

- The management of the business;
- The application of the method;
  - *a.* Allowances for the replacement of tenant's items;
  - *b.* The tenant's share;
- The 'personification' of the tenant; and
- The relevance of the tone of the list.

119. In regard to the Comparison method, the main concerns were:

- Reliable comparables;
- A valuation scheme;
- NAV's of adventure playgrounds in other places; and
- NAV's of local hereditaments in another category of use.

120. The Tribunal is not persuaded that there are grounds for challenging the operation of the business and, in particular, its seasonal opening or administrative charges.

121. It is clear from the authorities that the Receipts & Expenditure approach requires expert opinion about the tenant's items at relevant times, their value and condition, their likely useful life (perhaps also giving careful consideration in this case, which concerns children's attractions, to functional obsolescence) and the appropriate funding of their replacement. Unfortunately no such detailed consideration was before this Tribunal. Where the allowance for replacements is in dispute, it is insufficient to simply take the

depreciation figure in the trading accounts of the actual tenant, and unsafe to adopt a spot figure that is not transparent and cannot be tested: the Brighton Pier approach or something like it would have been appropriate in this case.

122. Even if only as a check, an attempt should be made to assess the tenant's capital and what would be an appropriate return on that. Again, the Brighton Pier approach or something like it would have been the proper approach in this case.

123. As the actual tenant was motivated to an extent by NITB grant considerations, there are grounds for an argument that the personification of the hypothetical tenant would be someone similarly motivated. If so, that grant should be reflected in the Receipts & Expenditure valuation; perhaps through a reduced tenant's share or a measured overbid.

124. As this is a revision, the Tribunal is required to have regard to the tone of the List except where for some compelling reason, such as the absence of comparables, it is impossible for it to do so.

125. There is no established principle that the only reliable comparables are those which are a viable alternative for the hypothetical tenant of the subject premises. By taking too narrow a view of comparables Mr McAllister may have disregarded evidence that is relevant.

126. Using a shortened Receipts & Expenditure method as a check only, the "superior state of repair" may not be sufficient to fully justify the relative NAV, as a percentage of receipts, being so much higher than Coco's.

127. The Tribunal concludes that the application of the Receipts & Expenditure method by Mr McAllister to this valuation produces an outcome that is very unreliable: there is an absence of expert evidence considering and quantifying core elements. In particular the Tribunal has reservations about Mr McAllister's approach to the tenant's items, the 'personification' of the tenant and the relevance of the tone of the list.

128. So far as relevant to this appeal, the Tribunal accepts that the conclusions on matters of law of the Court of Appeal in Williams (VO) v Scottish and Newcastle [2001] EWCA Civ 185; [2001] RA 41 apply in this jurisdiction.

129. The Tribunal accepts that a comparative approach is acceptable in principle but has reservations about the helpfulness of its application in this case.

130. The primary focus of the enquiry in this case is the correctness of the treatment of one adventure playground, Fantasy Island, and the Tribunal should be circumspect in how far it goes in reviewing the correctness or otherwise of the treatment of other hereditaments.

131. The Tribunal was told that within the category of adventure playgrounds each was valued by reference to local levels of value; generally speaking they were treated like any other shed and, where there was evidence of a rent, that rent was taken at face value. But there was no evidence before the Tribunal of careful consideration of evidence in the rental world that could provide a guide to or a scheme for the effect of the narrow, restricted category of use, perhaps by comparing rent review and lease renewal settlements (i.e. on contractual or statutory restrictions as to user) with open market lettings. There was some evidence from the rental world but there was a worrying absence of anything before the Tribunal that would allow it to test whether the experts had given consideration in sufficient depth to whether each or any rent was fixed on the basis of a narrow category of use.

132. As a consequence of reliance on direct comparison with other much more broad categories of use or their actual open market rents at the relevant time in the rental world, the Tribunal does have grave reservations about the correctness of the treatment and general level of values of the narrow category of adventure playgrounds as a whole. But in the absence of relevant and transparent analysis by experts, it is not in a position to come to a firm conclusion that this category has been shown to be wrongly valued.

133. Neither expert produced any transparent analysis isolating whether or not, or to what extent there was evidence of the proximity to shopping facilities as a factor affecting the value of adventure playgrounds generally in the rental world or the rating world. But it was suggested and seems quite possible that for adventure playgrounds there may be some advantage in that. The Tribunal is not persuaded that they provide some form of child minding service but a combination of shopping and entertainment in a single trip may add a special value. Some adventure playgrounds were located near major shopping facilities, some (like Fantasy Island and Coco's) were not. As Mr McAllister pointed out, Jungle Jim's, which had the highest value, was situated conveniently close to the Abbey Shopping Centre. But, in the absence of expert analysis, the Tribunal cannot say whether for example Jungle Jim's value in both the rental and the rating world simply reflected local values in the retail warehouse park in which situated, or a special or overvalue as a consequence of a synergy from the close proximity of the major shopping centre. But the demand for the adventure playground in Portrush may be less than Mr Bell thought; the seasonal trade and opening hours might reflect a lack of demand attributable to the absence of shopping facilities in the vicinity.

134. The lack of enquiry into the issue of possible relevance of proximity to major shopping facilities detracts from the reliability of the evidence of the pattern of NAV's of the comparables. But superficially the relative levels of NAV of adventure playgrounds within their category do not look too flawed and although it has reservations, the Tribunal is not persuaded that relative values within this category have been shown to be substantially wrong.

135. In regard to the NAV's of other local hereditaments the Tribunal largely agrees with Mr Shaw that the NAV's of other local hereditaments not in the same mode or category of use are an unreliable guide in this case; there are differences in location, quality and character and category of use, and the Tribunal has reservations about whether sufficient enquiries had been made into the rental world and also about the absence of any supporting analysis for the expert's conclusion on the effect of the factors outlined above. Further, if anything, the presence of the quasi-monopoly enjoyed by local licensed Amusement Arcades and the absence of any differential between their NAV's

and that of the narrow category of use of Fantasy Island as an adventure Playground suggests that Mr Bell's opinion of their relevance is unreliable, that there should be some differential and the NAV of Fantasy Island may be too high.

Conclusions

136. In this Appeal, because of the absence of expert evidence considering and quantifying core elements in the application of the Receipts & Expenditure method, the Tribunal accepts that the valuation is unreliable. The Tribunal prefers the Comparison method as much more helpful. It was based on two strands; local values and adventure playgrounds elsewhere. The former was the basis on which the List was prepared; the latter was the primary basis on which the NAV was defended.

137. The Tribunal has real reservations about the whether the effect of the narrowness of the category of use has been researched in sufficient depth or with sufficient insight; some reservations about Mr Bell's view of the demand for the adventure playground in Portrush; some reservations about the relative levels of NAV of adventure playgrounds within their category; some reservations about whether sufficient enquiries had been made into the local rental world; some reservations arising from the absence of any supporting analysis for the expert's conclusion on the effect of factors affecting the relevance of local NAV's; and reservations about the absence of any differential reflecting the contrast between the quasi-monopoly enjoyed by local licensed Amusement Arcades and the narrow category of use of an adventure Playground.

138. Although taken separately these reservations may or may not fall short of showing that entries in the List are not correct, the Tribunal concludes that in combination they do show that this entry is incorrect.

139. So far as assisting the Tribunal to make an adjustment is concerned, the expert valuation evidence is imprecise and lacking in depth but in the interests of fairness to the Appellant some allowance ought to be made. Only a robust approach is possible and the Tribunal concludes that an allowance of £1,000 is appropriate.

140. As Mr Hanna pointed out, on the Notice of Appeal to the Lands Tribunal the reason given by the Appellant for its contention that the valuation is excessive is:

"it is out of line with other comparable hereditaments".

141. However at the Hearing the Appellant rejected any approach based on comparables and instead relied on a Receipts & Expenditure method. Mr McAllister explained the absence of any reference to the profits method as being the result of adopting standard wording. The Tribunal accepts Mr McAllister's explanation. However, more in hope than expectation, it encourages parties to formulate and inform the other party of their case at the earliest opportunity rather than recite the usual mantras.

142. The Tribunal allows the appeal to this limited extent and reduces the NAV to £26,000.

ORDERS ACCORDINGLY

31st October 2002 **Mr M R Curry FRICS IRRV MCI.Arb Hon.FIAVI**

LANDS TRIBUNAL FOR NORTHERN IRELAND

Appearances:-

Appellant – Mr Stephen Shaw QC instructed by Macaulay Wray.

Respondent – Mr Nicholas Hanna QC instructed by the Departmental Solicitor's Office.